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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS Thirty-fourth session 25 April-13 May 2005

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT

Concluding observations of the Committee on Economic, Social and Cultural Rights

SERBIA AND MONTENEGRO

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Serbia and Montenegro on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.61) at its 11th, 12th and 13th meetings, held on 2 and 3 May 2005 (E/C.12/2005/SR.11-13), and adopted, at its 27th meeting held on 13 May 2005, the following concluding observations (see E/C.12/2005/SR.27).

A. Introduction

2. The Committee welcomes the submission of the initial report of Serbia and Montenegro, which was prepared in general conformity with the Committee's guidelines, and the written replies to its list of issues.

3. The Committee welcomes the frank and constructive dialogue with the delegation of the State party, which included representatives from the Republic of Serbia, the Republic of Montenegro and the State Union of Serbia and Montenegro.

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B. Positive aspects

4. The Committee notes with appreciation that, in accordance with article 16 of the Constitution (2003) of the State Union of Serbia and Montenegro, the Covenant takes precedence over the law of Serbia and Montenegro and that of the Republics, and that the Charter of Human and Minority Rights and Civil Liberties protects many economic, social and cultural rights, including special rights of members of national minorities.

5. The Committee welcomes the establishment of Ombudsperson institutions in the Republic of Montenegro and in the autonomous province of Vojvodina, as well as the current process of adopting a law on the Ombudsperson of Serbia.

6. The Committee notes with appreciation the considerable legislative and policy reforms which have been adopted in the State party, in particular in the Republic of Montenegro, with a view to achieving the enjoyment of economic, social and cultural rights by all, including by disadvantaged and marginalized persons.

7. The Committee notes with satisfaction that the State party supports the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

C. Factors and difficulties impeding the implementation of the Covenant

8. The Committee recalls that Serbia and Montenegro is undergoing a process of economic and institutional transition and that it is still suffering from the effects of territorial disintegration and armed conflicts throughout the 1990s, which render the full implementation of the Covenant difficult.

9. The Committee takes note of the State party's explanation about its inability to report on measures adopted and progress made in achieving the observance of the rights recognized in the Covenant with regard to the province of Kosovo and Metohija, where civil authority is exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK) under Security Council resolution 1244 (1999). The State party suggested that the Committee should invite UNMIK to submit to the Committee a supplementary report on the implementation of the Covenant in Kosovo. The Committee, however, calls upon the State party to request the Secretary-General to provide it with information collected by UNMIK, in accordance with paragraph 11 (j) of Security Council resolution 1244 (1999), on the enjoyment in Kosovo since 1999 of the rights recognized in the Covenant and, without prejudice to the legal status of Kosovo, on the basis of such information to supplement its initial report to the Committee. In this regard, the Committee requests the State party, in cooperation with and with assistance from UNMIK and local civil authorities in Kosovo, to submit the additional information with regard to the implementation of the Covenant in Kosovo by 30 June 2006.

D. Principal subjects of concern

10. The Committee regrets the absence of case law on the application of the Covenant by Serbian and Montenegrin courts.
11. The Committee is concerned that there is no systematic and comprehensive anti-discrimination legislation in Serbia and Montenegro at the level of the Republics or the State Union.
12. The Committee expresses its deep concern about reported incidents of inter-ethnic violence and racially motivated acts against ethnic minorities such as the Roma.
13. The Committee is deeply concerned that, despite the State party's efforts to improve the economic and social situation of Roma through National Plans of Action for the implementation of the Decade of Roma Inclusion (2005-2015) in both Republics, widespread discrimination against Roma persists with regard to employment, social security, housing, health care and education.
14. The Committee expresses its deep concern about the uncertain residence status of and the limited access by refugees, returnees from third countries and internally displaced persons, including internally displaced Roma, to personal identification documents, which are a requirement for numerous entitlements such as eligibility to work, to apply for unemployment and other social security benefits, or to register for school.
15. The Committee regrets the absence of a law on gender equality as well as the low representation of women in government offices and in the parliaments of both Republics and of the State Union.
16. The Committee is concerned about the high unemployment rate in Serbia and in Montenegro, especially among women, persons with disabilities, Roma and internally displaced persons.
17. The Committee is equally concerned that many persons, especially Roma, internally displaced persons and refugees, work in the informal economy or in the low-income sector without adequate working conditions and social security coverage.
18. The Committee notes with concern that only a small number of workers are unionized in the private sector and that the registration of trade unions is subject to strict requirements, including authorization by the Minister of the Interior, who has the power to dissolve trade unions.
19. The Committee is equally concerned about the broad definition of the concept of "essential services", including professions such as teachers and postal workers. The Committee is also concerned that the right to strike can only be exercised if strict conditions are met, and that participation in a strike can lead not only to the suspension of wages but also of social security rights.
20. The Committee is concerned about the very low unemployment benefit coverage in the State party.
21. The Committee notes that the recent Law on Pensions and Disability Insurance of the Republic of Serbia has introduced stricter requirements for eligibility for old-age and disability pensions in order to guarantee the financial sustainability of the pensions system, and expresses its concern that those who do not comply with these requirements will be left without adequate social assistance.
22. The Committee is concerned that a large number of Krajina Serbs and internally displaced persons from Kosovo above the retirement age have reportedly not received their pensions for years.
23. The Committee expresses its deep concern about the high incidence of domestic violence, often resulting from psychological distress caused by unemployment and traumatic disorders related to armed conflict.
24. The Committee is equally concerned about the high incidence of child abuse in the State party.
25. The Committee is deeply concerned about the high numbers of trafficked women and children for purposes of sexual exploitation and forced labour, as well as about reported incidents of police involvement.
26. The Committee notes with concern that many Roma children below the minimum working age of 15 years work in the informal economy without being covered by the labour code's special provisions on protection of minors.
27. The Committee notes with concern that 10.6 per cent of the Serbian population and 12.2 per cent of the Montenegrin population currently live below the poverty line and that another 25,000 persons in Serbia would fall below the poverty line if it were increased slightly.
28. The Committee is concerned about the extent of poverty among older persons and about the fact that home care is still insufficiently developed.
29. The Committee notes with concern that poverty among Roma is between four and five times higher than among the general population.
30. The Committee is gravely concerned about the poor conditions in which thousands of Roma families live in sub-standard informal settlements without access to basic services such as electricity, running water, sewage facilities, medical care and schools.
31. The Committee is deeply concerned that many refugees, internally displaced persons and Roma are being evicted from illegal collective centres and informal settlements which are being closed down without sufficient provision of adequate alternative housing.
32. The Committee is concerned about the lack of direct access to safe drinking water in 17.5 per cent of rural households in Serbia and about the poor quality of water in central Serbia.

