



**International Convention on the
Protection of the Rights of
All Migrant Workers and
Members of Their Families**

Distr.: General
28 November 2012
English
Original: French

**Committee on the Protection of the Rights of All
Migrant Workers and Members of Their Families**
Seventeenth session

Summary record of the first part (public) of the 208th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 12 September 2012, at 10 a.m.

Chairperson: Mr. El Jamri

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The meeting was called to order at 10.05 a.m.

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

Second periodic report of Bosnia and Herzegovina (continued) (CMW/C/BIH/2; CMW/C/BIH/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation took places at the Committee table.*
2. **The Chairperson** invited the Bosnian delegation to continue replying to the questions asked at the previous meeting.
3. **Ms. Đuderija** (Bosnia and Herzegovina) said that the national Discrimination Act adopted in 2009 gave the possibility of lodging complaints against discrimination. It allowed citizens' associations to initiate court proceedings in the event of individual or collective human rights violations. It also allowed foreigners, including all migrant workers, to file appeals before the relevant Bosnian court. The burden of proof then lay with the institution against which the complaint was brought. Judgements had already been handed down either to prevent discrimination or to annul certain decisions. The Act included provisions on the labour law applicable to migrants. Some hundred or so cases had been processed by local courts in recent years, of which a dozen had led to a judgement. A number of mechanisms were in place to combat discrimination. The State party also ran a computing system to collect data on discrimination cases and it planned to join forces with NGOs that surveyed such cases.
4. No specific measure has been taken in favour of migrant workers in that respect but the Government with UNICEF support had instituted services for the protection of minorities, including the Roma community and Roma children. Guides had been published to facilitate the identification of marginalized children, especially those belonging to minorities. A mechanism had also been introduced to evaluate the financial resources needed to protect the human rights of those children and Roma children in particular. She highlighted the difficulties faced by Roma migrant children to obtain identity documents in the country and raised the issue of family reunification within the Roma community.
5. **Mr. Bakula** (Bosnia and Herzegovina) said that the centres for immigrants came under the authority of the foreign affairs department, which itself depended on the Ministry of Security. The latter ensured that the centres, which were operationally independent, complied with existing laws. The Human Rights Ombudsman received representatives of the centres, whose reports included critical comments intended to improve their operations. The International Organization for Migration (IOM) had also visited the centres on several occasions. The Ministry of Human Rights had set up a committee that was responsible for supervising the human rights situation in the centres for immigrants. In accordance with established standards, private rooms were temporarily made available in the centres for mothers with their children. Following the principle of the higher interest of the child, children were never separated from their mothers and enjoyed the same rights as the mothers in accordance with the Convention on the Rights of the Child.
6. The Act on the Movement and Stay of Aliens, which established the rules governing the exemption of permits for foreigners, had been revised and the new bill should be adopted by November. Under the new legislation, seasonal workers had to approach the relevant services to obtain a special work permit allowing them to work for a given period in a particular enterprise. That brief and simple procedure allowed the services to gather information on the seasonal workers, in accordance with the provisions of the Act.

7. Illegal border crossing was an offence, unless illegal entry into the country had been organized, in which case it could amount to a criminal offence, subject to court proceedings. Detention in immigrant centres could not exceed 18 months. That period could be extended on grounds of public safety, but the State party did its best to speed up proceedings so that internees were able to leave the centres as soon as possible. Persons held in there were under an expulsion order and an immediately enforceable detention order. In that respect, the provisions of the Convention had been extensively incorporated in Bosnian legislation. Under the terms of the Convention, the person concerned could appeal against the expulsion order, which could not be enforced until the proceedings had been concluded. In the event of a rejection of the appeal, the person could lodge a further appeal with the Constitutional Court, which had already dealt with several such cases and on two occasions had judged in favour of the appellant.

