

WRITTEN COMMENTS

of the European Roma Rights Centre, PRAXIS and Other Partner Organisations, Concerning Serbia

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

P R A X I S

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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APPROACH AND GENERAL REMARKS

The European Roma Rights Centre (ERRC)¹, Praxis², Standing Conference of the Roma Associations of Citizens - League of Roma³, Roma Women's Network⁴, YUROM Center,⁵ Roma Women's Center Bibija,⁶ Minority Rights Center⁷, Regional Center for Minorities (RCM)⁸, Roma Association Kostolac, Humanitarian Center Roma Obrenovac and Society for Education of Roma Surdulica, respectfully submit written comments concerning Serbia for consideration by the Committee on Economic, Social and Cultural Rights (CESCR) at its 52nd Session from 28th April to 23rd May 2014.

In the Second Periodic Report of the Republic of Serbia submitted to the Committee on Economic, Social and Cultural Rights,⁹ the Committee is informed about the adopted laws, by-laws and strategies, as well as about budget funds set aside for the protection, promotion and fulfilment of economic, social and cultural rights in Serbia. However, indicators are lacking from this report. A time frame in which the strategies and the programmes are implemented is also absent, as are details of the relevant actors who will be responsible for their implementation. The organisations submitting this report have opted for a different approach, other than that of listing of adopted laws and funds set aside for specific rights. We believe that it is of particular importance to inform the Committee about the key issues affecting Roma and human rights violations occurring in practice. For this reason, we have opted for the so-called "violations approach" which identifies burning issues relating to the exercise of basic human rights, such as, for example, problems related to the right to housing, the right to work, the right to social security and other basic human rights. The data presented in this report are a result of years of fieldwork, information-gathering and cooperation with other Romani grass-root organisations, analysis of our previous experience from working on the topics relevant for the report and following on and analysing the work of the State bodies. Due to the selected approach, this report will not deal with the positive sides of the State policy in certain areas, which have been noticed recently in some aspects with regard to access to personal documents, health protection and education. It will exclusively deal with serious violations of human rights of which no information was given in the Second Periodic Report of the Republic of Serbia submitted to the Committee on Economic, Social and Cultural Rights.

The submitting organisations give full permission for this submission to be placed on the website of the Office of the High Commissioner for Human Rights and for it to be referred to by Committee members as a source of information during discussions with the Serbian Government.

- 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 Praxis is a national non-governmental organization established in 2004 in Belgrade that aims to promote, protect and improve human rights, and combat discrimination, intolerance and racism. Additional information about the organisation is available at: www.praxis.org.rs
- 3 The Standing Conference of the Roma Associations of the Citizens – the League of Roma is a coalition of Romani and Roma oriented CSO that gathers more than 60 organisations and activists throughout the country.
- 4 Roma Women Network is a form of voluntary association of organizations, initiatives and individuals who advocate for the implementation of individual and collective rights, the advancement of the status and quality of life of Roma women in Serbia with respecting the principle of solidarity and feminist activism.
- 5 Yurom Center is an NGO established in 1998. Engaged in advocacy for the interests of Roma in housing, health, education, employment, politics, security and culture. Additional information about the organisation is available at: www.yuromcenter.org.rs
- 6 Roma Women's Center BIBIJA was established in 1998 as the first organization focusing solely on Roma women in the Roma settlements in Serbia. Through extensive community education programs, employment assistance, free legal services, and psycho-social counseling, BIBIJA strives to improve the social position of Roma women in Serbia. BIBIJA initiated the creation of Roma Women's Network in Serbia. Additional information about the organisation is available at: www.bibija.org.rs
- 7 Minority Rights Center (MRC) is a non-profit, non-governmental organisation established in 2001 with an aim to improve the position of Roma in Serbia through monitoring human rights situation of Roma minority, advocacy and legal aid services to Romani victims of ethnic discrimination and racially motivated violence. Additional information about the organization is available at: www.mrc.org.rs
- 8 The Regional Centre for Minorities (RCM) is a Belgrade based non-governmental organization that strives to advance and protect minority rights through combating all forms of discrimination, exclusion and marginalization, and through promoting full participation of minorities in all spheres of society. Additional information about the organization is available at: www.minoritycentre.org
- 9 United Nations, Committee on Economic, Social and Cultural Rights, Second periodic reports submitted by States parties Serbia available at: http://tbineternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=820&Lang=en

GENERAL INFORMATION

As noted in the list of issues concerning Serbia submitted by the ERRC for the Pre-Sessional Working Group to the 52nd session of the CESCR, in several cases that the ERRC has brought before the Serbian courts on behalf of the victims of forced eviction (or threat of eviction), the courts have failed to take into consideration invoked international human rights treaties, especially the Covenant, despite Constitutional provisions guaranteeing direct applicability of international human rights standards and the obligation of the courts to base their decision on the ratified international treaties.¹⁰

There is an overall lack of understanding by the judiciary of the position of the Covenant within the national legal framework, substantive rights under the Covenant and their justiciability. According to available information from its website, the National Judicial Academy (Pravosudna akademija), an institution entrusted with professional development of future and elected judges and prosecutors, needs support to ensure that material on economic, social and cultural rights enshrined in the Covenant is included in its regular training programme. In general, very little attention in professional development of judges is devoted to international human rights standards, with the focus primarily put on the European Convention of Human Rights and jurisprudence of the European Court for Human Rights.

In 2013 the ERRC in cooperation with the National Judicial Academy organised two training sessions (in February and November) for administrative and higher court judges on housing rights under the UN and Council of Europe human rights law. Although these sessions were limited in scope (around 40 judges participated in total), they indicated the need for awareness-raising activities about the Covenant rights – at the last judges training in November 2013, 71% of respondents said they need more information on direct applicability of international human rights standards and 43% on the right to adequate housing under the UN system.

ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (ARTICLES 1 – 5)

ARTICLE 2 PARAGRAPH 2 – NON-DISCRIMINATION

Commissioner for the Protection of Equality

A comprehensive anti-discrimination legal framework prohibits all forms of discrimination against individuals and groups. Serbia's anti-discrimination legislation is broadly in line with European standards on combating racism and racial discrimination. However, in practice the extent of discrimination issues raises the question of the law's effectiveness. International human rights organisations and State institutions highlighted the fact that Roma continued to be the most vulnerable minority community and target of verbal and physical harassment from ordinary citizens, police violence and societal discrimination. Similarly, LGBT people, national minorities and disabled people still face discrimination in Serbia.¹¹

The awareness among Romani communities in Serbia of the relevant provisions of the anti-discrimination legislation and the competency of the Commissioner for the Protection of Equality (the Commissioner) remains low. In early 2013 the ERRC collected data on the work of equality bodies in 10 European countries, including Serbia, in relation to discrimination against Roma. Although Roma are the second largest minority in Serbia and generally perceived as the most discriminated group in the country, data for 2011 and 2012 show that less than 8% of complaints submitted to the Serbian Commissioner for the Protection of Equality related to discrimination against Roma and at least one third of those complaints were dismissed or withdrawn. Even though the Commission issued several important recommendations on discrimination against Roma in 2012 and 2013, and initiated misdemeanour proceedings and civil court proceedings, most of these actions were initiated *ex officio* or by different NGOs on behalf of Roma, not by Roma themselves.¹²

10 Written Comments by the European Roma Rights Centre concerning Serbia, for consideration by the Committee on Economic, Social and Cultural Rights at its 52nd session, European Roma Rights Center, 9 October 2013, 4, available at: <http://www.errc.org/article/errc-submission-to-unc-cescr-on-serbia-october-2013/4206>.

11 Written comments by the ERRC concerning Serbia's EU accession progress for consideration by the European Commission during its 2013 review, May 2013, 3, available at: <http://www.errc.org/article/errc-submission-to-the-european-commission-on-serbia-may-2013/4142>.

12 *Ibid.*

	Total no. of complaints	No. of complaints related to ethnic discrimination of Roma	No. of complaints related to ethnic discrimination of Roma that were dismissed or withdrawn
2011	335	23 (7.8%)	10 (43.5%)
2012	465	31 (6.7%)	8 (25.8%)

The latest 2013 annual report of the Commissioner show that Roma were the most discriminated ethnic group in Serbia. Around 12% (81) of complaints submitted throughout the year related to discrimination based on national or ethnic affiliation, while 34 complaints concerned discrimination on the basis of Roma ethnicity.¹³ Information available at the Commissioner's website shows that in 2013, the Commissioner resolved eight cases of discrimination of Roma, predominantly discrimination in area of education or peer violence in schools.¹⁴ In six cases the Commissioner determined a violation of the Law on Prevention and Protection from Discrimination¹⁵ and issued recommendations to eliminate discriminative practices; however not all of them have been fully implemented.

