



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

Distr.
GENERAL

CMW/C/SR.104
27 April 2009

Original: ENGLISH

COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Tenth session

SUMMARY RECORD OF THE 104th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 23 April 2009, at 10 a.m.

Chairperson: Mr. EL JAMRI

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (Continued)

Initial report of Bosnia and Herzegovina

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (continued)

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

1. At the invitation of the Chairperson, the members of the delegation of Bosnia and Herzegovina took places at the Committee table.
2. The CHAIRPERSON welcomed the delegation of Bosnia and Herzegovina, which had demonstrated the importance it attached to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in its detailed report (CMW/C/BIH/1) and written replies to the list of issues to be taken up in connection with the consideration of its report (CMW/C/BIH/Q/1/Add.1).
3. Ms. DJURIJA (Bosnia and Herzegovina), introducing the initial report of Bosnia and Herzegovina, said that she hoped the Committee's conclusions and recommendations would provide a road map for her country's application of the Convention. By way of background, she explained that the 1995 General Framework for Peace in Bosnia and Herzegovina (the Dayton Agreement) had established the Federation of Bosnia and Herzegovina and the Republika Srpska as two political, territorial and functional entities with a high degree of constitutional, organizational and institutional independence. Brcko District had been established pursuant to the Brcko Arbitration, and enjoyed a high degree of independence. Recent amendments to the Constitution of Bosnia and Herzegovina had established the district's constitutional status as a separate administrative entity over which Bosnia and Herzegovina had sovereignty. The Constitutional Court of Bosnia and Herzegovina would rule in any disputes between the district and the State or its entities. The cantons into which the Federation of Bosnia and Herzegovina was divided had considerable powers in social matters such as education, health and employment.
4. She drew attention to the constitutional reforms and institutional integration and harmonization that had been undertaken. The defence and justice systems had been improved, and reform of the security services continued. Bosnia and Herzegovina was working towards European Union membership, on the basis of the rule of law, free democratic elections and a market economy. It was striving to expedite harmonization of its legislation with the European Union acquis communautaire and had given the European Convention for the Protection of Human Rights and Fundamental Freedoms constitutional rank.
5. She pointed out that, under the Law on Accession to International Treaties, an international instrument had to be approved by the Council of Ministers, then the President and, lastly, by parliament.
6. Mr. ČEGAR (Bosnia and Herzegovina) said that his country was one of the few European countries to have acceded to and ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Many countries, in particular the

richer ones that received the largest number of migrant workers, paid insufficient attention to migration, thereby directly or indirectly exacerbating failings in the application of migrant workers' rights in vital areas such as employment, housing, education and health care.

7. The report had been drafted by a working group comprising representatives of a wide range of State bodies, trade unions, employers and non-governmental organizations. In the course of its work, the working group had taken the opportunity to promote the Convention, and the final report and supporting documents had been posted on the website of the Ministry for Human Rights and Refugees, where they could be consulted by the general public.

8. The report itself contained details of the framework for the implementation of the Convention, including all bilateral, regional and multilateral treaties that Bosnia and Herzegovina had signed. To avoid unnecessary repetition, information provided in previous reports to United Nations bodies was referenced in footnotes rather than reproduced in the report. Electronic versions of laws and regulations on migrant workers had been submitted separately.

9. Mr. TAGHIZADE (Country Rapporteur) said that it was clear from the report and the written replies to the list of issues that the State party took its responsibilities under the Convention seriously. Given the State party's complex structure, migration was regulated centrally but migration-related issues such as employment were dealt with at the cantonal or municipal level. Moreover, some laws related to migration differed between the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko District. He asked if there was any arrangement for coordinating the efforts of all the bodies dealing with migration issues. He also asked if there was a programme to ensure that the Convention was implemented at all levels in the State party.

10. He enquired how data on migration flows into and out of the State party were processed, collated and analysed, and whether there was a specific body that collated information from all the relevant authorities. Noting that as many as 1.5 million citizens of Bosnia and Herzegovina lived abroad, he asked which body was responsible for protecting their rights. He also asked whether citizens of Bosnia and Herzegovina living abroad could vote in elections in their home country and how freely they could return there, as it appeared that persons of certain ethnic origins might face problems upon their return. The Committee would also appreciate detailed and precise information on obtaining a work permit in Bosnia and Herzegovina.

