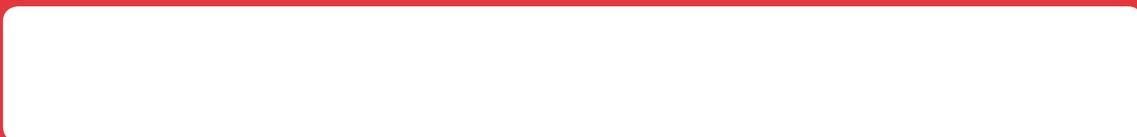


WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE

For Consideration by the European Commission concerning Roma Inclusion in the
Western Balkans Progress Reports 2016



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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The European Roma Rights Centre (ERRC) is a Roma-led international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. In May 2016, the ERRC responded to the European Commission's request for input regarding the forthcoming annual Progress Reports for the current candidate countries of Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey.

The ERRC comments cover only those areas which have been monitored by the ERRC and its partners. The submission makes no claims to be comprehensive: comments and observations are confined to ERRC's strategic priorities and reflect the organisation's activities, advocacy and research in those particular countries over the past year.

A 'STRENGTHENED APPROACH'

ERRC welcomes the fact that the Commission has just announced the introduction of a "strengthened approach" to its assessments in future annual reports, to allow for greater transparency in the accession process and facilitate greater scrutiny of reforms by all stakeholders.¹

This announcement stands as a tacit admission that until now the accession reports failed to provide satisfactory assessments of the state of play and progress from year to year, or allow for meaningful comparability between the countries. As far as Roma inclusion is concerned, the reports to date have been perfunctory at best; the format has not allowed for in-depth analysis, nor any meaningful tracking or assessment of progress from one year to the next.

"FUNDAMENTALS FIRST" PRINCIPLE AND ROBUST MONITORING MECHANISMS

The ERRC welcomes the statement that enlargement policy remains focused on the "fundamentals first" principle, which include the rule of law and fundamental rights, with specific mention of the "need to better protect minorities, in particular Roma."

But it remains unclear how the Commission's "new approach" will actually take reporting on Roma inclusion beyond generic observations that "Roma in the Western Balkans and in Turkey continue to be the victims of racism, discrimination and social exclusion and most Roma live in deep poverty, lacking sufficient access to healthcare, education and training, housing and employment."

In the enlargement component of the EU Framework for National Roma Integration Strategies up to 2020, the Commission called, among other things, for systematic evaluation and reinforced monitoring of progress. The Commission expressed its commitment to help countries to improve the social and economic inclusion of Roma.

This mid-point of the EU Framework is an opportune moment for the Commission to bring enlargement countries' reporting on Roma inclusion in line with that of Member States. In its original communication on the EU Framework, the Commission was emphatic about the need to put in place "a robust monitoring mechanism with clear benchmarks which will ensure that tangible results are measured, that money directed to Roma integration has reached its final beneficiaries, that there is progress towards the achievement of the EU Roma integration goals and that national Roma integration strategies have been implemented."

The ERRC fully agrees with the Commission's observation that Roma in enlargement countries face similar or even more serious problems than in many EU Member States.

The ERRC therefore calls on the Commission to work with the governments of accession countries to put in place "robust monitoring mechanisms" on Roma inclusion that align with the EU Framework,

¹ European Commission, Communication on EU Enlargement Strategy, Brussels 10.11.15. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_strategy_paper_en.pdf.

and an annual reporting schedule for those enlargement countries that coincides with that of the Member States. As participants in the Decade of Roma Inclusion 2005-2015 enlargement countries have had Roma inclusion strategies in place for years, and Turkey has just produced a Roma strategy in the last month, this would allow for greater transparency and meaningful comparability between Member States and aspirant countries.

The news on 6 June 2016 of the EU's participation in the new initiative 'Roma Integration 2020' was most welcome. As information on the workings of this new initiative remains somewhat scant, we look forward to hearing how government reporting, monitoring and EU assessment within 'Roma Integration 2020' might align with the EU Framework.

Such an alignment, with a similar emphasis on combating discrimination and racism, would also send a clear signal that Roma inclusion remains a priority for the European Commission in its "fundamentals first" policy approach to further enlargement, and provide enlargement countries with a timely reminder that the first Copenhagen Criterion, i.e. the "*stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,*" actually counts as the essential criterion on the road to EU membership.

ALBANIA

SEGREGATION IN EDUCATION

While some progress has been made in the field of education – since 2012 all children are entitled to one year's free pre-school education – the *Roma Inclusion Index 2015*² reports that on every education indicator, girls are doing worse than boys, very few Roma are completing primary or secondary education, and segregation is worsening. The ERRC has been working on countering segregation in Albania, in cases such as the *Naim Frashëri* school on outskirts of the city of Korca. It is known as "Roma and Egyptian" school because all 283 children of this school come from families from these two communities. Although there are three schools in the catchment area, and the other two are racially integrated, poor Roma and Egyptian parents have been induced to enrol their children in this school in order to secure social support (mainly food packages). The ERRC has submitted information on these two situations to the Commissioner for Protection from Discrimination and the Ombudsman in Albania. Both institutions accepted that there is discrimination in the schools. The responsible authorities need to act on their findings and take all necessary desegregation measures including free transport for Romani children to mainstream schools, and a redrawing the boundaries of the catchment areas, to ensure full access to quality integrated education for Roma and Egyptian children.

