

PARALLEL REPORT

BY THE EUROPEAN ROMA RIGHTS CENTRE AND MINORITY RIGHTS CENTRE,
CONCERNING SERBIA

To the Human Rights Council, within its Universal Periodic Review, for
consideration at its 15th session (21 January to 1 February 2013).



**Centar za
prava manjina**

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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The European Roma Rights Centre (ERRC) and Minority Rights Center submit this parallel report to the Human Rights Council commenting on the second periodic review of Serbia. This report highlights some of the key human rights concerns for Roma in Serbia, based on permanent monitoring by the ERRC and MRC of the human rights situation of Roma in the country. The issues raised in this report implicate Serbia's obligations under the following human rights laws: International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Rights of the Child.

ANTI-DISCRIMINATION LAW

When Serbia was reviewed under the Universal Periodic Review in 2008, it was recommended that the Government adopt specific and comprehensive anti-discrimination laws to protect the rights of persons belonging to minorities, including Roma, including access to health care and education. Serbian's Anti-Discrimination Law was adopted on 26 March 2009 and entered into force on 7 April 2009. On 5 May 2010 Nevena Petrušić was elected to the position of Commissioner for Equality.¹

In 2010 the Commissioner for Equality recorded 124 complaints and 52 notices and initiatives received between May and December 2010. Sexual orientation was the most commonly reported ground of discrimination, along with discrimination on the basis of ethnicity. Most persons reporting ethnic discrimination were Romani, according to the Commissioner, who did not specify the numbers involved.² In 2011 the Commissioner for Equality recorded 335 complaints and 11 notices and initiatives. The most commonly reported ground of discrimination was ethnicity, which accounted for 72 complaints, 31.9% from Roma. The Commissioner notes that there is a poor understanding of discrimination and the competency of the Commissioner's office among the population in general, which the Government should take steps to address.³

ACCESS TO EDUCATION

Access to education for Romani children remains a huge barrier for Roma integration. The educational situation of Romani children is characterised by low enrolment rates, high dropout rates and the misplacement of students in special schools and classes offering substandard education.

The Law on the Basis of the Education System (LBES), adopted in 2009,⁴ provides the necessary legal framework for inclusion of Romani children in mainstream education. Article 6/3 of the LBES stipulates that persons with developmental difficulties and disabilities shall be entitled to education recognising their educational needs in the mainstream education system and shall be provided with additional individual or group assistance in a special preschool group or school. Article 69/2 establishes that primary schools are implementing the curriculum and may introduce individual educational plans (IEP) for pupils and adults with development difficulties, or an individual programme for learning Serbian language or the language of national minorities, for pupils who do not have knowledge of the language in which the curriculum is taught.⁵ Article 77/1 highlights that for socially deprived children, children with development difficulties, children with a disability or children with any other reason to need support, educational institutions should develop individual educational plans. Article 77/2 stipulates that the aim of the individual plan is to achieve optimal inclusion of the child in mainstream education and his/her independence amongst peers.

1 Regulation on Internal Organisation and Job Classification of the Commissioner for the Protection of Equality. Annual report of the Commissioner for Equality, March 2011, available in Serbian at: <http://www.ravnopravnost.gov.rs/files/Redovan%20godisnji%20izvestaji%202010.pdf>.

2 *Ibid.*

3 Commissioner for Equality, Annual Report, March 2012, available at: <http://www.ravnopravnost.gov.rs/lat/izvestaji.php?idKat=16>.

4 Serbia, *Law on the Basis of the Education System*, 2009, available at: <http://www.mpn.gov.rs/propisi/propis.php?id=9>.

5 *Ibid.*, Article 69/2.

A report of the Open Society Institute from 2010 demonstrated that Romani children are overrepresented in special education in special schools and special classes in mainstream schools.⁶ According to the data collected from 85% of special schools in the 2007–2008 academic year, the total number of students stood at 5,639, of whom nearly 30% were Romani. In the 2008–2009 academic year, the data showed an increase of the number of Romani students in special schools to 32%.