11. According to the report and the written replies, schools usually catered for specific ethnic groups. He would like to know in which schools and in which languages migrant workers' children were taught, and how their right to education was guaranteed. He would also appreciate some general information on the coordination between the various bodies working in the field of children's rights.

12. Mr. BRILLANTES asked how successful the transfer of responsibility for migration issues from the Ministry for Human Rights and Refugees to the Ministry of Security had been, given that the members of the delegation were mainly from the former ministry. He asked whether the different constitutions mentioned in paragraph 12 of the report had equal status, and what measures the State party was taking to combat irregular migration, particularly that of migrants

in transit to destination countries. He would be grateful for more information on the Ilareia and Hera projects mentioned in paragraphs 65 and 66 of the report, and clarification of what the State party meant by “high-risk migration countries” in paragraph 108.

13. He asked whether the State party had fulfilled its obligations to inform migrant workers of their rights under the Convention, and whether migrants in an irregular situation had access to emergency health care on an equal footing with citizens of Bosnia and Herzegovina. He also asked what role recruitment agencies played in migration, whether they charged fees and whether they were regulated in any way. Lastly, he asked what the State party thought the repercussions of the global economic crisis would be for migrant workers, in its capacity as both a country of origin and a country of destination.

14. Mr. KARIYAWASAM said that he would appreciate information on prosecutions and convictions for crimes involving trafficking in persons. He asked whether the readmission agreements referred to in paragraph 54 of the report had been successful and whether many migrant workers had actually returned to Bosnia and Herzegovina. He would appreciate clarification of what was meant by the term “non-citizens” throughout the report.

15. Expressing concern at the large size of the Bosnian diaspora, he asked whether all its members were citizens of Bosnia and Herzegovina, with corresponding passports, or whether some were migrants who had settled in other countries and did not intend to return. If they were citizens of Bosnia and Herzegovina, the State party was obliged to ensure that their rights under the Convention, such as the right to participate in public affairs and to vote in their country of origin, were guaranteed. What arrangements were in place, including consular services in States of employment, to achieve that?

16. Mr. EL-BORAI said that he was concerned that appeals lodged by migrant workers against negative decisions concerning matters such as expulsion, residence and asylum appeared to take a long time to process. What was an appellant’s situation pending the final ruling? He asked for clarification of the terms “withdrawal of citizenship”, the subject of one complaint mentioned in paragraph 33, and “support resources”, one of the reasons for refusing entry to migrants that was listed in table 1 of the report.

17. He asked under what conditions work permits could be revoked. To complement the general information on legislative provisions regarding freedom of association for workers, he would appreciate information relating specifically to migrant workers. He would like to know what legal instruments guaranteed the equal treatment of migrant workers and citizens of Bosnia and Herzegovina with regard to remuneration, conditions of work and social security, and whether any complaints had been lodged concerning unequal treatment. Similarly, which law guaranteed the right to transfer earnings and personal belongings to the State of origin?

18. Ms. POUSSI, noting that the entities that constituted Bosnia and Herzegovina each had their own legislation in the area of labour migration, asked whether that led to differential treatment of migrant workers in the State party, according to where they lived.

19. Mr. SEVIM asked whether international treaties prevailed over national legislation, whether their provisions were self-executing or had to be incorporated into national legislation, and whether they could be invoked directly before the courts in Bosnia and Herzegovina by both

documented migrant workers and migrant workers in an irregular situation. He wished to know how the social security rights of migrant workers in an irregular situation were determined, and whether any bilateral agreements in that area had been signed with States of employment.

20. The CHAIRPERSON said that he would appreciate details of any coordination between the State party and neighbouring countries on labour migration issues. He asked what channels existed to enable the Bosnia and Herzegovina community abroad to maintain relations with, and make a contribution to, their country of origin. Referring to the overview of appeals lodged by migrant workers with the Ministry of Security, provided in table 8 of the report, he asked why so few appeals were lodged in relation to the number of migrant workers. He would appreciate further information on what was meant by “resolved” in the same table, when indicating the outcome of the cases: had the appeals been granted or dismissed?

