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## SOCIAL INCLUSION

- **What are the legal provision, policy frameworks and/or measures in your country that explicitly focus on older persons who are marginalised on the grounds of their sex, disability, race, ethnicity, origin, religion, economic or other status? (This may include addressing older populations on frameworks dedicated to other marginalised groups such as women, persons with disabilities, migrants, minorities, homeless people, etc.; or addressing marginalised groups within frameworks devoted to older persons)**

International and domestic legal instruments do not explicitly regulate the protection of rights of older persons, but they do regulate a positive obligation to protect all rights, which means a state obligation to ensure the unhindered exercise of the rights of older persons along with the freedom to choose protection mechanisms.

International legal instruments related to the rights of older persons are the UN Universal Declaration of Human Rights<sup>1</sup>, Convention on the Rights of Persons with Disabilities<sup>2</sup>, UN Resolution 46/91, European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>3</sup>, Protocol No. 12 to the Convention for the Protection of Human rights and Fundamental Freedoms<sup>4</sup> and the European Social Charter<sup>5</sup> (Revised).

The Constitution of BiH has the maximum degree of recognition of rights expressed in Article II Human rights and fundamental freedoms, in which it emphasises that the Constitution of BiH is a far-reaching document that commits to "the highest level of internationally recognised human rights and fundamental freedoms". Furthermore, the Constitution mandates that the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) and its protocols must be directly applied in BiH and must have priority over all other laws, and fundamental human rights, as a catalogue, are listed in a separate paragraph. Annex I lists the Additional Human Rights Agreements, which will apply in Bosnia and Herzegovina, and all United Nations (UN) documents are among them. Article II. 4 of the Constitution stipulates that the state is obliged to ensure that all persons enjoy the rights and freedoms provided for by the Constitution or international agreements listed in Annex I to the Constitution of BiH, without discrimination on any grounds.

Similarly to the Constitution of BiH, the Constitution of the FBiH ensures the application of international human rights standards, and, as in the Constitution of BiH, all incorporated international instruments have the same legal force as other constitutional provisions.

<sup>1</sup> Articles 1 and 2.

<sup>2</sup> Articles 1 and 5.

<sup>3</sup> Articles 3, 8, and 14.

<sup>4</sup> Article 1.

<sup>5</sup> Articles 11, 12, 13, 14, 15, and 23.

Under Article 2 (Part II. Human rights and fundamental freedoms), the FBiH must ensure the highest level of internationally recognised rights and freedoms guaranteed by the documents listed in the Annex. The Constitution of the FBiH even gives priority to international human rights instruments over domestic legislation in such a way that in case of a disagreement between international treaties or agreements and FBiH legislation, the treaty or agreement will prevail.

The Constitution of the Republika Srpska provides a catalogue of rights protected by the Constitution. This form more clearly defines rights, which are therefore recognisable and accessible to citizens. From the perspective of the obligation to ensure the enjoyment and protection of rights, Article 48 of the Constitution of the RS is significant, which establishes that the rights and freedoms guaranteed by this Constitution cannot be taken away or limited, judicial protection of the freedoms and rights guaranteed by this Constitution is ensured, and whoever violates human rights and fundamental freedoms guaranteed by this Constitution shall be held personally responsible for it and cannot be justified by anyone's orders. This provision is significant in the sense that it erases the line between private and public action and obliges the Entity to ensure that the individual is respected and does not interfere with the enjoyment of the human rights of another person.

In accordance with the above, there is a broad constitutional basis for requiring the state, as well as the entities, to act in accordance with international human rights standards and obligations assumed by ratification or incorporation of relevant international documents, and to ensure the rights and protection of all persons in their respective territory. Also, it unequivocally follows from the mentioned constitutional provisions that there is a constitutional obligation of the legislator that the laws that they pass must be in accordance with the incorporated and ratified international documents, and with the general rules of international law.

In the sphere of applicable obligations to protect all rights, the practice of the courts shows that a large number of decisions have found violations of the rights of older persons. Also, the Act on Prohibition of Discrimination<sup>6</sup>, which has been in force in Bosnia and Herzegovina since August 2009, is a good starting point that provides protection for older persons in its segments. The aforementioned Act stipulates that for the purposes of this Act, discrimination shall be considered any different treatment, including any exclusion, restriction or preference based on real or presumed grounds towards any person or group of persons and those who are related to them by family or otherwise on the ground of, *inter alia*, age.

The needs of older persons and the issue of their neglect is very important from the perspective of social protection of older persons and in a very close connection with violations of social rights in relation to the standard of living in the state and entities. The question of social protection standards, which should be based on the average income of citizens and the poverty line below which the social income of older persons should not fall, is open. The aforementioned areas are regulated by laws dealing with issues of social protection, pensions, social insurance, etc.

