

WRITTEN COMMENTS

of the European Roma Rights Centre and Chiricli, Concerning Ukraine

For Consideration by the Committee on Economic, Social and Cultural Rights
at the 52nd Session (28th April to 23rd May 2014).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

TABLE OF CONTENTS

Introduction	3
Strategy for the Protection and Integration of the Roma National Minority Into Ukrainian Society Up to 2020 (Articles 2, 3, 6, 7, 8, 9, 11, 12, 13, 15)	3
Data Collection (Articles 2, 3, 6, 7, 8, 9, 11, 12, 13, 15)	4
Lack of Personal Documents (Articles 2, 6, 9, 11, 12, 13)	4
Anti-Discrimination Legislation (Articles 2, 3, 7)	5
The Right to Education (Articles 2, 13, 14)	6
Housing (Article 11)	7
Health (Article 12)	8
Employment (Articles 6, 7)	8
Recommendations	8

INTRODUCTION

The European Roma Rights Centre (ERRC)¹ and Chiricli² respectfully submit written comments concerning Ukraine for consideration by the Committee on Economic, Social and Cultural Rights (CESCR) at its 52nd Session from 28th April to 23rd May 2014.

Regular monitoring of the human rights situation of Roma in Ukraine has been undertaken by the ERRC and Chiricli, and the work of both organisations is reflected in this submission.

The present document does not aim to address all issues relevant to the implementation of the Covenant or its provisions in Ukraine, nor is the document a comprehensive summary of all human rights issues facing Roma in Ukraine. With this submission, the ERRC and Chiricli aim to present the results of research in several areas of relevance to the Covenant in order to complement the information provided in the State Report. The information reflects the current priorities of the submitting organisations in their work in Ukraine.

According to the 2001 census, the most recent census data, the population of Ukraine is about 45,453,000 people, among them 47,587 Roma.³ However, unofficial estimates suggest that the number of Roma in Ukraine is between 120,000 and 400,000.⁴ Nationwide, comprehensive data on the socio-economic situation of the Roma in Ukraine do not exist. While nationwide statistics are in general based on the census results, the majority of Roma – for reasons that should be clear from what follows – do not disclose their identity in census-taking which creates a serious obstacle for the production of reliable data.

Roma in Ukraine face everyday discrimination and social exclusion. Available data, often collected by civil society organisations, indicate that many Romani communities in Ukraine live in conditions of extreme poverty, often in segregated settlements with little or no access to services such as the education system, health system and other essential services.

A number of overarching issues and developments have an impact on the enjoyment of all economic, social and cultural rights by Roma in Ukraine. These include the Strategy for the Protection and Integration of the Roma national minority into Ukrainian society up to 2020 and the National Action Plan on Roma Inclusion, both adopted in 2013 as well as recently-introduced anti-discrimination legislation.

Other major issues of concerns also addressed in this submission are the lack of personal documents and the consequences thereof when trying to access essential services, the lack of comprehensive or reliable ethnic data, and particular obstacles faced by Roma in Ukraine in relation to accessing education and housing.

STRATEGY FOR THE PROTECTION AND INTEGRATION OF THE ROMA NATIONAL MINORITY INTO UKRAINIAN SOCIETY UP TO 2020 (ARTICLES 2, 3, 6, 7, 8, 9, 11, 12, 13, 15)

Following the adoption in 2013 of the Strategy for the Protection and Integration of the Roma national minority into Ukrainian society up to 2020 and the publication of the National Action Plan (NAP) on Implementation of the Strategy which was approved by the Ukrainian government in September 2013, the ERRC and Chiricli have repeatedly raised a number of issues in relation to the National Action Plan.

1 The ERRC is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Additional information about the organisation is available at: www.errc.org.

2 The International Charitable Organisation Roma Women Fund Chiricli is an international charitable organisation working on combating discrimination and human rights abuses of Roma, and legal and social issues of the Roma community through its impact on public policy, advocacy work and strengthening the Roma community. Additional information is available at: www.chirikli.com.ua.

3 State Statistics Committee of Ukraine, All-Ukrainian Population Census, available at: <http://2001.ukrcensus.gov.ua/eng/>.

