



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 Thirty-first session

Summary record (partial)* of the 433rd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 September 2019, at 3 p.m.

Chair: Mr. Tall

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.20 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention *(continued)*

Third periodic report of Bosnia and Herzegovina (CMW/C/BIH/3; CMW/C/BIH/Q/3 and CMW/C/BIH/Q/3/Add.1)

1. *At the invitation of the Chair, the delegation of Bosnia and Herzegovina took places at the Committee table.*

2. **Ms. Đuderija** (Bosnia and Herzegovina), introducing her country's third periodic report (CMW/C/BIH/3), said that intensive efforts had been made to fully implement the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Bosnia and Herzegovina was a decentralized State and its entities – the Federation of Bosnia and Herzegovina and Republika Srpska – and the administrative unit of Brcko District were responsible for the implementation of obligations arising from the Convention. The report had been prepared by the Ministry for Human Rights and Refugees of Bosnia and Herzegovina in cooperation with numerous institutions at all levels of government, prior to its approval by the Council of Ministers.

3. The country had made significant achievements in institutional capacity-building and the improvement of legislative frameworks in the field of migration. The Laws on Aliens, on Asylum and on Legal Aid, amendments to the Law on the Prohibition of Discrimination and the 2016–2020 Migration and Asylum Strategy and Action Plan laid out the conditions applicable to persons arriving in the country and applying for refugee status. A body to coordinate migration and asylum issues among competent institutions had been established, and non-governmental organizations, such as Vaša prava BiH, and civil society organizations, such as the Bosnia and Herzegovina Women's Initiative, cooperated with the competent institutions to address migration-related issues.

4. One of the challenges faced by Bosnia and Herzegovina in implementing the recommendations made by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families was in accessing funding to raise the standard of protection for migrants, including through the provision of specialist training for staff and by increasing the accommodation capacity of immigration centres and safe houses for vulnerable migrants. The institutions concerned were endeavouring to provide more resources, and some funding for the Strategy and Action Plan on Migration and Asylum had been accessed through cooperation with international organizations, notably the European Union, and non-governmental organizations. However, if the latest uptick in migration inflows continued, the Government's capacities would be further challenged. Data collection, especially with regard to the sharing and analysis of migration data, represented another challenge for the State party.

5. Bosnia and Herzegovina was seeking to establish an effective return mechanism for irregular migrants in line with European Union standards. While cooperation with European countries and Turkey on that matter had been generally smooth, cooperation with countries outside the region had been challenging and was being strengthened. There had been significant increases in the numbers of people arriving in Bosnia and Herzegovina from countries with high migration rates; there had also been a rise in the numbers of third country nationals who had been returned to the State party under agreements on readmission, and of foreign nationals who had either been deported or had left voluntarily, similarly under readmission agreements. In accordance with its status in respect of the European Union, Bosnia and Herzegovina had maintained its visa-free regime. It had borders with the Schengen area and external borders, and its 2015–2018 Integrated Border Management Strategy and Action Plan had come into effect in 2016.

6. In 2018, more than 24,000 migrants had entered the country. All laws concerning health care, pensions and social security were applied equally to migrant workers. Approximately 2,600 work permits per year had been issued recently, representing an increase of more than 8 per cent over previous years. The biggest challenge was how to manage the issue of migrants in transit. In participating in the present meeting, the Government was seeking recommendations on how to address difficulties and overcome

potential obstacles to inclusion of the European integration processes in the country's legislative and legal system by improving its protection of migrant workers and their families.

7. **Mr. Taghi-Zada** (Country Rapporteur), thanking the delegation for the updated information, said that he would welcome more precise data, disaggregated by gender and age, on flows of migrant workers who were in transit through, or whose destination was, Bosnia and Herzegovina. It would also be interesting to know the dynamics of the outward flows of the country's own nationals and their main destination countries. He would like to hear, with data if possible, about the resources made available to nationals of Bosnia and Herzegovina living abroad and whether there were enough consular services to ensure their rights, for example, to participate in elections.

8. He wondered whether migrant workers in the country had the same rights to social protection as the country's own nationals and whether those rights differed in different parts of the country. It would also be useful to know whether the children of migrant workers born in Bosnia and Herzegovina were given the necessary documentation at birth and whether they could receive an education in the country. He further requested information on the situation of health-care services for migrant workers and their families.

