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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION**

Information provided by the Government of Bosnia and Herzegovina
on the implementation of the concluding observations of the
Committee on the Elimination of Racial Discrimination

[18 June 2009]

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Bosnia and Herzegovina submitted its combined seventh and eighth periodic report (CERD/C/BIH/7-8) regarding the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention) on 16 July 2008, as scheduled, and was notified by the Committee that the report had been duly received.

In connection with the Committee's concluding observations (CERD/C/BIH/CO/6), in which the Committee requests information on measures undertaken by Bosnia and Herzegovina in the implementation of the Convention, mainly with regard to paragraphs 11, 18, 20, 22 and 23, Bosnia and Herzegovina would like to inform the Committee of the following points.

Paragraph 11 of the Committee's concluding observations refers to the adoption of amendments of the relevant provisions of the State Constitution and the Electoral Law of Bosnia and Herzegovina that would enable equal exercise of the right to vote ("ius suffragii") actively and passively, for all citizens of Bosnia and Herzegovina regardless of their ethnic affiliation. Taking into account that this requires modifications of articles IV and V of the State Constitution, which stipulate that only the members of the "constituent peoples" (Bosniaks, Serbs and Croats) may be elected, we agree that the existing legal solutions are discriminatory. Article X, paragraph 1, of the Constitution provides that "the Constitution may be amended by a decision of the Parliamentary Assembly, including a two-thirds majority of those present". Therefore, the Constitution of Bosnia and Herzegovina has not yet been amended through the amendment procedure, but intensive discussions are under way in Bosnia and Herzegovina in order to find positive and non-discriminatory constitutional solutions.

With reference to paragraph 18 of the Committee's concluding observations concerning the progress made in Bosnia and Herzegovina on the reform process, we would like to highlight the following.

In Bosnia and Herzegovina, the legislator tried to resolve the issue of the so-called "people waiting to work" by enforcing the Labour Code, adopted on 5 November 1999. Upon adoption of the Code, employees who were "waiting to work" could, according to the Code, retain that status for a maximum period of six months following the entry into force of the Code, unless the employer requested the employee to work (article 143, paragraph 1, of the Code). In addition, article 143, paragraph 2, of the Code foresees that employees who were employed as of 31 December 1991 and who contacted their employer, whether in written form or directly, within three months from the entry into force of the Code, regarding the establishment of their legal working status, and who had not in that period been employed with another employer, were also considered as employees "waiting to work".

The Labour Code also stipulates that employees, who believe that their employer has breached their rights provided in article 143 of the Code, have the right to file a complaint to the Cantonal Commission for Implementation of article 143 of the Labour Code. The complaints lodged against the cantonal commission's decisions are judged by the Federal Commission for Implementation of article 143 of the Labour Code. Pursuant to data provided by the Federal Commission as of 5 November 2000 (the deadline for lodging complaints), a total of 52,286 complaints had been filed with the purpose of regulating the legal working status, consisting mainly of requests for the re-establishment of legal working status.

According to the Federal Ministry of Labour and Social Policy, the decision is made, above all, according to the economic stability of the employer, who is obliged to enforce the decision, and is not in any way influenced by the ethnic affiliation of the plaintiff.

As far as Republika Srpska is concerned, in April this year, the Parliamentary Assembly of Republika Srpska discussed and adopted the provisions on the right to severance pay, as per article 182 of the Labour Code. Articles 182-189 of the Labour Code (revised text) ("Official Gazette of RS", No. 55/07), (former provisions of articles 152 and 159) prescribe the conditions and the manner of exercise of the right to severance pay for persons who, in the period from 31 December 1991 to the effective date of the Law, lost their jobs in an illegal manner, and whose employer's seat is on the present territory of Republika Srpska.

Within three months, the Ministry of Labour, Veterans and Disability Protection of Republika Srpska received 58,488 requests from people who believed that their employment had been terminated illegally under the terms of article 182 of the Labour Code.

The Special Commission decides on the right to severance pay pursuant to article 185, paragraph 1, of the Labour Code, appointed by the minister responsible for labour issues. The Commission consists of a president and four lawyers chosen for their experience in dealing with labour issues; they do not exert any political or public function.

The Commission for the Implementation of article 182 of the Labour Code is independent and each case is decided on by a majority vote.

The severance pay established in line with article 182 of the Labour Code is determined within the scope of 1.33 to 3 times the average salary in Republika Srpska during the last three months prior to the month in which the right to severance pay was approved, depending on the length of employment with the last employer.

The severance pay is determined by the Commission and granted to the employee according to articles 182-183 of the Labour Code. If there is a shortage in the fund from which the severance pay is allocated, it can be paid, pursuant to a decision of the Government of Republika Srpska, as an "other budget resource" expense. In the past year, the severance pay was paid, in both the current and previous budget years, through the organization code with the ministry responsible for labour issues.