The ERRC is also pursuing a complaint about the *Anthyl Anthya* segregated elementary school in a Roma settlement in Morave, Berat. The school was built as an annex to another school, in whose catchment area the settlement is located, and which has only non-Roma children. After discovering that the recent refurbishment of the school was funded by the Czech Embassy in Tirana, we also started pursuing complaints in the Czech Republic, on the grounds that the Czech Embassy is funding school segregation abroad.³

ERRC fully endorses the recent ECRI recommendations on inclusive education:

- that the authorities (i) step up the creation of new nursery schools so that Roma children can improve their knowledge of the Albanian language before starting primary school and (ii) support the long term functioning of such schools.
- that the authorities evaluate the Roma inclusiveness of the pre-school programmes so far in place; they should also evaluate whether they provide equitable access and quality teaching.

² Decade of Roma Inclusion Secretariat, *Roma Inclusion Index 2015*. Available at: <http://www.romadecade.org/news/roma-inclusion-index-2015/9810>.

³ Embassy of the Czech Republic in Tirana, "We renovated the Centre for Roma Community" 22 September 2015. Available at: http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf.

HOUSING RIGHTS AND FORCED EVICTIONS

Housing rights is a priority for ERRC across Europe, and ERRC's observations on the ground have been echoed by the most recent ECRI report published in 2015 which stated that an estimated 60% of Roma dwellings do not have running water. Many Roma and Egyptians cannot regularise their homes. A considerable number are threatened by forced evictions without alternative housing.

The Roma housing situation is characterised by very poor conditions: 15% of the members of this community live in shacks, tents or other non-brick housing units; 60% do not have running water within their house premises; and 12% lack toilet facilities. As concerns infrastructure, the majority of Roma report living in areas that have unpaved roads (52.2%) or have roads which are in a very bad condition (22.5%).⁴

As Amnesty noted in its 2015/16 report on Albania, the situation is aggravated by the fact that many Roma and Egyptians, as well as young people leaving social care, failed to meet the income threshold required to access social housing. Many Roma have been unable to regularize their homes under the 2014 law on the legalisation of property, which allowed "illegal constructions" to be demolished. In July 2015, seventy mainly Romani families' houses were demolished in Selita, Tirana, during a forced eviction in advance of road construction.⁵

The ERRC echoes ECRI's call that access to social housing be improved; priority given to those Roma living in temporary accommodation; a Roma housing fund be set up; and that the authorities must ensure that persons facing eviction be notified well in advance and not be evicted without the possibility of being rehoused in decent accommodation.

ANTI-DISCRIMINATION

There is no reliable data on hate crime and many cases go unreported. Among the key recommendations by ECRI and others, the authorities should as a matter of urgency do the following: (1) spell out in the law the general duty for public authorities to promote equality; (2) enact clear legislation about the shared burden of proof in discrimination cases; and (3) enact provisions allowing for the discontinuation of public funding to political parties and other organisations that promote racism. The authorities should act upon the repeated recommendation by ERCI to ensure effective access to justice for victims of discrimination through a functioning and properly funded legal aid system.

BOSNIA AND HERZEGOVINA

BIH AT THE END OF THE DECADE

In 2014, the civil society monitoring reports funded by the Decade of Roma Inclusion reported that state institutions in BiH had no official initiatives designed to ensure equal access to public services; no efforts were made by government institutions in BiH to raise awareness and build public understanding of the benefits of Roma integration for the entire society. Since the adoption of the National Action Plan, the monitors asserted that no systematic steps were taken to secure the fundamental rights of Romani children; and claimed that no systematic measures were adopted to address multiple discrimination faced by Romani women. In all these areas the report noted that most positive initiatives emanated from Roma and pro-Roma civil society organisations, international donor programs and intergovernmental agencies.⁶

⁴ ECRI Report on Albania (fifth monitoring cycle) Adopted on 19 March 2015 Published on 9 June 2015. Available at: <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Albania/ALB-CbC-V-2015-18-ENG.pdf>.

⁵ Amnesty International, Annual Report Albania 2015/16. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/albania/report-albania/>.

⁶ Decade of Roma Inclusion Secretariat, Civil Society Monitoring on the Implementation of the National Roma Integration Strategy and Decade Action Plan in BOSNIA AND HERZEGOVINA in 2012 and 2013. Available at: http://www.romadecade.org/cms/upload/file/9773_file2_bh_civil-society-monitoring-report_en-1.pdf.

The US State Department report of 2015 contained more precise information on the current state of play.⁷

Statelessness: UNHCR reported 101 stateless persons, and an additional 75 persons were at risk of statelessness. Most of the latter were Roma and included persons in need of birth and/or citizenship registration. The Ministry for Human Rights and Refugees reported similar figures from its Roma registration database. Persons in need of documentation, and consequently at risk of statelessness, faced bureaucratic obstacles to completing birth and civil registration as well as inefficient registration procedures

Unregistered children: The NGO Vasa Prava estimated there were slightly fewer than 400 unregistered children in the country. UNHCR, with the legal assistance of a domestic NGO, registered the births of children, mainly Roma, whose parents failed to register them. Unregistered children experienced significant obstacles in accessing government social, educational, and health benefits.

Textbooks and Stereotyping: Human rights activists noted that many textbooks reinforced stereotypes of the country's ethnic groups and others missed opportunities to dispel stereotypes by excluding any mention of some ethnic groups, particularly Jews and Roma. State and entity officials generally did not act to prevent such discrimination.

Discrimination and ethnic quotas: Human Rights Watch asserted that ethnic quotas used by the Federation and RS to allocate civil service jobs disproportionately excluded Roma and other minorities. The quotas were based on the 1991 census, which undercounted these minorities.

