



International Convention on the Elimination of All Forms of Racial Discrimination

Committee on the Elimination of Racial Discrimination

Seventy-sixth session

Summary record of the 1925th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 3 March 2009, at 10 a.m.

Chairperson: Mr. Dah

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Initial report of Montenegro (continued)

The meeting was called to order at 10.20 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Initial report of Montenegro (continued) (CERD/C/MNE/1; list of issues and written replies, documents without a symbol, distributed in the meeting room, in English only)

1. *At the invitation of the Chairperson, the members of the delegation of Montenegro took places at the Committee table.*

2. **Mr. Mihaljević** (Montenegro) said that the bilateral agreement between Montenegro and the United States of America under article 98 of the Rome Statute of the International Criminal Court had been concluded through an exchange of diplomatic notes, which meant that it had not been signed or ratified. The agreement could be terminated by the parties, in which case it would remain in force for one year from the date on which either party had notified the other of its intention to terminate. Under the provisions of the agreement, Montenegro must consult the United States authorities before extraditing to another State one of its nationals who found themselves in the territory of Montenegro, and vice versa. To date, the agreement had never been implemented. Montenegro was fully aware of its implications and was more than willing to cooperate with the International Criminal Court should a case concerning it be heard by the court. If the European Union and the United States failed to agree on the issues raised by the agreement, Montenegro would consider reviewing its position with regard to the instrument, given its intention to join the European Union.

3. Despite the extremely difficult years that all the Balkan countries had undergone after the break-up of the former Yugoslavia, Montenegro had managed to preserve peace on its territory and stable relations among ethnic and national minorities. Like other countries in the region, it had begun the process of joining the European Union and the North Atlantic Treaty Organization (NATO). In addition, it was a member of the South-East European Cooperative Initiative and a party to the Central European Free Trade Agreement. Lastly, the peoples of the western Balkans had learned from the past and Montenegro was now living in peace with its neighbours.

4. **Ms. Mijusković** (Montenegro) said that her country had demonstrated its willingness to assist all displaced persons, even by welcoming refugees from the former Yugoslav republics, including Serbia, and Kosovo. At the time of the Kosovo conflict in 1998 and 1999 Montenegro had taken in more than 130,000 displaced persons from the former Yugoslavia, or 24 per cent of the population living there at that time. By 2000, when the situation had begun to stabilize, humanitarian aid had been drastically reduced and, consequently, the Montenegrin authorities had struggled to cope with the needs of displaced persons in its territory.

5. To find a lasting solution to the problem, in 2005 the Government of Montenegro had adopted the National Strategy for a Permanent Solution to the Problem of Refugees and Displaced Persons in Montenegro. The term “refugee” referred to persons displaced from the former Yugoslav republics, including Bosnia and Herzegovina and Slovenia, while the term “persons displaced within their own country” referred to persons displaced within Kosovo.

6. The three possible solutions outlined in the strategy were: repatriation and return of refugees to their countries of origin; local integration of refugees; and emigration to third countries. As far as Bosnia and Herzegovina was concerned, the repatriation of refugees had been a success. In contrast, in the case of Croatia, fewer people had been able to return home. In brief, most refugees and displaced persons who had fled to Montenegro during the conflict had stayed there. They enjoyed the same rights as Montenegrin citizens, including access to education, health care, employment and housing. In that connection, moreover, 886 homes had been provided for around 6,400 people. In order to protect the most vulnerable segments of that population group, the Ministry

of Health, Labour and Social Welfare, in collaboration with the United Nations High Commissioner for Refugees (UNHCR), had launched a project to guarantee such population groups access to the same benefits as those to which local people were entitled. The National Strategy for a Permanent Solution to the Problem of Refugees and Displaced Persons in Montenegro had been devised with the participation of displaced persons, most of whom had stated their preference for repatriation. No international aid had been allocated to implement the programmes under the Strategy.