In 2008, the Commission made 1,659 decisions which were approved; in 966 cases the right to severance pay was recognized, in 614 it was rejected, and in 53 cases it was repealed as unfounded. In 275 cases the complaint (second instance procedure) was completed, and 52 charges were answered.

The Commission has resolved a total of 10,270 requests since it started its work. Out of the total, 1,542 requests were rejected as inadmissible, 4,159 were refused, the right to severance pay was recognized in 4,550 cases and 19 cases were forwarded for further jurisdiction. In this period, 9,942 letters were written to clients to amend their files, and 753 complaints were decided positively.

The recognized severance pay is calculated and paid according to the average salary in Republika Srpska at the time of payment, so that the persons whose right to severance pay was recognized are not financially damaged concerning the amount of the recognized severance pay.

The Ministry of Labour, Veterans and Disability Protection of Republika Srpska provided 2.5 million convertible marks (KM) for 2008 and paid 1,357 people pursuant to valid decisions, by means of "posts of Republika Srpska".

In the past period (2007 and 2008), a total of 4.5 million KM was paid following valid decisions for 2,702 persons. The right to severance pay has been recognized so far in 4,672 cases, and 1,970 persons are to be paid in future.

The Commission continues to carry out its work and the deadline for the resolution of all cases cannot be foreseen.

In connection with the progress achieved in the reform process related to paragraphs 20 and 22 of the concluding observations of the Committee, Bosnia and Herzegovina informs the Committee of the following points.

Bosnia and Herzegovina is committed to the recognition of rights of all minorities, especially to the Roma minority community in Bosnia and Herzegovina in compliance with the highest international standards and in line with international conventions and other documents on human rights and the rights of national minorities incorporated in the Constitution of Bosnia and Herzegovina as well as other regulations governing the rights and protection of national minorities. Bosnia and Herzegovina has continually worked on the protection and promotion of the rights of national minorities.

The Law on Protection of the Rights of Members of the National Minorities of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", No. 12/03) of 1 April 2003 which recognizes 17 minority communities (Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Roma, Romanians, Russians, Slovaks, Slovenians, Turkish and Ukrainians) contains the crucial document which governs the basic foundations for the position of all minorities in the entire territory of Bosnia and Herzegovina. The rights of the minorities provided by the Law are exercised and implemented throughout Bosnia and Herzegovina, including all 10 cantons in the Federation of Bosnia and Herzegovina.

The Parliamentary Assembly of Republika Srpska has adopted the Law on Protection of the Rights of Members of the National Minorities of Republika Srpska, which further expands on the Law on Protection of the Rights of Members of the National Minorities of Bosnia and Herzegovina. The Government of the Federation of Bosnia and Herzegovina also made the Law on Protection of the Rights of Members of the National Minorities in the Federation of Bosnia and Herzegovina by the end of 2008 ("Official Gazette", No. 56/08). There is no such law at the cantonal level in the Federation of Bosnia and Herzegovina.

The amendments to the Electoral Law of Bosnia and Herzegovina opened up possibilities for minority communities, namely, they prescribed the obligation for minority communities to have their representatives, depending on their share in the population, in the

local authorities or municipalities and municipal councils, and it also provided for their participation at all authority levels within the legislative and executive authorities in Bosnia and Herzegovina.

The Council of National Minorities was established with the Parliamentary Assembly of Bosnia and Herzegovina. There is also a Council of National Minorities with the Parliamentary Assembly of Republika Srpska. The Law on Protection of Rights of Members of the National Minorities in the Federation of Bosnia and Herzegovina also provides for the establishment of the Council of National Minorities in the Federation of Bosnia and Herzegovina, as an advisory body to the Parliament of the Federation of Bosnia and Herzegovina. The selection and appointment of its members are under way.

In connection with the protection of the rights of Roma and other minorities, concerning the accommodation and strengthening of efforts for the return of Roma and other minorities to the homes in which they lived prior to the armed conflict, or the provision of adequate alternative accommodation or compensation for destroyed homes or for those people whose homes are still inhabited, Bosnia and Herzegovina points out the information below.

Since the establishment of the Ministry for Human Rights and Refugees within the Council of Ministers of Bosnia and Herzegovina, the sector for refugees, displaced persons and housing thereof has developed a legal and regulation framework defining the manner of exercise of the right to assistance in the process of return of refugees and displaced persons, regardless of their national or ethnic affiliation.

The concrete result of this activity is the Law on Amendments and Modifications of the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina ("Official Gazette", No. 33/03), which harmonized, at a later stage, the Entities' laws in this field with the State law. Moreover, a very transparent selection of the beneficiaries in the process of return has been developed based on the said Law. The Instruction on the manner and procedure of selection of beneficiaries for projects of return and reconstruction of houses has also facilitated the process ("Official Gazette", No. 48/06). This Instruction forms the basis for the implementation of joint projects and other projects of international humanitarian organizations in Bosnia and Herzegovina.