8. The agreement signed by the State party with the European Union concerned the exhaustion of all legal remedies in the European Union member States and in Bosnia and Herzegovina. In Bosnia and Herzegovina expelled persons had been able to exhaust all domestic remedies available under the law. On the other hand it was by no means sure that Bosnian nationals expelled by European Union member States had received the same treatment. The embassies of Bosnia and Herzegovina in European Union countries were expected to give assistance to immigrant Bosnian nationals. The State party had no information, however, regarding possible violations of those persons' rights in those countries. In the event of expulsion, if no re-entry agreement had been signed with the person's country of origin, proceedings could be extremely protracted. Such agreements were very useful from the point of view of more effective cooperation between the ministries and the liaison centres concerned. If cooperation worked well, proceedings could be limited to between 15 and 20 days. Failing any agreement, they could last up to eight months. Requests had been sent in that respect to the embassies of the countries of origin of the migrants concerned. Moreover, in 2012, Bosnia and Herzegovina had signed a re-entry agreement with Turkey, which could lead to a reduction in the number of irregular Turkish migrants in the country. Through a programme of assistance for voluntary return, supported by IOM, an effort was made to identify the persons concerned so that the relevant Bosnian services could help them find accommodation. A number of compulsory courses dealing with current international standards, including the Convention, which appeared on the Ministry's Internet site, had been and were being given to officials of the Ministry of Security.

9. **Ms. Đuderija** (Bosnia and Herzegovina) reiterated that all irregular migrants were either placed in a centre or sent back to their country of origin if a re-entry agreement had been signed between the two countries, and that the illegal entry of migrants was liable to sanctions. In that respect, she welcomed the fine cooperation between the Bosnian border police and their counterparts in neighbouring countries. The Council of Ministers had set up two committees, one in charge of overseeing conditions of detention, and the other of supervising migrant centres. The report of the Human Rights Ombudsman contained several recommendations concerning the management of such centres, all aspects of which, particularly medical and social, were assisted by the public services, with special attention for children's shelters. The cases of persons with children were given priority. Only migrants whose identities had not been ascertained could be placed in administrative detention.

10. **Ms. Hadžibegić** (Bosnia and Herzegovina) said that civil society had become more active after the first parliamentary elections had been held in 1991. Several conferences organized by IOM in conjunction with the Ministry of Human Rights in Sarajevo on the subject of migration into and out of Bosnia and Herzegovina had concluded that the emphasis needed to be placed on the vulnerability of migrants. Consideration had also been

given on those occasions to cooperation between the Government and the non-governmental sector, in particular in matters of migration.

11. According to the Bosnian Constitution, NGOs constituted the third pillar of society. Each year they were allocated substantial funds for projects concerning the protection of the population and the exercise of people's rights. Over the previous 20 years, the number of locally active NGOs had considerably increased and was currently close to 12,500. The public authorities and NGOs jointly drew up reports in compliance with the international instruments ratified by Bosnia and Herzegovina. NGOs undoubtedly played an important role since they could lobby the Government and influence the measures it took, especially those affecting the budget. In addition, Bosnians abroad played an active part in the life of the country through many discussion groups and associations. The authorities encouraged the participation of as many actors and representatives of civil society as possible so that all matters of interest could be jointly debated, even though not all trade unions had been registered on account of political difficulties.

12. **Mr. Zuko** (Bosnia and Herzegovina) said that for some years the Labour and Employment Agency had been cooperating with IOM in Bosnia and Herzegovina and training seminars had been held for the benefit of Bosnian consular and diplomatic staff, in particular concerning assistance for Bosnian workers abroad. In 2010, the IOM's office in Bosnia and Herzegovina had helped to prepare circulars on youth employment in the Republic of Slovenia. The Labour and Employment Agency organized language courses in cooperation with the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR), amongst others. Currently 16 information, guidance and training centres were working in close cooperation with the Labour and Employment Agency's services to provide guidance and training to job seekers, especially to help them prepare a curriculum vitae or learn a foreign language.

13. **Ms. Đuderija** (Bosnia and Herzegovina) said that it was prohibited to employ foreigners in an irregular situation and that both domestic rules and international norms governing the labour market were very strictly applied. Many graduates were looking for jobs, with the help of a number of employment assistance programmes, including abroad.

14. **Mr. Taghizade** said that he would like more details of the medical services to which migrant workers had access, whether they were in a regular or an irregular situation, of the relevant legal provisions, as well as some concrete examples of implementation. He wished to know whether Bosnians abroad could stand for election, for example for parliament, and more generally speaking how they took part in the political life of the country.

