



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

Distr.
GENERAL

CERD/C/SR.1920
12 March 2009

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-fourth session

SUMMARY RECORD OF THE 1920th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 26 February 2009, at 3 p.m.

Chairperson: Ms. DAH

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The meeting was called to order at 3.15 p.m.

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

Sixth, seventh and eighth periodic reports of Croatia (CERD/C/HRV/8)

1. At the invitation of the Chairperson, the members of the delegation of Croatia took places at the Committee table.
2. Mr. MADERIC (Croatia) said that discrimination was prohibited under his country's Constitution. The sole purpose of any restriction of the freedoms and rights guaranteed under the Constitution was to protect the freedoms and rights of others or the legal order, public morality and health. Discrimination on the basis of sexual orientation and marital status was prohibited under specific legislation designed to promote equality.
3. Particular value was placed on the participation of NGOs in all activities to protect and promote human rights in Croatia, and they were therefore consulted on regulations, policies and strategies concerning human rights protection. All relevant human rights institutions had been involved in the preparation of the periodic report, which had been made available to the public before adoption to enable all interested parties to comment.
4. His Government worked constantly to promote tolerance and non-discrimination against all vulnerable groups, and to ensure the rights of ethnic minorities. He described the Constitutional Act on the Rights of National Minorities, which guaranteed members of minorities the right to cultural autonomy, self-organization and association to further their interests, and the right of access to the media in the languages they used. Discrimination based on ethnic minority status was prohibited, and minorities were guaranteed equality before the law and equal legal protection.
5. He described the work of the Council for National Minorities, which was responsible for the advancement, preservation and protection of the status of minorities in society, and the action plan for implementation of the Constitutional Act on the Rights of National Minorities, as a result of which representation of national minorities had improved at the national and local levels, and in the civil service and judiciary. Eight members of the current Croatian parliament were from minority groups, and all were members of the coalition Government. In the most recent parliamentary elections, a member of the Roma minority had been elected to parliament for the first time.
6. The protection of minorities was one of the Government's top priorities. A National Roma Programme had been adopted in order to accelerate integration of the Roma, who were a particularly vulnerable group, into Croatian society. The aim of the programme was to provide systematic and comprehensive help to the Roma, enabling them to improve their living conditions, become more involved in society and decision-making, and preserve their distinct identity, culture and traditions. The Government had also adopted the Action Plan for the Decade of Roma Inclusion 2005-2015, which featured activities in the areas of education, health care, employment and housing aimed at fostering full integration of Roma into political, economic, social and cultural life.

7. The Anti-Discrimination Act had been adopted with the aim of protecting the most vulnerable groups, including ethnic minorities, from discrimination. As well as defining the different forms of discrimination, the Act had introduced concepts such as indirect discrimination, segregation and harassment of any kind. The Act had, inter alia, established the Office of the Ombudsman, a central anti-discrimination body. There were specific ombudsmen for gender equality issues, children's issues and issues of persons with disabilities.
8. The Anti-Discrimination Act provided for various types of proceedings, and allowed the possibility of filing class action suits to protect the collective interests of a specific group. Under the Act, persons who reported cases of discrimination or participated in discrimination proceedings were protected. The Act applied to the actions of government agencies, legal persons vested with public authority, and all natural and legal persons.
9. Croatia was still dealing with the consequences of wartime devastation, and one of the Government's priorities in the protection and promotion of human rights was the completion of the refugee return process and the provision of housing for former tenancy right-holders. To that end, much work had been done to create the financial and social conditions for the sustainable return of refugees. Many refugees had returned, most houses damaged during the war had been repaired and almost all appropriated private property had been restored to its rightful owners.
10. His Government was sensitive to all forms of racist propaganda, hate speech and racially motivated violence, and had amended the Criminal Code in order to define and punish hate crimes. Police officers had also been trained in the area of combating hate crimes. In the past two years, there had been eight convictions for such crimes.
11. Equal access to the courts and the right to a speedy trial were important elements in the Government's policies in the area of human rights protection. Accordingly, it had adopted a judicial reform to eliminate the backlog in the courts and introduced numerous measures to improve the efficiency of the judiciary. Work was also being carried out to promote social awareness of the need for zero tolerance for discrimination, including a project in conjunction with the European Union's employment and social solidarity programme PROGRESS. The project was called "Support for enforcement of the Anti-Discrimination Act" and featured a campaign to inform citizens of their rights and the means of protection available to them.
12. Creating a society with zero tolerance for all forms of discrimination was a long-term process, and the Government would continue to try to ensure that the work done and results achieved conformed as fully as possible with implementation of the Convention.
13. Mr. DIACONU, Country Rapporteur, outlined the geographic and historical context of Croatia. The country's 4.4 million inhabitants included 22 nationalities, many of them former enemies. The 1991-1995 war had left deep wounds that were difficult to overcome. In a short time Croatia had taken in 200,000 persons of Croatian origin from neighbouring countries; it also faced the problem of internally displaced persons from the areas of conflict and that of more than 350,000 refugees, many of whom might still return to their countries.
14. He welcomed the fact that Croatia was adopting the monist view of the relationship between international and national law, whereby the former prevailed over the latter. It had adopted various legislative instruments, including the Constitutional Act on the Rights of

