



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

Distr.
GENERAL

CMW/C/SR.106
29 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 106th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 24 April 2009, at 10 a.m.

Chairperson: Mr. EL JAMRI

later: Mr. BRILLANTES
(Vice-Chairperson)

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GE.09-41787 (E) 280409 290409

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 (continued) (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 resumed their places at the Committee table.
2. Ms. DJURIJA (Bosnia and Herzegovina) said that much progress had been made in Bosnia and Herzegovina in combating trafficking in persons. Work under the Hera programme had been completed, and a third action plan to prevent such trafficking in Bosnia and Herzegovina had been adopted for the period 2008-2012. In the previous three years there had been very few cases of trafficking of migrant workers in an irregular situation. The State party had established a transnational mechanism with 10 countries in the region, aimed at setting up a database for the exchange of information on victims and perpetrators of trafficking. However, the database was not yet fully operational, owing to a lack of resources.
3. The training courses under the Hera programme had been organized by the training centre for judges and prosecutors and the office of the state coordinator for combating trafficking and illegal migration, and had been provided not only to judges and prosecutors but also to more than 200 individuals from other institutions involved in combating trafficking, including social welfare centres and civil registries. In 2008, a mechanism had been established at State level for direct cooperation with NGOs, and since 2007 the Ministry of Security had worked in partnership with seven different NGOs that provided accommodation and safe houses for foreign nationals who had been trafficked. Since 2008 the Government had awarded grants to NGOs that provided accommodation and care for victims of trafficking. In 2009, financial assistance from the International Organization for Migration (IOM) had been allocated to programmes for the rehabilitation and reintegration of women and children who had been trafficked. The Ministry for Human Rights and Refugees, together with the Ministry of Security and the Ministry of Justice, had responsibility for the rehabilitation and reintegration programmes. The ministries of education and social welfare in the Federation of Bosnia and Herzegovina and in the Republika Srpska were also involved in the programmes, alongside 10 NGOs conducting individual reintegration programmes for victims of trafficking.
4. In the aftermath of the war in Bosnia and Herzegovina, the State party had inadequate resources to meet the costs of social protection and health insurance for migrant workers.
5. Mr. KURAVICA (Bosnia and Herzegovina) said that, as part of the strategy to combat irregular migration for the period 2004-2008, immigration centres had been established for foreign nationals placed under a supervision order. The centres could accommodate up to 45 people, and men and women had separate quarters. Children were not segregated from adults, but work was being carried out with the help of NGOs to rectify that. The Government of Bosnia and Herzegovina provided funding to the immigration centres. As part of the same strategy, the Aliens Affairs Service had been set up, and had taken over the powers and responsibilities of the police and administrative authorities formerly responsible for migration

issues in the Federation of Bosnia and Herzegovina, the Republika Srpska and Brcko District, thereby ensuring greater coordination throughout the State party. The Aliens Affairs Service had 250 staff, but was understaffed by approximately 25 per cent.

6. Under the strategy for migration and asylum for the period 2008-2012, it was envisaged to create a single information system that would merge all the databases containing information on migrants, including information on their residence and asylum status. To ensure confidentiality, the system would permit details of migrants applying for asylum to be made available to authorized users only. A special coordinating body, which reported to the Council of Ministers, had been established to deal with migration and asylum issues. The coordinating body included representatives of the Ministry of Security, the Ministry of Foreign Affairs, the border police and the Aliens Affairs Service.

7. The information brochure describing the rights of migrants in Bosnia and Herzegovina, as well as all legislation on issues relating to migrants, was due to be translated into local languages and English and posted on the website of the Ministry for Human Rights and Refugees.

8. A project entitled "Computerization of non-citizens' affairs" had been conducted within the framework of the European Union Community Assistance for Reconstruction, Development and Stabilization (CARDS) programme, with the aim of establishing networks for the compilation and exchange of data on migrants, including information on their visa applications, entry, registration and departure, in line with international standards and conventions, including European Union legislation.

9. "High-risk migration countries" were those classed as such on the basis of factors such as the country's security situation, including whether there was armed conflict, and whether a readmission agreement existed. Criteria taken into account when assessing a country of origin's security situation included the existence of organized crime, trafficking in persons and drug-trafficking. A simple indicator of a "high-risk" country was whether a visa was required for its nationals to enter Bosnia and Herzegovina, as was the case for China, and for African and Asian countries. Nationals of European Union countries, and Turkey, did not require a visa, and a proposal had recently been introduced to establish a visa-free regime for Albanian nationals.

