

**Council of Europe contribution for the 20<sup>th</sup> UPR session  
regarding Bosnia and Herzegovina**

**Prevention of torture**

*Periodic visit 2011*

On 24 April 2012, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Bosnia and Herzegovina from 5 to 14 April 2011, together with the response of the authorities (both documents are attached below).

The CPT's delegation received a considerable number of credible allegations of severe physical ill-treatment by the police. The alleged ill-treatment mostly concerned kicks and punches to the body and blows with batons; however, detailed allegations were also received of handcuffing in stress positions, the placing of plastic bags over the heads of suspects and the infliction of electric shocks. The majority of the allegations concerned the time when suspects were being questioned by crime inspectors in their offices, and the information gathered indicates that the infliction of ill-treatment is a frequent practice at Banja Luka Central Police Station. The CPT emphasises in its report that all means should be explored to ensure that a message of zero tolerance of ill-treatment reaches law enforcement officials at all levels. It recommends that an independent inquiry be carried out into the methods used by crime inspectors at Banja Luka Central Police Station.

Hardly any allegations of ill-treatment of inmates by staff were received in the prisons visited, with the exception of Banja Luka Prison. The delegation also found that significant steps had been taken to reduce inter-prisoner violence, particularly at Zenica Prison.

The situation of prisoners placed in high security units is commented on in the report, notably as regards the lack of activities and the inadequate safeguards surrounding their placement. The CPT is also critical of the impoverished regime of remand prisoners, who are confined to their cells for 22 hours a day for months on end.

The CPT's delegation found that overcrowding in Sokolac Psychiatric Clinic, the psychiatric annexe in Zenica and Drin Social Care Home continued to impact negatively on living conditions. The report also highlights ongoing concerns about the safeguards surrounding placement in these institutions as well as insufficient staffing levels.

Conditions in the Lukavica Immigration Detention Centre were found to be generally satisfactory, although steps need to be taken to provide more purposeful activities to detainees held for prolonged periods.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>1</sup>



BiH 2011 report.pdf



BiH 2011  
response.pdf

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<sup>1</sup> pp. 63-76.

## *Ad hoc visit 2012*

On 12 September 2013, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its *ad hoc* visit to Bosnia and Herzegovina from 5 to 11 December 2012, together with the authorities' response. The main objective of the visit was to examine the steps taken since the April 2011 visit to combat ill-treatment by the police.

The CPT's delegation again received a considerable number of credible allegations of severe physical ill-treatment by the police in the Republika Srpska. The alleged ill-treatment mostly took the form of slaps, punches and kicks as well as blows with hard objects (such as baseball bats) to various parts of the body. Detailed allegations were also received of handcuffing in stress positions, the placing of plastic bags over the heads of suspects, the infliction of electric shocks and mock executions. The majority of the allegations concerned the time when suspects were being questioned by crime inspectors in their offices, in particular at Banja Luka Central Police Station.

The CPT recommends that an independent professional assessment be carried out into the working methods used by crime inspectors at Banja Luka Central Police Station when detaining and interviewing suspects. Further, the report calls upon the authorities to improve the recruitment process and educational training of police officers, to take action to promote a culture where ill-treatment is regarded as unprofessional and to create an environment which encourages acts of ill-treatment to be reported.

The report is also critical of the lack of follow-up action when persons complain of ill-treatment by the police. The CPT makes several recommendations aimed at enhancing the effectiveness of investigations into allegations of ill-treatment. Recommendations are also made to strengthen, in practice, the formal safeguards surrounding deprivation of liberty, such as access to a lawyer and access to a doctor.

The absence of any holding cell at Banja Luka Central Police Station meant that detained persons were often handcuffed to radiators or items of furniture for prolonged periods. The report recommends that such a situation should be ended and proper holding cells established. Further, deficiencies found in other police stations should be remedied.