Access to public services: Although BiH officials did not release results of 2013 census, observers estimated the Romani population to be 60-80,000. Roma experienced discrimination in access to housing, health care, education, and employment opportunities. Several Romani leaders reported that discrimination in access to social benefits and employment led to a significant increase in the number of Roma who emigrated and sought asylum abroad. There were no official internal statistics to document this trend.

Discrimination and public services: Roma continued to experience more discrimination than any other segment of the population. Almost 95 percent of them remained unemployed. A significant percentage were homeless or without water or electricity in their homes. Many dwellings were overcrowded, and residents lacked proof of property ownership. Approximately three-fourths lived in openly segregated neighborhoods. Roma had significantly less access to health insurance than other groups, and infant mortality among Roma was four times greater than among the rest of the population. Authorities frequently discriminated against Roma, which contributed to their exclusion by society.

Roma victims: Many human rights NGOs criticized law enforcement authorities for widespread indifference toward Romani victims of domestic violence and human trafficking.

KOSOVO

ACCESS TO EDUCATION

Research commissioned by ERRRC, as yet unpublished, confirms that despite laws, policies and strategies to ensure that members from non-majority communities can fully enjoy their rights, including their right to education, the situation of children from the Roma, Ashkali and Egyptian communities throughout Kosovo is particularly alarming.

It is characterised by low attendance in compulsory education, high drop-out rates, and low participation in higher education, especially among girls. Children are often subject to discrimination, and there is a lack of teachers and staff from these communities, as well as a lack of quality mother-tongue materials and education.

⁷ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2015. Available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

The majority of Roma children in Kosovo attend the Serbian-curriculum school system (SCSS) in Kosovo, funded and managed by the Republic of Serbia. When Roma children enrol in primary or even pre-school education, it is mostly understood and widely accepted by all actors, e.g. parents, children, school authorities, teachers, municipality administrations, that they shall attend the Roma only school(s).

Roma pupils are often seated together in the back rows of the classroom with their Serbian peers in front of them. The segregation is justified by reference to Roma pupils' low standard of hygiene and their indifference towards education.

The field research revealed that several of the Roma pupils couldn't express themselves in Serbian or even understand teachers' instructions properly.

TREATMENT OF ROMA, ASHKALI AND EGYPTIAN COMMUNITIES AND RETURNEES

Human Rights Watch noted in its 2015 reports that Roma, Ashkali and Egyptians continue to face problems acquiring personal documents, which affects their ability to access health care, social assistance, and education.⁸ A lack of political will, funds, and cooperation between central and municipal authorities have contributed to the failure to fully implement the 2010 Strategy for the Integration of Roma, Ashkali and Egyptian communities. The 2013 strategy on the reintegration of repatriated persons, including Roma, Ashkali and Egyptians resulted in the establishment of the Municipal Office for Committees and Return to help provide food and accommodation. Yet those who have been repatriated still face difficulties accessing employment, education, and health care.

IDPS AND ACCESS TO PUBLIC SERVICES

The Special Rapporteur on the human rights of internally displaced persons,⁹ reporting on Kosovo visit in 2015, noted that access to public services for the Roma, Ashkali and Egyptians varies greatly, depending on where they are resident and whether the IDP concerned seeks services from Kosovar or Serbian administrative institutions. Each administrative institution requires its own documents (Serbian or Kosovar) before granting access to services. However, documents issued by one are not recognized by the other.

The Roma community, to a larger extent, relies on Serbian administrative structures for public services in the areas of health, education and social assistance. Conversely, the Ashkali and Egyptian communities rely more on Kosovan institutions. The Special Rapporteur recommended this dichotomy be addressed in a spirit of cooperation between the Government of Serbia and the authorities in Kosovo.

"Differential treatment for Roma children extends to education, as Roma face constraints on their access to schools. It also involves language barriers, as not all Roma speak Serbian and not all Roma speak Albanian. In addition, Roma, Ashkali and Egyptian IDPs suffer from differential treatment due to the combination of their ethnicity and their displacement. There is a clear need for awareness-raising among the general population, that is designed to combat discrimination against Roma IDPs."

MACEDONIA

RACIAL PROFILING

On 24 November 2015 in a court case represented by the Macedonian Young Lawyers Association, and supported by the ERRC, the judgment was that the Macedonian authorities racially profile their citizens who are trying to leave the country and stop Roma from leaving. This was the second case supported by MYLA where the Court determined there is discrimination and violation of the right to equal treatment on the

⁸ Human Rights Watch, Serbia, Events of 2015. Available at: <https://www.hrw.org/world-report/2016/country-chapters/serbia/kosovo>.

⁹ United Nations Human Rights Office of the High Commissioner, Press Statement Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha Visit to Serbia, including Kosovo, Belgrade, 25 May 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>.

ground of ethnicity. Such restrictions to freedom of movement targeting the Roma population have been numerous over the past four years and the ERRC reminded Macedonian authorities more than a year previously that this practice is unconstitutional.

In response to the gravity of these violations on the right to leave one's own country, the ERRC conducted several legal and advocacy activities. Between 2011 and May 2015, the ERRC documented the cases of 176 Romani individuals who were prevented from exiting the country, and became aware of another 63 such cases.

In the same period, the ERRC documented 75 cases in which Macedonian border officials revoked the passports of Romani individuals who had been deported from EU countries as failed asylum seekers, and became aware of another 155 such cases.