10. Ms. DJURIJA (Bosnia and Herzegovina) said that efforts were under way to ensure greater coordination between the border police, the Ministry of Security and the department dealing with immigration and asylum matters, for the purpose of combating illegal migration and in order to meet the strict requirements imposed by the European Union. Being geographically located in the centre of the Balkans, Bosnia and Herzegovina was primarily a country of transit towards the European Union. Considerable progress had been achieved in combating illegal migration, despite the State party's lack of resources, equipment and training.

11. Mr. KLIČKOVIĆ (Bosnia and Herzegovina) said that matters pertaining to the granting and revocation of work permits were regulated in the same way throughout the country. Migrants paid no fees whatsoever for work permits. The costs, which ranged from 50 to 100 marka, were borne by the employers. They were fixed by the employment agencies and covered their expenses. Brcko District applied the Law on Non-Citizens' Movements, Residence and Asylum, and the Federation and Republika Srpska had separate legislation. In all cases work permits expired within one year of the date of issue. Employers who failed to issue a contract were

subject to severe fines. If a temporary residence permit was revoked or if the employment contract expired or was terminated, the work permit was revoked on the same date. If a foreign national was charged with a crime or was guilty of some form of breach of duty, the employment agency invalidated the work permit. The foreign national could appeal the decision to the responsible ministries in the Federation and the Republika Srpska or to the responsible department in Brcko District, which would take a final decision. Employment agencies were notified of court judgements in order to assess whether the relevant work permit should be invalidated. Detailed and fully transparent records of all such proceedings were maintained in the employment agencies.

12. With regard to freedom of association, anyone with an employment contract, including a migrant worker, enjoyed the constitutionally guaranteed right to join a trade union.

13. With regard to the employment of non-citizens and stateless persons, it had been suggested that there was a contradiction between paragraphs 345 and 346 of the report. The fact that there was no separate legislation in Brcko District did not mean that migrants working there enjoyed less protection, since the Law on Non-Citizens' Movements, Residence and Asylum was directly applicable in the District.

14. All labour and social rights were regulated by the employment contract, which specified the number of working hours, the wage or salary to be paid, the amount of leave entitlement and the conditions governing termination of the contract. Employers were required to register all employees for social security purposes. Migrant workers were thus entitled to a pension and to disability, health and unemployment insurance. Where bilateral agreements had been signed, migrant workers' social insurance contributions were combined with contributions made in their country of origin or in countries where they worked after leaving Bosnia and Herzegovina. Families of migrant workers were also entitled to health care on an equal footing with nationals of Bosnia and Herzegovina.

15. If an employment contract was terminated and the migrant worker was not to blame, he or she would be entitled to unemployment benefit. The same legislation was applied throughout Bosnia and Herzegovina. Coverage for 8 months was required during a calendar year or alternatively for 12 months, with interruptions, over a period of 18 months. In cases where a bilateral social insurance agreement had been signed, such rights also depended on the duration of the insurance period in the country of origin. Where the period of cumulative employment was less than 10 years, migrant workers were entitled to 35 per cent of their average salary before termination of the contract; where the period exceeded 10 years, they were entitled to 45 per cent thereof. While receiving unemployment benefit, migrant workers and their families continued to enjoy health insurance coverage and retained their pension entitlements. Some social insurance agreements provided for the right to reimbursement of social security contributions if migrant workers returned to their country of origin after termination of the contract. Migrant women, even those who were unemployed, enjoyed the right to maternity leave and to special pregnancy and childbirth care.

16. Ms. DJURIJA (Bosnia and Herzegovina) said that banks imposed a ceiling of about 30,000 marka, which was equivalent to about €15,000, on remittances. Nationals of Bosnia and Herzegovina working in other countries could apply for exemption from customs duty when importing their personal belongings.

17. Ms. HADŽIBEGIĆ (Bosnia and Herzegovina), referring to question 5 in the list of issues (CMW/C/BIH/Q/1), said that the Ministry for Human Rights and Refugees, the Ministry of Security and the Ministry of Civil Affairs had prepared rulebooks for the protection of refugees. According to recent statistics, there were currently 143 persons with refugee status in the country. An asylum-seeker who was denied refugee status could be offered subsidiary protection if repatriation might expose him or her to torture or some form of ill-treatment. By-laws had been enacted to grant refugees, their families and persons under subsidiary protection the right to social welfare and health care. The rulebooks had begun to be applied in early 2009. In March 2009 the first instalments of funds had been transferred by the Ministry for Human Rights and Refugees to the competent social welfare centres, which assessed entitlements on the basis of applications from claimants. So far 44 applications had been submitted and 18 cases were still pending. Refugees and persons under subsidiary protection were entitled to financial assistance of 126 marka, or roughly €62, per month. On presentation of a refugee card and residence certificate, they were entitled to various social welfare benefits and their children were able to attend school.