Ethnically motivated violence

Ethnically motivated violence and hate speech against Roma are ongoing problems in Serbia. Such violence is not limited to any geographic area, but is prevalent throughout the country. Attacks have occurred in both public and private settings, by individual perpetrators and groups, by private entities and policemen. Victims are also diverse in character, including women, children, men, Roma (including Roma IDPs) or entire communities, targeted indiscriminately.¹⁶

The gravity of the occurrence of instances of hate crimes is often diminished, and thereby aggravated, by the refusal of law enforcement and/or judicial bodies to acknowledge and prosecute them as such. The situation as it stands provides an environment of impunity for anti-Roma hate crimes. The Commissioner for the Protection of Equality has noted that very frequently Roma are targeted in racially-motivated attacks which are often not investigated and punished properly.¹⁷

Analysis of the documented cases indicates that perpetrators of these crimes are predominantly older minors of age 14 and above or younger adults between 18 and 21 years of age, mostly gathered around the football fan groups or ultra-right wing groups such as *Obraz*, *Nasi*, skinheads, etc.¹⁸

It is not exactly known to what extent Roma are exposed to ethnically motivated violence and how effective the State response to these occurrences is because there is no publicly available information on the number of reported and prosecuted hate crimes, desegregated by ethnicity. ERRC, YUROM Center and Minority Rights Center have been monitoring, each organisation independently, cases of hate crimes against Roma. The data collected show there were at least 14 cases of racially motivated attacks on Romani individuals and entire communities in 2012 and 2013, including the killing of a 17-year-old Romani boy in Bečej.

Collective retributions against entire Romani communities are not rare occurrences. One such incident happened in June 2010 when four days of racist violence against Romani residents of Jabuka, a village near the town of Pančevo, took place after a Roma minor murdered a non-Roma minor. Police immediately arrested the Romani suspect who was later sentenced to four years in juvenile prison. However, as retribution over the killing of a young man, the non-Roma community organised attacks against local Roma and held them under siege for four days. Their houses were stoned, some property destroyed and, due to fear, Roma were not able to leave their homes. The authorities failed to provide adequate protection against the outburst of violence and they employed stronger security measures only after four days, following the visit of the State President

¹³ Commissioner for the Protection of Equality of the Republic of Serbia, *Annual Report of the Commissioner for the Protection of Equality for 2013*, Belgrade, March 2014, 41-42, available (in Serbian) at: <http://ravnopravnost.gov.rs/sr/izveštaji/izveštaji>.

¹⁴ Information available on the website of the Commissioner for the Protection of Equality www.ravnopravnost.gov.rs.

¹⁵ Law on Prevention and Protection from Discrimination, Serbia, (Official Gazette no 22/2009), available at: http://www.paragraf.rs/propisi/zakon_o_zabrani_diskriminacije.html.

¹⁶ European Roma Rights Center, Serbia: Country Profile 2011-2012, 23, July 2013, available at: <http://www.errc.org/article/serbia-country-profile-2011-2012/4166>.

¹⁷ *Ibid.*, 24.

¹⁸ Information provided by the YUROM Center, February 2014.

and Ombudsperson to the village. No measures of restorative justice within the community have been applied and Roma continued to live in fear for a long time after the incident. Six persons identified as leaders of riots were tried for instigating racial and ethnic hatred and intolerance and all were given sentences below the legally prescribed minimum (one to eight years of imprisonment) – four were sentenced to five months probation and two other convicted minors were sentenced to correctional measures.¹⁹ Similar recent incidents happened in 2013 in Zemun Polje in Belgrade²⁰ and in Romani settlement in Beograd Mala in Niš.²¹

Anti-Roma violence also takes place in the aftermath of forced evictions: a container settlement in Resnik inhabited by Roma evicted from the informal settlement Belvil in Belgrade, has been attacked twice since April 2012.²² Similarly, in May 2012, a container settlement in Jabučki Rit was attacked, just a few days after the City of Belgrade resettled Romani families following an eviction from the same informal settlement.²³

Legally invisible persons

In August 2012, the Law on Amendments to the Law on Non-Contentious Procedure was adopted, prescribing a special court procedure for determining the date and place of birth for those who could not be subsequently registered into birth registries through an administrative procedure.

Analysis of the implementation of the Law reveals that despite the indisputable importance of the new procedure, there are some difficulties in conducting this procedure along with inconsistent court practice.²⁴ One of the major problems identified is that of the length of this procedure as it lasts for 6 months on average, and in some cases the hearings were scheduled more than 5 months after filing the motion.²⁵ Court practice differs in terms of establishing the mandatory and optional elements of the decision, and thus the courts often failed to enter data about parents, even when they were known. The inconsistency of court practice is also reflected in the content of the motion as some courts had an understanding for uneducated parties filing the motions lacking all necessary data, while others rejected such motions. In addition, the period from the moment of reaching the decision determining the date and place of birth until the moment of registration in birth registries and issuance of the birth certificate lasts for more than six months in some cases.

Acquisition of citizenship is the next phase of the inclusion of legally invisible persons in the legal system. However, the Law on Amendments to the Law on Non-Contentious Procedure contains a disputable provision in Article 71k, under which the Ministry of Interior (MoI), when deciding on requests for obtaining citizenship, is not bound by the court decision establishing the date and place of birth.²⁶

At the same time, no steps have been taken to ensure the observance of the right of every child to be registered immediately after birth. The *Instructions on Administering Civil Registry Books and Registry Book Forms* envisage that in registering the fact of birth, data on parents are entered on the basis of the ID card and birth certificate or marriage certificate, or on the basis of a passport in the case of foreigners. Persons who do not have such documents are not able to register the child's birth, which leads to new cases of legally invisible persons.

19 Regional Center for Minorities, "Inappropriate sanctions for instigating racial hatred and intolerance in Jabuka", press release, 29 June 2011, available (in Serbian) at: <http://www.minoritycentre.org/sh/actuals/neprimerena-kazna-za-izazivanje-rasne-mr%C5%BEenje-i-netrpeljivosti-u-jabuci>.

20 For more information see Civil Rights Defenders, "Hate actions against Roma must be stopped", 11 November 2013, press release, available at: <http://www.civilrightsdefenders.org/news/hate-actions-against-roma-must-be-stopped/>.

21 Commissioner for the Protection of Equality, press release concerning attack on Roma settlement in Niš, 1 August 2013, available (in Serbian) at: <http://ravnopravnost.gov.rs/sr/saopštenja/saopstenje-povodom-napada-na-romsko-naselje-u-nisu>.

22 See European Roma Rights Centre, "Racist Attacks on Resettled Roma in Belgrade", press release, 10 September 2013, available at: <http://www.errc.org/article/racist-attacks-on-resettled-roma-in-belgrade/4186>.

23 European Roma Rights Centre, "Evicted Roma face attacks in new Belgrade settlement", press release, 4 May 2012, available at: <http://www.errc.org/article/evicted-roma-face-attacks-in-new-belgrade-settlement/3984>.

24 Detailed about deficiencies in implementation of the Law on Non-Contentious Procedure see at Praxis report "Analysis of Practical Application of the Law on Non-Contentious Procedure – Determining the Date and Place of Birth", December 2013, page 8-15, available at: http://www.praxis.org.rs/images/praxis_downloads/Analysis_of_Practical_Application_of_the_Law_on_Non-Contentious_Procedure_-_Determining_the_Date_and_Place_of_Birth.pdf.

25 The legally prescribed deadline is 90 days, which however may be extended by 60 days at most and only in case of decision on stay in procedure because of assumptions indicating that a concerned person had temporary residence abroad.

26 Please refer to the Legal Analysis of Article 71k, Paragraph 2, of the Law on Non-Contentious Procedure by PhD Nikola Bodiřoga available at: <http://www.praxis.org.rs/index.php/en/praxis-in-action/nationality-statelessness/item/716-pravna-analiza-%C4%8Dlana-71k-stav-2-zakona-o-van-parni%C4%8Dnom-postupku-dr-nikola-bodiroga>.