Additionally, ERRC documented cases where Macedonian Roma after being deported from Western European countries and having their passports confiscated by Macedonian authorities faced a ban on using their ID card to cross the border.

Most of the ERRC's documented cases show that only Roma were asked for evidence to justify why they intended to leave Macedonia, non-Roma were never requested to do so. It appears that the border officials were instructed to act based on the ethnicity of the people trying to leave, some Roma were told explicitly by the border officials that they could not cross the border due to their ethnicity.

According to the ERRC documented cases in the period between 2011 and 2014, 60% of Roma refused the right to leave were told by the border officials that they (the border officials) were instructed to restrict the rights of Roma. It appears that they were 'instructed' to act based on race. Thirty per cent of those Roma concerned were told *explicitly* by the border officials that they could not cross the border due to their Roma ethnicity.

VIOLENCE AGAINST ROMA AND ILL-TREATMENT BY POLICE

The ERRC in its written submission to UNCERD in 2015¹⁰ expressed its ongoing concern at the level of police brutality against Roma in Macedonia in parallel with the level of impunity displayed amongst the responsible authorities. The ERRC submission included a series of documented cases of police abuse against the Roma community in Macedonia reflecting persistent discriminatory police behaviour which is both excessive and unwarranted, breaching the overarching principle of non-discrimination prescribed under the ICERD in conjunction with Article 5.

According to the Committee of Ministers of the Council of Europe, in spite of the diminishing number of cases of ill-treatment by the police, such cases continue to be reported and, according to non-governmental sources, persons belonging to national minorities, especially Roma, are disproportionately targeted. Allegations of discriminatory ill-treatment of Roma are not always properly investigated.

The UN Committee against Torture's concluding observations in 2015 to Macedonia, inter alia, stated that it remains concerned at information regarding the excessive use of force by police officials against Roma particularly those committed by members of the "Alfa" unit.¹¹

Furthermore, the Committee requested the Macedonian Government to combat and prevent discriminatory police misconduct by ensuring that all alleged cases of excessive use of force by law enforcement officials against members of the Roma community are promptly and effectively recorded and investigated and, as appropriate, prosecuted and punished, ensuring that the victims are provided with an opportunity to seek redress including sufficient rehabilitation. Additionally, the aforementioned Committee recommended that the Macedonian Government should enhance the human rights training of law enforcement officials, particularly focusing on providing training to police forces on the rights of all citizens and minorities, including Roma, to be free from arbitrary force and ill-treatment in discharging their duties.

¹⁰ ERRC, Written Comments of the European Roma Rights Centre Concerning Macedonia For Consideration by the Committee on the Elimination of the Racial Discrimination at its 87th session (03 - 28 August 2015). Available at: <http://www.errc.org/cms/upload/file/macedonia-cerd-submission-10-july-2015.pdf>.

¹¹ Committee against Torture Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, 4,5 May 2015. Available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MKD/CAT_C_MKD_CO_3_20486_E.pdf.

Maximum use of Available Resources (Article 2.1)

Article 2(1) binds each State party to take the necessary steps “to the maximum of its available resources”. The Committee has interpreted this to mean that states should face particular scrutiny when failing to dedicate resources to meet the essential needs of vulnerable members of society in relation to food and water, primary health care, housing and education. Efforts to secure a basic level of enjoyment of rights under the Covenant should not be assessed in a vacuum, but rather alongside competing government spending. In this respect, we draw the Committee’s attention to the Skopje 2014 scheme to upgrade government buildings and public space which reportedly cost approximately 560 million Euro, some 5% of Macedonia’s GDP.

Is the state is making adequate use of available EU funds? An evaluation by the European Commission of the impact of EU funds directed to support Roma communities in the Western Balkan countries, including Macedonia, concludes that “*funding was not reaching Roma*”. The report finds that with the exception of Serbia, less than 1% of funding went towards projects for Roma communities despite their representing on average 5.5% of the population in the region (9.56% in Macedonia) and these communities’ severe needs.

Similarly, critics question the overall design of **EU-funded programmes** aimed at ethnic minorities, in particular the failure to identify Roma as a specific target group in various projects, to direct sufficient resources to the most socially deprived minorities, and to ensure the inclusion of the Roma population.

Law for the Prevention of and Protection against Discrimination(LPPD)

The LPPD was adopted on 8 February 2010, and came into force in January 2011. The LPPD is not in compliance with the EU law standards to which Macedonia is expected, as a candidate country, to adhere, nor with international standards on anti-discrimination law. The points of contention include the absence of an explicit legal framework or established practice allowing the use of statistics as evidence of indirect discrimination and the failure to define and prohibit segregation as a special form of discrimination.

The Commission for Protection against Discrimination (CPD)

The independence and expertise of the members of the Commission are questionable, considering that some of the members were until recently or are still employed in state institutions, and not all of them have experience of working on human rights issues

Housing

Most of the Romani population in the Republic of Macedonia continues to live in segregated settlements characterised by substandard housing conditions and without proper access to services. Residents often do not have property papers for their houses or land where they live, making them an easy target for forced evictions.¹⁸ The ERRC is unaware of any cases in which Roma living in informal settlements have been able to legalise their properties, or of any cases of infrastructure improvements in Roma settlements or neighbourhoods.

Right to water

The Right To Water As Part Of The Right To An Adequate Standard Of Living (Article 11) And The Right To The Highest Attainable Standard Of Health (Article 12)

Since 2014 the ERRC has been conducting research in seven European countries including Macedonia. The ERRC has collected evidence on access to safe and affordable drinking water and sanitation in Romani communities. The research focused on analysing problems with accessibility, affordability and quality of drinking water resources and sanitation in Romani neighbourhoods and settlements and examining potential cases of ethnic discrimination in the distribution and availability of these public utilities.