As regards the pre-trial departments in the prisons visited, the CPT remains critical of the disproportionate restrictions placed on remand prisoners who are confined to their cells for 22 hours a day for months on end. It also considers that remand prisoners should be offered at least one hour a week of visits and that such visits should, as a rule, take place under reasonably open conditions. Recommendations are also made *inter alia* to improve the health-care services in prison and to put in place systematic procedures for the recording and reporting of injuries.

A complete list of the CPT's recommendations, comments and requests for information is contained in the Appendix to the report.<sup>2</sup>



BiH 2012 report.pdf



BiH 2012  
response.pdf

## **Council of Europe Commissioner for Human Rights**

On 29 March 2011, the Commissioner for Human Rights, Thomas Hammarberg, released the report on his visit to Bosnia and Herzegovina from 27 to 30 November 2010.<sup>3</sup>

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<sup>2</sup> pp. 33-40.

<sup>3</sup>A summary of the report appears on pp. 2-4.

The Commissioner's report focuses on the following selected human rights issues:

- Fight against discrimination<sup>4</sup>
- Human rights of people displaced by the war, asylum seekers and stateless persons<sup>5</sup>
- Post-war justice and reconciliation<sup>6</sup>

The Commissioner provides specific conclusions and recommendations at the end of each section.<sup>7</sup>

Upon releasing his report, Thomas Hammarberg said that "the legacy of the violent past still endangers the full enjoyment of human rights, democracy and the rule of law in Bosnia and Herzegovina. Although some progress has been made, the authorities at all levels in Bosnia and Herzegovina should proceed in a determined manner towards putting an end to discrimination, fostering reconciliation and building a country that reflects its multiethnic richness."

The Commissioner remained concerned about persisting discrimination towards national minorities, stressing that "the authorities should address this problem more resolutely and make sure that national minorities have real opportunities for political representation." Furthermore, he expressed his concern that the country's complex, multi-layered political and institutional structure constitutes an impediment to equal enjoyment of social and economic rights by different categories of vulnerable people, in particular persons with disabilities, civilian war victims and victims of war-related crimes of sexual violence.

The need to enhance the protection of Roma was underlined, in particular in those sectors where they remain dramatically disadvantaged, such as education, employment, healthcare and housing. "Durable solutions should be found for the Roma who have been forcibly displaced from Kosovo<sup>8</sup> and who have lived for many years with their families in Bosnia and Herzegovina".

Widespread segregation and discrimination in public schools in Bosnia and Herzegovina remain a serious concern as well. Ethnically-based and divided education systems remain an obstacle to sustainable returns. "No progress has been made in bringing to an end the system of 'two schools under one roof' since my visit in 2007. A common, core curriculum should be introduced, respecting the particularities of each constituent people's language, culture and heritage".

Discrimination in access to healthcare, social care and pension rights, the slow pace of demining and the lack of effective monitoring of ethnically-motivated violence remain barriers to the sustainable and safe return of internally displaced persons. "More than 7,000 people are still living in collective centres and endure extremely difficult living conditions. The authorities should provide adequate housing to the vulnerable people living in collective centres, including the elderly, and ensure access to employment and health care.

The Commissioner underlined that genuine inter-ethnic reconciliation in Bosnia and Herzegovina cannot be achieved without justice. He encouraged the authorities to strengthen their efforts aimed at effectively investigating and prosecuting the cases relating to war atrocities, ensuring access to justice and effective domestic remedies for victims and providing them with adequate, effective and proportionate reparation.

Commissioner Hammarberg was seriously concerned by the failure of the authorities of Bosnia and Herzegovina to fulfil their international obligations to effectively prosecute war-related crimes of sexual violence, and to provide adequate protection and reparation to the victims of these

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<sup>4</sup> paras. 9-54.

<sup>5</sup> paras. 67-111.

<sup>6</sup> paras. 125-182.

<sup>7</sup> paras. 55-66, 112-124 and 183-198.

<sup>8</sup> "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo."

crimes. He also recommended ensuring that the victims receive adequate psychological and social support as well as vocational guidance.

The Commissioner further urged the authorities to considerably improve the witness protection system in the context of war-related proceedings and to promptly investigate and prosecute all reported cases of threats and intimidation of witnesses.

