



**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**

**Information received from Bosnia and Herzegovina on
follow-up to the concluding observations on its third periodic
report***

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Follow-up information relating to paragraph 34 of the concluding observations (CMW/C/BIH/CO/3)

1. The Immigration Centre is a section of the Service for Foreigners' Affairs (hereinafter: the Service). The Service is an organizational unit of the Ministry of Security with operational independence.
2. Article 118, paragraph (3) of the Law on Aliens (Official Gazette of BiH, 88/15 and 34/21) prescribes the reasons for determining the placement of an alien under surveillance by placing him in an immigration centre. The period of surveillance and the period of extension of surveillance by placing one in an immigration centre is aligned with EU standards. Thus, surveillance by placing one in an immigration centre is determined in a decision and can last for a period of up to 90 days. After expiration of this period, if there are still reasons for which the alien was placed under surveillance, surveillance over the alien may be extended up to 90 days, so that the total duration of surveillance at the immigration centre may not last more than 180 days. Exceptionally, in case of a lack of cooperation by an alien in the procedure of removal or delay in obtaining the necessary documents from the country to which the alien is returning, the duration of surveillance may be extended for a period longer than 180 days, provided that the total duration of surveillance in the immigration centre cannot be longer than 18 months in a row.
3. Detention of an alien is imposed as a last resort to ensure enforcement of expulsion order. In all situations where the conditions of each specific case allow, alternatives to detention in the Immigration Centre are used: restrictions of movement to the address of residence or some other form of semi-secure detention.
4. Families with minors are detained in the Immigration Centre only as a last resort and for the shortest possible time.
5. The Service temporarily places an unaccompanied minor who entered BiH illegally and who is not accompanied by a parent or legal representative or proxy parent or was left unaccompanied by those persons upon entering BiH, and whom the Service cannot immediately return to the country from which he arrived or hand him over to representatives of the country of which he is a citizen, in the department of the institution specializing in minors, of which he informs the competent centre for social work, which immediately appoints a temporary guardian. Unaccompanied minors are kept in the Immigration Centre exceptionally, only as a measure of last resort and for the shortest possible time, and minor aliens are treated with special care and respect, in accordance with the European Convention on Human Rights and Fundamental Freedoms and the Convention on the Rights of the Child and other regulations in BiH concerning care and protection of minors.
6. The Immigration Centre is equipped in accordance with all standards that provide beneficiaries with adequate basic services that include food, health care, hygiene conditions and access to outdoor space, i.e. according to the schedule of daily activities the Immigration Centre beneficiaries have the right to sports activities and they exercise that right by walking outside.

Follow-up information relating to paragraph 36 of the concluding observations

7. Article 105 of the Law on Aliens (Official Gazette of BiH, 88/15 and 34/21) provides that an appeal against a decision on expulsion and/or extension of the prohibition of entry may be lodged with the Ministry within eight days of receipt. If an expulsion decision was issued on the grounds of the international agreements on readmission of persons who is staying illegally without a residence permit in BiH, the deadline for an appeal is 24 hours of receipt. The appeal shall stay the execution of the decision and the Ministry issues a decision on the appeal within 15 days of receipt of the appeal. Since the entry into force of the Law on Aliens, no problems have been observed in the application of provisions relating to the time limit for lodging an appeal against expulsion orders.

8. Regarding the recommendation to allow for subsequent appeals to the courts with automatic suspensive effect without the appellant having to provide specific reasons for the court to order the suspension of the expulsion procedure, we emphasize that this recommendation refers to the application of BiH Law on Administrative Disputes, which is within the jurisdiction of the Court of BiH, so the Court of BiH should submit an opinion of this recommendation.

9. Regarding the recommendation that the State party take the steps necessary to ensure that migrant workers who are subject to an expulsion order are aware of and able to exercise their right to appeal such an order, we emphasize that this right is ensured in Article 12 of the Law on Aliens prescribing that at all stages of the proceedings, an alien will be informed of the rights and obligations arising from this Law. In addition to the above, this right of aliens is ensured through the basic principles of administrative procedure prescribed by the Law on Administrative Procedure (Official Gazette of BiH, 29/02, 12/04, 88/07, 93/09, 41/13 and 53/16), so Article 5 provides that where administrative authorities and the institutions possessing public authorisations conduct procedure and take decisions, they are required to enable the parties to protect and exercise their rights in accordance with the Constitution of Bosnia and Herzegovina, the European Convention on the Protection of Human Rights and Freedoms and Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina as easily as possible and, in doing so, take care that the exercising of their rights is not detrimental to the rights of other persons or in contradiction with the public interest defined by law. Where the official who takes decisions in an administrative matter learns or assesses, having regard to the existing facts, that a particular party has the basis to exercise a right, he warns the party of this. Also, Article 12 of the Law on Administrative Procedure provides that the authority conducting the procedure takes care that the ignorance and illiteracy of a party and other persons participating in the procedure are not detrimental to the rights belonging to them under the law. Violating the principles of administrative procedure may be a reason for annulment of the first instance decision in the appeal procedure. In the appeal procedure, foreigners can use legal aid provided through the Ministry of Justice of BiH or the services of legal aid regulated by the regulations on legal aid. They can also use the services of non-governmental organizations that provide legal aid.

