



**International Convention  
on the Protection of the  
Rights of All Migrant  
Workers and Members  
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 73 OF THE CONVENTION**

**Initial reports of States parties due in 2004**

**BOSNIA AND HERZEGOVINA**

[2 August 2007]

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## Introduction

1. On 13 December 1996, Bosnia and Herzegovina acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention on Migrant Workers), which went into force on 1 July 2003. According to article 73, paragraph 1, of the said Convention, States parties are obliged to inform the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families of legislative, judicial, administrative and other measures undertaken to implement the provisions of the Convention.
2. Bosnia and Herzegovina is one of the rare European countries that has signed this important instrument to date. However, due to objective reasons, such as a lack of time, insufficient material and technical capacity to address the topics and issues to be answered, the lack of a single nationwide database and other reasons that need to be thoroughly analysed from the point of view of existing practice in this field, Bosnia and Herzegovina has not been able to forward its replies to the questions to the Committee within the deadline set.
3. Recently, migrational phenomena have overwhelmed a great many countries, including Bosnia and Herzegovina. Since a number of citizens left the country due to economic, social, political and other reasons as a result of the war, this Convention was signed out of a desire to protect the rights of migrant workers and members of their families. It is a well-known fact that in the majority of countries, the rights of workers and their families are not sufficiently protected, which underscores the need for adequate international protection. This is why Bosnia and Herzegovina undertook a commitment to the provisions of the Convention to protect the rights of migrant workers and members of their families living and working in the country.
4. In accordance with article 73 of the Convention, which sets out the obligation for States parties to submit reports on implementation of the Convention's provisions, Bosnia and Herzegovina has fulfilled its international duty by preparing, adopting and submitting this report.
5. We would like to stress that this document does not contain the usual information on political structure, fundamentals of the judicial system and statistical figures characteristic of the country because these can be found in the Bosnia and Herzegovina core document submitted to the Office of the High Commissioner for Human Rights (see HRI/CORE/1/Add 89/Rev.1).
6. The drafting process, which followed the provisional guidelines regarding the form and content of initial reports submitted by States parties in accordance with article 73 of the Convention, involved State-level experts, Entities and the Brcko District of Bosnia and Herzegovina. In addition to the Bosnia and Herzegovina Ministry for Human Rights and Refugees that coordinated the report drafting, other State-level bodies involved were the Ministry of Security of Bosnia and Herzegovina, the Ministry of Foreign Affairs of Bosnia and Herzegovina, the Ministry of Justice of Bosnia and Herzegovina, the Ministry of Finance and Treasury, the State Border Police of Bosnia and Herzegovina, the Statistics Agency of Bosnia and Herzegovina, the Foreign Trade Chamber of Bosnia and Herzegovina, and the Labour and Employment Agency of Bosnia and Herzegovina. Ministries and institutions from Entities and the Brcko District of Bosnia and Herzegovina involved in the preparation of this report were the Federal Ministry of Justice, the Federal Ministry of the Interior, the Federal Ministry of Culture and Sport, the Federal Ministry of Education and Science, the Federal Ministry of Labour and

Social Policy, the Federal Ministry of Health, the Association of Independent Unions of the Federation of Bosnia and Herzegovina, the Federal Statistics Institute, the Ministry of Justice of the Republika Srpska, the Ministry of the Interior of the Republika Srpska, the Ministry of Education and Culture of the Republika Srpska, the Ministry of Health and Social Welfare of the Republika Srpska, the Ministry of Labour and Veteran-Invalid Care of the Republika Srpska, the Statistics Institute of the Republika Srpska, the Government of the Brcko District of Bosnia and Herzegovina-Brcko District Police, the Department of Education and the Department of Labour and Employment.

7. Key contributions to the preparation of the initial report were also made by some economic associations, employee associations and non-governmental organizations - national and international - which sent relevant information and provided technical support in relation to this document: the Chamber of Commerce of the Federation of Bosnia and Herzegovina and the Chamber of Commerce of the Republika Srpska, the Employers' Association of Employers of Bosnia and Herzegovina, the Employers' Association of the Republika Srpska, the Trade Union Association of the Republika Srpska, the World Diaspora Association of Bosnia and Herzegovina, the Association "Your Rights" of Bosnia and Herzegovina, and the Employers' Association of Bosnia and Herzegovina. So, apart from the information supplied by the report-making bodies the expert team also benefited from direct input from some non-governmental organizations (NGOs).

8. As some questions to be addressed under the Convention were put earlier and reviewed through the reports Bosnia and Herzegovina submitted to the competent United Nations committees, this report does not contain wider observations and explanations regarding the same issues. It primarily concerns the following documents: the initial report on the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.65), the initial report on the International Covenant on Civil and Political Rights (CCPR/C/BIH/1), the report of Bosnia and Herzegovina on legislative and other measures for implementation of the principles embodied in the Framework Convention on National Minorities (Council of Europe), Bosnia and Herzegovina's first report to the Committee on the Rights of the Child (CRC/C/11/Add.28), Bosnia and Herzegovina's report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD/C/464/Add.1) and Bosnia and Herzegovina's initial report on torture and other cruel, inhuman or degrading treatment and punishment to the Committee against Torture (CAT/C/21/Add.6).

9. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina, as the driving force behind the elaboration of this report, has undertaken comprehensive preparations and organized several working and consultative meetings with experts and professionals in this field. Experts from the Geneva-based Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) also rendered their assistance through the exchange of experience and know-how by organizing joint seminars.

10. The attachments to the report contain tabular statistical reviews, list of regulations, list of agreements and a key to abbreviations used.

## **PART I: GENERAL INFORMATION**

### **A. Constitutional and legislative framework**

#### **Constitutional framework**

11. Under the Constitution of Bosnia and Herzegovina, responsibility for matters concerning migration, visas and asylum is entrusted to government authorities, i.e. institutions at the level of Bosnia and Herzegovina. These issues initially fell within the purview of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina; however, after the Ministry of Security of Bosnia and Herzegovina was established, this latter body assumed full competence and responsibility for them. This means that these issues have been given full constitutional and legal framework, especially by means of the formation of the State Border Police of Bosnia and Herzegovina, the Department for Non-Citizens and other institutions which are more closely tasked with the protection of the fundamental human rights and freedoms of both citizens of Bosnia and Herzegovina and non-citizens residing in the country, either as tourists or workers employed in the country. We would like to stress that the rights and freedoms enshrined in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols are directly implemented in Bosnia and Herzegovina by means of the Constitution of Bosnia and Herzegovina and that these acts take precedence over all other laws.

12. The Constitution of Bosnia and Herzegovina also sets out special guarantees and mechanisms for the exercise of rights and freedoms, barring any discrimination among the citizens of Bosnia and Herzegovina, in both Entities and in the Brcko District of Bosnia and Herzegovina, on any grounds or reason whatsoever. The Constitutions of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Statute of the Brcko District of Bosnia and Herzegovina offer the same guarantees regarding the protection of human rights and fundamental freedoms as the Constitution of Bosnia and Herzegovina.

13. The Convention refers to migrant workers and members of their families in Bosnia and Herzegovina and is applied regardless of sex, race, skin colour, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or any other status. The Convention is applied during the entire period of migration of workers and their families, during their departures, transit and remunerated activities in the State of employment, as well as during the return to the State of origin or the State of habitual residence, as regulated by article 6 of the Law on Non-Citizens' Movements, Residence and Asylum on non-discrimination (*Official Gazette of Bosnia and Herzegovina*, Nos. 29/03 and 4/04), which states that non-citizens shall not be subject to discrimination on any grounds, including sex, race, skin colour, language, religion, political or other opinion, ethnic or social origin, affiliation to national minority, property status, age, mental and physical disability, status at birth or any other status.

#### **Rights and freedoms of non-citizens and stateless persons**

14. These are persons who exercise their rights in accordance with the Constitution and laws of Bosnia and Herzegovina and international treaties and conventions. Non-citizens in Bosnia and Herzegovina enjoy the rights and freedoms enshrined in the Constitution, domestic law and

international treaties and conventions. Moreover, non-citizens and stateless persons may regulate their residence under certain terms prescribed by the legislation of Bosnia and Herzegovina on different grounds, including refugee status and asylum.

### **Citizenship of Bosnia and Herzegovina**

15. Article 1, paragraph 7, of the Constitution of Bosnia and Herzegovina regulates citizenship in Bosnia and Herzegovina. Given the State structure and the organization of Bosnia and Herzegovina, which consists of two Entities and the Brcko District of Bosnia and Herzegovina, citizenship of Bosnia and Herzegovina is regulated by the law passed by the Parliamentary Assembly of Bosnia and Herzegovina, while citizenship of each Entity is regulated by the legislation of the individual Entities. It should be emphasized that, in accordance with the Constitution, all citizens of any Entity are automatically citizens of Bosnia and Herzegovina. No person can be arbitrarily deprived of Bosnia and Herzegovina citizenship or Entity citizenship, or left stateless on any grounds. No person can be deprived of citizenship of Bosnia and Herzegovina or of any Entity on any grounds such as sex, race, colour, language, religion, political or other opinion, ethnic or social origin, affiliation to national minority, property, birth or any other status. Persons who were citizens of Bosnia and Herzegovina immediately prior to the entry into force of the Constitution are Bosnia and Herzegovina citizens. The citizenship of persons who were naturalized after 6 April 1992 and before the entry into force of this Constitution will be regulated by the Parliamentary Assembly of Bosnia and Herzegovina, which is currently examining the matter.

16. Article 3 of the Law on Citizenship of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, Nos. 4/97, 13/99, 41/02, 06/03, 14/03 and 82/05) provides all Bosnia and Herzegovina citizens with equal rights. Article 5 of this law stipulates that Bosnia and Herzegovina citizenship is acquired by descent, by birth on Bosnia and Herzegovina territory, by adoption, by naturalization and by international agreement. Articles 7 and 24 of this law examine in greater detail some questions concerning the acquisition or loss of Bosnia and Herzegovina citizenship, both for Bosnia and Herzegovina citizens and foreigners and for members of their families. Some of the issues regulated therein pertain to acquisition of citizenship by birth on the territory of Bosnia and Herzegovina, adoption of children, acquisition of citizenship by naturalization, facilitated naturalization, loss of Bosnia and Herzegovina citizenship, loss by operation of law, renunciation, release and withdrawal.

17. Article 40 of the Law on Modifications and Amendments of the Law on Citizenship of Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 82/05) provides for the establishment of the National Commission for the revision of decisions on the naturalization of non-citizens after 6 April 1992 and prior to 1 January 2006. The citizenship of persons naturalized after 1 June 1992 and prior to the entry into force of the Bosnia and Herzegovina Constitution has been and is being regulated by the Parliamentary Assembly of Bosnia and Herzegovina. In this connection, the Council of Ministers formed a Commission in February 2006 tasked with considering individual applications for citizenship on the grounds of naturalization approved in the period mentioned in article 40, paragraph 1, of the said law. The Commission reviews the individual information supplied by the persons concerned and verifies the procedural correctness of the citizenship acquisition procedure. If the Commission so requests, the persons concerned must supply the required information on a timely basis, and

special responsibility in this respect lies with the relevant authorities of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina. If a person fails to respond to the Commission's summons, the Commission may withdraw his/her citizenship. Furthermore, if the Commission finds that the regulations in force on the territory of Bosnia and Herzegovina at the time of naturalization were not applied and if it is clear that the applicant was aware that he/she did not meet the naturalization requirements, he/she shall lose his/her Bosnia and Herzegovina citizenship. If such a person, until the moment of the Commission's decision, has fulfilled the requirements for naturalization or facilitated naturalization as defined by active legal regulations, he/she shall be considered a citizen of Bosnia and Herzegovina in accordance with the law.

18. The Commission may withdraw citizenship of Bosnia and Herzegovina in the following cases: if the regulations in force on the territory of Bosnia and Herzegovina at the time of naturalization were not applied; if the Bosnia and Herzegovina citizenship was acquired by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant, in the case of a lack of real connection between Bosnia and Herzegovina and a citizen not habitually residing in Bosnia and Herzegovina or in other cases. If a person subject to one of the above-mentioned reasons does not remain stateless, the Commission may submit a proposal to the Council of Ministers to withdraw Bosnia and Herzegovina citizenship in any case mentioned in article 23, lines 4, 5 and 6, of the said law. Decisions by the Council of Ministers are final and cannot be appealed; however, administrative proceedings may be initiated under the law of jurisdiction. Evidence that there is no real connection as defined by paragraph 4 (c) of this article can be especially failure to register residence, including address of a stay in Bosnia and Herzegovina. Another example can be failure to apply for the issuance of an identity card for Bosnia and Herzegovina citizens, in accordance with the regulations on registration and residence, and the identity card of Bosnia and Herzegovina citizens.

19. Bosnia and Herzegovina citizenship is not withdrawn when the person concerned fulfils the requirements for naturalization or facilitated naturalization, pursuant to the said law, until the moment of the Commission's decision, and when it is clear that the person concerned is not aware that the regulations were not applied, did not pursue the behaviour justifying withdrawal of the citizenship pursuant to the law, and did not consciously hide any relevant fact.

20. According to current available information on the Commission, it is expected that the results it achieves will be based upon active regulation, without discrimination on any grounds.

21. Out of a total of 16,000 reviewed files of persons who acquired Bosnia and Herzegovina citizenship, 1,230 are disputable. Due to the delicate, subtle nature of the work of the Commission, which affects the fate of people and their families, its work was prolonged for a year in order to resolve these delicate questions of justice and to protect the human rights of the persons whose citizenship is under review.

22. Bosnia and Herzegovina citizens may hold dual citizenship in accordance with decisions on ratification of agreements between Bosnia and Herzegovina and other countries. At this moment, such agreements have been ratified with Croatia, Serbia and Sweden, and a few agreements with other States are in preparation.

23. Non-citizens in Bosnia and Herzegovina are obliged to behave in conformity with the Constitution, laws and international treaties.

24. The legal framework of the domestic legislation regulating the scope of obligations in this field for Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District of Bosnia and Herzegovina consists of constitutions, laws and other legal provisions regulating this matter in Bosnia and Herzegovina. All provisions of these laws are founded upon principles advocating no discrimination against workers who are not Bosnia and Herzegovina citizens on grounds of citizenship affecting working conditions, remuneration for the work or dismissal from it. In principle, persons who are not Bosnia and Herzegovina citizens are granted all rights arising from work and on equal terms with Bosnia and Herzegovina citizens if they are documented on the territory of Bosnia and Herzegovina and employed under regulations for the employment of foreigners.

### **Legislative framework**

25. Besides the Bosnia and Herzegovina Constitution, the Entities' Constitutions and the Statute of the Brcko District of Bosnia and Herzegovina, the legislative framework regarding visas, border crossings (legal and illegal), asylum and migration, which are contained in the Convention, consists of a whole range of laws and by-laws (a list of regulations is attached).

26. The Law on the Employment of Non-Citizens and Stateless Persons of the Entities and the Brcko District of Bosnia and Herzegovina provides that non-citizens or stateless persons may enter into a work contract under the terms provided for in this law and the provisions of the Entity laws on the employment of non-citizens, all of which define the terms under which non-citizens and stateless persons may be employed in Bosnia and Herzegovina. The provisions of the said law stipulate that non-citizens may be employed or work in Bosnia and Herzegovina if they have a work permit and fulfil the general and special requirements stipulated by law. At the Bosnia and Herzegovina level, there is the Law on Civil Service in Bosnia and Herzegovina Institutions and the Law on Employment in Bosnia and Herzegovina Institutions, which regulate the rights and duties of Bosnia and Herzegovina citizens with regard to work and employment and which only apply to civil servants employed in Bosnia and Herzegovina institutions.

27. The Law on Non-Citizens' Movements, Residence and Asylum (*Official Gazette of Bosnia and Herzegovina*, Nos. 29/03 and 4/04) went into force on 14 October 2003. This instrument regulates the terms and procedure for non-citizens' entry and residence in Bosnia and Herzegovina, reasons for refusal of entry and residence, reasons for withdrawal of residence and deportation of non-citizens from the territory of Bosnia and Herzegovina, procedure for application for asylum, approval of asylum and termination of asylum in Bosnia and Herzegovina, the authorities' competence for the implementation of the law, as well as other issues regarding foreigners' movements, residence and asylum in Bosnia and Herzegovina. The basic reasons for enacting this law are the creation of conditions and a climate conducive to the improvement of coordination among the competent government bodies, the separation of the visa regime from residence and work permits, the separation of business permits from the category of persons to whom they are issued, and demarcation of a business (for non-citizens who own a registered business in Bosnia and Herzegovina or manage a business in their own registered company) from the work permit. Furthermore, some of the main objectives of this law are the establishment of transparent procedures for these bodies for determining a quota of work permits and defining the regime of work permits issued only to non-citizens employed under work contracts and a clear designation of competent bodies and time limits for issuance.



28. Work on the modifications and amendments to the Law on Non-Citizens' Movements, Residence and Asylum has been completed and is entirely in conformity with the Convention on Migrant Workers and European Union standards. Some of the major goals of the law regarding the employment of non-citizens in Bosnia and Herzegovina are transparent designation of the bodies for defining yearly quotas of work permits, ascertainment of sorts of business not requiring work permits, establishment of the regime of work permits issued only to non-citizens employed under work contracts, and clear designation of competent bodies and time limits for issuance.

29. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms with its protocols, the Convention relating to the Status of Refugees, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and protocols dealing with prevention of organized crime were consulted and applied in appropriate scope in the procedure of the elaboration of the Law on Non-Citizens' Movements, Residence and Asylum and its modifications and amendments. Accordingly, the law contains "protective provisions" that urge and commit the competent bodies to treat with utmost care all cases in which non-citizens express justifiable fear of persecution or other forms of degrading treatment. With a view to enabling thorough verification of a foreigner's allegations regarding possible persecution in his/her own country, the law stipulates that in such cases the decision shall be executed as per legal validity. The possibility of court checks is also indisputable in all other administrative procedures, but the law uses the possibility of introducing an exception regarding the moment of validity in all matters where the outcome may be a drastic violation of human rights under the Convention. The process of elaborating the existing law and its modifications and amendments was facilitated by the active participation of the representatives of the European Commission, the delegation for Bosnia and Herzegovina, the Office of the High Representative, the Office of the High Commissioner for Human Rights, the United Nations High Commissioner for Refugees and the International Organization for Migration, given the mandate they have in Bosnia and Herzegovina. The European Union standards concerning non-citizens' movements and residence were incorporated into the text of the law.

### **Judicial framework in Bosnia and Herzegovina**

30. Since there were more details on the judiciary in Bosnia and Herzegovina and its organization in article 14 of the initial report on the implementation of the International Covenant for Civil and Political Rights (CCPR/C/BIH/1, paras. 170-179), we shall only point out characteristic examples here. The Bosnia and Herzegovina courts do not maintain separate registries (logs) for cases where the proceeding parties are migrant workers and members of their families. Proceedings with courts in Bosnia and Herzegovina, in cases where one or more parties in the proceeding are non-citizens, natural or legal entities, hence, migrant workers or members of their families, are conducted under the domestic legislation in which provisions of adopted international instruments are applied. Consequently, proceedings with Bosnia and Herzegovina courts are conducted according to principles that bar discrimination on any grounds with regard to parties in proceedings that also involve Bosnia and Herzegovina citizens.

31. As an example, we give here some figures and cases registered with the Court of Bosnia and Herzegovina regarding settlements in cases concerning human rights, specifically non-citizens' movements, residence and asylum.

32. In conformity with article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, anyone arrested or detained must be brought promptly before a judge or any other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable lapse of time or to release pending trial. Anyone arrested or deprived of his liberty in violation of this Convention shall be entitled to compensation.

33. The records of the Court of Bosnia and Herzegovina (Department of Administrative Procedure) show that in 2003 there were 18 cases of litigation instituted against negative decisions of the Ministry for Human Rights and Refugees of Bosnia and Herzegovina, against which non-citizens filed complaints (brought administrative litigation) with the Court of Bosnia and Herzegovina. After the court procedure was completed, 13 complaints were refused and 5 rejected. In 2004, there were 13 complaints against the Ministry of Security, concerning expulsion litigation (deportation), residence and asylum. One complaint was refused and 12 rejected. In 2005, there were 31 complaints against the Ministry of Security and 1 against the Ministry of Civil Affairs of Bosnia and Herzegovina. The following cases were taken up: expulsion from Bosnia and Herzegovina - 4 complaints; residence in Bosnia and Herzegovina - 12 complaints; asylum - 15 complaints; and withdrawal of citizenship - 1 complaint. Ten complaints were rejected, 4 were refused, 17 are being processed and 1 complaint is in preparation. In 2006 there were 10 complaints against the Ministry of Security of Bosnia and Herzegovina, 4 complaints against the Council of Ministers, 5 complaints on asylum and 9 complaints on residence. One complaint was refused, 2 are being processed and 11 are in preparation.

#### **Foreigners in the Bosnia and Herzegovina judiciary**

34. Article IV of the Bosnia and Herzegovina Constitution provides for the composition of the Constitutional Court of Bosnia and Herzegovina. The Court has nine members, four elected by the House of Representatives of the Federation of Bosnia and Herzegovina, and two members elected by the National Assembly of the Republika Srpska. The three remaining members are elected by the President of the European Court of Human Rights in agreement with the Bosnia and Herzegovina Presidency. The judges elected by the European Court of Human Rights cannot be citizens of Bosnia and Herzegovina or any other neighbouring country. Pursuant to these constitutional provisions, three foreign judges participate in the work of the Constitutional Court. However, according to the same article of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina can foresee by law a different manner of selection for the three judges elected by the President of the European Court of Human Rights. To date, however, it has not availed itself of this right.

35. At present, there are 39 judges at the Court of Bosnia and Herzegovina - 23 national judges and 16 international ones. It should be noted that there is no special registry for foreigners who are the subject of court proceedings. Cases are filed and marked according to the sort of case, for example, criminal legal proceedings, and defendants have the same rights as citizens of Bosnia and Herzegovina. The participation of international judges in the Bosnia and Herzegovina courts is primarily aimed at not only assisting the courts of Bosnia and Herzegovina with deciding on numerous cases, especially ones involving war crimes, organized crime and corruption, but also contributing to the overall restructuring of courts, in accordance with international rules.

36. According to statistics provided by the Office of the Federal Prosecutor of the Federation of Bosnia and Herzegovina, in 2000, out of a total of 173 cases involving 264 persons in 2000 in first instance proceedings under the jurisdiction of this Prosecutor's Office, 11 were non-citizens, broken down as follows: 5 from Croatia, 1 from Tunisia, 1 from the Federal Republic of Yugoslavia, 2 from Slovenia, 1 from the Netherlands and 1 person charged with terrorism. In 2001, there were 131 cases involving 205 persons in first instance proceedings, of whom 14 were non-citizens, mainly from Algeria. In 2002, there were no non-citizens out of a total of 6 cases. In 2003, there were 18 cases involving 55 persons, of whom 4 were foreigners. In 2004, there were no non-citizens in first instance proceedings.

37. Until 2006, Entity regulations by which magistrate courts were established were in force in Bosnia and Herzegovina. However, the entry into force of the modifications and amendments of the Law on the High Judicial and Prosecutorial Council (*Official Gazette of Bosnia and Herzegovina*, Nos. 25/04 and 93/05 in article 94), modifications and amendments of the Law on the Courts of the Republika Srpska (*Official Gazette of the Republika Srpska*, No. 37/06) and modifications and amendments of the courts in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, No. 22/06) established a special department for magistrate's court at regular courts. Both in previous and existing law, shortened proceedings were applied to non-citizens who committed offences (i.e. on duty magistrates or judges who conducted legal proceedings on weekends and holidays in order not to unduly deprive non-citizens of their liberty and place inordinate limits on their freedom of movement).

38. Table 1 (see annex) provides an overview of criminal and legal proceedings instituted against non-citizens by the police in the Brcko District of Bosnia and Herzegovina. During the reporting period, there were 31 criminal proceedings registered and 126 legal proceedings, for a total of 157 criminal and legal proceedings. Human rights are respected and freedoms guaranteed in proceedings at this court by means of the Constitution, laws and international conventions, and the same provisions are applied to all citizens of Bosnia and Herzegovina.

39. The fact that there has been a great increase in activities relating to control and security of State borders is reflected by the figure that for all of 2005, there were 41.24 per cent less or 3,366 fewer offences leading to proceedings than in 2004, especially with regard to crossings of State borders and movement along the border line. The breakdown of the offence structure shows that the majority of offences were related to the following:

- Regulations governing the manner of crossing State borders and movement along the border line (1,528);
- Regulations governing international traffic (2,080);
- Regulations pertaining to traffic security (989);
- Regulations concerning movements and stays of foreigners and asylum (353);
- Regulations relating to customs offences (342).<sup>1</sup>

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<sup>1</sup> Report on the work of the State Border Police of Bosnia and Herzegovina for the year 2005, p. 13

The greatest number of persons recorded are Bosnia and Herzegovina citizens - 4,299, followed by citizens of neighbouring countries, namely citizens of Croatia - 302 and Serbia and Montenegro - 271. The clear decline in the number of offences committed is due to the professional work of the Bosnia and Herzegovina State Border Police in the field and their commitment to following up, discovering, suppressing and preventing the commission of all forms of illegal actions, which deterred many would-be perpetrators.<sup>2</sup>

40. In 2006, a total of 4,298 offences were committed, 852 offences less (-16.54 per cent) than in 2005, when 5,150 offences were recorded. A total of 4,051 (as against 5,752 in 2005) offences led to charges, which makes 744 offences less (-15.51 per cent) during the reporting period than in 2005. A total of 5,219 persons were charged (5,752 in 2005), which makes 533 persons less (-9.26 per cent) than in 2005.

41. The number of registered persons per offence type is as follows:

(a) The Law on Supervision and Control of State Border Crossings - 1,627 persons (31.17 per cent);

(b) The Law on Non-Citizens' Movements, Residence and Asylum - 363 persons (6.95 per cent);

(c) The Law on Travel Documents - 6 persons, total (0.12 per cent).

42. As far as a breakdown by citizenship of persons recorded, it is clear that the majority of them are citizens of Bosnia and Herzegovina, followed by citizens of surrounding countries, Serbia and Montenegro, Croatia and Albania. Other persons recorded are mainly citizens of Slovenia, The former Yugoslav Republic of Macedonia, Moldavia, Romania, Ukraine, Germany, Australia, Bulgaria, Turkey, Hungary, Czech Republic, Slovakia and Belarus.

### **Smuggling and criminal prosecution of illegal immigrants**

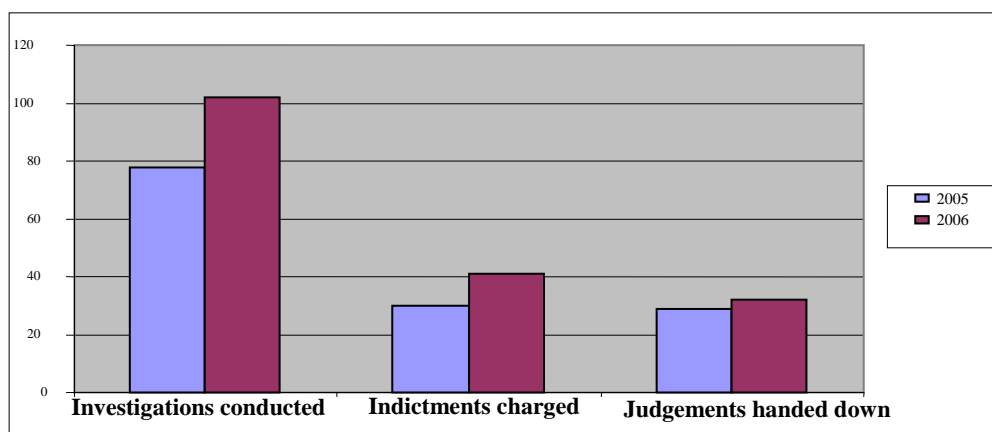
43. In 2006, based on figures by the services responsible for implementation of the law and the Prosecutor's Offices, there were 63 reports against 126 persons on the commission of crimes of smuggling of migrants under article 189 of the Criminal Code of Bosnia and Herzegovina. One case was reported on the commission of the crime of smuggling of migrants in connection with article 250 of the Criminal Code of Bosnia and Herzegovina (organized crime). In 2006, the Prosecutor's Offices conducted 102 investigations on crimes of smuggling migrants, with 57 investigations carried over from the previous period and 45 new investigations opened. During the reporting period, the prosecutors brought three orders on non-conduct of investigation and stopped investigation in five cases. During the reporting period, 41 indictments were brought, of which 39 were confirmed and 2 rejected. The courts passed judgement on 32 cases against 35 persons. Twenty-one persons were convicted while pleading guilty, 12 were given suspended sentences and 9 were sentenced to imprisonment. In addition, 13 persons were convicted while pleading innocent, 10 were given suspended sentences and 3 were sentenced to imprisonment. Finally, one person was released.

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<sup>2</sup> Ibid.

44. The following graph shows the relationship between investigations conducted, indictments brought and sentences handed down for smuggling of migrants in 2005 and 2006:

**Graph 1**



45. As for the migration and protection of victims of trafficking in persons, it is important to emphasize the following: in 2002, CARDS provided resources for the foundation of the Centre for the reception of illegal migrants. Construction for building the Centre at the designated location has already begun. The rules on standards and operation of the immigration centre have been adopted. Moreover, preparations to make the reception centre fully operational are under way.

46. Government bodies began dealing with the issue of trafficking in persons in 2001. On 6 December 2001, the Council of Ministers of Bosnia and Herzegovina adopted the Action Plan for the prevention of trafficking in persons in Bosnia and Herzegovina. Furthermore, a State Commission was formed to implement this Action Plan. Since legislation at the time made no provision for the protection of victims of trafficking in persons, on 6 September 2002 the Ministry for Human Rights and Refugees of Bosnia and Herzegovina drafted interim guidelines for the treatment of victims of trafficking. In addition, there is now a rulebook on the protection of foreign victims of trafficking and procedures and protocols defining cooperation among institutions and international organizations in this field have been established. The above instruments set out rules and manners of treatment by all State and Entity government bodies which are competent for activities on the prevention and suppression of trafficking in persons, and by the citizens' associations which have signed the Memorandum of Understanding of the Care of Trafficked Victims, all with a view to ensuring efficient protection of trafficked victims in accordance with international standards for the protection of human rights.

47. In April 2005, the Council of Ministers of Bosnia and Herzegovina adopted a new National Action Plan for combating trafficking in persons and illegal migration in Bosnia and Herzegovina for the period 2005-2007, an Operational Plan of Activities for 2005, and the Action Plan for combating trafficking in children, all of which set out the strategy for the work of government representatives in cooperation with non-governmental and international partner organizations in this field. These instruments formulated three-year strategic goals and defined measures and activities on support, prevention and protection of victims in shelters (safe houses)

for the accommodation of victims of trafficking and witnesses in criminal investigations of perpetrators of crimes involving trafficking in persons. Their implementation will enhance the entire process of coordination of activities and improve the situation with regard to prevention and efforts to combat trafficking in persons and illegal migration in Bosnia and Herzegovina, thereby ensuring full compliance with the provisions of the United Nations Convention against Transnational Organized Crime (the Palermo Convention).

48. The Action Plan for the prevention of trafficking in persons in Bosnia and Herzegovina is implemented by means of four key thrusts: legislative measures; strengthening of operational activities of the bodies involved in the implementation of the Action Plan; protection of victims - safe house shelter for victims; and an awareness-building programme.

49. In August 2003, based on recommendations by national and international organizations, the Council of Ministers of Bosnia and Herzegovina adopted the Decision on procedures and manner of coordination of activities related to prevention of trafficking in persons and illegal migration in Bosnia and Herzegovina and established the post of State Coordinator for Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 24/03).

50. In July 2005, procedures were defined for action by the competent government authorities (Ministry of Security of Bosnia and Herzegovina, Prosecutor's Office of Bosnia and Herzegovina, SIPA, Department for Non-Citizens) in cooperation with NGOs (safe houses for the accommodation of trafficked victims, the Association "Your rights BiH" for the provision of free legal assistance to trafficked victims, and IOM), which undertake repatriation to the States of origin.

51. The Law on Non-Citizens' Movements, Residence and Asylum stipulates the procedure and requirements for the granting of temporary residence on humanitarian grounds to victims of organized crime or trafficking in persons, with a view to rendering protection and assistance in their rehabilitation and return to their country of origin.

52. The said law defines the responsibility of the Ministry of Security of Bosnia and Herzegovina to ensure special protection and assistance to victims of trafficking in persons in order to facilitate their recovery and return to their country of residence, as well as the obligation to provide by-laws with rules and standards for treatment and other issues pertaining to the admission of the trafficked victims, their rehabilitation and return. Furthermore, the provisions of the law provide for the possibility of the establishment of specialized institutions for the reception of foreigners, accommodation of trafficking victims, asylum centres, centres for temporary shelter (Albanians from Kosovo) and special institutions for the reception of foreigners which already exist in both Entities ("Lara", Bijeljina, "La Strada", Mostar, "Medica", "Zenica", etc.).