The meeting was suspended at 11.20 a.m. and resumed at 11.45 a.m.

21. Ms. DJURIJA (Bosnia and Herzegovina) said that the Constitution of Bosnia and Herzegovina was applicable in both the Federation of Bosnia and Herzegovina and the Republika Srpska, and guaranteed a high level of independence for both, each of which in turn had its own basic law, also known as a constitution. In addition, Brcko District had its own statutes, and the 10 cantons within the Federation were also entitled to adopt their own basic laws. Notwithstanding the complexity of the constitutional system, the national Constitution and international conventions were applicable throughout the country, in both entities and in Brcko District. Bosnia and Herzegovina had a constitutional court in which any citizen was able to challenge the constitutionality of laws adopted by lower-level entities and their administrative decisions. Since the end of the war in Bosnia and Herzegovina, the country had faced serious constitutional problems, but none were of such a magnitude that they would prevent the application of international conventions throughout the country.

22. The Ministry for Human Rights and Refugees had been set up in 2000. Some of its powers, in particular those relating to the movement of aliens and authorization for them to reside in the country, had been transferred to the Ministry of Security, which had been established in 2003. The protection and promotion of human rights, monitoring of the human rights situation and the drafting of reports to international human rights treaty bodies remained within the purview of the Ministry for Human Rights and Refugees.

23. The specific situation in the country meant that the Ministry for Human Rights and Refugees needed to cooperate effectively with similar bodies at the various levels of government, and also with inter-ministerial groups at the national level. A special mechanism had been developed for the protection of the human rights of individuals, regardless of whether they held citizenship, whereby they could file complaints of violations. The Ombudsman for Human Rights was able to carry out investigations to ascertain whether a State body had violated the rights of an individual or of a group.

24. The main groups affected by problems related to the registration of births and documentation were ethnic minorities, in particular the Roma. Migrant workers and their families were generally unaffected, as records had always been carefully kept, first by local police departments and more recently by the Ministry of Security. There was no discrimination in access to primary and secondary education, which were provided free of charge. Access to

higher education was more problematic, as it had to be paid for, but if the student's family had the resources there were no restrictions on enrolment. Students from the families of migrant workers were able to apply for certain types of financial aid, including scholarships, for example through migrant workers' associations.

25. Mr. ZUKO (Bosnia and Herzegovina) said that the Labour and Employment Agency of Bosnia and Herzegovina was an independent administrative body that was responsible for the coordination of activities related to employment, including the collection and forwarding of information on the international and national labour markets. The agency initiated accession to international labour conventions and monitored their implementation and the enforcement of labour laws. It was also responsible for coordination with the employment services of the Federation, the Republika Srpska and Brcko District, for example in the collection of statistics on the labour market and on the issuance of work permits. The agency, after consultation with other bodies, had set the quota of work permits to be renewed or issued in 2009 at 2,580: 1,140 in the Federation, 800 in the Republika Srpska and 640 in Brcko District. Of those, between half and two thirds were renewals. In addition, some aliens were also allowed to work in the country under the law on asylum. Nationwide statistics on the number of work permits issued were compiled by the agency and were published and posted on its website. The agency actively cooperated with similar bodies in the region, and had helped to compile regional statistics on the number of people who had lost their jobs since the onset of the world economic crisis in October 2008.

26. Mr. KLIČKOVIĆ (Bosnia and Herzegovina) said that the procedure to apply for work permits had been made considerably simpler, and that the same requirements were applicable in the Federation, the Republika Srpska and Brcko District. Brcko District did not have its own laws for migrant workers; it applied the laws adopted at the national level. An employer could request a work permit for a foreign national by submitting an application with various supporting documents, including a contract setting out the conditions of employment. The employer had to specify what skills were required for the job and justify the need to employ the foreign worker. For an initial work permit, a health certificate was required as well, along with a certified copy of the passport, both of which must be issued in the country of origin. If there was no national of Bosnia and Herzegovina to take the job, a work permit was issued. Foreigners who owned companies in Bosnia and Herzegovina were issued with work permits without any conditions.

27. Significant progress had been made in harmonizing the entities' legislation relating to the movement and stay of aliens and asylum. The Labour Law prohibited any form of discrimination in employment, including discrimination based on citizenship or nationality. The same types of employment contract were used for migrant workers in the Federation, the Republika Srpska and Brcko District.

