



**International Convention on the
Elimination of All Forms of Racial
Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1736th MEETING,

Held at the Palais Wilson, Geneva,
on Thursday, 23 February 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

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

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (item 6 of the agenda) (*continued*)

Initial and second to sixth periodic reports of Bosnia and Herzegovina
(CERD/C/464/Add.1) (*continued*)

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

2. Mr. NAGRADIC (Bosnia and Herzegovina) noted a number of features of the political structure and constitutional reform in Bosnia and Herzegovina. The Constitution, which was adopted as a result of the conclusion of the Dayton Peace Agreement, gave the two entities that make up Bosnia and Herzegovina, namely, the Federation of Bosnia and Herzegovina and the Republika Srpska, broader powers than the central authority. Beginning in 1996, a considerable number of spheres of authority, including such areas as defense and security, as well as human rights and refugee issues, were gradually centralized. Bosnian and Herzegovinian authorities were well aware that provisions of the Constitution were, in some respects, discriminatory, and that pertained specifically to two things: on the one hand, the mechanism for electing the Bosnian and Herzegovinian Presidium, the three members of which (one Bosniak, one Croat, and one Serb) had to be elected in an entity where the constituent people they represented were in a majority; on the other hand, the mechanism for forming the House of Peoples, according to which each constituent people had an identical number of representatives. A consensus was reached among the political forces with regard to changing those provisions, which had been adopted as a result of the signing of the Dayton agreement. For example, agreement was recently achieved to no longer indicate ethnic origin after the names of candidates in parliamentary elections, and that opened the possibility in the future for a candidate who was not necessarily a Serb, a Bosniak, or Croat to stand for election to the Presidium. The parliament would have to weigh in on that suggestion regarding constitutional reform that was a result of a political consensus, and the Election Commission would have to change election law accordingly. There was also a consensus on the idea of allowing any candidate who ran for election to be elected from an entity where the constituent group to which he belonged was not in a majority.

3. Time dictated the need for those reforms. The next parliamentary and presidential elections were to take place on 1 October 2006. Meanwhile, under prevailing law, no changes could be made to the Constitution or to election law in the six months preceding the elections, and that meant that the reforms would have to be completed before 1 April of this year. Ultimately, the principle of equality among the constituent peoples, which was enshrined in the Dayton constitution, as well as its practical implementation, served as the determining factor for stability, politically and otherwise, for Bosnia and Herzegovina. Furthermore, any amendment of the provisions that were adopted as a result of the Dayton Peace Agreement that would not be a result of the full agreement among all the political and social forces of Bosnia and Herzegovina could destabilize the situation in the country, which was striving above all for peace.

4. Mr. Nagradic also noted that, after the ruling handed down in 2000 by the Supreme Court, which called for granting equal status to each constituent people throughout the entire national territory, important changes took place within the entities. For example, the current chairman of the Constitutional Court of the Republika Srpska was a Croat, something that had been simply unthinkable before the ruling. Numerous problems involving equal representation remained, particularly at the level of local administrative and executive bodies, despite the steady progress that was being made in that and other areas.

5. Ms. KALMETA (Bosnia and Herzegovina) said that in the domestic legal framework, international rules took precedence over national laws. They were directly reflected both in the constitution and in the law that arose from the constitution. The authorities that made direct use of international treaties were, primarily, the Human Rights Chamber and the Constitutional Court, which, for example, could cite the International Convention on the Elimination of All Forms of Racial Discrimination in their work. With time, however, other State bodies and institutions had also garnered experience in the application of international treaties. The primary difficulties encountered involved the existence in Bosnia and Herzegovina of a tradition of European law along with international norms that embodied, in particular, Anglo-Saxon law, which created a dilemma for some legal experts. At the same time, the important reforms of the judicial system that had been undertaken, as well as the broad replacement of judiciary members, had already begun to bear fruit.

6. In 2003, the adoption of a new Criminal Code and harmonization of the criminal law of the two entities, as well as of the law of those two entities with the law of the Brčko District, signaled the beginning of a new stage of legislative reform. New rules were making it possible, for example, to lodge complaints with the previously nonexistent federal courts of Bosnia and Herzegovina over the violation of human rights. Although, as before, it was necessary to raise the public's awareness of that legal remedy, the Commission for Human Rights was already hearing an entire array of cases involving complaints lodged by citizens. Six of those cases involved questions of racial discrimination. In their decisions, the courts were ordering involved State administrative and executive bodies to cease any practice that could prejudice the rights of citizens. In several cases, if the decisions were being enforced too slowly or in an unsatisfactory manner, the government often intervened successfully to remedy the situation.