53. As regards the database on foreign citizens, the Ministry of Security of Bosnia and Herzegovina is responsible for maintaining the central database on non-citizens in Bosnia and Herzegovina. In cooperation with the Centre for Interdisciplinary Postgraduate Studies, the Ministry completed a project entitled Computerization of Non-Citizens' Affairs. The European Commission approved financing from the programmes on Community Assistance for Reconstruction, Development and Stabilisation (CARDS), through IOM, for the above project. The project involves the establishment of networks for the exchange and formation of databases

in which all data will be inserted from the moment of submission of the application for visas in a diplomatic or consular office, down to entry, certificate of registration and departure of a non-citizen from the country. The database users are all State and Entity bodies dealing with issues relating to non-citizens in any segment.

### **International bilateral agreements on police cooperation or agreements on readmission**

54. In 2006, Bosnia and Herzegovina entered into 20 international bilateral agreements on police cooperation or readmission, thereby establishing an adequate legal framework for effective international cooperation of police and immigration services with a view to combating all kinds of crimes, especially organized crime, and fighting trafficking in persons and illegal migration. In 2006, Bosnia and Herzegovina also took steps to conclude an additional 35 such agreements. More detailed information is provided on agreements signed and steps to conclude new agreements in the chapter on international cooperation. It is essential to note that by the end of 2006, negotiations started with the European Union on two agreements, on readmission and the liberalization of visa requirements for citizens of Bosnia and Herzegovina.

55. A list of the bilateral agreements which Bosnia and Herzegovina signed and ratified with other countries is attached to this report. Moreover, based on information provided by the Ministry of Civil Affairs and the Ministry of Security of Bosnia and Herzegovina, the list of a whole range of agreements is also attached to this report.

56. The end of 2005 marked the completion of a two-year regional CARDS project aimed at the establishment of a legislative, regulatory and institutional framework in the field of visas, migration and asylum, in conformity with the legal order of the European Union, in which all Bosnia and Herzegovina institutions responsible for visas, migrations and asylum participated. In the course of the project, the European legal order was presented in detail along with European best practice in the fields mentioned, and a final project document was drafted which took the form of a roadmap to ensure the conformity of the legislative, regulatory and institutional framework in the field of visas, migrations and asylum for the countries of South-East Europe. When this project ended, an interdepartmental steering group was formed with a mandate to prepare a draft of modifications and amendments to the Law on Non-Citizens' Movements, Residence and Asylum aimed at ensuring that this law was closely aligned with the European Union legal order and European best practice. In 2006, the Steering Group endorsed the majority of modifications and amendments to the law in question and will endeavour to finalize its work in the shortest time possible, after which the draft modifications and amendments will be forwarded to the Council of Ministers and the Parliamentary Assembly, in accordance with procedure.

57. In 2006, the Ministry of Security of Bosnia and Herzegovina passed appropriate by-laws based upon this law (attached).

58. In 2006, the State Border Service of Bosnia and Herzegovina (now the State Border Police of Bosnia and Herzegovina) completed its efforts to establish and upgrade the legal framework arising from the law on supervision and control of State border crossings. It concerns the passing of the by-laws, attached hereto as the list of regulations.

59. In the light of difficulties arising with the recognition of evidence validity in a country in a region where criminal proceedings are conducted pursuant to the laws in force in another country in the region, there is a need to initiate a regional agreement for signature by representatives of the Governments in the region that will define the duties of the competent authorities to accept and recognize in their criminal procedure codes the validity of evidence collected in compliance with the code in force in another country in the region.

60. The Ministry of Justice of Bosnia and Herzegovina and the Ministries of Justice of the countries in the region should prepare guidelines providing for urgent treatment in cases of international legal assistance in proceedings against perpetrators of crimes of trafficking in persons, and train contact teams or persons for urgent treatment in procedures of international legal assistance and exchange of information among them. This would help strengthen national/State capacities for the purpose of ensuring better and more efficient utilization of the possibilities offered by internationally established regional institutions and making more constructive use of liaison officers at the embassies of the European Union countries.

61. It is necessary to take steps, through the competent institutions of the Council of Europe, to establish a regional centre for combating transfrontier organized crime that would involve regional prosecutor's offices alongside police forces. There is also a need to sign and ratify the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols (from 1959 and 2001). For the sake of fuller implementation of the United Nations Convention against Transnational Organized Crime, the adoption of the regional programme could not only help to ensure implementation of relevant international instruments but could also assist with establishing standardized criteria for victims' compensation and protection as well as the protection of victims and other participants in criminal proceedings against traffickers in persons, and to harmonize standards regarding the "period of reflection" for victims and its length, that should be 90 days from the date of identification of the victim and not from the date of the victim's entry in a given country, which does not preclude the establishment of standardized criteria for situations where this deadline could be longer than 90 days.

62. In order to enhance protection of victims of trafficking in persons, the need for free legal assistance was accepted, the hearings of victims as witnesses in criminal proceedings were shortened to a minimum, the assistance of specialized doctors was actively sought so that they might help as experts not only in proving the consequences of the punishable acts but also in offering aid to facilitate the psychological recovery of the traumatized victims and in relying on the sophisticated use of technical facilities (video link) for testimonies of victims appearing as witnesses wherever at all possible.

63. In order to ensure that victims of trafficking enjoy the right to compensation, it is necessary for the countries in the region to take synchronized steps to ensure compensation for any damage suffered by victims, whether material or non-material, during the conduct of the criminal proceedings against the traffickers. The countries in the region should earmark far more resources from government budgets in order to guarantee the rights of victims of trafficking in persons, as for example with the implementation of the Italian Law on Foreigners (article 18 - allocation of resources out of the State budget), especially for the operation of safe houses so they do not depend solely on donations.



64. To enhance the effectiveness of measures to suppress trafficking in persons, Bosnia and Herzegovina intends to establish standardized educational programmes for all government authorities, institutions, judicial officials, police and other bodies working to combat trafficking in persons with a view to increasing the authorities' sense of responsibility.

65. In 2006, Bosnia and Herzegovina joined the international project entitled "Ilareia" created by the Ministry of Public Order of the Republic of Greece and backed by the European Commission - Directorate-General for Enlargement and the Technical Assistance and Information Exchange Unit. The project will be realized by means of the implementation of the Action Plan for police cooperation in transfrontier efforts to combat trafficking in persons. Besides Greece and Bosnia and Herzegovina, the following countries will take part in the project: Albania, Austria, Bulgaria, Croatia, Cyprus, Finland, The former Yugoslav Republic of Macedonia, France, Germany, Hungary, Italy, Moldova, Montenegro, Portugal, Romania, Serbia, Slovenia, Turkey and Ukraine, along with the following international organizations: European Commission, Europol, the Judicial Cooperation Unit of the European Union (Eurojust), the European Agency for the Management of Operational Cooperation and the External Borders of the Member States of the European Union (Frontex) and Interpol. The purpose of the project is to find a model for improving transfrontier police cooperation at the bilateral and multilateral levels. In order to achieve this goal, ways and means of strengthening transfrontier cooperation with a view to combating the phenomenon of trafficking in persons should be agreed in South-East Europe and in Europe as a whole. The planned activities under the project will, inter alia, focus on the establishment of a standing network of experts from the participating countries; the realization of joint operations and the development of joint actions; the formation of joint ad hoc investigative teams; transfrontier supervision operations; the use of plain-clothes police officers; direct exchange of intelligence information during joint operations; the use of a network of police liaison officers; the joint conduct of detailed financial investigations; joint analysis of the phenomenon; the conduct of joint exercises and training of operational personnel involved in efforts to combat trafficking in persons. A special activity designed to run for the duration of the entire project will be the establishment of an emergency group of police heads of South-East Europe, who will meet two times a year with the primary objective of strengthening cooperation in operational planning at regional level and coordinating the activities of law enforcement services in the fight against organized crime, trafficking in persons, drugs, arms and terrorism.

66. In 2006, Bosnia and Herzegovina was also involved in the international project entitled "Hera", a network to combat trafficking in persons in central and southern Europe, which is implemented by the Athens-based European Public Law Center with the backing of the Greek Ministry of Foreign Affairs. In addition to Bosnia and Herzegovina, the following countries are participating in the project: Albania, Bulgaria, Cyprus, The former Yugoslav Republic of Macedonia, Greece, Moldova, Romania, Serbia, Turkey, and Ukraine. The project goal is to align the legislative and institutional framework in selected countries with the legal standards of the European Union in the field of trafficking in persons and to develop cooperation ties between administrative, judicial and prosecutor's institutions and services. The project includes a study on the phenomenon of trafficking in persons in the participating countries that will encompass the following elements: social dimensions of the phenomenon, including causes and evolution; legislative and institutional framework, with a focus on prevention, protection of the victims and criminal prosecution; collection of statistics; technical needs; and proposals for the elimination of the phenomenon in each of the countries represented.

67. In 2006, along with Albania, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, Serbia and the territory of Kosovo, Bosnia and Herzegovina joined the project of support for the development of a transnational mechanism of support for victims of trafficking in South-East Europe, which is implemented by the International Centre for Migration Policy Development and backed by the United States Agency for International Development. The project goals are the development of mechanisms required for effective transnational support to victims of trafficking in persons and the institutionalization of cooperation in transnational cases between south-eastern European countries. Over the medium term, the project should help victims of trafficking to become stronger at the beginning of their independent life and raise awareness of their rights and the role they can play in criminal proceedings brought against perpetrators of crimes involving trafficking in persons. The long-term goal and overall purpose of the project is to contribute to efforts to combat trafficking in persons and to check this phenomenon in South-East Europe by developing and implementing transnational mechanisms.

68. In late 2006, work began on implementation of the project to develop communication systems and exchange information on illegal migration in the West Balkans. The project is being implemented by the Hungarian Ministry for Justice and Law Enforcement with the backing of the European Commission via the Aeneas programme. Bosnia and Herzegovina joined this project along with five other countries from the West Balkans. The chief purpose of the project is to provide assistance to six countries of the West Balkans in their efforts aimed at improving the management of illegal migration flows and strengthening bilateral and multilateral cooperation in this field. Other project goals are support for the establishment of effective preventive policies in efforts to combat illegal migration, including trafficking in persons and the smuggling of migrants, followed by the development of relevant legislative and best practices. One specific goal of the project is the development of bilateral and multilateral systems and mechanisms for communication and the exchange of information between the countries in the region.

69. After successful completion of the regional CARDS project on the harmonization of legislative, regulatory and institutional frameworks compatible with European Union standards in the field of visas, migration and asylum, in 2006 the Swedish Migration Board enlisted the support of the European Commission via the Aeneas programme to continue activities in this field. Bosnia and Herzegovina decided to participate with five other countries from the region in the continuation of the above project, which now focuses on institutional capacity-building in the field of asylum, migration and visas. The primary goals of the revamped project are the practical implementation of actions (*acquis*) of the European Union and best practices of the European Union countries in the field of visas, asylum and migration; and the enhancement of national institutions and services with a view to the development of a platform for regional cooperation already established under other CARDS projects.

70. The migration situation is analysed by means of statistics and other figures collected by the Bosnia and Herzegovina Ministry of Security and its organizational units: the Migration Unit, the Asylum Unit, the State Border Police of Bosnia and Herzegovina, and the Ministry of Foreign Affairs of Bosnia and Herzegovina.

## **Institutional framework**

71. The institutional framework ensuring the application of migration regulations and regulations relating to rights of migrant workers and members of their families at the State level includes the following:

- The Ministry of Security of Bosnia and Herzegovina: the Department for Non-Citizens, the Migration Unit and the Asylum Unit;
- The Ministry for Human Rights and Refugees: the Human Rights Unit and the Department for International Reporting;
- The Ministry of Civil Affairs of Bosnia and Herzegovina;
- The Ministry of Foreign Affairs of Bosnia and Herzegovina;
- The State Border Police of Bosnia and Herzegovina;
- The State Investigation and Protection Agency;
- The Office for Cooperation with Interpol;
- The Intelligence Security Agency;
- The State Commission for the Revision of Decisions concerning the Naturalization of Non-Citizens;
- The State Coordinator for combating trafficking in persons and illegal migration;
- The Work and Employment Agency of Bosnia and Herzegovina; and
- The Statistics Agency of Bosnia and Herzegovina.

72. There are also responsible Entity and cantonal ministries, and institutions of the Brcko District of Bosnia and Herzegovina:

- The Employment Bureau of the Republika Srpska;
- The Employment Bureau of the Federation of Bosnia and Herzegovina;
- The Employment Bureau of the Brcko District of Bosnia and Herzegovina;
- The Ministry of the Interior of the Federation of Bosnia and Herzegovina;
- The Cantonal Ministries of the Interior;
- The Ministry of the Interior of the Republika Srpska;
- The Police of the Brcko District of Bosnia and Herzegovina;

- Entities and Brcko District of Bosnia and Herzegovina funds for health and pension-invalidity insurance.

An overview on the application of ILO conventions is attached to this report, and it shows that Bosnia and Herzegovina has been a full ILO member since 2 June 1990 and that it is a signatory of 68 ILO conventions and recommendations.

## **B. Information on migration flows**

### **Some aspects of migration flows in Bosnia and Herzegovina**

73. Irregular migration, an important and familiar phenomenon in Europe in recent decades, leaves its base, routes and traces in Bosnia and Herzegovina. Movements of non-citizens from east to west across Bosnia and Herzegovina's territory are recognized as a major problem, both for Bosnia and Herzegovina and the region. In past years, many non-citizens entered Bosnia and Herzegovina legally or illegally with the intention of leaving for western European countries. From an analysis of available data, it may be concluded that a great number of these persons followed through on their intentions. Although until recently Bosnia and Herzegovina was only a transit country, it is now beginning to appear as a country of final destination, primarily as regards labour migration.

74. The unstable political, security, economic and social situation in the countries of the former Yugoslavia and nearby in recent years has led, inter alia, to large migratory inflows from citizens of surrounding countries into Bosnia and Herzegovina. One of the reasons for such a trend is the search for international protection in Bosnia and Herzegovina. Although the original causes have disappeared, and the political situation is tending to stabilize, a number of persons still enjoy international protection and the right to care, accommodation, education, health care and social protection. Although Bosnia and Herzegovina receives financial aid from the international community, this situation further complicates the country's difficult economic situation. The above remarks refer to refugees from Croatia and Serbia and Montenegro who found shelter in Bosnia and Herzegovina.

75. Regional activities are coordinated under the auspices of the Stability Pact for South-Eastern Europe, within the Migration, Asylum and Refugees Regional Initiative. Visible progress was clear after the signing of a declaration at the summit of countries participating in the European Union Stabilization and Association Process, held in Zagreb on 24 November 2000. Representatives of the participating countries assessed asylum, migration permitted by law and migration prohibited by law, control of borders and visa and entry permit issuance policy as important fields for cooperation, and therefore undertook commitments of mutual assistance and cooperation on behalf of the countries participating in the Stabilization and Association Process (SAP).

76. At the same time, the countries participating in the Stabilization and Association Process (SAP) have undertaken to accept all of their fellow countrymen who are in an irregular situation on the territory of an EU Member State and have bound themselves to align their legislation with the relevant international conventions.

77. All activities in the field of migration and asylum are mainly managed under the supervision of and in cooperation with the European Union, through the European Commission representatives in Bosnia and Herzegovina and UNHCR. Cooperation is important for Bosnia and Herzegovina and other SAP members, not only for the opening up of possibilities to participate in EU funds but also for offering the possibility of access to the experience and specialized know-how of EU experts. Knowledge applied in the process of association of other countries to the European Union is used and supplied to SAP members in order to reduce costs and guide the necessary transformation activities. At the end of 2003, the European Commission reported on Bosnia and Herzegovina's progress in the Stabilization and Association Process. Managing asylum and migration is emphasized as the priority field of activities. The reform of legislation, the formation and training of the State Border Police of Bosnia and Herzegovina, the training of police and the establishment of specialized units to fight organized crime, the constitution of the Ministry of Security, the reform of the judiciary and a whole range of other activities have been carried out in cooperation with the international institutions present in Bosnia and Herzegovina, directly related to the requirements of international conventions, including the present Convention.

78. Reports on the situation in the field of migration and asylum, which were adopted by the Council of Ministers of Bosnia and Herzegovina in March 2001 and 2002, set out the following migration types:

- Legal entry into Bosnia and Herzegovina and illegal crossing into western European countries;
- Illegal entry into Bosnia and Herzegovina and transit to western European countries;
- Illegal residence in Bosnia and Herzegovina;
- Request for asylum and temporary shelter as a possibility for illegal transit to western European countries.

According to information mentioned above, the factors that influenced the situation in this field are the following:

- Flexibility/porosity of State borders;
- Existing visa regimes;
- Lack of comprehensive legislation;
- Lack of centres for sheltering illegal immigrants and asylum centres;
- Lack of readmission agreements;
- Insufficient financial resources for the proper admission, shelter and deportation of non-citizens.

79. According to figures provided by the Ministry of Security of Bosnia and Herzegovina, Department for Non-Citizens, the following activities are listed as carried out in 2006:

- (a) Registration in/out of residence of non-citizens:
  - 5,412 applications for residence;
  - 2,522 applications for temporary residence;
  - 2,890 applications for extension of temporary residence;
- (b) Decisions made to grant/extend 5,120 temporary residences:
  - 2,387 certificates of temporary residence issued;
  - 2,733 extensions of temporary residence granted;
  - 158 decisions to reject applications for temporary residence;
  - 71 decisions to reject decisions on temporary residence;
  - 232 rulings on approval procedure for temporary residence;
  - 89 rulings on termination of procedure;
  - 43 rulings on stoppage of procedure;
- (c) In procedure for consideration of admissibility of submitted applications for extension of temporary residence, 294 rulings handed down:
  - 280 rulings on termination of procedure;
  - 14 rulings on stoppage of procedure;
- (d) 172 applications submitted for designation of personal identity number for non-citizens:
  - 163 identity numbers designated;
  - 9 applications under consideration;
- (e) 164 applications for permanent residence submitted:
  - 152 applications for permanent residence granted;
  - 3 applications for permanent residence rejected;
  - 9 applications under consideration;

- (f) Inspection controls of non-citizens' movements and residence:
  - 1,963 inspection controls of non-citizens;
  - 1,186 at non-citizens' place of residence;
  - 409 on catering and tourist premises;
  - 356 in legal entities/enterprises;
  - 9 in nightclubs;
- (g) Measures taken against non-citizens in 842 cases:
  - 565 non-citizens extradited from Bosnia and Herzegovina;
  - 157 requests for initiation of procedure;
  - 31 forcible expulsions of non-citizens, in application of a decision;
  - 65 decisions to withdraw temporary residence;
  - 18 decisions to withdraw permanent residence;
  - 6 decisions to place under surveillance;
- (h) Measures taken against legal entities and natural persons offering accommodation services:
  - 21 measures;
  - 14 natural persons;
  - 7 legal entities;
- (i) Assistance to victims of trafficking in persons in 22 cases.

### **The situation with regard to illegal migration**

80. The situation in terms of legal and illegal migration is analysed by means of statistical and other information collected from the Ministry of Security of Bosnia and Herzegovina and its organizational units: the Migration Unit; the Asylum Unit; the State Border Police of Bosnia and Herzegovina; and the Ministry of Foreign Affairs of Bosnia and Herzegovina. In 2005, there were 48,872,820 registered crossings of persons at the State border checkpoints, with 25,028,541 entries and 23,844,279 departures. Compared with the same period in 2004, this shows an increase in border crossings of 3,065,554 persons or 6.27 per cent.

81. In 2006, a total of 48,540,884 persons were registered as crossing State borders, with 24,754,788 entering and 23,786,096 exiting. Compared with 2005, this is a decrease of 331,936 persons or 0.68 per cent as against total registered crossings.

### **Refused entries into Bosnia and Herzegovina**

82. The number of crossings refused to non-citizens<sup>3</sup> in 2005 is lower by 2,711 or 25.8 per cent.<sup>4</sup> The State Border Police of Bosnia and Herzegovina gives the following reasons for this decline:

(a) The terms for entering and staying in Bosnia and Herzegovina and sanctions for failure to respect provisions governing non-citizens' movements and residence are set out and realistically grounded, within the scope of the internal provisions and rules of the State Border Police of Bosnia and Herzegovina, with a view to ensuring orderly and lawful treatment by border police officers without undue application of border formalities;

(b) The character and quantity of measures taken during 2004 and 2005 against non-citizens who failed the prescribed requirements for entering and staying in Bosnia and Herzegovina acted as a deterrent, and many potential perpetrators gave up trying to enter Bosnia and Herzegovina in violation of the regulations in force;

(c) The elimination of the visa requirements for citizens of newly-admitted EU Member States had an impact on the number of refused entries in late 2004 and the first half of 2005, as citizens of the Czech Republic, Hungary, Poland and Slovakia accounted for the bulk of entries refused to foreigners in Bosnia and Herzegovina (in 2004 entry was refused to 2,317 citizens of the above States).<sup>5</sup>

### **Non-citizens refused entry into Bosnia and Herzegovina**

83. In 2006, the number of persons refused entry into Bosnia and Herzegovina rose by 71 or 0.92 per cent. Out of the total number of registered non-citizens, 7,829 were not approved to enter Bosnia and Herzegovina, based on article 20 of the Law on Non-Citizens' Movements, Residence and Asylum, and in connection with article 11 of the same law, because they did not meet the prescribed conditions:

Non-possession of valid travel document	4,365 persons or 55.75 per cent
Non-possession of visa	1,934 persons or 24.70 per cent
Provision of false information	715 persons or 9.13 per cent

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<sup>3</sup> Entry into Bosnia and Herzegovina is refused to non-citizens who do not fulfil all of the requirements for entry and stay in Bosnia and Herzegovina, in compliance with article 11 of the Law on Non-Citizens' Movements, Residence and Asylum in Bosnia and Herzegovina. Decisions on refusal are issued based on failure to meet the requirements provided by the said article, and in accordance with article 20 of the law.

<sup>4</sup> In 2004, the number was 10,469, and in 2005 it was 7,758.

<sup>5</sup> Report on work of the State Border Police of Bosnia and Herzegovina for 2005, p. 2.



Non-possession of support resources	564 persons or 7.20 per cent
Non-possession of work permit	236 persons or 3.01 per cent
Threat to national security and expulsion measures	15 persons or 0.19 per cent.

84. Breakdown by citizenship for persons refused entry:

Serb/Mont <sup>6</sup>	1,904 persons or 24.31 per cent
Croatia	1,690 persons or 21.58 per cent
Slovenia	543 persons or 6.94 per cent
Bulgaria	501 persons or 6.39 per cent
Romania	496 persons or 6.34 per cent
Switzerland	450 persons or 5.74 per cent
Turkey	343 persons or 4.38 per cent
FYROM	263 persons or 3.36 per cent
Brazil	160 persons or 2.04 per cent
Mexico	133 persons or 1.70 per cent
Slovakia	132 persons or 1.69 per cent
Italy	108 persons or 1.38 per cent
Argentina	105 persons or 1.34 per cent
DZSCG/UNMIK	99 persons or 1.26 per cent
Albania	90 persons or 1.15 per cent
Israel	83 persons or 1.06 per cent

It is clear that nearly half of the persons refused entry into Bosnia and Herzegovina (45.89 per cent) were citizens of neighbouring countries: Serbia and Montenegro - 1,904 persons or 24.31 per cent; and Croatia - 1,690 persons or 21.58 per cent.

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<sup>6</sup> Citizenship of Serbia and Montenegro is used in the report since, because this State existed for the major part of the reporting period, the records were kept in it.

85. A closer analysis of the figures reveals that the reasons for refusal of entry into Bosnia and Herzegovina differ according to citizenship. Thus, for example, entry was refused to citizens of Slovenia and Switzerland mainly on grounds of non-possession of travel documents, most probably due to lack of information, as they might consider that they do not need travel documents because they do not need them for Croatia. Entry was refused to citizens of Romania and Bulgaria mainly on grounds of non-possession of travel documents or visas. Entry was refused to citizens of Croatia mainly on grounds of non-possession of valid travel documents. Entry was refused to citizens of Serbia and Montenegro on different grounds, including non-possession of valid travel documents, the provision of false information, non-possession of support resources and non-possession of work permits. The reasons for the refusal of entry into Bosnia and Herzegovina are given in the following table as comparative figures for 2004 and 2005.

**Table 1**

Reasons to deny entry	Non-possession				The provision of false information	Threat to national security and other measures	Total
	Travel documents	Visas	Support resources	Work permits			
Total 2004	4 991	4 584	367	158	354	15	10 469
Total 2005	4 402	2 564	431	139	210	12	7 758
Difference	-589	-2 020	64	-19	-144	-3	-2 711
+/- & in per cent	or 11.80%	or 44.06%	or 17.44%	or 12.02%	or 40.68%	or 20%	or 25.89%

*Source:* State Border Police of Bosnia and Herzegovina (report on the work of State Border Police of Bosnia and Herzegovina for 2005).

86. In July 2005, the Council of Ministers of Bosnia and Herzegovina adopted the Integrated Border Management Strategy which stipulates the arrangements for the effective control and protection of Bosnia and Herzegovina's borders, especially regarding cooperation between the relevant institutions, with a view to achieving a free flow of people, goods, capital and services while simultaneously preventing all forms of transfrontier crimes. Efforts have begun to align the Strategy with the guidelines submitted by the Delegation of the European Commission in Bosnia and Herzegovina and to commence the elaboration of the Plan of Action for the full implementation of this Strategy. The Working Group formed to implement the Strategy will establish better cooperation between institutions responsible for border-related matters based on the regional guidelines distributed by the European Commission to all countries in the south-eastern European region.

87. In August 2005, the Law on the Department for Non-Citizens was passed, establishing the Department for Non-Citizens and making provision for its powers, organization and management as well as other issues relevant to its work and proper operation. The Department will be an administrative organization within the Ministry of Security of Bosnia and Herzegovina with operational independence for conducting business and addressing matters within its remit, and has been set up to deal with administrative and inspection matters defined by the Law on

Non-Citizens' Movements, Residence and Asylum. Once this unit becomes fully operational, this will ensure the coordinated implementation of the Law on Non-Citizens' Movements, Residence and Asylum, which is currently under the authority of Entity and cantonal Ministries of the Interior.

88. In December 2005, the Minister of Security, together with the Ministers of the Interior of the Federation of Bosnia and Herzegovina and the Republika Srpska and the head of the Brcko District of Bosnia and Herzegovina Police, prepared the protocols on the handover of personnel, documentation, equipment, material and technical assets and premises for the purpose of establishing the Department for Non-Citizens. The signing of these protocols is one of the key conditions that the Ministry of Security of Bosnia and Herzegovina and other institutions must fulfil in order to ensure that the Department is fully operational by mid-2006.

89. In 2005, Bosnia and Herzegovina concluded readmission agreements with Sweden, Norway, Denmark and Romania and began work on the conclusion of such agreements with more countries in the region and beyond, such as Albania, Bulgaria, The former Yugoslav Republic of Macedonia, Moldova and Turkey. In 2006, Bosnia and Herzegovina started negotiating, signed or concluded readmission agreements with Austria, the Benelux countries, Bulgaria, France, The former Yugoslav Republic of Macedonia, Greece, Italy, Norway, Romania, Slovenia, Slovakia and Spain. Steps to conclude similar agreements were also launched with Albania, the European Union, Turkey, and the countries of the Africa-Asia region.

90. Throughout 2005, officials from the Ministry of Security of Bosnia and Herzegovina and the Ministry of Foreign Affairs of Bosnia and Herzegovina actively participated in the implementation of the regional CARDS project on the establishment of a legislative, regulatory and institutional framework in the field of migration, asylum and visas harmonized with European Union standards. During the implementation of the project, a detailed analysis was made of the consistency of the laws, by-laws and institutions of Bosnia and Herzegovina with EU standards in these three fields. Subsequently, comparative analyses were carried out in cooperation with international organizations implementing the project, experts from some EU countries and officials from the competent Bosnia and Herzegovina ministries on any flaws, which resulted in the completion of three separate documents containing concrete recommendations to the competent Bosnia and Herzegovina authorities on the way in which they should improve and harmonize their laws and by-laws and set up appropriate institutions. Upon completion of the project, in December 2005, in Brussels, all of the countries in the region were provided with a roadmap for integrated management of migration, which contains concrete recommendations related to the establishment of an integrated migration management system. Mindful of the importance of the above-mentioned final project documents and their concrete contents, the Ministry of Security of Bosnia and Herzegovina decided at the end of 2005 to begin working towards the full harmonization of the Law on Non-Citizens' Movements, Residence and Asylum with EU standards. The Working Group was set up and went into operation at the beginning of 2006. It will certainly have a great impact on the phenomenon of illegal migration and trafficking in persons and efforts to combat them while at the same time facilitating the protection of victims and enhancing respect for their rights.

91. A look at the situation with regard to legal migration in Bosnia and Herzegovina for the year 2005 reveals no characteristic divergencies as compared with the migration situation of the previous period.

92. In 2005, the Bosnia and Herzegovina Ministry of Security - Migration Unit and the competent Departments for Non-Citizens of the Ministries of the Interior issued a total of 4,928 decisions on approved temporary or permanent residence for foreign citizens. Of this total, 177 decisions refer to permanent residence granted to non-citizens while 4,751 decisions refer to temporary residence granted to non-citizens.
93. Out of a total of 177 non-citizens who were granted permanent residence, the greatest number were citizens of the People's Republic of China (61), Croatia (27), The former Yugoslav Republic of Macedonia (15), the Syrian Arab Republic (11) and Ukraine (8), which works out to 69 per cent of all applications for permanent residence that were processed and approved during the reporting period.
94. Out of a total of 4,751 non-citizens granted temporary residence last year, the greatest number were citizens of Serbia and Montenegro (1,720), the People's Republic of China (866), Croatia (448), Turkey (303) and The former Yugoslav Republic of Macedonia (189), which accounts for 74 per cent of all applications for temporary residence that were processed and approved during the reporting period.
95. As for the grounds for temporary residence, the highest number of applications for temporary residence were generally approved on grounds of work permit (28.75 per cent), followed by marriage (27.28 per cent), profitable business (16.08 per cent), family reunification (11.91 per cent) and education (9.91 per cent), which gives 93.93 per cent of all applications for temporary residence that were processed and approved during the reporting period.
96. During the reporting period, with regard to the structure of temporary residence granted on grounds of work permits, the greatest number of applications were approved for citizens of Serbia and Montenegro (528), the People's Republic of China (242) and Croatia (141).
97. During the reporting period, with regard to the structure of temporary residence granted on grounds of marriage, the greatest number of applications were approved for citizens of Serbia and Montenegro (521), Croatia (225) and Macedonia (116).
98. During the reporting period, with regard to the structure of temporary residence granted on grounds of profitable businesses, the greatest number of applications were approved for citizens of the People's Republic of China (502), Serbia and Montenegro (96), Turkey (39).
99. During the reporting period, with regard to the structure of temporary residence granted on grounds of family reunification, the greatest number of applications were approved for citizens of Serbia and Montenegro (178), the People's Republic of China (99), Turkey (41).
100. During the reporting period, with regard to the structure of temporary residence granted on grounds of education, the greatest number of applications were approved for citizens of Serbia and Montenegro (332), Turkey (64), Croatia (18).
101. The following figures on residence granted on grounds of humanitarian reasons have been supplied by the Bosnia and Herzegovina Ministry of Security:

(a) The total number of temporary residence applications granted in Bosnia and Herzegovina in 2006 was 5,274.

- Permanent residence: 153
- Residence granted issued on work grounds: 1,494
- Temporary work in the territory of Bosnia and Herzegovina: 113

(b) Highest residence rates on work grounds:

- Serbia and Montenegro - 568
- People's Republic of China - 269
- Turkey - 160
- Croatia - 152

(c) Active as of 21 December 2006 - 1,187, of which:

- Serbia and Montenegro - 471
- Turkey - 112
- Croatia - 130
- People's Republic of China - 80

(d) Deportation: orders served deporting non-citizens from Bosnia and Herzegovina with a 1-10 year ban on re-entry - in 2006, there were 565 cases, out of which 31 individuals were forcibly expelled (ruling to permit the execution of the deportation order). There were 157 requests for the initiation of deportation proceedings.

102. During the reporting period, there were 190,397 non-citizens registered, including for short stays, according to reports from the field centres for non-citizens. On average, around 200 applications for permanent residence are submitted yearly in Bosnia and Herzegovina, 80 per cent of which are granted. As for illegal immigration, the figures from 2000 indicated that Bosnia and Herzegovina had become a centre for well-organized international crime dealing with smuggling of people. In the first quarter of 2001, a report on immigration and asylum was made which described the factual situation in the field, identified types of illegal migration and the causes that led to the current situation, and proposed remedial measures. On 10 May 2001, the Council of Ministers discussed and adopted the report in question, which became a good starting point for further efforts to curb illegal population movements. A thorough analysis of the situation provided guidance as to procedure and a series of proposed measures were implemented. According to the figures supplied by the State Border Police of Bosnia and Herzegovina, this more than halved the number of migrants seeking to

enter western European countries illegally via Bosnia and Herzegovina in 2001 as compared with 2000. The declining trend is clear in 2002, and figures from 2003 indicate a continuation of this tendency (by approximately the same percentage).

103. The figures given are comparative data from different periods and are based on the number of entries-exits from air border points and on the number of illegal migrants from Croatia readmitted under the readmission agreement between Croatia and Bosnia and Herzegovina.