Follow-up information relating to paragraph 46 of the concluding observations

10. The Law on Provision of Legal Aid (Official Gazette of BiH, 83/16) determines the forms of obtaining legal aid, the actors for providing it, the beneficiaries of legal aid and the conditions and manner for obtaining legal aid before BiH bodies and institutions. In accordance with this Law, legal aid is provided in administrative proceedings, administrative disputes, civil and executive proceedings, as well as in criminal proceedings in accordance with the Codes of Criminal Procedure.

11. The beneficiary of free legal aid may be, among others – “a natural person who is in the territory of BiH under international protection in accordance with international standards, especially asylum seekers, refugees, persons under subsidiary or temporary protection, persons in exile, stateless persons, victims of trafficking, in accordance with the obligations of BiH according to international conventions.” Legal aid is provided by officers of the Office for Legal Aid, which is a section of the Ministry of Justice of BiH. The Law on Provision of Legal Aid was passed in the Republika Srpska, the Brcko District of BiH and cantons in the Federation of BiH.

Follow-up information relating to paragraph 62 of the concluding observations

12. In January 2020, the Council of Ministers of Bosnia and Herzegovina adopted the 2020-2023 Strategy for Combating Trafficking in Human Beings and an action plan for the Strategy implementation. The documents clearly define the strategic goals and measures related to the prosecution of criminal offenses of trafficking in human beings and preventive activities in this area. In the past period, the authorities of Bosnia and Herzegovina organized

a large number of training courses related to the criminal offenses of trafficking in human beings, including all forms of exploitation. The training courses included law enforcement agencies, prosecutors, and non-governmental organizations.

13. By implementing the policies defined in this Strategy, in addition to meeting the general and specific policy goals of preventing, combating and combating trafficking in human beings, the authorities of Bosnia and Herzegovina will fulfil their obligations arising from a number of international documents, primarily the United Nations Convention against Transnational Organized Crime and its accompanying Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children, and the Council of Europe Convention on Action against Trafficking in Human Beings and implement recommendations of international monitoring mechanisms, primarily the Council of Europe and the US State Department. By implementing the policies defined in this strategy, the authorities of Bosnia and Herzegovina will also implement recommendations of the European Commission from the 2019 Analytical Report and the Opinion on Bosnia and Herzegovina's application for membership in the European Union and from the 2018 Report of the European Commission on the Fight against Trafficking in Human Beings and make progress in fulfilling the obligations under Directive 2011/36 / EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims of trafficking.

14. When it comes to the protection of victims of trafficking in the past, the Ministry of Security and the Ministry of Human Rights and Refugees allocated financial resources for the accommodation of victims of trafficking in safe houses. At the beginning of 2021, the above-mentioned ministries signed an agreement on pooling and spending of funds for non-governmental organizations that care for victims of human trafficking in the Budget of the Institutions of Bosnia and Herzegovina. The agreement stipulates that the funds will be consolidated and transferred to the budget of the Ministry of Security of Bosnia and Herzegovina and that in the coming years the Ministry of Security will undertake to appropriate funds for this purpose and issue public calls for NGOs with accommodation capacity for victims of trafficking.

15. From the competence of the Ministry of Justice of Bosnia and Herzegovina, we emphasize the following:

(a) The criminal offense of "Smuggling of Persons" is prescribed in Article 189¹ of the Criminal Code of BiH and the criminal offense of "Organizing a Group or Association for the Purpose of Perpetrating the Criminal Offence of Smuggling of Persons" is prescribed in Article 189a². The basis of this criminalisation is Article 6 of the Protocol against

¹ Smuggling of Persons
Article 189

(1) Whoever, with the intent of procuring gain for himself or someone else, illegally transports or enables transportation across the state border of one or more migrants or other persons, or whoever with the same purpose makes, obtains or possesses false travel or personal documents, shall be punished by imprisonment for a term of between one and ten years.