National Minorities, amendments to the Criminal Code and the new Anti-Discrimination Act. He noted the determination of the central Government to foster the exercise of minority rights, and welcomed Croatia's ratification of Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

15. The key concerns relating to implementation of the Convention stemmed from the 1991-1995 war, and particularly involved the return and reintegration of Croatian Serb refugees, the rights of the Serb and Roma minorities in general and accountability for war crimes. Many reports confirmed the severe underdevelopment and poverty of the conflict areas, which still contained mines and were home to large numbers of members of minorities, including Roma. Limits had allegedly been placed on the supply of electricity to villages housing national minorities. If true, that situation constituted discrimination, and the State party was obliged to eliminate disparities between regions and take the necessary measures to guarantee to all inhabitants equal conditions in which to exercise their rights. To that end, the State party should continue and expand the work it had described in its written reply to question 14 of the list of issues.

16. Reports showed that, in spite of legislation and other measures introduced by the Government, in some areas of the country local politicians with the support of the media, were reluctant to implement return policies, to ensure the representation of ethnic minorities in local administrations and to combat discrimination in the private sector in accordance with the law. Recommendations had already been addressed to the Government encouraging it to take action to ensure full implementation of the relevant legal measures and enforce compliance by regional and local authorities. In its written response to question 8 the delegation had presented information on the procedural aspects of central government control, but more detailed information was required.

17. On the issue of accountability for war crimes, Croatian Serbs still formed the vast majority of those prosecuted and convicted. The monitoring mission by the Organization for Security and Cooperation in Europe (OSCE) had established that there was an inconsistency in the prosecution of Croat and Serb defendants, leading to widespread impunity for war crimes committed against Croatian Serbs. True reconciliation and justice would require equal treatment of all defendants and victims, irrespective of their ethnic origin. The written reply to question 20 was not clear, as it did not contain disaggregated data on the number of cases brought against ethnic Croats and against Serbian Croats and the number of cases concerning Serbian Croats in which they had been the victims but there had been no prosecution. The OSCE mission had drawn attention to the problem on many occasions and the State party should continue its efforts to solve it.

18. Croatia recognized the existence of 22 national minorities, a significant number for a small country. Although the law guaranteed the representation of minorities in parliament, the manner in which it was organized raised questions as to how a member of a German minority could represent some 10 other minorities, given that he or she might not be aware of their needs or concerns and might not speak the same language or live in the same area of the country. He wished to know how the Government categorized the Muslims and Yugoslavs who had declared themselves as such in the referendum of 2001 and who were more numerous than some recognized majorities.

19. Turning to the issue of minority councils and the registration of minority representatives mentioned in paragraphs 110-113 of the report, he wished to know who was entitled to confirm the existence of representatives, whether all the councils and representatives had been confirmed after the 2004 elections, and whether all of them had been empowered to act on behalf of their groups. If a council or representative had not been confirmed, was the minority considered as non-existent? Following the delegation's written reply to question 6, he wished to know whether all councils were registered.

20. The intervention of the Government in appointing the members of the Council for National Minorities raised doubts about the representative character of those appointed and their activities. He failed to see why the nominations by national minority councils could not be accepted. The answer to question 7 increased his concern since the Government even appointed the chairperson of the Council.