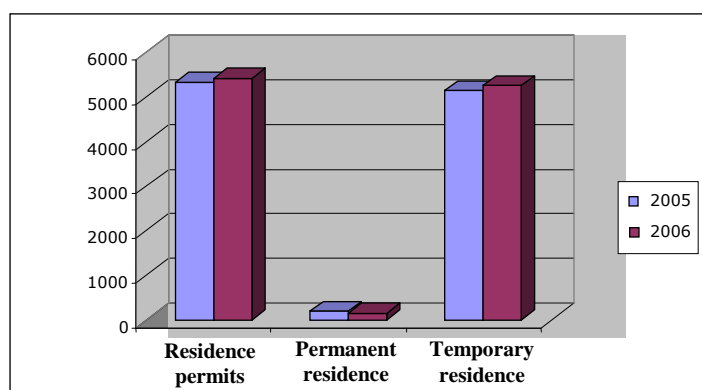
### Residence permits

104. In 2006, the Migration Unit of the Bosnia and Herzegovina Ministry of Security received and processed 5,427 decisions on residence granted to non-citizens in Bosnia and Herzegovina, of this total 153 refer to permanent residence and 5,274 to temporary residence. Of the 153 who were granted permanent residence for Bosnia and Herzegovina, the greatest number were citizens of the People's Republic of China (42), Croatia (19), Turkey (16), The former Yugoslav Republic of Macedonia (10), Ukraine (7), Germany (7) and Moldova (7), accounting for 70.9 per cent of total permanent residence authorizations processed and approved during the reporting period. Of the total of 5,274 foreigners who were granted temporary residence authorizations last year, the greatest number were citizens of Serbia and Montenegro (1,839), China (823), Croatia (544), Turkey (480) and The former Yugoslav Republic of Macedonia (228), accounting for 74.21 per cent of all applications for temporary residence that were processed and approved during the reporting period.

105. The highest number of applications for temporary residence were approved on grounds of work permits (28.33 per cent), marriage (26.45 per cent), family reunification (13.48 per cent), education (12.40 per cent) and profitable business (10.56 per cent), accounting for 91.22 per cent of all applications for temporary residence that were processed and approved during the reporting period.

106. A comparison of the number of decisions issued on residence for non-citizens in Bosnia and Herzegovina for 2005<sup>7</sup> and 2006 is given in the following graph:

**Graph 2**



<sup>7</sup> The number of cases processed shown in the report for 2005 is lower than the real one. This is due to the subsequent entry of figures at the beginning of 2006 for 2005 by the Migration Unit.

As mentioned in the above text, in 2006 the Ministry of Security of Bosnia and Herzegovina, i.e. the Migration Unit, granted temporary residence to 11 victims of trafficking in persons.

### Entry of citizens from high-risk migration countries through airports into Bosnia and Herzegovina

107. As for the number of citizens from high-risk migration countries who entered/left Bosnia and Herzegovina via international airports in 2005, the majority of persons registered upon entry during the reporting period were citizens of Turkey (10,911), Serbia and Montenegro (5,451), Lebanon (1,100) and the People's Republic of China (949). As you can see from the following table, it is noticeable that in 2005, there was a rise in the number of citizens from India, the Islamic Republic of Iran, the People's Republic of China, the Syrian Arab Republic and Turkey, and a fall in the number of citizens from Lebanon and Serbia and Montenegro.

108. It is important to note that fewer potential illegal immigrants from high-risk migration countries are trying to enter Bosnia and Herzegovina via airports and to continue in transit to destination countries. This can be explained by the alignment of control procedures with active regulatory and international standards, as well as efforts made by the State Border Service of Bosnia and Herzegovina to prevent illegal migration.<sup>8</sup>

**Table 2**

S. N o.	Citizenship	Transit via airports Total 2004			Transit via airports Total 2005		
		Entry	Exit	Balance	Entry	Exit	Balance
1	Armenia	34	33	1	34	34	0
2	Afghanistan	4	6	-2	11	10	1
3	Algeria	45	54	-9	26	28	-2
4	Bangladesh	25	25	0	8	7	1
5	People's Republic of China	752	578	174	949	883	66
6	India	187	183	4	228	227	1
7	Iran (Islamic Republic of)	288	275	13	438	445	-7
8	Iraq	38	32	6	49	44	5
9	Lebanon	2 109	2 187	-78	1 100	1 110	-10
10	Morocco	14	14	0	19	20	-1
11	Pakistan	137	109	28	101	95	6
12	Sri Lanka	10	10	0	10	11	-1
13	Romania	379	394	-15	414	396	18
14	Syrian Arab Republic	83	86	-3	157	153	4
15	Tunisia	29	28	1	32	34	-2
16	Turkey	7 718	7 504	214	10 911	10 888	23
17	Serbia and Montenegro	5 749	5 487	262	5 451	5 549	-98
18	Zimbabwe	0	0	0	1	1	0
	Total	17 601	17 005	596	19 939	19 935	4

*Source:* State Border Police of Bosnia and Herzegovina (report on the work of the State Border Police of Bosnia and Herzegovina for 2005).

<sup>8</sup> Report of the State Border Service (border police) of Bosnia and Herzegovina for 2005, p. 4.

### High-risk migration countries' citizens crossing State borders via international airports

109. The number of 47,127 persons who in 2006 crossed Bosnia and Herzegovina borders from high-migration risk countries via international airports shows a visible increase of 7,253 persons or 18.19 per cent as compared with 2005 (39,874).

110. During the reporting period, 23,672 entries were registered as against 23,455 exits, as a result of which the entry/exit balance was +217 persons or 0.92 per cent of the total number of registered entries.

Citizenship breaks down as follows:

Turkey	entry - 14,219 persons,	exit - 13,932 persons,	balance +287 persons
India	entry - 346 persons,	exit - 298 persons,	balance +48 persons
Armenia	entry - 24 persons,	exit - 100 persons,	balance +24 persons

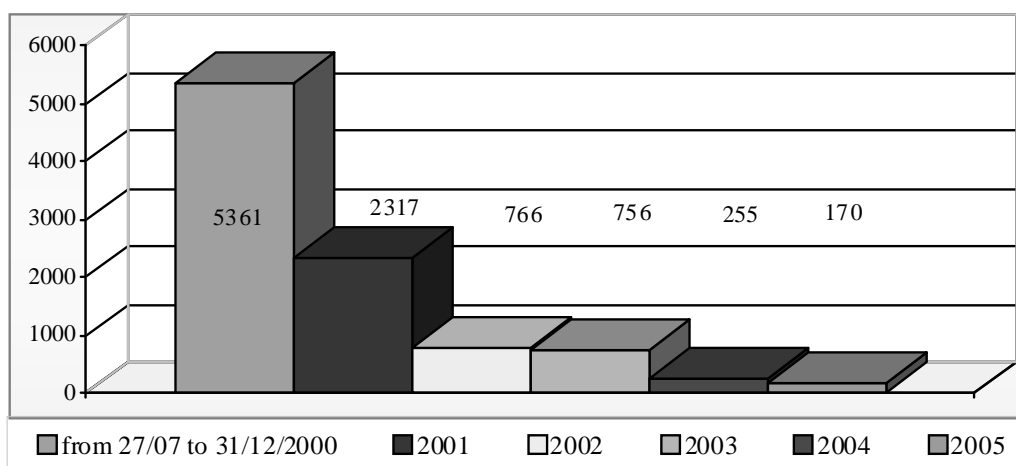
It is important to say that the balance with citizens of other countries is small or negative (more exited than entered), so the figures show that the international airports in Bosnia and Herzegovina are not used as channels for illegal migration.

### Admission of third country citizens under the agreement with Croatia

111. It can be seen from the following graph that there is a slight trend towards a decline in the number of illegal migrants admitted under the agreement with Croatia, presented by year from the signature of the agreement on 27 July 2000 to 27 July 2005.

Graph 3

Number of persons admitted under Agreement with Croatia  
from 27 July 2000 to 25 December 2005





112. It could be concluded from all the above that illegal migration is being curbed by the State Border Police of Bosnia and Herzegovina via the application of appropriate operational and tactical measures and action and the improvement of unit and intelligence work, with an emphasis on preventive work through monitoring, protection and control of border crossings and the harmonization of the visa regime and terms to enter Bosnia and Herzegovina in accordance with valid regulations, and the consistent application of the Law on Non-Citizens' Movements, Residence and Asylum.<sup>9</sup>

#### **Visas issued by the State Border Police of Bosnia and Herzegovina at border crossings**

113. Mention should also be made of the drastic decline (-63.68 per cent) in the total number of visas issued at border crossings in 2005 as compared with 2004, which fully justifies expectations for the introduction of an electronic visa issuing system. If we compare the statistical figures, 51.49 per cent of all visas were issued at border crossings at airports, while other visas were issued at land border crossings. Based on figures for 2004 and 2005, it can be noted that the number of visas issued at border crossings rose by 72.97 per cent for citizens of Albania. Since citizens of Albania regularly appear as persons admitted from Croatia, we think that a number of persons are misusing the right of entry on visa grounds in order to go to Croatia and further on to the West.<sup>10</sup>

#### **Persons deported to and from Bosnia and Herzegovina**

114. In 2005, the Bosnia and Herzegovina State Border Police units recorded at border checkpoints 1,533 Bosnia and Herzegovina citizens who were deported to Bosnia and Herzegovina on various grounds from western European and other countries, which is 611 less (-28.50 per cent) than during the same period of 2004, when the corresponding figure was 2,144. Of the above-mentioned number of deported persons in 2005, 792 (51.67 per cent) were deported with a police escort while 741 persons (48.33 per cent) were deported without one.

115. The State Border Police of Bosnia and Herzegovina gives the following main reasons for deportation:

- Illegal stay - 1,325 or 86.43 per cent;
- Commitment of various crimes - 52 or 3.39 per cent;
- Drug abuse - 13 or 0.85 per cent;
- Other - 143 or 9.33 per cent.

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<sup>9</sup> Ibid., p. 5.

<sup>10</sup> Ibid., p. 5.

116. The greatest number of Bosnia and Herzegovina citizens have been deported from the following countries:

- Croatia - 426 or 27.79 per cent;
- Germany - 363 or 23.68 per cent;
- Sweden - 210 or 13.70 per cent;
- Switzerland - 108 or 7.04 per cent;
- Denmark - 67 or 4.37 per cent;
- Norway - 57 or 3.72 per cent;
- France - 55 or 3.59 per cent;
- Other - 247 or 16.11 per cent.<sup>11</sup>

During 2005, 60 non-citizens were deported, a decrease of 22 or 26.83 per cent compared with the same period in 2004, when the corresponding figure was 82.

117. The State Border Police of Bosnia and Herzegovina gives the following main reasons for deportation:

- Illegal crossing of State borders - 51 or 85 per cent, which is 17 or 50 per cent more than in the same period in 2004;
- Illegal residence in Bosnia and Herzegovina - 5 or 8.33 per cent, which is 40 or 88.89 per cent less than in the same period in 2004;
- Commitment of punishable acts of robbery, theft, imposture - 2 or 3.33 per cent, while last year no deportations on such grounds were recorded;
- Other - 2 or 3.33 per cent, which is equal to the number of registered foreigners who were deported from Bosnia and Herzegovina on these grounds in 2004.<sup>12</sup>

The figures of the State Border Police show that in 2006, 48,540,884 persons crossed the State borders, 24,754,788 persons entered Bosnia and Herzegovina, and 23,786,096 persons left Bosnia and Herzegovina. A total of 17,241,267 persons crossed State borders by means of transportation (private car, transport vehicle, bus, plane, train or ship). Entry was refused to 7,829 non-citizens, 1,289 persons were stopped from crossing Bosnia and Herzegovina State borders illegally and 402 persons were deprived of their liberty as a result of investigations.

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<sup>11</sup> Ibid., p. 6.

<sup>12</sup> Ibid., para. 6.

118. The greatest number of deported non-citizens were citizens of Serbia and Montenegro - 42 or 70 per cent, which is 16 less or -27.58 per cent as compared with 2004, followed by Albania - 11 less or -18.33 per cent, which is 3 higher or +37.5 per cent as compared with last year and Croatia - 7 or 11.67 per cent, which is 4 less or -36.36 per cent as compared with last year.<sup>13</sup> As main reasons, the State Border Service cites the lack of specialized institutions for the admission of non-citizens who should be placed under surveillance, in accordance with the regulations in force, and failure to set up the Service for Foreigners.<sup>14</sup>

### **Bosnia and Herzegovina citizens deported to Bosnia and Herzegovina**

119. During the reporting period, the State Border Service recorded at border crossings 1,350 Bosnia and Herzegovina citizens who were deported on various grounds to Bosnia and Herzegovina from western European and other countries, which represents a drop of 11.9 per cent (-183 persons) in comparison with 2005, when 1,533 Bosnia and Herzegovina citizens were deported. Of the above number, 737 persons were deported with a police escort and 613 were deported without one.

(a) The most common reasons for the deportation of Bosnia and Herzegovina citizens are:

- Illegal residence and work in third countries: 983 or 72.8 per cent;
- Commission of serious crimes (murder, rape, theft, robbery, fraud, prostitution): 106 or 7.9 per cent;
- Drug abuse: 27 or 2.00 per cent;
- Other: 232 or 17.2 per cent.

(b) Bosnia and Herzegovina citizens have been deported from the following 21 countries:

- |                             |                           |
|-----------------------------|---------------------------|
| – Croatia: 507 persons      | – Austria: 63 persons     |
| – Germany: 234 persons      | – Switzerland: 67 persons |
| – France: 107 persons       | – Netherlands: 52 persons |
| – Sweden: 89 persons        | – Italy: 39 persons       |
| – United States: 38 persons | – Other: 154 persons      |

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

### **Non-citizens deported from Bosnia and Herzegovina**

120. The number of non-citizens deported from Bosnia and Herzegovina in 2006 was 95, which is 35 more (+35.84 per cent) than in 2005 (60 persons).

121. The reasons for deportation were as follows:

- Illegal crossing of State borders: 70 non-citizens or 73.68 per cent;
- Illegal residence in Bosnia and Herzegovina: 12 non-citizens or 12.63 per cent;
- Commission of crimes: 1 non-citizen or 1.05 per cent;
- Drug abuse: 1 non-citizen or 1.05 per cent;
- Other: 11 non-citizens or 11.58 per cent.

Of the above number, 85 persons were deported with a police escort and 10 were deported without one.

122. The non-citizens deported from Bosnia and Herzegovina were citizens of 16 countries, including:

- |                               |                                 |
|-------------------------------|---------------------------------|
| – Albania: 35 persons         | – China: 2 persons              |
| – Serb+Mont: 21 persons       | – Romania: 2 persons            |
| – Serb+Mont/UNMIK: 16 persons | – Slovenia: 1 person            |
| – Croatia: 8 persons          | – Turkey: 1 person              |
| – FYROM: 2 persons            | – France: 1 person              |
| – Tunisia: 1 person           | – Serb+Mont + Croatia: 1 person |
| – Croatia+FYROM: 1 person     | – Morocco: 1 person             |
| – Moldavia: 1 person          | – United Kingdom: 1 person      |

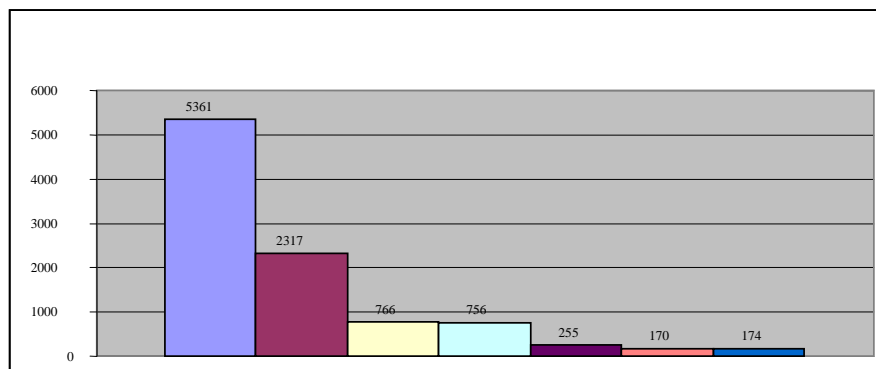
### **Admission and extradition of persons under the agreement with Croatia**

123. During the reporting period, a total of 363 persons were admitted under the agreement with Croatia, including 189 Bosnia and Herzegovina citizens and 174 non-citizens, on grounds of illegal entry and stay in Croatia, who entered Croatian territory from Bosnia and Herzegovina.

124. The number of non-citizens admitted under the agreement with Croatia (174) in comparison with 2005 (170 persons) increased by 4 (+2.35 per cent). The following graph shows the number of non-citizens admitted under the readmission agreement with Croatia in the period from 2000 to 2006:

**Graph 4**

**Number of persons admitted under agreement with Croatia  
in the period 2000-2006**



\* The number of persons admitted (5,361) from 2000 refers to the period from 27 July - 31 December 2000).

125. The number of non-citizens admitted, broken down by citizenship, is as follows:

- Serb+Mont: 74 persons or 42.53 per cent
- FYROM: 32 persons or 18.39 per cent
- Albania: 31 persons or 17.82 per cent
- Turkey: 10 persons or 5.75 per cent
- Nigeria: 1 person or 0.57 per cent
- Serb+Mont: 26 persons or 14.94 per cent

126. In 2006, 14 non-citizens were extradited from Bosnia and Herzegovina, an increase of 1 compared with 2005, when 13 non-citizens were extradited.

The citizenship of the persons extradited breaks down as follows:

- 6 citizens of Croatia;
- 6 citizens of Serbia and Montenegro (one holding dual citizenship of Croatia);
- 1 citizen of FYROM/Croatia;
- 1 citizen of Slovenia.

127. The number of persons admitted from Croatia under the agreement is at the same level as last year, while the citizenship of the persons admitted remains more or less the same.

**Persons delivered to the International Organization for Migration (IOM) - repatriation**

128. During the reporting period, a total of 54 persons were delivered for voluntary repatriation to the State of origin or former residence to the International Organization for Migration (IOM), which is 141 persons less (-72.30 per cent) than in the same period of 2005 (195 persons). The

reason for the decrease is the lack of financial resources at IOM, as a result of which IOM has had no possibility since June 2006 of implementing in full the scheduled programme of assistance to the State Border Police of Bosnia and Herzegovina. Of the above total number, 52 cases or 96.29 per cent refer to illegal immigrants, and in 2 cases it refers to other reasons.

Citizenship of persons delivered to IOM:

- Serb+Mont: 30
- Albania: 10
- Serb+Mont/UNMIK: 8
- Turkey: 3
- FYROM: 2
- People’s Rep. of China: 1

**Persons caught while trying to cross Bosnia and Herzegovina State borders illegally (2004, 2005 and 2006)**

129. In 2005, the number of persons trying to cross State borders illegally or after illegal entry in Bosnia and Herzegovina and caught at the border was 655,220 less (-25.14 per cent) than in the same period of the last year, when the corresponding figure was 875. Of that total, 68.85 per cent were caught trying to enter illegally and 31.15 per cent trying to depart illegally.<sup>15</sup> The majority of attempts to cross State borders illegally were made by citizens of Bosnia and Herzegovina, Serbia and Montenegro, Croatia and people from western Albania (63.82 per cent).<sup>16</sup>

130. The following table contains a breakdown by citizenship and place of discovery for persons caught trying to cross Bosnia and Herzegovina State borders illegally in 2004 and 2005.

131. In 2006 there was a rise of 96.79 per cent in the number of persons (1,289) caught crossing State borders illegally (entry and exit) compared with 2005, when 655 persons were caught. Out of a total of 800 persons caught at State borders trying to enter Bosnia and Herzegovina illegally, 483 persons were caught at border crossings while 317 were caught elsewhere. A statistical analysis indicates that the greatest number of illegal entries into Bosnia and Herzegovina occurred at:

- The border with Serbia (490 persons);
- The border with Croatia (247 persons); and
- The border with Montenegro (63 persons).

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<sup>15</sup> Ibid.

<sup>16</sup> Report on the work of the Bosnia and Herzegovina State Border Police for 2005, p. 5.

**Table 3**

S. No.	Citizenship	2004 Attempted			2005 Attempted		
		Illegal entry	Illegal departure	Total	Illegal entry	Illegal departure	Total
1	Albania	37	4	41	35	4	39
2	Austria	0	1	1	1	0	1
3	Bangladesh	-	-	-	4	0	4
4	BiH	260	295	555	164	119	283
5	Brazil	-	-	-	1	0	1
6	Bulgaria	4	1	5	1	0	1
7	Czech Republic	11	1	12	-	-	-
8	Serb+Mont	89	64	153	104	36	140
9	Netherlands	1	0	1	-	-	-
10	Croatia	43	21	64	106	23	129
11	Iraq	-	-	-	6	0	6
12	Israel	2	1	3	-	-	-
13	Cameroon	-	-	-	0	2	2
14	People's Rep. of China	1	8	9	1	0	1
15	Hungary	4	0	4	-	-	-
16	FYROM	0	3	3	1	12	13
17	Mexico	0	2	2	-	-	-
18	Germany	-	-	-	2	0	2
19	Poland	1	2	3	-	-	-
20	Romania	10	3	13	6	1	7
21	Russian Federation	0	1	1	-	-	-
22	Singapore	0	3	3	-	-	-
23	Slovakia	-	-	-	0	1	1
24	Slovenia	-	-	-	2	1	3
25	Turkey	1	1	2	0	1	1
26	UNMIK				17	4	21
Total		464	411	875	451	204	655

*Source:* State Border Police of Bosnia and Herzegovina, report on the work of the State Border Police of Bosnia and Herzegovina for 2005.

132. During the same period, 489 persons were caught trying to leave Bosnia and Herzegovina illegally, broken down as follows: 270 at border crossings and 219 elsewhere. The highest number of illegal departures from Bosnia and Herzegovina were recorded at the border with:

- Croatia (351 persons);
- Serbia (132 persons); and with
- Montenegro (6 persons).

133. Persons caught crossing State borders illegally were citizens of 27 different countries. Most persons caught crossing State borders illegally (entry and exit) were Bosnia and Herzegovina citizens (730 persons). The citizenship of non-citizens caught crossing State borders illegally breaks down as follows:

- Serb+Mont: 256 persons
- FYROM: 35 persons
- Albania: 89 persons
- Romania: 32 persons
- Croatia: 67 persons
- Bulgaria: 16 persons
- Turkey: 15 persons
- Serb+Mont/UNMIK: 15 persons

The number of citizens from Croatia has fallen sharply as compared with 2005 (2005 - 129, 2006 - 67); Iraq (2005 - 6, 2006 - 0); Bangladesh (2005 - 4, 2006 - 1) and UNMIK (2005 - 21, 2006 - 15), while the number of citizens from all other countries caught crossing Bosnia and Herzegovina State borders illegally is much higher. These statistics refer to illegal entries and exits from Bosnia and Herzegovina, the citizenship of persons caught crossing Bosnia and Herzegovina State borders illegally, and registered illegal crossings with neighbouring countries. They clearly show that the territory of Bosnia and Herzegovina continues to be used as a transit area for illegal migration from east to west, namely, the highest number of attempts to enter Bosnia and Herzegovina illegally were recorded on the eastern border adjacent to the municipalities between Visegrad and Trebinje. The highest number of attempts to leave Bosnia and Herzegovina illegally were recorded on the western border near the municipalities of Grude, Bihac and Velika Kladusa.

### **Confiscation of forged documents**

134. In 2005, members of the Bosnia and Herzegovina State Border Police confiscated 334 documents on suspicion of forgery, a decline of some 27 per cent compared with the same period last year, when 458 documents were confiscated.

135. The following tables clearly show a sharp drop in total cases recorded except the number of confiscated residence permits and documents from the “other” category. An analysis of total confiscated forged documents in 2005 and the same period of 2004 shows once again that the highest number of documents were from Bosnia and Herzegovina, Serbia and Montenegro, Germany, Croatia and Italy, followed by The former Yugoslav Republic of Macedonia, Slovenia, Turkey and Austria.



**Table 4**

Document	Total number		
	2005	2004	+ - % in 2005
Passport	65	81	-19
Vehicle licence	45	49	-8
Driving licence	42	57	-26
Identity card	20	35	-43
Visa	11	12	-9
Residence permit	8	5	+60
Car authority	6	20	-70
Travel sheet	2	4	-50
Vehicle insurance	52	115	-55
Other	83	80	+4
<b>Total</b>	<b>334</b>	<b>458</b>	<b>-27</b>

*Source:* Bosnia and Herzegovina State Border Police, report on the work of the Bosnia and Herzegovina State Border Police for 2005.

**Table 5**

State	2005	2004
BiH	145	150
Serb+Mont	71	90
Germany	29	66
Croatia	19	28
Italy	15	27
Slovenia	13	14
Austria	11	19
Turkey	7	8
Czech Republic	7	1
FYROM	5	22
Other	12	33

*Source:* Bosnia and Herzegovina State Border Police (report on the work of the Bosnia and State Border Police for 2005).

### **Counterfeited documents**

136. In 2006, the Bosnia and Herzegovina State Border Police temporarily confiscated 434 documents on suspicion of forgery, i.e. a 29.94 per cent increase when compared with the same period last year, when 334 documents were confiscated. The confiscation of these documents led to 280 charges for the offence of “forgery of documents”, which once again was down by 20 per cent compared with the same period last year, when 350 such punishable acts were recorded. On the one hand, the number of documents confiscated on suspicion of forgery increased, while on the other hand the number of crimes recorded in this field decreased.

The difference between the number of documents confiscated (434) and the number of punishable acts recorded (280) is the result of the application of International Civil Aviation Organization standards, several documents found in the possession of one person, the forwarding of cases to competent bodies, etc.

The number of confiscated documents, broken down by relevant category, is as follows:

**Table 6**

	Number of documents		%
	2005	2006	
Passport	65	84	+29.23
ID card	20	20	0
Visa	11	20	+81.81
Residence permit	8	17	+112.5
Travel sheet	2	0	-

It will be noted that the total number of forged temporary passports, passports, residence permits and visas confiscated is much greater than last year, a positive trend which reflects the strong performance of the Bosnia and Herzegovina State Border Police.

### **Trafficking in persons**

137. Based on the figures relating to the law implementing services and prosecutor's offices in 2006, 34 perpetrators of crimes of trafficking in persons were recorded, as were 77 persons for similar crimes. In two cases, criminal charges were brought for crimes involving trafficking in persons, in connection with article 250 of the Bosnia and Herzegovina Criminal Code (organized crime).

138. In 2006, the prosecutor's offices conducted a total of 90 investigations related to trafficking in persons and similar crimes. In 2006, 42 new investigations were launched and 48 were carried over from the previous year. Fourteen orders dismissing investigations were issued and 13 investigations were stopped.

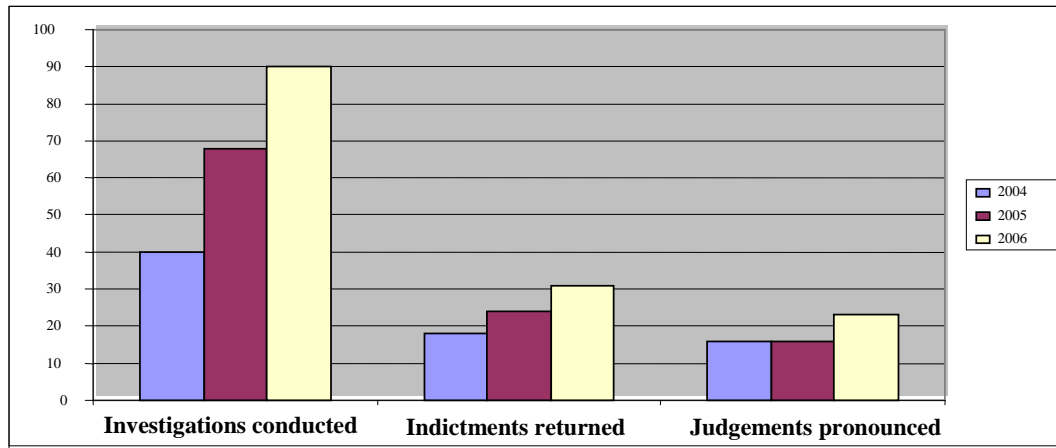
139. During the reporting period, 31 charges were brought and the courts confirmed 33 charges (2 charges brought in 2005 were confirmed in 2006). Courts pronounced first instance judgements against 30 persons, of which 23 led to conviction. Ten persons who pleaded guilty were convicted, broken down as follows: 1 suspended sentence, 2 fines and 7 prison terms. Thirteen persons who pleaded innocent were convicted, broken down as follows: 2 suspended sentences and 11 prison terms, 3 rejected and 4 released. Twelve appeals were lodged against first instance judgements.

140. According to police reports, the number of identified victims of trafficking in persons in 2005 was 54, as compared with 42 in 2006. At the same time, it will also be noted that in 2006 90 investigations were processed (42 new investigations and 48 unresolved from the previous period), which is more than in 2005, when there were 68 investigations (37 instituted in 2005

and 31 investigations carried over from the previous period, i.e. 2004). In 2006, 31 indictments were filed and 32 were confirmed by the court, and in 2005, 24 indictments were brought and the courts confirmed 26 indictments.

141. The following graph shows the number of investigations conducted, indictments returned and first instance judgements pronounced against persons who committed crimes of trafficking in persons or similar crimes.

**Graph 5**



142. An analysis of the relationship between imprisonment sentences and suspended sentences and fines indicates that criminal policy has become more stringent. Seven persons who pleaded guilty were sentenced to imprisonment, while 11 who pleaded innocent were sentenced to imprisonment. Fines were only levied on 2 persons who pleaded guilty. With regard to the total number of convicted persons, sentences were rejected for 3 persons, while 4 persons were released. First instance judgements in 2006 were appealed in 23 cases: of this total, the prosecutor filed against 12 persons while the accused lodged 11 appeals. Deciding upon these appeals, the second instance court handed down a total of 17 enforceable judgements, imprisonment for 10 persons, suspended sentences for 2 persons, a fine for 1 person, dismissed charges for 3 persons, and ordered 1 person's release. Nine convicted persons have already begun to serve their sentences, and eight are waiting to begin their sentence.

143. The following table gives a breakdown for crimes of trafficking in persons and similar crimes, for 2005 and 2006:

**Table 7**

Crime	Number of reported crimes		Number of reported persons		Number of victims	
	2005	2006	2005	2006	2005	2006
Establishment of a slavery-like relationship Article 185, CC BiH	-	2	-	2	-	1
Trafficking in persons Article 186, CC BiH	15	17 <sup>17</sup>	35	45	27	23
International solicitation for prostitution Article 187, CC BiH	-	3	-	9	-	3
Article 188, CC BiH	3	2	3	6	3	5
Inducement to prostitution Article 210, CC F BiH	10	8	10	13	14	8
Trafficking in persons for purposes of prostitution Article 198, CC RS	6	1	8	1	6	2
Inducement to prostitution Article 207, CC Brcko District of BiH	1	1	2	1	3	1
Use of children for pornography Article 208, CC Brcko District of BiH	1	-	1	-	1	-
<b>Total</b>	<b>36</b>	<b>34</b>	<b>59</b>	<b>77</b>	<b>54</b>	<b>43</b>

### **Some aspects of illegal migration into Bosnia and Herzegovina**

144. On 2 March 2005, two citizens of the People's Republic of China whose papers were not in order were discovered in Banja Luka. They had no valid residence visa for Bosnia and Herzegovina; nor had they applied to the competent Department for Non-Citizens for a certificate of temporary residence. In addition, on 25 August 2005 the inspectors of the Department for Non-Citizens of the Centre for Public Security - Banja Luka discovered one female citizen of the People's Republic of China without valid travel documents in Prijedor.

<sup>17</sup> Perpetrators are unknown in four cases.

The Chinese citizens came to Bosnia and Herzegovina on economic grounds, with the aim of staying in Bosnia and Herzegovina or leaving for a western European country in search of work. In all of these cases, a decision was taken to deport these foreign citizens from the territory of Bosnia and Herzegovina.

145. The mentioned figures show that police officials of the Interior Ministry of the Republika Srpska discovered and cut off several international channels for the transfer of illegal migrants. During the reporting period, 83 illegal migrants were discovered on the territory of the Republika Srpska: 39 from Albania, 33 from Serbia and Montenegro, 6 from Iraq, 3 from the People's Republic of China and 2 from Cameroon. An analysis of the matter reveals that the Republika Srpska and Bosnia and Herzegovina have become a major transit centre for the illegal transfer of citizens from high-risk countries sending countries to western European countries, and that police officials of the Interior Ministry of the Republika Srpska achieved good results in preventing and suppressing illegal migration in these areas.

146. On the basis of the statistics (see annexed tables Nos. 2, 3 and 4) submitted by the responsible bodies of the Brcko District of Bosnia and Herzegovina, the following could be stated:

- In the period from 30 June 2003 to 31 December 2006, 1,332 work permits were issued in this area;
- During the same period, 11,730 foreign citizens registered residence on the territory of the Brcko District of Bosnia and Herzegovina. Temporary one-year residence was approved for 1,363 non-citizens while permanent residence was refused for 39 non-citizens;
- A review on the number of pupils attending secondary and other schools was given, showing 62 pupils in all.

The Statistics Institute of the Republika Srpska provided a breakdown of the qualifications of foreign workers to whom work permits were issued, ranging from qualified workers to persons with university graduates and post-graduate degrees, for the year 2006 and by branch (see attached tables Nos. 5, 5 (a) and 5 (b)).

