



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2365th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 11 August 2015, at 3 p.m.

Chairperson: Mr. Calí Tzay

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The meeting was called to order at 3.05 p.m.

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

Combined eighth to tenth periodic reports of the former Yugoslav Republic of Macedonia (CERD/C/MKD/8-10; CERD/C/MKD/Q/8-10)

1. *At the invitation of the Chairperson, the delegation of the former Yugoslav Republic of Macedonia took places at the Committee table.*

2. **Ms. Kuzmanovska** (The former Yugoslav Republic of Macedonia) said that the grounds for discrimination under the Criminal Code — gender, race, skin colour, national or social origin, political or religious conviction, property and social status, language, and other personal features or circumstances — had been extended in February 2014 to include membership of a marginalized group, ethnic origin, education, mental or physical disability, age, family or marital status, state of health, and any other grounds established by law or international treaties ratified by her country. Since the Law on the Prevention of and Protection against Discrimination had entered into force on 1 January 2011, courts of first instance had handed down rulings in four cases brought under its provisions. The Constitutional Court had considered 27 cases concerning human rights in 2012, 15 of which had related to protection against discrimination; for 2013 the figures had been 13 and 10, respectively, and for 2014 16 and 7.

3. The Commission for Protection against Discrimination, established in January 2011, worked with representatives of local authorities, local equal opportunities coordinators and the public to raise awareness about equality and non-discrimination, increase the visibility and understanding of protective mechanisms and legislation, and promote the work of the Commission. Between 1 May 2013 and 27 July 2015, the Commission had received 202 applications and dealt with 121, establishing that there had been discrimination in 12 cases. A large majority of the applications concerned labour relations and most alleged discrimination on grounds of ethnic affiliation; 14 of the latter concerned discrimination against Roma. The 2012-2015 National Strategy on Equality and Non-Discrimination was being reviewed to assess its effectiveness prior to the drafting of a new strategy for 2016-2020, which was due to be adopted in late 2015.

4. New departments for equitable representation and protection against discrimination had been created in the Ombudsman's Office and a bill to amend the Law on the Ombudsman had been drafted, with the aim of strengthening its role as a national preventive mechanism and consolidating both its mandate to promote and protect human rights and its financial independence. In 2013, the Office had identified discrimination in 15 of the 63 requests for protection it had received and had submitted recommendations to the relevant bodies, which had been accepted in 8 cases. The figures for 2014 were similar and related mainly to discrimination on grounds of ethnicity.

5. Fostering good inter-ethnic relations founded on the principles of mutual tolerance and respect, equal treatment of all before the law and full implementation of the Ohrid Framework Agreement were among the Government's main priorities. The implementation of policies deriving from the Framework Agreement was being reviewed, in conjunction with the European Institute of Peace. The 2014 Public Sector Employees Act provided for the application of the principle of equitable representation in planning employment needs and the representation of small ethnic communities in public administration was constantly growing. A government agency had been established to oversee the implementation of all laws relating to the rights of persons

belonging to communities that made up less than 20 per cent of the population. In addition to working with other government departments, the agency cooperated with civil society organizations to build their capacity, share information and experiences, take account of community needs and suggest future action.

6. The State party had made every effort to improve the status of non-nationals, including migrants, refugees and asylum seekers, while tackling the challenges involved, and the number of individuals accommodated in its reception centre had increased annually. Many were unable to provide identity documents. Foreign nationals admitted to the reception centre were informed of their rights and obligations, which included the right to receive visits, conduct telephone conversations and receive packages and money, under certain conditions. Unaccompanied minors were assigned guardians as a matter of urgency; moreover, foreign and stateless children were entitled to primary education on the same basis as nationals of the State party. Efforts had been made to improve material conditions at the reception centre and to provide constant medical coverage. Migrants received clinical tests and inpatient treatment free of charge. The possibility of relocating the reception centre to a larger building that could accommodate more people was being considered; temporary facilities were being used in the interim to increase the centre's capacity and improve conditions, particularly for children. A new law on foreigners, currently being drafted, would, as well as implementing various European Union directives, provide for unaccompanied minors and families with minors to be detained only as a last resort and for the shortest possible time. The maximum period of detention at the reception centre would be reduced from 12 to 6 months.