In accordance with the points discussed above, and within the context of the presentation of opportunities for obtaining assistance for the reconstruction of housing units for the return to pre-war homes (including Roma) we would like to put special emphasis on the fact that the relevant legal and regulation Acts governing these issues recognize potential beneficiaries of Bosnia and Herzegovina as refugees from Bosnia and Herzegovina, displaced persons in Bosnia and Herzegovina and returnees, namely the citizens of Bosnia and Herzegovina. Any other kind of discrimination on any grounds is absolutely excluded and illicit as such.

Since the Committee, in paragraphs 20 to 22 of its concluding observations, insists on answers to the question of how Roma can realize their right to reconstruct their pre-war homes, namely for the provision of the rights and interests of Roma and other minorities concerning accommodation, the answer is very clear: "under the same conditions as all other citizens of Bosnia and Herzegovina."

The same conditions apply exclusively regarding the reconstruction of housing units for return to the pre-war place of living or the reallocation of the building from 1991 for which approval is granted under very strict procedures based on the Instruction on the manner and procedure of selection of beneficiaries for the projects of return and reconstruction of houses.

Any other assistance for the Roma is not subject to the existing legal regulations which were enforced in order to help exercise the rights under Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

The authorities in Bosnia and Herzegovina are aware of the difficult situation of the Roma community in Bosnia and Herzegovina in all segments of life, especially in housing, and they have undertaken and adopted the national programme "Strategy of Bosnia and Herzegovina for resolution of Roma issues" in 2005 which represents the adoption of 15 separate programmes of activities from different areas of living that would have an impact on the change and improvement of the overall social standing of the Roma population in Bosnia and Herzegovina (education, employment, housing, health and social care, census and other). The programme is currently being implemented and it is developing according to the scheduled time frames.

For that purpose, the Council of Ministers, at its fifty-fourth session held on 3 July 2008:

Adopted the Plan of Action of Bosnia and Herzegovina for solving issues of Roma in employment, housing and health care;

Made the decision to establish the Coordinating Board for monitoring of the implementation of the Plan of Action of Bosnia and Herzegovina for solving issues of Roma in employment, housing and health care;

Adopted the Declaration on accession to the "Decade of inclusion of Roma 2005-2015" and the Roma Decade programme. At the same time, the Chairman of the Council of Ministers of Bosnia and Herzegovina, Nikola Spiric, was empowered to sign the Declaration;

The Chairman of the Council of Ministers of Bosnia and Herzegovina, Nikola Spiric, signed the Roma Decade Declaration in September 2008, and so Bosnia and Herzegovina formally acceded to the Decade of Inclusion of Roma.

In the Plan of Action of Bosnia and Herzegovina for solving issues of Roma in employment, housing and health care, the Bosnia and Herzegovina authorities are aiming to achieve anticipated objectives and generate results that would guarantee, until the end of the Roma Decade, i.e. 2015, the comprehensive progress and enhancement of the status of the Roma minority community in Bosnia and Herzegovina in all important areas of living.

The Coordinating Board has been established to monitor the Plan of Action of Bosnia and Herzegovina for solving issues of Roma in employment, housing and health care. The Coordinating Board has held four meetings so far, adopted the Rules of Procedure and designed the draft of the operational plan of activities and priorities for 2009.

The Chairman of the Council of Ministers of Bosnia and Herzegovina appointed the National Coordinator for solving Roma issues in Bosnia and Herzegovina, Maksim Stanisic. The decision was published in the "Official Gazette", No. 5/09.

The resolution of Roma issues and the accompanying complex tasks from the Plan of Action for solving Roma issues in housing (unsolved property/legal relations, complicated procedure for obtaining of necessary permits, lack of reliable data, bad construction of the existing buildings, avoidance of making ghettos, etc.) is "a big challenge", even for many more developed societies than Bosnia and Herzegovina.

Besides the political willingness and significant financial resources, all actors participating in the solving of this issue need mutual understanding, tolerance and synchronized action in order to achieve the proclaimed objectives.

The Plan of Action for solving Roma issues in housing makes certain trends of action concrete for the purpose of achieving the basic goals, such as provision of the right to a home, and education aimed at raising the level of knowledge, general culture and living culture.

The Plan of Action has three goals to be undertaken with specific results envisaged for each:

Urbanization of Roma settlements (places where Roma live) and legalization of housing facilities;

Education and awareness-raising in the society and the Roma population on solving the housing issues, legal regulations, living culture, etc.;

Planning and building of new residential buildings through social, donor and credit programmes.