18. Mr. Brillantes, Vice-Chairperson, took the Chair.

19. Ms. DJURIJA (Bosnia and Herzegovina) noted that Bosnia and Herzegovina was still a poor country, which accounted for the relatively small benefits granted.

20. The movements and residence of non-citizens were regulated by the Ministry of Security and a distinction was made between migrants with regular and irregular status. The latter did not enjoy the same rights.

21. Mr. ZUKO (Bosnia and Herzegovina) said that Bosnia and Herzegovina had been involved for a year in the so-called Aeneas Project, which was financed by the European Union (EU), the International Organization for Migration (IOM), the International Labour Organization (ILO), the Swiss Federal Office for Migration, the German Federal Office for Migration and Refugees, and other donors. The purpose of the project was to help citizens of Bosnia and Herzegovina and other countries who wished to work or study in an EU country, New Zealand, Australia, Switzerland, the United States or Canada. There were service centres in Sarajevo and Banja Luka. The staff had been trained to run the project by experts from IOM.

22. Mr. KURAVICA (Bosnia and Herzegovina) said that he wished to supplement the information provided at the previous meeting with a few details regarding quotas applicable to work permits. Many categories of employment were excluded from the quotas. Article 79 of the Law on Non-Citizens' Movements, Residence and Asylum listed those categories, which included: foreign nationals with higher education degrees; foreign nationals whose work was based on an international agreement; foreign nationals performing essential tasks in a private company such as a bank; teachers recruited to provide mother-tongue instruction for non-citizens; professional sports trainers; and spouses or common-law partners of foreign nationals working in Bosnia and Herzegovina.

23. Article 84 of the same law listed 21 categories of persons who were not even required to apply for a work permit. They included: members of the board of directors of companies incorporated in Bosnia and Herzegovina; founders of private companies; university teaching staff; teachers at foreign cultural institutions; civilian and military officials of foreign

Governments whose presence in the country was based on a cooperation agreement; members of international missions; representatives of religious communities; foreign correspondents; artists such as opera singers, folk singers or ballet dancers; foreigners entering the country to receive vocational training, to take part in sports events, to organize conferences or to attend fairs; and circus staff. They could stay in the country for up to 30 days or, in some cases, for a year.

24. With regard to transit migration, the authorities had begun work on integrated border management in 2005 and the Council of Ministers had adopted a document in 2006 which stated that the flow of persons, goods and services must be as smooth as possible, and that efficient arrangements for effecting controls must be introduced in order to reduce the time spent at the border. To that end, close cooperation was necessary among border agencies, such as the border police, the customs authorities, inspectorates, veterinary services and phytosanitary agencies. To prevent illegal border crossings, the official crossings should be clearly identified and blocked. Since the establishment of the Aliens Affairs Service at the Ministry of Security in October 2006, the State border police had been responsible for the 10-kilometre belt adjacent to the border.

25. When a foreign national was found to be illegally resident in Bosnia and Herzegovina, he or she was permitted to contact IOM, which made the necessary arrangements for departure under its Assisted Voluntary Return (AVR) programme. The authorities were discussing whether funds should be earmarked in the budget of Bosnia and Herzegovina to set up a national voluntary return programme.

26. Under the law of Bosnia and Herzegovina, foreigners working without a work permit could not be regularized. Persons working illegally in the country who were of nationalities not requiring visas had their right to reside in Bosnia and Herzegovina rescinded within a three-month period; if they were of nationalities requiring visas, or if they had committed a crime in Bosnia and Herzegovina, they could be expelled and banned from re-entering the country for a period of one to five years. Expulsion measures were issued by the administrative authorities of the Ministry of Security's department for Alien Affairs Service. Foreign nationals were not expelled pending their appeals, which were handled by the Ministry of Security. If the appeal was unsuccessful, the decision became enforceable, but only after a waiting period. Not all persons subjected to expulsion orders were placed in migrant accommodation centres. If there was a risk that the person would flee or if the person had no documentation, he or she could be subject to placement in such a centre, from where they could file appeals within 24 hours with the Ministry of Security. The Ministry had to respond within another 24 hours; if it rejected the appeal, the person had the right to lodge another appeal with a court, which itself had 72 hours to issue its decision. During such procedures, the person had to stay at the migrant accommodation centre.

27. The local offices of the Ministry of Security did not provide financial assistance to foreigners wishing to return to their countries, but they did facilitate self-initiated voluntary return. Such persons registered their departure with the border police, which officially informed the Ministry of Security of their departure. Bilateral agreements covering the transit of migrant workers were in effect with both Serbia and Montenegro.