The ERRC research revealed that Roma suffer disproportionately from the failures of public authorities to secure access to water and sanitation. Roma, especially those living at the outskirts of towns or in completely segregated settlements, are often treated differently by local authorities when it comes to the provision of these public utilities.

Of the 12 Roma settlements and neighbourhoods surveyed by the ERRC in Macedonia:

¹² Written Comments of the European Roma Rights Centre, Concerning Macedonia For Consideration by the Committee on Economic, Social and Cultural Rights at its 56th Session (Pre-session working group 12-16 October 2015). Available at: <http://www.errc.org/cms/upload/file/macedonia-cescr-11-august-2015.pdf>.

- in 10 the inhabitants could not afford to connect their households to the public water supply; in the remaining two, the houses which were connected were under threat of being cut off due to the debts that had accrued;
- only half were informal settlements (i.e. with outstanding issues of land ownership / building permits / formal recognition as a settlement), while the other half had by and large no such issues; consequently, difficulties in accessing water were not mainly or exclusively attributable to the informality of the settlement, as the authorities often claimed;
- in eight, the residents had no tap water; in seven, the residents used external water resources (public pumps), shared between a large number of people (dozens of families for each pump);
- nine experienced seasonal water problems (wells that dry up in summer and freeze in winter);
- seven used uncontrolled open sources of water which are unprotected from insects and are accessible to wild animals and stray dogs;
- four used wells reportedly contaminated by faeces from nearby pit latrines and dry toilets;
- four used wells reportedly contaminated by ground water from nearby rivers;
- nine had no sewerage system and had to use external pit latrines as toilets.

The ERRC's research strongly suggests that, in respect of Roma communities, Macedonia is systematically failing to comply with its core obligations on the right to water, as detailed by the Committee in General Comment no.15.

The Right To Education (Article 13)

According to a research report compiled by the CPD, national and municipal level, the percentage of Roma children in Macedonia who are categorised as persons with psychological disabilities is disproportionately high. According to the report, this results from a variety of factors, including lack of institutional capacities and inter-institutional cooperation, procedural and legislative omissions, as well as lack of awareness among the parents and officials.

The report concludes, inter alia, that in the period from 2010-2014, there was a high percentage of segregated Roma children both in the regular schools (as part of regular and special classes) and in special schools; according to the report, these practices amount to indirect, systemic and persistent discrimination. This discrimination does not end with the educational process; it impacts the further development of the person, and hinders their future ability to compete in the labour market.

MONTENEGRO

According to the 2015 REF Country Assessment of Montenegro, the poverty headcount rate exceeds 36% among Roma, Ashkali and Egyptian communities, compared to 11% for the general population. Some 80% of working-age Roma population is officially unemployed; trading in the grey economy and doing seasonal labor do provide some income for Roma families. Indicators in health and housing are similarly bleak and Roma refugees and IDPs suffer inordinately from a lack of access to healthcare and housing services.¹³

DISCRIMINATION, INCITEMENT AND HATE CRIME

The ERRC, in a third party intervention *Alković and others v Montenegro*, stressed the widespread nature of negative attitudes, and discrimination towards Roma in Montenegro. Citing the 2014 concluding observations of the UN Committee on the Elimination of Racial Discrimination (CERD),¹⁴ and the Committee's deep concern at

¹³ Roma Education Fund, *Advancing the Education of Roma in Montenegro REF Country Assessment – 2015*. Available at: http://www.roma-educationfund.hu/sites/default/files/publications/mne_country_assessment_2015.pdf.

¹⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second and third periodic reports of Montenegro* (March 2014). Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPrC.AqhKb7yhsiqQvsN5V%2b wfWBilqk9c7qWr8dvvJcLJlb9qygyYci0gmmUb1g54gwoX4iA2xMBjxez0ZpwqAXzyWo1WPXLXjG84eFv29w2cozUIvC7%2b76v>.

the negative attitudes, stigmatization and discrimination against people of Roma, Ashkali and Egyptian origin, in particular persons from Kosovo, the main concerns were:

- the absence of legislation declaring organizations which promote and incite racial discrimination illegal;
- that racial, national, ethnic or ethno-religious motivation is not regarded as an aggravating circumstance in determining the punishment of crimes;
- the small number of cases of racial discrimination before the courts and the low number of convictions in such cases. Even very serious cases of incitement to racial hatred are treated as misdemeanours and that they seldom result in convictions;

CERD called for better initial and in-service training of judges, prosecutors, lawyers and police officers on how to identify and sanction racially motivated offences; called for a mechanism to recognize, record and analyse such cases and urged the authorities to ensure that criminal acts relating to racial discrimination, incitement to racial hatred and racially motivated hate crimes are prosecuted at a level commensurate with their seriousness.

LEGAL STATUS OF “DISPLACED” AND “INTERNALLY DISPLACED” PERSONS

The Committee recommended that the state:

- Simplify the procedure for “displaced” and “internally displaced” persons to qualify for the status of foreigner under the Law on Amendments to the Law on Foreigners;
- Raise the awareness of the persons concerned in a simple, accessible and well-publicized manner about the importance of registering, having proof of registration or having documents for themselves and their children;
- Enhance assistance to persons facing problems with the payment of administration fees and continue to organize bus visits in order to help them obtain the documents required to apply for foreigner status in Montenegro;
- Establish a simplified birth registration procedure and issue documents to all persons born in the territory of the State party;
- Devise a strategy and take administrative and judicial measures to register or retroactively register children born outside of established health institutions.

