

Law on Gender Equality in BiH

PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA

161.

Pursuant to Article IV.4. a) of the Constitution of Bosnia and Herzegovina, at a session of the House of Representatives held on 22 April 2003 and of the House of Peoples held on 21 May 2003, the Parliamentary Assembly of Bosnia and Herzegovina enacted the

LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA

I. GENERAL PROVISIONS

Article 1

This Law governs, promotes and protects gender equality and guarantees equal opportunities for all in both public and private domain, and prohibits direct and indirect discrimination on the grounds of gender.

Article 2

The sexes have equal rights.

Full gender equality is guaranteed in all sectors of society, particularly in the fields of education, economy, employment and labour, social welfare, health care, sport, culture, public life and the media, regardless of marital or family status.

Discrimination on the grounds of gender and sexual orientation is prohibited.

II DISCRIMINATION

Article 3

For the purposes of this Law, discrimination on the grounds of gender is defined as all juridical or effective, direct or indirect distinction, privilege, exclusion or restriction on the grounds of gender as a result of which the recognition, exercise or enjoyment of a person's human rights and freedoms in the political, educational, economic, social, cultural, sports, civil and all other domains of public life are denied or curtailed.

Discrimination may be direct or indirect.

Direct discrimination on the grounds of gender occurs when a person has been, is, or may be treated less favourably on the grounds of gender than another person in the same or a similar situation.

Indirect discrimination on the grounds of gender occurs when apparently neutral legal standards, criteria or practices that are equal for all have the effect of leaving a person of one sex disadvantaged by comparison with a person of the other sex.

Standards, criteria or practice that may be objectively justified by the achievement of a lawful aim proportion to necessary and justified measures shall not be regarded as discrimination on the grounds of gender.

Pursuant to para. 5 of this Article, the introduction of special measures designed to promote gender equality and to eliminate existing inequalities or to protect the sexes on the grounds of biological attributes is permitted.

III DEFINITIONS

Article 4

For the purposes of this Law, the following definitions shall apply:

- a) **gender** is the socially established role of women and men in public and private life as distinct from the expression bestowed by biological attributes. The expression of sex, for the purposes of this Law, indicates the significance given to the biological attributes of sexes within society;
- b) **gender-based violence** is any act that causes physical, mental, sexual or economic harm or suffering, as well as threats of such acts that seriously impede a person's ability to enjoy his or her rights and freedoms on the grounds of gender equality in both public and private life, including trafficking in human beings for the purposes of forced labour, and constraints on or the arbitrary deprivation of freedom;
- c) **harassment** is any situation in which inappropriate behaviour related to gender arises which has the intent and effect of inflicting injury on the dignity of a person or giving rise to intimidation, hostility, or demeaning, threatening or similar situations;
- d) **sexual harassment** is any behaviour that in word, action or psychological effect of a sexual nature in intent or effect inflicts injury on the dignity of a person or gives rise to intimidation, hostility, or demeaning, threatening or similar situations and which is motivated by belonging to another sex or different sexual orientation and which to the victim represents inappropriate physical, verbal, suggestive or other behaviour;
- e) **employer, employee, worker** shall have the meanings given to these terms in the Entity laws governing labour and employment.

IV EDUCATION

Article 5

Everyone shall have equal rights to education, regardless of gender.

Educational institutions may not discriminate on the grounds of gender in:

- terms of admission;
- refusal of admission;
- the way access to services, facilities and benefits is afforded;
- exclusion from the educational process;
- assessment of results achieved during education;
- equal career opportunities and vocational specialization, training and the acquisition of diplomas and degrees;
- other potential circumstances.

Article 6

The relevant authorities, educational institutions and other juristic persons shall ensure that their plans and methodology provide for the establishment of an educational system that will guarantee elimination of elements of the curriculum that contain stereotypical social roles for men and women and that result in gender discrimination and gender inequality.

Contents that promote gender equality shall be an integral part of the curriculum at all educational levels.

The relevant authorities, educational institutions and other juristic persons shall provide effective mechanisms for protection against discrimination and sexual harassment and shall take no disciplinary or other punitive measures against a person by reason that that person has brought proceedings for discrimination, harassment or sexual harassment or has given evidence in relation to discrimination, harassment or sexual harassment.

V EMPLOYMENT, WORK AND ACCESS TO ALL TYPES OF RESOURCES

Article 7

Everyone shall be equal on the basis of gender in the employment process.