21. The definition of "national minority" was limited to its citizens and to those living traditionally on the territory of the State party; the problem of new minorities was not a topical one for Croatia, but it might become one in the future. He noted the answer given to question 19, namely that from the beginning of 2009 local officials were to be educated in the use of minority languages at the local level.

22. In connection with article 4 of the Convention, many interesting legal provisions had been adopted, including a definition of hate crime and the prohibition of incitement to racial discrimination, but it would seem necessary to make a recommendation to the State party to give full effect to article 4 provisions in its legislation; they required it to declare illegal and prohibit organizations and activities promoting or inciting racial discrimination, whether or not the Government was aware of their existence.

23. He wished to know why nearly all the human rights bodies in Croatia had been set up by the Government and why none were independent; furthermore, he wished to receive more information on the county human rights coordination bodies and whether they provided reports on the situations in their regions. It appeared that participation of ethnic minorities in local administrations was either non-existent or insufficient. The Constitutional Act stipulated that due consideration should be accorded to the representation of ethnic minorities when appointing judges, and that members of ethnic minorities should be given priority when filling judicial posts. He wished to know more about the coordinators of human rights bodies and whether they played a role as local ombudsmen.

24. One of the most important provisions of article 5 of the Convention was the right to security of person and protection by the State against violence or bodily harm. According to reports from NGOs and other sources, the police had in most cases failed to apprehend the perpetrators of killings, beatings and other incidents with clear or possible ethnic motives, and in 2007 the European Court of Human Rights had found Croatia to be in violation of the European Convention on Human Rights because the authorities had failed to thoroughly and impartially investigate a crime against a Roma man. The Government should redouble its efforts to punish violent acts and ensure the protection of members of ethnic and other minorities; it should also further the education of local civil servants and law enforcement officials in order to promote non-discrimination.

25. The situation of the Roma minority raised concerns on many grounds: most of them, particularly women, were unemployed due to their low level of education and prejudice on the part of employers. In relation to the statement in paragraph 165 of the report that it had not been possible to recruit a suitably qualified Roma employment adviser, he believed that other solutions should have been found. He wished to know what action the Government was taking to provide college and university education for the Roma. Further to the written answer to question 17, he wished to know what percentage of Roma children were enrolled in school. He enquired what results had been achieved through the Action Plan for the Decade of Roma Inclusion 2005-2015 and the National Programme for the Roma (2003) mentioned in the report; some information had been given in the written answer to question 9, but it was obvious that more permanent measures were needed, particularly in the field of education.

26. It appeared that Roma women and children and other national minorities experienced difficulties in obtaining citizenship because they could not provide the documentary proof required for residency or proficiency in the Croat language; a simplified citizenship procedure was reserved for ethnic Croats only. He wished to know on what grounds persons present on Croatian soil since 1991 were not considered Croatian citizens. In addition, according to the Convention, a State party was obliged not to discriminate against any nationality in its legislation on citizenship. It seemed that it would be necessary to renew the recommendation made by the Committee in 2002 on that issue. He sought clarification on the numbers of requests for termination of citizenship received and resolved (report, para. 124).

27. In view of the concerns raised by the Committee on the Rights of the Child, steps should be taken to ensure that up-to-date textbooks were available in minority languages and that disputes in relation to Serbian-language schools were resolved; minority-language education should be organized in accordance with Croatian law and the country's international commitments.

28. In connection with article 5 of the Convention and the situation of people who had left their homes because of the war, there were many reports documenting the lack of progress in resolving lost tenancy rights and the imposition of local administrative and political barriers. The written answer to question 13 showed that much remained to be done, particularly for Serbian Croats who had returned and could not find housing. The 2004 decision of the European Court of Human Rights, accepting as legitimate the termination of tenancy rights of those who had been absent for six months, did not absolve Croatia from responsibility for solving the housing problems of the people concerned.