9. **Mr. Ünver** (Country Rapporteur) said that, while the Committee recognized the country's achievements in respect of the protection of migrant workers and their families, it was concerned that the Government did not collect statistics on migration that could be used, for example, in drafting laws to protect migrant workers, or in migration management. Such data would be helpful, for instance, in the context of mixed migration flows, in distinguishing between regular and irregular migration or forced irregular migration. It would be useful to hear about the steps the Government was taking to protect the large numbers of migrant workers from Bosnia and Herzegovina who lived abroad, particularly those in vulnerable situations in their host countries, and whether the consular officials serving them received specific training. He wished to know whether civil society was able to make migrants' voices heard and the extent to which it was involved in drafting legislation with respect to migrant workers. He would also appreciate further information on what was done to prevent the arbitrary detention of migrants, and whether, when migrants were detained, a distinction was drawn between those involved in serious criminality and those who had committed only migration-related offences.

10. **Mr. Botero Navarro** said that he would like to hear how the Government was coordinating the implementation of migration regulations between the country's entities, particularly the Republika Srpska. He would also like an explanation of how the Government worked with neighbouring States when dealing with migrants transiting through their countries, notably with respect to their repatriation, how it screened them and whether it provided them with any protection or met their specific needs. He would like to know whether the authorities ensured that all migrant workers were protected from arbitrary detention on account of their migrant status and if the Government strived to avoid migrants being detained for being in an irregular situation. He would be keen to hear more about the Government's treatment of migrant children, including whether the law prohibited such children in an irregular situation being detained, and whether that protection was also extended to their families.

11. **Ms. Landázuri de Mora**, congratulating the delegation on its gender-balanced composition, said that she would firstly like to know whether enough resources were being allocated to the Institution of the Ombudsman to enable it to fulfil its mandate in line with the Paris Principles. Noting that immigration into Bosnia and Herzegovina was on the rise and mostly comprised migrant workers, she would like to know what steps the Government was taking to enable those persons to regularize their immigration status in a simple and accessible manner; how it guaranteed them dignified working conditions, a fair wage and access to emergency health care in line with the Convention; and how it ensured they were made aware of their rights and duties in their native languages.

12. **Mr. Kariyawasam** said that he would like to hear how the central Government coordinated with its decentralized levels in order to implement its obligations under the Convention in a uniform fashion. Given that Bosnia and Herzegovina was a country of transit, destination and origin, he wondered what specific measures the Government was taking to

combat human trafficking and whether it coordinated on that issue with neighbouring States. It would be useful to receive statistics on any legal action taken against traffickers and to find out about the support offered to victims of trafficking and the legal provisions in place to ensure that they were not treated as criminals.

13. **Mr. Charef** said that, in the light of reports of harsh living conditions and police violence in the migrant camps that had been set up in the country, he would like to hear what the Government was doing for the migrants living there, particularly the most vulnerable persons, including children and persons with disabilities. He would like to know how many camps the Government had recorded and how it was working with other States and the European Union to deal with such a difficult issue.

14. **The Chair** said that he would like to know whether civil society had been involved in the preparation of the State party's report. He would also be interested to find out whether citizens of the country working abroad were eligible to vote in national elections and how they were helped to do so. It would be helpful to receive details of cases in which national courts had directly applied the provisions of the Convention and, in general, how the Government facilitated access to justice for migrants, including those in an irregular situation. He would also welcome information on collective and individual expulsion procedures, including whether decisions on expulsion were judicial or administrative, if they could be appealed and, if so, whether the appeal had suspensive effect.

The meeting was suspended at 4.15 p.m. and resumed at 4.45 p.m.

15. **Ms. Đuderija** (Bosnia and Herzegovina) said that the Constitution of Bosnia and Herzegovina included an annex on human rights in which a wide range of international human rights standards, including those contained in the Convention, were recognized. Its provisions obliged all levels of government, when formulating legislation on the rights of migrant workers, to identify the obligations of the relevant bodies. As the law gave universal protection from discrimination based on grounds that included race and age, it had not been necessary to invoke the Convention in court cases. However, the case law of the European Court of Human Rights had been used to determine the rights of migrant workers in the country.

16. The Government was trying to establish a mechanism to guarantee the rights of all vulnerable groups, including migrants, and protect them from discrimination. Until such times as the mechanism became operative, the Government was working with an organization that provided free legal aid for migrant workers and their families, particularly where children's rights were concerned. The recommendations of the Council of Europe Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse had been adopted to ensure that migrant children, including unaccompanied minors, were given the appropriate protection and that guardians could be appointed for them where necessary.