All forms of discrimination on the grounds of gender in the employment process, the advertisement of vacancies, selection procedures, employment and dismissal are contrary to the provisions of the Law other than in the cases stipulated by Article 3 paras. 5 and 6 of this Law.

Article 8

Prohibited discrimination on the grounds of gender at work and in employment is defined as:

- failure to pay equal wages and other benefits for the same work or work of equal value;
- failure to ensure promotion at work on equal terms;
- failure to provide equal opportunities for education, training and professional qualifications;
- failure by an employer to provide work premises, ancillary facilities and equipment appropriate to the biological and physical needs of employees of both sexes;
- different treatment on the grounds of pregnancy, childbirth or exercising the right to maternity leave, including failure to enable an employee to return to the same job or another job of the same seniority with equal pay after the expiry of maternity leave, as well as different treatment for men and women in regard to deciding how to take up maternity leave following the birth of a child;
- any unfavourable treatment of a parent or guardian in balancing their commitments in family and professional life;
- organizing work, the allocation of tasks or other conditions of work or dismissal from work so that on the grounds of gender or marital status an employee is left in a less favourable position than other employees;
- any other act constituting any form of direct or indirect discrimination as defined in Article 3 paras. 3 and 4 of this Law.

An employer is required to undertake effective measures to prevent harassment, sexual harassment and gender discrimination at work and in employment as set out in para. 1 of this Law, and may undertake no measures against an employee by reason that that employee has brought proceedings for harassment, sexual harassment or discrimination on the grounds of gender.

Article 9

General and specific collective agreements should comply with the provisions of this Law and ensure equal opportunities regardless of gender.

Trade unions and associations of employers will have a particular role to play in ensuring equal protection of the right to work and equal conditions of recruitment and shall ensure that there is no discrimination on the grounds of gender among their members, both direct or indirect.

Article 10

Everyone regardless of gender has an equal right to work for gain, which includes equal treatment in access to all economic resources, privatization, access to credit and other forms of financial assistance, licences and registration of businesses, and the conditions in which they are obtained.

Equal treatment and equal opportunities and the elimination of discrimination shall also be assured for women in rural areas, so that they may secure subsistence for themselves and their families.

VI SOCIAL WELFARE

Article 11

Everyone has equal rights to social welfare regardless of gender.

Discrimination on the grounds of gender in the exercise of all forms of social rights stipulated by current legislation is prohibited, in particular:

- when applying to exercise any social welfare right;
- in the process of ascertaining social rights and the manner in which they may be exercised and in identifying beneficiaries;
- when the exercise of ascertained rights ceases.

Article 12

The relevant authorities shall ensure that laws and other regulations and the mechanisms relating to access to and enjoyment of social welfare are non-discriminatory on the grounds of gender, both directly or indirectly.

VII HEALTH CARE

Article 13

Everyone has an equal right to health care and access to health care services, including those relating to family planning, regardless of gender.

Health care institutions shall undertake all necessary steps to prevent discrimination on the grounds of gender in the enjoyment of all forms of health care.

The relevant authorities shall undertake all necessary steps to protect and advance the reproductive health of women.

VIII SPORT AND CULTURE

Article 14

Everyone has equal rights and opportunities to participate in and have access to sport and cultural life regardless of gender.

The relevant authorities, institutions and juristic persons are required to undertake all possible measures to prevent discrimination on the grounds of gender and to ensure equal opportunities for:

- access to branches of sport or culture;
- the development and provision of support for individual branches of sport or culture;
- the granting of community awards for outstanding achievement in sport and culture within the same branch of sport or culture.

IX PUBLIC LIFE

Article 15

The state and local authority bodies, corporate management bodies, political parties and other non-profit organizations shall ensure and promote equal gender representation in management and the decision-making process.

To achieve the ends set forth in para. 1 of this Article, the relevant authorities shall draw up special programmes and plans to improve gender representation in the bodies of governance at all levels. These programmes and plans shall include measures designed to improve the representation of sexes.

In order to ensure equal gender representation, the percentage of participation of the sexes in government bodies at all levels, including the judiciary, legislature and executive, as well as all other public services, committees, boards, and bodies representing the state at the international levels, shall as a rule reflect equal gender representation.

X THE MEDIA

Article 16

Everyone shall have the right of access to the media regardless of gender.