Finally, he recommended continuing with determination to identify about 10,000 pending cases of persons missing due to the war; taking effective measures to protect the impartiality and independence of the judicial institutions; adopting measures to improve the protection of lesbian, gay, bisexual and transgender persons and resolving the cases of the 220 police officers who were decertified in the late 1990s and providing adequate redress to those still in need of it.

The Commissioner's report on his visit to Bosnia and Herzegovina in 2010 appears below.



CHR report BiH.pdf

### **Fighting corruption**

On 7 January 2014, the Council of Europe Group of States against Corruption (GRECO) published its third round compliance report on Bosnia and Herzegovina. In its report GRECO concluded that Bosnia and Herzegovina had implemented satisfactorily or dealt with in a satisfactory manner only four of the twenty-two recommendations contained in the Third Round Evaluation Report addressed to the authorities in 2011.

Concerning the criminalisation of corruption offences, in September 2011, Bosnia and Herzegovina ratified the Additional Protocol to the Criminal Law Convention on Corruption. Drafting of legislative amendments followed thereafter to meet GRECO's recommendations regarding bribery of arbitrators, active trading in influence and bribery in the private sector<sup>9</sup>; however, with the exception of Republika Srpska which amended its Criminal Code in 2013, the proposed changes are still at incipient stages of the legislative process and need to materialise in practice. More decisive action must be taken to harmonise criminal legislation in the country (there are four criminal codes in use at the different levels of Government: State level, Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District) and to do so fully in line with the Criminal Law Convention on Corruption. While some effort has been devoted to further acquainting legal professionals with corruption related provisions, as well as to identifying challenges in the investigation and adjudication of cases, overall the action taken by the authorities to address GRECO's recommendations in the almost two and a half years that have elapsed since the Third Evaluation Round Report was adopted must be assessed as rather limited.

Concerning transparency of party funding<sup>10</sup>, the overall picture is very disappointing. GRECO welcomes the intention stated by the authorities of Bosnia and Herzegovina to adopt a uniform law on political parties at State level, but work on this issue is still at a very initial stage. The Law on Financing of Political Parties was amended in December 2012, but GRECO regrets that it does not significantly impact most of the deficiencies highlighted in the Evaluation Report. Some measures were taken to encourage the use of bank accounts by political parties, but GRECO is concerned that they still leave room for the use of cash and related manipulations. Transparency of the accounts of political parties was still insufficient, especially as regards donations and the identity of donors. No measures were taken to strengthen the internal control mechanisms of political parties, nor the monitoring capacity of the Central Electoral Commission and its Audit Service. The range of available sanctions had not been extended, there are still no specific

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<sup>9</sup> 2011 Evaluation Report on Bosnia and Herzegovina on Incriminations (Theme I).

<sup>10</sup> 2011 Evaluation Report on Bosnia and Herzegovina on Transparency of Party Funding (Theme II).

sanctions for several violations of the law and the amount of some fines was even decreased. More worryingly, some changes introduced in the law run counter to the objectives of GRECO recommendations and seem to validate certain formerly illegal political parties' practices, such as the use of administrative bodies' business premises, or the receipt of funding from companies entered into public procurement contracts, when the contract is below a certain value.

The conclusions of the compliance report from 2013<sup>11</sup>, which is attached below, should be read in conjunction with GRECO's two evaluation reports from 2011. They have also been attached below.



GrecoRC3(2013)16\_ GrecoEval3(2010)5\_ GrecoEval3(2010)5\_  
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### Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2013, there were 33 cases against Bosnia and Herzegovina pending before the Committee of Ministers for supervision of their execution. 12 of these cases were "leading cases", i.e. raising a new structural/general problem and requiring the adoption of general measures. The main cases or groups of cases revealing such structural problems are listed below:

- ❖ Compulsory detention of aliens perceived to constitute a threat to public order or national security, irrespective of existence of any deportation order - *Al-Husin v. Bosnia and Herzegovina*, application No.3727/08, judgment final on 09/7/2012
- ❖ Non-enforcement of final judgments ordering the state to pay certain sums in respect of war damage - *Colić v. Bosnia and Herzegovina*, application No.1218/07, judgment final on 28/06/2010
- ❖ Military apartments taken from members of the former Yugoslav People's Army in the aftermath of the war in Bosnia and Herzegovina - *Đokić v. Bosnia and Herzegovina*, application No. 6518/04, judgment final on 04/10/2010  
*Mago and others v. Bosnia and Herzegovina*, application No.12959/05, judgment final on 24/09/201
- ❖ War crime cases: retroactive application of new law with more severe sanctions - *Maktouf and Damjanović*, application No.2312/08+, judgment final on 17/07/2013
- ❖ Ethnic-based discrimination on account of ineligibility of persons non-affiliated with one of the "constituent peoples" (Bosnians, Croats or Serbs) to stand for election to the House of Peoples (the upper chamber of Parliament) and the Presidency - *Sejdić and Finci*, application No. 27996/06, judgment final 22/12/2009

The document attached presents a brief description of the violations and the latest detailed decisions taken by the Committee of Ministers and the responses given thereto by the respondent state.



Contributions  
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<sup>11</sup> Section III of the report, paras. 96-100.

## Fight against racism and intolerance

On 8 February 2011, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Bosnia and Herzegovina.<sup>12</sup> ECRI's Chair, Nils Muiznieks, said that, although there has been progress in certain areas, some issues give rise to concern, such as continuing ethnic discrimination in the field of electoral law, marginalisation of the Roma and politicians' use of virulent nationalistic rhetoric.

A new antidiscrimination law has strengthened the legislative framework, and crucial responsibilities in combating racial discrimination have been transferred to the Human Rights Ombudsman. Strategies have been adopted to facilitate the return of refugees and displaced persons and to ensure systematic treatment of war crimes cases. Measures have been adopted to improve the situation of the Roma in daily life and a process of civil registration launched to assist Roma in obtaining identity documents.

At the same time, the continued existence of constitutional arrangements that exclude some ethnic groups from standing for certain elections is in breach of the prohibition on discrimination, and persons who do not identify with one of the three constituent peoples are often excluded from political processes. Politicians' use of virulent nationalist rhetoric fosters divisions between the various constituent peoples and ethnic groups living in Bosnia and Herzegovina.

Children of different ethnic backgrounds also continue to attend different schools, and some school textbooks still display ethnic bias. Minority returnees continue to face discrimination, and the rate of returns has slowed down. Ethnically divisive political discourse continues to create a climate of hostility and to deter other displaced persons and refugees from returning.

Roma experience extreme poverty and marginalisation, compounded by prejudice and discrimination. Many live in inadequate housing, and Roma children remain much less likely than others to attend or complete school. Along with other visible minorities, Roma are also subject to ethnic profiling by the police.

The report contains findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions<sup>13</sup>
- Racism in public discourse<sup>14</sup>
- Racist violence<sup>15</sup>
- Discrimination in various fields, including education, employment, housing, access to health care and access to public services<sup>16</sup>
- Vulnerable groups, including minority returnees and displaced persons, Roma, national minorities, person who do not want to identify themselves with any constituent people or minority group, refugees and asylum seekers<sup>17</sup>
- Antisemitism<sup>18</sup>
- Human rights education and awareness-raising<sup>19</sup>
- Conduct of law enforcement officials<sup>20</sup>
- Monitoring racism and racial discrimination<sup>21</sup>
- The need to acknowledge full Bosnian democratic citizenship<sup>22</sup>

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<sup>12</sup> A summary of the report can be found on pp. 7-11.

<sup>13</sup> paras. 1-42.

<sup>14</sup> paras. 43-53.

<sup>15</sup> paras. 54-60.

<sup>16</sup> paras. 61-93.

<sup>17</sup> paras. 94-150.

<sup>18</sup> paras. 151-153.

<sup>19</sup> paras. 154-155.

<sup>20</sup> paras. 156-161.

<sup>21</sup> paras. 162-166.