17. The Government regularly collected and monitored data on citizens who left the country, publishing them on its website, although it was unable to gather figures for all indicators because some citizens left without informing the authorities. According to the latest data, 2.2 million of the country's nationals, or 56 per cent of the total population, were living abroad; the country had the sixteenth-highest migration rate in the world. In the previous four years, the largest numbers had left for Serbia, Croatia, Austria and Germany, all countries where Bosnia and Herzegovina had well-established diplomatic missions from which its nationals could receive the proper documentation. The Government had concluded bilateral agreements with several States, in order to simplify day-to-day life for its nationals who had migrated to those countries. Economic migrants remitted some €1.3 billion to Bosnia and Herzegovina, and the trend was for that figure to increase.

18. The Ministry of Human Rights and Refugees and its Department for the Diaspora were implementing projects to enable nationals who had left the country to contribute to Bosnia and Herzegovina. The majority of former refugees had become integrated in their country of residence: according to figures from the Office of the United Nations High Commissioner for Refugees, there were 17,500 nationals of Bosnia and Herzegovina in 14 countries worldwide who still had refugee status. The Government had, for many years, been working closely with States of residence, where refugees were often second- or even third-

generation immigrants, with a view to preserving their traditions. During elections, media campaigns targeting such persons publicized the simple process for registering to vote in Bosnia and Herzegovina from abroad.

19. **Mr. Kedić** (Bosnia and Herzegovina) said that persons whom the Government considered to be economic migrants in transit through the country were provided with all the information that they needed about their rights and obligations in their own language. That was done once accommodation had been found for them, and so not always immediately. In some parts of the country, there was a shortage of interpreters for languages such as Urdu, Pashto, Bengali and Tamil.

20. Subsidiary protection status had been granted to some migrants in transit, and several agencies and organizations provided them with help and assistance; some had been given paid jobs in those agencies, which helped with their integration. However, many migrants in Bosnia and Herzegovina saw it as just a transit country and did not want services relating to employment, health care or schools. Of the 17,722 persons who had arrived in Bosnia and Herzegovina stating that they wished to claim asylum since the start of 2019, only a very insignificant number had actually done so.

21. Non-governmental organizations (NGOs) had been involved in drafting the Law on Aliens. Comments on the content of the Law had also been requested from a number of households and any suggestions had been taken into account.

22. **Ms. Tanković** (Bosnia and Herzegovina) said that all authorities were required to post any piece of legislation on the Government's e-consultations web portal for between 15 and 30 days, depending on the subject matter. Any citizen or interested party could use that system to comment on each individual article and such comments were taken into consideration.

23. **Mr. Kedić** (Bosnia and Herzegovina) said that legislation prohibited the detention, surveillance or custody of migrants under the age of 18, hence children were not detained. The NGO International Forum of Solidarity – Emmaus helped the Government to operate reception centres for children and shelters for unaccompanied children, where they were given assistance with returning to their country of origin.

24. Migrants were only incarcerated with criminals if they too had committed a crime. The Code of Criminal Procedure and the Law on the Execution of Criminal Sanctions, Detention and other Measures clearly distinguished between administrative and criminal proceedings, and anyone, migrant or citizen, who had been accused of a crime was treated in exactly the same way. An exclusively administrative procedure was followed in the case of migrants in an irregular situation. The country's only detention facility for migrants was of the closed type and housed 150 persons. Individuals were not generally kept there for longer than 90 days, although that period could be extended in some cases.

25. The Law on Aliens had been drafted with a view to ensuring its alignment with the European Union acquis and legislation, so the detention period could not exceed 18 months, but was generally no longer than 6 months, after which the person must be returned to the country of origin, released or sent to a safe third country. Collective detentions and deportations were prohibited in the law of Bosnia and Herzegovina. If migrants made use of the administrative remedies available to them during the deportation process, they were not obliged to leave the country until a final appellate decision had been reached by the Ministry of Security. Following such a decision, the migrant also had the right to file a complaint before the competent court and, potentially, take it as far as the Constitutional Court and then the European Court of Human Rights. While suspension of deportation was not automatic during the course of such legal remedies, the migrant could apply for it on the ground of the non-refoulement principle, among other things.

26. The Vucjak Camp was not an official reception camp for migrants, but an improvised, unofficial and temporary solution, put in place by Una-Sana canton and the city of Bihać to remedy conditions that had previously been far worse, which had included migrants sleeping on the street. Although the conditions were poor, there was no better alternative until the opening of the official facility. It housed only young men, not women or children, for whom better alternatives were found, such as Sedra, which had previously been a hotel.