28. The basic information concerning conditions for residence in the country had been published, and there had already been some training sessions on the Convention for certain State

bodies, including the border police, the police, the Alien Affairs Service and the State Investigation and Protection Agency. Hopefully, training sessions on the Convention would soon be given to prosecutors and judges. The Dayton Agreement had established the obligation for the State to review the citizenship of certain persons residing in the country. Those affected by the review had been duly informed through extensive posting of notices in the published and broadcast media, on the World Wide Web and in Bosnian consular offices abroad. Any interested party had had ample time to find out how to support a claim of citizenship. Under the criteria set out in the Dayton Agreement and the Constitution, citizens had to demonstrate an actual connection with the country. Those who had illegally obtained citizenship were liable to have their citizenship revoked. The Commission that heard cases had to determine whether the person in question had a real desire to retain citizenship or whether they had some ulterior motive, such as the intention to participate in organized crime or terrorism. The Commission had issued fair decisions, none of which had been based on ethnic or racial reasons, and all of which had been subject to appeal within 60 days. Any revocation of citizenship had taken place because the person in question had obtained citizenship illegally. Such persons were often able to apply for residence in Bosnia and Herzegovina as foreign nationals; they could not be repatriated until the Ministry of Security issued a decision on their application. The few who had been placed in detention centres had been able to appeal their cases before the courts.

29. Mr. EL-BORAI said that it would be useful for the delegation to explain in more detail the relationship between the employment contract and the work permit. It was important for the Committee to understand what happened when a contract of employment was terminated, either by the employer or by the worker. Would the worker retain the right to reside and work in the country? Did the authorities take into consideration whether the employer or the worker was at fault when determining the worker's future status? The right to form trade unions should not be dependent on the contract of employment, but on national legislation. The delegation had referred to limits on monetary transfers to countries of origin. Were those limits imposed by the banks or by the Government? Lastly, what happened to persons who lost their citizenship? If they were repatriated, how did the Government determine where to send them?

30. Mr. TAGHIZADE (Country Rapporteur) said that it was his understanding that migrant workers lacking medical insurance or who came from countries with which there were no bilateral or multilateral agreements on medical insurance had no possibility of receiving medical assistance, including emergency care. He asked the delegation to explain whether the children of all migrant workers had access to education, or only those who came from countries with which Bosnia and Herzegovina had concluded bilateral or multilateral agreements. When migrants' children were born in the country, were the births registered, and were the children entitled to medical care and education?

31. Mr. SEVIM asked whether social security coverage extended to all migrant workers, or just to those whose countries had concluded bilateral agreements with Bosnia and Herzegovina, and whether migrants had the right to export their social insurance benefits. It was his understanding that medical insurance coverage depended on contributions to the insurance scheme. Did all migrant workers have access to urgently required medical care, as stipulated by article 28 of the Convention, or were their contributions verified prior to treatment?

The meeting was suspended at 11.55 a.m. and resumed at 12.10 p.m.

32. Ms. DJURIJA (Bosnia and Herzegovina) said that it was not the banks that limited the amount of transfers to other countries, but legal provisions adopted to combat money-laundering. Anyone transferring amounts of over €15,000 had to provide evidence of the origin of the funds. In the case of migrant workers sending remittances, that would not be problematic. By law, persons requiring emergency medical care received it regardless of their legal status. Children and pregnant women were entitled to medical care regardless of the status of their contributions to medical insurance schemes. While it was difficult to ensure that everyone, and not only migrant workers, paid their social insurance and health-care contributions, that problem generally did not adversely affect the provision of emergency care. Access to State schools was not a problem for the children of migrant workers, but private and international schools, which charged for tuition, were less accessible. Work permits were issued for a specific period, and migrant workers who lost their jobs during that time were able to seek other employment. To determine whether a person was entitled to emergency medical care, the State applied the so-called “territorial principle”, whereby the beneficiary must be present in the national territory. For social security and pension coverage, while there were indeed some bilateral agreements, workers not covered by them could, if they met certain conditions, be eligible to participate in the social security system on the same basis as citizens of Bosnia and Herzegovina.

33. Mr. KLIČKOVIĆ (Bosnia and Herzegovina) said that a migrant worker’s employment contract and work permit were linked insofar as the work permit was issued for the length of the contract. If the contract was ended early by the worker, the permit retained its original period of validity. If the contract was terminated early by the employer and the worker appealed against the termination, the worker’s permit would remain valid until such time as a decision was taken.

34. The Constitution of Bosnia and Herzegovina and labour legislation guaranteed migrant workers the right to join trade unions at either the company or regional level. The State could not interfere in how trade unions were organized.