7. Along with those activities, Montenegro had continued its efforts to implement the 1998 Sarajevo Declaration, which had been signed by the State Union of Serbia and Montenegro, Bosnia and Herzegovina and Croatia. The purpose of the Declaration was to address the issue of displaced persons at the regional level with the participation of international partners, including UNHCR, the Organization for Security and Cooperation in Europe (OSCE) and the European Commission. Montenegro, which had acceded to the Sarajevo Declaration after the proclamation of its independence, had fulfilled all its obligations under the instrument. For instance, it had been the only State to have established a road map, in accordance with the Declaration. It paid great attention to bilateral agreements concluded with other countries in the region so as to address such issues in the best possible way.

8. The Montenegrin Government had instructed the Ministry of Internal Affairs and Public Administration to reconsider the status of refugees from former Yugoslav republics on the basis of the Asylum Act. In addition, it had requested the Refugee Agency to liaise with the Ministry of Internal Affairs and Public Administration and update the database on displaced persons from Kosovo. Under the Citizenship Act, the new place of residence of displaced persons must be regarded as their lawful residence for the purpose of their naturalization application. Displaced persons currently represented 4 per cent of Montenegro's population.

9. **Ms. Pešić** (Montenegro) said that there was not a culture of impunity in Montenegro, particularly as far as war crimes and crimes against humanity were concerned. On the contrary, the authorities were striving to improve the effectiveness of the prosecution aspect of the judicial system and had embarked on reforms to that end, which had led, inter alia, to the establishment of the Organized Crime Division.

10. Regarding the *Kaluderski laz* case, in July 2007 the Bijelo Polje District Court had instituted proceedings against eight persons for crimes against humanity committed against civilians. Seven of the suspects had been arrested and placed in pretrial detention, but the eighth person had fled the country. The trial was to be held in March 2009. Regarding the *Morinj* case, in August 2008 the Prosecutor's Office had instituted proceedings against six individuals for war crimes and crimes against prisoners of war under articles 142 and 144 of the Criminal Code respectively. Five of them had been arrested. The court hearing the case had decided to try in absentia the sixth person, who had fled the country. The trial, which should have been held in January 2006, had been deferred indefinitely.

11. As far as the deportation of Muslims case was concerned, in June 2009 the Podgorica Regional Court had issued a warrant for the arrest of nine individuals suspected of war crimes against civilians. Four of them had been arrested, but the other five had fled the country.

12. The Montenegrin Government was keen to cooperate with the authorities of other States and with regional or international organizations to provide compensation for the victims of war crimes or crimes against humanity. It had expressed its intention to address such issues by extrajudicial means, in cooperation with the authorities of Bosnia and Herzegovina. A framework had been established with a view to negotiating agreements between the Ministry of Justice and the relatives of the victims. In September 2008, five meetings had been held during which representatives of the Ministry of Justice and the victims had defined the criteria to be used to determine the amount of compensation due. Those criteria included the degree of relationship between the relatives and the victims, their financial needs and the gravity of the offence. Thanks to the initiative, 42 civil actions for compensation had resulted in friendly settlements. The amount of compensation awarded had totalled 4.35 million euros.

13. As for the *Bukovica* case (A/HRC/WG.6/3/MNE/3, para. 21), in December 2007 the Bijelo Polje District Court had instituted proceedings against seven individuals suspected of crimes against humanity, under article 427 of the Criminal Code and article 7, paragraph 2, of the European Convention on Human Rights. The investigation had established that war crimes had been committed in the case. A further investigation conducted by the War Crimes Division was under way. The case, in which the national courts had referred to an international convention and the domestic legislation, showed that the instruments to which Montenegro was a party formed part of the domestic legal order and that their provisions could be invoked by the courts when they were directly applicable; they did not need to be transposed into a national law.