### **C. Current situation regarding the practical implementation of the Convention**

147. Since by the nature of their work the police are more geared to following up illegal rather than legal immigration, and given that Bosnia and Herzegovina is a very attractive transit zone on the way to western Europe for many immigrants, some relevant information follows. In comparison with 2000, when illegal immigration peaked in Bosnia and Herzegovina (it is estimated that in that year some 50,000 immigrants passed through Bosnia and Herzegovina), or compared with 2001, when the number of illegal crossings of Bosnia and Herzegovina State borders fell sharply, the figures clearly show that in 2002, the downward trend continued with regard to the number of offences and the total volume of illegal immigration in 2005 as per some parameters (primarily per number of deported immigrants from neighbouring Croatia) at a level

lower than in 2002. However, this does not by any means imply that the issue of illegal immigration is nearly solved; on the contrary, illegal immigration across Bosnia and Herzegovina is continuing and will surely continue in the near future, thus posing a special security problem.

148. In 2000, Iranian citizens accounted for the bulk of immigrants (primarily economic migrants); in 2001 Turkish citizens; and in the last two years most immigrants were of Albanian nationality from Kosovo and less from The former Yugoslav Republic of Macedonia and Albania. There is a constant but somewhat smaller flow of citizens from Bangladesh, Pakistan and especially the People's Republic of China. The Chinese tend to stay for shorter or longer periods in Bosnia and Herzegovina, where they sell Chinese goods legally or illegally. Indians, Pakistanis and Chinese often fly to Bosnia and Herzegovina, mainly to Sarajevo airport (just as Iranian immigrants did in 2000) with proper visas obtained in Bosnia and Herzegovina embassies and consular missions on grounds of letters of guarantee.

149. After entering Bosnia and Herzegovina, illegal immigrants come under the control of organized groups which handle their illegal transfer, provide beds and transfer migrants further on. There were also cases of providing so-called "Schengen" visas via embassies of some EU countries (for example Greece), which immigrants then used to enter other western European countries. Recently, Albanian immigrants from Kosovo and The former Yugoslav Republic of Macedonia have been entering Bosnia and Herzegovina mainly illegally from Serbia and Montenegro and are transferred via organized channels in Bosnia and Herzegovina across Croatia and Slovenia, most often to Italy and other western European countries. Prices for transferring Albanian migrants to Italy usually range from 1,000 to 3,000 euro. For the vast majority of immigrants, Croatia is the second country they travel across on their way out of Bosnia and Herzegovina, and Germany is definitely the most desirable destination for many immigrants.

150. The different Ministries of Interior still face numerous problems in this respect:

- Difficulties in identifying immigrants due to a lack of any identification documents;
- Language barriers and a shortage of interpreters for minority languages;
- The presence of immigrants as aggrieved parties in various crimes and offences where their fundamental rights are sometimes violated by Bosnia and Herzegovina citizens and very often by smuggling organizers of the same origin;
- The lack of reception centres for illegal migrants (only some who wish to return voluntarily to the State of origin are covered by IOM programmes and repatriated).

151. Over the last three years there has been an increase in illegal emigration of Bosnia and Herzegovina citizens (especially from Tuzla Canton) to EU countries, France being the major destination where Bosnia and Herzegovina citizens mainly requested asylum. These networks of Bosnia and Herzegovina citizens have been considerably reduced in scope by the work of the Bosnia and Herzegovina State Border Police and the ordinary police.

152. Persons recorded as having committed the crime of “human smuggling” were mainly Bosnia and Herzegovina citizens, although the number of non-citizens smuggled via Bosnia and Herzegovina accounted for a larger share of total persons smuggled via Bosnia and Herzegovina, as is the case with smuggling organizers operating on the territory of Bosnia and Herzegovina who are from outside Bosnia and Herzegovina (Kosovo and Turkey), who outnumber local smuggling organizers. It is important to recall that the operation of the Prosecutor’s Office and the Bosnia and Herzegovina Court as well as the new offence of “human smuggling” which has been introduced into the Bosnia and Herzegovina Criminal Code was already in conformity with the Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air and was further improved last year, have created good prerequisites for the criminal prosecution of human smugglers and their accomplices in Bosnia and Herzegovina. Scores of charges are brought yearly on the basis of reports on crimes of human smuggling, mainly supplied by the State Border Police of Bosnia and Herzegovina. It is also interesting to note that the police in the Federation of Bosnia and Herzegovina has so far recorded only one case indicating trafficking in persons for the purpose of labour exploitation, i.e. a slavery-like relationship, where the victim was an immigrant from Kosovo working in a fellow countryman’s pie shop in Gorazde, but the case was dismissed by the Bosnia and Herzegovina Court due to a lack of evidence.

153. In our view, once the Bosnia and Herzegovina Ministry of Security has assumed full responsibility for immigration issues (by taking over the different Departments for Non-Citizens) and the computer networks compatible with the Citizen Identification Protection system have been installed, the situation will improve in this field and implementation of existing and recently adopted by-laws in this field will become more effective. Furthermore, since the State Border Police is already under the Bosnia and Herzegovina Ministry of Security, this means that in the future this Ministry will have full information on the matter and will conduct systematically, comprehensive research, which is not the case at present. There is also a need for Bosnia and Herzegovina to participate more actively in international cooperation arrangements to check illegal immigration, in particular through the Regional Center of the Southeast European Cooperative Initiative for combating transborder crime (SECI) in Bucharest.

154. Over the past few years, one special problem that has made it more difficult to deal with this matter in Bosnia and Herzegovina has been the lack of a readmission agreement with Serbia and Montenegro, because the persons deported from Croatia could not return and crossed over illegally from Serbia and Montenegro into Bosnia and Herzegovina. Additional efforts with Serbia are required in order to enable and facilitate such readmission.

**D. Information on measures undertaken by Bosnia and Herzegovina for dissemination and promotion of the Convention and cooperation with civil society in promoting and respecting rights enshrined by the Convention**

155. In the last three years, the police from all of Bosnia and Herzegovina have established full cooperation with IOM’s Bosnia and Herzegovina Office in Sarajevo as regards care for immigrants in an irregular situation and their voluntary return to their State of origin, with IOM officials taking pain to respect their human rights during the conduct of the programme. Cooperation is also good with a wide range of NGOs operating in Bosnia and Herzegovina, especially those working to combat trafficking in persons.

## **PART II. INFORMATION REGARDING DIFFERENT ARTICLES OF THE CONVENTION**

### **A. General principles**

156. The Constitutions of Bosnia and Herzegovina, the Entities and the Statute of Brcko District of Bosnia and Herzegovina ban all kinds of discrimination and incorporate paragraphs from the preamble of the Convention. Article 6 of the Law on Non-Citizens' Movements, Residence and Asylum prohibits discrimination, providing that non-citizens may not be subject to any kind of discrimination on any grounds, including sex, race, skin colour, language, religion, political and other opinions, national and social origin, affiliation to national minority, property status, age, mental or physical disability, status by descent or any other status.

157. Several provisions of the Law on Non-Citizens' Movements, Residence and Asylum relate to the right to an effective remedy, in particular article 8, paragraph 2, dealing with rights in procedures before government bodies, which stipulates that non-citizens must be informed at all stages of the procedure of the rights and duties arising from this law, such as the right to appeal, all possible claims for damages, and all necessary requirements for the exercise of their rights.

158. The issuance of work permits to non-citizens is regulated by the provisions of the relevant Laws on Employment at the Entity and the Brcko District of Bosnia and Herzegovina level, and by laws on non-citizens' movements and residence as well as laws on the employment of non-citizens (and stateless persons). In accordance with prevailing legislation, work permits are issued for a limited period, up to one year maximum, with the possibility of extension.

159. The constitutional and legislative framework of Bosnia and Herzegovina grants full rights to both its citizens and non-citizens who meet the requirements to stay on its territory, without prejudice or discrimination on any grounds. Article 2, paragraph 4, of the Constitution of Bosnia and Herzegovina stipulates that all persons in Bosnia and Herzegovina are entitled to the enjoyment of all rights and freedoms provided for in this article and in international agreements listed in the Constitution, with no discrimination on any grounds whatsoever. The Constitution also sets out special guarantees and mechanisms for the exercise of rights and the enjoyment of freedoms, stipulating that there may not be any discrimination against Bosnia and Herzegovina citizens in either Entity, on any grounds whatsoever.

160. The said constitutional provisions and the legislation of Bosnia and Herzegovina, both its Entities and the Brcko District of Bosnia and Herzegovina guarantee that all persons whose rights and freedoms have been violated have the right to appeal, including in cases where the violations have been committed by persons acting in an official capacity (article 83 of the Convention).

### **Non-discrimination**

161. Bosnia and Herzegovina has made great progress in respecting the rights of all migrant workers and members of their families, regardless of race, sex, language, religion, belief, political or other opinion, national, ethnic or social descent, citizenship, age, economic status, property, marital status or any other status, because the Constitutions of Bosnia and Herzegovina, the Entities and the Statute of the Brcko District of Bosnia and Herzegovina ensure



that all persons may enjoy all rights and freedoms without discrimination. These documents provide special guarantees and mechanisms for protecting the human rights and fundamental freedoms of all Bosnia and Herzegovina citizens. These guarantees, together with additional legislative instruments, refer to equal rights and freedoms for non-citizens who reside or work on the territory of Bosnia and Herzegovina.

### **Right to effective remedy**

162. Each signatory State that is a party to this Convention is bound to ensure remedy for any person whose rights are violated, including cases in which violations were committed by persons acting in an official capacity. The relevant provisions of the Law on Non-Citizens' Movements, Residence and Asylum provide for remedies, in some cases for appeal and in other cases for the right to lodge complaints with the Court of Bosnia and Herzegovina by means of administrative procedures. Remedies are most often used in cases of rejection of non-citizens' application for entry into the country, rejection of applications for residence on various grounds, rejection of applications for asylum, withdrawal of residence authorization, etc. Non-citizens/workers have the right to appeal such decisions to the Bosnia and Herzegovina Ministry of Security (higher instance) within 15 days of the date of notification receipt and are entitled to all sorts of legal assistance. It should be noted that appellants on any issue may not be expelled or forcibly evicted from the country until the appeal deadline has expired, that is, until the responsible body has made a final decision under the appeal. This is defined by the appropriate provisions of the said law, which regulates the manner of official forcible eviction of non-citizens from the country. Rulings must be executed no later than seven days after the final decision. Rulings set the manner, time and place for the execution of the final decision, and appeal does not stay enforceability. In cases when non-citizens have been placed under surveillance, the provisions of the said law stipulate that non-citizens may file an appeal to the Bosnia and Herzegovina Ministry of Security within three days of the date of notification of the decision. The Bosnia and Herzegovina Ministry of Security is obliged to rule on decisions appealed within seven days following the date of receipt of the appeal.

### **Commitment to implement the Convention**

163. Pursuant to the provisions of the Convention, Bosnia and Herzegovina has adopted appropriate laws and other legal acts regulating the issue of foreign migrant workers and members of their families. They include, among others, the Law on Non-Citizens' Movements, Residence and Asylum, laws on the employment of non-citizens passed at Entity level, as well as a whole range of by-laws necessary to implement the laws. This field is also treated by the criminal codes passed at all levels: Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina. The procedure for the exercise of rights and duties of non-citizens is regulated by the laws on administrative procedure and on administrative disputes.

### **B. Part III of the Convention: Human rights of all migrant workers and members of their families**

164. Non-citizens enjoy the same guarantees as to protection and freedom as do citizens of Bosnia and Herzegovina. Such matters are regulated by the Bosnia and Herzegovina Law on Non-Citizens' Movements, Residence and Asylum. Pursuant to article 6 of this law, non-citizens cannot be discriminated against on any grounds whatsoever. Non-citizens authorized to stay for

humanitarian reasons, in accordance with article 35 of the law, have the right to work and are entitled to education, health and social care on the same terms as citizens of Bosnia and Herzegovina. Legislation provides that non-citizens cannot be exposed to torture or any other cruel and inhuman or degrading treatment or punishment, nor can they be in slavery-like or captive status. According to the said law, non-citizens may only be denied entry and residence in the event that they have not met necessary requirements, as provided by the law. Non-citizens have the right to appeal any such negative decisions to the Bosnia and Herzegovina Ministry of Security.

165. According to the legislation of Bosnia and Herzegovina, if non-citizens are deprived of their liberty they must be treated humanely and with dignity. Non-citizens cannot be detained on grounds of failure to fulfil contractual obligations and have the right to contract and rights in court, the right to an equitable and fair trial by a competent, independent and impartial court constituted by the law in the event of any criminal charges. Non-citizens are protected against arbitrary and unlawful interference in their privacy, family, home or correspondence; they have the right to freedom of thought, belief and religion and the right to freedom of opinion and expression. They have the right of peaceful assembly and freedom of association; they have the right to enjoy their own culture, to practice and promote their own religion, to use their language, as well as the right to marriage, etc. Non-citizens' children enjoy special legal protection in accordance with their status as minors. By virtue of the legislation of Bosnia and Herzegovina, the above-mentioned rights of non-citizens may only be limited by law in accordance with the Law on Non-Citizens' Movements, Residence and Asylum. This law guarantees rights in procedures in government bodies, as defined by the provisions of article 8, and refers to the obligation of such bodies to inform non-citizens as to the rights and duties arising from the law, the right to appeal and the right to proceedings in the non-citizens' native language. Article 5 of the Law on Non-Citizens' Movements, Residence and Asylum guarantees non-citizens freedom of movement and freedom of choice of place of residence.

166. Non-citizens with refugee status have the right to stay in Bosnia and Herzegovina. For this purpose, they are granted residence for refugees, during which time they have the right to work and the right to education, health and social care on the same terms as citizens of Bosnia and Herzegovina. Non-citizens may not be forcibly expelled from Bosnia and Herzegovina before enforceability of the decision to terminate the validity of asylum under article 76 of the said law.

167. Pursuant to the legislation of Bosnia and Herzegovina, non-citizens may dispose freely of their remuneration, savings and property.

### **Freedom to leave any State, including the State of origin, and to return thereto**

168. Article 8 of the Convention provides for the liberty to leave any country, including their State of origin, and to return thereto, and this is implemented in certain articles of the law on Non-Citizens' Movements, Residence and Asylum in Bosnia and Herzegovina.

169. Non-citizens residing in Bosnia and Herzegovina under the conditions defined by the said law enjoy the right to free movement in the country and to free choice of their place of residence, unless stipulated otherwise in this or any other special law.

170. The provisions of the said law (arts. 9 to 26) regulate the rights of non-citizens regarding entry and departure to any country, including their State of origin. During their stay on the territory of Bosnia and Herzegovina, non-citizens must be in possession of the necessary documents to prove their identity and their right to enter and stay in Bosnia and Herzegovina, and must show such documents to the competent body (article 9 of the law - evidence of identity).

171. Non-citizens may cross the borders of Bosnia and Herzegovina at border check points open to international traffic or at the points designated for traffic between two States, unless otherwise stipulated by agreements between Bosnia and Herzegovina and neighbouring countries (article 10 of the law - border crossing).

172. Non-citizens wishing to enter or leave Bosnia and Herzegovina are subject to control by officials authorized to control State borders, and are obliged to submit to checks of their luggage and transport vehicle. Non-citizens wishing to enter or leave Bosnia and Herzegovina are obliged to provide accurate and complete answers to all questions, to produce all necessary documents upon request, as per paragraph 2 of this article, and to fill in all additional questionnaires, at the request of such officials.

173. Non-citizens may be granted entry into Bosnia and Herzegovina (article 11 of the law - general entry terms) if they meet the following requirements:

- In possession of a valid travel document or other document based on a decision of the Council of Ministers of Bosnia and Herzegovina;
- In possession of a valid visa for entry, stay or transit across the territory of Bosnia and Herzegovina, i.e. a certificate of residence as defined by this law;
- In possession of sufficient resources for entering, staying in and leaving the country, including resources for health insurance as regulated by article 14 of this law;
- In possession of an entry visa for a neighbouring country to which they are travelling or through whose territory they are transiting for further journey, if a visa is required;
- Not to be subject to a measure of deportation, withdrawal of residence or a ban on entering the territory of Bosnia and Herzegovina, at the time the measure was handed down;
- Their presence on the territory of Bosnia and Herzegovina does not pose a threat to national security, the legal order or public order in Bosnia and Herzegovina.

174. The Council of Ministers of Bosnia and Herzegovina can prescribe special conditions for the entry of non-citizens when this is required to protect the national security and legal order of Bosnia and Herzegovina or any other reasons arising from international commitments. Non-citizens may be granted entry even if they do not meet the requirements set out in article 11 (a) and (b) of this law, if so stipulated by an international treaty to which Bosnia and Herzegovina is a party or by special provisions set by the Council of Ministers (article 12 of the law - entry under special conditions).

175. The Council of Ministers, acting on a proposal by the Bosnia and Herzegovina Ministry of Security and the Ministry of Foreign Affairs, designates those countries whose citizens require a visa to enter Bosnia and Herzegovina (hereinafter non-visa regime countries) and those countries whose citizens can enter Bosnia and Herzegovina with travel documents other than a passport. The Bosnia and Herzegovina Council of Ministers is also competent to exempt from visa requirements persons to whom other countries have granted refugee status, in accordance with the 1951 Convention relating to the Status of Refugees (article 13 of the law - visa exemptions).

176. Non-citizens who, as per this law, do not require a visa to enter Bosnia and Herzegovina may stay in the country (non-visa residence) for up to three months, unless a shorter period has been specified under an international agreement to which Bosnia and Herzegovina is a party or under special provisions of the Council of Ministers of Bosnia and Herzegovina adopted in conformity with article 12 of this law. Such non-citizens are not under any obligation to obtain a visa to enter Bosnia and Herzegovina if they have a valid sticker certificate of temporary or permanent residence in their passports.

177. Non-citizens can provide proof that they have sufficient resources as defined by article 11, paragraph 1 (c), in one of the following ways:

- (a) Possession of cash in local or convertible foreign currency;
- (b) Possession of a paper payment facility accepted by the Bosnia and Herzegovina banking system, and guarantees by the Bosnia and Herzegovina bank recognizing the paper payment facilities held by the non-citizen;
- (c) Letter of guarantee or invitation;
- (d) Presentation of proof of accommodation paid through a tourist agency; or
- (e) Possession of other means (e.g. real estate in Bosnia and Herzegovina on account of which it is possible to provide support resources during the stay in Bosnia and Herzegovina; resources from foreign direct investment; production-technical cooperation, etc.).

178. The letter of guarantee for the non-citizen's entry into Bosnia and Herzegovina can be issued by a citizen of Bosnia and Herzegovina or a non-citizen granted permanent residence in Bosnia and Herzegovina. The letter of guarantee can be accepted as a certificate attesting to the possession of financial resources if it contains a statement that the guarantor undertakes to provide accommodation, pay the costs of medical treatment, defray the support and other costs that might arise during a non-citizen's stay in Bosnia and Herzegovina as well as the costs of his/her departure from Bosnia and Herzegovina (article 15 of the law - letters of guarantee).

179. Such letters of guarantee must be certified by the competent administrative authority and the organizational unit of the Bosnia and Herzegovina Ministry of Security as to the place of residence, i.e. the professional domicile of the guarantor. The invitation must take the form of a letter of guarantee by which a national or a foreign legal entity registered in Bosnia and Herzegovina invites a foreign partner for a business visit at specified time intervals. The invitation must contain a statement on payment of costs in regard of article 15 of this law.

The invitation must be certified by the Bosnia and Herzegovina Chamber of Commerce and by the competent administrative authority and the organizational unit of the Bosnia and Herzegovina Ministry of Security as per the professional domicile of the guarantor (article 16 of the law).

180. Non-citizens wishing to enter Bosnia and Herzegovina with the intention of working or carrying out any other gainful activity subject to tax may be authorized to enter if they hold a work permit or any other equivalent issued by the responsible administrative body, and in accordance with special regulations governing employment, banking, investment and foreign direct investment policies and technical-business cooperation and production (article 17 of the law - work permits). It is considered that a non-citizen who holds a work permit satisfies the requirements regarding the possession of support resources.

181. Diplomatic and consular missions issue visas. Visa applications must be submitted in advance and in person. Visa applications may exceptionally be submitted immediately before entering Bosnia and Herzegovina; if this is the case, such requests are regulated by a by-law of the Bosnia and Herzegovina Ministry of Foreign Affairs and are decided upon, at the recommendation of this Ministry, by the organizational unit of the Ministry responsible for controlling State border crossings.

182. In exceptional cases, the organizational unit of the Bosnia and Herzegovina Ministry of Security responsible for State border crossings may, as appropriate, independently issue a visa to a non-citizen to transit through the territory of Bosnia and Herzegovina (article 24 of the law - visa issuance).

183. The Bosnia and Herzegovina Ministry of Foreign Affairs takes and implements decisions concerning visa extensions, under article 23, paragraphs 5 and 6, of this law. Decisions to extend visas may not be appealed, and must be justified.

184. Visas shall be deemed void if it is subsequently discovered that they were issued contrary to the requirements of this law (art. 23, para. 2 and art. 25, para. 2). Visas may be annulled on the basis of an enforceable court decision or a decision on visa annulment made by the Bosnia and Herzegovina Ministry of Foreign Affairs. Visas are annulled by the body that made the decision on annulment, namely the competent organizational unit of the Bosnia and Herzegovina Ministry of Security or the Ministry of the Interior, on whose territory the non-citizen resides, on grounds of information and receipt of the enforceable decision by the body that annulled the visa. Visas are annulled by affixing a stamp onto the visa sticker in the non-citizen's travel document bearing the mark ANNULLED (article 26 of the law - visa annulment).

185. If the organizational unit of the Bosnia and Herzegovina Ministry of Security, the body responsible for controlling State border crossings, finds out when checking a non-citizen crossing the border that his/her visa has been falsified, it is obliged to annul the visa immediately. Decisions on visa annulment may not be appealed and must be justified. Application of the above articles is connected to constitutional provisions and criminal regulations at the level of Bosnia and Herzegovina.

## **Asylum**

186. In 2005, 97 applications for asylum were submitted for 145 persons on the territory of Bosnia and Herzegovina. Out of the applications submitted in 2005 and earlier, 91 cases were decided, as follows: 59 applications for 77 persons were decided by termination, 29 applications for 51 persons were rejected, and 3 applications for 9 persons were rejected. Not a single asylum request was approved in 2005.

187. In 2006, the Bosnia and Herzegovina Ministry of Security - Asylum Unit received 37 applications for asylum for 68 persons, out of which 27 were decided for 46 persons and 10 applications for 22 persons are being processed. Four complaints were lodged against decisions on applications, two of which were decided by confirmation of the Ministry decision. Other complaints are being processed.

188. Legislation governing the status of temporary admission to Bosnia and Herzegovina is defined by the Guidelines on the status of persons from Serbia and Montenegro who are temporarily admitted to Bosnia and Herzegovina, and from 30 June 2004 by the Guidelines on the extension of temporary admission status to Bosnia and Herzegovina of persons from Serbia and Montenegro with a last residence in Kosovo. Temporary admission was extended until 31 December 2006. A total of 3,057 persons have the right to temporary admission. Cases decided upon during the above-mentioned period concerned the following: consent for the extension of temporary admission status; establishment of temporary admission status for newborn children (25 applications received and 25 decided); and issuance of certificates based on information from the official records (9 applications received and 9 certificates issued).

189. In order to ensure that beneficiaries of the asylum system have access to the adequate services provided for by legislation, the Bosnia and Herzegovina Ministry of Security signed the Protocol on free legal assistance (application of the Protocol in 2006 was satisfactory); the Protocol on care and maintenance of the UNICEF-funded shelter centre in Bosnia and Herzegovina; the Protocol between the Ministry for refugees and displaced persons from the Republika Srpska and UNHCR on reregistration of refugees from Croatia living in the Republika Srpska.

190. There were 5,427 decisions to approve residence for non-citizens that were received and processed. Out of this number, 153 referred to permanent residence granted to non-citizens, and 5,274 to temporary residence granted to non-citizens. Files were processed and temporary residence stickers were issued. As for the grounds of temporary residence, the greatest number of approved temporary residences were on grounds of work permit (28.3 per cent), marriage (26.45 per cent), family reunification (13.48 per cent), education (12.40 per cent) and profitable business (10.56 per cent).

191. During the same period, the Asylum Unit participated directly in the drafting and implementation of the Protocols: in the programme for the voluntary repatriation of non-citizens to the States of origin (the so-called AVR programme), which has been by and large harmonized

with IOM as programme managers and implementer: on the transfer of the personnel, documentation and premises of the Ministry of the Interior of the Republika Srpska, the Cantons of the Federation of Bosnia and Herzegovina and the police of the Brcko District of Bosnia and Herzegovina, with a view to the establishment of the Department for Non-Citizens; on cooperation in the provision of adequate and safe accommodation and care for non-citizens and victims of trafficking in persons, in Bosnia and Herzegovina with five non-governmental organizations; on cooperation in the implementation of the programme on the protection of victims of trafficking in persons and their voluntary repatriation to their States of origin or States of residence signed between the Ministry of Security and IOM and on the provision of free legal assistance concluded with the association "Your Rights".

192. As regards administrative and legal supervision in 2006 at the first instance level, 346 applications were received, 330 (95.38 per cent) of them were settled, and 16 (4.62 per cent) are being decided. Out of 330 applications decided, 324 were settled within the normal deadline while 6 were settled afterwards due to a delay in the issuance of the assessment of the competent prosecutor. The number of settled applications for temporary residence was 295 (approved); 19 applications for temporary residence were rejected; 3 were rejected by ruling as untimely; 6 procedures regarding applications were terminated and 7 cases were returned under the competency of the field centres for foreigners. Six proposals for renewal of procedure were received, out of which four were settled (refused) and two are in the process of being settled.

193. With regard to the second instance body in the settlement procedure, out of a total of 88 appeals, 86 were settled (97.73 per cent) and 2 appeals (2.27 per cent) are in the process of being settled. At the request of the Bosnia and Herzegovina Court, 18 answers to complaints were completed and two answers to requests for the reconsideration of judicial judgements were provided. All judgements handed down by the Bosnia and Herzegovina Court upheld the decisions made by the Ministry.

194. In 2006, the Migration Unit of the Bosnia and Herzegovina Ministry of Security processed cases regarding the conduct of proceedings at the second instance level in matters provided by the material law; the conduct of the first instance proceedings in matters under the Unit's jurisdiction; the monitoring and verification of the legality of acts brought at the first instance in which permanent or temporary residence was granted to non-citizens on the territory of Bosnia and Herzegovina, and approval of the issuance of approved residence stickers, the production of stickers and their distribution in the field; verifications on the basis of official records with regard to non-citizens' entry, movements, residence and status with NGOs in connection with accommodation and illegal immigrants and victims of trafficking in persons, as well as other acts and correspondence. A total of 88 appeals were received (according to field centres for foreigners - four appeals were received in 2005).

**Table 8**  
**Overview of cases received and their status in 2006**

Ser. No.	Case	Received	Resolved	In process
1.	Appeals lodged against first instance decisions on refusal of entry to BiH to non-citizens	0	0	0
2.	Appeals lodged against first instance decisions on refusal of temporary residence to non-citizens in BiH	24	24	0
3.	Appeals lodged against first instance decisions on refusal of permanent residence to non-citizens in BiH	1	1	0
4.	Appeals lodged against first instance decisions on the withdrawal of residence of non-citizens in BiH	2	2	0
5.	Appeals against decisions on the expulsion of non-citizens from BiH	60	58	2
6.	Appeal against decisions to place non-citizens under surveillance	1	1	0
7.	Applications for approval of temporary residence	346	330	16
8.	Request for the reopening of cases	6	4	2
9.	Processed first instance decisions on approved permanent residence of non-citizens in BiH-issued stickers for permanent residence	153	153	0
10.	Processed first instance decisions on temporary residence of non-citizens in BiH-issued stickers for temporary residence	5 274	5 274	0
11.	Electronic and written applications of the Department for Non-Citizens - field offices - of the field centres for approval of temporary or permanent residence of non-citizens in BiH - checks in Serbia	2 958	2 958	0
12.	Electronic applications at diplomatic and consular offices and the State Border Service for issuance of entry visas for BiH, for approval of residence for non-citizens and the granting of BiH citizenship to non-citizens - checks in Serbia	14 668	14 668	0



**Table 8 (continued)**

Ser. No.	Case	Received	Resolved	In process
13.	Entry of information into Serbia's database on final and enforceable decisions on deportation, withdrawal of residence, notification of undesirable non-citizens and withdrawal of BiH citizenship	1 099	1 099	0
14.	Request for expert opinions, recommendations and instructions for procedure in the application of material provisions	48	48	0
15.	Request for procedure under readmission agreements	38	38	0
16.	Announced and executed deportation of BiH citizens in BiH	1 320	1 320	0
17.	Procedure subsequent to requests for the readmission of victims of trafficking in persons	22	22	0
18.	Decisions on payment of deportation costs	14	14	0
19.	Transfer of travel documents found in conformity with the rulebook on travel sheet	6	6	0
20.	Request for additional checks of data under the Mission Implementation Plan for the issuance of visas	10	10	0
21.	Transfer of travel documents found in conformity with the rulebook on travel sheet	9	9	0
22.	Requests made to the Embassies of other States, mediation of the Mission Implementation Plan and other bodies, for checks of the movements and residence of non-citizens in BiH (Iraqi and Indian citizens) with INTERPOL and the Office of Special Affairs	82	82	0
23.	Other correspondence	445	445	0

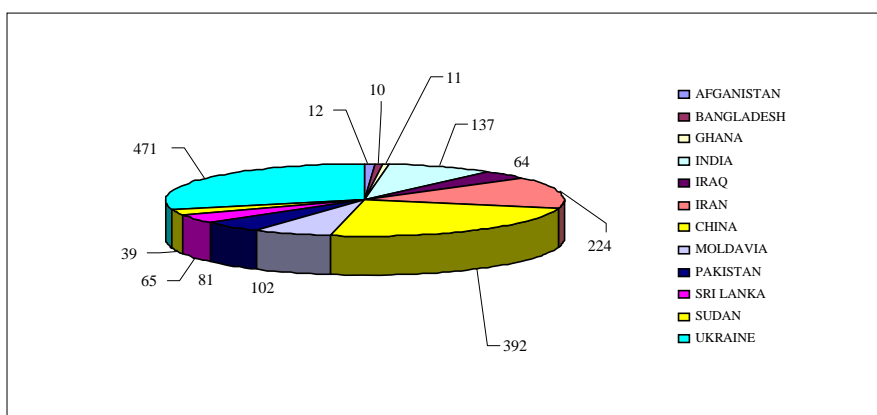
## Visas

195. In 2005, the total number of visas issued was 13,589 for citizens of other countries who require visas to enter Bosnia and Herzegovina. Out of the total number, 11,540 were issued in diplomatic and consular missions of Bosnia and Herzegovina, while 2,049 were issued at border crossings.

196. As a result of the ongoing efforts of diplomatic and consular missions with regard to the issuance of visas, opportunities for changing from legal to illegal migration over the territory of Bosnia and Herzegovina have substantially decreased.

197. Checks of females from the high-risk 17-25 age bracket have been strengthened. By the end of 2005, the number of applications from persons in this group had declined sharply, indicating that the goal of prevention of trafficking in persons and illegal migration had been achieved. The following graph gives an overview of visas issued for high-risk countries:

**Graph 6**



198. In 2006, a new trend of illegal immigration was noticed with migrants trying to obtain visas to enter Bosnia and Herzegovina legally and then stay in the country or use its territory as a transit area in their efforts to enter western European countries. The most common tactic is to attempt to obtain a visa on grounds of education in Bosnia and Herzegovina, scientific conferences, sports or cultural and other manifestations. It will be noted that potential illegal immigrants use Internet websites to obtain information on coming events then apply via electronic mail to the faculties in question with a view to participating in such events. The following graph shows that in 2006, the number of visas issued to high-migration-risk citizens for entering Bosnia and Herzegovina from Egypt, India, Palestine and Uganda increased, while the number of visas issued to citizens of the Islamic Republic of Iran, Moldova, Pakistan, the People's Republic of China, Sri Lanka, Sudan and Ukraine fell sharply.

199. Based on the statistics provided by the Bosnia and Herzegovina State Border Police, in 2005 and 2004 the greatest number of rejected entries into Bosnia and Herzegovina referred to the citizens of:

- Croatia	1,687 or 21.75 per cent	- Switzerland	461 or 5.94%
- Serb+Mont	1,681 or 21.67 per cent	- Bulgaria	429 or 5.53%
- Slovenia	584 or 7.52 per cent	- Romania	428 or 5.52 per cent <sup>18</sup>

200. Although reasons for denying entry into Bosnia and Herzegovina differ, it can be observed that:

(a) Citizens of Croatia, Slovenia and Switzerland were denied entry mainly due to a lack of travel documents;

(b) Citizens of Serbia and Montenegro were denied entry due to various reasons, such as:

- Lack of valid travel documents;
- Provision of false information;
- Lack of support resources; and
- Lack of work permit;

(c) Citizens of Romania and Bulgaria are denied entry due to lack of visa;

(d) The number of citizens of new EU Member States has declined sharply.<sup>19</sup>

### **Right to life; prohibition of torture; prohibition of inhumane or degrading treatment**

201. The right to life, as a fundamental human right, takes precedence in the Constitution of Bosnia and Herzegovina, the Entities and the Statute of Brcko District of Bosnia and Herzegovina. It is inviolable and no one has the right to deprive anyone of his life.