<sup>22</sup> paras. 167-172.

The following three recommendations were selected for priority implementation to be revisited two years later:

- Provide training for judges and prosecutors on the new antidiscrimination legislation;
- Complete the work under way to resolve all remaining cases of “two schools under one roof” and ensure that pupils are taught together wherever possible;
- Put an end to instances of ethnic discrimination in the field of pension entitlements and legislate as necessary to prevent new cases from arising.

Subsequently, on 25 February 2014, ECRI published conclusions on the implementation of these recommendations for which priority follow-up was requested.

ECRI's report on Bosnia and Herzegovina and the conclusions on the implementation of the recommendations subject to interim follow-up are attached below.



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2-ENG.pdf



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## **Protection of minorities**

### *Framework Convention for the Protection of National Minorities*

The third Opinion of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities on Bosnia and Herzegovina is still restricted since the Committee is awaiting comments from the authorities on the Opinion.

### *European Charter for Regional or Minority Languages*

On 10 July 2013, the Council of Europe Committee of Ministers made public the first report on the application of the European Charter for Regional or Minority Languages by Bosnia and Herzegovina. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is contained in the attachment below.

In Bosnia and Herzegovina, the 17 languages covered by the ratification enjoy a high level of recognition in the minority laws at national and entity levels. However, the number of speakers of most minority languages is low and, at present, the infrastructure necessary to ensure implementation of the Charter does not exist. With the exception of teaching German, Italian and Ukrainian at some levels of education, the minority languages of Bosnia and Herzegovina are absent from the regular educational system. As to the use of the minority languages before judicial and administrative authorities, the domestic legal set-up is not in conformity with the Charter. Television and radio programmes use the minority languages only to a limited extent and a dedicated scheme providing regular and stable financial support to cultural activities and facilities relating to the minority languages does not exist. There is no discrimination against the use of minority languages in economic and social settings. A number of activities involving kin-states also take place with some support by the authorities of Bosnia and Herzegovina.

On the basis of this report, the Committee of Ministers in its Recommendation on the application of the European Charter for Regional or Minority Languages by Bosnia and Herzegovina recommends the authorities to:

- provide appropriate forms and means for the teaching of the minority languages in co-operation with the speakers;
- establish a scheme for financing cultural activities and facilities relating to the minority languages;

- make adequate provision so that public broadcasters offer programmes in the minority languages;
- use traditional forms of place-names in the minority languages.



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### **Action against trafficking in human beings**

On 14 May 2013, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Bosnia and Herzegovina<sup>23</sup> together with the final comments of the Government. Both documents are contained in the attachment below. GRETA noted the steps taken by the authorities of Bosnia and Herzegovina to combat trafficking in human beings, such as the appointment of a national coordinator and the adoption of state action plans, but a number of important challenges remain.

In its first report on Bosnia and Herzegovina, GRETA called upon the authorities to ensure that human trafficking is criminalised by all criminal codes applicable on the country's territory (i.e. in Republika Srpska, the Federation of Bosnia and Herzegovina and the Brčko District). At present, only the state criminal code defines human trafficking as a criminal offence and therefore cases of human trafficking are prosecuted only at state level. GRETA urged the authorities to ensure that human trafficking cases are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions

Most of the victims identified in recent years were trafficked within Bosnia and Herzegovina. The report highlighted the need to improve the identification of victims of trafficking, by disconnecting it from the initiation of a criminal case. Increased attention should be paid to the identification of child victims of trafficking.

In addition, GRETA called upon the authorities to provide adequate assistance and protection to victims of trafficking and to ensure that they can obtain compensation from the perpetrator or the state.

In the area of prevention, GRETA considered that there is a need for a comprehensive awareness-raising campaign for the general public, as well as targeted initiatives for groups vulnerable to human trafficking. GRETA also urged the authorities to ensure the registration of all children at birth and to ensure that Roma children, who are particularly vulnerable to human trafficking, have effective access to education.