Another important aspect in the process of obtaining personal documents relates to the possibility of residence registration. In November 2011, the new Law on Permanent and Temporary Residence of Citizens was adopted and it prescribes the procedure for permanent residence registration for persons without a legal basis for housing, mainly Roma living in informal settlements. This Law provides for the possibility of establishing permanent residence at the address of the Social Welfare Centre (SWC) operating in the territory in which they live, should they have no other legal grounds.

However, the adoption of an appropriate by-law was required, as it was not possible to register residence at the SWC's address solely on the basis of the Law. Although the timeframe for adopting the by-law was three months from the entry into force of the Law, the by-law was²⁷ adopted as late as one year later. Soon after the adoption of the by-law, new problems appeared regarding the registration of permanent residence at the SWC's address.²⁸ Following a few instructions for the application of the Law issued by the Ministry of Labour, Employment and Social Policy and the Ministry of Interior, and ongoing inconsistent practice, the Rules of Procedure of Registration and De-registration of Permanent and Temporary Residence of Citizens were amended in December 2013 with an aim to standardise and synchronise the approach of institutions, precisely social welfare centres, police departments and police stations.

Finally, the Law does not offer a solution for people who have registered their permanent residence, but not in the place where they actually live. This is often the case with IDPs who continue to have their permanent residence registered in Kosovo, although they do not live there anymore. Many of them have settled in informal settlements where it is not possible to register permanent or temporary residence, and because of that, they cannot exercise almost any right in the place of residence.

ARTICLE 3 – EQUAL RIGHTS OF MEN AND WOMEN

Equal opportunities in access to occupation

Roma communities in Serbia are characterised by low educational qualifications and high unemployment rates with significant participation in the grey economy, or so-called informal sector. Therefore, monitoring of gender differences in earnings is almost impossible. The general situation is that Romani women have lower education attainments and the dropout rate is higher among Romani girls comparing to the general population or to Romani boys, thus making Romani women often unemployed and inactive.²⁹

Data from the National Employment Service (NES) show that the gender division of work is still strong within Romani communities and Romani women are mostly qualified for jobs that are typically reserved for women and less well-paid. Around 90% of unemployed hairdressers of Roma ethnicity registered with the NES are women, 50% of Roma sales assistant and cooks are women, while only 18% of bakers are Romani women and there is not a single Romani woman qualified as a locksmith or car repairer.³⁰

Representation of Romani women in the government

Roma are officially recognised as a national minority in Serbia and thus entitled to be proportionately represented in public administration and public offices. However, research from 2010 on the number of Roma employed in public administration showed that while Roma make up 2.05% of the entire population, in State administration they are represented by only 0.04%.³¹ While these figures do not reveal the number of Romani women, other sources indicate that Romani women are almost completely left out of decision making processes and political life in Serbia.³²

27 Pursuant to Article 11, paragraph 5 of the Law on Permanent and Temporary Residence of Citizens, the Minister of Interior, with the consent of the Minister of Labour, Employment and Social Policy, adopted the *Rulebook on the form of permanent residence registration at the address of institution or social welfare centre*. The Rulebook was published in the *Official Gazette of RS*, no. 113/2012 of 30 November 2012.

28 For more details refer to: <http://www.praxis.org.rs/index.php/en/praxis-in-action/residence/item/505-dodatne-komplikacije-u-vezi-sa-prijavom-prebivali%C5%A1ta-na-adresi-centra-za-socijalni-rad>.

29 Information provided by the Roma Women's Centre "Bibija", February 2014.

30 Standing Conference of the Roma Associations of the Citizens – The League of Roma, *Monitoring implementation of Roma policies at national and local level in the Republic of Serbia*, Belgrade, December 2013, 68.

31 European Roma Rights Center, *Serbia: Country Profile 2011-2012*, 8.

32 Roma Women's Centre "Bibija", *Roma Women Speak Out – Shadow report for the Committee of the Elimination of Discrimination against Women to be considered at its 55th session*, Belgrade, 2013, 42.

In relation to participation of Roma at the local level, according to research conducted in 33 municipalities in Serbia in 2013 there are only two Romani women in local assemblies and one Romani woman in a local executive body. Out of the targeted municipalities only 25 have appointed local Roma coordinator of which only eight are women.

ISSUES RELATING TO THE SPECIFIC PROVISIONS OF THE COVENANT (ARTICLES 6 – 15)

ARTICLE 6 – THE RIGHT TO WORK

Members of the Roma minority experience difficulties in accessing formal employment, face discrimination at the labour market and have limited opportunities to use active employment measures aimed to improve the competitiveness of disadvantaged groups of society in the labour market. Even when they manage to get employment, Roma often do the lowest-paid jobs.

The low educational attainment is reflected in low employment rates – only one in five Roma is working in Serbia - and in much lower earnings - the average net monthly income of an employed Roma is 48% less than the income of a member of the majority population. The majority of Roma households “depend on low income obtained mostly from seasonal work such as agriculture and construction or collecting scrap metal for recycling”.³³

Survey on Roma employment

In 2013 Praxis conducted a survey on Roma employment in six cities in Serbia. According to the collected results, only 16 per cent of the respondents stated that they were employed. Thirty-five (35) per cent of those concluded a permanent employment agreement, while most of the remaining 65 per cent of the respondents who earn an income are engaged under a fixed-term agreement (33 per cent), a number of them worked without any agreement (29 per cent) or were hired through a youth cooperative (three per cent). The employed respondents work mainly in private firms (41.17 per cent of respondents) or public companies (27.73 per cent of respondents). The majority of respondents support from four to six family members (66 per cent of employed respondents).

The exercise of the right to work for Roma is hindered due to complicated procedures and conditions for obtaining documents required for employment, which prevent many Roma from concluding an employment agreement. Individuals who are both Roma and internally displaced persons (IDPs) encounter additional difficulties. More specifically, unemployed IDPs face difficulties in obtaining a work booklet (i.e. the necessary documentation to work) because their permanent residence is still registered in the place of origin which they were forced to leave over a decade ago; on the other hand, it is not possible to obtain a work booklet in the place of temporary residence.³⁴ Without a work booklet a person cannot register as unemployed with the National Employment Service (NES), and cannot get assistance in seeking employment or use any other programmes or services offered by the NES, despite belonging to one of the most vulnerable groups at the labour market. In February 2010, Praxis made an appeal to the Minister of Labour and Social Policy to amend the Rulebook on work booklet and proposed allowing the issuance of work booklets in the places of temporary residence, but the Minister’s reply was negative.

Difficulties in accessing formal employment lead to a widespread phenomenon of working in the grey economy. It is estimated that as many as 70 per cent of Roma aged between 15 and 64 work without an employment agreement. Among the various forms of informal self-employment of Roma, the most common activity is the collection of recyclable materials.

According to the YUROM Center, estimates show that for about 8,000 Romani families (50,000 people) scrap collection is the only source of income. According to their assessment, these families collect around 75% of the recycled material in Serbia. Despite their important role in the society, the collectors and especially Romani scrap collectors, live and work in extremely difficult conditions. They do not have an employment status, including social and health benefits, and their working day lasts on average 12 hours. Their monthly income is little above 100 Euros.

33 European Roma Rights Center, *Serbia: Country Profile 2011-2012*, 8.

34 Praxis, *Analysis of the main problems and obstacles in access of Roma to the rights to work and employment*, Belgrade, June 2013, available at: http://praxis.org.rs/images/praxis_downloads/Analysis_of_the_Main_Problems_and_Obstacles_in_Access_of_Roma_to_the_Rights_to_Work_and_Employment.pdf.

Legal and policy framework and local development strategies do not include plan for improving the social and economic status of these workers in the informal sector. The Serbian government has not put in place mechanisms or instruments to transform several thousands of individual scrap collectors working in “grey” economy to the formal market. By imposing different administrative requirements and restrictions, local authorities deny Romani scrap collectors the right to work and disregard the development potential and economic empowerment for the Romani community in large.³⁵

Due to a number of obstacles faced by the Roma minority, they have been recognised in national strategy documents as a particularly vulnerable group that should have priority in the implementation of active employment policy measures. As regards these measures, self-employment subsidies, subsidies to employers, further education and training and public works may be important for Roma. However, it has turned out that even these measures are not appropriate for the most vulnerable Roma individuals and usually unable to produce long-term positive effects. The main problem with self-employment subsidies lies in the requirements that must be met. It is necessary to provide security instruments to receive subsidies (such as a mortgage, lien worth three times the amount of subsidy or bank guarantee/guarantor), which is an insurmountable obstacle for the poverty-stricken Roma. The impact of this measure is very limited while it has almost no effect on increasing employment of Romani women – throughout 2011 and 2012 there were only 65 Roma beneficiaries of self-employment subsidies, including just 25 Romani women. As a comparator, in 2011 and 2012 there were more than 9.000 Romani women registered with the NES.³⁶

As regards employment subsidies (subsidies to employers), one of the main problems is the lack of interest among potential employers in hiring Roma (during a two-year period only 19 Roma were employed through this measure in the entire country, including nine women³⁷), while the biggest deficiency of public works is their short-term effect. In addition, public works engage more men than women as the jobs are predominantly physical labour and construction work. Women are mostly offered jobs as carers of seniors, which makes up only 15% of jobs available through public works.³⁸ In 2011 and 2012, a total of 455 Roma were hired through public works, including 105 Romani women (23%).³⁹

One problem is the reluctance of Roma to indicate their ethnicity when registering as unemployed, as highlighted by the NES. This was also stressed as a problem in the letters that the NES Branch Subotica sent to the Protector of Citizens in 2010 and 2011.