14. Regarding the incorporation of the provisions of article 4 of the Convention into Montenegrin legislation, after recalling the substance of the criminal provisions set out in paragraphs 38 and 39 of the report (CERD/C/MNE/1), she explained that racial discrimination was expressly prohibited under section 370 of the Criminal Code, paragraph 1 of which provided that incitement to national racial or religious hatred or intolerance among peoples, minorities or ethnic groups living in Montenegro was punishable by 6 months' to 5 years' imprisonment. Furthermore, paragraph 2 of that article provided that if such acts were accompanied by violence, ill-treatment, attacks on personal safety, damage to the property of others, vandalization of monuments, commemorative plaques or tombs were punishable by imprisonment of 1 to 8 years. Paragraph 3 of the article provided that the acts referred to in paragraphs 1 and 2 of the article were punishable by 1 to 8 years' imprisonment if such acts caused riots, violence or other incidents with serious repercussions on relations among national minorities or ethnic groups living in Montenegro.

15. Moreover, genocide, crimes against humanity, war crimes committed against the civilian population, the organization and promotion of genocide and crimes against humanity, failure to take measures to prevent crimes against humanity and serious violations of international law were penalized under Montenegrin criminal legislation (articles 426, 427, 428, 431, 440 of the Criminal Code). Racial discrimination was punishable under the provisions of article 443 of the Criminal Code, which stipulated, inter alia, that anyone who violated the fundamental rights and freedoms of a person on grounds of race, colour, national or ethnic origin or any other special individual characteristic was liable to a prison sentence ranging from 6 months to 5 years, and that anyone who disseminated ideas based on racial superiority or advocated racial hatred was liable to a prison sentence ranging from 3 months to 3 years.

16. The Montenegrin Constitution enshrined the principle of inviolability of citizens' physical and mental integrity and privacy, and prohibited the use of torture or inhuman and degrading treatment. Under the Constitution, no one could be enslaved or kept in enslavement.

17. Under article 5 of the Code of Criminal Procedure, all persons deprived of their liberty should be informed in their language or a language which they understood of the reasons for their detention. They also had the right to request that a person of their choice should be informed of their arrest, and the right to legal counsel.

18. Article 12 of the Criminal Code prohibited the use of force against persons deprived of their liberty and the extortion of confessions by torture, humiliation, intimidation or degrading treatment. Confessions thus obtained could not be used as evidence during trial, and those who had exercised that type of pressure on a suspect in order to extort confessions were liable to a prison sentence ranging from 3 months to 5 years. In addition, persons who had not been informed of their right to be assisted by a lawyer could not be convicted.

19. Under the Montenegrin legal system, there was no special law on prohibition of discrimination, which came under criminal law.

20. **Mr. Delić** (Montenegro) said that the Act on the election of councillors and members of Parliament was to be reviewed by Parliament before October 2009 so that it could be brought into line with the provisions of the 2008 Constitution. Parliamentarians had not yet reached an agreement, and the two-thirds majority in Parliament had still not been obtained. Under the legislation in force, of the 81 current members of Parliament, there were 8 Bosnians, 5 Albanians, 2 Croats and 1 Muslim. All had been elected as members of a political party representing their national minority.

21. From the few reliable statistics on the proportional representation of minorities in various areas of public life it was clear that they were underrepresented in many ways. The Government of Montenegro had therefore devised a strategy to help them, whereby candidates for posts in the civil service belonging to national or ethnic minorities, who were equally qualified, were given preference over other candidates.

22. Under article 13 of the Constitution, Montenegrin was the official language, but other languages such as Serbian, Croatian, Bosnian and Albanian were used. Having ratified the European Charter for Regional or Minority Languages, Montenegro had allowed the use of the Roma and Albanian languages for administrative and judicial procedures.

23. The Identity Documents Act provided that cardholders must have the information contained in Montenegrin and English on identity cards translated into Serbian, Bosnian, Albanian or Croatian by the cardholders, and that their names and first names should be entered in the alphabet of their choice.

24. In the field of education, Albanian speakers could receive tuition in their native language from preschool to university. People who spoke Serbian, Bosnian and Croatian could also request to be taught in their mother tongue. Rights relating to the use of languages were upheld in practice.

25. Members of minorities who did not declare their ethnic origin were no greater in number now than in 1991, the date of the last census. The fact was that Montenegrins were not particularly interested in their ethnic origin and that the exercise of their rights and freedoms did not depend on it.