28. Mr. KURAVICA (Bosnia and Herzegovina) said that the Ministry of Security was responsible for keeping information on residence permits issued in the country. It maintained a database originally kept by the Ministry for Human Rights and Refugees, while at the same time implementing a new information system that would eventually include data on visas issued and allow electronic consultation by consular and other offices around the world. The new system would be much more comprehensive, as it would also encompass information on such acts as expulsions and court rulings affecting foreign nationals and would make it possible to keep track of aliens who obtained residence and work permits through procedures such as family

reunification. Under the system, there were three kinds of work permit: standard, volunteer and humanitarian organization permits. Foreigners wishing to work in Bosnia and Herzegovina in theory had to apply through the country's diplomatic or consular missions abroad; the application was then forwarded to the authorities in Bosnia and Herzegovina, who sent the application back to the mission with their decision. However, that procedure was not always followed in practice. Another procedure involved filing an application with the local office of the Aliens Affairs Service of the Ministry of Security. Either the employer or the worker could apply for the work permit, which must be obtained prior to the foreign worker's entry to the country.

29. The requirements and procedure for the issuance of work permits were specified by law. Some foreigners who had gone through the procedure felt that it involved too much paperwork. Efforts had been made to simplify it, but they had so far proved unsuccessful. The requirements, based on standards applicable in neighbouring countries and in member States of the European Union, were necessary to prevent social problems. They included presentation of a health certificate and proof of accommodation. Grounds barring the issue of a residence permit included a record of serious crime in the country of origin.

30. The fee for processing applications was 10 marka, which was equivalent to about €5. The fee for inserting a sticker certificate of temporary or permanent residence in a passport was equivalent to about €50. Non-citizens tended to be ill-informed about the regulations governing their status. Two weeks before the expiry of their visa, they were required to submit an application for residence. Applications submitted after that date were rejected. The authorities had prepared a document entitled "Basic information on the entry, residence and international protection of non-citizens in Bosnia and Herzegovina", which would be available shortly for consultation on the Government's website. It would also be possible to download residence application forms from the site. The normal deadline for a decision on such applications was 30 days. If background checks were necessary, especially where criminal liability was suspected, that period could be extended to 60 days. Most applications were decided promptly. If the application was turned down, the applicant could appeal the decision within two weeks and remain legally in Bosnia and Herzegovina during that period. However, he or she could not leave and re-enter the country.

31. Ms. HADŽIBEGIĆ (Bosnia and Herzegovina) said that, according to official statistics, 1,350,000 citizens of Bosnia and Herzegovina lived abroad, in a total of 121 countries. According to the World Bank, 1,471,000 citizens, or 37 per cent of the total number, lived abroad. The figures were imprecise because many citizens were registered in the countries in which they lived as citizens of Serbia or Croatia. The reason for the shockingly large diaspora was the 1992-1995 war. Moreover, according to the International Organization for Migration (IOM), it was one of the most highly educated diasporas: 28.6 per cent of its members held higher education degrees and 4 per cent some kind of postgraduate degree. Remittances from citizens living abroad were very large. According to recent Central Bank data, one third of the country's foreign trade debt was covered by remittances. Families who had remained behind in Bosnia and Herzegovina were also heavily dependent on them.

32. Citizens living abroad were in most cases very well integrated into their host society. Almost 95 per cent had acquired regular status in terms of work and residence permits, education and family reunification. Although a small number had become citizens of their host country, most opted to retain their separate status, especially since some countries, such as Austria and

Germany, ruled out the possibility of dual citizenship. They had set up many associations and clubs, which were often united under an umbrella organization. However, the tendency to form associations along ethnic lines, for instance Croatian and Serbian associations, meant that the diaspora was in some respects more divided than the home community.

33. Responsibility for assisting citizens living abroad lay, according to the Constitution, with the central Government, in particular the Ministry for Human Rights and Refugees and the Ministry of Foreign Affairs. The Ministry of Security and the Ministry of Civil Affairs were also involved. Only about 1 per cent of emigrant children had access to mother-tongue education or language classes. Tuition was sometimes arranged by the country's consular missions. In other cases the Governments of host countries, such as Austria and the Scandinavian countries, financed education for children of immigrants in their mother tongue. Associations and religious communities also provided educational facilities, but that was not always the best solution.