27. **Ms. Đuderija** (Bosnia and Herzegovina) said that the labour legislation of all the country's constituent parts, under which the Convention was implemented, guaranteed all migrant workers the same rights as citizens, whether or not they had work or residence permits, or were under subsidiary or temporary protection. The legislation also required employers to conclude with any migrant worker whom they hired a contract of employment, which must detail the migrant worker's right to social welfare benefits and the employer's obligation to pay the worker's social contributions. Labour inspectorates at all levels of government conducted checks to ensure equality of treatment in employers' provision of such entitlements.

28. Migrants had the same rights in every administrative unit in Bosnia and Herzegovina. All migrant workers were required upon employment to register with the national social welfare system, which was common to the whole country. Migrants and their families enjoyed the same level of social protection as nationals, including child benefits, maternity leave and access to health care. Women workers enjoyed special protection in all three administrative units.

29. **Ms. Vujadin** (Bosnia and Herzegovina), referring to paragraphs 42 to 54 of the State party's replies to the list of issues in respect of its report ([CMW/C/BIH/Q/3/Add.1](#)), said that access to education was facilitated in accordance with the Convention in Republika Srpska, where all children of migrants had the right to enrol in schools in rural and urban areas. In the Federation of Bosnia and Herzegovina, access to education for migrant children was organized at the cantonal level.

30. **Ms. Đuderija** (Bosnia and Herzegovina) said that, when unaccompanied child migrants were identified, the State always acted in their best interests, reuniting them with family members in other countries if appropriate. In cooperation with the Service for Foreigners' Affairs, specialist teams carried out expert assessments, sometimes involving DNA tests, to determine whether migrant children were unaccompanied. There were very few cases involving unaccompanied child migrants in Bosnia and Herzegovina, and those children that were identified received special treatment and were accommodated in shelters.

31. **Mr. Kedić** (Bosnia and Herzegovina) said that migrants in an irregular situation could not be granted temporary residence. However, those who were granted refugee status could work in Bosnia and Herzegovina under the same conditions as nationals. Victims of trafficking were never treated in the same way as the perpetrators of trafficking; rather, they were offered special protection, as prescribed by the law. A manual containing guidelines on the protection of victims of trafficking had been issued. Victims were given time to decide whether to stay in Bosnia and Herzegovina. If they were of legal age, they were permitted to work. With regard to coordination between the various levels of government, the determination of migrant status came under the exclusive competence of the State. Questions of expulsion, surveillance, residence permits, refugee status, visas and the right to entry were resolved at the State level. However, the administrative units had competence over employment-related issues. Bodies at the local, entity and State level coordinated in the issuance of work permits. There were no issues arising from overlapping jurisdiction.

32. **Ms. Marković-Sekulić** (Bosnia and Herzegovina) said that Bosnia and Herzegovina had been facing an influx of migrants in an irregular situation since 2017. In anticipation of that influx, it had adopted a migration strategy and action plan in 2016. In 2018, the number of migrants entering the country had reached a critical level, and the State had found itself working at full capacity and employing its resources to the maximum possible extent to handle the resulting humanitarian situation and to ensure the safety of migrants. In that context, the Coordination Body for Migration Issues had been established to facilitate cooperation between all entities with competency in the field of migration. The Coordination Body was composed of high-level officials from the Border Police, the State Investigation and Protection Agency, the Ministry of Security, the Ministry of Human Rights and Refugees, and the Ministry of Foreign Affairs, under the direction of the Minister of Security. In the previous year, the Coordination Body had met 28 times to exchange information, to monitor the implementation of legislation and its alignment with international standards, to ensure compliance with the migration strategy and action plan, to promote interministerial cooperation and to propose improvements to the current migration policy. The migration strategy action plan had recently been updated, with the addition of eight midterm strategic

goals and 37 new measures comprising a total of 170 activities that were currently being implemented.

33. Bosnia and Herzegovina did not have sufficient funds to handle the current migration situation, so international organizations such as the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the United Nations Children's Fund had provided support and funding. The European Commission had agreed to make an expert available to the Coordination Body to facilitate the implementation of migration-related measures and to monitor the quality and timeliness of reporting to international bodies such as the Committee. The Coordination Body collected information on a daily basis regarding migrants entering Bosnia and Herzegovina.

34. **Ms. Đuderija** (Bosnia and Herzegovina) said that the State did not have all the information requested by the Committee, such as information relating to the gender and age of migrants. It would work to establish a system to ensure that data was disaggregated in the future. With regard to the documentation given to migrant children, all foreign nationals residing in the country, including the children of migrants, were assigned identity cards. Information relating to migrants in an irregular situation, such as their country of origin, was stored in an electronic database.

The meeting rose at 6.05 p.m.