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the Elimination
of all Forms of
Racial Discrimination**

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Seventy-fourth session

SUMMARY RECORD OF THE 1924th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 2 March 2009, at 3 p.m.

Chairperson: Ms. DAH

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial report of Montenegro (CERD/C/MNE/1)

1. At the invitation of the Chairperson, the members of the delegation of Montenegro took places at the Committee table.
2. Mr. NIMANI (Montenegro) said that, after regaining independence and assuming responsibility for international relations, his Government had been guided by the observance of international law in its national and international activities. Given the principles and objectives incorporated in Montenegro's declaration of independence, the Government had taken steps to regulate its status in relation to international organizations and international legal instruments. In accordance with the provisions of the Vienna Convention on Succession of States in respect of Treaties, the Ministry of Foreign Affairs had submitted the statement of succession to the States parties to the international instruments to which the State Union of Serbia and Montenegro had been a party. It was in those circumstances that Montenegro had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination.
3. The initial report (CERD/C/MNE/1) had been prepared by an intra-governmental working group, coordinated by the Ministry for the Protection of Human and Minority Rights. It had been compiled from information received by ministries, public administration bodies responsible for specific areas of protection of human rights and freedoms, and the Office of the Protector of Human Rights and Freedoms (Ombudsman).
4. After gaining independence in May 2006, Montenegro had undertaken comprehensive reforms of its legal system, based on Montenegrin citizens' decision to live in a State that shared the basic values of freedom, peace, tolerance, respect for human rights and freedoms, multiculturalism, democracy and the rule of law. The reforms were also based on the determination of people of all nations and national minorities living in Montenegro to live in a democratic and civic State. Significant efforts had been made to create a Constitution that included the whole range of human rights and freedoms contained in the fundamental international instruments to which Montenegro had acceded on becoming a sovereign and independent State.
5. The Constitution incorporated the principle that international agreements and generally accepted rules of international law formed an integral part of the domestic legal order and had primacy over domestic legislation. That served also to remind State bodies and other institutions of the need to harmonize domestic legislation with international law, primarily in the area of guaranteeing, promoting and protecting fundamental human rights and freedoms.
6. His Government was committed to developing and promoting multi-ethnic harmony. In order to protect the entire national identity, in addition to fundamental human rights and freedoms, minorities were granted a set of additional rights under the Constitution and other legislation, as detailed in paragraph 51 of the initial report.

7. Important developments in the area of protection of human rights and freedoms had included the establishment of the Ombudsman's Office as an autonomous and independent body which acted to protect human rights and freedoms. The Judicial Council had also been established as an independent and autonomous body that ensured the independence and autonomy of courts and judges.

8. Article 8 of the Constitution prohibited any direct or indirect discrimination on any grounds. In addition, the Constitution provided that regulations and special measures aimed at creating conditions for national, gender and overall equality and protection of persons who were in a position of inequality on any grounds would not be considered discriminatory. Special measures could apply only until the objectives for which they had been designed had been accomplished. A general law prohibiting discrimination was also being drafted, covering a number of different areas and special cases of discrimination, as well as the new institutional mechanism to combat discrimination.

9. His Government had adopted a judicial reform strategy for the period 2007-2012, with an action plan highlighting strategic priorities and measures for their implementation. In order to increase the independence of the judiciary and improve its efficiency, legislation governing the organization of the judiciary had been amended and a law on the Judicial Council had been adopted. The Judicial Council had been set up in April 2008 and had already demonstrated its commitment to appointing judges on the basis of precisely defined criteria. It had also taken several measures establishing the responsibility of judges. Giving the Judicial Council that role had helped establish realistic guarantees of the independence and autonomy of the courts. A similar approach was being taken to the organization of the State prosecution service.

10. In order to increase efficiency in the courts and avoid delays in trials, a law had been enacted on the protection of the right to trial within a reasonable time. It provided for the protection of that right, including compensation claims where the right had been violated. Such claims fell under the jurisdiction of the Supreme Court, which had already handed down relevant decisions in several cases. A new Code of Criminal Procedure had also been prepared. It had shifted responsibility for criminal investigation from the courts to the prosecution, while also guaranteeing defendants all their rights. Efforts to reduce the backlog of court cases had included promoting alternative dispute-resolution procedures and establishing a mediation centre, which encouraged mediation in civil and criminal matters, trained mediators and created the appropriate conditions for the mediation procedure. The Judicial Training Centre, responsible for training judges and State prosecutors, had reached a preliminary agreement with the Council of Europe on training for all Montenegrin judges during 2009. In implementing the training programme, the Centre also worked with Montenegrin and foreign NGOs.