(2) Whoever recruits, transports, harbours, protects or otherwise enables smuggled persons to stay in Bosnia and Herzegovina, shall be punished by imprisonment for a term of between six months and five years.

(3) If the offences under paragraphs 1 and 2 have been perpetrated by members of a structured group, or an organised crime group, by abuse of official duty, or in a manner that poses a threat to life, health or safety of the smuggled persons, or if those persons were exploited or treated in another inhuman or degrading manner, the perpetrator shall be punished by imprisonment for a term of between three and fifteen years.

(4) The punishment under paragraph 3 of this Article shall also be imposed on the perpetrator of the criminal offences referred to in paragraphs 1 and 2 of this Article whose victims were under the age of 18.

(5) In the event that the offences under paragraphs 1 and 2 resulted in the death of one or more smuggled persons, the perpetrator shall be punished by imprisonment for a term of not less than five years.

(6) The instrumentalities or means of transportation used for the purpose of perpetration of the offence shall be confiscated.

² Organizing a Group or Association for the Purpose of Perpetrating the Criminal Offence of

Smuggling of Migrants by Land, Sea and Air, which supplements the UN Convention against Transnational Organized Crime. Article 189 of the Criminal Code provides for two basic forms of criminal offense of smuggling of persons: transport across the state border of one or more migrants or other persons who do not meet requirements for legal entry across the state border or enable another person (make, obtain false travel or identity documents) (paragraph 1) and enable the stay of smuggled persons in BiH, i.e. a person who is not a citizen of BiH nor has a permanent residence to remain in the territory of BiH without fulfilling requirements for legal residence (paragraph 2). In both cases, for the criminal offense to exist, it is necessary that the action was taken out of greed, i.e. in order to achieve, directly or indirectly, financial or other material benefits. Greediness as a motive is a legal element of a crime. However, for the existence of the crime, it is not necessarily that a motive of greed exists in the perpetrator. Paragraphs 3, 4 and 5 of this Article prescribe aggravating forms of the acts referred to in paragraphs 1 and 2 of this Article. They exist if the crime is committed by someone as part of an organized group or an organized criminal group, by abuse of office or in a way that endangers the life, health or safety of smuggled persons, or if they are treated for the purpose of exploitation or in any other inhuman or degrading manner or if safety or life of persons transported across the state border or persons who have been allowed to stay illegally in the territory of the receiving State or who have been treated for the purpose of exploitation or in any other inhuman or degrading manner may be endangered or if the act was committed against a person under 18 or the death of one or more smuggled persons occurred. According to its legal definition the offense under Article 189a (organization of a group or association for commission of the criminal offense of smuggling of migrants) is the crime committed by an organized group of people for the purpose of committing the criminal offense of human trafficking. In that sense, it is a special form of the criminal offense of extreme danger that is criminalised as an independent criminal offence. This criminalisation covers creating a criminal association for committing a criminal offense referred to in Article 189 of this Law (Smuggling of People), as well as joining or otherwise assisting a group or association;

(b) The Criminal Code of BiH prescribes the criminal offenses of International Trafficking in Human Beings (Article 186) and Organized International Trafficking in Human Beings (Article 186a), while the criminal codes of the Entities and Brčko District prescribe the criminal offenses of trafficking in human beings. This clearly distributes jurisdiction over this crime in BiH. International trafficking in human beings and organized international trafficking in human beings are classified in the BiH CC in the group of criminal offenses against values protected by international law, which is justified insofar as these, as well as other basic human rights and freedoms are subject to numerous international legal instruments and thereby they are values protected by international law. Article 186³

Smuggling of Persons

Article 189a

- (1) Whoever organises a group or another association for the purpose of perpetrating the criminal offence referred to in Article 189 of this Code (Smuggling of Persons), shall be punished by imprisonment for a term of not less than three years.
- (2) Whoever becomes a member of the group or the association referred to in paragraph 1 of this Article, or otherwise assists the group or association, shall be punished by imprisonment for a term of not less than one year.
- (3) The provisions set forth in Article 250 of this Code (Organised Crime) shall apply to the organiser or ringleader of the structured group or the association who perpetrated the offences under paragraph 1 of this Article and the members thereof.