4 European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, Brussels, 2011, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

In December 2013 the Cabinet of Ministers issued an order to the effect that regional administrations have to develop Regional Action Plans with indicators and budget lines. However, regional administrations are facing problems in this regard as they lack reliable data about the number of Roma in their regions, and they also lack knowledge on which indicators to use.

- The Strategy and the NAP have been developed with an insufficient participation of Romani representatives.
- The NAP does not foresee any budget responsibilities and allocations.
- The NAP lacks concrete targets in many areas, and does not outline indicators for successful monitoring of its implementation.
- As of yet, no nation-wide monitoring mechanisms have been created.

These omissions make it difficult to implement and monitor a possible implementation or even to review and adjust the policies.

It is therefore, indispensable that:

- The national authorities in Ukraine adopt an evidence-based and rights-based approach with regard to the NAP.
- The national authorities in Ukraine introduce a monitoring mechanism that involves civil society
- The national authorities in Ukraine develop clear and detailed commitments on the full inclusion of Romani civil society in the implementation, the monitoring and possible revision of the NAP.
- The authorities at all levels commit to allocate sufficient budget resources for the implementation of the NAP

At present all of these elements are absent and without developing these elements, it is unlikely that the NAP will achieve its intended outcomes.

DATA COLLECTION (ARTICLES 2, 3, 6, 7, 8, 9, 11, 12, 13, 15)

Ukrainian authorities have been urged to establish and implement a system of ethnic data collection in order to be in a position to assess and redress any racial discrimination that may exist in the country. It is possible to implement such a system whilst ensuring compliance with all national law as well as European and international obligations and recommendations on data protection and the protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, anti-Semitism and intolerance. However, no such policy has been implemented. The absence of reliable data on Roma in Ukraine makes it difficult to quantify the discrimination which Roma face.

Reliable data are required to monitor the situation of Roma in Ukraine and also to measure the impact of policies aimed at improving the situation of Roma. Data collection also allows for monitoring any negative impact of policies which appear to be neutral. Effective monitoring is particularly important for the NAP introduced in 2013.

LACK OF PERSONAL DOCUMENTS (ARTICLES 2, 6, 9, 11, 12, 13)

ERRC and Chiricli research in recent years has identified lack of personal documents as a significant problem for Roma in many parts of Ukraine. The ERRC has worked with communities in Odessa region since 2011, assisting Roma to apply for personal documents. In three communities between 30% and 40% of Roma reported that they lack at least one of the documents which are necessary in order to access a range of services. These include birth certificates, internal passports (which serve as identification documents) and residence registration documents. Many Roma in Ukraine also lack documents proving ownership of either the place of residence, or of the land on which they reside.

The lack of personal documents creates obstacles with regard to education, housing, health care and other forms of social security, and employment. In some cases, individuals lack any form of identification and so cannot prove their identity in order to avail of any state services. There are several reasons why Roma lack particular documents; some missed deadlines for exchanging documents following the collapse of the Soviet Union and were not aware that such deadlines existed; some did not have documents during the Soviet period and now cannot prove their place and date of birth, or their length of residence in Ukraine; some had lost personal documents and were unable to replace them.

Low levels of literacy make it difficult for some to negotiate the complex bureaucratic procedures involved in obtaining documents; and, as outlined in the report of the Ukrainian Parliament Commissioner for Human Rights to the CESCR, there are issues with employees of relevant state bodies, who require Roma to hand in additional documents which are not foreseen in current regulations. The ERRC is also aware of cases where applicants appear to have been asked to provide payment (in the form of gifts or cash) to ensure that their applications would be dealt with promptly, even though the law does not provide for priority processing for those able to pay more. With the support of the ERRC, several Roma have appealed to courts in order to establish identity and access personal documents; without support in doing so, this process can be particularly complex and expensive.