26. The chapter of the Criminal Code dealing with criminal offences against human and civil rights and freedoms established a prison sentence of up to 3 years for any person who infringed the principle of equality among citizens.

27. An amendment relating to the financing of the public service had been introduced to the Act on public broadcasting services since, in practice, radio and television channels had problems in defraying the costs of all their programmes and broadcasts alone. The Government had no intention of monopolizing the media, which should remain independent.

28. During censuses, citizens had the opportunity — and not the obligation — to declare their nationality, ethnic origin or religious affiliation. In 1991, 87,000 people had identified themselves as Muslims — 14.7 per cent of the population. In 1993, some of them had claimed that they belonged to a national minority, the vast majority to the Bosnian minority. The Muslims of Montenegro considered themselves indigenous people and thereby claimed the rights enjoyed by national minorities.

29. Any persons who considered that their rights had been violated, including members of a religious minority or an ethnic group, could approach the Ombudsman. In the field of employment and housing, from the responses that the Ombudsman had received from the Government regarding alleged discrimination, it could be seen that there was no discrimination on the grounds of belonging to a minority. Moreover, all the persons concerned had been informed of their rights and none had filed a complaint of discrimination.

30. A comprehensive draft law on discrimination was being prepared by a working group under the Ministry for the Protection of Human and Minority Rights, with the support of NGOs and academics. The draft law contained a clear definition of discrimination, both direct and indirect, harassment (including sexual harassment), segregation and intimidation and listed serious forms of discrimination. It prohibited the suspension or restriction of the ban on discrimination on any ground whatsoever. The draft law also addressed issues relating to discrimination in access to health, employment or education and dealt with discrimination against the disabled, minorities, religious groups and on grounds of sexual orientation, among others. Lastly, it provided protection for the victims of discrimination, but at the present juncture the question remained as to whether it was better to establish a new institution to combat discrimination or to broaden the Ombudsman's terms of reference.

31. **Mr. Nimani** (Montenegro) said that his country had spared no effort to improve the situation of human rights and racial discrimination. With a view to its accession to the European Union, Montenegro was progressively bringing its legislation into line with that of the Union. Montenegro enjoyed good relations with its neighbours, and the disagreements of the past were being resolved. Reverting to a point made with reference to an earlier point, the perpetrators of any hate crime or act of discrimination were

prosecuted and duly punished, irrespective of their nationality.

32.**Mr. Thornberry** said that he would like to know whether economic or identity factors had led Montenegro to become independent and what place was reserved for national minorities in the process of transition towards independence. Since he understood that Montenegrin was a fairly minority language, he would also like to know whether there was any competition between Montenegrin and languages spoken and understood by the majority of the population.

33.**Mr. Avtonomov** asked what differences there were between Montenegrin and Serbian. He noted in Table 1 of the report under consideration that from 1991 to 2003, the number of Montenegrins, or people who considered themselves as such, had significantly decreased, while the number of Serbs had increased considerably. He would like to know whether those demographic changes had had any effect on the country, and whether the Protector of Human Rights and Freedoms (Ombudsman) dealt with both ethnic and religious minorities and had received complaints of racial discrimination. If so, he would like to know what action had been taken on those complaints.

34.**Mr. Anir** said that he understood that one seat in Parliament was reserved for a Muslim and wanted to know whether that member of Parliament represented Islam as the religion practised by many people in Montenegro or whether he or she represented all Muslims who were in the country, irrespective of their ethnic origin. In general, he would like to receive more information on the relationship between the State and religion. Was Montenegro a secular country? Did the Civil Code apply to all citizens, including Bosnian Muslims, whose traditions and beliefs might not necessarily be in keeping with the customs and principles of the Civil Code of Montenegro?