15. **Mr. Núñez Melgar Maguiña** said he would like to know what type of offence was committed by a person in an irregular situation in the country. Was it a minor offence, subject to the corresponding penalties, or an administrative offence, as was the case in many countries of origin. Lastly he asked whether any distinction was drawn between migrants who joined criminal gangs and those who fell victims to gang activities.

16. **The Chairperson** asked what the political reasons were for the failure of certain trade unions to register and how the Labour and Employment Agency cooperated with recruitment agencies active in Bosnia and Herzegovina or abroad to protect migrant workers.

17. **Ms. Đuderija** (Bosnia and Herzegovina), referring to health matters, said that Bosnia and Herzegovina had set up a fund to finance the basic needs of migrant workers in a regular situation. Irregular migrant workers, however, also had access to health care. In emergencies, it was not necessary to show identity papers.

18. Regular migrant workers were entitled to stand for certain elections in Bosnia and Herzegovina provided that they had a registered address in the country. They were also

entitled to vote. For Bosnian migrant workers living abroad, administrative rules (SIPS system) had been improved and visa arrangements in particular would soon be made more flexible.

19. Illegal entry to Bosnia and Herzegovina was considered a minor offence. Victims of human trafficking who were illegally present in the country, on the other hand, were protected because they were treated as witnesses, and they could be granted accommodation and a residence permit for humanitarian reasons if they agreed to help the authorities identify and prosecute the criminals. If they preferred to withhold information, they forfeited the right to residence on humanitarian grounds and were repatriated.

20. **Ms. Hadžibegić** (Bosnia and Herzegovina), in reply to the question concerning trade unions that were not yet registered, said that she could not explain the political reasons, but that the registration process was continuing and raised many questions from the point of view of the Constitution. Although no final solution had been found as yet, the trade unions were recognized by the International Labour Organization (ILO) and came under the terms of the agreement with the European Union, IOM and ILO.

21. **Mr. Zuko** (Bosnia and Herzegovina), referring to the subject of recruitment agencies, said that a meeting between public and private sector participants had recently been organized on the theme of employment, with positive results in terms of joint projects and exchanges. Communication between public organizations and the agencies was open and frank, and cooperation between them on the whole was satisfactory.

22. **Mr. Bakula** (Bosnia and Herzegovina) said that immigrant centres were attended by competent staff able to provide basic medical treatment. An agreement had also been concluded with health-care establishments for the provision of more advanced medical treatment. Regarding illegal entries into the country, he explained that they were considered minor administrative offences, and were subject to criminal prosecution only if human trafficking was involved. Victims of trafficking were never held liable either criminally or administratively.

23. **Ms. Duderija** (Bosnia and Herzegovina) said that the data contained in statistical tables on migration flows, particularly those concerning refused entries at the borders and the numbers of appeals considered in first instance and on appeal, were reliable and up to date. Significant progress had been made in recent years regarding the collection and processing of data, particularly those concerning migrant workers.

24. **The Chairperson** asked how activities conducted under the migration policy of Bosnia and Herzegovina were coordinated.

25. **Mr. Carrión Mena** asked for additional information on mono-ethnic schools and their effect on children.

26. **Ms. Duderija** (Bosnia and Herzegovina), returning to the question of trade unions, said that there were disagreements between the Federation of Bosnia and Herzegovina and the Republika Srpska and that a number of political decisions needed to be taken in that respect, particularly regarding the merger of trade unions and the constitution of federations.

27. The issue of mono-ethnic schools, which had been settled in most regions, had to be looked at in the post-war context. It did not affect the children of migrant workers and very few cases of ethnic discrimination in schools had been reported. The situation was not common in Bosnia and Herzegovina.