One Romani mediator reported to Chiricli as follows: 'It is written that a lack of registration should never be a reason for refusal to issue a passport. However, I've never had one incident where someone was issued a passport in the absence of registration.' In 2012-2013 Roma mediators helped 6783 Romani individuals to get registration, 2052 to receive birth certificates, and 1246 to receive their internal passport/national identity document. 102 individuals were also helped to receive a pension and 82 to receive invalidity allowance.⁵

ANTI-DISCRIMINATION LEGISLATION (ARTICLES 2, 3, 7)

In September 2012 Ukraine adopted a law on the principles of preventing and combating discrimination.⁶ A European Commission report stated that the law 'lacks clear and complete definitions... and institutional provisions to ensure its effectiveness'.⁷ The Commission also noted that Roma among other groups face different forms of discrimination and, occasionally, acts of violence.⁸

According to the Coalition for Combating Discrimination in Ukraine:

"The Anti-discrimination law should be comprehensive and contain a precise definition of discrimination, clear interpretation and standards of identification; it should clearly define basic concepts such as "discrimination", "direct discrimination", "indirect discrimination", "positive anti-discrimination measures", "victimisation", "persecution", etc.; it should include a comprehensive list of prohibited bases of discrimination, including sexual orientation and gender identity as explicitly defined protected grounds; it should stipulate basic standards and principles for proving discrimination; the anti-discrimination law should fulfil the State's duty to undertake positive measures to prevent discrimination, compensate for damage linked to discrimination, as well as impose proportionate sanctions for infringements of anti-discrimination norms. These sanctions should allow for compensation to victims of discrimination. The state also needs to establish an institutional framework for the effective implementation of anti-discrimination legislation and policy with the following aims: policy implementation; monitoring and public reporting; coordination of state actors; investigation; participation of victims; and ensuring assistance to and redress for victims".⁹

5 Field research and interviews carried out by Chiricli in 2013.

6 The text of the law is available at: <http://zakon4.rada.gov.ua/laws/show/5207-17>.

7 European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, *Implementation of the European Neighbourhood Policy in Ukraine – Progress in 2012 and recommendations for action*, Brussels, March 20 2013, available at: http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_ukraine_en.pdf.

8 *Ibid.*

9 Anti-discrimination developments and shortcuts in Ukraine- statement on behalf of the Coalition for combating discrimination in Ukraine, available at: <http://www.osce.org/odhr/94820>.

THE RIGHT TO EDUCATION (ARTICLES 2, 13, 14)

Romani children face many obstacles in accessing education. ERRC research has shown that Romani children often study in fully segregated and sub-standard schools, are not permitted to register in integrated schools, and are overrepresented in so-called ‘special education’ schools which have adapted curricula for children diagnosed with special education needs.

In the Odessa region the ERRC has visited one ‘special education’ school where Romani children account for 36% of the total number of pupils, even though the Romani population of this area is under 5%. The school follows an adapted curriculum which covers a standard five year curriculum in nine years. Children are enrolled following an examination by a committee which assesses whether a child requires an adapted curriculum or has particular education needs. However, the ERRC has found that entire families of Romani children have been officially diagnosed as having special education needs and were all enrolled in this school, and Romani parents are encouraged to enrol their children in this school.

In the Odessa region the ERRC has also visited a fully-segregated Roma-only school building approximately five kilometres from Odessa. This school consists of two school buildings; the newer building accommodates children from various ethnic backgrounds, while the older building, which has poorer facilities and is generally in a poorer condition, accommodates only Romani children. A very small number of Romani children, usually no more than two per class, have enrolled in the integrated school building. Parents state that this is because the parents of these children are able to pay informal monthly fees to the school and are therefore permitted to enrol in the integrated school building.

The remaining Romani children are actively enrolled in this segregated building by teachers, and are not permitted to transfer to the newer building. Teachers in the Romani-only building openly expressed negative stereotypical views of Roma to the ERRC, stating that these Romani children are genetically unsuited to formal education, and that the children and their families are uninterested in gaining educational qualifications. Several parents of these children have expressed deep dissatisfaction with the standard of education received, and the poor learning outcomes from this school. Many children remain illiterate after several years of school attendance.

In the Transcarpathia region the ERRC has visited three fully-segregated Roma-only schools in Mukachevo (school no. 14) and in Uzhgorod (schools number 13 and 14). The quality of education in all three schools is low – often classes are overcrowded and there are not enough teachers working in these schools. In all three schools the majority 4th grade students (aged between nine and ten approximately) were illiterate. Subsequently success rates at higher levels are low. In School no. 14 in Mukachevo only four out of 24 9th graders passed their final state exams.

Students who wish to transfer to integrated schools and receive a better quality education are often refused admission to other schools. School no. 14 in Uzhgorod teaches only to the 4th grade. Approximately 30% of students who completed 4th grade here were refused enrolment in School no. 20 in the same district, where they could have completed their education.