7. In June 2015, the Law on Asylum and Temporary Protection had been amended to make a clear distinction between the intent to lodge an application for asylum and the actual lodging of the application, which could be done within 72 hours of stating the intent to an official at a border crossing or other location. The aim of the amendments was to facilitate access to the asylum application procedure, prevent irregular migration and avoid a situation in which migrants walked along railway lines and other high-risk transport routes, and instead to allow them to use public transport. The amendments were also expected to reduce migrant smuggling by groups and individuals, give a better overview of irregular migration and afford migrants better health care. Since the amendments had come into force, more than 30,000 foreign nationals had exercised the right to state their intention of lodging an asylum application. The number of cases of migrant smuggling had fallen dramatically and there had been no reports of fatal accidents involving migrants. Asylum on the grounds of needing subsidiary protection had been granted to one Afghan national in 2013 and one Ukrainian national in 2014. Asylum on the grounds of being recognized as refugees had been granted to 11 Syrian nationals in 2014 and one so far in 2015. There were currently 28 recognized refugees and 505 individuals under subsidiary protection in the State party, mostly as a result of the 1999 conflict in Kosovo. A new strategy on the integration of refugees and foreign nationals for 2015-2025 was being drafted, together with an action plan to implement it.

8. Major efforts had been made to address the vulnerable situation of Roma, whose living conditions were often below the established standards for proper housing. Funds were being allocated to housing projects, with support from the Council of Europe Development Bank, and measures were being taken to enable those living in illegally constructed buildings, which included many Roma, to legalize their houses. Projects focused on including Roma in education, employment and society in general, providing information and free legal assistance, identifying persons whose birth had not been registered and remedying the situation, and promoting and advocating the rights of underprivileged groups. Education for children in the Albanian, Turkish and Serbian communities was provided in their respective mother tongues at all levels,

while children from the Bosniak, Vlach and Roma communities could study their mother tongue as an optional subject during the latter part of their primary education. Curricula and textbooks had been developed for optional mother tongue subjects and teachers belonging to the relevant communities had been recruited to provide instruction. Mentors had been engaged to work with Roma pupils in secondary schools and scholarships had been allocated to Roma children with the aim of reducing dropout rates; 97 per cent of scholarship holders completed their schooling and around half continued to university. Roma education mediators would begin working in the education system from September 2015. Prior to the start of each school year, activities were carried out among the Roma population to raise awareness of the importance of enrolling children in school and to assist in the process.

9. Under a 2014 ruling by the Constitutional Court, forced return or deportation from another country for violating regulations for entry and stay in the State concerned was no longer used as grounds to reject passport or visa applications or to deny exit to nationals of the State party. The Ministry of the Interior had drafted a human rights concept paper, setting out its commitment to increasing respect for human rights, which would serve as a fundamental reference document for the Ministry and the police. In April 2012, an intersectoral human rights body had been formed to advance the coordination of human rights activities among ministries and other government bodies, exchange information, implement the recommendations made by relevant international committees and submit proposals for improving human rights legislation and promoting human rights.

10. **Mr. Lindgren Alves** (Country Rapporteur), after welcoming the successful implementation of the 2001 Ohrid Framework Agreement, said that the State party had made great progress towards eliminating violence between ethnic Macedonians and ethnic Albanians since the consideration of its previous report. In the light of the inter-ethnic clashes of May 2014 and the recent tensions in Kumanovo, he asked whether steps had been taken under the Agreement to adequately tackle the root causes of such incidents and to prosecute, convict and punish the perpetrators. Additional information on the outcome of the cases before the courts listed in table 1 of the report would be welcome in that regard. He also wished to know whether the continuing inter-ethnic tensions had hindered the State party's ability to hold a national census with a view to addressing the lack of up-to-date disaggregated data on the composition of the population, including socioeconomic comparisons of ethnic Macedonian groups, ethnic Albanian groups and ethnic minorities.