³ Organizing International Human Trafficking

Article 186

- (1) Whoever, by use of force or threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power or influence or a position of vulnerability, or by giving or receiving payments or benefits to obtain the consent of a person having control over another person, recruits, transports, transfers, harbours or receives a person for the purpose of exploitation of that person in the state where that person has no permanent residence or is not a citizen thereof, shall be punished by imprisonment for a term of not less than five years.
- (2) Whoever recruits, solicits, transports, transfers, harbours or receives a person under the age of 18 for the purpose of exploitation by prostitution or other forms of sexual exploitation, forced labour or services, slavery or a similar status, servitude or the removal of parts of human body or of some other

“Criminal Offense of Trafficking in Human Beings” of the CC BiH was designed in accordance with the notion of trafficking in human beings defined in the Protocol supplementing the UN Convention against Transnational Organized Crime. According to the CC BiH, “trafficking in human beings” means recruitment, transport, transfer, concealment or reception of persons, through threats or the use of force or other forms of coercion, abduction, fraud, deception, abuse of power or endangerment or giving or receiving money or benefits for obtaining the consent of a person who has control over another person, for the purpose of exploitation, with an emphasis on the exploitation of that person in a state where that person does not have permanent residence or citizenship (according to shared jurisdiction in BiH). Thus, the commission of the criminal offense of trafficking in human beings is alternatively determined (transport, surrender, concealment or reception of a person) and, in order for these acts to constitute the act of committing the criminal offense of trafficking in human beings, deception, abuse of power or influence or position of helplessness or giving or receiving payment or other benefits in order to obtain the consent of a person who has control over another person need to occur. Paragraph 2 of this Article prescribes a special form of human trafficking that exists when the subject of recruitment, transportation, surrender is a person under 18 years of age. In this case, the existence of the crime of trafficking in human beings does not require that the acts be committed by the use of force or the threat of use of force or other forms of coercion. This provision is a result of the need for enhanced protection of children and minors. This criminal offense (paragraph 4) prescribes the penalty for forgery, obtaining ... of travel or personal documents of another person for the purpose of facilitating international trafficking in human beings, as well as the penalty for using the services of a victim of international trafficking in human beings (paragraph 5). A special aggravated form of this criminal offense is prescribed in paragraph (3), if the criminal offense was committed by an official while performing official duties, as well as paragraph (6) of this Article if the commission of the offense caused serious health impairment, serious bodily injury or death. Paragraph (7) of Article 186 also provides that exploitation includes exploitation of others for prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, obedience or organ harvesting. In accordance with international instruments, the circumstance whether the person who is a victim of international trafficking in human beings agrees to exploitation or not does not affect the existence of the criminal offense of international trafficking in human

type of exploitation in the state where that person has no permanent residence or is not a citizen thereof, shall be punished by imprisonment for a term of not less than ten years.

(3) If the criminal offence referred to in paragraphs 1 and 2 of this Article has been committed by an official person in the performance of his official duty, the perpetrator shall be punished by imprisonment for a term of not less than ten years.

(4) Whoever counterfeits, procures or issues travel or identification documents, or uses, holds, seizes, alters, damages or destroys travel or identification documents of another person with the purpose of facilitating international human trafficking, shall be punished by imprisonment for a term of between one and five years.

(5) Whoever uses the services of victims of international human trafficking shall be punished by imprisonment for a term of between six months and five years.

(6) If the perpetration of the criminal offence referred to in paragraphs 1 and 2 herein has caused serious health damage, grievous bodily harm or the death of the persons referred to in paragraphs 1 and 2, the perpetrator shall be punished by imprisonment for a term of not less than ten years or a long-term imprisonment.

(7) Exploitation, for the purposes of paragraph 1 of this Article means: prostitution of another person or other forms of sexual exploitation, forced labour or services, slavery or a similar status, servitude or the removal of parts of human body or any other type of exploitation.

(8) Instrumentalities, conveyances and facilities used for the perpetration of offences shall be confiscated.

(9) Whether the person who is a victim of international human trafficking consented to the exploitation bears no relevance to the existence of the criminal offence of international human trafficking.

(10) No criminal proceedings shall be conducted against the victim of international human trafficking whom the perpetrator of the criminal offence had coerced to participate in the perpetration of another criminal offence if such victim's action was a direct consequence of his/her status of the victim of international human trafficking, thereof.

beings under Article 186 of the CC BiH. The offense under Article 186a⁴ “Organized International Trafficking in Human Beings” is characterized with organization or management of a group of people for the purpose of committing the criminal offense of international trafficking in human beings, and there is a penalty for participating in the group and other ways of helping the group. Article 187⁵ of the CC BiH criminalizes recruitment for prostitution when it involves a foreigner and was done for profit or other gain. This international element is recruiting another for prostitution in a state where that person does not have permanent residence or citizenship, since this element of “being a foreigner” makes that person more vulnerable and prone to exploitation, which facilitates his/her exploitation for prostitution by another person, especially by organized criminal groups whose activities have a transnational character. For the existence of this criminal offense, it is necessary that another person is recruited, lured or induced to provide sexual services for the purpose of earning in a state where that person does not have permanent residence or citizenship. The object of the action can be a person of any gender. Although prostitution is most often motivated by selfish motives, the motive for committing the crime is not an element of the legal nature of the crime;