In the meantime, since the last information provided to the Committee, Bosnia and Herzegovina informs the Committee that the Council of Ministers has approved the amount of 3 million KM to the 2009 budget for the needs of the Roma minority community in Bosnia and Herzegovina. The approval of certain financial funds is expected to be allocated by the Entities' and cantonal Governments for this purpose as well as for the local communities.

The budget of the Ministry for Human Rights and Refugees has 3 million KM allocated for the implementation of adopted plans of action such as:

To the Coordinating Board for monitoring the implementation of the Plan of Action of Bosnia and Herzegovina for solving Roma issues in employment, housing and health care (it brought its basic Acts: the Rules of Procedure and the operational plan of activities and priorities) until the end of this year;

To representatives of the Coordinating Board, in cooperation with Roma non-governmental organizations, where the proposal was put forward to allocate the amount of 3 million KM to three areas as follows:

For housing 2.07 million KM;

For employment 780,000 KM;

For health care 150,000 KM;

Out of the total funds, 10 per cent is allocated to the registration of Roma households and their concrete needs for all three areas of action.

International organizations such as the Swedish International Development Agency, BOSPO, the Government of Hungary, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Refugees actively support the implementation of these activities.

Currently, the ministry responsible is working to design relevant criteria for the implementation of the action plans and expenses schedules which will be presented to the Council of Ministers of Bosnia and Herzegovina; we expect that these activities will be completed by the end of April 2009 at the latest.

The Council of Ministers of Bosnia and Herzegovina adopted in February 2004 the Plan of Action on educational needs of Roma and members of other national minorities in Bosnia and Herzegovina (the Plan of Action). Bosnia and Herzegovina has made intensive efforts to implement and carry out the Plan of Action. In the new school year 2008/2009, the majority of the members of the Roma minority community in Bosnia and Herzegovina and members of other national minorities enrolled in educational institutions at all levels, schools and universities (often based on the principle of positive discrimination); the study materials and textbooks were donated, and other assistance for transport and snacks was provided depending on the capacity of municipalities, cantons and districts.

In the course of implementation of the Plan of Action, in practice and in everyday life, there have appeared certain gaps such as insufficient development and details of concrete measures, allocation of financial resources, existence of an adequate monitoring team, etc. The Ministry for Human Rights and Refugees of Bosnia and Herzegovina has recognized them all and a revision of the Plan of Action is under way. The official appointment of the members of the working group for revision of the Plan of Action (consisting of representatives of Government authorities at all levels and representatives of the Roma non-governmental sector) is under way, and various possibilities for financing the programme are being examined; we expect that these activities will be completed in the short term.

In connection with the information on the number of Roma children enrolled in primary and secondary schools and figures on school attendance by the members of other national minorities, Bosnia and Herzegovina informs the Committee that it does not,

unfortunately, dispose of the required figures. The Ministry for Human Rights and Refugees requested these figures from the Agency for Statistics of Bosnia and Herzegovina and from the Entities' statistics institutes, but they do not maintain records on the school attendance rate according to student or pupil nationality. Accordingly, there are no official figures on the number of Roma children in Bosnia and Herzegovina who attend primary and secondary schools.

Information on progress in the process of reform, in connection with paragraph 23 of the Committee's concluding observations, is set out below. The issue of "two schools under one roof" was considered several times at the sessions of the Conference of the Ministers of Education in Bosnia and Herzegovina, and at the fourth session, held on 9 September 2008, it was concluded to establish a working group consisting of two representatives each of the Federal Ministry of Education and Science and the Ministry of Education, Science, Culture and Sport of the Herzegovina-Neretva, Sredisnja Bosna and Zenica-Doboj Cantons, and two representatives of the Organization for Security and Cooperation in Europe. The working group was tasked to analyse and prepare comprehensive information on the issue of "two schools under one roof", offering solutions that would be verified by the Conference of the Ministers of Education in Bosnia and Herzegovina. The working group decided to visit schools in the field but, given the holidays and the end of the first school term, they have not managed to complete their mission within the given deadlines.

At the seventh session of the Conference of Ministers of Education of Bosnia and Herzegovina, held on 5 May 2009, the working group presented its report and it was concluded that the working group should hold a meeting before the end of May this year in order to analyse the material, build in the comments and deliver it to all Ministers of Education so that the information can be discussed at one of the forthcoming sessions of the Conference.

Having in mind all the points mentioned above, Bosnia and Herzegovina informs the Committee that it is aware of gaps in legislative solutions and their discriminatory nature and effects in society such as the phenomenon "two schools under one roof", and that, as a Member State of the United Nations and a Contracting Party to the Convention, it is ready to continue its dialogue with the Committee in order to improve the implementation of provisions and the spirit of the Convention in the society of Bosnia and Herzegovina.