11. In that connection, he would be grateful for clarification on the State party's use of the term "Albanian" in the report. Did it refer to ethnic Albanians habitually residing in the country with Macedonian citizenship or foreign nationals who had migrated from Albania? He also asked what policies, apart from the closure of the overcrowded and ill-equipped Gazi Baba Reception Centre for Foreigners, had been introduced to uphold the rights of migrants in transit, including economic migrants from neighbouring Kosovo and asylum seekers from Afghanistan, the Syrian Arab Republic and Somalia.

12. While welcoming the adoption of the 2010 Law on the Prevention of and Protection against Discrimination and the amended Law on Social Protection, he asked whether the State party intended to include descent as an additional ground for discrimination. Detailed information on the results of the National Strategy on Equality and Non-Discrimination on grounds of ethnic affiliation, age, mental and physical disability and gender would also be useful in that regard.

13. As for the treatment of the Roma, he wished to know whether areas of the country with large Roma populations were inhabited by settled groups of Roma and, if so, whether they held positions of authority in the community, as mayors or police

officers, for example. He also asked what measures had been taken to address the difficulties faced by Roma and ethnic Albanians when they tried to leave the country and travel abroad and to combat the problem of Roma street children. In addition, he would welcome clarification on the number of official national languages and the different religions practised in the State party.

14. With regard to the Political Parties Act, he enquired about the prohibition of discrimination on the grounds of membership or non-membership of a political party, given the existence of ethnic parties. Could ethnic Albanians or members of the Roma community join an ethnic Macedonian party? In addition, he wished to know what efforts had been made to develop a standardized national curriculum, particularly in respect of the country's history, that took into account the cultural differences of ethnic minorities in order to build a strong sense of national belonging and social cohesion between all ethnic groups.

15. Lastly, he commended the State party for its response to the Committee's previous concluding observations regarding the rendition under suspicion of terrorism of Mr. Khaled al-Masri, a German citizen of Lebanese origin, to a third country for the purposes of detention and interrogation. The translation into Macedonian of the landmark ruling of the European Court of Human Rights in favour of the victim and its dissemination among the national bodies and organizations involved in or affected by the case had been a welcome step.

16. **Mr. Avtonomov**, after noting the late submission of the report, said that he would like additional, updated data on the number of Roma, Ashkali and Sinti in the country. He also wished to know what steps had been taken to ensure that the Ombudsman's Office was awarded A status accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and that its recommendations were fully implemented. Lastly, he asked whether Roma children were taught in their native language and, if so, whether educational materials in the relevant languages had been made available.

17. **Mr. Murillo Martínez**, after welcoming the amendments to the Criminal Code prohibiting racism as an offence, asked whether similar provisions had been established in the Labour Code and, if so, whether they had been invoked in cases of racial discrimination in the workplace. Further information on the role played by the Ombudsman's Office and the complaint submission procedure would also be useful in that regard. In addition, he enquired about the convictions and punishments handed down to law enforcement officials found guilty of acts of racism or racial discrimination. Lastly, he asked what efforts had been made to bring domestic legislation into line with European Union directives and norms on combating racism and racial discrimination.

18. **Mr. Diaconu** said that, although much remained to be done, the special measures taken in respect of Roma in the areas of housing, education and employment were welcome. The activities of the Ombudsman's Office were also to be commended; the State party should build the institution's capacity and provide the necessary support in order for it to obtain A status accreditation from ICC. He was concerned that, although racial discrimination was prohibited in the State party, there was no definition in domestic legislation of what constituted racial discrimination, as set out in article 1 of the Convention. The provisions on discrimination in a number of laws, including legislation on education and employment, did not contain a specific reference to discrimination on the grounds of ethnic origin, as required under the Convention. As discrimination on the basis of ethnic origin was prohibited, an explicit reference to that should be consistently included among the other grounds for discrimination in all relevant legislation. Noting that the majority of complaints submitted to the Commission for Protection against Discrimination were not processed or did not result

in a finding of discrimination, he requested details on cases in which racial discrimination had been established and sanctions imposed. He would welcome specific information on cases involving discrimination by police officers, particularly the disproportionate use of force against Roma.