202. In 2002, Bosnia and Herzegovina also signed the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment. In accordance with its authorities and standards, the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) paid its first periodic monitoring visit from 27 April 2003 to 9 May 2003. The CPT visited places where persons were deprived of their liberty against their will (prisons, psychiatric hospitals, police stations and border police detention sites).

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<sup>18</sup> Report on the work of the Bosnia and Herzegovina State Border Police, p. 3.

<sup>19</sup> Ibid.

203. After the completion of monitoring in coordination with the Bosnia and Herzegovina liaison officers and the Entity liaison officers on 9 May 2003, there was a meeting of ministers and senior officers of authorized ministries of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina. On this occasion, attendees were informed by the CPT delegation that the European Committee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment would be briefed on the monitoring visit in writing, with instructions for procedure sent to the competent Ministries of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina.

204. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has become an integral part of Bosnia and Herzegovina's legal system.

205. There are several provisions in the Criminal Code of Bosnia and Herzegovina, the Criminal Code of the Federation of Bosnia and Herzegovina, the Criminal Code of the Republika Srpska and the Criminal Code of the Brcko District of Bosnia and Herzegovina that foresee crimes for acts containing features in regard of definition of torture given in article I/1 of the Convention. It should be mentioned that the ban of torture is raised at the level of constitutional law, both in the Constitution of Bosnia and Herzegovina and the Constitutions of the Entities and the Statute of Brcko District of Bosnia and Herzegovina. The right of persons not to be subjected to torture or inhuman or degrading treatment or punishment is anticipated by article II/3 of the Constitution of Bosnia and Herzegovina. Article II/A/2/1/f of the Constitution of the Federation of Bosnia and Herzegovina foresees that all persons on the territory of the Federation enjoy the right to a ban of torture, cruel or inhuman treatment or punishment.

206. Article 14 of the Constitution of the Republika Srpska stipulates that no one may be subjected to torture, cruel, inhuman or degrading treatment or punishment, that any coercion of confession or statements is forbidden and punishable, and that it is forbidden to conduct any medical or other scientific experiments on any person without his/her consent.

207. Persons claiming to be victims of torture or other cruel, inhuman or degrading treatment or punishments can turn to the Ombudsmen institution to protect their rights, i.e. to the Ombudsmen of the Federation of Bosnia and Herzegovina, or Republika Srpska Ombudsmen, depending on what authority level the person or persons committing offences under the Convention belong to, as long as these three institutions do not merge into one institution. Such a process is now under way in accordance with the Law on Modifications and Amendments to the Law on Bosnia and Herzegovina Ombudsmen for Human Rights, and it is expected to be fully implemented by the end of 2007.

208. Persons who claim to be victims of torture or other cruel, inhuman or degrading treatment or punishment, can use all legal means permitted by the law, in addition to Ombudsmen institutions, such as:

- They can file criminal charges with the competent prosecutor against the persons responsible;

- They can file complaints with the court of jurisdiction against the natural or legal person responsible for damages;
- They can launch administrative proceedings by means of complaint against final administrative acts;
- They can use all remedies envisaged by the law such as regular and special legal remedies;
- They can submit appeals to the Constitutional Court of Bosnia and Herzegovina if all remedies defined by the law have been exhausted;
- They can press for disciplinary proceedings against responsible persons.

209. The Criminal Code of Bosnia and Herzegovina sanctions the crime of torture and other forms of cruel, inhuman or degrading treatment committed by officials or other persons (article 190 of the Criminal Code of Bosnia and Herzegovina).

210. The Criminal Code of the Federation of Bosnia and Herzegovina provides for the extradition of accused and convicted non-citizens. The procedure is launched upon receipt of a petition from the foreign State, and must be accompanied by evidence as to identity, citizenship, crime, and relevant excerpts from the Criminal Code.

211. If the proceedings are conducted in a national court, the Republika Srpska Constitution stipulates that everyone has a right to equal protection of his/her rights before the court or other government body, and the Code of Criminal Procedure provides for rules of procedure ensuring that no one innocent is convicted and that guilty persons are sentenced under the terms foreseen by the Criminal Code and pursuant to lawfully conducted procedure. The court is obliged to conduct the procedure without delay and to prevent any abuse of the rights of persons participating in the proceedings.

212. Pursuant to the provisions of the Code on Criminal Procedure of the Republika Srpska, if a court discovers that the legal prerequisites for the extradition of a non-citizen have not been met it may decide to reject the request for extradition. Enforceable decisions by which the extradition is refused must be submitted to the foreign country, thus marking the end of the procedure.

213. Article 44, paragraph 2, of the Constitution of the Republika Srpska guarantees non-citizens and stateless persons the right to obtain asylum in the Republika Srpska if they are persecuted for participation in movements for social and national liberation, advocacy of democracy, human rights and fundamental freedoms or freedom of scientific and artist work.

214. Procedure as well as rights during the conduct of proceedings are regulated by the Law on Criminal Procedure of the Brcko District of Bosnia and Herzegovina. The extradition procedure is monitored by the court, and is conducted via the competent Bosnia and Herzegovina institutions in accordance with the provisions of inter-State agreements and the European Convention on Extradition. Article 412, paragraph 2, of the Law on Criminal Procedure sets out that criminal prosecution and trial are not permitted if they expose a non-citizen to unjust procedure or inhuman or degrading treatment or punishment.

**Prohibition of slavery and forced labour**

215. According to the constitutional and legal regulations at the Bosnia and Herzegovina level and at the level of the Entities and the Brcko District of Bosnia and Herzegovina, neither migrant workers nor members of their family may be held in slavery-like conditions or subjected to forced labour or compulsory labour. Naturally, the legislation of each country - and Bosnia and Herzegovina is no exception - does not exclude the possibility of hard labour in execution of a sentence or in the event of an emergency or calamity threatening the life or well-being of the community. Accordingly, all citizens, as well as migrant workers and members of their families, must participate on equal terms in efforts to alleviate emergency situations, for the purpose of saving human lives and welfare, under the supervision and protection of the competent State authorities and organizations.

216. Article 185 of the Criminal Code of Bosnia and Herzegovina states that any persons who, by breaking the rules of international law, places someone else into a slavery-like or similar situation or holds him in slavery, who buys, sells, hands over a person to some other person, or mediates in buying, selling or handing over such a person or induces someone else to sell his or her freedom or the freedom of the person whom he supports or takes care of, shall be liable to at least five years' imprisonment.

217. The Criminal Code further states that persons who, by breaking the rules of international law, buys or sells an under-age person because of adoption, organ transplantation or work exploitation, or because of some other illegal purpose, shall be liable to at least five years' imprisonment.

218. Lastly, it provides that persons who, by breaking the rules of international law, transports persons held in slavery or in some similar situation, shall be liable to imprisonment from six months to five years in duration.

219. However, as a State of transit, over the last 10 years Bosnia and Herzegovina has had to cope with the appearance of organized crime and trafficking in persons as the new methods of the subordination and enslavement of victims, mostly women and children. In response to the appearance of this kind of slavery, article 186 of Bosnia and Herzegovina's Criminal Code provides that persons who take part in canvassing, transporting, giving asylum or accepting of persons, by threatening or using force or some other kinds of compulsion, kidnapping, deception, deceit, misuse of authority or someone else's weakness, or giving or receiving payments or privileges, in order to secure the acceptance of the person who controls the other person, for the purpose of exploitation of the person, shall be liable to 1 to 10 years' imprisonment. Persons who commit criminal offences defined by paragraph 1 of this article against under-age persons shall be liable to at least five years' imprisonment.

220. The United States State Department underscored the seriousness of this phenomenon in its annual report, published in April 2005, in which Bosnia and Herzegovina is ranked in category 2 (countries which have not completely met minimal standards but are making an effort to do so), reflecting progress in comparison with the previous year, when Bosnia and Herzegovina was ranked among countries on the list under special supervision. A similar evaluation was made by the estimate given by the Committee against Torture which, while acknowledging all of Bosnia and Herzegovina's efforts in the field of prevention of trafficking in persons, expressed concern

at the fact that only a small number of cases of trafficking were investigated and processed and that for those which were processed, mainly fines and minor penalties were handed down.

221. Accepting these evaluations, the authorities of Bosnia and Herzegovina, in the second half of 2005, undertook extensive measures to prevent and check trafficking in persons. Detailed analyses of the previously accepted Action Plan have been made along with assessments of the present situation, leading to a new State Action Plan. This Plan has precisely stated strategic aims for a three-year period (2005-2007), as well as the necessary measures and activities in the area of the identification of victims and traffickers and in the field of prevention, training and protection (victims and witnesses) and criminal prosecution of perpetrators of the criminal offence of trafficking in persons.

222. Since the broad legislative reform to find solutions to the problems of trafficking in persons and illegal migration was carried out during the previous period, with the recommendation of the authorized international committees and other legislative bodies and for the purpose of identifying gaps and defects in existing legal and other acts, efforts have begun to amend them and adopt new instruments. For example, during 2005, amendments were adopted to the Bosnia and Herzegovina Criminal Code; the Law on the Protection of Threatened or Endangered Witnesses; the Regulatory Guideline on the terms and procedures of non-citizens' entry and residence came into effect, which is a by-law of the Law on Non-Citizens' Movements, Residence and Asylum; the Bosnia and Herzegovina Council of Ministers adopted the Integrated Border Control Strategy with a view to effectively controlling and protecting the borders of Bosnia and Herzegovina, so as to ensure that the circulation of people, goods, capitals and services could go undisturbed while at the same time prohibiting transborder crime. In the second half of 2005, the Law on Non-Citizens came into effect, under which the Department for Non-Citizens was set up and its powers, organization and supervision were defined, as well as other important issues for its operation and legal functioning. The Bosnia and Herzegovina Council of Ministers and various ministries participated actively and are still participating in the implementation of a CARDS project on the establishment of a legislative, regulatory and institutional framework in the area of migration, asylum and visas, harmonized with EU standards, which led to efforts to fully align the Law on Non-Citizens' Movements, Residence and Asylum with EU standards. The Bosnia and Herzegovina Council of Ministers, at its 92nd session held on 15 September 2005, endorsed the strategy on the coordination of Bosnia and Herzegovina's institutional and legal framework with the EU in the area of migration, and the reports on asylum and visas for Bosnia and Herzegovina were endorsed and signed. These steps will certainly have a major impact on the phenomenon of illegal migration and trafficking in persons and on efforts to combat them while ensuring the protection of victims and respect for their rights. Work has begun on the preparation and adoption of procedures for behaviour toward victims of trafficking in persons in Bosnia and Herzegovina. Due to a lack of accommodation and assistance to victims of trafficking in persons, the Protocol on cooperation and on ensuring adequate and safe residence and board for foreign victims of trafficking in persons was signed by the Bosnia and Herzegovina Ministry of Security and five NGOs. A similar Protocol was also signed with the IOM mission in Bosnia and Herzegovina.

223. Given that Bosnia and Herzegovina is a signatory of the United Nations Convention against corruption, it is expected that in the near future Bosnia and Herzegovina will make even more decisive efforts to combat corruption, which is also linked to the phenomenon of trafficking in persons and illegal migration, as could clearly be seen during the previous period.

224. Another obvious problem of forced labour refers to the appearance of vagrancy on streets most often involving children, older persons, invalids and persons with disabilities. For now, this problem is recognized and defined in Bosnia and Herzegovina as a problem of disturbing public peace and order (as the offence), although there are some relevant indicators that in some cases it is about organized crime networks in which the above-mentioned categories are exploited as workforce. According to some estimates and data, it mostly involves the Roma who live in Bosnia and Herzegovina and come from a neighbouring country.

225. The difficult socio-economic situation is the main reason for the abuse of the above-mentioned population for economic purposes. Besides police intervention and occasional intervention by inspection authorities and authorized services and the centre for casework, other measures to combat vagrancy are hardly used. This means that in Bosnia and Herzegovina, there are not yet enough social and State mechanisms for the prevention of and protection from the consequences of vagrancy, of which the participants and victims are most often Roma and Roma children. It is alarming to note that vagrancy as an aspect of economic exploitation in Bosnia and Herzegovina is not tending to decrease in comparison with the previous period. Authorities arrest, register and finally leave beggars without applying criminal sanctions. This usually happens because the majority of beggars come from neighbouring States or from other parts of Bosnia and Herzegovina and because they do not have permanent residence. It is estimated that some 20 per cent of beggars come in an organized fashion from neighbouring countries to bigger cities in Bosnia and Herzegovina, which implies that one of the tasks facing the Bosnia and Herzegovina authorities will be to prevent the current situation and to reduce vagrancy to a tolerable level.

### **Right to freedom of thought, conscience and religion**

226. Freedom of thought and expression are guaranteed by article II, paragraphs 2 and 3 (g), of the Constitution of Bosnia and Herzegovina, which emphasizes that Bosnia and Herzegovina directly implements all rights and freedoms that are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as its Protocols, and many other international instruments (conventions, charters, contracts). These official documents take precedence over all other laws.

227. Information on the rights of both citizens and foreigners to freedom of information and expression is given in article IV.4 (a) of the Bosnia and Herzegovina Constitution and the Law on Freedom of Access to Information in Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 28/00). Article 4 of this law establishes that every natural person or legal entity has the right to access information, which is under the control of authorities, whereas every authority has a corresponding obligation to announce/publish such information. The right to access information can only be limited in the way and under the conditions set out in articles 6, 7 and 8 of the law, on complete or partial information, and in the event that the information published is not of public interest. If the information published is of public interest, the authority will announce the required information.

228. The same laws were passed in both Bosnia and Herzegovina Entities. In the Federation of Bosnia and Herzegovina, the Law on Freedom of Access to Information in the Federation of



Bosnia and Herzegovina was adopted in 2001 (*Official Gazette of the Federation of Bosnia and Herzegovina*, 2001, No. 32/01, and in the Republika Srpska the Law on Freedom of Access to Information was passed (*Official Gazette of the Republika Srpska*, No. 20/010).

229. By adopting these laws at the State level and both Entity levels in Bosnia and Herzegovina, all natural persons and legal entities throughout the territory of Bosnia and Herzegovina have the right to access information which are under the control of authorities at all governmental levels in Bosnia and Herzegovina.<sup>20</sup>

230. Although the authorities - executive, legislative, administrative and juridical and all legal persons under the control of public authority - are obliged to make adequate preparation for the implementation of the Law on Freedom of Access to Information, and also to officially inform the Bosnia and Herzegovina Ombudsmen for Human Rights, only some of these authorities have fulfilled this obligation. In both Entities, appropriate by-laws have been passed (guidebooks, index files, application forms and instruction on costs), but they still do not comply with the legal obligation for regular three-monthly reports to the Ombudsmen on the number of requests for access to information and the way in which they have been handled.

231. If the authority receiving a request is not able to satisfy the request because the formal conditions laid down in article 11, paragraphs 2 and 3, have not been met, it will, as soon as possible, but not later than eight days from the date of submission of the request, inform the petitioner in writing when such information will be available. It is stipulated that applicants must be informed of their right to consult the Ombudsmen and to obtain all the necessary information for contacts.

232. The above-mentioned laws also stipulate that each person has the right to ensure that his/her personal information, which are under the control of authorities, is true, or, for purposes of collection and use of information, is up to date, complete and relevant for the legal purpose for which it has been preserved, and is not wrong in any other way. After approval of access to personal information, applicants' personal data could be changed or some comments added.

233. It should be emphasized that in Bosnia and Herzegovina, in accordance with the corresponding articles of the Convention, some conditions are provided to protect rights and freedom of thought and expression. On the one hand, the right to thought without disturbance is guaranteed to all citizens, and on the other hand their right to freedom of thought is protected; in certain situations permitted by law, the latter right could be subject to specific legal limitations, always bearing in mind, however, that the expression of certain political thoughts is not a reason for discrimination towards any person, or even for restriction of a person's freedom by the authorities.<sup>21</sup> The relevant legal provisions also refer to non-citizens and members of their families who reside, live and work in Bosnia and Herzegovina. It should be emphasized that in Bosnia and Herzegovina, no migrant workers or members of their families have been denied the right to freedom of thought and expression.

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<sup>20</sup> See CCPR/C/BIH/1, para. 193.

<sup>21</sup> See CCPR/C/BIH/1, paras. 219-224.

234. According to article IV.4 (a) and article II, paragraph 3 (g) and paragraph 5 (a), of the Constitution of Bosnia and Herzegovina, at the beginning of 2004, the Law on Freedom of Religion and the Legal Status of Churches and Religious Communities in Bosnia and Herzegovina was passed (*Official Gazette of Bosnia and Herzegovina*, No. 5/04). This law was passed, first of all, to ensure respect for the heritage and traditional values of tolerance and coexistence of all people in multinational Bosnia and Herzegovina, and in order to further international understanding and respect for the right to freedom of conscience and religion and to establish a unique legal framework within which all the churches and religious communities in Bosnia and Herzegovina would enjoy equal rights and obligations, without any discrimination whatsoever.

235. According to article 20, paragraph 1, of the Bosnia and Herzegovina Law on Freedom of Religion and the Legal Status of Churches and Religious Communities, the Ministry for Human Rights and Refugees of Bosnia and Herzegovina issued guidelines in mid-2006 for the implementation of the above-mentioned law. It was pointed out that these guidelines are designed to improve the relationships among countries, churches and religious communities. It is aimed at strengthening guarantees of religious freedoms and equal rights and obligations for all churches and religious communities. The section of the guidelines on discrimination on the basis of religion or belief stipulates that none of the provisions of the law can be applied for limiting, discriminating against or granting privileges to any religious community or for participation in religious ceremonies and the exercise of all guaranteed religious freedoms and rights. By protecting the rights and freedoms of worshippers and religious communities in Bosnia and Herzegovina, both the law and the guidelines extend the same rights and freedoms to foreigners who work and live in Bosnia and Herzegovina, without any discrimination whatsoever.

236. Migrant workers and members of their families are guaranteed the right to freedom of conscience and religious freedom in accordance to the above-mentioned guidelines and law, as specified by the highest international standards on human rights contained in the Universal Declaration of Human Rights and various instruments on freedom of religion.

237. Article 4 of the above-mentioned law lays down that everyone has the right to freedom of religion and belief, including freedom to practise their religion in public or not to practise it. Also, everyone has the right to adopt a religion or belief of their choice or to change it, as well as freedom - either individually or in community with others, in public or private - to practise their religion or belief in worship by carrying out religious ceremonies and by practising and observing religious rules and teaching. Everyone has the right to religious teaching, in religious institutions and in public and private preschool institutions, primary schools and institutions for higher education. However, the freedom to manifest one's religion or belief is limited by the provisions prescribed in article 4, paragraph 2 (3), of this law, which refer to the fact that churches and religious communities, by their observance, practice and teaching, must not go against the order, public safety, health or morals or the fundamental rights and freedoms of others.

238. In accordance with the provisions of article 6, paragraph 2 (a), of this law, and in harmony with the prescribed codex of rights and duties of their members, it is established that members may not be subject to coercion that would impair their freedom to have or to adopt a religion or

belief of their choice, or to take part in religious rites and ceremonies in their church or religious community. Paragraph 2 (b) of the same article prescribes the prohibition of direct or indirect coercion regarding people's religion or belief.

239. Article 7 of this law prescribes the freedom, in public or private, to manifest religion or belief in religious service, worship, observance and teaching. The law prohibits any form of discrimination against any religion or belief. In this connection, the following acts are prohibited: attacks on and insults to religious persons, attacks on and damage to religious facilities and other property of church and religious communities, activities and acts that are aimed at stirring up religious hatred against any church or religious community or their members, showing contempt for any religion, provoking or supporting religious intolerance and hatred.<sup>22</sup> Certainly, in Bosnia and Herzegovina during the war, many religious objects of great cultural value were ruined. Many religious sites were devastated and plundered, and attacks were made on religious figures. Unfortunately, this also happened after the war, especially in the period when refugees and displaced persons were returning to Bosnia and Herzegovina. Luckily, nowadays, great efforts are made in respect of reconstruction, and tolerance and respect for the right to freedom of religion and belief are growing. In this connection, in 2006, Bosnia and Herzegovina signed a Fundamental Contract with the Holy See and paid the first post-war visit to the Serbian Orthodox Church, which has its seat in Belgrade. The signature of a fundamental contract with this church is in preparation. All such efforts are designed to establish good-neighbourly relations among countries and develop overall cooperation among religious communities in Bosnia and Herzegovina.

240. Public promotion of religious practices and teachings can only be limited on the base of the law, in accordance with international standards, when the relevant authority proves that this is in the interests of public safety, health, morals or the fundamental rights and freedoms of others. The Bosnia and Herzegovina Ministry for Human Rights and Refugees issues opinions on cases involving prohibition of the public practice of religion.

241. Article 8 of the law on primary and secondary education in Bosnia and Herzegovina provides for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Surely, on the basis of this, there is no discrimination against migrant workers and the members of their families in Bosnia and Herzegovina.

242. Freedom of speech and expression are provided by the Bosnia and Herzegovina Constitution, the Constitutions of the Entities and the Statute of Brcko District, all of which give each citizen the right to criticize in public the work of civil servants and other officials and employees, to submit proposals and petitions, and to get answers if they ask for it. Citizens may not be called to account for or suffer from other harmful consequences for their views expressed in public criticism or in a submitted proposal, complaint and petition, unless they have committed a criminal offence. Limitations in the sense of freedom of expression refer to respect for the rights and reputations of others, for the protection of the State's national security, public order, public health or morals.

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<sup>22</sup> See CCPR/C/BIH/1, paras. 203-213.

243. Prohibition of war propaganda is also provided by the Constitution and the Bosnia and Herzegovina Criminal Code and constitutions and the Criminal Codes of the Entities and the Brcko District of Bosnia and Herzegovina. Calling for and inciting to war is a criminal offence punishable by a 10-year prison term. Any kind of causing and stirring up national, racial, religious and other inequalities, as well as causing national, racial, religious and other hatred and intolerance, is unconstitutional and punishable.

244. Advocacy of national, racial, religious and other hatred that constitutes incitement to discrimination, hostility and violence is prohibited by the provisions of the Bosnia and Herzegovina Constitutions and by the Law on Freedom of Religion and the Legal Status of Churches and Religious Communities in Bosnia and Herzegovina.

245. Under the provisions of article 6 of the Law on Non-Citizens' Movements, Residence and Asylum of Bosnia and Herzegovina, any form of discrimination on any grounds is prohibited, including national origin, language, religion, political and other views, national and other origin, etc. Non-citizens in Bosnia and Herzegovina enjoy all rights that are guaranteed by the positive legal regulations on all citizens of Bosnia and Herzegovina, without any form of discrimination.

### **Freedom to form and join trade unions**

246. The right to form and join trade unions in Bosnia and Herzegovina is regulated by the international conventions signed by Bosnia and Herzegovina (ILO Convention No. 87 - Freedom of Association and Protection of the Right to Organize, Convention No. 98 - Right to Organize and Collective Bargaining, Laws on Employment in both Entities and the Brcko District of Bosnia and Herzegovina and collective bargaining agreements). Workers have the right to organize unions and join trade unions voluntarily.

247. In the Federation of Bosnia and Herzegovina, article 10 of the Labour Law sets out that employees and employers are free to decide whether to join or not to join the appropriate trade union or employers' association. Neither employees nor employers may be discriminated against on the basis of membership of a union or an employers' association.

248. Article 6 of the Labour Law of the Republika Srpska establishes that the provisions of this law apply to all workers on the territory of the Republika Srpska, to domestic or foreign legal or natural persons, as well as to workers who are sent abroad by their employer. The provisions of this law apply to civil servants, bodies and organizations of territorial autonomous units and local self-government and public services, if not provided otherwise by law.

249. According to article 6 of the Republika Srpska's Labour Law, workers have the right to organize and join unions without interference, according to the Statute and union rules. Employers have the right to freely organize and join the employers' association, according to the Statute and rules of associations. Trade unions and employers' associations are organized without the prior consent of any State body. Article 7 of the Labour Law of the Republika Srpska provides that employees or employers are free to leave the trade union or the employers' association, while article 9 of the same law provides that the legal union activity and employers' association cannot be forbidden either temporarily or permanently.

250. In the Brcko District of Bosnia and Herzegovina, workers have the right to organize and join the trade union of their choice. The provisions on the right to organize trade unions are described more clearly and in detail in branch collective agreements.<sup>23</sup>

251. According to the above-mentioned laws, the legal activities of the union chairmen must not be obstructed if they are in accordance with ILO conventions ratified, the law or collective agreements.

252. Employers and others acting on their own or on behalf of some other person, member or representative, are forbidden to:

- (a) Interfere in the establishment, functioning and management of the union;
- (b) Support and assist the union in order to control it.

253. Trade union chairmen who act on their own or on behalf of some other person, member or representative, are forbidden to interfere with the establishment, functioning or management of the employer's unions.

254. In the Federation of Bosnia and Herzegovina, the trade union is organized into an association called the Federation of Independent Trade Unions of Bosnia and Herzegovina, organized into 22 branch trade unions with a total membership of 277,450 members.

255. In the Republika Srpska, the trade union is organized in 14 branch unions. The total number of members is 180,310.

256. In the Brcko District of Bosnia and Herzegovina, the trade union was established in 2001, in accordance with the Agreement between SSBiH and SSRS from 2000, as the voluntary organization for the promotion of workers' interests.

257. At the level of Bosnia and Herzegovina, the Confederation of the Trade Unions of Bosnia and Herzegovina was established as the highest level of union organization in Bosnia and Herzegovina in order to bring together the complete union work and activity. Trade unions in Bosnia and Herzegovina are independent from State bodies, employers, political parties, religious bodies and organizations, including other unions. They agree, plan, coordinate and implement tasks and activities of common interest for members based on the principle of equality, reciprocity and solidarity. They also cooperate and act along with the unions of Bosnia and Herzegovina Entities and unions from the former Yugoslavia and with European and world unions in order to strengthen cooperation among unions. They realize their aims and tasks through legal use of all methods and means of union activities, starting with public presentation of opinions, initiatives, proposals, and collective negotiations, criticism, calls for resignation and recall, and organized protest, including strikes.

258. It is important to mention that migrant workers who live and work in Bosnia and Herzegovina also enjoy all union rights as do workers in Bosnia and Herzegovina.

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<sup>23</sup> See E/1990/5/Add.65, paras. 188-193.

**Prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communication; prohibition of arbitrary deprivation of property**

259. The question of prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communication and prohibition of arbitrary deprivation of property is widely described in the initial report on the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Bosnia and Herzegovina, which was submitted to the competent United Nations bodies in Geneva.<sup>24</sup>

260. It will be noted that the Bosnia and Herzegovina Constitution, the Constitutions of the Entities and the Statute of the Brcko District of Bosnia and Herzegovina guarantee the right to privacy for all people. In article II of the Constitution of Bosnia and Herzegovina, which relates to human rights and fundamental freedoms, it is emphasized that all people in the State enjoy human rights and fundamental freedoms, which include the right to life, the right to liberty and security of person, the right to a legal hearing in civil and criminal offences, the right to private and family life, the right to home and correspondence, the right to marriage and family planning, the right to property, the right to education, the right to freedom of movement and residence, etc. All of these rights and those not mentioned and which are related to the rights of Bosnia and Herzegovina citizens are generally implemented without discrimination in practice.

261. The inviolability of tenants' flats belongs to the constitutional category of human rights and fundamental freedoms and ratified conventions, and becomes an instrument for the protection of human rights with the legal force of constitutional provisions. The constitutional and legal provisions confirm that tenants' flats are inviolable and that without permission from the authorities, no one may enter the flat against the tenant's will, that the flat can only be searched in the presence of two witnesses, that the owner of the flat or his representative may be present during the search and that every illegal entry into the flat and other premises and their search is punishable.

262. Criminal Codes in Bosnia and Herzegovina prescribe certain criminal offences which refer to the inviolability of the flat: violation of the inviolability of the flat; unlawful search; robbery; grand larceny in abandoned and damaged flats. Besides these criminal offences the Criminal Codes also prescribe criminal sanctions in the case of damage to flats, business buildings and premises, and theft of moveables from them. Because of the war that caused a huge number of refugees and displaced persons throughout Bosnia and Herzegovina, some drastic violations of human rights took place in the field of housing, including violation of the inviolability of the flat and the right to the peaceful enjoyment and use of the flat. The situation in this field is improving throughout Bosnia and Herzegovina, because nowadays there is a higher degree of compliance with the related regulations.

263. Family life and the right to privacy, family and home, correspondence and other communications are protected by the Bosnia and Herzegovina Constitution and the Constitutions of both Entities and by the Statute of the Brcko District of Bosnia and Herzegovina.

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<sup>24</sup> See CCPR/C/BIH/1, paras. 199-202.

264. Protection of personal data is regulated by article 149 of the Criminal Code of Bosnia and Herzegovina, which stipulates that officials or persons responsible in Bosnia and Herzegovina institutions must not, without the consent of the individual, present, collect, analyse his/her personal data, because this would be contrary to the terms defined by the law and the permitted purpose for their collection. Offenders are liable to up to six months' imprisonment.

265. This question is described in detail by the Law on the Protection of Personal Data (*Official Gazette of Bosnia and Herzegovina*, No. 32/01), which was adopted in 2001. The primary aim for passing this law was to ensure that all persons, regardless of their citizenship or residence, should be guaranteed enjoyment of their human rights and fundamental freedoms, especially the right to secrecy with regard to the processing of their personal data. Article 3 (a) of this law concerns a special category of data that refer to origin, citizenship, national or ethnic origin, political attitude or political party denomination or trade union membership, religious and other beliefs, state of health, sexual life, etc.

266. Security and protection of the same data are guaranteed by article 10 of this law. Consequently, persons who process data must undertake the necessary technical and organizational measures in order to protect data secrecy.

267. In Bosnia and Herzegovina, laws on expropriation regulate the right to adequate compensation in cases where real estate (land, building and other construction facilities) is excluded with the exception of cases involving public interest (economic infrastructure, electric power industry, PTT, hydroelectric engineering, mining, transportation, administration of justice, police, exploration and exploitation of mineral and other riches), and for purposes of opening new cemeteries or implementing regulatory plans. Reimbursement for the extent of the market value of the real estate belongs to the owner or the holder of citizens' right for expropriation of real estate. Compensation can be made to the former owner of the real estate, at his/her request, and if all conditions are fulfilled, by granting ownership or joint ownership of some other adequate real estate matches in structure, area, location, housing conditions or business conditions in which the former owner of the expropriated real estate operated.

268. In Bosnia and Herzegovina, its Entities and the Brcko District of Bosnia and Herzegovina, according to the available data, there were no complaints as to unlawful interference with privacy, home, correspondence and other communication concerning the migrant workers and the members of their families. There were no occurrences of arbitrary deprivation of property (shop, land, objects and other construction facilities) that they possess on the territory of Bosnia and Herzegovina. The foregoing is surely valid and refers to the property acquired in accordance with the positive legal regulations in Bosnia and Herzegovina.

### **Right to liberty and security of person**

269. Migrant workers and members of their families in Bosnia and Herzegovina have the right to liberty and security of person, effective protection against violence, physical injury, threats and intimidations, whether by public officials or by private individuals, groups or institutions, as guaranteed by the constitutional and legal provisions.

270. Under the provisions of article 34 of Bosnia and Herzegovina's Law on the Judiciary, all rights to liberty and security of a suspect and accused are guaranteed. It is also stipulated that no one can be subjected to arbitrary arrest or detention; no one can be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law. If there is justified suspicion that a suspect has committed criminal offence, he/she has the right to take a lawyer, and the right for his/her lawyer to be present during the public hearing by a competent person. If the suspect is deprived of liberty, he/she has the right to ask for a lawyer if he/she can not cover the cost of defence. The suspect has the right to choose a lawyer on his/her own and to inform the courts accordingly.

271. Every competent person or police officer must inform the suspect of his/her rights under paragraphs 2 and 3 of the above-mentioned law. During the first hearing, the suspect must be notified of any charges and suspicions against him/her. The suspect must be able to give statements about all facts and evidence against him/her and to present all facts and evidence for his/her benefit. It is forbidden to coerce confession or any other statement from the suspect or arrested person. This means that the Court cannot base its judgement upon the evidence supplied by violations of human rights and freedoms established by the Constitution and international contract, or on the evidence supplied via violations of the above-mentioned and other laws.

272. Two deadlines are important: the deadline within which the arrested person must be brought promptly before a judge, and the deadline within which the same person can be detained in custody while awaiting trial.

273. Migrant workers and members of their families who have been victims of unlawful arrest or detention have an enforceable right to compensation.

274. The Bosnia and Herzegovina Criminal Code establishes that the unlawful deprivation of liberty by an official or competent person in the institutions of Bosnia and Herzegovina is a criminal offence, stating that any person who unlawfully deprives of liberty some other person, subjects him/her to any form of detention or imprisonment or deprives him/her of freedom of movement in any other way shall pay a fine or be sentenced to three years' imprisonment. Perpetrators will be liable to 2-8 years' imprisonment if the unlawful deprivation of liberty lasts more than 30 days or if is done cruelly or if the health of the person who is unlawfully deprived of liberty is violated or if some other difficult consequences occurs. If the person who is unlawfully deprived of liberty has lost his/her life due to such deprivation, the perpetrator will be liable to at least five years' imprisonment.