11. Parliament had adopted a resolution on fighting corruption and organized crime, and in May 2008 had initiated an innovative action plan to be implemented within the political system, judiciary, police, public administration, public finance, media and the economy. A new law designed to prevent conflicts of interest in public office had also been enacted. An anti-corruption initiative had been developed to raise public awareness and encourage more active participation of citizens in fighting corruption. Efforts were being made to bring the

relevant domestic legislation into line with international standards on fighting corruption and organized crime. Training for the judiciary and civil servants in prevention and the fight against corruption and organized crime had been designed in cooperation with UNDP and the United Nations Democracy Fund.

12. In September 2007, plans had been adopted to establish specialized divisions in two high courts for crimes of corruption, organized crime, terrorism and war crimes. The prosecution of perpetrators of those crimes fell within the jurisdiction of a special unit within the Supreme State Prosecutor's Office. Several high-profile cases had been tried under the new system; the trials had been of a better quality and conducted in a more responsible manner.

13. Montenegrin courts were currently working on four war crime cases, three of which had involved international legal cooperation. Indictments had been brought in two of the cases and the trials had started. In the third case, the investigation had been extended to persons who had been in high positions in the Montenegrin security system at the time of the crimes. The fourth case depended on the willingness of the relevant bodies in Bosnia and Herzegovina to provide speedy international legal assistance. Montenegro cooperated fully with the International Criminal Tribunal for the former Yugoslavia. In December 2007, a special agreement on technical cooperation had been signed between the International Criminal Court and the Supreme State Prosecutor's Office.

14. While the freedoms of movement and residence of foreign nationals were guaranteed by the Constitution, legitimate limitations recognized by international instruments were imposed. Legislation on asylum had been adopted and the institutional infrastructure for its implementation established. Six asylum applications had been processed, and plans were in place to build a centre for asylum-seekers. In November 2008, the Government had enacted a bill on foreign nationals, Montenegro's first experience of independently regulating the entry, movement and residence of foreign nationals. It was committed to implementing international law in the field of visa and migration issues, and fully observing human rights. The provisions of the law were in line with the Convention applying the Schengen Agreement in order to facilitate free movement among countries and strike a balance between the need to ensure free movement of people, goods, services and capital, and the need to combat international crime. Steps were being taken to re-examine the status of displaced persons and establish bilateral cooperation with their countries of origin.

15. The freedoms of thought, conscience, belief, expression and association were guaranteed by the Constitution, with clearly defined legitimate limitations. The few cases in which the State had limited those rights had involved the right of peaceful association, and had been necessary in order to protect public order and security.

16. The number of media operating had proved that by promoting media freedom, Montenegro had created favourable conditions for freedom of expression. The implementation of media laws had shown that some legal provisions required amendment, particularly the law on public broadcasting services. Free access to information had been introduced through legislation adopted in 2005, and in 2008 a protection of personal data bill had been enacted. That law would complete the legal framework in that field.

17. Montenegro had made a significant effort to preserve harmony among ethnic, religious and cultural entities, and was the only State in the territory of the former Yugoslavia that had succeeded in avoiding war and ethnic conflict within its borders. In addition to the provisions fully guaranteeing minority rights in the Constitution, three new institutions for the promotion of minority rights had begun operating in 2008. In accordance with applicable legislation, assemblies had been held to elect members of the Croatian, Bosnian, Roma, Muslim, Albanian and Serbian councils. Following the constitutive sessions of those councils, they had registered with the Ministry for the Protection of Human and Minority Rights, which had financed their work since August 2008. Their role included representing minority groups, submitting proposals to State bodies, local government bodies and public services for the promotion and development of minority rights, taking steps to promote minority rights in education, and proposing legislative amendments. Each council participated directly in political activities at the local and national levels.