HOUSING SITUATION IN THE KONIK CAMP

The Committee was seriously concerned at the conditions in the Konik camp near Podgorica; that despite the adoption of the strategy for durable solutions in 2011, the camp continues to lack basic utilities and services, such as electricity, running water and sanitation. Beyond the 60 housing units announced, the Committee urged the authorities start construction of the other several hundred housing units without delay; and to ensure the local integration of Roma, Ashkali and Egyptians, by providing them with adequate living and housing conditions, in order to avoid segregation.

ACCESS TO EDUCATION

According to data from a UNICEF survey, just 18.5% of children aged three to five in Roma settlements were attending an organized early childhood education program compared to 52.4 % among the total population in 2012.¹⁵

Only about half of Montenegro’s Roma and Egyptian children are in primary school at any given time. Roma and Egyptian children who do attend school often perform poorly and dropout rates soar after the age of 11. Less than a third complete primary school and only 7% complete secondary school, compared to 98% and 86% respectively for the mainstream population.

Unofficial estimates put the primary enrolment rate of Roma and Egyptian children at 25.2%, the completion rate of the first cycle of compulsory education at 32% (compared to 98% for the general population) and the corresponding rate for the second cycle at 7% (compared to 86% of the general population).

15 UNICEF and Ipsos, *Study on the Obstacles to Education in Montenegro: Focus on Roma and Egyptian Children*, 2013. Available at: http://www.unicef.org/montenegro/Studija_UNICEF-za-web-en.pdf.

Additionally, more than 10% of children from the Roma and Egyptian population, which have the highest percentage of primary school age children, are still not registered in the Birth Registry. Also, 34% of stateless children and 16% of children who are in the process of acquiring citizenship do not attend school. Other vulnerable groups of children who are at high risk of dropping out are children with disabilities and poor children.

Roma and Egyptian often live in housing that is distant from schools. A large majority of Roma and Egyptian families cannot afford to pay for safe transport to and from school, and according to parents' statements free transport is often not available.

In addition to that, there is a gap in educational policy: children who dropped out from regular education are barred from continuing their education from ages 9 to 15. Their only possibility to continue education is in adult primary education settings which can only enroll students older than 15 years old.

SERBIA

ACCESS TO EDUCATION

In March 2014, ERRC published *A Long Way to Go: Overrepresentation of Romani Children in "Special Schools" in Serbia*¹⁶

Despite positive developments and the promise of inclusive education with the legal and policy reforms Serbia adopted in 2009, including the Law on the Foundations of the Education System, there are a number of issues of concern when it comes to equal access to quality education for Roma.

Key Findings

Romani students are still overrepresented in special schools though their absolute number in these schools have decreased

While there has been a welcome decrease in the absolute number of students attending specialised educational institutions, the share of Roma remains high. ERRC research data, collected from 31 schools throughout the country, indicates an ongoing and notable degree of overrepresentation of Roma in special schools. Furthermore, a number of individual schools have alarmingly high shares of Romani students, reaching up to 73% in 2012/13.

Insufficient assistance to children to stay in mainstream schools

The practice of transferring students from mainstream schools to Education of pupils with disabilities (EPD) schools still continues. Both the overall number and the number of Romani students even increased from 2011/2012 to 2012/2013.

In 70% of the cases, the interviewees confirmed that the school did not offer any additional support to their children in order to keep the student enrolled in the mainstream schools, as opposed to transfer.

In the cases of students transferred to "special schools" after they had spent some time in mainstream education, 41% of their parents and carers were never contacted in relation to the difficulties their children experienced.

Once students end up in a specialised educational institution, there is hardly any return, and only one in ten respondents attempted to transfer the students to (or back to) main-stream schools.

Limited information for parents - the ability of parents to make informed decision on the educational choices for their children

A large majority of respondents (75%) to the ERRC survey says the commission did not inform them on the limitations and negative consequences associated with attending EPD schools.

¹⁶ ERRC, *A Long Way to Go: Overrepresentation of Romani Children in "Special Schools" in Serbia*. Available at: <http://www.errc.org/cms/upload/file/serbia-education-report-a-long-way-to-go-serbian-13-march-2014.pdf>.

71% were not told by the commission that they have the right to refuse the commission's opinion.

Treatment of Romani children in mainstream education

46% of the interviewees alleged that the treatment in mainstream schools was not good. The most common reasons given were:

- the teachers ignored the student (50%),
- the student had to sit in the back of the class (50%),
- the teachers humiliated the student in front of their peers (39%).

The most common reasons why students who additionally experienced bullying in mainstream schools were:

- Romani ethnicity (75%)
- disabilities or low grades (42%)
- poverty (33%).

ERRC has commissioned additional research on education in Serbia in 2016. Work is still in progress but among the key points are:

- Confusion over the catchment area system, which has not been revised in a long time to take into account demographic changes and is not observed in practice, exacerbates the segregation of Roma children in schools close to Romani settlements by allowing unchecked “white-flight”.
- In integrated classes Romani children are far more likely to be designated to follow individual education plans, which allows schools to reduce the size of the class.
- There has still not been marked progress in addressing the issue of over-representation in special schools continues.

IDENTITY DOCUMENTS AND BIRTH REGISTRATION

The European Network on Statelessness, the ERRC and the Serbian NGO Praxis have lodged a constitutional “initiative” with the Constitutional Court in Serbia attacking a provision of legislation which allows registrars to delay birth registration.

