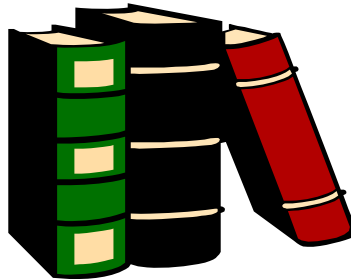




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LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA

“Official Gazette of Bosnia and Herzegovina”, 16/03

NOTE: The Law on Changes and Amendments to the Law on Gender Equality in Bosnia and Herzegovina, published in the “Official Gazette of Bosnia and Herzegovina”, 102/09 (12/29/09), is not included in this translation.

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

LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA

I GENERAL PROVISIONS

Article 1

This Law regulates, promotes and protects gender equality and guarantees equal opportunities to all citizens, in public as well as private life, and prevents direct and indirect gender based discrimination.

Article 2

Sexes shall be equal.

Full gender equality shall be guaranteed in all spheres of society, and particularly in the fields of: education, economy, employment and labor, social and health care, sports, culture, public life and media, irrespective of marital and family status.

Discrimination based on sex and sexual orientation is hereby prohibited.

II DISCRIMINATION

Article 3

For the purpose of this Law, gender discrimination is any legal or factual, direct or indirect distinction, exclusion, restriction or preference based on gender, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and freedoms of individuals in political, educational, economic, social, cultural, sports, civic or any other sphere of public life.

Discrimination may be direct or indirect.

Direct discrimination is any situation wherein an individual has been or is or may be treated less favorably than another individual in a similar situation, on the basis of sex.

Indirect discrimination is any situation wherein an apparently neutral legal norm, criterion or practice, equal for all, puts persons of one sex at a particular disadvantage compared with persons of the other sex.

Any norm, criterion or practice reasonably justifiable by a legitimate aim, proportionate to the necessary and justified measures taken, shall not be considered gender discrimination.

In accordance to paragraph 5 of this Article, special measures are allowed in order to promote equality and gender equality and to eliminate the existing inequality, i.e. to promote gender protection based on biological determination.

III DEFINITIONS

Article 4

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

- a) **gender** : socially constructed roles of man and women in public and private life. In the spirit of this Law, the term gender represents the significance the society affords to the biological determination of gender, as opposed to the term sex, which refers solely to biological differences;
- b) **gender based violence**: any act causing physical, mental, sexual or economic damage or suffering, as well as threats of such actions, which interfere with the enjoyment of rights and freedoms based on gender equality, in public and private life, including trafficking in human beings for the purpose of forced labor, and any restriction or arbitrary deprivation of liberty, for persons exposed to such acts;
- c) **harassment**: any situation where an unwanted conduct related to sex occurs, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating, offensive or similar situation;
- d) **sexual harassment**: any situation where by any form of verbal, non-verbal, physical or psychological unwanted conduct based on sex occurs, with the purpose or effect of violating the dignity of a person, or creating an intimidating, hostile, degrading, humiliating, offensive or any similar situation, motivated by the fact that the individual is of the opposite sex or of different sexual orientation, and is for the given person an unwanted physical, verbal, insinuating or other type of behavior;
- e) **employer, employee, worker (gender unspecified)**: as defined by Labor and Employment Laws of the Entities.

IV EDUCATION

Article 5

Everyone shall have equal rights to education, irrespective of sex.

Educational institutions shall not discriminate on the basis of sex in relation to:

- conditions for enrollment;
- refusal of enrollment;
- rendering services and benefits;
- exclusion from education system;
- evaluation of results achieved during education;
- equal conditions of career development and professional guidance, further education and diplomas;
- in all other cases.

Article 6

Competent authorities, educational institutions and other legal persons shall ensure that syllabi, curricula and methodologies provide for the establishment of an education system, which includes guarantees for the elimination of, stereotyped curricula of a man and a woman, which produce discrimination and gender inequality as a consequence.

Materials promoting gender equality shall be an integral part of curricula for all levels of education.

Competent authorities, educational institutions and other legal persons shall provide effective mechanisms of protection against sexual harassment and discrimination, and shall undertake no disciplinary or other penal measures against any person who complains of discrimination, harassment or sexual harassment or provides testimony about discrimination, harassment or sexual harassment.