28. **Mr. Bakula** (Bosnia and Herzegovina), referring to information provided regarding annual migration flows, said that the data were accurate and reflected the reasons for refused entries to the territory. Illegal entrants found in border areas could be returned

directly to their countries of origin once the authorities of those countries had been notified. In 2007, it had been decided to set up a coordination body to supervise the implementation of the strategy on migration and asylum and the 2008–2011 plan of action. The body was made up of senior officials of the immigration sector, the border police, the Ministry of Foreign Affairs and the Ministry of Justice. It met every month and special meetings could be convened if necessary. It was very efficient and had produced solutions to many problems, such as the issue of visas to the nationals of warring countries and asylum seekers, or housing and employment for foreigners. Since it was not yet officially a standing body, it would be reinstated every four years according to a plan of action and a strategy. The Committee would be sent an English version of the migration strategy and the 2012–2015 plan of action, which was currently available on the website of the Ministry of Security.

29. **Ms. Đuderija** (Bosnia and Herzegovina) said that the coordination body was very useful and that the collection of data for the preparation of the periodic report was based on the migration and asylum strategy and the related plan of action and helped the Government meet its international obligations.

30. **Mr. Taghizade** (Rapporteur for Bosnia and Herzegovina) thanked the delegation for its constructive attitude. Its members had shown a really open mind and had given thorough replies to the questions they had been asked and a detailed account of the evolving situation of migrant workers and members of their families in recent years. It was clear from their statements that the effects of war were still being felt. The Committee was aware of the fact that the current legal rules and instruments, as well as the executive and legislative branches, were largely the product of the country's recent history.

31. The Committee wondered about the harmonization and coordination of the different government bodies and legislation, and the need for supervision of the decisions taken. The difficulties facing the existing organs could sometimes be explained for historical reasons. The second report did, however, show the real progress that had been achieved in five years, particularly with regard to the incorporation of the Convention's provisions in domestic legislation and to harmonization.

32. As for mono-ethnic schools, which still existed in some regions, the Committee hoped that a solution would be found before long. With regard to statistics, the Committee was satisfied to note the introduction of an electronic system and a reliable database for border controls, but wished to point out that those new technologies could not solve the problem of the lack of data concerning the period before the system had been in operation. Regardless of the financial implications, the question deserved the Government's attention. Despite the undoubted progress achieved in the sensitive field of the fight against human trafficking, the Committee wondered to what extent, in some concrete cases, the situation was not due to a lack of monitoring. If the Committee appeared insistent, it was to draw the Government's attention to the more sensitive aspects of the action it needed to take, in view of the fact that it was committed to implementing all the provisions of the Convention.

33. Following the meeting, a list of comments and recommendations would be drawn up and transmitted to the State party, with a view to continuing consultations and strengthening cooperation with the State party in order to help it discharge its Convention obligations as effectively as possible.

34. **Mr. Brillantes** praised the delegation on its exemplary presentation and its spirit of cooperation. The replies it had given reflected its very careful preparation work and the fact that all stakeholders had been consulted in the process. It could be concluded that Bosnia and Herzegovina was doing its best to abide by the rules and apply the provisions of the Convention.

35. **Ms. Đuderija** (Bosnia and Herzegovina) thanked the Committee for the excellent exchange and for its spirit of cooperation. Its recommendations would be duly taken into account in order to still further improve the situation of migrant workers and members of their families in Bosnia and Herzegovina, as well as that of the many Bosnians living abroad. Despite the difficulties it was currently facing and the after-effects of the recent conflict, Bosnia and Herzegovina was making every effort to improve the situation regarding human rights, always with the emphasis on the human aspect.

36. **The Chairperson** said that the Committee fully appreciated the fact that Bosnia and Herzegovina had sent a very high level delegation, chaired by a minister and including representatives from the capital, which proved the country's interest in the Convention. The Committee further welcomes the fact that the third periodic report was already scheduled for submission. In accordance with the simplified procedure for the presentation of reports, the Committee would submit a list of issues, which could serve as a starting point for the preparation of the report.

37. He thanked the delegation for its very complete and frank replies and for its positive attitude and welcomed the measures taken by the State party to implement the Convention, despite the difficulties it had recently been facing. The Committee was aware of the fact that the protection of migrant workers fitted into the broader framework of the Government's restructuring process. Together with the State party's civil society partners, the United Nations Organizations and the International Organization for Migration, the Committee was prepared to help the State party with the tasks of implementing the Convention and preparing the third report.

The first part (public) of the meeting rose at 12.55 p.m.