Many Roma in Serbia, following years of exclusion, discrimination, and, especially in the 1990s, forced movement, do not have identity documents. When they give birth in Serbia, the registrars refuse to register the birth. The provision being challenged gives them legal cover: it vaguely allows registrars to delay birth registration for an indefinite period to verify the details to be entered in the register of births. This would seem contrary to the human right of every child to be registered immediately after birth and to have a name and a legal personality.

Article 23(3) is unnecessary, and it violates the child's right to immediate birth registration. Unicef Insights survey data from 2014 reveals that almost 5% of Roma children born in Serbia are unable to secure a birth certificate, leaving them at risk of statelessness as a result of this rule. Ensuring birth registration for the prevention of statelessness is Action 7 in UNHCR's action plan to end statelessness by 2024.¹⁷

Together with Praxis and with the support of the European Network on Statelessness under their pan-European litigation strategy programme, ERRC has now filed a constitutional “initiative” with the Constitutional Court of Serbia. It was submitted on 7 March 2016.¹⁸

¹⁷ UNICEF Insights, Realizing the rights of Roma children and women in Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, and Serbia Summary analysis of key findings from MICS surveys in Roma settlements in the three countries. Issue 2, 2014. Available at: http://www.unicef.org/ceecis/Insights2014_2.pdf.

¹⁸ Initiative to institute proceedings for assessing constitutionality and legality. Available at: <http://www.errc.org/cms/upload/file/serbia-birth-initiative-7-march-2016-english.pdf>.

HOUSING RIGHTS AND FORCED EVICTIONS

Amnesty reported in 2015 that three years after the forced eviction of more than one hundred Roma families from the Belvil settlement in Belgrade, a combination of bureaucratic incompetence, inertia and discrimination resulted in the failure of a multi-million Euro EC-funded project to resettle them. The majority of these families are still living in squalid racially segregated metal containers and around 50 may never be resettled, a new briefing from Amnesty International has found.¹⁹

The briefing, **Roma still waiting for adequate housing**, found that, despite commitments from the City of Belgrade and €3.6 million funding from the EC, not one of the planned new housing blocks has been finished. Meanwhile evicted Roma have spent years living in container settlements far from schools, social services and access to employment.²⁰

Amnesty reported that under EC rules the €3.6 million was due to be spent by February 2015. The City of Belgrade failed to meet this deadline, which has now been extended by a year. Despite this extension, the city authorities told the Roma that there was no money left to rehouse 50 families. Unless the EC secures additional funding to follow through on the commitments made to the families, they will be forced to remain in the containers and join the waiting list for the city's inadequate stock of social housing.

ERRC reported that in July 2015 an informal housing unit in a Romani settlement in the Novi Belgrade municipality was demolished by authorities without prior notification or alternative accommodation for the families living there. The planned evictions of 53 Romani families from their homes in Belgrade without alternative accommodation was halted in July after the European Court of Human Rights intervened, issuing an interim order to halt the evictions following a petition from a local human rights organization citing procedural failings and a failure to provide adequate alternative accommodation.

As Human Rights Watch report in 2015 stated, Roma in informal settlements often live in appalling conditions. A May 2015 report on Serbia by the United Nations special rapporteur on adequate housing highlighted the disproportionate number of evictions of Roma, lack of provision of basic services to Roma, and lack of legal security of tenure.²¹

On her 2015 visit to Serbia, the Special Rapporteur on the human rights of internally displaced persons, described conditions in the settlements she visited as appalling:

“The authorities in Serbia provide virtually no services to the informal Roma settlements. Those that I visited were almost completely unserved. Children play amidst garbage heaps and broken glass because garbage collection services are at best sporadic. Without public infrastructure, housing and the communal areas were both unsanitary and unsafe. I heard accounts of rats posing a significant risk to children, including in one case disfiguring a child. I was also made aware that electricity is generally not provided, and in some cases there is not even piped water. These conditions are in violation of international human rights law and standards, particularly CESCR’s general comment No. 4.”²²

The Special Rapporteur made the following urgent recommendations:

- Local authorities, particularly in the City of Belgrade, must immediately stop evictions of Roma from informal settlements leading to segregation and substandard housing conditions, such as those involving mobile housing units. Durable, integrative housing solutions must be found.
- Central government must adopt and immediately implement a law which prohibits any level of government from the practice of forced evictions except in the most exceptional circumstances, in

19 Amnesty International, Press Release(Brussels, 08 April 2015) Serbia: Forcibly evicted Roma still awaiting resettlement despite EU millions. Available at: <http://www.amnesty.eu/en/news/press-releases/eu/discrimination/roma/serbia-forcibly-evicted-roma-still-awaiting-resettlement-despite-eu-millions-0876/#.V0AJpaxG8U>.

20 Amnesty International, *Serbia: Still Waiting for Adequate Housing*. Available at: http://www.amnesty.eu/content/assets/Doc2015/Serbia_Roma_housing_report_EUR_7013082015_Eng.pdf.

21 Human Rights Watch, Serbia, Events of 2015. Available at: <https://www.hrw.org/world-report/2016/country-chapters/serbia/kosovo>.

22 United Nations Human Rights Office of the High Commissioner, Visit to Serbia, including Kosovo, Belgrade, 25 May 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>.

keeping with international human rights law. This law must also incorporate international human rights standards as found in the CESCR's General Comment No. 7 with respect to the pre-, mid- and post-eviction process.