Most Roma individuals covered by some of the active employment policy measures were engaged in public works, but the analysis of the impact of these measures has shown that they did not contribute to greater chances of finding and maintaining more stable employment. As regards training courses organised by the NES, 2013 surveys indicate that only six per cent of the respondents answered affirmatively when asked whether the NES had ever offered them training.

The State’s obligation to guarantee protection from discrimination in accessing and maintaining employment is an obligation of immediate effects, as is the obligation to take steps that are deliberate, targeted and concrete. Discrimination in the enjoyment of economic, social and cultural rights, among which is the right to work, is elaborated in detail in the General Comment 20⁴⁰ of the CESCR. In this General Comment the CESCR recognises that discrimination is frequently encountered in the private sphere, such as in workplaces. States are thereby obliged to adopt measures to address discrimination including in the private sphere, thus ensuring that individuals and entities in the private sphere do not discriminate on prohibited grounds.

Discrimination against Roma in particular is elaborated in detail in General Recommendation No 27 of the Committee on Elimination of All Forms of Racial Discrimination (CERD). In this document it is specifically stipulated that States should adopt or make more effective legislation prohibiting discrimination in employment

³⁵ Information provided by the YUROM Center, February 2014.

³⁶ Standing Conference of the Roma Associations of the Citizens – The League of Roma, *Monitoring implementation of Roma policies at national and local level in the Republic of Serbia*, 33.

³⁷ Data are for period 2011 and 2012, *Ibid.*

³⁸ *Ibid.*, 69.

³⁹ *Ibid.*, 33.

⁴⁰ Committee on Economic, Social and Cultural Rights, Geneva, G General Comment 20, E/C.12/GC/20.

and all discriminatory practices in the labour market affecting members of Roma communities, and to protect them against such practices.

The National Strategy for the Prevention and Protection from Discrimination⁴¹ adopted in 2013 recognises national minorities as one of the groups affected by discrimination, and among the national minorities recognises the vulnerable position of Roma. This document outlines that “the employment of Roma is a very prominent problem”⁴². It refers to the National Employment Strategy⁴³ as a relevant document defining Roma among groups which have difficulty in securing employment, as well as to the National Employment Action Plan for 2013⁴⁴ which envisages a set of measures aimed at stimulating the employment of Roma.

Among the Specific Objectives of the above mentioned Strategy, there is the improvement of the application of the principle of equality in the field of labour and employment, both in the public and private sector.

The National Employment Action Plan considers Roma explicitly under the category of “difficult to employ” and outlines six measures to encourage and promote employment of Roma. *Addressing discriminatory attitudes and practices as one of the obstacles in accessing employment for Roma in both public and private sector is not encompassed by any of the six measures defined by this planning document.*

Similarly, the National Action Plan for Roma Inclusion 2012-2016, Employment Chapter, defines 47 specific measures to promote and enhance employment of Roma. However, *challenging discrimination is again not encompassed.*

Due to the lack of knowledge about their rights and the concept of discrimination, it is rather unlikely that the Roma candidates will engage in questioning of the justification for rejecting them. Among the respondents included in the Praxis surveys in 2013, *4.5 per cent said that they were discriminated against when seeking employment or in the workplace.* However, the surveys also show that a large number of respondents (34 per cent) did not know what discrimination was, even when the concept was explained to them.

ARTICLE 9 – THE RIGHT TO SOCIAL SECURITY

Lawsuits as a necessary precondition for exercising the right to social security

The lack of personal documents, permanent/temporary residence registration and complicated and lengthy administrative procedures constitute significant impediments to exercising the right to social protection for most vulnerable groups in Serbia, especially Roma. In addition, the majority of Social Welfare Centers do not obtain evidence *ex officio* and do not observe the principle of assistance to undereducated clients, but only present them with the list of necessary documents they need to obtain with no thorough explanation as to how and which institutions to contact. This presents a huge obstacle in accessing the right to social protection.

Although the beneficiaries of financial social assistance already encounter numerous problems, the Law on Social Protection⁴⁵ (LSP) imposes another requirement for obtaining this kind of assistance, thus posing an insurmountable obstacle to the exercise of the rights of many beneficiaries. Article 84 of the LSP provides that an individual, a family member who is unable to work, must include along with a request for determining eligibility to receive financial social assistance a final court decision, court settlement or proof of having initiated a procedure before the competent court for determining the obligation of a relative who does not live in the same household but who is obliged and able to participate in his/her support in accordance with the law governing family relations.⁴⁶

41 Serbia, Anti Discrimination Strategy for 2013-2018, Office for Human and Minority Rights, available at: <http://www.ljudskaprava.gov.rs/index.php/yljudska-prava/strategije>.

42 *Ibid*, page 19, para 2.

43 Serbia, National Employment Strategy (“Official Gazette of RS” no. 37/11), available at: <http://lokalnirazvoj.rs/nacionalna-strategija-zapo%C5%A1javanja-2011-2020.html>.

44 Serbia, National Employment Action Plan for 2013 (“Official Gazette of RS” no. 117/2012) available at: <http://www.minrzs.gov.rs/doc/zaposljavanje/NAPZ%202013.pdf>.

45 Serbia, Law on Social Protection (“Official Gazette RS” no. 24/2011), available at: http://paragraf.rs/propisi/zakon_o_socijalnoj_zastiti.html.

46 In order to obtain accurate information and to gain better insight into the true effects of this legal provision, in March 2013 Praxis addressed the basic courts throughout Serbia with a request for access to public information about the number of lawsuits for support filed against relatives in accordance with Article 84 of the Law on Social Protection in 2012. The survey showed that in total, Basic Courts in Serbia received 4,598 lawsuits, Praxis documentation, May 2013.

The introduction of mandatory lawsuits against the nearest relatives further complicates the already complicated administrative procedure. Such a requirement leads to the situation that many beneficiaries will not be able to exercise the right to financial social assistance. This approach stultifies the very essence of social protection whose purpose is precisely to help the most vulnerable layers of population to cope with poverty and penury, and not to deny them that right by placing conditions that they cannot meet, thus directly violating the basic principles of social protection – the principle of efficiency, the principle of availability of social protection and the principle of the best interests of beneficiaries.

ARTICLE 10 – PROTECTION OF THE FAMILY, MOTHERS AND CHILDREN

Early marriages and trafficking

According to the Family Law, a person younger than 18 cannot get married, but the court may allow a juvenile aged 16 to marry if (s)he has attained their physical and mental maturity necessary for the exercise of marital rights and duties. Assessment of maturity is usually given by the responsible Centre for Social Work, which usually agrees and does not make adequate use of its legal powers to prevent marriages before the age of 15.

Roma women's NGOs emphasise that no substantial progress can be noted in the area of undertaking institutional measures to prevent early marriage or in raising awareness of its negative effects. The problem of early marriages among Roma population and some other minorities (e.g., Vlachs in Eastern Serbia) has been largely neglected and overlooked by institutions. According to the experience of Roma women's NGOs, based on extensive field work in Romani settlements, such practice has (often) been accepted by Centres for Social Work as "tradition among Roma", which could not or should not be prevented. In Romani settlements, girls below the age of 18 mostly cohabit, i.e. live in extra-marital union. However, cohabitation raises the same women's human rights concerns as legal marriage.

Further, arranged marriage, marriage of minors and forced marriage have not been perceived as forms of gender-based violence in public/media, which is not in line with international documents and relevant analyses at the level of UN, including the UN Secretary General In-depth Study on violence against women (2006). Similarly, early marriage and the custom of "selling brides" have rarely been (even) mentioned in strategic policy documents of the Government.