29. Returnees, particularly those of Serb ethnicity, persons from ethnically mixed marriages and ethnic Croats living in territories occupied by Serbian forces during the war, also experienced difficulties in recovering their agricultural land and some experienced job discrimination. He wished to know whether there were applications for restitution of property which had yet to be resolved. The Committee might join other bodies in recommending that Croatia speed up its efforts to resolve those problems and take all measures to facilitate the return of people to their places of origin. It had been generally found that there were still serious problems in terms of inter-ethnic relations and acceptance of the return process, in particular in the war-affected areas. The State party had a duty to protect returnees from acts of discrimination; it should establish adequate programmes and activities with a view to stimulating a process of reconciliation and confidence-building.

30. He asked the delegation to reflect on the reasons why a relatively small number of racial discrimination cases reached the courts compared with the large number of allegations, and to assess whether that was due to a lack of information or because the prosecution system was not functioning properly. He queried why members of the Roma minority had been obliged to take a case concerning their abbreviated curriculum to the European Court of Human Rights and why the case had been rejected by the Constitutional Court of Croatia.

31. The complexity of legislation on property rights and the malfunctioning of local commissions made it essential that legal aid should be provided on an objective basis and without discrimination. The Government should facilitate ethnic minorities' access to legal aid and ensure their equal treatment before the courts. He requested the delegation to comment on articles 174 and 106 of the Criminal Code as reproduced in paragraphs 8 and 11 of the report; clearly, only article 106 was in accordance with the definition of racial discrimination given in the Convention. He wished to know to what categories of rights article 174 applied if they were different from those set out in article 106.

32. He had been informed that some local media still resorted to negative reporting; the State party should support the creation of a self-regulatory body to deal with complaints about reporting in the media. The written answer to question 25 had referred to broadcast and electronic media, but not to the press.

33. He had been encouraged by the steps taken to involve minorities in solving different problems of interest to them. He also welcomed Croatia's efforts to improve its relations with neighbouring countries and to join the European Union, particularly its adoption of modern legislation on recognition and representation of national minorities and promotion of their right to protect their linguistic and cultural heritage.

34. Mr. PROSPER said that it was important to recognize the significant progress made by Croatia in recent years, both in emerging from a situation of conflict and in providing leadership to countries in the region during difficult times. He commended Croatia for its commitment to human rights, equality and accountability. Nevertheless, he agreed with Mr. Diaconu that, in establishing accountability for war crimes, Croatia needed to investigate the evidence, wherever it might lead, in order to demonstrate to both current and future generations that justice was administered on an equal and neutral basis.

35. Mr. de GOUTTES welcomed the efforts made by Croatia to heal the effects of war, recognizing in particular the Government's cooperation with the International Criminal Court, and the introduction of the Constitutional Act on the Rights of National Minorities and criminal legislation on racism. The country was to be commended for having set up national programmes for the Roma and institutions to protect human rights.

36. The oral presentation made by the representative of Croatia gave rise to a number of questions. The topic of special measures was of particular interest to the Committee, and so he wished to learn more about the special measures which the Council for National Minorities could propose to assist persons from national minorities in gaining access to posts in the public sector.

37. He asked for some examples of class actions brought and details of any specific cases that would illustrate the working of such actions. He also requested additional information on the

penalties that had been handed down in cases of incitement to racist propaganda and hate speech, as they would be a useful indicator of the State party's efforts to combat such acts. It would be helpful to have an update on the status of the draft legislation on legal aid.

38. Mr. AMIR urged the delegation to include disaggregated data in its forthcoming periodic report in order to allow the Committee to evaluate the progress the State party had made. Particularly in the light of the relatively recent conflict in the region, it would be advisable for the State party to accede to the Convention on the Rights of Persons with Disabilities in order to improve protection of the rights of those people.

39. Mr. PETER asked what measures the Government was taking to ensure that Roma children attained the same level of education as other children. The Committee would also appreciate additional details on the steps being taken to protect Roma children. In particular, he asked which authority sanctioned early marriages in the Roma community, whether those were true marriages, and whether the minors who married were always in agreement with their marriage. It would be useful to learn what was the lowest legal age at which a person could marry, and what punishments were imposed on males who impregnated underage girls. It was difficult to understand why the Government considered it positive that most Roma mothers aged between 14 and 17 gave birth in health-care institutions. Surely those girls should be attending school, not having babies. He asked what measures the State took to ensure that Roma children attended school.