35. The State party endeavoured to ensure access to social security for migrant workers from countries with which Bosnia and Herzegovina did not have a bilateral agreement. Nevertheless, once such migrants returned to a country of origin with which a bilateral agreement had not been concluded, Bosnia and Herzegovina could not continue to guarantee such rights as access to medical insurance and unemployment benefits. The right to medical insurance would be exercised by the families of migrant workers for as long as they remained in the country.

36. Ms. DJURIJA (Bosnia and Herzegovina) said that if a migrant worker remained in Bosnia and Herzegovina long enough to earn a pension, the pension would be paid upon return to the country of origin, even in countries where no bilateral agreement was in place.

37. Mr. MIŠKOVIĆ (Bosnia and Herzegovina) said that people-smuggling was a crime punishable by between six months’ and five years’ imprisonment under article 189 of the Criminal Code of Bosnia and Herzegovina. In 2006, a total of 21 persons had been convicted of people-smuggling. Article 186 provided for a prison term of between 1 year and 10 years for trafficking in persons or, for especially serious instances of that crime, up to 45 years’ imprisonment. In 2006, 23 individuals had been convicted of trafficking in persons. Some individuals had also been prosecuted under article 250 of the Code for organized crime in relation to people-smuggling and trafficking in persons. In 2005, 54 victims of trafficking in

persons had been identified; in 2006, that figure had fallen to 42. Data indicated that in 2008-2009 those crimes had become more infrequent, probably because of a concerted effort by the law enforcement agencies.

38. Mr. KURAVICA (Bosnia and Herzegovina) said that migration bodies had to follow strict deadlines when taking decisions on individual cases; for example, a decision on whether to grant a residence permit must be taken within 30 days or, exceptionally, where a background check was necessary or the applicant had to submit additional documentation, 60 days. A decision on an appeal by a migrant placed in a migrant detention centre must be given within 24 hours. Deadlines for judicial procedures also ranged between 24 hours and 30 days, depending on the procedure.

39. Bosnia and Herzegovina was a member of the Migration, Asylum and Refugees Regional Initiative (MARRI) and Southeast European Cooperative Initiative (SECI) and had signed readmission agreements with all neighbouring and European Union countries. It had also signed the Police Cooperation Convention for Southeast Europe and the related memorandum of understanding on an early-warning system aimed at identifying region-wide crimes, such as smuggling.

40. In response to a question from the Chairperson, he explained that the captions of columns 4 and 5 of table 8 in the report should read “completed” instead of “resolved”, and “pending” instead of “in process”.

41. In the period 2003-2008, between 70 and 78 per cent of all applications for residence had been successful. Of the applications that were initially rejected, 60 per cent had been returned for re-examination.

42. Ms. HADŽIBEGIĆ (Bosnia and Herzegovina) said that, under the 2003 Law on Associations and Foundations, foreign nationals had the same right as citizens of Bosnia and Herzegovina to establish associations. The Ministry of Justice had registered 13 associations organized by foreign nationals since the law was passed. Those associations could apply for government funding and assistance was also available in the form of technical support or premises that the associations could use free of charge. National minorities had also established 10 associations of which foreign nationals were members. Bosnia and Herzegovina intended to establish a strategy for developing the non-governmental sector and a law on their funding.

43. Ms. DJURIJA (Bosnia and Herzegovina) said that the State party was endeavouring to establish good relations with its citizens living abroad and, in that connection, had amended the Law on Citizenship, in particular article 17 on dual citizenship. The State party also supported associations created by its citizens who lived abroad.

44. She noted that Bosnia and Herzegovina was taking steps to overcome the problems caused by the global financial crisis through negotiations with the International Monetary Fund.

45. Mr. TAGHIZADE (Country Rapporteur) said that, given the proportion of its population living abroad and its importance as a transit country, Bosnia and Herzegovina would have to tackle its migration issues vigorously, notwithstanding the structural difficulties faced by the

country. He also noted that, as migrant workers and their families were a particularly vulnerable social group, treating them the same as nationals with regard to access to social and medical services could constitute discrimination.

46. Mr. EL-BORAI asked the delegation to ensure that the written responses it was to submit concentrated on migrant workers, not refugees, and that they included further and full information on trade union legislation.

47. Ms. DJURIJA (Bosnia and Herzegovina) said that her delegation would be happy to supply further information within a few days on the questions raised by Committee members.

48. The CHAIRPERSON said that Bosnia and Herzegovina had made great progress since its initial report had been submitted and commended it on its efforts to apply a rights-based approach to migration.

The meeting rose at 1 p.m.