A recent extensive analysis and survey of services for victims of different forms of gender-based violence (including forced marriage) in the State and civil society sectors revealed that only women's NGOs across Serbia provided assistance and support to Roma and other minority girls/women who were victims of forced and arranged marriages. Organisations that provide support and assistance to victims of trafficking in Serbia reported in 2011 that Roma and other girls of Serbian origin/nationality are sometimes forced into marriage in Germany or other EU countries. As mentioned above, forcing into marriage in practice has sometimes been punishable as a form of trafficking. However, records on victims of forced marriages (as identified by institutions) are scarce.

The most recent relevant research-based data on early marriage are available in MICS4 survey, which was conducted in 2010 and published in 2011). Data on populations in Romani settlements revealed disturbing trends. Almost 17% of women aged 20–49 in Roma settlements were married before the age of 15, and 54% of them married before the age of 18. Nearly half of the young women aged 15–19 years are currently married or in a union (44%). This proportion varies between urban (40%) and rural (52%) areas, and is also strongly related to the level of education. Furthermore, comparing early marriages of women and men in Roma settlements, a notable cross-gender difference was found: 44% of women aged 15–19 years are currently married or in union, and only 19% of men of corresponding age (*ibid.*).

The MICS4 survey also emphasised the age difference between Roma girls/young women in Roma settlements and their husbands/extra-marital partners. Results indicating the age difference between husbands and wives showed the following: more than half of the women aged 20–24 are currently married to a man who is older by 0–4 years (57%). Overall, 24% of women aged between 15 and 19 are currently married to men who are 5 to 9 years older. Low education, living in a rural area and lower socio-economic status are linked to marriage with an older man.

Research evidence, as well as experience of Roma women's NGOs, based on fieldwork in Roma settlements, indicate that early marriages and extra-marital unions decrease educational and occupational opportunities, cause economic dependence on the husband and his family and potentially expose girls/young women to higher risk

of domestic violence and health risks associated with early pregnancy. The above-mentioned MICS4 findings (Statistical Office and UNICEF, 2011) support such conclusion: “Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child-mothers face constrained decision-making and reduced life choices. Women who married at younger ages were more likely to believe that it is sometimes acceptable for a husband to beat his wife and were more likely to experience domestic violence themselves. The age gap between partners is thought to contribute to these abusive power dynamics and to increase the risk of untimely widowhood. Pregnancy related deaths are known to be a leading cause of mortality for both married and unmarried girls between the ages of 15 and 19, particularly among the youngest. There is evidence to suggest that girls who marry at a young age are more likely to marry older men”.⁴⁷

ARTICLE 11 – THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

Access to social housing in Serbia

Social housing in Serbia is still being developed and in the absence of a comprehensive legal framework and in the situation of slow implementation of the activities envisaged under the National Social Housing Strategy, it does not provide a satisfactory solution to the housing problems encountered by the Roma population. The experience of the City of Belgrade, which is the biggest social housing provider in Serbia, shows that “about 10% of social apartments are allocated to persons of Roma ethnicity”.⁴⁸

The programmatic nature of the Law on Social Housing and the out-dated Law on Housing⁴⁹ have led to the situation that the social housing system in Serbia can only partly respond to the problems faced by the Roma who cannot exercise their right to adequate housing at market prices. The Law on Social Housing does not regulate the procedure for the selection of social housing beneficiaries, the procedure for eviction from social housing or otherwise define in more detail the actions of local self-government units regarding the announcement of competitions for social housing allocation.

In competing for social housing, the Roma are often in a less favourable situation than other citizens. Those who are not registered in birth and citizenship registry books or who are registered in destroyed or missing registry books⁵⁰ cannot participate in any social housing competition, while internally displaced persons from Kosovo have additional difficulties in accessing the dislocated registry offices and obtaining documents required for participation in social housing competitions. In Belgrade, one of the requirements for participation in social housing competitions is the registration of permanent residence in Belgrade at least two years prior to the competition. Roma IDPs residing in informal settlements cannot register residence at the address where they live, despite the fact that they have been living in Belgrade since 1999, and therefore cannot apply for social housing.

Moreover, Roma are often not informed about social housing competitions, due to having a lower literacy rate than the rest of the population and because social services usually do not inform them about competitions.

Furthermore, Roma tenants of social housing are not protected through special mechanisms against eviction or other forms of harassment or restrictions to the exercise of the right to adequate housing in social apartments.⁵¹ Article 50b of the *Decision on conditions and manner of assigning apartments constructed according to the project of building 1,100 apartments in Belgrade*,⁵² based on which lease agreements are concluded and which is used by the

47 Roma Women's Centre “Bibija”, *Roma Women Speak Out – Shadow report for the Committee of the Elimination of Discrimination against Women to be considered at its 55th session*, Belgrade, 2013, 45-50.

48 The City Administration of Belgrade, Secretariat for Social Welfare, No: XIX-07-031-96/2012 of 24 April 2012 - Resettlement Action Plan for Belvil, p. 2.

49 See: Urban Planning Institute of Belgrade - *Social Housing Study*, Belgrade, 2009, p. 15: “The Law on Housing is completely out-dated and its primary mission to facilitate a transition from one system to another has been completed”.

50 As a result of the conflict in Kosovo in 1999, the birth, marriage, death and citizenship registry books for the Municipalities of Klina, Kacanik, Banjica and Novo Brdo went missing or were completely destroyed. Many registry books of the Municipalities of Prizren, Djakovica, Decani, Kosovska Kamenica, and many places of Pec Municipality, were also destroyed. Some pages are missing from the registry books for the Municipalities of Kosovo Polje and Pristina. All registry books for the Municipalities of Dragas, Suva Reka and Gora were left in Kosovo. The registry books that were left in Kosovo are considered unavailable. Since 1999 a large number of these registry books have been reconstructed but there are still a number of entries that have not been reconstructed.

51 Praxis was addressed by at least twenty City social housing tenants living in the apartments rented to persons in social and housing needs. For example, a family of five, who addressed Praxis and who live in a social apartment in the settlement Block 61 in Novi Beograd, has a monthly income of financial social assistance in the amount of 10,000 dinars (approximately 90 EUR) and the total cost of subsidised housing and utilities equals 6,000 dinars (approximately 55 EUR).

52 *Official Journal of the City of Belgrade*, Nos 20/03, 9/04, 11/05, 4/07, 29/07, 6/10, 16/10, 37/10 and 17/12.

Housing Commission of the Belgrade City Mayor in deciding on the status of social housing tenant, provides that “the lessor may terminate the lease agreement by a written notice which cannot be less than 90 days, and if the notice period expires in the period December - February, it must be extended for additional 30 days”.

Persons who live in social apartments may file a complaint against the Commission’s decision with the Belgrade City Mayor, who represents the City Administration of Belgrade – one of the parties to this agreement. After the second-instance decision (i.e. the Mayor’s decision) had been issued, the Administrative Court of Serbia took a position that the termination of social apartment lease agreements was not an administrative matter and that legal protection could not be achieved before that court. The additional difficulty for social housing tenants is the fact that based on Article 28, paragraph 3 of the *Decision on conditions and manner of assigning apartments constructed according to the project of building 1,100 apartments in Belgrade*“ legal protection cannot be achieved against a decision issued upon complaint.” This means that *social housing tenants are not allowed to achieve legal protection by challenging a decision issued by the other party to the agreement – the City Administration of Belgrade, exactly on the basis of a general decision adopted by that other party.*⁵³

The emergency protection measure for the most vulnerable citizens⁵⁴ includes subsidies for utility products and services and rent for the beneficiaries of financial social assistance, allowance for assistance and care of other person in accordance with the City regulations on extended protection of veterans, disabled veterans and civilian war invalids and for other categories of vulnerable population in Belgrade. This provision envisages that households get the discounts if they pay the previous month’s utility bills, issued by the Public Utility Company Infostan, until the end of the current month. Thus formulated, this provision is extremely unfavourable and may additionally aggravate the position of users of social housing apartments, because those users who receive financial social assistance in the majority of cases have a three-month interruption in receiving social assistance.⁵⁵ In that period they remain without any income and cannot pay the utility bills issued by the Public Utility Company Infostan regularly, which automatically leads to termination of subsidies for rent and utility services and places a huge financial burden on these households.