7. Ms. Kalmeta said that in Bosnia and Herzegovina, a provision that clearly prohibits any discrimination based on race, language, religion or any other ground was henceforth being included systematically in any new law being adopted by the parliament. For example, the rights that every person could exercise without discrimination were spelled out, specifically, in the Law on Gender Equality, the Law on Freedom of Religion and on the Legal Status of Religious Associations and Communities in Bosnia and Herzegovina, and the Law on Displaced Persons and Refugees in Bosnia and Herzegovina, as well as the Law on Associations and Funds of Bosnia and Herzegovina. Thus, persons who regarded themselves as victims of discrimination could henceforth cite in the courts not only international conventions and treaties to which Bosnia and Herzegovina was a party, but also relevant national regulations and could request measures to remedy the situation or could ask the Constitutional Court to order compensation for them. In cases in which the applicants were victims of war, the State, owing to inadequate resources at hand,

was often unable to pay the victims the amount they could claim under international rules.

8. Between 1996 and 2003, many refugees and displaced persons who wanted to return to their homes abandoned the idea because they were encountering discrimination, particularly in employment, that was due specifically to their ethnicity and religious beliefs. Since Article 145 of the Criminal Code had prohibited national and local governmental bodies and State institutions from encouraging racial discrimination or instigating it, and acts of discrimination had come to be regarded as crimes, the situation of the returnees had improved, and the number of wrongful acts committed against them had dropped dramatically. At the same time, a 2005 survey of returnees found that nearly 77% of Bosniaks, 63% of Croats, and 64% of Serbs felt safe in their homes, whereas 1.5% of Bosniaks, 3.5% of Croats, and 1.3% of Serbs did not feel safe.

9. Ms. Kalmeta noted that, after the delimitation of the State boundaries and the creation of customs services, competent bodies found it easier to control the problem of the influx of underground migrants and, at the same time, provide better protection of their rights and deal with human trafficking more effectively.

10. As for the right to asylum, the functions associated with providing most of the services that were previously provided by the Office of the High Commissioner for Refugees were transferred several years ago to Bosnian and Herzegovinian authorities, which, unfortunately, did not have the requisite means to create refugee holding centres.

11. Ms. TARABA (Bosnia and Herzegovina) said that a number of gaps found by certain experts in the report under consideration were due to the fact that the Ministry for Human Rights and Refugees, which was authorized to draft reports on the implementation of international treaties to which Bosnia and Herzegovina was a party, was overloaded with work. Because of a shortage of funds, the ministry had been unable to consult with non-governmental organizations (NGOs) during the drafting of the report, but it had taken care to include all the available data provided by the NGOs on matters of interest to the Committee.

12. Article 143 of the Labour Code of the Federation and Article 152 of the Labour Code of the Republika Srpska gave persons illegally dismissed during the war the opportunity to turn to special commissions created in each entity for the purpose of potentially being compensated. In the Republika Srpska alone, some 60,000 complaints were received by the special commission, but the review procedure was lengthy, and the commissions did not always have enough evidence to hand down a ruling. Moreover, in a report published in 2003, the Ombudsman for Human Rights stressed that when applicants won a case, they were not always confident they would receive the compensation due to them, because of the shortage of resources in Bosnia and Herzegovina.

13. With regard to the Mostar Aluminum Plant workers fired after 1991, Ms. Taraba stated that on 15 June 2005, an agreement was concluded between trade-union representatives and the management that was a big step forward and could serve as an example for other enterprises that encounter such problems.

14. In Bosnia and Herzegovina in 2004, to guarantee the rights of religious minorities and to provide punishment for the desecration of places of religious worship, the Law on Freedom of Religion and on the Legal Status of Religious

Associations and Communities was passed, and the Criminal Code categorized the desecration of graves as a criminally punishable act and specified a punishment for it. Moreover, the Inter-Religious Council of Bosnia and Herzegovina was created, which played a fundamental role in various activities aimed at encouraging tolerance and ensuring the co-existence of the various denominations in the country.

15. The Office of the Ombudsman for Human Rights was authorized to direct the attention of the authorities to human rights violations it was apprised of and could itself undertake an investigation if it felt that to be necessary. State officials who had pertinent information but did not wish to cooperate in an investigation could be subjected to disciplinary measures or could even be taken to court.