19. Recalling the concluding observations of the Committee on the Rights of the Child concerning the limited availability and lower quality of education in the language of certain minorities and reports from other sources that the percentage of Roma children in special schools remained very high, he asked how the State party intended to address such problems. He requested information on efforts being made to address the situation of persons who did not have any personal documents, which was a major obstacle to the exercise of human rights. He would welcome data on discrimination in the field of employment, particularly the employment situation of the country's various ethnic groups. He wished to know what was being done to tackle the problem of persons who were still internally displaced long after the conflict had ended. Lastly, he would be interested to know more about the situation of the Vlachs.

20. **Mr. Kut**, noting the delay in the submission of the report, recalled the importance of regular reporting. Since the Committee's last consideration of the situation in the State party in 2007, commendable improvements had been made in many areas, particularly in the legal and institutional infrastructure. However, combating racism was a continuous process that required sustained effort. Noting that the State party's report contained repeated references to "vulnerable groups", he asked which groups were considered vulnerable and what problems they faced. He would welcome information on whether the results of the National Strategy on Equality and Non-Discrimination on grounds of ethnic affiliation, age, mental and physical disability and gender had been evaluated on the basis of the predefined qualitative and quantitative success indicators or whether there were plans to do so. Given that there were several institutions working to fight various forms of discrimination, he wondered what methodology was in place to evaluate the effectiveness of those institutions and avoid overlap. He would be grateful for details of the actual implementation of the provisions of the Criminal Code and related legal texts designed to eliminate propaganda based on ideas of racial superiority, hatred and discrimination. Referring to the review of applications and cases relating to non-discrimination set out in table 1 of the periodic report, he asked for clarification of the column relating to violations in which no procedures had been instituted despite an intervention by the Ombudsman's office.

21. **Mr. Yeung Sik Yuen** said that the State party was to be commended on the significant progress made in a range of fields in recent years. He invited the delegation to comment on the reasons for the low success rate of complaints lodged with the Commission for Protection against Discrimination, the Constitutional Court and the Ombudsman's Office. In particular, he would be interested to know more about the investigation procedure, and particularly whether complaints against police officers and employees of the Ministry of the Interior were investigated internally or independently. One reason for the lack of positive outcomes to complaints might be that the burden of proof required under criminal legislation was unnecessarily high. For example, under article 144 of the law amending the Criminal Code, the accused must be found to have endangered the security of another individual by making serious threats against their life or body, when in fact it should suffice that the accused had made serious threats.

22. **Mr. Vázquez** asked whether the State party was taking any measures to address the concerns regarding the Ombudsman's Office that had resulted in its being granted only B status accreditation by ICC, such as the lack of a transparent and participatory selection process for the appointment of the Ombudsman and the lack of necessary

funding to carry out its mandate. Noting that, according to a report received from the Ombudsman, the latter's recommendations were not complied with and his work continued to be obstructed by the failure of certain State agencies to submit requested data, he wondered what steps were being taken to resolve those problems. He invited the delegation to comment on reports of problems with the Commission for Protection against Discrimination, particularly the fact that it included government and parliament staff in its composition, received a limited State budget, had been allocated inadequate premises and performed its mandate selectively, focusing on complaints at the expense of advisory, educational and promotional functions.

23. He was concerned about the way in which what were known as special measures under the Convention were dealt with in the national anti-discrimination law, namely as "excluded" or "permitted" discrimination. In that regard, he drew the State party's attention to the Committee's general comment No. 32 on special measures, which made it clear that the Committee did not consider such measures to be a form of discrimination if their purpose was to improve the status of vulnerable groups under certain circumstances. Furthermore, in accordance with the Committee's approach to special measures, it would be more appropriate to have an open list of possible measures. He requested confirmation that the reversal of the burden of proof applied only to civil cases. The Committee had heard concerns that, while the burden of proof had formally been shifted to the defendant, complainants were still required to present evidence to support their claims and, if unable to do so, could have their cases rejected. He requested additional information on how the system functioned in practice and whether the State party considered that there was a problem. He also wondered whether the State party planned to take measures to address the high cost of litigation with respect to discrimination, which limited access for poorer people, including the Roma.