Property tax imposed on social housing tenants

In addition to the high cost of housing and utility services, social housing tenants are required to pay the annual property tax of natural persons. Although these apartments are assigned to persons in difficult social and housing situation, tax decisions are issued to social housing tenants according to which they are ordered to pay the annual property tax of natural persons. These decisions were made earlier but now they are “legalised” through Amendments to the Law on Property Tax⁵⁶ on the grounds that social housing tenants are liable to pay taxes because they have the status of leaseholder of an apartment or building in accordance with the law governing housing, for a period exceeding one year or indefinitely.⁵⁷

This approach illustrates the complete incompatibility of the Republic of Serbia’s legal framework in the field of housing with international human rights standards. According to General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, adequate housing includes the affordability of housing. Paragraph 8 (c) of General Comment states the following: “Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels”.

53 If we take into account that the right to legal protection is one of the constitutional guarantees and that the local self-government authorities and the City of Belgrade are neither allowed nor authorised to derogate constitutionally guaranteed rights by their own decisions, the constitutionality and legality of Article 28, paragraph 3 of the Decision are called into question.

54 *Official Journal of the City of Belgrade*, Nos 19/95, 13/96, 22/98, 10/99, 21/99, 9/2000, 21/2000, 14/2001, 19/2001, 26/2001, 1/2002, 11/2002, 29/2002, 2/2003, 17/2003, 33/2003, 1/2004, 12/2004, 38/2004, 15/2005, 27/2005, 27/2006, 9/2007, 39/2007, 41/2007, 42/2008, 31/2009, 1/2010 and 25/2010.

55 For more information about the interruption of social assistance and breach of Article 13 paragraph 1 the European Social Charter (revised), refer to: Decision on the merits of the European Committee of Social Rights in case of the collective complaint *ERRC v. Bulgaria*, no. 48/2008, paragraph 40: “The Committee considers that the contested amendments to the Social Assistance Act, which establish the interruption of social assistance for unemployed persons in active age after 18, 12 or 6 months, cannot be considered to be a permissible restriction on the right to receive social assistance under the provisions of Article 13§1”.

56 The Law on Property Taxes, “The Official Gazette of RS”, no. 26/2001, 80/2002, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 47/2013.

57 In January 2013, Praxis requested an opinion from the Ministry of Finance and Economy about the tax collection from social housing tenants. The Ministry responded that, according to the applicable regulations, social housing tenants were obliged to pay the property tax of natural persons.

Forced evictions

Between 2009 and 2013, the ERRC and several national NGOs gathered around the Platform for the Right to Adequate Housing⁵⁸ registered 18 forced evictions, affecting more than 650 Romani families including more than 2,700 individuals. Almost all instances of forced evictions were marked by the same human rights violations, notably the failure to provide evictees with adequate (or indeed any) alternative accommodation, as Serbia has undertaken to do under the Covenant, or to consult affected communities throughout all stages and provide due process and compensation.

The two biggest mass evictions were from informal Romani settlements in Belgrade located under the Gazela Bridge in 2009 (175 families) and in Belvil in 2012 (257 families). Some of the families were resettled on the outskirts of Belgrade in metal containers which do not meet adequacy criteria, while others were forced to return to their previous places of permanent residence, usually to the small and impoverished municipalities in the south of Serbia where they were provided with inadequate accommodation, usually lacking security of tenure. Current ERRC research revealed that most of those sent back to the south of Serbia again went back to informal settlements in Belgrade, where some of them faced another eviction, or migrated to Western Europe.⁵⁹

The Serbian legal system does not recognise the right to adequate housing as a self-standing right, nor does it contain legislation to prevent forced evictions. On these issues the domestic legal framework is either silent or, where certain provisions do exist, they tend to be incompatible with international human rights standards on adequate housing. Different procedural and material domestic laws are applicable in cases of eviction depending on whether administrative or judicial authorities are deciding the case, as well as on the nature of the case itself, i.e. illegal occupancy, demolition due to lack of construction permit or expropriation. Roma subjected to forced evictions in Serbia are victims of breaches of Article 4 of the Covenant (specifically, the requirement that limitations on rights be ‘determined by law’), taken with Article 11(1): the law on forced evictions is so vague and complex as to lack the quality of law that Article 4 of the Covenant requires.⁶⁰

The Action Plan (AP) for implementation of the National Strategy for the Improvement of the Status of Roma in the Republic of Serbia (Roma Strategy) for the period of 2009-2011 included a set of goals, measures and activities related to housing conditions including their harmonisation of domestic legislation with the International Covenant on Economic, Social and Cultural Rights (2.1.2).⁶¹ Similarly, the AP for the period 2012-2015 includes the same set of measures. However, to date, none of the above measures have been implemented. Finally, following pressure from various NGOs, independent national human rights institutions and the international community, in 2013 the Government launched preparatory activities on drafting the bill on forced evictions compatible with international human rights standards. Currently, there is no available information on the results of these processes. However, the submitting organisations remain sceptical about the prospects of enacting a *lex specialis* on forced evictions.

In November 2012 the Commission for the Protection of Equality determined that the City of Belgrade had discriminated against Roma living in container settlements formed after forced evictions of informal Roma settlements in 2009 (Gazela settlement) and 2012 (Belvil settlement). The NGO Praxis filed a complaint on behalf of the Coalition against Discrimination to the Commission for the fact that a legal regime established in container settlements does not apply to any other population groups. Namely, the City Administration has stipulated that if the Roma residing in container settlements “do not adopt rules of good manners towards the representatives of the institutions of the City of Belgrade”, and “do not show an interest in the efforts of the City to socialise the individuals and their families”, or if they “have guests in the containers”, they might be again forcibly evicted from the accommodation provided to them. Based on these discriminatory provisions, the City Administration has evicted 11 families (44 persons). The Commission has determined that provisions of the contract on the use of

⁵⁸ The Platform for the Right to Adequate Housing (the Platform) is an informal network of NGOs working at local, national and international levels on issues of human rights, anti-discrimination, anti-racism and Roma rights. The Platform was established in November 2011 as a response to a worrying increase of forced evictions in Serbia over the past years with an aim to mobilise civil society organisations to promote and fight for the human right to adequate housing for all, including the prohibition of forced evictions.

⁵⁹ Written Comments by the European Roma Rights Centre concerning Serbia, for consideration by the Committee on Economic, Social and Cultural Rights at its 52nd session, European Roma Rights Center, 9 October 2013, 3 – 4, available at: <http://www.errc.org/article/errc-submission-to-un-cescr-on-serbia-october-2013/4206>.

⁶⁰ *Ibid.*

⁶¹ The Platform for the Rights to Adequate Housing, *Legal standards and evictions of Roma in Serbia* (draft), December 2012.

mobile housing units, house rules and warnings along with the house rules represent acts of discrimination against Roma and therefore the City Administration needs to change discriminatory provisions within 30 days.⁶² By December 2013, more than a year since the Commission issued the recommendation, City of Belgrade authorities had failed to comply fully with the recommendation and eliminate discriminatory provisions of the house rules.⁶³

The submitting organisations welcome the EU funded project aimed at securing adequate and sustainable housing solutions for around 200 Romani families currently living in several container settlements in Belgrade.⁶⁴ However, providing suitable locations with necessary infrastructure and access to services by the City authorities remains a problem.⁶⁵ NGOs and the Commission for the Protection of Equality expressed their concern that particular attention should be given to avoid the creation of ethnically segregated Romani settlements.⁶⁶

ARTICLE 12 – THE RIGHT TO PHYSICAL AND MENTAL HEALTH

Access to health insurance for Roma

The right to healthcare in Serbia is still not completely and equally accessible for those who are particularly vulnerable: those who do not have required documents and who are, at the same time, members of the Roma minority, and who live below the poverty line in adverse housing conditions that cause frequent illness.

The Law on Health Insurance, which provides for the possibility of exercising the right to health insurance for Roma individuals without permanent or temporary residence,⁶⁷ was applied consistently only in the period from July 2010 to March 2012.⁶⁸ Only with the help of Praxis over 120 people managed to obtain health cards in the specified period. However, after the adoption of the Law on Permanent and Temporary Residence of Citizens,⁶⁹ the Republic Fund for Health Insurance (RFHI) sent to its branch offices an instruction stating that Roma without registered permanent or temporary residence must support their application for health insurance with the evidence of their registered permanent residence at the address of institution or social welfare centre.⁷⁰ Practice deviates significantly from the Law's requirements, depriving these persons of their rights guaranteed by the law, causing confusion in practice and ultimately deepening the problem in practice for the most vulnerable. At the same time, the possibility to register one's residence at the address of the SWC has only just been introduced and is not being implemented in many municipalities, thus further depriving Roma of access to the right to healthcare.