V EMPLOYMENT, LABOR AND ACCESS TO ALL FORMS OF RESOURCES

Article 7

Everyone shall have equal employment opportunities.

Any gender based discrimination in employment offers, public vacancy notices, job allocations, contracts and termination of contracts, shall be considered as violation of this Law, except in cases as provided in Article 3, Paragraphs 5 and 6 of this Law.

Article 8

Prohibited gender discrimination in labor and employment includes:

- failure to provide equal salary and other benefits for the same work or work of the same value;
- prevention of advance in work under equal conditions;
- prevention of equal opportunities in education, training and further professional education;
- uneven suitability of work premises and auxiliary premises and equipment of the employer to biological-physiological needs of employees of both genders as well as disabled employees;
- different treatment due to pregnancy, childbirth or maternity leave, including failure to provide the same or equally paid employment of the same level, upon return from maternity leave, as well as different treatment of men and women in relation to leave following childbirth;
- any unfavorable treatment of parents or guardians in the reconciliation of professional and family obligations;
- organization of work, distribution of tasks or any other form of setting the conditions of work in such a way as to place an employee into an unfavorable position in comparison with other employees on the basis of gender or marital status;
- any other action or activity amounting to any form of direct or indirect discrimination as set by Article 3, Paragraphs 3 and 4 of this Law.

The employer shall undertake effective measures to prevent harassment; sexual harassment or gender based discrimination at work or in contracts, as set by Paragraph 1 of this Article, and shall undertake no measures against an employee who complains against harassment, sexual harassment or gender discrimination.

Article 9

General and special collective contracts shall be harmonized with provisions of this Law and shall provide equal opportunities irrespective of sex.

Trade unions and employers' associations shall play a special role in ensuring equal protection of the right to work and employment conditions and shall ensure that there is no gender-based discrimination among its members, either direct or indirect.

Article 10

Everyone shall have equal rights of access to economic affairs, irrespective of sex, which includes equal treatment in access to any economic resources, privatization, access and utilization of loans and other forms of financial assistance and conditions for obtaining them, business permits and registration as well as conditions for obtaining them.

Equal treatment and equal opportunities, and elimination of discrimination shall be ensured in the same way for women in rural areas, in order to ensure their economic subsistence as well as subsistence of their families.

VI SOCIAL WELFARE

Article 11

Everyone shall enjoy equal rights to social welfare, irrespective of sex.

Gender based discrimination in the enjoyment of all forms of social welfare rights as established in this Law is prohibited, and particularly in cases of:

- filing any request for enjoyment of any right in the field of social welfare;
- any procedure of determination and utilization of social rights and benefits as set;
- termination of enjoyment of rights as set.

Article 12

Competent authorities shall ensure that laws and other acts and mechanisms related to access and utilization of social welfare are not discriminating on the grounds of sex, either directly or indirectly.

VII HEALTH CARE

Article 13

Everyone shall have the same right to health care, accessibility of health services, including family planning, irrespective of sex.

Health institutions shall undertake all necessary measures to prevent gender discrimination in all forms of health care.

Competent authorities shall undertake special measures aimed at protecting and promoting reproductive health of women.

VIII SPORTS AND CULTURE

Article 14

Everyone shall have equal rights and possibilities in participating in sports and cultural life, irrespective of sex.

Competent authorities, institutions and organizations shall undertake measures to prevent gender discrimination, aimed at ensuring equal possibilities to:

- any sport or branch of culture;
- development, and support any sport or branch of culture;
- public awards for outstanding achievement in the given sport or branch of culture.

IX PUBLIC LIFE

Article 15

Bodies of the state and local self-governance, managerial bodies of companies, political parties and other non-profit organizations shall ensure and promote balanced representation of both sexes on the process of management and decision-making.

In order to achieve goals set in Paragraph 1 of this Article, competent authorities shall develop plans and programs to be used to remove the gender misbalance in government bodies of all levels. These plans and programs shall contain measures aimed at improving gender representation.

In order to ensure equal representation of genders, gender's percentage in governmental bodies at all levels, including judiciary, legislative and executive authority, as well as other public services, commissions and committees, and including participation in bodies representing the state internationally, in principle shall preserve equal representation of genders.