24. The practice of systematic, discriminatory profiling, particularly of Roma, at border crossings was also a concern. Despite the fact that the Constitutional Court had held unconstitutional certain provisions that would limit the ability of persons to leave the country, the Committee understood that the problem remained and that some victims had been informed by border guards that, as they were considered potential asylum seekers in European Union countries, orders had been issued by superiors not to let them cross the border. Persons had the right to seek asylum and should not be prohibited from crossing the border to do so. Furthermore, the fact that there was a concern that Roma persons would seek asylum in the European Union signified that they were experiencing problems in the State party that needed to be addressed. He also wished to know what steps were being taken to tackle the high rate of early marriage among Roma girls, including prevention and awareness-raising activities, rather than simply legislative and punitive measures. He requested additional information on the self-segregation of Roma in the field of education and the opening of a secondary school in Shuto Orizari as an example of "positive segregation". It was important to ensure a welcoming environment for Roma students in all schools.

25. **Ms. Hohueto** said that, although the State party had made considerable efforts to reduce racial discrimination, the Committee understood that, as a result of decentralized administration, the municipalities did not always comply with national legislation, particularly when it came to the education of Roma children. She would be interested to hear what measures the State party planned to take to ensure that all municipalities complied with provisions to integrate Roma students. She also asked what steps were taken to address the high level of intellectual disabilities among Roma students and to support them in adapting to general education. While the establishment of shelters for victims of domestic violence was to be commended, the requirement that women be at least 18 years of age in order to be admitted should be lifted, particularly in the light of the high rate of early marriage among Roma women. She

would be interested to hear about awareness-raising campaigns against domestic violence.

26. **Ms. Crickley** said that she would welcome further information on the progress made with regard to implementing the 2012-2015 National Strategy on Equality and Non-Discrimination on grounds of ethnic affiliation, age, mental and physical disability and gender. She wished to know whether its implementation had been evaluated and, if so, what the results had been. She wondered whether the Strategy constituted part of a broader European Union national action plan for social inclusion. She asked whether the National Strategy for Roma had been subject to European Union evaluation and what the outcome of its implementation had been thus far. She would welcome further information on how the State party intended to address the issue of social segregation, particularly of the Roma. She was particularly worried about the use of the terms “positive discrimination” and “positive segregation”. Rather than being segregated, Roma children should be integrated into mainstream schools. She wondered whether any efforts were being made in that regard.

27. Turning to legislation on discrimination, she asked how the State party had interpreted European Union guidance on positive action. She was concerned about the burden of proof in civil cases and asked how it was applied. She wished to know what measures had been taken to eliminate all forms of discrimination against Roma women and, in particular, to guarantee their economic and social rights. She also wished to know whether any measures had been taken to follow up on the concerns raised by the Committee against Torture with regard to the excessive use of force by the police against Roma. She asked whether the State party had any plans to investigate such cases and punish the perpetrators and whether compensation would be provided to victims. She wondered whether any measures were in place to improve training for the police and the judiciary on how to interact with Roma. Lastly, on decentralization, she wondered how coherence was ensured in the implementation of national and local government measures relating to public services, in particular, education, employment, health care and law enforcement.

28. **Mr. Kemal** asked whether any remedial action was being taken to solve the problem of lack of access to health care, education and child benefits for Roma children and refugee children without identity documents. He wondered what measures were being taken to assist Roma and minority women who were victims of domestic violence. The State party should also strengthen its mechanisms for the prosecution and punishment of traffickers. He asked whether measures were being taken to improve facilities for victims of trafficking by building new shelters and providing legal and medical services. He requested disaggregated data on trafficking allegations and prosecutions. The Committee had been informed that the reception centre for asylum seekers and refugees was overcrowded and that persons detained there suffered degrading and inhuman treatment. He asked whether measures were being taken to expedite the judicial review of their situation. The Ombudsman’s Office had an important role to play in identifying weaknesses in human rights protection and its functions should not be restricted.