IDPs who have their permanent residence registered in Kosovo also encounter difficulties in exercising the right to healthcare. These persons are entitled to health insurance in the place of actual residence if they have

62 Praxis, "Discrimination against Roma living in container settlements formed after forced evictions", press release, 6 November 2012, available at: <http://praxis.org.rs/index.php/en/praxis-in-action/social-economic-rights/housing/item/425-discrimination-against-roma-living-in-container-settlements-formed-after-forced-evictions>.

63 Praxis, "Non-acting of the Belgrade City Administration upon the Recommendation of the Commissioner for Protection of Equality Issued for Discrimination against the Roma in Container Settlements", press release, 27 December 2013, available at: <http://praxis.org.rs/index.php/en/praxis-in-action/social-economic-rights/housing/item/708-nepostupanje-gradske-uprave-grada-beograda-po-preporuci-poverenice-za-zastitu-ravnopravnosti-donete-zbog-diskriminacije-roma-u-kontejnerskim-naseljima>.

64 More about the project "Let's build a home together" is available at: <http://www.sagradimodom.org/>.

65 Minutes from the second Project Sub Committee Meeting (draft), Belgrade, 28 November 2013, 5, available at: <http://www.sagradimodom.org/tekst/biblioteka/28/>.

66 Praxis, "Poverenica ukazala Gradskoj upravi Grada Beograda na potrebu pronalazjenja adekvatnih lokacija za stanovanje Roma", press release, 17. September 2013, available at: <http://praxis.org.rs/index.php/en/praxis-in-action/social-economic-rights/housing/item/707-poverenica-ukazala-gradskoj-upravi-grada-beograda-na-potrebu-pronalazjenja-adekvatnih-lokacija-za-stanovanje-roma>.

67 The Law on Health Insurance in the Article 22, paragraph 1, item 11 defines persons of Roma ethnicity without permanent/temporary residence as a special category of the insured.

68 More information about inconsistent practice caused by unofull by-laws is available in the Praxis report "Contribution to social inclusion and combat against discrimination of marginalized population in Serbia", pages 26-30, http://www.praxis.org.rs/images/praxis_downloads/Contribution_to_Social_Inclusion_and_Combat_against_Discrimination_of_Marginalised_Population_in_Serbia.pdf.

69 Article 11, paragraph 2, item 4 of the new Law on Permanent and Temporary Residence of Citizens envisages that for persons without legal basis for registering permanent residence (mainly Roma or homeless people), the competent authority shall determine permanent residence at the address of social welfare centre in the territory of municipality in which they live.

70 The branch offices refer to the Regulation on the content, form and manner of submitting a single application for compulsory social insurance, uniform methodological principles and uniform system of codes for entering data into a Single Database of the Central Registry of Compulsory Social Insurance (the Regulation), which has never been aligned with the Law on Health Insurance and prescribed the submission of the proof of temporary residence (and item 7, Section 2.1).

temporary residence registration and an IDP card. However, upon their arrival from Kosovo, a large number of internally displaced Roma settled in informal settlements, where it is not possible to register temporary residence.⁷¹ At the time of consistent application of the Law on Health Insurance, some displaced Roma without temporary residence registration applied for health insurance on the basis of the statement of actual residence, as Roma without permanent or temporary residence.⁷² Since this option does not exist anymore, these persons can exercise the right to health insurance only at the place of permanent residence, which implies travelling to Kosovo not only to apply for health insurance, but also every time the health card needs to be verified or when a referral is required for treatment that is not covered by primary health care.⁷³

Persons who are not registered in the civil registry books and do not have personal documents can only access emergency medical assistance. Not even children or pregnant women, who are defined as particularly vulnerable groups of the population under the Law on Health Care, can apply for health insurance unless they are registered in birth registry books and obtain other required documents (depending on the basis of insurance). As regards children who are not registered in birth registry books and who have not acquired the status of insured persons, Praxis addressed the RFHI and requested information on how these children may acquire health insurance. The RFHI responded that these children were not eligible for health insurance while emphasizing that “registration into birth registry books (at birth or subsequently) as proof of identity is the preliminary issue for the exercise of all individual rights, and the right to compulsory insurance is no exception in this regard”.⁷⁴

ARTICLE 13 – THE RIGHT TO EDUCATION

The Law on the Fundamentals of the Education System (hereinafter: the Law on Education)⁷⁵ and the Law on Preschool Education⁷⁶ have eliminated the deficiencies of the previous legal framework in the field of education. They provided a legislative framework for the abolition of so-called *special schools* and set inclusive education as a goal, and in order to achieve full equality, introduced Roma teaching assistants in some preschools and primary schools.

Despite the normative guarantees suggesting that every child can access education, children without a birth certificate or health clearance certificate sometimes face difficulties with school enrolment. Although in 2009 it was prescribed that undocumented children from vulnerable social groups could enrol in school, some schools are not familiar with this provision and it used to happen that children without a birth certificate or health clearance certificate were not allowed to enrol. Although over time there has been a decrease in the number of cases where schools hinder or reject the enrolment of undocumented children in the first grade, Praxis still occasionally identifies such cases. Some children have been permanently left out of the education system after the initial refusal of the school to enrol them. Even parents are not informed about the possibility of enrolling children in school despite the lack of documentation. Some of them used to give up after the first unsuccessful attempt, while others have not even tried to enrol their children in school believing that it is necessary for children to have a proof of permanent residence or other documents in order to attend school.⁷⁷

The greatest failures in the area of education are associated with a *large number of Roma children who do not enrol in primary school or drop out before completing primary education*.⁷⁸ The situation of children from informal settlements or children

71 According to the Commissariat for Refugees and Migration and the Government of the Republic of Serbia, out of about 22,500 Roma registered in the Commissariat's database, only 1,200 live in collective centres. It means that over 95 per cent of internally displaced Roma were left on their own upon leaving Kosovo, and many of them settled in informal settlements.

72 They could not be insured as IDPs due to the lack of registered temporary residence, although the IDP status is the priority health insurance basis for the IDPs who are not insured on some of the grounds envisaged under Article 17 of the Law on Health Insurance.

73 Refer to Article 47a of the Rulebook.

74 Serbia, Republic Fund For Health Insurance (RFHI), Act of the RFZO no. 54-2935/11-1 of 29 July 2011.

75 Serbia, Law on the Fundamentals of the Education System (LFES) (“Official Gazette of Rep. of Serbia” No. 72/2009, 52/2011, 55/2013) available at http://www.paragraf.rs/propisi/zakon_o_osnovama_sistema_obrazovanja_i_vaspitanja.html.

76 Serbia, Law on Preschool Education (Official Gazette of RS, no. 18/2010) available at: <http://www.impres.rs/assets/dokumenta/zakon-o-predskolskom-vaspitanju-i-obrazovanju/zakonpredskolsko.pdf>.

77 For more information on difficulties faced by the children who did not have a birth certificate or other documents required for the enrolment in primary school, refer to the report *Analysis of the Main Problems and Obstacles in Access of Roma in Serbia to the Right to Education*, Belgrade, November 2011, pp. 22 – 26 (hereinafter referred to as: Praxis 2011 Report on Education).

78 It is estimated that about 26 per cent of Roma children do not attend primary school, and that the total number of Roma children who enrol in primary school, 73 per cent drop out before completing elementary education; Open Society Institute, *Roma Children in “Special Education” in Serbia: over-representation, underachievement, and impact on life*, 2010, p. 33 (hereinafter referred to as: Open Society Institute).

without documents is particularly disconcerting. They *do not receive school enrolment notices*, local self-governments do not have records on these children and no measures are taken if these children remain outside the education system.⁷⁹

The insufficient knowledge of the language of instruction constitutes one more obstacle to successful completion of education by Roma children. Due to the insufficient knowledge of language the Roma children have often been sent to the so-called *special schools*.⁸⁰

Segregated Roma-only schools

The share of Roma in specialised educational institutions remain high. ERRC research data, collected from 31 such schools throughout the country, indicate a continuous, 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 per cent in 2012/13.