40. Mr. LINDGREN ALVES asked how the Government classified people who continued to declare themselves as Yugoslavs. It would be interesting to learn how the State party ensured that all the national minorities were represented in parliament. The Committee would appreciate additional data on the number of Roma in the State party, and an indication of how the Government balanced its attention to protection of the various minority groups. He requested further details of how the Council for National Minorities coordinated its work with Croatian ministries, and particularly whether it had ever been accused of interfering in areas outside its jurisdiction.

41. Mr. KEMAL asked for further explanation of Croatian ethnicity. In particular, how did it differ from the ethnicity of Bosnia-Herzegovina and Serbia in terms of language, religion, and other elements relevant to the Convention?

42. Ms. KLAJNER (Croatia) said that, since many Roma did not officially declare themselves as such but rather as another national minority, it was difficult to provide accurate data on the number of Roma. Official statistics put the total at 9,500, while more realistic estimates were between 30,000 and 40,000.

43. The number of Roma children attending primary school had risen from about 1,000 in 2005 to almost 4,000 in 2009. All Roma children of secondary school age had been given scholarships in order to encourage more Roma children to go on to secondary education. There were currently about 300 Roma children in secondary schools, and 12 Roma students in higher education.

44. The National Programme for the Roma addressed all issues concerning the Roma population, including any cases of prejudice or discrimination. The Government had taken steps

to facilitate capacity-building among Roma NGOs in order to ensure that the Roma participated in all decisions affecting them. There was currently one Roma member of parliament, who represented 12 minority groups, and over 300 Roma representatives at local and regional levels directly involved in decision-making.

45. There were currently three Roma police officers in Croatia. As more Roma students progressed through secondary education, the numbers of Roma in employment would increase. A strategy for Roma employment had also been launched, and in March 2009 a workshop would be organized to promote a model of Roma employment. The Government currently paid two years' remuneration to Roma people employed in the private sector.

46. Early marriage among some Roma groups was traditional. The Roma had arrived in Croatia in several waves, each maintaining its own customs. Many had come from Romania over two centuries before, others had arrived more recently from Bosnia, Macedonia and Serbia, and the most recent influx had been from Kosovo. Those populations all practised different religions and maintained different traditions.

47. There was no policy of segregating Roma children in schools. In some regions with a high concentration of Roma, such as Međimurje County, schools located near Roma settlements were sometimes obliged to set up special classes for Roma children who started school and did not speak the local language. Once those children had acquired sufficient language skills, usually in two or three years, they were integrated into regular classes.

48. Measures had been taken to integrate the Roma population in terms of housing. This would have a beneficial effect on employment and schools. In Međimurje, the Government had financed housing for Roma families who had been living in an area that flooded frequently. Those families had chosen where they wished to relocate, had integrated into other towns and villages, and had found employment there.

49. The Constitutional Act had established two new institutions for the exercise of minority rights - minority councils elected at the local and regional levels and a national-level Council for National Minorities. The national Council's members were appointed by the Government: seven on the recommendation of local minority councils; five eminent persons from minority groups on the recommendation of minority associations; and all minority members of parliament. The Council's Chairman and Vice-Chairman were likewise appointed by the Government on the basis of the recommendation of the minority-group members of parliament.

50. The Council was an independent body whose role was to allocate funding, which amounted to €7 million in 2009, for the promotion of minority culture. The Council ensured liaison with the Government's Office for National Minorities and could make proposals to, or raise any issue with, the Government, ministries and parliament. It monitored the media and dealt with such issues as minority programming. It had for example organized, in cooperation with the Office for National Minorities, meetings, seminars and workshops on promoting minority issues and combating prejudice, especially with regard to the Roma.

51. Mr. TURKALJ (Croatia) stressed that his Government was currently investigating all incidents of potential war crimes, whoever the perpetrators or victims might be, without distinction as to ethnicity. A database of some 700 incidents had been compiled, existing and

new evidence was being collated, and every attempt was made to identify the perpetrators and their accomplices. At the end of 2008 the police and prosecutors had developed an action plan to ensure prosecution and accountability. Court decisions handed down in absentia had been reviewed in order to identify cases where the grounds for conviction had been weak. Thanks to an amendment to the Code of Criminal Procedure, prosecutors could reopen cases if they wished and to date new trials had been ordered in 86 in absentia cases.