### **Protection against arbitrary arrest and detention**

275. According to Article 190 of the Bosnia and Herzegovina Criminal Code, an official or some other person who, by supporting or with explicit or secret consent of the official, causes physical or mental pain or some serious physical or mental suffering, in order to extract information or a confession from him/her or some third party, or to punish him/her for the criminal offence he/she committed or is suspected of committing, or frightens him/her for any other reason, will be liable to 1-10 years' imprisonment.



276. Arrested and convicted persons must be treated humanely and with respect for the inherent dignity of the human person (article II, paragraph 3 of the Bosnia and Herzegovina Constitution - catalogue of rights). It is prohibited to coerce confessions or any other statement from suspects, indicted persons or any other person involved in proceedings. Paragraph 2 of article 10 of the Law on Criminal Procedure of Bosnia and Herzegovina states that the Court may not found its judgement upon evidence supplied via violations of the human rights and freedoms protected by the Constitution and by the international conventions that Bosnia and Herzegovina has ratified, or upon evidence obtained in breach of this law.

277. The criminal offence of torture or other similar inhuman acts are covered by the special part of Bosnia and Herzegovina's Criminal Code that deals with criminal offences against humanity and the values protected by the international law. Article 172, paragraph 1 of this Code stipulates that persons who, as part of a wide or systematic attack aimed at civilian populations, commit the offence of torture or some other similar inhuman offences in order to cause great suffering and serious physical and mental injury or violation of health, shall be liable to at least 10 years' imprisonment. According to paragraph 1 of this article, the term torture means the deliberate demonstration of severe physical or mental pain or the sufferings of a person kept by the indicted person or in his/her care, excluding the pain or suffering stemming from the implementation of legal sanctions.

278. The Criminal Code of Bosnia and Herzegovina standardized the term of official person in terms of an official who is chosen or appointed in an executive capacity in the bodies of legal, executive and judicial authority in Bosnia and Herzegovina and in other governmental and administrative institutions or services which perform certain administrative, professional and other duties within the rights and duties of the establishing authority, where their responsibility is specified according to compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, the code of behaviour for the officials implementing the law, and the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other crimes, inhuman or degrading treatment or punishment. On the basis of the United Nations Convention against Torture, the criminal legislations of both Entities and the Brcko District of Bosnia and Herzegovina have been harmonized with minimal differences, and activities are under way to align such standards throughout Bosnia and Herzegovina. For example, the Criminal Code of the Federation of Bosnia and Herzegovina does not provide for penal proceedings for certain criminal offences on account of official duty, so it is necessary to work on amending and supplementing the criminal legislation that will oblige the public prosecutor's office to prosecute the perpetrator of criminal offences on the grounds of official duty. The Criminal Code of the Brcko District of Bosnia and Herzegovina also contains no special definition of the criminal offence of torture, as defined by article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>25</sup>

279. Convicted persons must comply with the provisions of the law and the regulation of the institutions where they are serving their sentence. Order and discipline are maintained in the penal institutions in order to achieve the purpose of the punishment and re-education of the

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<sup>25</sup> See CCPR/C/BIH/1, para. 100.

convicted persons and to guarantee the safety of the institutions and the everyday life of the convicted serving their prison sentences. Such purposes can only be achieved under conditions and measures aimed at maintaining order and discipline. This is why the rights, duties and privileges of the convicted persons are established, in the cases when they cannot keep discipline, as is provided by the above-mentioned instruments.

280. The laws on the implementation of criminal sanctions provide that convicted persons can incur lighter or heavier disciplinary sanctions for the infringement of discipline. For minor breaches of discipline, convicted persons can be subject to such disciplinary measures as reprimand or public reprimand, whereas for more serious breaches of discipline a fine is levied and the convicted person may be placed in a solitary confinement cell for up to 20 days.

281. The most common breaches of discipline committed by convicted persons are abuse of privileges, consumption of alcohol, fighting, racketeering, aggressive behaviour and use of inadmissible substances.

282. A disciplinary commission appointed by the director of the penal institution conducts the disciplinary proceedings and pronounces the sentence. It hands down a first instance decision, and the convicted person has the right to appeal to the director of the penal institution, who hands down a second instance decision which is final and not subject to appeal. The most common disciplinary measure is solitary confinement, which accounts for more than half of all disciplinary measures enforced.<sup>26</sup>

283. Positive legal regulations in this field make no discrimination as to migrant workers or members of their families.

### **Recognition as a person before the law**

284. According to the Constitutions and laws in Bosnia and Herzegovina, its Entities and the Brcko District of Bosnia and Herzegovina, each migrant worker and member of his or her family has the right to recognition as a person before the law without any kind of discrimination. Natural persons become subjects of law by birth. Accordingly, children of migrant workers and members of their families are granted by birth the same rights as children in Bosnia and Herzegovina (name, surname, citizenship, etc.).

### **Right to procedural guarantees**

285. In Bosnia and Herzegovina, the rules of criminal procedure are stipulated by the Bosnia and Herzegovina Law on Criminal Procedure (*Official Gazette of Bosnia and Herzegovina*, Nos. 36/03, 26/04 and 13/05), the Law on Criminal Procedure of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, No. 35/03), the Law on Criminal Procedure of the Republika Srpska (*Official Gazette of the Republika Srpska*, No. 50/03), and the Law on Criminal Procedure of the Brcko District of Bosnia and Herzegovina (*Official Gazette of the Brcko District of Bosnia and Herzegovina*, No. 10/03).

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<sup>26</sup> See CPT report (CPT/Inf (2004) 40), paras. 108-113.

286. These laws have been fully harmonized with each other, and also with modern and internationally accepted standards from the field of criminal code, including guarantees granted by the International Bill of Human Rights, which is an integral part of Bosnia and Herzegovina's Constitution and takes precedence over all other laws. Criminal offences and criminal and legal sanctions are provided only by the law. The criminal legislation of Bosnia and Herzegovina applies to everyone who commits a criminal offence on the territory of Bosnia and Herzegovina.

287. All procedural rights of migrant workers and members of their families guaranteed by the Convention are contained in the provisions of Bosnia and Herzegovina's Law on Criminal Procedure, with which, as mentioned above, the criminal procedures laws of the Entities and the Brcko District of Bosnia and Herzegovina have been harmonized.

288. The right of migrant workers and members of their families to be informed at the time of arrest of the reasons of their arrest under any charges against them is guaranteed by article 5 of Bosnia and Herzegovina's Law on Criminal Procedure, according to which persons deprived of their liberty must be informed in their native language or in the language they understand of the reasons for their arrest.

289. Article 13 of the above Law provides that arrested or detained migrant workers and members of their families facing criminal charges must be brought promptly before a judge or other official authorized by law to exercise judicial power and are entitled to trial within a reasonable time.

290. The right of the consular or diplomatic authorities of the State of origin or of the State representing the interests of that State to be notified of the arrest or detention of migrant workers and members of their families, upon the request of the latter, is foreseen under article 5 of the law.

291. The right to communicate with the said authorities is enshrined in article 144, paragraph 2, of the law, with the proviso that the judge for the previous proceedings may decide to prohibit certain visits because of their potential harmful impact on the proceedings.

292. The right of persons deprived of their liberty to be informed without delay of the above-mentioned rights is stipulated in article 139, paragraph 2 of the law.

293. The right of migrant workers and members of their families to legal judicial proceedings is laid down by article 13 and 139 of Bosnia and Herzegovina's Law on Criminal Procedure. Article 139 stipulates that the police authorities have a duty to bring a person deprived of his/her liberty before the prosecutor without delay, and the prosecutor is obliged to hear that person without delay and to decide within 24 hours whether the person deprived of liberty will be released or whether the judge for the previous procedure will submit a request for detention.

294. The right to the free assistance of an interpreter if a person cannot understand one of the official languages in Bosnia and Herzegovina is foreseen by article 8 of the law, with the proviso that the costs will be paid out of the funds of the competent court or the competent prosecutor's office.

295. The right to compensation in the case of unlawful arrest or detention is covered by article 436 of the law.

296. The right to a fair hearing by a competent, independent and impartial tribunal is guaranteed by the fact that the courts in Bosnia and Herzegovina are established by law and that over the past few years, an intensive reform of the Bosnia and Herzegovina judiciary has been carried out with the aim of establishing an independent and impartial judiciary.

297. The assumption of innocence, as long as guilt has not been proven according to the law, is stipulated in article 3 of the law. Article 3, paragraph 2 of Bosnia and Herzegovina's Criminal Code, adopted in 2003, states that no sentence or other penal sanction may be applied for an offence which, before it was committed, was not established as a criminal offence by the law or international law and for which the sentence is not provided by law.

298. The right to minimum guarantees during consideration of the charges against migrant workers and members of their families is established in articles 6, 7, 8, 12, 13, 247 and 262 of the law, and in the many other articles that set out the relevant rules of procedure. For example, the right to personal presence to the trial is enshrined in article 247, which provided that accused persons may not be tried in absentia, while the right to the cross-examination of witnesses is set out in article 262.

299. Special chapters of the law deal with proceedings against juveniles. Inter alia, article 342 provides that the authorities participating in proceedings against juveniles are obliged to treat them carefully, taking account of their mental development, sensitivity and personal characteristics so that the proceedings do not adversely affect their development.

300. The right to re-examination of the decision by which the migrant worker or the member of his or her family is convicted of a criminal offence is stipulated in the provisions of chapter XXIII of the law (regular legal remedies, right to appeal, etc.).

310. The right to reimbursement in the case of unjustified condemnation of a criminal offence is laid down in articles 11 and 432 (f) of the law.

302. The right of migrant workers and members of their families not to be liable to be tried or punished again for an offence for which they were already finally convicted of in accordance with the law and penal procedure of the State concerned is enshrined in article 4 of the law.

303. Articles 3 and 4 of Bosnia and Herzegovina's Criminal Code provide that migrant workers or members of their families cannot be sentenced or subjected to another penal sanction for an offence that did not constitute a criminal offence under national or international law at the time of commitment of the criminal offence; nor shall a heavier penalty be imposed than the one that was applicable at the time of commitment and a lighter penalty shall be imposed in the event that the law has changed after the offence was committed.

304. Notwithstanding the extensive reform of penal legislation that has taken place over the past few years, there is no gainsaying that there is still a need for legislation that will ensure that all human rights provided become the model according to which the individual as well as courts and

other authorities in charge of their protection will behave and act. To achieve this goal, considerable efforts are being made to reform the police in the entire judicial system, because without professional police and an independent and impartial judicial system, there can be no appropriate protection of human rights and freedoms.

**Prohibition of imprisonment, deprivation of residence and/or work permit and expulsion merely on the grounds of failure to fulfil an obligation arising out of a work contract**

305. The Law on the Employment of Non-Citizens in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, No. 8/99) establishes the manner and terms of employment of non-citizens and stateless persons, the powers of the Federal Employment Bureau and the public employment departments of the cantons with regard to the procedure for the employment of non-citizens and other related questions. The Law on the Employment of Non-Citizens and Stateless Persons (*Official Gazette of the Republika Srpska*, Nos. 97/04, 96/05 and 126/06) establishes the terms for the procedure and manner of employment of non-citizens and stateless persons in the Republika Srpska. In November 2002 in the Brcko District of Bosnia and Herzegovina, the Law on the Employment of Non-Citizens was adopted, establishing the terms for the employment of non-citizens and stateless persons in the Brcko District of Bosnia and Herzegovina. The Law on Non-Citizens' Movements, Residence and Asylum stipulates the terms for granting temporary residence to non-citizens according to the type of work listed on the work permit issued and to the residence for business purposes. Fulfilment of established conditions is the basis for granting temporary residence to non-citizens. In accordance with article 47 (g), non-citizens are deprived of the right to residence if they perform an activity for which they need a work permit which they do not possess.

**Protection against confiscation and/or destruction of identity documents or other documents and protection against collective expulsion - Confiscation of identity documents**

306. The Law on Non-Citizens' Movements, Residence and Asylum establishes in which situations the passport of non-citizens may be confiscated.

307. Article 43 of the law (appeals against decisions of the organizational unit of the Bosnia and Herzegovina Ministry of Security) stipulates the following:

(a) It is permitted to appeal against a decision on an application for a residence permit to the Ministry within 15 days of the date of receipt of the decision;

(b) Applicants for residence permits may not be expelled from the territory of Bosnia and Herzegovina until the time allotted for the appeal has expired, in other words, until settlement of the appeal procedure;

(c) Until the appeal decision is enforced, the non-citizen must be at the address at which he or she is registered and he or she must report every day to the authority on whose territory he or she resides;

(d) Until the procedure is completed, the non-citizen is temporarily deprived of his or her passport, in exchange for a receipt, unless he or she willingly agrees to leave the territory of Bosnia and Herzegovina before completion of the procedure, according to paragraph 2 of the present article.

308. Expulsion of migrant workers and members of their families only takes place in the cases when the conditions established by the Law on Non-Citizens' Movements, Residence and Asylum and the Guidelines for the procedure of removal, supervision and defrayal of the costs of the surveillance and return of non-citizens from Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 30/05) have been fulfilled. Migrant workers receive assistance if they wish to contact the diplomatic or consular mission of their State of origin.

309. The right of migrant workers to be absent occasionally from their residence is provided for in articles 38 and 39 of the Convention. Implementation takes place via the provisions of the Law on Non-Citizens' Movements, Residence and Asylum - article 5 of the law (liberty of movement).

(a) The entry, stay, movement and exit of non-citizens can be limited under the conditions provided by this law;

(b) Non-citizens who reside in Bosnia and Herzegovina under the conditions stipulated by this law are entitled to the right to movement within the State with free choice of residence, if not provided otherwise by this or other special laws.

#### **Release from the requirement to obtain a visa**

310. Non-citizens are not required to obtain a visa for their entry into Bosnia and Herzegovina if they have in their passport a sticker for temporary or permanent residence, while that permit is valid.

#### **Guarantee of exit out of State**

311. The existence of guarantee for the exit of non-citizens from the State can be proved by means of the possession of a valid travel document for the continuation of travel, or for return, as well as by the fact that the non-citizen is in legal possession of a vehicle.

#### **Conditions for the granting of permanent residence**

312. Any stay out of the territory of Bosnia and Herzegovina which lasts 90 days within 1 year is not considered as interruption of residence according to paragraph 1 (a) of the present article.

313. According to article 48 of the law - special reasons for the cancellation of permanent residence - permanent residence in Bosnia and Herzegovina granted to non-citizens may be cancelled:

(a) If it is established that the non-citizen has not lived in Bosnia and Herzegovina for over a year and he has failed to notify the competent organizational unit of the Bosnia and Herzegovina Ministry of Security or Ministry of Internal Affairs on whose territory he or she lives on the reasons for his absence;

(b) If the non-citizen stays away from Bosnia and Herzegovina for less than a year and if it can be proved beyond any doubt on the basis of circumstances that he or she has no intention of returning to Bosnia and Herzegovina to reside there permanently.

**Equal treatment in respect of remuneration and other conditions of work and terms of employment, social security; right to receive urgent medical care**

314. The current situation in the field of work, employment and social welfare in Bosnia and Herzegovina is characterized by powers for labour migration that are shared between the State and its Entities and the Brcko District of Bosnia and Herzegovina and the existence of more institutions of different levels and powers concerning employment and work, i.e. the rights arising from migrants' work. The issue of non-citizens' movements, residence and asylum are regulated by the Bosnia and Herzegovina Law on Non-Citizens' Movements, Residence and Asylum, laws on the employment of non-citizens in both Entities and the Brcko District of Bosnia and Herzegovina and other by-laws. Once the work permit has been issued, the non-citizen signs a contract for fixed, temporary or occasional work for an employer, which is designed to regulate the rights and duties arising from the work relationship. According to rights, duties and responsibilities arising from the work and employment regulations, from the collective contracts and general acts of employers, non-citizens are deemed to be on an equal footing with employees who hold Bosnia and Herzegovina citizenship. With regard to reimbursement for overtime, hours worked, weekly rest, paid holidays and other absences, migrant workers and members of their families enjoy the same rights as Bosnia and Herzegovina citizens.

315. Furthermore, such a situation is also characterized by the lack of a migration plan, both for leaving and entering the State, or in other words a plan for the employment of migrants in Bosnia and Herzegovina. Such a plan should be worked out in cooperation with the competent State and Entity bodies, taking into account their different powers and responsibilities. We have to conclude that there is no cooperation within the region and beyond because Bosnia and Herzegovina has yet to sign an international contract; even though there is a competent authority for the preparation and making of such contracts, it has insufficiently investigated the opportunities for cooperation in the region.

**Work permits issued to foreign citizens in Bosnia and Herzegovina**

316. In Bosnia and Herzegovina in 2005, 2,347 work permits were issued to non-citizens, of which:

- 1,551 work permits in the Federation of Bosnia and Herzegovina;
- 365 work permits in the Republika Srpska;
- 431 work permits in the Brcko District of Bosnia and Herzegovina;

317. As of December 2006, 1,884 work permits had been issued to non-citizens in Bosnia and Herzegovina, of which:

- 1,009 work permits in the Federation of Bosnia and Herzegovina (1 January-30 September 2006);

(The majority of work permits were issued to persons from the following countries: Serbia and Montenegro - 276, China - 221, Croatia - 157, Turkey - 105, Slovenia - 50, The former Yugoslav Republic of Macedonia - 33);

- 447 work permits in the Republika Srpska (1 January-30 November 2006);

(The majority of work permits were issued to persons from the following countries: Serbia, Montenegro, Croatia, Lithuania, Ukraine, Slovakia, The former Yugoslav Republic of Macedonia, the People's Republic of China, Russian Federation);

- 428 work permits were issued in the Brcko District of Bosnia and Herzegovina (1 January-30 November 2006);

(The majority of work permits were issued to persons from the following countries: People's Republic of China - 302, Serbia and Montenegro - 70, Turkey - 20, Croatia - 11, The former Yugoslav Republic of Macedonia - 6, others - 19).

318. In 2005, 2,347 work permits were issued to non-citizens, the majority of which (1,551) were issued in the Federation of Bosnia and Herzegovina. From January to November 2006, 1,884 work permits were issued to non-citizens in Bosnia and Herzegovina. According to data provided by the Bosnia and Herzegovina Agencies for Work and Employment, in the Federation of Bosnia and Herzegovina 1009 work permits were issued, 447 in the Republika Srpska and 418 in the Brcko District of Bosnia and Herzegovina. The majority of work permits were issued to citizens of Serbia and Montenegro, Croatia and the People's Republic of China.

319. In accordance with the Constitution of Bosnia and Herzegovina, the field of work and the employment of non-citizens falls within the purview of the Entities, which legally regulate this area with special laws. Non-citizens are defined as natural persons who do not have Bosnia and Herzegovina citizenship or who are stateless. Non-citizens can get a job on the territory of Bosnia and Herzegovina if they sign a contract for fixed work or the execution of temporary and occasional work with the employer, on the grounds of a previously obtained work permit, on the condition that they fulfil all of the conditions for the establishment of a labour relationship pursuant to the law and general acts of the employer.

320. In the Federation of Bosnia and Herzegovina, the manner and terms of the employment of non-citizens and stateless persons are established by the Law on the Employment of Non-Citizens, for the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, No. 8/99). Work permits are issued to non-citizens for fixed, temporary or occasional work on the condition that they have a permit for permanent accommodation or temporary residence in the Federation of Bosnia and Herzegovina and that in the register of the Bureau of Employment for unemployed persons, no other person fulfils the requirements set by the employer. The request for the issuance of a work permit for the establishment of a contract on fixed, temporary or occasional work for a non-citizen who has a permit for permanent accommodation or temporary residence in the Federation of Bosnia and Herzegovina is submitted by the manager of the Bureau of Employment according to domicile, with a justification of the need to hire the non-citizen, the terms for establishing a contract for fixed, temporary or occasional work, the number of employees required, the kind of work and the duration thereof.

321. The employment of non-citizens in the Republika Srpska is regulated by the Law on the Employment of Non-Citizens and Stateless Persons (*Official Gazette of the Republika Srpska*, Nos. 97/04, 96/05 and 123/06).



322. According to the said regulations, in order to employ the non-citizen or stateless person, the employer is obliged to submit the request to the competent branch office of the Bureau of Employment of the Republika Srpska, according to domicile. When the branch office manager receives the request with complete documentation, he or she processes the request within 30 days. The work permit can be issued at the least to cover the period for which the residence is permitted, most often 6 or 12 months. The branch office cannot issue the work permit if, according to the register in the Bureau of Employment, there are unemployed persons who fulfil all of the conditions required by the employer.

323. Past experience shows that the bulk of work permits are issued to non-citizens with university-level qualifications, primarily for scarce occupations (pharmacist, veterinary surgeon, electrical engineer with special knowledge of computer applications, metallurgy or mining engineer, professor of foreign languages, etc.).

324. Work permits are also issued for persons with higher professional qualifications, for highly skilled and skilled workers if they possess special knowledge and skills mentioned as conditions for the execution of work and tasks at the workplace in question.

325. In the Brcko District of Bosnia and Herzegovina, before submission of requests for the issuing of work permits, an employer is obliged to obtain a certificate from the Employment Bureau of the Brcko District of Bosnia and Herzegovina attesting that among the registered unemployed citizens of the Brcko District of Bosnia and Herzegovina there is no suitable number of qualified persons who fulfil the conditions for the work for which the employer wishes to employ the non-citizen. The work permit is issued by the Department for Professional and Administrative Affairs of the Brcko District of Bosnia and Herzegovina. This Department is obliged to issue work permits to a number of non-citizens working in managerial posts in foreign companies established in the Brcko District of Bosnia and Herzegovina, depending on the volume of foreign investment.

#### **Non-citizens employed in 2004**

326. In 2004 and the first half of 2005, the Federal Employment Bureau issued 792 work permits for non-citizens. The majority of work permits were issued to citizens of Serbia and Montenegro - 215, People's Republic of China - 185, Croatia - 101, Turkey - 92, Slovenia - 30, The former Yugoslav Republic of Macedonia - 20, the United States of America - 19, Germany - 17, Austria - 16.

327. In addition, the Federal Employment Bureau rejected applications for 23 work permits for foreign citizens, as follows: Serbia and Montenegro - 18, Croatia - 2, People's Republic of China - 1, The former Yugoslav Republic of Macedonia - 1, who did not meet certain legal requirements for the issuing of permits.

#### **Non-citizens registered with unemployment offices as of 30 June 2005**

328. A total of 61 non-citizens have registered with the cantonal employment bureaux. The majority are from Serbia and Montenegro - 37, The former Yugoslav Republic of Macedonia - 4, Croatia - 3, Russian Federation - 2, Albania - 2, Turkey - 2, People's Republic of China - 2.

329. Past experience with regulation of the rights of migrant workers and members of their families has not revealed any problems with the implementation of this or other conventions governing the field of work and employment.

330. According to the reports in the Federation of Bosnia and Herzegovina, a total of 792 work permits were issued for the first half of 2005. A table giving a breakdown of the work permits issued is attached to this report.

331. According to the above-mentioned principles of the rights of migrant workers and members of their families who have regulated status, they enjoy the same rights as employees who are citizens of Bosnia and Herzegovina, in the sense of fundamental human rights and the rights stemming from employment as established by the Labour Law, collective contracts and the general acts of the employer; in the sense of employment as such, the protection of their rights is ensured by the implementation of the Law on the Employment of Non-Citizens and Stateless Persons in the Republika Srpska, the Law on the Employment of Non-Citizens in the Federation of Bosnia and Herzegovina and the Brcko District of Bosnia and Herzegovina, as well as the Laws on Employment of both Entities and the Brcko District of Bosnia and Herzegovina.

332. A tabular presentation of registered non-citizens from 1 January to 30 June 2005 in the Federation of Bosnia and Herzegovina, who total 61, is broken down by canton and country in an attachment to the report.

### **Report on the implementation of the Law on the Employment of Non-Citizens and Stateless Persons**

333. The same article establishes that non-citizens and stateless persons can be granted asylum in the Republika Srpska if they are persecuted because of involvement in movements for social and ethnic liberation or because of the combat for democracy, human rights and fundamental freedoms or freedom of scientific and artistic creation. In accordance with article 2 of the Constitution of Bosnia and Herzegovina, the rights and freedoms stipulated by the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms are applied and these acts take precedence over others, as a result of which cooperation is provided and access ensured to all international mechanisms for the monitoring of human rights. This same article establishes the principle of non-discrimination so that the enjoyment of human rights and freedoms is guaranteed for all persons in Bosnia and Herzegovina with no discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national and social origin or affiliation to ethnic minorities, property, birth or other status, including the right not to be subjected to torture or inhuman or degrading treatment or punishment; the right not to be held in slavery or servitude or on forced or obligatory labour; the right to personal freedom and security; the right to private and family life, home and correspondence; freedom of thought and religion; the right to marriage and family; the right to property, education, freedom of movement and residence; and the right to a fair trial in civil and criminal proceedings.

### **Law on Non-Citizens' Movements, Residence and Asylum (refusal of entry)**

334. Non-citizens are refused entry to Bosnia and Herzegovina if they do not fulfil the conditions set out in article 11 of the law. Non-citizens may be refused entry to Bosnia and Herzegovina even if they fulfil the conditions for entry stipulated in article 11 of this law if:

(a) During entry they avoid showing the competent authority the necessary documents or fill in certain questionnaires or deliberately provide wrong information on their right to enter Bosnia and Herzegovina, or deliberately avoid such a situation; or

(b) There is justified suspicion that they will exercise activities for which they require a work permit and they do not possess such a permit, especially in the case of non-citizens who have already been refused entry to Bosnia and Herzegovina for the said reasons.

Non-citizens who have been refused entry in accordance with the paragraphs of this article may not enter Bosnia and Herzegovina for at least 24 hours following the moment of refusal even if they have fulfilled the conditions for entry after the decision on refusal of entry was made.

335. Arrangements concerning labour migration in Bosnia and Herzegovina are established in the first place by the constitutional authorities and legal regulations. The role of the Agency for Work and Employment in this field is limited to the number of activities, and the role of the State is that its representatives sign contracts which are implemented and realized by the Entities' Employment Departments and the Employment Department in the Brcko District of Bosnia and Herzegovina.

336. One of the restrictions on the employment of non-citizens (migrants) is justified by the fact that unemployment in Bosnia and Herzegovina has reached alarming proportions, so from this point of view this measure will also help to protect citizens' constitutional right to work, as is also the case in neighbouring countries. The second restriction on the employment of non-citizens is that the competent authority would be obliged to withdraw the work permit from a non-citizen who committed a criminal offence or crime, for which he or she would be liable to a prison sentence under the law. The law gives non-citizens the right to appeal against a decision on withdrawal of the work permit.

337. The reasons for such restrictions are obvious from the table which refers to the state of employment and unemployment in Bosnia and Herzegovina and the population.<sup>27</sup>

*NOTE: The only regulations governing the field of work and employment at the State level are the Law on Public Services in Bosnia and Herzegovina institutions (Official Gazette of Bosnia and Herzegovina, Nos. 12/02, 35/03, 4/04, 17/04, 26/04 and 37/04) and the Law on Employment in Bosnia and Herzegovina Institutions (Official Gazette of Bosnia and Herzegovina, Nos. 26/04 and 7/05); however, these laws do not refer to non-citizens and foreign migrants, but only to citizens of Bosnia and Herzegovina.*

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<sup>27</sup> Attachment, table No. 3.

## **Legislative framework for labour migration viewed from the perspective of rights arising from work**

338 Starting with the fact that labour migration is established by laws, by-laws and other regulations, the normative framework as the condition for implementation of labour migration policy is given below. The normative framework for labour migration in Bosnia and Herzegovina is based on international and State regulations.

### **International regulations**

339. The following international regulations are applied:

- ILO Convention No. 97 on Migration for Employment (revised) 1949;
- ILO Convention No. 143 on Protection of All Migrant Workers (1975);
- ILO Recommendation No. 199 on the Protection of Migrant Workers (Underdeveloped Countries and Territories) (1955).

### **Bosnia and Herzegovina regulations**

340. The Constitution of Bosnia and Herzegovina provides that Bosnia and Herzegovina, both Entities and the Brcko District of Bosnia and Herzegovina have to provide the highest level of internationally recognized human rights and fundamental freedoms. International standards, which refer to rights and freedoms, are applied directly in Bosnia and Herzegovina and take precedence over all other laws and national regulations.

341. The Law on the Agency for Work and Employment in Bosnia and Herzegovina (*Official Gazette of Bosnia and Herzegovina*, No. 21/03), provides that the Agency, among other things, is competent to collect information on the supply and demand of labour on the international market, to supply the Entity offices with relevant information, to initiate the preparation and signing of international contracts in the field of work, and to monitor their implementation.

### **Entity regulations**

342. According to the Constitution of Bosnia and Herzegovina, the Entities are competent to establish the field of work and employment autonomously, as well as issues on work migration, which is why each Entity has special laws which comply with the international standards set out in the relevant international instruments ratified by Bosnia and Herzegovina. In each Entity, the field of work and employment is fully covered, and the laws in this field are applied as follows:

343. In the Republika Srpska, the following laws are in force:

- The Law on Employment (*Official Gazette of the Republika Srpska*, Nos. 38/00, 40/00, 47/02, 38/03 and 66/03);
- The Law on Employment - revised text (*Official Gazette of the Republika Srpska*, No. 54/05);

- The Law on the Employment of Non-Citizens and Stateless Persons (*Official Gazette of the Republika Srpska*, Nos. 97/04 and 96/05).

344. In the Federation of Bosnia and Herzegovina, the following laws are in force:

- The Law on Employment (Official Gazette of the Federation of Bosnia and Herzegovina, Nos. 43/99 and 32/00);
- The Law on Intervention in Employment and Social Security of Unemployed Persons (Official Gazette of the Federation of Bosnia and Herzegovina, No. 81/01);
- The Law on the Employment of Non-Citizens and Stateless Persons (Official Gazette of the Federation of Bosnia and Herzegovina, No. 8/99).

345. In the Brcko District of Bosnia and Herzegovina, the following laws are in force:

- The Law on Employment of the Brcko District of Bosnia and Herzegovina (Official Gazette of the Brcko District of Bosnia and Herzegovina, Nos. 7/00 and 8/04);
- The Law on Employment and Rights during Unemployment in the Brcko District of Bosnia and Herzegovina (*Official Gazette of the Brcko District of Bosnia and Herzegovina*, No. 8/04).

In the Brcko District of Bosnia and Herzegovina, there are no special regulations providing for employment of non-citizens and stateless persons.

346. Starting with the fact that the employment of non-citizens in each country is the subject of a special legislative system, the Republika Srpska, the Federation of Bosnia and Herzegovina and the Brcko District of Bosnia and Herzegovina regulated this field by special laws, but only insofar as the conditions and procedure of employment are specific, taking into account laws which at the State level regulate asylum and stay of non-citizens and stateless persons, all in accordance with international standards.

347. Along with these regulations, there are national regulations for non-citizens' movements, residence and asylum, something which is very important for further developing migration policy in Bosnia and Herzegovina.

348. Bosnia and Herzegovina institutions which are competent for the implementation of regulations and policy concerning labour migration only from the aspect of work and the right to work, in accordance with the different powers and authorizations are:

- The Agency for Work and Employment of Bosnia and Herzegovina;
- The Employment Bureau of the Republika Srpska;
- The Employment Bureau of the Federation of Bosnia and Herzegovina;
- The Employment Bureau of the Brcko District of Bosnia and Herzegovina.

The competent Ministries of Labour and Social Policy of the Entities and the Brcko District of Bosnia and Herzegovina deal with these issues.

349. The Agencies for Work and Employment of Bosnia and Herzegovina, whose powers are established by the Law on the Agency for Work and Employment of Bosnia and Herzegovina, are competent for the following: to liaise with international organizations and execute international duties in the field of work and employment; to coordinate activities with Entity authorities and Entity Employment Bureaux relating to employment in projects of interest to Bosnia and Herzegovina; to collect information on labour supply and demand on the international market and pass such information on to the Entity Employment Bureaux; to prepare and sign contracts on the field of work, employment and national insurance and to monitor their implementation; and to monitor the implementation of International Labour Conventions and International Standards in the field of work and employment.

350. The Employment Bureaux of the Entities and the Brcko District of Bosnia and Herzegovina are competent for matters concerning the employment of non-citizens in Bosnia and Herzegovina because such employment is a part of the overall policy of employment which they implement in these fields.

351. Entities in Bosnia and Herzegovina have their own laws regulating general work and employment and social welfare.

352. As for foreign workers in Bosnia and Herzegovina and Bosnia and Herzegovina citizens in other countries, with the mutual consent of Bosnia and Herzegovina and those countries, bilateral treaties on social insurance are concluded, regulating, inter alia, pensions, health care, unemployment benefits, children's allowances and other aspects of social insurance. These rights are regulated by social insurance contracts concluded with various countries.