33. The Committee is concerned about the limited access to primary health care in rural areas, especially for refugees and other vulnerable groups, and that 7 per cent of the Serbian population are not covered by the compulsory health insurance.

34. The Committee deplores the high rates of tobacco consumption and of cardiovascular diseases in Serbia and Montenegro, in particular in the autonomous province of Vojvodina.

35. While acknowledging the State party's efforts to devise a strategy to address the HIV/AIDS pandemic, the Committee notes the absence of national benchmarks against which the State party's achievements in this or other areas of health could be assessed.

36. The Committee regrets the absence of information on mental health services in the State party's report, including provision of psychological rehabilitation to victims of physical and sexual violence and other traumatizing experiences related to armed conflict.

37. The Committee is deeply concerned that a high percentage of Roma children and children belonging to other minority groups, as well as refugee and internally displaced children, are not enrolled in school, drop out at an early stage, are being discriminated against at school, or are placed in schools for children with special needs.

E. Suggestions and recommendations

38. The Committee urges the State party to ensure that the provisions of the Covenant are given effect by its domestic courts and that legal and judicial training takes full account of the justiciable elements of all Covenant rights, as defined in the Committee's general comments, and promotes the use of the Covenant as a domestic source of law. The Committee draws the attention of the State party to general comment No. 9 (1998) on the domestic application of the Covenant and invites the State party to include information concerning case law on the application of the Covenant in its next periodic report.

39. The Committee calls on the State party to adopt specific anti-discrimination framework legislation and to increase awareness about international anti-discrimination standards among judges and other members of the legal profession. The State party should ensure wide participation of the civil society in the adoption of such legislation.

40. The Committee urges the State party to investigate such incidents, to bring perpetrators to justice, and to take all necessary measures to raise awareness of the dimensions of ethnic discrimination and intolerance among local authorities and the general public.

41. The Committee recommends that the State party ensure adequate participation of Roma representatives in the implementation of the plans of action adopted or envisaged by both Republics with regard to non-discrimination, gender equality, employment, social protection, housing, health and education of Roma, and to allocate sufficient funds to these and other relevant programmes.

42. The Committee calls on the State party to assist refugees, returnees and internally displaced persons by facilitating the procedures necessary to obtain personal documents, including birth certificates, identity cards and work booklets, to enable them to enjoy their economic, social and cultural rights.

43. The Committee recommends that, in addition to the establishment of a Council on Gender Equality in Serbia and of an Office for Gender Equality in Montenegro, the State party expedite the adoption of a law on gender equality with a view to ensuring greater access for women to positions of responsibility in the Government and public employment sectors.

44. The Committee requests the State party to intensify its efforts to reduce the unemployment rate, including through the implementation of its National Strategy on Employment, to promote employment of persons belonging to vulnerable groups through special measures, e.g. special training, the removal of physical barriers limiting workplace access by persons with disabilities, and wage subsidies or other incentives for employers, and to report on the results of these measures in its next report.

45. The Committee recommends that the State party remove from its legislation any unjustified registration requirements and grounds for dissolving trade unions.

46. The Committee requests the State party to limit the scope of its definition of "essential services" and to ensure that the exercise of the right to strike does not lead to the suspension of social security rights.

47. The Committee recommends that the State party increase unemployment benefit coverage so as to ensure an adequate standard of living for unemployed workers and their families and to include in its next report detailed information on the extent of unemployment benefit coverage, disaggregated by age, gender, residence status and national or ethnic origin.