16. Ms. RADIC (Bosnia and Herzegovina) pointed out to Committee members that most of the report under consideration had been prepared before 2004 and that unequivocal progress has been made in education after that. The structure of the education system in Bosnia and Herzegovina was complex, but many of the functions in education, as a rule, rested with cantonal entities, which explains the presence in the country of 13 education ministries. The federal education ministry was called upon to coordinate solely and exclusively the activities of the various cantonal entities.

17. Ms. Radic clarified that activities in primary and secondary education were governed by the 2003 framework law, which set forth the general goals of education based on the universally recognized goals of a democratic society and the intrinsic values of the system that are based on national, historic, cultural, and religious traditions. The law guaranteed access to education for all and protected the right to education. It defined a number of the basic principles of education and also included provisions pertaining to the integration and education of children who had recently arrived in the country. The framework law was also geared to harmonizing the laws used by the various cantons in education. Other laws pertaining to pre-school education, secondary vocational education, and higher education were being drafted.

18. With regard to education programmes and strategies, Ms. Radic cited the adoption in 2005 of a national plan of action that was built on the Dakar Framework for Action "Education for All" and was geared to developing the school system. In 2002, the education ministries signed an agreement that called for the encouragement of the schooling of children recently arrived in the country, as well as an agreement aimed at more effectively satisfying the educational needs of the Roma minority and other minorities.

19. Ms. Radic acknowledged that Bosnian and Herzegovinian authorities were encountering enormous difficulties implementing educational programmes and strategies that they had developed and that more vigorous efforts on their part were required. The difficulties included the lack of coordination between education ministries, the split-up of functions among the various competent bodies in education, the shortage of funds, and, in some cases, the improper use of available resources. The federal education ministry intended to intensify efforts to give the various cantonal ministries the support they need to more effectively implement relevant laws and programmes. In that connection, it was noteworthy that the federal education ministry, as a rule, did not carry out any activities in the Brčko District or the Republika Srpska.

20. The Bosnian and Herzegovinian representative said that most of the mono-ethnic schools, which were comparatively numerous immediately after the conflict, were disappearing, and, in any case, the authorities at this point were averse to their existence. A fairly small number of such schools remained in areas where certain ethnic groups were in a clear majority. Bosnia and Herzegovina was more troubled by the problem of ethnic segregation in educational institutions, as a result of which different schools occupied the same premises, but were administratively independent and provided very different kinds of education. At present, there were 52 such schools, which were concentrated in three cantons. A federal commission was authorized to perform inspections in the cantons where such schools are most prevalent and to submit to parliament a report on ways to remedy the situation.

21. The representative clarified that the framework law on primary and secondary education prohibited discrimination based on language, and the Constitution recognized three official languages (Bosnian, Croatian, and Serbian) and two alphabets (Latin and Cyrillic). Thus, those three languages and two alphabets were used in primary schools to the same extent, and no one language had privileged status. Authorities were working tirelessly to see to it that all children received their education in their native language. In areas inhabited primarily by Serbs, the children began studying Cyrillic in primary schools and then began learning the Latin alphabet in secondary school. At the same time, for children who were Bosnian or Croatian by descent, the Latin alphabet was initially taught, and then they began learning Cyrillic in secondary school.

22. She added that the framework law on primary and secondary education set a number of general goals in education, including, specifically, the encouragement of respect for human rights, training in the spirit of cultural and religious traditions, and the encouragement of tolerance and of mutual understanding between the communities. In August 2003, joint programmes that called for focusing on tolerance of and respect for diversity among the communities were developed in all cantons.

23. Ms. ODOBASIC (Bosnia and Herzegovina) said that agencies regulating print and electronic mass media had done considerable work since 1998, when Bosnia and Herzegovina had some 3,000 print and radio-and-television media outlets that, in some cases, were disseminating materials that fomented hatred of given ethnic communities. A code had been developed in Bosnia and Herzegovina that covered the broadcasting of radio-and-television programmes and that was based on the provisions of the European Convention on Human Rights and the Universal Declaration of Human Rights, including its Article 19.

24. Ms. Odobasic pointed out that the work of the Communications Regulatory Agency (paragraph 194 of the report)—which was responsible for regulating the activities of, and imposing appropriate penalties on, telecommunications entities and electronic media outlets throughout Bosnia and Herzegovina—had made it possible to make considerable progress in combating racial discrimination. For example, statements stirring up ethnic hatred or intolerance, which were widely disseminated in the mass media in 1998, had virtually disappeared today.