INTERNALLY DISPLACED PERSONS (IDPS)

Among the most urgent problems facing Roma IDPs:

- Among IDPs' most urgent protection needs is obtaining documentation to enable them to access basic public services. The Special Rapporteur witnessed how the lack of documentation forces Roma, Ashkali and Egyptian IDPs to live in informal, substandard and overcrowded settlements without electricity, energy, water or sanitation.
- A considerable proportion of Roma IDPs do not have birth certificates as their birth was never legally registered, while some lost their birth certificates during flight and remain without access to official registration books. Generations are being affected, as thousands of people are "legally invisible" and potentially stateless. Not having a birth certificate impedes registration and the issuance of an identity card, on which access to public services such as health care, education, housing programmes and employment programmes, as well as social integration in general, depends.
- In Serbia, for example, urgent admissions to hospitals are available for IDPs, but regular treatment and medication is only available in Kosovo at IDPs' place of origin.

CONCLUSIONS AND RECOMMENDATIONS

DG NEAR is to be commended for the commissioning of an external report, *The Thematic Evaluation on IPA Support to Roma Communities*, which clearly identified why EU funding did not have a discernible impact on Roma inclusion in the first round of IPA assistance. The ERPD consortium was tasked to "provide findings and recommendations to assist in improving its programming and implementation of IPA II assistance, targeting support to Roma communities in the enlargement countries."²³

The findings from the first round of IPA funding raised a number of concerns:

- Credible assessment of project effectiveness proved to be difficult "because of poor design of indicators and means of verification, together with scarce project level evaluation";
- Even in the sphere of education where most progress has been made the report concluded that "Evidence for improved educational attainment is piecemeal and anecdotal – but points strongly in the right direction";
- Displacement projects were not designed specifically for Roma, but for all DPs, so there were no Roma-specific activities, objectives or indicators. Specifically for the Roma population, sustainability is highly questionable and there are concerns that housing projects creating (or re-creating) segregated communities.
- Housing projects are expensive and relatively insignificant interventions compared to the scale of the needs.
- Employment projects have not achieved any notable successes;
- Monitoring at country, programme and project level remains very poor. At country level, there are some efforts to provide indicators and data on the situation of Roma communities, but there is an almost complete lack of comparable information over time to show changes.

The recommendations concerning political will, financial allocations, robust monitoring, gender equity, and the "need for a strong, independent and sustainable civil society", mirror the challenges facing the EU Framework. What is clear from ERRC's various submissions, advocacy, research and litigation in the enlargement countries of the western Balkans over the past year is that for Roma inclusion to be effective, national and local authorities must

23 ERPD European Commission Thematic Evaluation on IPA Support to Roma Communities, Executive Summary June 2015. Available at: http://cloud2.snappages.com/ecc3fa83da15cf423fe3aaa342f545fa355b24f3/IPA%20Roma%20eval%20Executive%20Summary_EN.pdf

prioritise combating all forms of discrimination; ending residential and school segregation; challenging ethnic profiling and police brutality; addressing statelessness and ending forced evictions; and ensuring access to justice.

The need to **step up the fight against all forms of discrimination against Roma including institutional racism**, which is evident in the enlargement countries, is something that is common to all of the Member States of the European Union. The Commission was quite explicit in its 2015 Communication on the EU Roma Framework, that despite its own efforts to fight discrimination, racism and xenophobia, anti-Roma hate speech and hate crime have been on the rise in many Member States, adding that “Politicians and public authorities often failed to publicly condemn such negative trends.”²⁴

In calling for the necessary political will, long-term vision, determined action and sufficient funding to be mobilised in the fight against discrimination and segregation, the European Commission declared it “will use all means within its competence to fight against discrimination, including infringement proceedings. It also supports transnational awareness-raising activities to fight discrimination and anti-Gypsyism at local level.”

The ERRC fully agrees with the Commission’s observation, and it is clear from this submission, that Roma in enlargement countries face similar or even more serious problems than in many EU Member States. As mentioned earlier, the ERRC welcomes the Commission’s statement that enlargement policy remains focused on the “fundamentals first” principle, which includes the rule of law and fundamental rights, with specific mention of the “need to better protect minorities, in particular Roma.”

Therefore, the ERRC recommends that the Commission work with the governments of enlargement countries to put in place “robust monitoring mechanisms” on Roma inclusion that align with the EU Framework, and to establish an annual reporting schedule that coincides with that of the Member States. This would allow for greater transparency and meaningful comparability between Member States and aspirant countries. The recent announcement of the new *Roma Integration 2020* initiative provides an opportunity for such an alignment.

The stated objective of the *Roma Integration 2020* initiative is “to contribute to reducing the socio-economic gap between the Roma and non-Roma population in the Western Balkans and Turkey and to strengthen the institutional obligations of governments to incorporate and deliver specific Roma integration goals in mainstream policy developments.”

It is important from the outset to send a signal to these countries that combating discrimination and racism is a priority for the Commission in its “fundamentals first” policy approach to further enlargement. Based on our common experience of the EU Framework, ERRC fully endorses the Commission’s assertion that “stepping up the fight against racism and discrimination” remains essential to making any advances in “reducing the socio-economic gap between the Roma and non-Roma population in the Western Balkans and Turkey” up to 2020 and beyond.

²⁴ European Commission, Report on the implementation of the EU Framework for National Roma Integration Strategies 2015. Brussels, 17.6.2015. Available at: http://ec.europa.eu/justice/discrimination/files/roma_communication2015_en.pdf.