By way of example, Lena is 12 years old and attended the segregated primary School no. 14 in Uzhgorod and graduated from the 4th grade in 2013. Her mother died when she was 6 and she was raised by her grandmother. She tried to enrol in School no. 20 in Uzhgorod, which is the public school in her territorial district offering secondary education. School no. 20 sent Lena for psychiatric testing, which was not warranted in her case. Local NGOs intervened and the school revised its decision, and only required Lena to pass the medical examinations that are part of the ordinary admission process. Lena passed these exams successfully. However, School no. 20 ultimately rejected her application for enrolment due to Lena’s lack of an original birth certificate. Lena only possessed a copy off her birth certificate, as all original documents had burned in a fire at her grandmother’s house some years before. “Now I just sit at home and when I get lonely I go to the primary school and play with the younger children” she told the ERRC.¹⁰

In addition to School no. 20 in Uzhgorod, the ERRC visited two other schools, School no. 7 in Uzhgorod and School no. 20 in Mukachevo, which appear to deny admission to Romani students or limit the number of Romani students studying in these schools systematically.

10 ERRC Interview, Uzhgorod, November 2013.

School directors and staff have given many reasons to explain poor school attendance by Romani children, which often reflect stereotypical and negative views of Roma. Directors and teachers frequently state that Roma are not interested in education for their children or are not disciplined enough to attend school, and that Romani children are not able to learn. Teachers also state that Romani children are not able to behave 'normally'. However, many Romani parents have expressed a strong desire to have access to good quality education for their children and are keen that their children can complete secondary education.

The ERRC has identified several reasons for school segregation and/or low school attendance. Some schools refuse Romani students as they lack personal documents, such as birth certificates. Many Roma-only schools actively encourage Romani children to enrol in a segregated rather than a mixed school; this involves teachers going directly to Romani families to enrol their children in a segregated school. Although education is free in theory, many schools require an unofficial monthly contribution from parents to cover running costs; for poorer Romani parents this monthly contribution is unaffordable. In some areas, a lack of transport to schools is an obstacle. Finally, Romani students who attempt to enrol in integrated schools are often refused without clear reason and it is evident that these schools limit the number of Romani students that they accept.

HOUSING (ARTICLE 11)

Housing standards and security of tenure are both major problems for Roma in Ukraine. As outlined above in relation to personal documents, Roma often lack necessary documents in relation to housing and so are at risk of eviction. Roma may lack documents to show proof of ownership of their housing, despite having lived in this housing for several years. Roma may also lack proof of ownership of the land on which their housing is situated. The document acquisition process in relation to land and housing is not only time-consuming and complex, but can potentially also be expensive.

According to information gathered by Chiricli through Roma mediators in Transcarpathia and Odessa regions, many Romani families live in poor conditions, with many living in housing either in need of repair, or in altogether dangerous conditions. It is estimated that up to 11,000 Romani individuals across eight regions are not officially registered at an address, and so lack this important personal document. Roma mediators together with Chiricli have monitored the situation of 193 families who are without proper housing and live in makeshift tents, and many Romani families living in seriously overcrowded housing.

The ERRC works with cases relating to housing documents in Transcarpathia, and both Chiricli and the ERRC have documented two occasions in 2013 when Romani communities faced a threat of eviction due to lack of required documents. The ERRC has also noted that many Romani households in the Odessa region lack documents to prove ownership of land or housing.

In June and July 2013 two attacks occurred targeting Roma in Kiev. According to information compiled from various sources, on 13 June 2013 at 8.00 p.m. in the Darnitsky district of Kiev a group of men attacked and set fire to a Roma camp. Up to 40 people were left homeless by the attack, including many children. All of their personal property, including personal documents, was destroyed.

On 3 July 2013 at about 8.30 p.m. two men approached a Roma settlement in Bereznyaki, Kiev. After a brief argument, the two men poured flammable liquid around the settlement and set it on fire. Again a lot of personal property was destroyed in the fire.

In July 2013 the ERRC and Chiricli documented a situation in Khust, Transcarpathia region in which over 300 people, many of them children, were threatened with eviction if they did not vacate the land on which they were living. Representatives of the municipality threatened to begin legal action against the families if they did not move. The families were offered no suitable alternative accommodation; authorities suggested that they could move to a nearby settlement which is already extremely overcrowded. These families have been living on the land for approximately five years. They do not have proof of ownership of the land but have tried to legalise their dwellings in the past.