34. Under the Law on Associations and Foundations, the Ministry of Justice kept records of associations of foreign migrant workers in Bosnia and Herzegovina. There were 23 associations of foreign nationals and 10 minority associations.

35. Owing to dissatisfaction with the provisions for participation by the diaspora in elections, it had been decided to amend the relevant legislation to simplify the procedures and to allow emigrants to vote electronically. The number of emigrants participating in elections had been steadily declining since 1996, when 450,000 votes were recorded. By way of comparison, only 20,000 votes were recorded in 2006.

36. Mr. ČEGAR (Bosnia and Herzegovina) said that Bosnia and Herzegovina ranked fifth in the world in terms of the relative scale of emigrants' remittances. Legislation imposed no barriers on remittances and bilateral agreements had been concluded to avoid double taxation.

37. He assured the Committee that the authorities would make every effort to simplify the Electoral Law to stimulate more active participation by the diaspora in the electoral process.

38. Ms. BAŠIĆ (Bosnia and Herzegovina) said that bilateral and multilateral agreements and treaties that had been ratified by Bosnia and Herzegovina were directly applicable by the courts, though there had not been many cases of direct application to date. The legislature was also seeking to harmonize domestic legislation with international treaties.

39. Mr. ČEGAR (Bosnia and Herzegovina) said that action against human trafficking was taken on two fronts: prevention and suppression. Prevention was based on education, counselling, awareness-raising in the media and meetings focusing on the criminal and pernicious nature of the phenomenon. Suppression was based on prosecution. Article 186 of the Criminal Code defined the offence of human trafficking and article 189 the offence of human smuggling. The legislation of the Federation and Brčko District defined the offence of soliciting for prostitution, and that of the Republika Srpska defined the offence of human trafficking for the purposes of prostitution. Severe prison sentences were prescribed for such offences: under article 186, a term of imprisonment of between 25 and 40 years could be imposed. The minimum

term was one year. In a final judgement handed down two days previously following appeals from both the prosecution and the defence to the appellate division of the Court of Bosnia and Herzegovina, the principal accused had been sentenced to a term of 12 years and his accomplice to a term of 8 years.

40. Mr. TAGHIZADE (Country Rapporteur) asked for more precise information on the procedures applied by the different components of the State structure: the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko District. What measures were usually taken by each of them to deal with the situation of irregular migrant workers: action to legalize their situation or rigorous administrative measures, including expulsion? Were there detention centres for migrants in the individual components and, if so, what were the conditions like, how long could a detainee be held, and were the decisions regarding detention taken by the courts or by administrative bodies? He would welcome specific examples of current practice and, if possible, statistics.

41. He also wished to know whether the social rights of migrant workers in the form of social security and unemployment benefits were equivalent to those enjoyed by the citizens of Bosnia and Herzegovina. Were the punishments applicable to citizens, such as suspension of unemployment benefits for up to 12 months, also applicable to migrant workers? On leaving the country, were migrant workers permitted to remove their personal effects and tools without paying customs duties? Lastly, he asked whether any provision was made for safeguarding the rights of Roma who were migrant workers.

42. Mr. KARIYAWASAM enquired about the implementation in practice of article 31 of the Convention, which required States parties to ensure respect for the cultural identity of migrant workers and members of their families, even when they were in transit. As a multicultural country, Bosnia and Herzegovina had the potential to serve as a model for other States parties, including through the conduct of its consular missions abroad.

43. The CHAIRPERSON asked about Bosnia and Herzegovina's attitude to dual citizenship. In the case of Germany and some other countries, the authorities returned the passport of persons who had relinquished their citizenship to the country of origin. In principle, it should be possible for such persons to recover their citizenship on request. Was that the case in Bosnia and Herzegovina?

44. He asked whether the decision to introduce electronic voting for emigrant citizens was the result of a study of the physical and logistic reasons that had prevented them from voting in the past, or whether it was merely based on assumptions regarding the downward trend.

The meeting rose at 1 p.m.