18. In February 2008 parliament had approved the establishment of a fund for minorities to preserve and develop minority communities. A 15-member steering committee for the fund had been elected in July 2008. The fund's budget for 2008 had been €422,125 and its estimated budget for 2009 was €1,018,000. Furthermore, following the decision to establish a centre for the preservation and development of minority cultures in April 2007, the appointment of a four-member steering committee, and preparation and equipping of its premises, a director had been appointed and the centre had begun operations in 2009.

19. Since submission of the written report, considerable progress had been made in improving the situation of the Roma. In November 2007, the Government had adopted a comprehensive strategy for the improvement of the status of the RAE (Roma, Ashkelia and Egyptian) population in Montenegro (2008-2012), which included measures in such areas as legislation, registration and documentation, health care, social services, education, employment, housing, participation in political activity, etc. In addition to the funds allocated to various departments for Roma-related issues, a further €400,000 had been allocated in 2008. A commission made up of deputy ministers concerned, other stakeholders and Roma representatives had been established in December 2008 to monitor implementation of the strategy and report to the Government. The commission, in cooperation with the ministries, allocated funds for strategy-related projects by public tender, open to State bodies, local government and NGOs.

20. His statement had focused on the most important aspects of the prohibition of discrimination. While much more had been done to promote equality, he hoped the information given would provide the basis for a constructive dialogue with the Committee.

21. Mr. LAHIRI, Country Rapporteur, drew attention to the diversity of the population of Montenegro, with no single group constituting a majority. The Committee's principal concerns related to: discrimination in law and practice against minority ethnic groups, in particular the Roma; the treatment of refugees, displaced persons from the ex-Yugoslav republics and so-called internally displaced persons from Kosovo; police abuses and corruption in the judiciary; lack of harmonization between pre- and post-independence legislation; and the considerable discrepancy between legislation and implementation.

22. Since its independence in 2006, Montenegro had made impressive progress towards establishing a human rights infrastructure. The Constitution of 2007 incorporated a broad prohibition of direct or indirect discrimination and explicitly provided for temporary special measures to achieve de facto equality for disadvantaged groups. Furthermore, a law on the prohibition of discrimination would soon be adopted.
23. He nevertheless had some concerns. The Constitution used the restrictive term “minority national community” rather than simply “minority” as used in the current Law on Minority Rights and Freedoms of May 2006. The Roma were the only ethnic group not mentioned in the new Constitution; he wondered whether that would have a negative effect on their status and treatment. The above-mentioned Law extended minority rights only to citizens, thus excluding many Roma and internally displaced persons. That restriction should be reconsidered in the light of the Constitution. The treatment of minority languages, especially Serb, Bosnian and Croatian, seemed discriminatory. However, he welcomed the fact that the Law on Montenegrin Citizenship of 2008 had made naturalization easier by requiring “lawful and habitual residence” rather than “permanent residence”.
24. While the Constitution guaranteed proportional representation for minority groups in the Government, the administration and public services, current electoral legislation referred only to representation of the Albanian minority in parliament, and minority groups had expressed dissatisfaction with their level of participation in decision-making, in particular at the national level. No data were available on the number of members of minorities employed in national and local government and in the judicial system; schools did not keep records of students disaggregated by minority or ethnic group; and no ethnically disaggregated data on access to educational, social and economic opportunities had been provided.
25. State bodies, including the armed forces, the police and the judiciary, had not provided data on the minority and religious affiliation of their personnel to the central administrative authorities. Even where data had been submitted, many individuals had exercised their right not to indicate any minority affiliation. He wondered whether those individuals feared the stigma attached to membership of certain groups and asked the delegation to comment.
26. There seemed to be considerable confusion about the number of Roma, officially estimated to be about 3,000, although NGO estimates put the figure at between 15,000 and 20,000. A quarter of the refugees and internally displaced persons in Montenegro were Roma. While a number of legislative and policy measures had been adopted to improve their situation, there had been little implementation in practice. The strategy for the improvement of the status of the RAE population in Montenegro (2008-2012) was very ambitious, but it seemed unlikely that the targets under that strategy in such areas as data collection, increased enrolment in kindergartens, legal aid, health care or improved living conditions in substandard settlements would be met. More information on steps being taken or envisaged to accelerate the implementation of the strategy would be welcome.
27. Around 4 per cent of the population were refugees and internally displaced persons from Bosnia and Herzegovina, Croatia and Kosovo, many of whom were Roma. While they theoretically had access to basic services, they generally lacked the necessary citizenship or identification documents, which required permanent residence. He looked forward to the review of the situation of displaced persons from the former Yugoslavia and the registration of Kosovan

internally displaced persons planned for 2009. He requested more information, however, on the expected practical effect of the review on the status of those persons and hoped every effort would be made to find a solution (including naturalization) to the problem.