In August 2013 the ERRC and Chiricli monitored a situation in Uzhgorod, Transcarpathia which was reported in local media and by civil society organisations. Approximately 40 Roma families in Uzhgorod were approached

by representatives of the city authorities. The purpose of the visit was to warn the Roma that they should move out of their homes immediately. Families were also threatened that if they did not comply their children could be taken into state care. Families were offered no suitable alternative accommodation or other services. Four families are currently attempting to legalise their dwellings, with the support of the ERRC and a local lawyer.

HEALTH (ARTICLE 12)

Many Roma face obstacles in accessing medical services because of a lack of personal documents, including identity cards and proof of registration. Although the Constitution guarantees that medical care shall be available free of charge,¹¹ in reality it is almost impossible to access quality medical services for free. The cost of medical services and medicine is therefore an obstacle. One Roma health mediator in Kirovograd reported that lack of documents is a serious obstacle; and while maternity hospitals will admit Romani women without documents, the hospitals are then unable to register the child's birth officially due to the lack of documents. Furthermore, many Roma do not know that, in accordance with the law, doctors in state medical facilities are obliged to accept them (without charge) and that many diagnostic and treatment procedures are available to people on lower incomes.

A Roma social and health mediators program has been implemented in Ukraine since 2011. The aim of the programme is to improve access of Roma to medical and social services. There are 50 mediators working in twelve pilot regions of Ukraine.¹² At the moment the work of the mediators is supported by international donors. Taking into account the success of the programme and the need for the mediator's work with the communities and local authorities, it is important for the Government to consider supporting the mediators, as has happened in other countries.

EMPLOYMENT (ARTICLES 6, 7)

In 2013 Roma mediators started to monitor the situation regarding employment for Roma in 12 regions and preliminary results show that the majority of Roma face mass unemployment. Of 1456 Romani individuals who participated in this monitoring, only 217, or 14.9%, were in regular employment. For many Roma only seasonal work or informal work is available.

RECOMMENDATIONS

- Ensure that the National Action Plan for Roma follows both an evidence-based and a rights-based approach, and that Romani civil society is involved in this process, and furthermore that the Plan addresses access to education, health care, housing, and employment.
- Outline a detailed and adequate budget for the implementation of the National Action Plan, and outline indicators for monitoring the development of the National Action Plan
- Implement data collection, including data disaggregated by ethnicity, in the areas of education, employment, health and housing to monitor both direct and indirect discrimination against Roma.

ACCESS TO PERSONAL DOCUMENTS

- Reform the process for obtaining personal documents to make it more accessible to Roma and facilitate access to property titles for land and houses, *inter alia*, through necessary legislative changes. Simplify the procedure for Roma to obtain these documents.

¹¹ Constitution of Ukraine, Article 49, available at: <http://www.president.gov.ua/en/content/chapter02.html>.

¹² Those regions are Odessa, Transcarpathia, Zaporizhia, Kharkiv, Kherson, Luhansk, Donetsk, Dnipropetrovsk, Kirovograd, Kyiv, Lviv and AR Crimea.

- Develop programmes in collaboration with civil society and Romani NGOs to assist Romani individuals in obtaining personal documents.

ENDING SCHOOL SEGREGATION AND DISCRIMINATION

- Ensure that Romani children are enrolled in mainstream schools, according to the Law on Education in Ukraine and ensure that they are not denied access to education due to a lack of personal documents, due to financial obstacles, or because of anti-Romani prejudices of school staff or parents of non-Romani children.
- Ensure that schools have anti-discrimination policies and practices in place and that all Romani school children have equal access to education in a desegregated school environment.
- Make data available on school segregation across Ukraine and monitor any changes in this situation.

HOUSING

- Address the lack of necessary documents relating to housing and land which leads to a lack of security of tenure for many Romani families.
- Cease threats of eviction and eviction of Romani families on the basis of lack of documents, in particular when no alternative adequate housing is being offered.

HEALTH AND EMPLOYMENT

- Address discrimination in the areas of health and housing through the National Action Plan and implement concrete activities to ensure that Romani individuals enjoy access to healthcare and to employment opportunities.