X THE MEDIA

Article 16

Everyone shall have equal right of access to the media, irrespective of sex.

No person irrespective of sex shall be publicly presented in an offensive, humiliating or degrading way.

Through their programming, the media shall develop gender equality awareness.

XI PREVENTION OF VIOLENCE

Article 17

All forms of gender-based violence in private and public life are prohibited.

Competent authorities shall undertake all appropriate measures in order to eliminate and prevent gender based violence in public and private life, and shall provide instruments of protection, assistance and compensation to the victims.

Competent authorities shall also develop measures of protection of gender-based violence, especially in education, in order to eliminate bias, traditions and all other practices based on the idea of inferiority or superiority of either sex, as well as stereotype roles of men and women. This includes but is not limited to education and raising awareness among civil servants, the public, etc.

XII STATISTICAL RECORDS

Article 18

All statistical data and information collected, recorded and processed by state bodies at all levels, in public offices and institutions, state and private companies and other subjects, shall be gender-disaggregated.

Statistical data and information collected recorded and processed pursuant to Paragraph 1 of this Article, shall be part of statistical records and shall be available to the public.

XIII JUDICIAL PROTECTION

Article 19

Everyone whose right set by this Law has been violated shall have the right to initiate appropriate proceedings before the competent court of general jurisdiction.

Charges may be brought before the competent court prior to or without initiating proceedings for protection with the employer.

XIV COMPENSATION OF DAMAGES

Article 20

Gender based discrimination, harassment and sexual harassment, as defined by this Law, may serve as basis for compensation of damages. In such an event, provisions of the Law on Obligations and provisions of relevant Laws on Civil Proceedings and Laws on Enforcement shall be duly applied.

All decisions issued by competent judicial bodies in relation to a violation of any provision of this Law shall be submitted to the Gender Equality Agency of Bosnia and Herzegovina, Gender Equality Center of the Federation of Bosnia and Herzegovina (hereinafter Gender Center of FBH) and the Gender Equality Center of Republika Srpska (hereinafter Gender Center RS).

XV RESPONSIBILITIES OF THE AUTHORITIES

Article 21

Competent authorities shall undertake appropriate measures on all levels in order to implement provisions of this Law in areas of, but not limited to:

- adopting sets of measures aimed at achieving gender equality in all areas and on all levels of government;
- adopting new or amending existing laws in order to harmonize them with provisions of this Law;
- ensuring judicial protection, both civil and criminal, in all cases of violations of provisions of this Law;
- ensure maintenance of gender-disaggregated statistics in all companies and enterprises, state owned and public, all state and public bodies and institutions, as well as access to such information.

XVI MONITORING AND SUPERVISION OF IMPLEMENTATION OF THE LAW

Article 22

The Ministry of Human Rights and Refugees of Bosnia and Herzegovina (hereinafter the Ministry) shall supervise implementation of this Law.

For monitoring of implementation of this Law, within Ministry for Human Rights and Refugees, shall be established the Gender Equality Agency of Bosnia and Herzegovina (hereinafter: the Agency).

The Gender Equality Agency shall be established and shall work pursuant to a special decision passed by the Council of Ministers of Bosnia and Herzegovina, at the proposal of the Ministry referred to in Paragraph 1 of this Article.

Article 23

Gender Equality Agency of Bosnia and Herzegovina shall specially do the following:

1. Shall prepare a periodical National Action Plan for the promotion of gender equality, based on proposals of all State level ministries, plans by Gender Center of FBH and Gender Center RS, to be presented each year by the Ministry to the Council of Ministers for adoption.
2. Shall monitor implementation and shall coordinate activities with all the subjects relevant to the process of implementation of the National Plan referred to in point 1. of this Article.

3. Shall prepare annual reports for the Council of Ministers of Bosnia and Herzegovina, on the status of genders in BH, on the basis of reports by the Gender Center of FBH and the Gender Center RS.
4. Shall evaluate laws, acts and sub-laws adopted by the Council of Ministers of Bosnia and Herzegovina, in order to monitor their effect on gender equality and equal representation.
5. Shall prepare methodology for evaluation of effects of state policies and programs related to gender equality.
6. Shall perform other tasks related to the promotion of gender equality and the implementation of the purpose of this Law.