The public expression concerning presentation of any person in an offensive, denigratory or demeaning manner in regard to gender is prohibited.

The media are required in their programming to raise awareness on gender equality.

XI PROHIBITION OF VIOLENCE

Article 17

All forms of violence in private and public life on the grounds of gender are prohibited.

The relevant authorities shall undertake appropriate steps to eliminate and prevent violence on the grounds of gender in public and private life, and apply instruments for the provision of protection, assistance and compensation to the victims of violence.

The relevant authorities shall also undertake steps to prevent gender-based violence, particularly in the field of education, to eliminate prejudices, customs and all other practices based on the idea of the inferiority or superiority of either sex or on the stereotypical roles of men and women. This includes, but is not restricted to, education and awareness-raising among state officials, the general public, etc.

XII STATISTICAL RECORDS

Article 18

All statistical data and records collected, recorded and processed in state bodies at all levels, public services and institutions, state and private corporations and other entities must be gender disaggregated.

Statistical data and information collected, recorded and processed pursuant to para. 1 of this Article must be an integral part of statistical records and accessible to the public.

XIII COURT PROTECTION

Article 19

Everyone whose rights as set out in this Law are violated may initiate appropriate proceedings in the competent court.

A claim may be pursued by judicial process in the competent court before the termination of proceedings for redress from or without initiating such proceedings with an employer.

XIV COMPENSATION

Article 20 Discrimination, in terms of this Law, gender-based violence, harassment and sexual harassment on the grounds of gender constitute grounds for compensation. In such case, the provisions of the Obligations Law and the provisions of the relevant Civil Proceedings Laws and the Law on Enforcement Proceedings shall be applied.

All rulings issued by competent judicial authorities in relation to breaches of any of the provisions of this Law shall be filed with the Gender Equality Agency of Bosnia and Herzegovina, the Gender Centre of the Federation of Bosnia and Herzegovina (hereinafter: FBiH Gender Centre) and the Gender Centre of Republika Srpska (hereinafter: RS Gender Centre).

XV OBLIGATIONS OF THE AUTHORITIES Article 21

The relevant authorities at all levels shall undertake all appropriate and necessary steps to enforce the provisions set forth in this Law by area, including but not restricted to:

- the adoption of planned measures designed to achieve gender equality in all fields and at all levels of governance;
- the enactment of new or the amendment of existing legislation to bring it into conformity with the provisions of this Law;
- ensuring the protection by the civil and criminal courts in all cases of breaches of the provisions of this Law;
- ensuring that statistical data is gender disaggregated in all commercial entities, private and state corporations, state and public organizations and institutions, and that such data is accessible to the general public.

XVI MONITORING AND SUPERVISION OF IMPLEMENTATION OF THIS LAW

Article 22

The Ministry for Human Rights and Refugees (hereinafter: the Ministry) shall keep under review implementation of this Law.

In order to monitor implementation of this Law, the Gender Equality Agency of Bosnia and Herzegovina (hereinafter: the Agency) shall be formed under the auspices of the Ministry for Human Rights and Refugees.

The Agency shall be organized and shall operate pursuant to a separate ruling to be moved by the Ministry specified in para. 1 of this Article and issued by the Council of Ministers of Bosnia and Herzegovina.

Article 23

The Agency shall in particular perform the following functions:

1. periodically draft a State Plan of Action to promote gender equality, based on proposals from all State-level ministries, the plan of the FBiH Gender Centre and the RS Gender Centre, the said Plan of Action to be presented annually to the Council of Ministers of Bosnia and Herzegovina for adoption;
2. monitor the implementation and coordinate activities with all relevant entities in the process of implementation of the State Plan of Action referred to in point 1 of this Article;
3. draft an annual report to the Council of Ministers of Bosnia and Herzegovina on the status of the sexes in BiH based on the reports of the FBiH Gender Centre and the RS Gender Centre;
4. assess the Laws, acts and by-laws adopted by the Council of Ministers of Bosnia and Herzegovina so as to keep under review their impact on the equal treatment and equal

- gender representation;
5. design a methodology for assessing the impact of state policy and programmes relating to gender equality;
 6. perform other tasks related to the promotion of gender equality and the implementation of the purposes of this Law.

Article 24

The FBiH Gender Centre and the RS Gender Centre shall also keep under review implementation of the Law and shall report thereon at least once a year to the Ministry.