52. Legal aid had always been possible under the Code of Criminal Procedure, the Bar Association Act and the Asylum Act. However, new provisions for a comprehensive legal aid system had been adopted in June 2008 and had entered into force in February 2009. The only criterion for legal aid was financial need; the purpose of the comprehensive legal aid system was to facilitate access to justice for those who would not otherwise have sought redress before the courts because they could not afford it.

53. In addition, under the National Programme for the Roma, the Roma had been entitled to a special free legal aid scheme organized by the Ministry of Justice. Roma individuals and associations would be encouraged to take advantage of the scheme; associations could register as Roma advocacy groups and would be supported by the Government. Some 400 aid requests had already been received and many approved. If a request for aid was refused, appeal was possible to the Ministry of Justice as well as the courts. The functioning of the new scheme would be reviewed in one year's time.

54. Ms. RADIC (Croatia), referring to the return of refugees and former tenancy right-holders, recalled her delegation's replies to question 13 of the list of issues and said that while there had been problems in the past, the current situation was much different. The progress made had, for example, been recognized by OSCE and UNHCR.

55. The families of some 14,000 former tenancy rights-holders had requested the return of their property; to date housing had been provided for 8,400 families and the cases of another 2,000 would be settled in the current year. Her Government's approach was to compensate those who had fled Croatia through a sustainable solution based on return to Croatia and reintegration. Most cases involving such persons would be resolved by the end of 2009 and most private property had been returned to the former owners. The most significant case still outstanding was that of seven temporary land-users, mostly Croats from Vojvodina, who were occupying land belonging to 30 returnees in the Benkovac area. Her Government had, however, found a solution to that situation which would provide compensation to both groups and would be implemented in the near future.

56. Most of the damaged or destroyed homes belonging to Serbs had been rebuilt by the end of 2004 and the former inhabitants had returned. Some 300 abandoned hamlets had been identified and in 2005 her Government had implemented a programme to link those hamlets to the electricity grid; by the end of 2008 some 4,500 homes had been reconnected. There had been problems in areas close to the border with Bosnia and Herzegovina because those hamlets had been connected to the Bosnian grid and the entire infrastructure had had to be replaced. There had likewise been problems in some areas with regard to connection to the water supply network. In general, however, when problems were identified, every effort was made to find a solution.

57. She acknowledged that there had been some racially-motivated incidents which had led to criticism of certain local authorities, but said the situation was currently much different. Many people who had fled during the conflict had returned. Referring the Committee to the written replies to question 5 of the list of issues, she said that an additional 126,000 Serbs had returned to areas of special concern to her Government, the areas most affected by the war.

58. Only about 40 per cent of the previous Serb population had in fact returned to Croatia. According to a recent survey of remaining refugees, only about 5 per cent were considering returning to Croatia. Those statistics could be explained by the fact that they had been away from Croatia for a long period, had spent most of their adult lives in the host countries, had new families there or had no wish to return to the mostly rural areas they had left behind, which was especially true for young people. Many of the areas from which people had fled had been relatively disadvantaged at the time and continued to be so. Accordingly, her Government was focusing its efforts not only on the return of refugees but also on promoting the development of those areas to bring them up to the same standard as the rest of Croatia. In that context she noted that the Regional Development Strategy and Act were being finalized and should be adopted by June 2009.

59. Mr. MADERIC (Croatia), on the question of class-action suits, said that the Anti-Discrimination Act did allow for such types of action, following the example of consumer law, but since the Act had only been in force since January 2009 no data were yet available. The new Act made it easier for individuals who would otherwise not have had the skills or knowledge to pursue a court action to associate themselves with a suit and thereby obtain redress for their complaints. The Act would likewise make it easier for NGOs to launch anti-discrimination suits on behalf of particular groups.

60. He was pleased to report that Croatia had been the second country to ratify the Convention on the Rights of Persons with Disabilities. Available data indicated that approximately 10 per cent of the population of Croatia suffered from some type of disability. The Anti-Discrimination Act guaranteed the rights of persons with disabilities. For example, it prohibited any individual or enterprise from erecting or permitting physical barriers to access to buildings by persons with disabilities.

The meeting rose at 5:50 p.m.