35.**Mr. de Gouttes** said that it was regrettable that the report contained little information on the effective enforcement of the criminal provisions on racial discrimination and on complaints of and convictions for racist acts. He recalled the Committee's doctrine whereby the absence of complaints and convictions of cases of racial discrimination was not necessarily good because it could be indicative of certain shortcomings (inadequate legislation, minorities' lack of confidence in law enforcement, difficulties encountered by victims' problems regarding the burden of proof, shortage of information on minority rights, etc.).

36.**Mr. Ewonsan** said that the Roma were more vulnerable to discrimination. The solution adopted by the Montenegrin State was apparently to facilitate their integration, which specifically entailed their settlement. He would be interested to know what the attitude of the Roma was to settlement initiatives and how their lifestyle had been taken into account in integration programmes. The Roma's main problem was their lack of national recognition. Lastly, had Montenegro received applications for asylum from anyone from black Africa?

37.**Mr. Diaconu** said that it was regrettable that the report did not review the provisions of the Criminal Code referring to article 4 of the Convention. He invited the State party to remedy that lacuna in its next periodic report. Regarding independence-related issues, Montenegro was one of the first independent countries in the region and the people of Montenegro had always been very proud of their identity.

38.**Mr. Danielsen** said that he would like to know more about the procedures for amending the Constitution. Could it be amended by Parliament or by referendum?

39.**Mr. Nimani** (Montenegro) explained that when he spoke of the integration of the Roma, it was absolutely not a question of assimilation. The Roma had the same rights as other ethnic groups in Montenegro, although it was not always easy to attain that objective in practice. The Government was also helping the Roma to preserve their language and to broadcast programmes in Romany. Their situation had also improved significantly in the education system. In fact, they received primary education in Romany. The Roma who lived in the coastal areas were well integrated, went to school and took courses in Montenegrin or Albanian. Some Roma said that they were Muslim and others practised the Orthodox faith. In conclusion, all ethnic groups could be integrated while preserving their national, linguistic, religious and ethnic identity.

40. The different ethnic communities were represented in Parliament, and religious considerations played absolutely no part there. Montenegro was a secular State with total separation of church and State. The ethnic Albanian members of Parliament represented the ethnic Albanian community, whether they were Muslim or Catholic, and the same applied to the other representatives of various ethnic communities. In addition, under the Constitution, everyone was free to express his or her religious views.

41. Regarding the reasons for the independence of Montenegro, it had been desired by all communities in Montenegro. There had in fact been two options: to stay within the State Union of Serbia and Montenegro or choose independence and one day become a member of the European Union. The second option had been chosen by the majority of the population, including minority groups. The independence of Montenegro would help to stabilize the region and usher in a new era in which the country would also contribute to the Europeanization of the Balkans. Minorities had also played an important role in that process. The choice — European integration and the development of the Montenegrin State — had been made by a party or a political representative: Montenegro's independence had come about in a democratic exercise in which the population had voted for independence with a 55 per cent majority.

42. Concerning linguistic diversity, as a Montenegrin of Albanian origin, if he was with a Croat, a Bosnian, a Serb and a Montenegrin, he would immediately recognize the language of each one of them from one sentence. Of course they would have no need for an interpreter to understand one another, since those languages belonged to the same family, but there were nuances and small differences between them. They were different enough to be considered dialects. That being said, the work of a Montenegrin author would not represent the real Montenegrin identity and culture if it was written in a Serbian dialect.

43. He fully agreed with the comment that Montenegro was both an old and a young State. It was a historical fact which was important for understanding the nature of the country, and all Montenegrins, even those who were of Serbian or Albanian origin, could be proud of that historical fact.

44. As far as education was concerned, there were no separate schools for minorities in Montenegro. Courses were generally taught in Montenegrin, which was the official language, but also in Albanian, for students whose first language was Albanian, in the same schools. Under the new legislation, a history teacher was allowed to spend 20 per cent of history classes teaching the history of minorities. That represented considerable progress in terms of the integration of different languages and cultures.

45. As an ethnic Albanian, he found that the situation of the Albanian community in Montenegro had significantly improved over the last 15 years. That climate had also allowed the Albanian minority to play a more positive role at regional and European levels. In the same spirit, the Government was aware that it did not have sufficient means to resolve the Roma problem. The funds allocated by the European Union for programmes to assist the Roma would be put to appropriate use and Montenegro would submit reports on it.