In its report, GRETA provides concluding remarks<sup>24</sup> as well as a complete list of proposals to the authorities of Bosnia and Herzegovina.<sup>25</sup>



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<sup>23</sup> A summary of the report can be found on pp. 7-8.

<sup>24</sup> paras. 165 - 172.

<sup>25</sup> Appendix I.



## **Preventing and combating violence against women and domestic violence**

Bosnia and Herzegovina has ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It will be covered by the monitoring procedure to be carried out once the Convention will enter into force.

## **European Commission for Democracy through Law (Venice Commission)**

The Venice Commission has adopted a number of opinions on draft laws and on the constitutional situation in Bosnia and Herzegovina. A list of adopted opinions, with hyperlinks to the texts, appears in the attachment below.



Venice Com BiH.docx

## **Social and economic rights**

Bosnia and Herzegovina ratified the Revised European Social Charter on 07/10/2008, accepting 51 of its 98 paragraphs.

It has not yet signed the Additional Protocol providing for a system of collective complaints.

### Cases of non-compliance

#### *Thematic Group 1 "Employment, training and equal opportunities"*

► Article 1§1 Right to work - Policy of full employment

It has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.  
(Conclusions 2012, p. 6)

► Article 20 - Right to equal opportunities and equal treatment in employment and occupation without sex discrimination

The right to equal opportunities and equal treatment in employment and occupation without discrimination on grounds of gender is not guaranteed in practice and women are prohibited from working in underground mining.  
(Conclusions 2012, p. 19)

#### *Thematic Group 2 "Health, social security and social protection"*

► Article 12§1 Right to social security – existence of a social security system

The duration of unemployment benefit is too short.  
(Conclusions 2013, p. 17)

#### *Thematic Group 3 "Labour rights"*

Conclusions to be published in January 2015.

#### *Thematic Group 4 "Children, families, migrants"*

► Article 7§4 - Right of children and young persons to protection - Working time for young persons under 18

The limit of 40 hours per week for young workers under the age of 16 is excessive.  
(Conclusions 2011, p. 7)

- ▶ Article 7§6 - Right of children and young persons to protection - Inclusion of time spent on vocational training in the normal working time  
Legislation does not provide for time spent at the training with the consent of employer, to be counted as a part of the working day.  
(Conclusions 2011, p. 8)
  
- ▶ Article 7§9 - Right of children and young persons to protection - Regular medical examination  
There is no requirement for regular medical check-ups for young workers.  
(Conclusions 2011, p. 10)
  
- ▶ Article 8§1 – Right of employed women to protection of maternity - Maternity leave  
Maternity benefits are not adequate or not regulated in certain cantons of the Federation of Bosnia Herzegovina.  
(Conclusions 2011, p. 14)
  
- ▶ Article 8§4 - Right of employed women to protection of maternity - Regulation of night work  
Night work of pregnant women, women having recently given birth and women who are breastfeeding is not adequately regulated in the District of Brčko.  
(Conclusions 2011, p. 15)
  
- ▶ Article 8§5 - Right of employed women to protection of maternity - Prohibition of dangerous, unhealthy or arduous work  
There are no adequate regulations on dangerous, unhealthy and arduous work in respect of pregnant women, women who have recently given birth and who are breastfeeding their child.  
(Conclusions 2011, p. 16)
  
- ▶ Article 16 - Right of the family to social, legal and economic protection  
It has not been established that the living conditions of Roma families and other vulnerable families in housing are adequate.  
(Conclusions 2011, p. 21)
  
- ▶ Article 17§1 - Right of children and young persons to social, legal and economic protection - Assistance, education and training  
Corporal punishment is not prohibited in the home, neither in schools nor in institutions.  
(Conclusions 2011, p. 24)
  
- ▶ Article 17§2 - Right of children and young persons to social, legal and economic protection - Free primary and secondary education - regular attendance at school  
It has not been established that measures taken to increase the enrolment rate in secondary schools are sufficient.  
(Conclusions 2011, p. 26)

Please find attached below the Conclusions regarding Bosnia and Herzegovina from 2011, 2012, and 2013, as well as the country fact sheet.



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