28. He suggested that complaints of abuse of authority should include the ethnic origin of the aggrieved party and requested information on the specific actions taken by the Ombudsman to resolve complaints of discrimination in the areas of, for example, employment, housing, mistreatment by the authorities and torture.

29. The data provided by the State party were insufficient for the Committee to adequately assess the situation in Montenegro. He nevertheless commended the State party for complying with its reporting obligation so soon after independence. Many positive steps had been taken to establish a legal framework for the protection of human rights. It was now time to ensure effective implementation on the ground.

30. Mr. SICILIANOS requested more information on cases involving discrimination dealt with by the Ombudsman and on the provisions of the Prohibition of Discrimination Bill relating, for example, to sharing of the burden of proof in cases involving discrimination. When would that Bill be enacted and enter into force? With regard to the Law on Public Broadcasting Services, he wondered whether the “significant changes” to that Law mentioned in the delegation’s oral presentation were technical or substantive, and whether the Law provided for broadcasting services for minorities and in minority languages. While he welcomed the establishment of elected councils for the various ethnic minorities, he requested information on their level of representation in parliament, the Government, the judiciary, etc.

31. Mr. PROSPER said the State party had made great progress since independence and shown its willingness to move forward. It should do its utmost to address the accusations of war crimes committed by its citizens, as it was essential to combat impunity. The work carried out in the area of legislation and institutions was commendable, but it was also important to strive to bring about a culture of tolerance and non-discrimination. He asked what the State party was doing, if anything, to prevent current inter-ethnic tensions in Bosnia and Herzegovina from spilling over into Montenegro. It was necessary to take preventive measures in order to avoid the chaos of the past, and to proactively ensure the protection and equal treatment of all persons.

32. Mr. de GOUTTES said he had noted the information provided by the delegation on the war crimes cases before the national courts and on Montenegro’s close cooperation with the International Criminal Tribunal for the former Yugoslavia. In that connection, he recalled the concern expressed by the Committee against Torture, following its consideration of Montenegro’s report in 2008, at the climate of impunity prevailing in the State party. He would welcome additional information from the delegation in relation to that observation. Noting that Montenegro had ratified the Rome Statute of the International Criminal Court, he said he would be interested to hear the delegation’s views regarding claims that the jurisdiction of that Court had been limited by a bilateral agreement between Montenegro and the United States of America.

33. He recalled the concern expressed by the Human Rights Committee in 2004 at reports of ill-treatment of Roma by racist groups and inadequate protection of the Roma by law enforcement officials. He would welcome information on whether the State party had regularized

displaced persons from Croatia, Bosnia and Herzegovina and Kosovo, in line with the recommendations made by the Commissioner for Human Rights of the Council of Europe in November 2008. It was important to protect such persons from the risk of statelessness. In that connection, he asked whether Montenegro envisaged ratification of the United Nations Convention on the Reduction of Statelessness.

34. The information contained in paragraph 49 of the initial report regarding the procedure for the registration and “unregistration” of residence was complex, and he would appreciate further details. Referring to paragraph 76, he asked why Roma, Ashkalia and Egyptians were registered together as the “RAE” population.

35. Mr. DIACONU welcomed the positive aspects of the State party’s report, including the primacy of international law over national law, the broad prohibition of discrimination and the establishment of various human rights bodies. He noted, however, a certain lack of rigour in legislation concerning minority groups. For example, the Roma had not been included in the minority groups specifically acknowledged in the Constitution, despite the State party having declared its acceptance of provisions of the Council of Europe’s Charter for Regional or Minority Languages relating to the Albanian and Romany languages. He would be interested to know why the State party had chosen not to apply the Charter to other minority languages.