48. The Committee requests the State party to include in its next report detailed information on the number of persons who are not eligible for old-age or disability pensions under the Serbian Law on Pensions and Disability Insurance and under similar legislation in Montenegro, if any, disaggregated by gender, age and national or ethnic origin, as well as on the type and levels of social assistance received in lieu of such pensions.

49. The Committee requests the State party to pursue its bilateral negotiations with Croatia regarding the payment of pensions to Krajina Serbs residing in Serbia and Montenegro and to alleviate documentation requirements for the payment of pensions to internally displaced persons whose work booklets were destroyed during the hostilities in Kosovo.

50. The Committee urges the State party to take effective measures to combat domestic violence, to provide counselling to victims and perpetrators, including those suffering from traumatic disorders related to armed conflict, and to include updated statistical data on the number of reported cases, disaggregated by age, gender, employment status and national or ethnic origin of the victims and/or perpetrators, in its next report.

51. The Committee urges the State party to take effective measures to ensure the immediate protection and long-term rehabilitation of

abused children and to include in its next report detailed information on these measures as well as on the number of reported cases of child abuse.

52. The Committee urges the State party, in addition to the recent legislative measures to combat trafficking in persons, to prosecute and punish perpetrators and corrupted law enforcement officials involved in trafficking, to provide medical, psychological and legal support to victims, to raise awareness about the dimension of the crime among law enforcement officials, and to include updated statistical data on the number of victims, perpetrators, convictions and the type of sanctions imposed in its next report. The Committee also encourages the State party to proceed with the adoption of a national plan of action on trafficking in Serbia.

53. The Committee recommends to the State party to ensure the protection of minors against economic and social exploitation and to take all necessary measures to combat and punish employment of children below the age of 15.

54. The Committee recommends that the State party ensure the full integration of economic, social and cultural rights into its Poverty Reduction Strategy and allocate sufficient funds for the implementation of the Strategy. In this regard, the State party is referred to the Committee's statement "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).

55. The Committee recommends that, in applying its Poverty Reduction Strategy, the State party take special measures to alleviate the extent of poverty among older persons and that priority be given to home care rather than institutionalization of older persons in need of care. The State party should allocate sufficient funds to that effect and strengthen the role of non-profit organizations in the provision of home care and other social services.

56. The Committee recommends that, in applying its Poverty Reduction Strategy and national plans of action for the implementation of the Decade of Roma Inclusion, the State party take special measures to alleviate the extent of poverty among Roma.

57. The Committee urges the State party to ensure, by legalizing and improving the infrastructure of existing settlements or through social housing programmes, that Roma have access to adequate and affordable housing with legal security of tenure, safe drinking water, adequate sanitation, electricity and other essential services.

58. The Committee urges the State party to ensure that adequate alternative housing is provided whenever forced evictions take place, in line with the Committee's general comment No. 7 (1997), and to include updated statistical data on an annual basis on the number of forced evictions, arrangements for alternative housing and the extent of homelessness in its next report.

59. The Committee recalls the State party's obligation to ensure access to safe drinking water within, or in the immediate vicinity of each household. It invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to the right to water, in line with the Committee's general comment No. 15 (2002), and to include information on the process of identifying such indicators and benchmarks in its next report.

60. The Committee recommends that the State party ensure universal access to affordable primary health care, i.e. by increasing the number of family doctors and community health centres, and include all members of society, including refugees, internally displaced persons and Roma, in the compulsory health insurance scheme.

61. The Committee recommends that the State party intensify its anti-smoking and healthy diet campaigns with a view to combating the causes of cardiovascular diseases.

62. The Committee invites the State party to identify disaggregated indicators and appropriate national benchmarks in relation to priority health concerns, including HIV/AIDS, in line with the Committee's general comment No. 14 (2000), and to include information on the process of identifying such indicators and benchmarks in its next report.

63. The Committee requests the State party to ensure the provision of adequate counselling and other assistance to victims of physical and sexual violence and other traumatizing experiences related to armed conflict, in particular women and children, and to include information on these and other mental health services, as well as on the number of victims of such violence, in its next report.

64. The Committee urges the State party to take effective measures to promote school attendance by Roma children and children belonging to other minority groups, as well as refugee and internally displaced children, by increasing subsidies, scholarships and the number of teachers instructing in minority languages. It also urges the State party to eradicate ethnically discriminatory attitudes by taking effective measures in the fields of teaching, education, culture and information, in order to promote understanding, tolerance and mutual respect among all ethnic groups living on its territory.

65. The Committee recommends that the State party intensify its efforts to promote respect for the cultural values of ethnic communities in order to enhance mutual tolerance and understanding. The Committee requests the State party to include information in its next report about the measures taken to implement recommendations made by the National Councils of the Roma and other minorities in Serbia and about similar measures in Montenegro.

66. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to engage non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

67. Finally, the Committee requests the State party to submit its second periodic report by 30 June 2010.