29. **Mr. Khalaf** asked what measures had been taken to ensure that the activities of the Ombudsman and the Commission for Protection against Discrimination complemented each other and that their efforts were not duplicated. He wished to know why the majority of decisions of the Constitutional Court deemed complaints inadmissible; was it open to any citizen to have recourse to the Constitutional Court? He would appreciate more information on the decisions of national courts, since none had been provided in the State party’s report. He particularly wished to know whether the courts had issued any judgements in discrimination cases and whether there were any such cases currently pending. He wondered what were the similarities and

differences between the Law on the Prevention of and Protection against Discrimination, which had entered into force in 2011, and the anti-discrimination provisions that had been in force previously.

30. With regard to the situation of the Roma, he said that, since the 2005-2015 Strategy and Decade of Roma Inclusion was coming to an end, he wished to know what results it had produced and whether there were any plans to adopt a renewed strategy for the future. Lastly, he asked what was being done to consolidate the concept of peaceful coexistence at the political level. He would be interested to hear about the impact of the constitutional principle of equitable representation on the composition of the different branches of government and on the recruitment of civil servants.

31. **Mr. Bossuyt** said that he was concerned at the State party's use of the term "positive discrimination". According to the information before the Committee, there were 16 refugees recognized in the State party; in recent times, large numbers of people had sought asylum and he wished to know what had become of them. While he welcomed the efforts being made with regard to the Roma, he had been surprised to find very little information in the report on the situation of Albanians in the State party and would appreciate further information.

32. **Mr. Chupi** (The former Yugoslav Republic of Macedonia), responding to the Committee's questions on education, said that Albanian children were taught the Macedonian language in school from fourth grade until the end of basic education, as a compulsory subject, with two hours of lessons per week. The national curriculum, including Macedonian language lessons, was drawn up by the Ministry of Education, paying due regard to the multi-ethnic composition of the population and putting the focus on tolerance. A strategy had been adopted to change the approach to education on the basis of five key elements, including the decentralization of schools. Thus, in three municipalities with a predominantly Albanian population, education was provided in both the Albanian and Macedonian languages. The Roma language had a written form, which had been developed in 1990 and was used in schools in Macedonia.

33. With regard to the definition of discrimination in educational law, he said that the Constitution enshrined the right to education for all, without discrimination. On the question of the segregation of Roma children with special needs, he said that, at the primary school level, children with special needs attended some lessons separately from the other pupils and some together. Progress had been made in recent years with regard to increasing the number of Roma students integrated into mainstream education. The situation of each Roma student should be considered on a case-by-case basis, to decide whether he or she could be integrated into mainstream education or would benefit from attending schools for children with special needs.

34. Teaching of the Roma and Vlach languages in primary schools was optional. Training in those languages was provided for teachers. Since primary education had been decentralized, municipalities were responsible for organizing primary schools. Children were guaranteed access to their closest primary education institution. That meant that the student population of schools in areas with large Roma populations would be predominantly Roma. The State made considerable efforts to raise awareness among Roma parents and encourage them to send their children to schools with other children. Mediation and tutorship programmes were provided to assist Roma children with integration in mainstream schools, in particular to assist them with language issues.

35. Positive discrimination measures were in place to help vulnerable groups achieve the same level of education as the rest of the population. A secondary school recently

built in Šuto Orizari municipality, which had a predominantly Roma population, was one of the most modern in Macedonia and the Government was doing its utmost to ensure that the quality of education provided there was such that children from other municipalities would be motivated to study there. All children in Macedonia, whatever their nationality and whether they had identity documents or not, had the right to education under article 8 of the Law on Primary Education.

36. **Ms. Kuzmanovska** (The former Yugoslav Republic of Macedonia) informed the Committee that the constitutional name of her country was the Republic of Macedonia.

The meeting rose at 6 p.m.