36. Legislation should be brought into line, as soon as possible, with requirements for the protection of minority groups. The State party must take measures to eliminate discrimination against the large numbers of Roma citizens and displaced Roma and ensure their social and economic integration. There was overlap between some of the categories used for the statistics provided on the different minority groups, for example between “Albanian” and “Muslim” in table 1. Efforts should be made to establish the ethnic origin of the large numbers of people listed under the category “not declared”.

37. He had been pleased to see the broad prohibition of discrimination provided for under the Constitution, but recalled that the Committee was interested specifically in racial discrimination. Few of the provisions described in paragraphs 37-42 related specifically to article 4 of the Convention, according to which all dissemination of ideas based on racial superiority or hatred must be declared an offence punishable by law. Consequently, legislation should be reviewed in order to bring legal instruments - in particular the Criminal Code - into line with the Convention.

38. Mr. HUANG Yong’an noted with satisfaction that Montenegro’s 2007 Constitution and other legislation contained provisions prohibiting racial discrimination, and said that the State party should be encouraged to continue its efforts in the area of human rights protection. It had a large number of ethnic groups within a small population. The Roma, Ashkali and Egyptians were among the most disadvantaged ethnic groups. According to reports he had read, they lived in relatively poor conditions and did not enjoy equal education rights. Reportedly, 50 per cent of Roma children were not integrated in the education system, and 80 per cent of Roma children dropped out of school between first and third grades. If that were true, it constituted a serious obstacle to the equal enjoyment of education by ethnic minorities.

39. He welcomed the regional “Decade of Roma Inclusion: 2005-2015” project, and asked what specific measures had been put in place for its implementation and what results had been achieved.

40. Mr. AMIR, referring to paragraph 90 of the report and the objective listed as “education for respect for national, historical and cultural values”, said he would appreciate more information in the subsequent report on Montenegro’s history and emergence as an independent State. Referring to tables 1 and 2 of the report on population structure according to national origins and population structure according to religion, he asked for clarification of the relationship between the “Muslim” category in table 1 and the “Islamic” category in table 2. “Muslim” indicated a person’s religion, not their national origin. There appeared to be some overlap of categories, which should be clarified.

41. In view of Montenegro’s particular situation of being bordered by several countries, he asked whether it had concluded agreements with those countries on issues such as freedom of movement and refugees. He would also appreciate more information on the Government’s position vis-à-vis the International Criminal Tribunal for the former Yugoslavia in relation to Montenegrin citizens.

42. Noting that the official language in the State party was Serbian, he asked whether Montenegro had a specific Montenegrin language, and what the officially recognized national languages were.

43. Mr. NIMANI (Montenegro) said he would transmit the Committee’s comments to his Government so that efforts to improve the human rights situation in Montenegro could begin as soon as possible. Montenegro was a very mixed society; its minorities were valued, and the Government was doing its utmost to integrate them into social and economic life. Minorities were represented in all government departments. Some 50 years earlier that would have been unimaginable and reflected the extent to which Montenegro had understood the need for European integration.

44. Mr. DELIC (Montenegro) said that he wished to respond to the questions raised concerning the situation of the Roma in Montenegro. The tables included in the initial report gave the data recorded during the last census conducted in November 2003, in which Montenegrin citizens had been given the choice of identifying themselves according to their affiliation with national or minority groups, their religion, and their mother tongue. The tables illustrated the multi-ethnic, multicultural and multi-confessional nature of Montenegrin society. It should be emphasized that participation in the census had not been compulsory; participants had been able to respond orally or in writing and there had been no obligation to answer the questions concerning religion or mother tongue. The table showed that 2,601 persons had chosen to identify themselves as Roma, 225 as Egyptians and almost none had chosen the designation “Ashkali”. The acronym RAE had been used to designate the Roma, Ashkali and Egyptians, a group whose rights were fully covered under the Constitution of Montenegro and domestic laws.