Number and percentage of Romani and non-Roma students in EPD schools and classes

School year	Romani students (Vojvodina data)	%	All students	Romani students (ERRC research)	%	All students
2010/2011	736	28.26	2604	n/a	n/a	n/a
2011/2012	623	27.29	2300	808	23	3539
2012/2013	557	26.15	2130	690	21	3306

Schools with highest percentage of Romani children in academic year 2012/2013

School	Absolute number	% of Romani students
SPSE Vidovdan in Bor	69	73%
PS Sveti Sava in Prokuplje	23	68%
SPSE Veselin Nikolić in Kruševac	75	63%
PS Novi Beograd in Belgrade	58	40%

Roma often live in extremely poor conditions, lack the minimum means of subsistence, cannot get employment and may have no shelter,⁸¹ these factors are also conducive to the exclusion of Roma children from the education system. This problem is especially pronounced in informal settlements and in families whose members do not have personal documents, due to which they are not able to exercise the right to social assistance.

Although the Law on the Fundamentals of Education System has removed the deficiencies of the previous legal framework and created preconditions to terminate segregation of Roma children through referring them to special schools, the overrepresentation of Roma children in special schools is still one form of segregation and discrimination of Roma. One part of the problem refers to schools with a majority of Roma pupils, usually as a result of a higher concentration of Roma in certain areas, and the quality of teaching in these schools, which is worse than in other educational institutions. It can happen that the percentage of Roma students in these schools reaches or even exceeds 90 per cent of the total number of students. The quality of teaching tends to decrease constantly in the schools attended mostly by Roma pupils, the criteria are lowered, fewer non-Roma children enrol in these schools, and those who previously attended these schools increasingly abandon them.⁸²

Praxis filed a complaint with the Commissioner for the Protection of Equality against the segregation of Roma pupils in the Primary School Petar Tasić in Leskovac. Although the Commissioner concluded that the particular school did not discriminate against Romani children, she noted that there was *de facto* segregation and strongly recommended immediate actions aimed at resolving the problem of overrepresentation of Romani children compared to other children in the Primary School Petar Tasić.

In addition, Praxis filed a complaint with the Commissioner for the Protection of Equality against the segregation of Roma children in the Primary School Vuk Karadžić in Niš. The Primary School Vuk Karadžić is located in the vicinity of a Romani settlement whose population has increased over the last decade. Consequently, the number of

79 *Ibid*, pp. 28 and 29.

80 *Strategy for Improvement of the Status of Roma in the Republic of Serbia*, 2010, available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-SR-web-FINAL.pdf>.

81 The Roma living in Serbia constitute a group that is most affected by poverty and faces the greatest risk to remain poor. See the Poverty Reduction Strategy, available at: <http://www.prsp.gov.rs/dokumenta.jsp>.

82 Refer to the Praxis 2011 Report on Education, *op.cit.*, pp. 46 – 47.

Romani pupils enrolled in the school has also increased. At the time of filing the complaint, about 90% of pupils enrolled in school were Roma. The Commissioner issued an opinion pointing out that the majority of pupils in the Primary School Vuk Karadžić were undoubtedly Roma, but that the activities and actions of that school related to enrolment and the structure of pupils did not violate the provisions of the Law on Prohibition of Discrimination. In this case, the Commissioner issued a recommendation with measures for overcoming the problem of segregation.

Another aspect of the problem refers to the treatment of Roma pupils by teaching staff and the community. An example is the Primary School Jovan Jovanović Zmaj in Surdulica where only Roma children were forbidden to take home the textbooks provided by school free of charge; it was suggested to them that they could leave the class whenever they wanted; and they were placed only in the back benches and exclusively with other Roma children. In addition, Romani children were discouraged to attend the English language classes under the pretext that this subject matter was difficult for them. Praxis filed a complaint with the Commissioner for the Protection of Equality against this school and the school director as the responsible person. The Commissioner established the existence of indirect discrimination and a violation of Article 44 of the Law on Education relating to the prohibition of discrimination.

OTHER

Access to free legal aid

The Republic of Serbia still does not have a specific Law on Free Legal Aid, so the most vulnerable still do not have access to free legal aid without impediments. Article 67 of the Constitution of Serbia prescribes that: *“Everyone shall be guaranteed the right to legal assistance under conditions stipulated by the law. Legal assistance shall be provided by legal professionals, as an independent and autonomous service, and legal assistance offices established in the units of local self-government in accordance with the law. The law shall stipulate conditions for providing free legal assistance.”*

Despite this legal provision, only one-fourth of municipalities have established legal assistance offices and legal professionals are not available for the most disadvantaged (Roma, migrants, internally displaced persons, women victims of domestic violence, etc.). Because of this, the most vulnerable seek legal aid in NGOs, Legal Clinics and other providers of free legal aid which are not legal offices or legal professionals.

However, the Draft Law on Free Legal Aid⁸³ will exclude the poorest and the most socially vulnerable citizens from the system of free legal aid. According to this Draft Law, a beneficiary of legal aid also needs to be a beneficiary of social protection or the right to cash social assistance or the beneficiary of the right to child allowance. Considering also that a significant number of persons do not fulfil the conditions required to become a beneficiary of social protection system due to being legally invisible persons, stateless or internally displaced persons who cannot register the permanent residence in place where they live, Roma living in informal settlements, etc., this Law will not provide for a systemic solution to some of the burning issues of the citizens of Serbia.

RECOMMENDATIONS

General recommendations

- Organise trainings for judiciary and other public authorities working on social issues, primarily on housing, construction and urban development, on human rights standards enshrined in the Covenant;
- Ensure that courts take into consideration ratified international human rights instruments, in particular the Covenant, when ruling on instances of forced evictions and other social, economic and cultural rights;
- Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights⁸⁴ which enables the Committee on Economic, Social and Cultural Rights to receive individual complaints;

⁸³ Draft of the Law on Free Legal Aid, Serbia, available online in Serbian at: <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

⁸⁴ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 1966, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>.

Non-discrimination

- Ensure that the relevant provisions of anti-discrimination legislation are brought to the attention of Romani communities, and implement awareness-raising campaigns on non-discrimination;
- Regularly collect, publish and analyse data disaggregated by ethnicity on violence against Roma, including hate crimes, and their investigation and prosecution;
- Prosecute to the fullest extent of the law all perpetrators of violence and hate crimes against Roma;
- Ensure efficient implementation of the Law on Non-Contentious Procedure and Law on Permanent and Temporary Residence of Citizens;
- Delete Article 71k, paragraph 2 of the Law on Non-Contentious Procedure;
- Ensure registration of children at birth irrespective of the status of their parents;

Right to work

- Re-shape the active-employment programmes implemented by the State so as better to meet the needs of Roma, especially the needs of Romani women, and establish an efficient system to evaluate their impact;
- Introduce measures to enable and assist the transition of garbage collectors from the informal to formal economy;

Protection of family, mothers and children

- Define forced marriage as a specific criminal offence;
- Establish mechanisms at the national and local levels to monitor and prevent cases of forced marriage, arranged marriage, or betrothal of minors for the police, Centres for Social Work and other relevant institutions;
- Implement measures related to preventing and combating forced marriage, custom of “selling brides” and other harmful customary practices;

Right to an adequate standard of living

- Amend regulations in order to provide detailed procedures for the termination of lease agreements and extension of the agreements;
- Ensure full implementation of international human rights instruments in procedures related to the status of beneficiaries of social housing;
- In order to ensure legal security of tenure in social housing, map all social housing programmes and introduce minimal general legal standards that are to be applied in all different social housing programmes;
- Prohibit forced evictions and adopt a legal framework that establishes appropriate requirements and procedures to be followed prior, during and after the eviction in line with the Covenant and other international human rights standards;
- Map all informal Romani settlements throughout Serbia, primarily Belgrade, that are threatened with forced evictions based on the urban and spatial plans of the cities and municipalities, development projects or other undertakings of the government;
- Authorities at all levels should ensure dialogue and participation of the communities and civil society organisations in all procedures and phases of developing urban development programs that might result in forced evictions;
- Collect and disseminate data at national and local levels on the number of forced evictions, number of affected individuals and conditions under which the eviction took place;

Right to physical and mental health

- Harmonise existing by-laws with the Law on Health Insurance and enable unimpeded access to healthcare and health insurance for Roma in accordance with the Law on Health Care and the Law on Health Insurance;

Right to education

- Implement inclusive education as required and regulated by the relevant legislation;
- Implement the National Action Plan on Roma Education 2012-2014, by providing adequate human and financial resources, and especially its measures addressing the overrepresentation of Romani students in “special schools”;
- Ban segregation on ethnic grounds in Serbian schools, especially in schools for students with disabilities;
- Explicitly mandate school desegregation of Romani children as part of a wider process of implementing a fully inclusive educational system for all;