Article 24

Gender Center of FB&H and Gender Center RS shall also monitor and supervise implementation of the Law and shall report on it to the Ministry no less than once a year.

In the preparation of the report referred to in Paragraph 2 of this Article, they shall cooperate with and consult the non-governmental sector, particularly organizations dealing with protection of human rights.

Gender Center of FBH and Gender Center of RS shall ensure that all levels of government have a balanced gender equality policy, and shall cooperate with non-governmental organizations and trade unions in this area.

Gender Center of FBH and Gender Center of RS may, at any time, present special reports to the Ministry.

All reports of the Gender Center of FBH and the Gender Center of RS shall be public.

Article 25

Gender Center of FBH and Gender Center of RS shall have the right to examine any alleged violation of this Law at the request of the Ministry, citizens, non-governmental organizations, or at their own initiative.

Gender Center of FBH and Gender Center of RS shall cooperate in undertaking initiatives, drafting laws, other regulations and general acts, and in enacting measures aimed at ensuring gender equality.

Gender Center of FBH and Gender Center of RS shall prepare reports on their findings and their recommendations and submit them to competent bodies and individuals concerned.

In the case if the Gender Center of FBH and the Gender Center of RS find a violation of gender equality due to disagreement between any law and sub-law with this Law, they will initiate proceedings for changes and amendments such regulation.

A detailed procedure referred to in the preceding Paragraph shall be elaborated in Rules of Procedure of the Gender Center of FB&H and Gender Center of RS.

Article 26

Competent authorities and other state institutions, employers and other physical or legal persons, are obliged to provide with all the necessary information and allow access to any documents at the request of the Gender Center of FBH and Gender Center of RS no later than 15 days upon request.

XVII PENAL PROVISIONS

Article 27

Any person who commits gender based violence; harassment or sexual harassment as described in Article 4 of this Law shall be punished for a criminal offence and sentenced to 6 months to 5 years of imprisonment.

Prosecution shall be *ex officio*.

Article 28

A legal person shall be sentenced with a fine of 1,000 KM to 30,000 KM in cases of:

1. failure to undertake appropriate and effective measures against gender discrimination, harassment and sexual harassment;
2. failure to undertake appropriate measures to eliminate and prevent unlawful gender discrimination in labor and employment, as defined by Articles 7 and 8 of this Law;
3. failure to provide plans, programs and methodology in educational institutions which guarantee the elimination of stereotyped curricula which produce discrimination and gender inequality as a consequence;
4. failure to maintain gender-disaggregated statistical data and information collected, recorded and processed;
5. failure to provide public access to statistical data held, pursuant to this Law;

6. public presentation of any person in an offensive, humiliating or degrading way, irrespective of sex.

An offence set forth in Paragraph 1 of this Article shall entail a fine of 100 KM to 1,000 KM against a responsible person within the legal person as well as against any individual in charge of an independent private business.

No provision of this Law can be interpreted as a limitation or restriction of the right to initiate criminal or civil proceedings, under the conditions set by this Law.

Pursuant to provisions of this Law and until adoption of appropriate law on minor offences of Bosnia and Herzegovina, the competent authorities in Entities and in the Brcko District of Bosnia and Herzegovina shall enforce the minor offences proceedings.

Fines shall be collected in favor of the budget of institutions of Bosnia and Herzegovina.

Decisions are enforced pursuant to current laws of the Entities and of the Brcko District of Bosnia and Herzegovina, as the case may be.

Article 29

Proceedings and rulings on criminal and other offences defined by this Law shall be of urgent nature and shall take priority in the work of competent bodies.

XVII INTERIM AND FINAL PROVISIONS

Article 30

The Ministry for Human Rights and Refugees shall propose the establishment of the Gender Equality Agency no later than three months following the date when this Law comes into force.

All State and Entities laws, as well as other relevant regulations, shall be harmonized with provisions of this Law within the time of no longer than 6 (six) months.

Article 31

This Law shall come into force on the eighth days of its publication in the "Official Gazette of Bosnia and Herzegovina".