45. By 2006, the Roma population had grown considerably; the original 2003 census figures might also have been somewhat unreliable as the Roma might have chosen to identify themselves with another population group which they perceived as having more rights than their own. Furthermore, the 2003 figures had not included internally displaced persons from the former Republic of Yugoslavia, including a significant number who had come from Kosovo. The Roma population in Montenegro was characterized by its low economic status, lack of education, low level of employment and nomadic lifestyle. His Government was aware of, and paid particular attention to, the low social status of the Roma. Following a high-level conference in

Budapest in 2003, the Government had signed the agreement on the Decade of Roma Inclusion 2005-2015. In January 2005, it had adopted an action plan to implement the agreement, which identified four priority areas to improve the situation of the Roma and assist their integration into modern Montenegrin society: education, employment, health care and housing. Details of the plan had been given in the written responses to the list of issues.

46. In 2007, the Government had adopted a strategy for the period 2008-2012 to improve the situation of the RAE population; it would extend that period if that proved necessary. The strategy covered legal aspects of the situation of the RAE and protection of their languages and cultures. The ultimate goal of the strategy was to increase Roma participation in political activity. The Government had set up a working group to coordinate and monitor implementation, and report on progress and any problems encountered. Special funds had been allocated for implementation of the projects comprised in the strategy.

47. Montenegro's Statistics Office, in cooperation with a number of NGOs, had undertaken a well-publicized survey in October and November 2007 in order to find out the exact number of Roma present in the country and to update information on their employment status, education, housing and other important indicators. The Office was currently processing the data collected and preliminary results revealed that the total Roma population was approximately 10,500. The Government was determined to break the cycle of poverty and social exclusion of the Roma by improving access to education. A total of 413 Roma children had started primary school in 2008, all of whom had been given free textbooks and other materials. The State provided scholarships for Roma high-school and university students, and some received further assistance with travel costs and housing. There were currently 35 Roma students in high schools and 9 students attending university.

48. Local government departments had been making efforts to improve housing for the Roma, and new housing had been built with help from UNHCR and external partners. Some municipalities had given land and had connected homes to the various utilities free of charge. Social-care centres helped marginalized groups, including Roma, and the Government paid special allowances for children in Roma families who had been displaced from Kosovo. Several projects had been initiated to focus on health care through education and training. Health-care projects had targeted the improvement of vaccination rates and the reproductive health of Roma women. The Government had also signed a memorandum of understanding with UNDP with the aim of promoting the social development and inclusion of the Roma population.

49. Recognizing the link between education and employment, the national employment agency had established databases on Roma seeking employment and provided information on training and retraining. Progress had been achieved in primary school enrolment: in 2002, 536 Roma children had been enrolled, and that number had risen to 1,263 in the current academic year. The dropout rate had also improved. It was believed that progress was directly linked to the social assistance provided. Many children experienced barriers to access to education as they did not speak the official language of Montenegro, and the appointment of Roma classroom assistants from preschool to secondary level had proved helpful to children, teachers and parents in that regard. Preschool education and daily meals were provided free of charge. Public information campaigns encouraged school attendance, although there was a lack of interest among many Roma families, who preferred to send their children to work or even to beg rather than to school.

Primary education was compulsory and parents who did not send children to school faced criminal charges: nevertheless, the Government tried to adopt a tolerant approach to the Roma population, bearing in mind their situation.

50. With regard to racial discrimination, Montenegrin society as a whole had made considerable progress in reducing a stereotyped and prejudiced approach to minority communities, particularly the Roma. There had been an incident in 1995 in Danilovgrad when an entire Roma settlement had been evicted, but Montenegro had compensated the families involved. No other cases of that kind had been recorded.

51. Mr. NIMANI (Montenegro), responding to the questions raised concerning language, said that much of the traditional literature of Montenegro had been written in the Montenegrin language, whose origins were very old. The Ministry of Education and Science had established a commission to work on standardization of the Montenegrin dialect. The use of the national language would restore the country's national and cultural identity.

52. The process of introducing anti-discrimination laws had included wide consultation with academic experts, international organizations and the general public. The provision of public information in minority languages, particularly Albanian, which was the language spoken by the largest minority group, had improved in recent years. Programmes in Albanian were broadcast on television daily and there were some programmes in Romany. It was evident that more could be done, although great progress had been made.

53. Montenegro cooperated fully with the International Criminal Court and did not tolerate any form of racial discrimination. The situation of the Roma was complex and was made all the more difficult - despite the willingness of the Government - by the global financial crisis. Montenegro was an example to the region and remained committed to its anti-discrimination programmes.

The meeting rose at 6 p.m.