353. Migration with regard to the field of employment and inter-religious cooperation is a very important issue for each of the States, because it significantly affects the economic situation and social relations in the States. Regular migration in the field of employment, managed by appropriate plans, can have a very important effect on the social and economic development of each State. The basis for such migration is the bilateral contracts on employment concluded between States and other measures founded on relevant international standards in this field, which protect against irregular employment or prohibited ways of migration inside and outside the region, as such phenomena can have a negative impact on the economic development and social relations of all States in the region. Labour migration in Bosnia and Herzegovina has specific characteristics in comparison with other States in the region because of the transition and changes in all spheres of economic and social life and because of the change in property structures, ways of doing business and different attitudes of the States in the region towards these phenomena in Bosnia and Herzegovina. This is reflected by the uncontrolled and unplanned departure of the skilled young from Bosnia and Herzegovina and by pressure for uncontrolled admission of non-citizens, very often with different motives. The planned employment of Bosnia and Herzegovina citizens through bilateral treaties with the States inside and outside the region will reduce unemployment and support the economic recovery of the State, under the assumption that the families of these citizens live in Bosnia and Herzegovina and spend what they earn there, thereby enhancing the financial potential of the State.

354. The cooperation in the field of labour migration between Bosnia and Herzegovina and States both inside and outside the region is founded on the principles contained within the framework of the international contracts signed and the clear need for labour in these States, which in turn provides a basis for strengthening sustainable migration. Nowadays, there are ways out of these contracts, which operate through Chambers of Commerce and employers' associations, because Bosnia and Herzegovina has not signed such contracts with the States in the region, even though this should be the main task of the competent Agency. There is a lack of controls and procedures regarding our citizens' employment abroad, and this is handled on the basis of bilateral treaties with these States and on the basis of employment guarantees provided by the foreign employers from States both inside and outside the region.

355. Such issues are resolved through the cooperation founded on international standards and through the contracts already concluded between States both inside and outside the region and by other measures and activities, which are of common interest and which are agreed between the competent State bodies, in order to make this field function as well as possible. With a view to enhancing cooperation, support has been expressed for the establishment of a common body in the region to promote cooperation among States in the field of migration and employment, monitor implementation of and respect for the conclusion of international contracts and coordinate efforts with similar bodies in other regions in order to strengthen cooperation in the field of labour migration outside the region.

356. To date, Bosnia and Herzegovina has concluded or is in the process of concluding a number of bilateral treaties on social insurance with other States. Agreements have been concluded and ratified with Croatia, Austria, Turkey and The former Yugoslav Republic of Macedonia. Beside these agreements, Bosnia and Herzegovina have inherited various bilateral treaties during the process of succession which the former Yugoslavia concluded with other States. Ratification of agreements with Belgium and Slovenia is under way. A list of bilateral treaties is attached to the report.

357. Labour mobility in the region will be made possible by the establishment of relations between the States in question, founded on the conclusion of bilateral employment treaties and the demonstrated market needs of all signatory States. As for Bosnia and Herzegovina, there is current information on needs with regard to civil workers, medical technicians and qualified metalworkers, and for seasonal workers from the States in the region (Serbia, Montenegro, Croatia and Slovenia). There is a steady demand for seasonal workers in Montenegro and Croatia, particularly for restaurant and hotel workers. Worker mobility should be ensured first of all through the employment services in Bosnia and Herzegovina, based on the bilateral treaties concluded by the competent government bodies and which should be prepared by the Bosnia and Herzegovina Agency for Work and Employment. The factors restricting the mobility of workers in the region are low salaries and high living costs in the States of employment.

358. In Bosnia and Herzegovina, there is neither a single economic market nor a single labour force market; however, the Entity regulations defining employment issues, that is, general employment, do not stipulate that only citizens of Bosnia and Herzegovina may be employed. It can therefore be concluded that non-citizens and migrant workers may also work and enjoy all the rights in Bosnia and Herzegovina. Pursuant to these regulations, they enjoy all of the same rights as Bosnia and Herzegovina employees as far as employment is concerned, i.e. their work and legal status is equal.

359. During the year 2005, a total of 1996 non-citizens from 53 States were employed in Bosnia and Herzegovina. Out of this total, 1,551 non-citizens were employed in the Federation of Bosnia and Herzegovina and 445 in the Republika Srpska, while there is no data for the Brcko District of Bosnia and Herzegovina. The employment permits for these persons were issued by the Entity Employment Departments in accordance with the prescribed Entity procedures. The majority of employment permits were issued for citizens of Serbia and Montenegro, Croatia, the People's Republic of China, Ukraine, Turkey, the former Yugoslav Republic of Macedonia, and Austria. Regarding the qualifications structure, it is obvious that most of them are university professors, experts with university degrees, pharmacists, veterinarians, doctors with various specialities, electrical engineers with special knowledge of computer applications, mining engineers, metallurgical engineers, English, French or Latin teachers, various types of professors/teachers, economists with knowledge of foreign languages, managers, programme directors, controllers, ballistic technicians and members of other professions.

360. Employment permits for the conclusion of employment contracts with migrant workers are issued by the competent Employment Departments in the Entities and the Brcko District of Bosnia and Herzegovina at the recommendation of the employers. However, such employment permits may not be issued if there are unemployed persons registered with the competent Employment Department who fulfil all the conditions required by the employer. In the Federation of Bosnia and Herzegovina and the Republika Srpska, requests for the issuance of employment permits are submitted by the employer to the Employment Department, depending on the location of the company office, with a justification of the need to hire the non-citizen, the terms for the conclusion of the contract, the number of workers, the type of work and the period of their engagement. Before submitting a request for the issuance of an employment permit in the Brcko District of Bosnia and Herzegovina, the employer is obliged to provide a certificate from the Employment Department that among the registered unemployed citizens in the District there is no adequate number of qualified persons who fulfil the conditions for the job for which the employer has asked to employ the non-citizen. In the Federation of Bosnia and Herzegovina, employment permits are issued to non-citizens on the condition that they have been granted temporary or permanent residence in the Federation of Bosnia and Herzegovina and that in the register of the Employment Department there are no persons who fulfil the conditions which the employer has fixed for the conclusion of the contract. In the Republika Srpska, the Employment Department cannot issue an employment permit to a non-citizen if there is an unemployed person who fulfils the conditions of the job and who accepts this job. Employment permits for non-citizens are issued by the competent branch office for employment in the Federation of Bosnia and Herzegovina and the Republika Srpska, or by the Department for Administrative Affairs of the Brcko District of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina, employment permits require the approval of the Federal Institute for Employment. Employment permits for non-citizens are issued for a set period, one year maximum in the Federation of Bosnia and Herzegovina, or for the period of approved residence, as defined in the Republika Srpska, and according to the regulations in the Brcko District of Bosnia and Herzegovina for a limited period, not longer than one year, which can be extended. An amendment to article 4 of the Law on the Employment of Non-Citizens and Stateless Persons modified the special conditions, because residence is not a prerequisite for approval of employment permits. The new article 4 of the law in question stipulates that in addition to the general conditions prescribed by the law, the conditions prescribed by the collective agreements



and by the general acts of the employer, non-citizens must also fulfil the special conditions of having an employment permit for the conclusion of the employment contract issued by the Institute for Employment in the Republika Srpska.

361. Bosnia and Herzegovina is a member of the United Nations and its specialized organization, the International Labour Organization. Accordingly, Bosnia and Herzegovina has ratified 68 ILO Conventions (see attached list). When the Entity governments prepare and adopt the regulations from the fields covered by these Conventions, these regulations must comply with the Conventions and must be submitted to ILO for comments and harmonization. Special attention is paid to certain ratified ILO Conventions, such as No. 19 (Equality of Treatment (Accident Compensation)), No. 97 (Migration for Employment), and No. 143 (Migrations in Abusive Conditions and the Promotion of Opportunity and Treatment of Migrant Workers).

362. Article II.7 of the chapter on International Agreements of the Constitution of Bosnia and Herzegovina stipulates that Bosnia and Herzegovina is a contracting party to the international agreements listed in Annex I of the Constitution (additional agreements on human rights which apply to Bosnia and Herzegovina), which include the above-mentioned agreements as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

363. Information on the bilateral treaties which Bosnia and Herzegovina has concluded with other States or on treaties in progress and on Conventions which Bosnia and Herzegovina has ratified is provided in the attachment to this report.

#### **Exercise of the right to health care**

364. Migrant workers and members of their families enjoy in the State of employment the same treatment as do citizens of the State of employment with regard to the right to social insurance (para. 1) as long as they fulfil the conditions prescribed by the current laws of that State and by the bilateral and multilateral agreements which are in force. The competent bodies of the State of employment and the State of origin may at any time enter into an agreement in order to define the modalities for the application of this norm. As confirmation of the above-mentioned statements, reference is made to several articles of the Law on Health Insurance of the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, No. 30/97).

365. Article 30 of the law stipulates that health care is provided to non-citizens and stateless persons under the same conditions as to the citizens of the Federation of Bosnia and Herzegovina, unless defined otherwise by international agreement. This means that all of the migrant workers for which the employer is paying contributions enjoy the right to health care and protection in the same way as the insured people of Bosnia and Herzegovina.

366. Article 11 of the law provides that all insured persons enjoy equal treatment with regard to the enjoyment of the right to obligatory health protection. This article ensures that if health insurance contributions are paid, there cannot exist any possibility of discrimination regarding enjoyment of the right to health care and protection, thereby equalizing the rights of the insured persons regardless of whether or not they are citizens of the State.

367. Article 19 of the law defines which persons can be treated as insured persons in view of this law, spelling this out in paragraph 5: persons who are employed in companies, institutions, cooperative societies and other organizational forms, who are employed by workers who are doing business on their own work, by citizens' resources, workers who are self-employed working in their own profession on the territory of the Federation of Bosnia and Herzegovina. According to this article, in any kind of employment in which the person performs any work there is a right and obligation to obligatory health insurance.

368. According to article 2 of the Convention, the term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. In conformity with the application of article 19 of the Law on Health Insurance, and per the definition of "migrant worker", all these migrant workers have equal rights to health care on grounds of employment as do the employed citizens of our State.

369. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also protects the rights of all migrant workers and members of their families. Here are some explanations as to how this is provided for in our current legal regulations.

370. Article 5 of the Law on Health Insurance provides that, under the obligatory health insurance scheme, persons and members of their families (from now on: the insured persons) are guaranteed the right to avail themselves of health care and protection and the right to financial assistance and support according to this law.

371. The scope of the rights from the obligatory health insurance is defined by the provisions of this law and the regulations adopted on the basis of this law. Article 20 prescribes who can be treated as members of the family in accordance with this law: spouses (married or unmarried according to the regulations on the marriage and family), children (born in or out of wedlock, adopted children or stepchildren), and other children without parents if they are supported by the insured person, parents (father, mother, stepfather, stepmother, adopters of the insured person) if the insured person supports them, grandchildren, brothers, sisters, grandfather, grandmother if they are not capable of independent living and work and if they have no means of support other than the insured person supporting them.

372. Under paragraph 1 of article 20, members of the insured family obtain the right to obligatory health insurance under this law, provided that they do not enjoy the same right from their employment or through the performance of economic or non-economic activities by individual work or through the performance of agricultural activities.

373. The government of the Federation of Bosnia and Herzegovina has issued executive regulations defining the terms and conditions under which it is considered that a person is not capable of independent living and employment and has no personal means of support.

374. Article 53 of the law provides that only the person who was granted the status of an insured person is entitled to the rights arising from the obligatory insurance. The status of insured person is approved by the competent cantonal institute for insurance, and is certified by a special document. The executive regulations on the contents and form of this document and the procedures for their issuance are adopted by the Minister of Health.

375. This means that the status of insured person for all the migrant workers or the members of their families is approved by the competent cantonal health institute. For those migrant workers whose status of insured persons has been approved by a cantonal health institute, the same institute issues a special document certifying the status of insured person. The health ID is now in use as a special document. The same procedure applies to members of migrant workers' families.

376. The only difference that can occur is in the field of certification of the health insurance base between some cantons. Article 84 of the Law on Health Insurance specifies that cantons or legislative bodies of the cantons, upon recommendation of the cantonal insurance institutes, adopt, by their regulations, the basis, procedures for calculations and payment of the contributions, which are not defined by the regulations on taxation of the citizens.

377. Article 84 of the law provides that the basis, procedures for calculation and payment of the contributions under article 80, paragraph 1, items 3, 4, 5, 6, 7, 8, 9 10, 11, 12, 13 and 14 of this law are regulated by the legislative body of the canton at the recommendation of the competent cantonal insurance institute.

378. Article 10 of the Law on Health Insurance in the Republika Srpska (*Official Gazette of the Republika Srpska*, Nos. 18/99, 51/01, 70/01 and 57/03) stipulates that the insured persons are also non-citizens who are attending school in the Republika Srpska, if not defined otherwise by international agreement.

379. Article 11 sets out that the insured person/worker may also be a non-citizen or stateless person who is employed by a foreign legal or natural person on the territory of the Republika Srpska, and by international or consular representatives, if such insurance is provided by international agreement.

380. Article 18 of the Law on Health Insurance in the Brcko District of Bosnia and Herzegovina (*Official Gazette of the Brcko District of Bosnia and Herzegovina*, No. 1/02) provides that insured persons are also persons who have temporary residence and work in the Brcko District of Bosnia and Herzegovina and are employed by a foreign employer and have no insurance via the foreign health insurance scheme or via any other institution which is competent to offer health insurance.

381. Citizens of States with which international agreements have been concluded on social insurance (health insurance) are entitled to their health care and protection within the scope defined by these agreements.

### **Rights of children of migrant workers**

382. The international instruments which are binding on Bosnia and Herzegovina with regard to the right to a name for children of migrant workers as well as the obligation of the State to ensure enjoyment of this right are clearly the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Bosnia and Herzegovina is obliged to respect both these instruments for the protection of human rights because they have been

incorporated into the Constitution of Bosnia and Herzegovina. Article 7 of the Convention on the Rights of the Child and article 24 of the International Covenant on Civil and Political Rights are the two relevant passages in this respect.

383. The laws on the register of births in the Federation of Bosnia and Herzegovina (*Official Gazette of the Federation of Bosnia and Herzegovina*, Nos. 20/92, 13/94) and in the Republika Srpska (*Official Gazette of the Republika Srpska*, No. 18/99) define the announcement and registration in the register of birth and prescribe the sole text in article 6 of both laws, namely, that the birth of a child must be announced to the birth register officer in the area where the child is born, orally or in writing, in order to be registered in the register of birth.

384. Article 8 of both laws prescribes the obligation of the health institution to announce the birth of a child, while a child born outside the institution must be announced by his or her father or another member of the household, the persons in whose flat the child is born or the persons who came to know that the child was born.

385. The announcement of the birth of the child must be made within 15 days and registration of the child's name must be made within 2 months after the birth of the child. Registration of the child's name 30 days after the birth is made by the officer on the basis of the decision issued by the police office in the area where the register of births is kept, and the same procedure applies as for any other late registration.

386. The Law on Personal Names, which applies in both Entities (*Official Gazette of Bosnia and Herzegovina*, Nos. 35/71, 38/86, 37/88 and 33/90), carries over from the former State, and article 3 prescribes that the personal name of the child shall be designated by agreement of the parents.

387. Article 1 of the Amendments and Modifications of the Law on Personal Names (*Official Gazette of Bosnia and Herzegovina*, No. 38/86) stipulates that if the parents have not reached agreement about the personal name of their child, the personal name of the child shall be defined by the competent body of care.

388. The law on Bosnia and Herzegovina citizenship was adopted on the territory of Bosnia and Herzegovina. The provisions of this law are in compliance with the provisions of the European Convention on Nationality. The State of Bosnia and Herzegovina is in the process of adhering to this Convention. Article 7 of the Law on Citizenship provides that Bosnia and Herzegovina citizenship will be granted to a child born or found on the territory of Bosnia and Herzegovina after the Constitution became valid, both of whose parents are unknown or of unknown citizenship or without citizenship, or if the child is without citizenship. Under the provisions of paragraph 1 of this article, a child will lose Bosnia and Herzegovina citizenship if, before the age of 14 years, the child receives the citizenship of another State, on grounds of his or her origin.

389. In connection with this item, article 11 of this law gives the possibility to a non-citizen who has had a registered company in Bosnia and Herzegovina for at least two years and is doing business successfully on the territory of Bosnia and Herzegovina, to obtain Bosnia and Herzegovina citizenship at the birth of his or her child, even though he or she does not comply

with the conditions of article 8, paragraph 1, item 3, of this law. In such cases, after obtaining a positive ruling by the Ministry of Foreign Trade and Economic Relations, the non-citizen is granted citizenship.

390. The Entity laws on citizenship (and other regulations) have been harmonized with the law on Bosnia and Herzegovina citizenship, and registration of all children born or found in the register of birth is handled by the Entity bodies (we have information that a number of Roma children have not been registered in the register of birth, a problem which should be addressed in future along with what is recorded in the Bosnia and Herzegovina Strategy for Solving the Problems of the Roma).

391. In the area of education, the following laws have been adopted at the State level: the Framework Law on Primary and Secondary Education (in 2003), the Framework Law on Preschool Education (in 2006) and the Law on Higher Education, which is being examined by Parliament. The text of the law was adopted during a session of the House of Representatives, and will in all likelihood be adopted at a session of the House of Peoples. In the said laws, there is no mention of the rights of the children of migrant workers, because these rights are guaranteed at the lower level of the administrative structure in Bosnia and Herzegovina, that is, in the area of education at the cantonal level in the Federation of Bosnia and Herzegovina, at the level of the Republika Srpska Entity and at the level of the Brcko District of Bosnia and Herzegovina. None of these governmental levels is obliged to submit any information to a Bosnia and Herzegovina ministry, and there is a real risk that these rights - the rights of the children of migrant workers - may not be defined identically in all administrative units, which are totally autonomous as far as education is concerned. However, Sarajevo Canton has aligned the rights of migrant children with the rights of children of citizens of Bosnia and Herzegovina.

392. In the area of culture, at the level of Bosnia and Herzegovina there are no laws or regulations at present which define this area. In the Federation of Bosnia and Herzegovina, culture is the responsibility of the cantons, and in the Republika Srpska and the Brcko District of Bosnia and Herzegovina it is the same as in the area of education. There are no general laws on culture in the cantons, only law on specific cultural sectors (museums, archives, scenic activities, etc.). Nor are there any regulations defining respect for the cultural identity of migrant workers. Since the State of Bosnia and Herzegovina is one of the signatories of a number of the conventions which deal with and affirm culture, and in view of the fact that the Dayton Constitution stipulates that the essential international conventions are part of the Constitution of Bosnia and Herzegovina, it is the obligation of the State to ensure and respect the rights of migrant workers and members of their families.

### **Right to transfer earnings and personal belongings to the State of origin and right to information**

393. Upon termination of the stay of the migrant workers and members of their families in Bosnia and Herzegovina as the State of employment, according to the legislation in force, they have the right to transfer all of their earnings and savings, their belongings and personal things.

394. Prior to departure, during the so-called preparatory phase for departure from the State of employment, migrant workers have the right to be timely informed, by the competent bodies of the State of employment, on their rights and obligations. This refers, first of all, to their rights

and obligations under the laws and regulations of the State of employment, but also those of the State of origin and the State of transit about the issues that will enable them to fulfil the basic administrative and other formalities which are very important for their families. One crucial issue for migrant workers is the transfer of their belongings without customs duties or other barriers. Issues connected with assistance in cases involving the death of the migrant workers or members of their families are also very important. Consequently, the State of employment, in this case Bosnia and Herzegovina, is obliged to inform migrant workers and members of their families, which it does, through employers, trade unions and other appropriate bodies and institutions. An effort is made to provide appropriate information to migrant workers in a language they are able to understand, of course according to current possibilities.

### **C. Part IV of the Convention: Other rights of migrant workers and members of their families who are documented or in a regular situation**

395. The right to information of migrant workers and members of their families, upon departure from Bosnia and Herzegovina, is defined by positive law and regulations. Information is accessible upon entry and departure from the State, to ensure that migrant workers can enjoy full respect of their rights by the host State without discrimination. Their rights are prescribed by the laws and regulations and other documents adopted at the State and Entity levels, as well as by the documents of the companies and organizations in whose employ the foreign workers are. The key legal instrument regulating this field is the Law on Non-Citizens' Movements, Residence and Asylum, which was adopted at the level of the State of Bosnia and Herzegovina.

396. Article 1 of the Law on Non-Citizens' Movements, Residence and Asylum states that this law defines the conditions and procedures for non-citizens' admission to and residence in Bosnia and Herzegovina, the reasons for the refusal of admission and residence, the reasons for the refusal of residence and for the expulsion of non-citizens, the procedures for application for asylum, the competent government bodies for the legal application, as well as other issues relating to non-citizens' movements, residence and asylum.

397. Article 47 of the Law on Non-Citizens' Movements, Residence and Asylum sets out the main reasons for refusal of residence. Among others, this occurs when non-citizens fail to respect the constitutional system of Bosnia and Herzegovina and the Brcko District of Bosnia and Herzegovina; if non-citizens, through their acts, jeopardize the national interests of Bosnia and Herzegovina, if they engage in the smuggling of weapons and war equipment, radioactive and other hazardous materials and other means of mass destruction, narcotics etc.; if they have violated the regulations prescribed for crossing Bosnia and Herzegovina State borders; if they give false and incorrect data with a view to approval of residence, and so on. Article 48 of this law defines the special reasons for refusal of residence. Residence can be refused to non-citizens if it can be proved that they have not resided in Bosnia and Herzegovina for over a year and have failed to inform the competent bodies of the reasons therefor. Residence can also be refused if non-citizens have resided outside Bosnia and Herzegovina for less than one year and if it is obvious from the circumstances that they have no intention of returning to Bosnia and Herzegovina to take up permanent residence.

398. Non-citizens may enter Bosnia and Herzegovina if they fulfil the conditions set out in article 11 of the Law on Non-Citizens' Movements, Residence and Asylum, such as the following: possession of a valid passport and visa; possession of the means for entry, residence

and departure from the State; visas for the countries through which they are travelling; means for health care and protection, if they have no registered measures of expulsion or prohibition of entry; if they are not in the category of international offenders; and if their presence does not pose a threat to State security.

399. After entering Bosnia and Herzegovina, non-citizens may apply for temporary residence, if they wish to stay in Bosnia and Herzegovina longer than visa and non-visa residence, for one of the following reasons: marriage with a citizen of Bosnia and Hergovina, family reunification, education, scientific research or cultural activities, work upon issuance of a work permit, for business purposes, for the purpose of medical treatment and on humanitarian grounds. Temporary residence permits may be issued for the period of one year or for the period of the passport validity, if less than one year. Temporary residence on humanitarian grounds can be granted for a period of three months, whereas non-citizens who have entered Bosnia and Herzegovina as tourists cannot be granted temporary residence based on employment.

400. For the granting of permanent residence to non-citizens, the main condition is that they have maintained continuous residence in Bosnia and Herzegovina for at least five years.

401. Non-citizens are granted asylum according to the conditions stipulated in the Law on Non-Citizens' Movements, Residence and Asylum, based on the standards applied in the EU countries.

#### **Right of non-citizens to employment in Bosnia and Herzegovina**

402. The right to employment of non-citizens and stateless persons is defined by the special laws on the employment of non-citizens in both Entities, whereas at the Bosnia and Herzegovina level these issues are defined by the Law on Non-Citizens' Movements, Residence and Asylum. Issuance of a work permit to a non-citizen is one of the conditions for the granting of temporary residence based on employment, on the condition that the non-citizen has obtained an employment permit before entering Bosnia and Herzegovina. In this respect, the employment laws in the Entities do not comply with the Law on Non-Citizens' Movements, Residence and Asylum in Bosnia and Herzegovina because they stipulate that possession of a temporary residence permit is a precondition for obtaining the employment permit. Some argue that existing regulations on the employment of non-citizens in the Entities are tied to efforts to combat possible misuse, because issuance of the employment permit as a precondition for the entry of a non-citizen could be misused by the employer in connection with the illegal entry of non-citizens into Bosnia and Herzegovina. Another problem is the non-compliance of the regulation for the issuance of visas (prescribed by the regulations of the Ministry of Foreign Affairs) with the Law on Non-Citizens' Movements, Residence and Asylum, and the needs of the non-citizens who are entering with the intention of employment in Bosnia and Herzegovina, because there is no separate prescription calling for the visa for employment (the so-called employment visa). The third problem is the non-compliance of the Ministry of Foreign Affairs (diplomatic and consular offices) with the provisions of article 42 of the Law on Non-Citizens' Movements, Residence and Asylum, by which it is prescribed that non-citizens may apply for temporary residence through the competent diplomatic or consular office of Bosnia and Herzegovina.

403. According to the law, temporary residence permits are granted based on a profitable business (the establishment of small or medium-sized enterprises); in this case the employment visa is replaced by the permit for the establishment of the enterprise. Residence permits based on employment and employment permits are issued for the defined period, but not longer than one year. Under the regulations of the Federation of Bosnia and Herzegovina, it is possible to issue employment permits for unlimited periods in special cases. Non-citizens holding tourist visas cannot obtain an employment permit. Non-citizens' employment permits expire according to the conditions defined by law.<sup>28</sup> Among others, non-citizens' employment permits may be revoked if they commit a criminal offence or a serious offence against public peace and order, for which they are liable to a prison sentence as in similar cases prescribed by the law, which is decided upon by the same body that pronounced the sentence.

**Right to temporary absence without effect upon authorization to stay or work, right to liberty of movement and freedom to choose residence in the territory of the State of employment**

404. Migrant workers obtain the necessary support if they wish to apply to the diplomatic or consular office in the State of their citizenship. Migrant workers are entitled to occasional leave from the place of their residence.

405. Bosnia and Herzegovina is making efforts through the employment regulations at the State level, at the level of Entities and that of the Brcko District of Bosnia and Herzegovina, as the State of employment, not to create obstacles for migrant workers and members of their families concerning occasional leave, without an effect on their residence and employment permits. Employers are obliged to inform migrant workers about conditions under which occasional leave is permitted, which is done at the worker's request, in accordance with positive law and regulations.

406. The right to freedom of movement and choice of place of residence in Bosnia and Herzegovina as the State of employment is regulated by the Law on Non-Citizens' Movements, Residence and Asylum. Article 5 of this law provides that admission, residence and departure of non-citizens may be restricted by the provisions of this law.

407. Non-citizens residing in Bosnia and Herzegovina enjoy the right to free movement within the State and free choice of place of residence, in accordance to the conditions prescribed by this law, if not stipulated otherwise by this law or a special law. According to the information received from the competent bodies in Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina, there are no records of any cases of unlawful treatment of these rights of migrant workers and members of their families.

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<sup>28</sup> After expiry of the period for which it is issued, after expiry of the period of the temporary residence, by refusal of residence in line with special regulations, by loss of the status of resident non-citizen, by expiry of the time for which the employment agreement is concluded or the agreement on temporary or occasional work, or by refusal of the employment permit.



408. According to article 31 of the above-mentioned law, the following cases are considered: residence with visa, without visa, and temporary and permanent residence. In all these cases, the law prescribes the general framework and special conditions, which must be respected in order for non-citizens to obtain the appropriate employment and residence permits in Bosnia and Herzegovina.

### **Right to form associations and trade unions, right to vote in the State of origin and enjoyment of political rights in the State of employment**

409. Under article II, paragraph 2 (i) of the Constitution of Bosnia and Herzegovina, the right to peaceful assembly is guaranteed, which means that in accordance with the International Covenant on Civil and Political Rights, every person is guaranteed the right to free association with other persons on political and other grounds. This article complements the right to peaceful assembly recognized by article 21 of the Covenant.

### **Associations and foundations**

410. The right to association of citizens in Bosnia and Herzegovina, its Entities and the Brcko District of Bosnia and Herzegovina is defined by the Law on Associations and Foundations. According to this instrument, associations represent every kind of free connection of several natural or legal persons in order to improve or achieve some of the common or general interests or aims, in accordance with the Constitution and law, and whose main goal is not of a profit-making nature. An association may be established by at least three natural or legal persons, by adoption of a constitutional act. After its founding, it can become a legal entity upon registration. The constitutional assembly of the association adopts the constitutional act and statutes of the association and appoints the management structure.

411. Associations and foundations in Bosnia and Herzegovina may define their goals and activities freely, in accordance with the Constitution and law. However, the activities of these associations and foundations cannot go against the constitutional order, either through violent undermining, spreading of national, racial and religious animosity and intolerance, or discrimination forbidden by the Constitution and laws. The goals and activities of these associations and foundations cannot involve an engagement in the pre-election campaign of political parties and candidates and the financing of candidates or political parties.

412. Associations and foundations may manage their assets freely, in accordance with their statutes and laws. Auditing and checking of the legality and earmarked spending of the resources owned by the associations and foundations are conducted by the bodies of the associations and foundations, defined by the statutes and law, as well as the responsible government body.

413. Associations or foundations exercising some public powers are obliged to submit reports on their activities to the governmental body overseeing their activities at least once a year. If they do not exercise their duties in accordance to their obligations, the governmental body overseeing their activities is obliged to warn in writing the responsible body of the associations and foundations, recommend the measures for elimination of the shortcomings noted, and recommend other measures within its rights and authorities. Penalties and fines are foreseen for any unlawful activities.

## Political organizing

414. The right to establish political parties in Bosnia and Herzegovina is specified in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brcko District of Bosnia and Herzegovina by laws on political organizing. These laws define freedom to engage in political organizing and activities, the conditions and procedures for the foundation, registration and cessation of activities of political organizations. A political organization has its statute, the main document of the organization, which among other things contains provisions regarding the goals of the political organization and ways and means of achieving them. The political organization has features of a legal person, which is achieved by registration with the courts. The maintenance of the register of political organizations is handled via a special regulation defining the contents and procedure of the political organizations which register. By law, political organizations are independent and voluntary organizations of citizens which can be founded by at least 50 of age citizens in the Federation of Bosnia and Herzegovina, 500 citizens of age in the Republika Srpska and 300 in the Brcko District of Bosnia and Herzegovina. Every Bosnia and Herzegovina citizen of age can under equal conditions and in accordance with the relevant statute become a member of the political organization (party, association, movement, union or other organization), established with the aim of achieving political goals.

415. Any political organization will be banned from operating if it seeks to provoke violent change in the constitutional order, jeopardizes the territorial entity and independence, violates rights and human rights or spreads national, racial and religious animosity and intolerance aimed at jeopardizing the generally accepted principles of democratic government and the rights and freedoms guaranteed by the Constitution of Bosnia and Herzegovina.

416. The Central Election Commission of Bosnia and Herzegovina has formed a working group with the aim of passing a law on political organizing at the Bosnia and Herzegovina level, and has tasked this group with drafting an initiative for starting activities with a view to the adoption of such a law. An intersectoral group will be established for the drafting of this law; the group will consist of representatives of competent ministries and organizations in Bosnia and Herzegovina.

417. The Bosnia and Herzegovina Law on Associations and Foundations (*Official Gazette of Bosnia and Herzegovina*, No. 32/01) stipulates that each natural person who is a citizen of Bosnia and Herzegovina or has taken up residence in Bosnia and Herzegovina, and legal persons who are registered in Bosnia and Herzegovina, may freely and voluntarily organize their associations with any goals whatsoever, in accordance with the Constitution and laws of Bosnia and Herzegovina. An association can be organized by at least three natural persons who are citizens of Bosnia and Herzegovina or reside in Bosnia and Herzegovina, or legal persons from Bosnia and Herzegovina who are registered in Bosnia and Herzegovina. The same law prescribes the ways of organizing the foundations, whose founders need not be citizens or legal persons from Bosnia and Herzegovina, which means that non-citizens, migrant workers and members of their families have the right of association and the right to establish foundations in Bosnia and Herzegovina, and there is no discrimination against migrant workers in Bosnia and Herzegovina.

418. It should be emphasized that the political scene is still fragmented in Bosnia and Herzegovina nowadays. There are still a great many political parties and coalitions active in

election activities, with further details provided in the Inception Report on the Application of the International Covenant on Civil and Political Rights. Migrant workers and members of their families exercise their electoral rights through their embassies and consular offices in Bosnia and Herzegovina. There are no restrictions and obstacles regarding this matter in Bosnia and Herzegovina.

### **Trade unions organizing**

419. The right to trade unions organizing in Bosnia and Herzegovina is provided by the Laws on Employment in the Entities and the Brcko District of Bosnia and Herzegovina. This kind of organizing is guaranteed by the Constitution of the Entities, and it is more precisely defined by the Laws on Employment adopted at the level of entities and the Brcko District of Bosnia and Herzegovina, as well as by the collective agreements. Employees have the right to organize freely into trade unions and to become members thereof. The provisions on the right to trade union organizing are much more concrete and are described in greater detail in the trade and collective agreements.

420. According to the data in our possession, the total number of trade union members in Bosnia and Herzegovina is 478,640, with 277,450 in the Federation of Bosnia and Herzegovina and 180,310 in the Republika Srpska. The trade unions are organized in unions and branch trade unions. There are 22 branch trade unions in the Federation of Bosnia and Herzegovina and 14 branch trade unions in the Republika Srpska. A trade union was founded in 2001 in the Brcko District of Bosnia and Herzegovina as a voluntary interest organization of the employees. This trade union has 3,600 members, or some 20 per cent of the total number of employees in the Brcko District of Bosnia and Herzegovina.

421. Employees are guaranteed the right to strike by the Constitutions and laws and collective agreements in Bosnia and Herzegovina, in the Entities and in the Brcko District of Bosnia and Herzegovina. This right is defined by the laws on strikes adopted at all the levels of the State organization.