25. Mr. ABOUL-NASR said that he was shocked by paragraph 112 of the State party's periodic report, which noted that 'the Roma themselves do not show interest [in the problem of education]' and that "under such conditions, the Islamic faith practiced by the Roma in Bosnia and Herzegovina not only promotes the rejection

and neglect of the language, culture, and traditions of the Roma, but also results in many Roma declaring themselves to be Bosniaks”. In that connection, he made it clear that there is only one Islam and that, accordingly, the Islam professed by the Roma in Bosnia and Herzegovina is the same Islam of all the Muslims of the world.

26. Mr. AMIR stated that, as before, he did not understand how Article 4 of the Convention had been incorporated into the domestic law of Bosnia and Herzegovina. He noted that the country had a number of unregistered organizations and associations, which prevented the authorities from monitoring them and, if necessary, imposing sanctions on them if they made racist declarations or stirred up racial discrimination. He asked the delegation of Bosnia and Herzegovina whether the country had a criminal law that categorized the dissemination of ideas based on racial hatred as unlawful and that declared organizations based on the theory of the superiority of a given race as illegal.

27. Mr. YUTZIS said that it was clear from the periodic report under consideration and from the oral communication of the delegation of Bosnia and Herzegovina with regard to the report’s submission that the State party had to maintain a delicate balance between its endeavor to ensure some degree of political centralization and the need to take into account numerous manifestations of cultural self-identity. He acknowledged that the development and implementation of national formal-education programmes that would be identical for everyone, while taking into account special conditions, was undoubtedly a difficult and delicate task; but he was of the opinion that reform of the school system of Bosnia and Herzegovina required that federal structures show not only real political adherence to that process, but also cooperation with and support of all participants, in all echelons of political authority and administration at the local and national levels.

28. Mr. Yutzis said that he was extremely dismayed by the earlier cited points of paragraph 112 of the report, which implied that the Roma, in order to consider themselves integrated in the society of Bosnia and Herzegovina, would have to “abandon Islam.” He asked the Bosnian and Herzegovinian delegation to clarify the content of that paragraph.

29. The expert was also interested in obtaining detailed clarifications with regard to the situation of the Roma community in terms of housing and, in particular, in being informed of whether there was any federal housing law.

30. Mr. KJAERUM asked the delegation to clarify what measures had been adopted in education to accommodate special-needs children and children of the Roma minority, only 15% of whom were in school.

31. Mr. Kjaerum stressed that Article 2(2) of the Convention called upon States parties to take special and specific measures to provide for the adequate development and protection of certain racial groups, so as to guarantee them full and equal exercise of human rights and fundamental freedoms. Pointing out that the delegation of Bosnia and Herzegovina had said that the government planned to review the mechanism for hearing complaints on employment discrimination, he asked the delegation to indicate the special measures that had been undertaken to eliminate practices involving systematic discrimination with regard to employment both in the State and in the private sectors and to ensure equality on the labour market.

32. Ms. JANUARY-BARDILL said that she understood very well that Bosnia and Herzegovina, which had seen for itself the pain of war, was seeking stability and peace. But she felt that no State could count on achieving that at the expense of its own citizens. She expressed her dismay at the violation of the principles of non-discrimination and equality, particularly in education and citizenship, in Bosnia and Herzegovina and pointed out that those principles could not be subject to waiver or discussion. Those problems, which were political and structural, required political and structural solutions. In that connection, Ms. January-Bardill pointed out that in her country of origin, South Africa, an education system that was built on the principle of racial affiliation existed during apartheid and was eradicated with the adoption of legislation that established a single nationwide education system for all.

33. At the same time, Ms. January-Bardill asked the delegation to indicate whether the judges sitting in the courts of a considerable number of municipalities were versed in the provisions of Article 7 of the Convention, which specified that States parties had to take measures to encourage mutual understanding, tolerance, and friendship among nationalities and racial or ethnic groups and to clarify whether all citizens of Bosnia and Herzegovina, in the opinion of the delegation, had confidence in the country's system of criminal justice.

34. Acknowledging the multitude of measures that were enumerated in paragraph 53 and in subsequent paragraphs of the periodic report under consideration and that prohibited sexual discrimination in public and private life, Ms. January-Bardill asked what measures had been adopted in the interests of minority women and whether the principle of non-discrimination on the basis of sex was being observed.

35. The CHAIRPERSON declared that the Committee would resume its consideration of the initial report and the second to sixth periodic reports of Bosnia and Herzegovina at the next meeting.

The meeting rose at 1 p.m.