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<sup>6</sup> *BiH OG*, no 59/09 and 66/16

It is important to point out that in the Federation of Bosnia and Herzegovina<sup>7</sup> and in the Republika Srpska<sup>8</sup>, strategies have been adopted to improve the position of older persons.

- **What legal age limits exist in your country that prevent the full and equal participation of older persons in societies in areas such as employment, education, healthcare, financial goods and services, or others?**

In the field of employment, the Act on Working in the Institutions of Bosnia and Herzegovina<sup>9</sup> stipulates that employment is terminated, *inter alia*, by force of law, when the employee reaches the age of 65 and has been insured for minimum 20 or for 40 years, regardless of age – by the day the decision is issued.

According to the Labour Act of the Federation of Bosnia and Herzegovina<sup>10</sup>, the employment contract ends, *inter alia*, when the employee reaches 65 years of age and has been insured for 15 years (pursuant to pension and disability insurance regulations), unless the employer and employee agree otherwise.

According to the Labour Law of the Republika Srpska<sup>11</sup>, the employment relationship ends, among other things, when the worker reaches the age of 65 and has at least 15 years of insurance experience.

It is important to point out that there are certain occupations with a later or earlier retirement age.

The Council of Ministers of Bosnia and Herzegovina adopted the Strategic Platform for the Development of Adult Education in the Context of Lifelong Learning in BiH for the period 2014-2020. Also, both the European Parliament and the Council of Europe recommended that the development strategies of all countries in Europe should take into account the establishment of the possibility of developing eight key competences: communication in the mother tongue, communication in a foreign language, mathematical abilities and basic competences in science and technology, IT competences, adoption of learning methods, social and civic competences, sense of initiative and entrepreneurship, and cultural awareness and expression.

One of the main problems that affects the possibility of lifelong learning is the lack of infrastructure for this purpose, although there is also the problem of lack of information and disinterest of older persons (especially in rural areas) in learning activities, as well as the lack of social skills that are needed for learning in the community.

In particular, it is necessary to point out the incompliance of educational policies with the needs of the labour market at the higher and secondary education levels, which has a direct impact on the employment of persons and the exercise of their rights (through health and pension/pension-disability insurance). Also, the labour market requires new competencies and skills that older

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<sup>7</sup> *Strategy for the Improvement of the Position of Older Persons in the Federation of Bosnia and Herzegovina for the period 2018-2027.*

<sup>8</sup> *Strategy for the Improvement of the Position of Older Persons in the Republika Srpska for the period 2019-2028.*

<sup>9</sup> *BiH OG*, no 26/2004, 7/2005, 48/2005, 50/2008 – another law, 60/2010, 32/2013, 93/2017 and 59/2022

<sup>10</sup> *FBiH OG*, no 26/2016, 89/2018, 23/2020 – Constitutional Court decision, 49/2021 and 44/22

<sup>11</sup> *RS OG*, no 1/2016, 66/2018, 91/2021 – CC decision and 119/2021

persons often have not have the opportunity to develop, which leads to their exclusion from the entire process of lifelong learning.

- **What measures are in place, if any, to ensure that older persons in institutions segregated from their communities – such as institutional care systems or prisons – can continue participating in their society?**

According to the information available to the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, there are no measures to ensure that older persons in institutions who are separated from their communities can continue to participate in their society.

A lack of activities in which older persons could participate was observed in local communities. Previous activities that were available to older persons through local communities or associations of retirees are becoming less accessible, while positive examples of assistance to older persons have been identified, e.g. through healthy ageing centres.

Apart from the examples mentioned above, there are very few initiatives at local community level involving interested older persons in life improvement activities. For this reason, various abilities, skills and knowledge of older persons remain wasted, while they, due to exclusion, become susceptible to mental illnesses (primarily depression) that have a significant negative effect on the quality of life of older persons. Also, the retirement of older persons is seen as an opportunity to free up jobs for younger generations, and not as an opportunity to access freed resources.

Although there are no reliable indicators, from the perspective of physical activity of older persons, older persons are believed to become less and less active with age, which results in more severe health problems (biological, cognitive and emotional). Positive progress on these issues has been observed in healthy ageing centres where members participate in regular physical activities that lead to the improvement of their health condition, and it would be necessary to replicate a similar approach in other environments.

In social care institutions for older persons, users are not systematically involved in the processes of assessment of the quality of services and needs (for example, regarding the improvement of nutrition, healthcare, space they live in, etc.). In individual cases, these institutions organise user satisfaction surveys, but they are often themselves limited by income that do not allow for significant change in the living conditions compared to the already existing ones.

- **States have an obligation to use maximum available resources to progressively achieve the full realisation of economic, social and cultural rights. What is the share of national public expenditure budget targeted to older persons as a distinct group?**

IHROBiH does not have the data requested.

**THE INSTITUTION OF HUMAN RIGHTS OMBUDSPERSON OF BOSNIA AND HERZEGOVINA**