46. **Mr. Mihaljević** (Montenegro), referring to the agreement between Montenegro and the United States concerning article 98 of the Rome Statute of the International Criminal Court, said that the agreement could be easily revoked, as it was not a conventional agreement, but a procedure between two ministries that could be revoked simply by sending a written communication.

47. **Mr. Lahiri**, Country Rapporteur, said that the complex issues of discrimination in Montenegro had prompted a very interesting debate and it would indeed be useful if the delegation attached a brief history of Montenegro in future reports to the Committee.

48. While welcoming the timely submission of the State party's report, he hoped that in its next report the State party would provide more details on the practical implementation of anti-discrimination legislation and the provisions of the Convention, including data disaggregated by ethnic origin, gender and geographical location.

49. He also welcomed the excellent report submitted, the very comprehensive written and oral replies and the high-level delegation, which reflected the country's ethnic and religious diversity.

50. In its concluding observations the Committee would no doubt comment favourably on the legislation and regulations adopted by the State party since independence in order to take into account international human rights. In particular, it might also comment favourably on the Constitution adopted in 2007, the establishment of an Ombudsman, provisions relating to the right to asylum and the employment of foreigners, and programmes to improve the situation of the Roma and minorities in general. It might observe that the situation of disadvantaged ethnic groups had undeniably improved in recent years.

51. The Committee might also welcome the anti-discrimination legislation and hope that its adoption and entry into force would be expedited. It would take note of the efforts to harmonize the laws adopted before and after independence with the 2007 Constitution in matters relating to discrimination, and encourage the State party to continue such efforts, there still being a number of inconsistencies in the legislation.

52. The Committee might welcome the measures taken to combat discrimination, but note that there was still a gap between intentions, the legislative framework in place and the real situation on the ground. The Committee certainly hoped that more targeted efforts would be made and it would examine their effects in the next report.

53. With regard to crime and violence against ethnic minorities, the Committee had taken note of the statement that there was not a climate of impunity in that respect in Montenegro. However, there were indications that some practices and working methods of the police and judicial authorities still had negative effects in terms of discrimination against disadvantaged groups and that those practices must be abandoned. In that connection, it had been stated that the authorities did not collect information about crimes committed against members of ethnic minorities and had not provided details on measures taken by human rights defenders in response to several complaints apparently involving racial discrimination.

54. Regarding the Roma issue, the Committee had noted that while affirmative action had been taken, that there had been noticeable improvements in primary school education and scholarships and that an effort had been made to improve regulations and legislation, the situation remained very difficult. It was important to guarantee equal opportunities and rights, but more importantly, to obtain more tangible results in that area through targeted and results-oriented measures.

55. The Committee would shortly be considering the problematic country situation in Bosnia and its possible effect on discrimination in Montenegro in more detail.

56. **The Chairperson** joined Mr. Lahiri in welcoming the constructive dialogue held between the Committee and the Montenegrin delegation, which had given rise to very interesting exchanges on the initial report of Montenegro. The example of Montenegro confirmed the adage that appearances could often be deceptive. Indeed, the country was like an old man dressed in new clothes. It was an ancient nation that had regained its independence. The new clothes represented the country's new political and social choices. Since the identity the country sought to regain was largely based on its ethnic diversity, the Committee was particularly concerned by those new clothes and would carefully observe during the next session how well they had worn. Montenegro had already taken an important step in the right direction and the anti-discrimination legislation was an important milestone.

57. **Mr. Nimani** (Montenegro), thanking the Chairperson, said that his delegation looked forward to the Committee's recommendations and conclusions and would study them in depth. As the Chairperson had said, Montenegro was in fact wearing new clothes. They seemed to fit well and Montenegro would work very hard to be deserving of them, including by continuing its efforts to meet the criteria for joining the European Union.

The meeting rose at 12.55 p.m.