(c) The importance of continuous training of judges and prosecutors throughout BiH is recognized and institutionalized through the Entity Judicial and Prosecutorial Centres (RS JPTC and FBiH JPTC). The JPTCs provide mandatory training for all judges and prosecutors in BiH and operate under the supervision of the BiH HJPC. In a short time, the JPTCs have become institutions important for the implementation of judicial reforms, recognized by domestic and foreign partners for their contribution to better efficiency of courts and prosecutor’s offices. Their work programs envisage specialized education in particular concepts (e.g. terrorism, human trafficking ...) and the training system provided by the Entity JPTCs is focused on professional development;

(d) The Anti-Trafficking Task Force has played a significant role in conducting and coordinating operational activities, in detecting and gathering evidence for trafficking offenses and related offenses.

Statistics on human trafficking in Bosnia and Herzegovina

2019

16. The Ministry of Security of BiH, Department for Combating Trafficking in Human Beings, during the collection and recording of data by prosecutors, law enforcement services, centres for social work and non-governmental organizations, which needed to compile information on the state of trafficking in human beings in BiH for 2019, ascertained that a total of 61 potential victims of trafficking in human beings/labour exploitation/incitement to prostitution and/or sexual exploitation/trafficking in human beings for the purpose of begging/sale, i.e. for the purpose of marriage lewd acts/exploitation of a child or a minor for the purpose of pornography and other were identified/assisted. In the reporting period, with regard to criminal offenses related to trafficking in human beings, the prosecutor's offices in Bosnia and Herzegovina issued a decision to suspend investigation in 7 cases against 8 persons, issued 37 orders to conduct investigation against 48 persons and filed 20 indictments

⁴ Organised International Human Trafficking
Article 186a

(1) Whoever organises or directs a group or another association that by acting together perpetrates the criminal offence referred to in Article 186 (International Human Trafficking), shall be punished by imprisonment for a term of not less than ten years or a long-term imprisonment.

⁵ International Enticing Persons into Prostitution
Article 187

(1) Whoever, for profit or any other benefit, entices, incites or lures another person into offering sexual services, or in any other way enables his/her transfer to another for the purpose of offering sexual services, or in any other way participates in organizing or directing the offering of sexual services in the state where that person has no permanent residence or is not a citizen thereof, shall be punished by imprisonment for a term of between six months and five years.

(2) Whether the person enticed, incited or lured into prostitution has already been engaged in prostitution is of no relevance for the existence of the criminal offence.

against 31 persons. According to the data of the Republic Public Prosecutor's Office of the Republika Srpska, in 2019 the following was recorded for the criminal offenses of "Trafficking in Human Beings" and related criminal offenses: the number of indictments brought – 9, the number of accused (suspects, reported persons) – 29, the number of victims – 38, the number of verdicts – 5 and they are: conviction (imprisonment for 5 years) – 1, acquittal – 1, conviction and suspended sentence – 2 and conviction with a fine for one person – 1. In 2019, the courts handed down 34 convictions against 34 persons. The courts issued 4 decisions against 4 persons rejecting the appeal as unfounded and confirming the first instance verdict. 7 decisions on imposing correctional measures against 7 minors were also issued. When it comes to the types of sentences imposed by the courts, the following were imposed: 24 prison sentences against 24 persons and 1 suspended sentence against 1 person and 2 fines against 2 persons. 1 measure of obligatory psychiatric treatment and custody in a health institution was also adopted. Also, in the reporting period, 4 acquittals were handed down against 4 persons.

2020

17. Based on data collected by the newly formed anti-trafficking coordination teams, in 2020 in Bosnia and Herzegovina a total of 70 potential victims of trafficking were identified and they were trafficked for sexual exploitation, begging and other forms of exploitation, which was a slight increase compared to previous reporting periods. In the reporting period, based on data from the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, for crimes related to human trafficking, prosecutors in Bosnia and Herzegovina issued 38 orders to conduct investigations against 43 persons and filed 25 indictments against 27 persons, which was a significant increase compared to the previous year. In 2020, courts in Bosnia and Herzegovina handed down 30 convictions against 30 persons for crimes related to human trafficking. 4 decisions imposing correctional measures against 4 minors were also issued. Regarding the types of sentences imposed by the courts, the following sentences were imposed: 16 prison sentences against 16 persons and 3 fines against 3 persons, which was again a significant increase compared to the previous year.