422. The above-mentioned laws define the rights of employees to strike, the right to the trade union to call for a strike, the right of employers to exclude workers from the company's employment contract and other issues in relation to strikes. Trade unions have the right to call for and organize a strike, with the aim of protection and realization of the economic and social rights and interests of their members. A strike can only be organized in accordance with current laws and regulations and the trade unions' own regulations on strike and collective agreements. Workers make their own decisions freely about their involvement in the strike.

423. Employers must be notified in writing at least eight days before the beginning of the strike. The reasons for the strike and the place, date and time of its beginning should be noted therein. At the same time, the organizer of the strike is obliged to inform the competent bodies and to submit to them the decision on entering into the strike, about the time and place of the strike.

424. In some trades, according to the laws on strikes in the Entities, upon the recommendation of the employer, the trade unions and the employer agree on the works and services that cannot be interrupted during the strike. This agreement contains provisions about the works and services and number of employees who are obliged to work during the strike in order to ensure the

minimum working process (production-maintaining works), provision of the necessary conditions for citizens' living and working, or for works of other legal persons, and to protect the security of property, and prevention of the endangerment of lives and the individual security or health of citizens (health care, power supply, water supply, PTT services, international traffic, etc.). It means that these services are necessary to ensure the minimum process of works during the strike. It should be emphasized that the law prescribes that the place of the strike must be within the compound of the company or enterprise, while gatherings at public places are defined by the laws on public gatherings.

425. Workers who take part in strikes can have their pay cut in proportion to the time they spent on strike, in accordance with the relevant collective agreements and labour regulations.

426. Employers may petition the courts to grant an injunction aimed at preventing the organization and execution of the strike, if it is contrary to the provisions of the above-mentioned laws, collective agreement and the trade union regulations about strikes. Employers may request compensation for damage caused by the strike, if it is not organized in accordance with the provisions of the law. Likewise, the trade union may apply to the courts in order to prevent the expulsion of employees from the working process, if this is done contrary to the law. Trade unions may also request the employer to compensate the trade union and the workers for the damage the trade union and workers have suffered due to the expulsion from the working process, if this is not done in accordance with the provision of the above-mentioned laws.

427. In the event that a trade union organizes a strike contrary to the provisions of the law, there are prescribed fines from KM 500 to 2,500. For violations committed by the employer, there are prescribed fines ranging from KM 1,000 to 5,000.

428. Bosnia and Herzegovina has been characterized by numerous strikes and much social unrest. In recent years, the entire State has been characterized by unrest directed towards (or against) employers, local governments, Entity and State Governments. Due to the extremely negative economic situation and the lack of any signs of improvement, the following people took part in the strikes and unrest: retired persons, employees in education, doctors, miners, industrial workers, farmers, war invalids, members of associations to determine the fate and whereabouts of killed or missing persons, State officials (from the taxation departments, inspection, etc.) and others. The most frequent reasons for strikes have been low or, even more often, unpaid salaries. The unrest has been regularly associated with requests for change in managers or for the resignation of political office-holders. There are many cases where employers have been in debt to the employees because of non-payment of scores of monthly salaries. Very often, the reasons for the unrest were tied to flaws in the privatization process which led to the total destruction of many companies, where workers often found themselves jobless and without any prospects of employment. In most cases, the new owners of the companies had no intention of starting (restoring) the previous production activity of the company, so workers were given "waiting worker" status at the very outset, after which they stayed without jobs. When one adds the discrimination of Bosnia and Herzegovina citizens in employment because of the interests of the parties or nations or because of membership thereof, along with the phenomenon of nepotism or corruption, it can be said that the right to employment is one of the most frequently violated human rights in Bosnia and Herzegovina.

429. With regard to migrant workers and members of their families, there are no restrictions in current laws and regulations in Bosnia and Herzegovina; nor is there any discrimination regarding their involvement in the public works of the States of their origin, election or participation in the election of that State. Migrant workers and their family members can enjoy political rights without discrimination and organize themselves in accordance with their needs and activities. This refers to the organization of unrest, strikes and other demonstrations while respecting the current laws and regulations of the State of employment.

**Principles of equal treatment with citizens of the State of employment regarding dismissal and assistance in case of unemployment**

430. As regards the equal treatment and protection of workers from dismissal, according to the provisions of the Labour Law and the Law on Employment, non-citizens and stateless persons have the same rights as citizens of Bosnia and Herzegovina regarding dismissal from a job and support during unemployment.

431. The detailed list of the rights and freedoms promoted and enshrined by the Constitution of Bosnia and Herzegovina and international documents forming a part of the Constitution contains the right to education (article II.3.1 of the Constitution of Bosnia and Herzegovina). In this connection, article 88 of the Law on Non-Citizens' Movements, Residence and Asylum emphasizes that no provision of this law can prevent the enjoyment and protection of the rights of any person to which this law refers, under any responsible bodies, according to the Constitution and laws of Bosnia and Herzegovina, the Entities and the Brcko District of Bosnia and Herzegovina.

432. The Constitution of Bosnia and Herzegovina defines the responsibility of the State and both Entities for the enjoyment of the highest level of the internationally recognized human rights and fundamental freedoms (article II.1 of the Constitution of Bosnia and Herzegovina). This means that protection of the human rights and responsibility for non-discrimination in the enjoyment of such rights is the joint obligation and responsibility of the State and Entities, and that the government bodies at each level of decision-making are obliged to secure the enjoyment and protection of the human rights and freedoms defined by the Constitutions, including the right to education.

433. The Constitution of Bosnia and Herzegovina also defines the concrete distribution of obligations and responsibilities between the State and the Entities, and mutual relations between the State and Entity institutions. All of the government functions which are not specifically assigned to Bosnia and Herzegovina institutions belong to the Entities (article III.3 (a) of the Constitution of Bosnia and Herzegovina). This means that special and concrete responsibilities for the organization and management of the education system belong to the Entities, i.e. the federal units.

434. The Framework Law on Primary and Secondary Education in Bosnia and Herzegovina was adopted in June 2003. This instrument defines the general principles for preschool, primary and secondary school education, adult education and the establishment and functioning of educational institutions in Bosnia and Herzegovina (art. 1).

435. The government bodies responsible for the organization of the education system in the Brcko District of Bosnia and Herzegovina, in the Entities and cantons (from now on: the responsible educational authorities), institutions that according to current laws in Bosnia and Herzegovina should be registered for providing education services in the field of preschool, primary and secondary education and adult education (from now on: schools) and other expert institutions in the field of education are obliged to use and respect the principals and norms defined by this law in order to ensure the education under equal conditions for all pupils (article 1 of the Law).

436. Article 4 of this law provides that all children have equal rights to attend school and equal possibilities of involvement in the appropriate education, without discrimination on any grounds.<sup>29</sup> The children of migrant workers have the possibility of integration and access to the school system throughout Bosnia and Herzegovina.

437. According to the Republika Srpska data, pursuant to the laws and regulations, on the basis of enabling access to the educational institutions to the members of foreign employers, in 2005 temporary residence was granted in 4 cases and extended in 17 cases on grounds of education; for the 9 months in 2006 temporary residence was granted in 25 cases and extended in 3 cases.

438. Execution of the programme of professional orientation, training and requalification of unemployed persons and their re-employment in appropriate jobs in Bosnia and Herzegovina as well as access to the services and institutions for professional education and re-qualification are defined by the current regulations, and there is no discrimination in any form in comparison with citizens of Bosnia and Herzegovina.

439. Laws on the employment of non-citizens have been adopted in both Entities and in the Brcko District of Bosnia and Herzegovina, and define the types of terms of employment for non-citizens and stateless persons. Under these laws, non-citizens are natural persons who do not hold Bosnia and Herzegovina citizenship. In accordance with the various bodies of labour legislation, the departments responsible for employment in the Entities and the Brcko District of Bosnia and Herzegovina retain the required data on unemployed non-citizens who perform temporary and occasional work.

440. In accordance with the regulations in force, migrant workers and members of their families in Bosnia and Herzegovina have the right to a flat, to gain it in possession by purchase or use it via leasing. The leasing of a flat is defined by contract concluded with the leaseholder, including the defining of the rent, which is individually agreed between the two parties.

441. The right to social and health services is defined by the laws of the Entities and the Brcko District of Bosnia and Herzegovina and by the cantonal laws. Migrant workers and members of their families can use the above-mentioned services in the same way as Bosnia and Herzegovina citizens without any discrimination whatsoever.

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<sup>29</sup> See E/1990/5/Add.65, paras. 522-603.

442. The authorities of Bosnia and Herzegovina do not prevent employers from solving issues of housing and social politics for migrant workers, within their capacities, or their involvement in cultural or other events in Bosnia and Herzegovina.

443. In the case of unemployed workers, their rights in Bosnia and Herzegovina are defined by articles 3, 29 and 30 of the Law on Mediation in Employment and Social Security of Unemployed Persons.

444. Financial aid during unemployment (article 29 of the Law) is defined by article 3, under the conditions prescribed in the law, and the amount thereof is defined by article 30 of this law. During unemployment, the right to health and pension-invalidity insurance is prescribed by the laws on health or pension-invalidity insurance in the Entities and in the Brcko District of Bosnia and Herzegovina. The special programmes to combat unemployment are implemented by the responsible department for employment.

445. Protection of the rights of workers in Bosnia and Herzegovina is defined by the Laws on Employment, which specify that workers have the right to employment status. Workers are entitled to request their employer to ensure enjoyment of their rights. If no friendly settlement of the dispute is reached (that is, if an employer does not approve the request within 15 days from the date of its submission) workers have the right to appeal to the courts to enforce protection of their rights.

446. Migrant workers who have received a permit for paid activities, in accordance with the provisions for issuance of such permits, have the same rights while performing such activities as citizens of Bosnia and Herzegovina.

#### **Protection of the entire family of migrant workers and reunification of migrant employees with their family**

447. Article 38 of the Law on Non-Citizens' Movements, Residence and Asylum provides that members of the close family of Bosnia and Herzegovina citizens with residence in Bosnia and Herzegovina or non-citizens with a temporary or permanent residence permit for Bosnia and Herzegovina may be granted temporary residence for purposes of family reunification on the condition that:

(a) The Bosnia and Herzegovina citizen or non-citizen who holds a residence permit for Bosnia and Herzegovina is the permanent source of funding and means of subsistence of the applicant in Bosnia and Herzegovina;

(b) There are no reasons prescribed by this law for elimination of approval of residence.

448. In accordance with this law, close family members are deemed to be the following:

(a) Spouse (husband or wife);

(b) Children under 18 or supported children who live in the common household;

(c) Supported parents.

449. Based on the connection of the employees with their close family members, in the Republika Srpska 20 residence permits were approved and 29 extended (49 in total) in 2005. During the first 9 months of 2006, there were 27 applications approved and 47 temporary residences extended on the same grounds (74 in total).

450. Residence related to divorce or a marriage that ceased due to the death of the husband or wife (articles 44 and 50 of the Convention) is defined by the provisions of article 39 of the Law on Non-Citizens' Movements, Residence and Asylum in Bosnia and Herzegovina. In the event of the spouse's death, a non-citizen granted residence as the spouse of a Bosnia and Herzegovina citizen or a non-citizen with temporary or permanent residence obtains the right to extended temporary residence if he/she has tutorship status over any underage children who have Bosnia and Herzegovina citizenship, and if based on the principle of family reunification he or she stays three years and fulfils the conditions for residence on another basis and if there are cogent humanitarian grounds for granting temporary residence.

451. The expulsion of non-citizens may only take place in accordance with the legislation and regulations in force. According to article 56 of the law, expulsion is defined as a measure ordering a non-citizen to leave the State of Bosnia and Herzegovina and prohibiting him/her from re-entering Bosnia and Herzegovina within a defined period, which cannot be shorter than 1 year or longer than 10 years. The reasons for passing the sentence of expulsion are prescribed by the provisions of article 57 of the Law on Non-Citizens' Movements, Residence and Asylum. The decision issued by the competent Department for Non-Citizens defines the term in which the decision should be executed within 15 days. Appeals against the decision on expulsion may be lodged with the Bosnia and Herzegovina Ministry of Security within 15 days from the date of receipt of such decision. According to the current legislation, the Council of Ministers of Bosnia and Herzegovina may, in special individual cases and based upon the reasonable recommendation by the competent Ministry, decide to expel the non-citizen from Bosnia and Herzegovina if it concludes that such expulsion is necessary for ensuring public order and national security. Article 60 of the law defines the reasons for which non-citizens may not be expelled in any case to the country where his or her life and freedom will be jeopardized because of religion, race, and nation, membership of a particular social group or political ideas.

452. Forced expulsion is carried out in the event that the non-citizen does not leave the State willingly, and the relevant procedures are defined by the Special Instruction, in accordance with the law.

453. Cases involving residence on grounds of divorce or cessation of marriage due to the death of a spouse who is a citizen of Bosnia and Herzegovina are settled according to articles 35, 39 and 61 of the Law on Non-Citizens' Movements, Residence and Asylum. In such and similar cases, when the non-citizen emphasizes the reasons connected with article 60 of this law, the processing body submits the case to the Bosnia and Herzegovina Ministry of Security in order to proceed with assessment of the grounds for granting residence for humanitarian reasons. Non-citizens who have been granted a residence permit for humanitarian reasons have the right to work and opportunities for education, health and social protection under the same terms as citizens of Bosnia and Herzegovina.



454. As for residence related to divorce, article 39 of the above-mentioned law prescribes various rules. For example, if the divorce happens during the temporary residence on grounds of family reunification, the former spouse who received the temporary residence permit as the close family member under article 38 of this law does not gain the right to extension of temporary residence. He/she keeps this right, according to article 39 of this law, if he/she has the right of tutorship over an under-age child who has Bosnia and Herzegovina citizenship and was born in the marriage with a Bosnia and Herzegovina citizen. This right is also gained on grounds of temporary residence granted for family reunification and if he/she has been residing in Bosnia and Herzegovina continuously for three years and fulfils the special conditions. In addition to the foregoing, to exercise this right, the temporary residence permit must have been granted on humanitarian grounds, as defined by article 35 of the law.

455. Paragraph 1 of article 39 of the law applies if the marriage ceased due to the death of the spouse who is a Bosnia and Herzegovina citizen or the non-citizen who has been granted a temporary or permanent residence permit for Bosnia and Herzegovina.

### **Enjoyment of equal treatment for members of migrant workers' families**

456. According to existing legislation in Bosnia and Herzegovina, members of the families of migrant workers enjoy equal treatment as Bosnia and Herzegovina citizens when it comes to exercise of the right to access educational institutions, health and social institutions, involvement in cultural life and cultural manifestations, if they display an interest therein. As defined by the appropriate legal instrument, non-citizens and their family members may be employed by national legal and natural persons and enjoy the same rights, obligations and responsibilities arising from such employment as citizens, in accordance with the employment regulations, collective agreements and general acts of the employers. Of course, migrant workers' families have the right, without discrimination, to involvement in the local educational system, with respect to their native language and cultures. In this sense, Bosnia and Herzegovina has an obligation to provide special programmes for the education of migrant children in their native language, and if necessary to establish, to that end, cooperation with the State of their origin. As regards health and social protection, such rights are achieved according to established regulations. Taking into account the conditions of overall economic relations in society, which are characterized by the grave social situation due to widespread unemployment, according to our information, there is a small number of non-citizens applying for use of the above-mentioned services. If they display an interest, no obstacles are put in their way in respect of the utilization of such services, in accordance with the law.

457. No obstacles are placed in the way of migrant family members upon choice of their paid activities, if these are undertaken in accordance with the legal regulations. This refers to migrant workers and their family members whose employment residence and employment permit are not time-bound. These issues are closely connected and depend on the bilateral and multilateral agreements signed between the State of employment and the State of origin.

### **Exemption from import and export duties and taxes in respect of specified belongings**

458. In accordance with the Law on Customs Policy in Bosnia and Herzegovina, at the beginning of 2005 and upon the recommendation of the Management Board and the Directorate for Indirect Taxation, the Bosnia and Herzegovina Council of Ministers adopted a decision on

the procedure for exemption from import customs and duties for specified equipment of non-citizens that represents their deposit. This decision defines more precisely the procedures of exemption from import customs and duties for specified equipment of non-citizens, in accordance with article 176, paragraph 1, of the Law on Customs Policy in Bosnia and Herzegovina, and which represents the deposit of non-citizens, except for passenger cars, automatic entertainment machines and games of chance. The term “equipment which represents the non-citizens’ deposit” covers the equipment that:

(a) Is imported, and which the non-citizen investor invests as his deposit into the legal person, on the basis of the investment agreement; or

(b) Is imported on behalf of the legal person, if it is paid for out of the funds collected from the foreign investor’s deposit in that legal person.

459. In order to benefit the customs privileges spelled out in article 176, paragraph 1, of the Law on Customs Policy in Bosnia and Herzegovina, the beneficiary of this privilege submits a written request for the exemption of import duties to the customs office responsible, according to the place of the beneficiary’s seat, accompanied by the necessary documents defined by the above-mentioned decision. The responsible customs office must decide on the matter within 15 days from the date of receipt of such request. The customs bodies have authorization to undertake all necessary activities and measures in order to ensure that the equipment exempt from import customs duties on grounds of the foreign deposit is not used for any purposes other than those for which it was exempt, without payment of appropriate customs duties.

460. Migrant workers and their family members have the right to transfer their salaries and savings in Bosnia and Herzegovina to the State of their origin or any other State to which the migrant worker and his/her family members wish to move, without obstacles. Likewise, they are protected against double taxation, because upon entry the migrant worker and his/her family members are subjected to control and listing of assets (property) entering Bosnia and Herzegovina, according to the current legal regulations.

#### **Right to seek alternative employment in case of termination of remunerated activities for migrant workers who have no right freely to choose their remunerated activities**

461. Employment permits are issued to migrant workers on the condition that they have a permit for permanent or temporary residence in Bosnia and Herzegovina and that on the registers of the Bosnia and Herzegovina employment departments there are no persons who fulfil the conditions requested by the employer for conclusion of an employment agreement or contract for temporary or occasional work.

462. Subsequent to the amendment of the Law on Employment of Non-Citizens and Stateless Persons, which took place in 2006 in the Republika Srpska and the ongoing amendment of this law in the Federation of Bosnia and Herzegovina, the special condition that the person must reside in Bosnia and Herzegovina no longer applies. The new article 4 of this law stipulates that besides the general conditions prescribed by the law, the conditions prescribed by the collective agreement and by the general acts of the employer, non-citizens must also comply with a special condition, namely, to be in possession of a work permit, issued by the Employment Bureau, for conclusion of the work contract issued.

463. According to the Law on the Employment of Non-Citizens, work permits cease to be valid under the following conditions: expiry of the period for which they were issued; expiry of the period of temporary residence permit; dismissal of residence in accordance with the special regulations and loss of status of permanent resident as a non-citizen; expiry of the period for which the work agreement or the contract for performance of temporary or occasional work was concluded; and withdrawal of the permit.

464. The Laws on Employment in both Entities and the Brcko District of Bosnia and Herzegovina provide that non-citizens, i.e. migrants, can only enter into work agreements according to the conditions defined by the relevant Laws on the Employment of Non-Citizens.

465. Temporary residence permits do not influence the status of migrant workers and their family members after termination of the jobs they have done in a specified period. Upon termination of the jobs of the migrant workers, their family members continue to reside in Bosnia and Herzegovina until the end of the period permitted.

466. Implementation of the programme of professional orientation, training and retraining of unemployed persons and their re-employment in appropriate jobs in Bosnia and Herzegovina, as well as access to services and institutions for professional education and retraining, are defined by regulations in force, and there is no discrimination of any kind in comparison with citizens of Bosnia and Herzegovina.

467. Migrant workers, under the conditions mentioned in the previous article, realize their right to employment in the period mentioned in the employment agreement and in accordance with the legal regulations. This period is generally one year, with possibility of extension for each successive year, depending on the period of permitted residence and the plans of both the employees and the employer.

468. Specified categories of jobs in Bosnia and Herzegovina are defined by the legal regulations and can only be performed by citizens of Bosnia and Herzegovina. These are jobs of civil servants, public servants employed with the Government, in education, health services, defence, police, etc. For instance, in article 22 of the Law on Civil Service in Bosnia and Herzegovina Institutions, one of the first general conditions for employment as a civil servant is citizenship of Bosnia and Herzegovina.

469. Validation of diplomas and titles in Bosnia and Herzegovina takes place in accordance with the bilateral treaties that Bosnia and Herzegovina has concluded with other countries. These jobs are temporarily under the responsibility of the Entity Ministries of Education. University diplomas, Master studies and doctoral dissertations are validated by the relevant faculties, in coordination with the Entity Ministries of Education. After adoption of the Law on Higher Education at the Bosnia and Herzegovina level and following integration of the Bologna process, these issues will be solved successfully and the above-mentioned diplomas will be recognized in the countries of the European Union and even further beyond.

470. Article 17 of the Law on Non-Citizens' Movements, Residence and Asylum in Bosnia and Herzegovina (work permit) provides that non-citizens wishing to enter Bosnia and Herzegovina in order to work and perform other profitable business subject to taxation, can be granted entry if they have a work permit or other equivalent, issued by the authorized governmental body, in

accordance with the regulations that define the fields of employment, banking, investment or of direct foreign investment policies, as well as business-technical cooperation, and production and cooperation. It is understood that non-citizens who hold a work permit fulfil the regulations provided by the law that refer to possession of means of livelihood.

471. Article 31 defines kinds of residence: temporary residence on the territory of Bosnia and Herzegovina is residence during the period of one year, if not stipulated otherwise by the residence permit, whereas permanent residence is residence on the territory of Bosnia and Herzegovina for an unlimited period.

472. The laws on the employment of non-citizens in Bosnia and Herzegovina define the conditions under which migrant workers, who are received on grounds of their employment, can obtain permits to perform their jobs on their own account, taking into consideration the period during which workers have already spent documented stays in Bosnia and Herzegovina.

473. According to the current regulations in Bosnia and Herzegovina, the special permits for the residence and employment of non-citizens are related to the provisions of the labour legislation exclusively covered by the associations of employers, in cooperation with the Employment Bureaux operating in the State. In Bosnia and Herzegovina, there is no special law on the rights of migrant workers, as such rights are defined by the laws on the employment of non-citizens and labour laws. These laws stipulate precisely all of the issues relating to the issuance of work permits, status of employers, their rights and obligations, salaries and other conditions in connection with employment, unemployment, etc.

474. In special cases, when work is performed on the investment buildings, according to the Law on Foreign Trade, works contracts may be awarded to foreign contractors on the basis of previously completed public tendering or collection of offers from a number of tenderers. If the investor is the governmental body, a public company with a majority of State capital or a public subject for the satisfaction of needs of general interest, the provisions of the Public Procurement Law apply during the selection procedure. This works contract is registered in a special register kept by the responsible Entity ministry. For the execution of the contracted works, the foreign partner can engage persons from abroad as well as labour force (workers) from the State where the works are to be executed. If the investor/works contractor engages workers from abroad, it is necessary, in accordance with the Law on the Employment of Non-Citizens, to provide residence and employment permits. The period limitation and possibility for extension of the employment permits and period of residence are defined by the laws on rules of procedure, as explained earlier. Issues relating to loss of residence permit, employment status and support during unemployment not caused by the worker's fault, are also defined there.

475. In special situations, the Bosnia and Herzegovina Chambers of Commerce are authorized to certify invitations for the business visits of foreign partners. Such invitations take the form of a letter of guarantee by which the domestic or foreign legal person, registered in Bosnia and Herzegovina, invites the foreign partner for a business visit in the defined period. This invitation must be certified by the competent department of the Ministry and the competent Chamber of Commerce, depending on the business seat of the guarantee (invitation) issuer. In such cases, the inviter (legal person) is obliged to enclose a statement that he/she undertakes to ensure accommodation, living expenses and other costs that may be incurred during the foreign

partner's stay in Bosnia and Herzegovina, and the costs of departure of the foreign partner from Bosnia and Herzegovina. The invitation letter is submitted to the Bosnia and Herzegovina embassy, which grants the foreigner an entrance visa.

476. Since there is not a special Ministry of Labour at Bosnia and Herzegovina (BiH) level to deal with employment issues, this fact causes difficulties regarding the harmonization of such issues at the State level. Once this question is solved, it will be possible to give answers in a more effective and transparent way to the competent United Nations committees on all of the questions dealt with, according to the standards defined by the Convention.

477. The special chapter of the Law on Non-Citizens' Movements, Residence and Asylum, defined by articles 56 to 62, refers to the expulsion of non-citizens from the State. It is normal that migrant workers and their family members could be expelled merely on grounds specified by the national legislation of the State of employment. Wider explanations relating to this issue are given in the previous text of this Report, but we emphasize that all cases of expulsion of non-citizens from the country are founded on legal facts, i.e. not contrary to the legislation in force. Decisions to expel non-citizens from the State of Bosnia and Herzegovina are the responsibility of the organizational unit of the Bosnia and Herzegovina Ministry of Security, which hands down a first-instance decision by taking measures for the forced expulsion of non-citizens from Bosnia and Herzegovina, if necessary in cooperation with other organizational units of the Ministry or the Ministry of the Interior, all in accordance with the law in question. This is done in cases where the expulsion of a non-citizen is necessary and when this is connected to reasons of national security, according to provision 1, paragraph 2, of Protocol No. 7, of the European Convention on the Protection of Human Rights and Fundamental Freedoms. When humanitarian grounds are involved, according to the legislation of Bosnia and Herzegovina non-citizens may not be expelled to a territory where their life and freedom are jeopardized, or if there is knowledge that they could be a target of torture or other inhuman or degrading treatment. The humanitarian grounds can also refer to other reasons, about which the decision is made by the competent body.

478. Decisions on expulsion may be appealed to the competent Ministry, in accordance with article 58 of the Law on Non-Citizens' Movements, Residence and Asylum.

#### **D. Part V of the Convention: Provisions applicable to particular categories of migrant workers and members of their families**

479. Particular categories of migrant workers, such as frontier workers, seasonal workers, itinerant workers, project-tied workers, specified-employment workers, self-employed workers, etc., if they have regulated residence and employment status, enjoy all of the rights defined by the law, without discrimination on any grounds whatsoever.

480. Although this category of workers stays seasonally in Bosnia and Herzegovina for shorter periods of time, they are informed of their rights according to Bosnia and Herzegovina legislation and the obligations they have towards Bosnia and Herzegovina. Of course, they will enjoy their rights better if they are more active and show an interest in the exercise of their rights, because at this level of development of Bosnia and Herzegovina, although it is its

obligation to inform workers of their rights more effectively and comprehensively, it does not always do so in a transparent way, which will be the prime task of Bosnia and Herzegovina in the future.

**E. Part VI of the Convention: Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

481. According to article 65 of the Convention on the Protection of Rights of Migrant Workers and Members of Their Families, the Law on the Department for Non-Citizens was adopted. This unit is the governmental organization within the Bosnia and Herzegovina Ministry of Security with operational autonomy to deal with affairs and solve issues concerning foreigners' movements, residence and asylum. It was established in order to supply administrative, governmental and inspection services prescribed by the Law on Non-Citizens' Movements, Residence and Asylum. The management of the Department for Non-Citizens was appointed in August 2006, while the handover of the officers employed with non-citizens' affairs from the Entity ministries and the Brcko District of Bosnia and Herzegovina was successfully completed and began operation on 1 October 2006.

482. The purview of this Department encompasses the following tasks, inter alia: issuance and withdrawal of non-citizens' identity documents; registration of non-citizens' residence and change of residence; granting of temporary or permanent residence to non-citizens and withdrawal of the same; the placement of non-citizens under surveillance; dismissal of non-citizens; inspection affairs; assessment and reporting about the conditions in this field and other services by which are defined the rights and obligations concerning non-citizens' movements and residence in Bosnia and Herzegovina. If necessary, migrant workers are allowed appropriate consular and other services necessary in order to satisfy the social, cultural and other needs of migrant workers and members of their families.

**Approval of activities and bodies for the recruitment of workers for employment in another State**

483. Approval for the engagement of workers for employment in another State is possible only in accordance with the defined bilateral and multinational agreements between the States concerned. The States concerned may issue the approval to the employers, agencies or persons working on their behalf, while the latter may also obtain authorization in accordance with the legislation and practice of the States concerned for undertaking such activities.

484. Bearing in mind that in Bosnia and Herzegovina there has not been a significant number of such cases registered, we are not in a position at this time to present our experiences regarding this issue.

**Measures regarding the orderly return of migrant workers and member of their families to the State of their origin, their resettlement and cultural reintegration**

485. In addition to undertaking special procedures and measures in cases where the State of employment must expel migrant workers willingly or by force, about what we have reported in the previous part, and what is defined by the Special Instructions on the procedure of expulsion,

supervision and obligation to cover the costs of the supervision and return of non-citizens from Bosnia and Herzegovina, the States of employment and States of origin of the worker have defined agreements and contracts for this kind of return mentioned in the title. This concerns migrant workers who had or have documented status. Of course, there are obligations of the States parties to cooperate on these issues and to fulfil defined contracts and agreements regarding the encouragement of adequate economic conditions for their resettlement and reintegration in all aspects in the State of origin. Unfortunately, these practices are not yet applied in States with much stronger economies, where all contact with the migrant workers is lost. As a developing country, Bosnia and Herzegovina still makes efforts to protect the rights of migrant workers and members of their families, in order to make them feel safe and protected without any discrimination, in the same way as citizens of Bosnia and Herzegovina.

#### **Measures with a view to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation**

486. The State of Bosnia and Herzegovina, within the scope of all the activities it undertakes on prevention and elimination of unlawful or secret movements and employment of migrant workers who do not have regulated employment or other similar status, conducts regular checks of enterprises by the competent bodies. In both Entities and the Brcko District of Bosnia and Herzegovina, inspectors conduct inspections and checks of the companies where the migrant workers are employed.<sup>30</sup> In this respect, by application of the Law on Non-Citizens' Movements, Residence and Asylum, measures are undertaken and decisions made to reject requests for the issuance of temporary residence permits for non-citizens on the basis of employment and performance of profitable business, to expel those who are residing in Bosnia and Herzegovina in an irregular situation, and to refuse admission to Bosnia and Herzegovina, in addition to final decisions on cancellation of non-citizens' temporary residence permits in Bosnia and Herzegovina.

487. In 2005, in the Republika Srpska, there were 98 inspections of non-citizens in the companies in which the non-citizens were employed, and 84 inspections during the first nine months of 2006. No irregularities were found in the course of these inspections.

#### **Measures undertaken to prevent discrimination of migrant workers in an irregular situation**

488. In cases where there are migrant workers and members of their families without documented status on the territory of Bosnia and Herzegovina, according to the Law on Non-Citizens' Movements, Residence and Asylum, the Law on the Department for Non-Citizens, the Instructions on Procedures for the expulsion of non-citizens, inspections and obligations to cover the costs of inspections and return of non-citizens from Bosnia and

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<sup>30</sup> According to the data from the Republika Srpska, the inspectors for the foreigners have executed 197 inspections during the period 2001-2004, and in accordance with the law, have undertaken 378 adequate measures. In the Brcko District of Bosnia and Herzegovina there were 31 criminal procedures and 126 violations during the period 30 June 2003-31 December 2005.

Herzegovina and other regulations, the competent State bodies take appropriate legal measures. In any event, on the basis of multilateral agreements concluded between the State of employment and the State of origin of the workers, the appropriate conditions taken into consideration upon their admission to the State are the length of the period of residence in the State of employment and other relevant reasons, especially those referring to the status of their families. These issues were discussed in this Report in greater detail earlier on in the text on the manner of undertaking legal measures, in most cases with maximum reliance on and respect for humanitarian grounds, with a view to ensuring more consistent protection of migrant workers and members of their families.

### **Measures to ensure living conditions for migrant workers and members of their families**

489. Bosnia and Herzegovina respects its law founded on the internationally recognized legal standards, especially international conventions based on respect for human dignity, freedom, equality, justice, tolerance, etc., which have been incorporated into the Bosnia and Herzegovina Constitution, the Constitutions of the Entities and the Brcko District of Bosnia and Herzegovina, and intends to apply these norms on the said Convention. According to legislation and in conformity with its economic capability, Bosnia and Herzegovina is making an effort to ensure that the status of migrant workers and members of their families meets standards of exemplary security, health and principles of human dignity.

### **Repatriation of the bodies of deceased migrant workers and members of their families and compensation matters relating to death**

490. In each case without exception, out of respect for this Convention, Bosnia and Herzegovina is obliged and has a duty, in the case of the death of the migrant worker or member of his family, to provide support during the return of the deceased or injured migrant workers and members of their families to the State of origin. These questions refer, first of all, to the migrant workers and members of their families, in accordance with the European Convention on Social Security, a topic that is defined in greater detail by the bilateral treaties and contracts between the State of employment of the migrant workers and their State of origin. To date, Bosnia and Herzegovina has concluded such agreements with more than 20 States. According to the information at our disposal, there have been no problems in defining the issues regarding the death of the workers and their family members - when the subject was the return of the deceased bodies or providing the compensation related to the death. This means that all such issues are solved in relation between the State of employment, the State of origin and the employer. If related issues lie outside this legal framework, they are treated and solved in a different way.

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