When drafting the said reports, they are required to cooperate and consult with the non-governmental sector, in particular with organizations dealing with human rights.

The FBiH Gender Centre and the RS Gender Centre shall endeavour to ensure that balanced sexual equality policies are pursued at all levels of governance and shall in that regard cooperate with non-governmental organizations and trade unions.

The FBiH Gender Centre and the RS Gender Centre may at any time present a special report to the Ministry.

All reports issued by the FBiH Gender Centre and the RS Gender Centre shall be made public.

Article 25

The FBiH Gender Centre and the RS Gender Centre shall have the right to investigate breaches of this Law at the request of ministries, citizens, or non-governmental organizations, or on their own initiative.

The FBiH Gender Centre and the RS Gender Centre shall participate in moving and drafting laws, other regulations and general acts and in determining measures designed to achieve gender equality and equality.

The FBiH Gender Centre and the RS Gender Centre shall draw up reports and recommendations on the basis of their findings, and shall submit them to the relevant authorities and interested parties.

In case that the FBiH Gender Centre or the RS Gender Centre establish that gender equality has been contravened as a result of laws or by-laws failing to comply with this Law, they shall move that the procedure to amend the said legislation shall be initiated.

The detailed procedure for so doing shall be set forth in the rules of procedure of the FBiH Gender Centre and the RS Gender Centre.

Article 26

The relevant authorities and other state institutions, employers, and other juristic and natural persons are required to provide all necessary information and facilitate the inspection of documentation at the request of the Agency, the FBiH Gender Centre and the RS Gender Centre forthwith, or within fifteen days at the latest.

XXVII PENALTIES

Article 27

Anyone who perpetrates violence, harassment or sexual harassment on the grounds of gender as described by the provisions of Article 4 of this Law shall be convicted of a criminal offence and sentenced to serve a term of from six months to five years in custody.

The prosecution shall be undertaken in the line of duty.

Article 28

A fine of from 1,000 KM to 30,000 KM shall be imposed on a juristic person for the following misdemeanours:

1. failure to undertake appropriate steps and use effective protective mechanisms against discrimination on the grounds of gender, harassment and sexual harassment;
2. failure to undertake appropriate steps to eliminate and prevent prohibited discrimination on the grounds of gender at work and in employment as defined by Articles 7 and 8 of this Law;
3. failure to introduce curricula and methodologies in educational institutions that will guarantee elimination of stereotypical contents that give rise to gender discrimination and gender inequality;
4. failure to provide gender disaggregated statistical data and information collected, recorded and processed.
5. failure to make available statistical data provided in accordance with this Law to the public.
6. public presentation of any person in an offensive, denigratory or demeaning manner with regard to gender.

A responsible person within a legal entity shall also be imposed a fine of from KM 100 to KM 1000 for a breach from the paragraph 1 of this Article, as well as individuals who work independently with resources belonging to citizens.

No provision in this Article can be interpreted as limitation or reduction of the right to initiate criminal or civic proceedings, under conditions regulated by this Law.

Criminal proceedings as per provisions of this Law shall be carried out by competent bodies responsible for the proceedings in the Entities and the District Brčko of Bosnia

and Herzegovina, until the appropriate Law of offences in Bosnia and Herzegovina is brought.

The Budget of Bosnia and Herzegovina institutions shall benefit from the fines.

Rulings on misdemeanours shall be enforced pursuant to the current laws of the Entities or Brčko District Bosnia and Herzegovina as the case may be.

Article 29

The prosecution and passing of a verdict in cases of criminal offences and misdemeanours as defined by this Law are of an urgent nature and shall take priority in the operations of the relevant authorities.

XVIII TRANSITIONAL AND CONCLUDING PROVISIONS

Article 30

The Ministry for Human Rights and Refugees shall move that the Gender Equality Agency of Bosnia and Herzegovina be formed within three months from the entry into force of this Law.

All State and Entity laws and other relevant regulations shall be brought into conformity with the provisions of this Law within six months at the latest.

Article 31

This Law enters into force on the eighth day from the date of its publication in the Official Gazette of BiH.

PA BiH no. 56/03
21 May 2003
Sarajevo

Speaker of the
House of Representatives of the
Parliamentary Assembly of BiH
Šefik Džaferović (signed)

Speaker of the
House of Peoples of the
Parliamentary Assembly of BiH
Velimir Jukić (signed)