In October 2011, the ERRC requested information from the Ministry of Education and Science about the number of pupils attending school according to an IEP in school year 2010/2011. In their response, the Ministry noted that because the creation of the individual educational plan is a process it is hard to represent the number of students following such a plan in any given moment. The Ministry confirmed that some Romani pupils do follow an individual educational plan.⁷

On 9 March 2010, the Ministry of Education and Science sent every mainstream primary school in Serbia a document called “Information about the enrolment of children in the first grade of primary school.”⁸ The document stated that, according to the LBES, “every child of at least six and a half, maximum of seven and a half years of age, will be enrolled in the first grade of primary school. The school is required to enrol all children from the area.” This includes children with disabilities.

ERRC research indicates flaws in the implementation of the new law and specifically IEP measures to address the particular needs of students. During interviews, school officials reported that schools do not have the capacity to implement all measures foreseen in the new law, in part due to the failure of the Ministry to develop the requisite guidelines and instructions more than two years after the LBES was passed. One school psychologist stated:

Our experience with the individual educational plan is poor since the Ministry of Education and Science still has not created the Regulation on evaluation of the achievements of pupils that attend school according to an IEP. In the school year 2010/2011, 19 pupils started school here according to an IEP, but the local commission for IEP was only founded by the City of Belgrade in April 2011, so we are waiting for its evaluation which is necessary for continuing work according to the IEP. Only three staff members have passed the training to work with pupils according to an IEP, including myself, the Director and one teacher, which is not enough. I think that these results that we achieved are the highest possible results in the current circumstances, since our teachers are not trained to work with children with disabilities and difficulties.⁹

Poverty continues to be a significant barrier to the education of Romani children. Numerous Romani parents have reported to the ERRC that their children are not in school because they cannot afford the cost of supplies such as pencil, notebooks, clothing, etc.¹⁰ Some children never enter school for this reason, while others are forced to drop out after several years. Besides poverty, the housing situation of Romani families also continues to negatively impact the education of Romani children. One teacher in a primary school in Lebane reported to the ERRC that the school performance of Romani children suffers because of inadequate space or substandard conditions in their homes for homework and studying.¹¹

In June 2012, the Commissioner for Equality started litigation against a school and preschool that segregated Romani children into separate classes in separate buildings in the village of Vožegrnci-Blaževo, Novi Pazar Municipality.¹²

6 Open Society Institute, *Roma Children in Special Education in Serbia: Overrepresentation, Underachievement, and Impact on Life* (Budapest: 2010).

7 Written responses of the Ministry of Education and Science from 3 November 2011 and 21 October 2011.

8 Republika Srbija, Ministarstvo Prosvete, Informacija o upisu dece u prvi razred osnovne škole, 9 March 2010, (last accessed 16 July 2012) available at: <http://www.dils.gov.rs/documents/filesEducation/March%202010/Upis%20svakog%20deteta%20u%20skolu.pdf>.

9 ERRC interview with a psychologist at the Petar Kočić primary school. Zemun, Serbia: 10 November 2011.

10 ERRC interview with Ms A.A., Crvena Zvezda Romani settlement, Niš, 10 August 2009. ERRC interview with Ms H.J., Crvena Zvezda Romani settlement, Niš, 10 August 2009.

11 ERRC interview with Ms V.D., Lebane, 27 December 2009.

12 Pritužba D.z.r.d.m, br. 237/2011, IF/GC Beograd, del. Br. 84,20.01.2012. Poverenik za zaštitu ravnopravnosti, available at: <http://www.ravnopravnost.gov.rs/lat/nacionalnaPripadnost.php?idKat=20>.

ANTI-ROMA VIOLENCE AND HATE SPEECH

The Commissioner for Equality has noted that very frequently Roma are targeted in racially-motivated attacks which are often not investigated and punished properly.¹³ Anti-Roma hate speech is noted to be a widespread issue in Serbia and particular concern was expressed about the lack of public condemnation of anti-Roma statements. The ERRC monitors instances of violence against Roma in Serbia in media and NGO reports. Since 2008, the ERRC has monitored 24 reports of violence against Roma, including one incident involving a Molotov cocktail. It is not a comprehensive monitoring of attacks, but highlights some of the key incidents involving Roma.

The ERRC and MRC are aware of two such incidents which involved State actors:

- On 12 July 2011 a 15-year-old Romani boy from Novi Sad was severely beaten by police officers. The boy and his friends were at a local fair when two police officers started to assault him. The police handcuffed the boy, took him to a dark corner and continued to beat him. Another police officer found a child witness accusing the boy of stealing 200 Serbian dinars (around 2 EUR). The boy was put in a patrol car and taken to the police station, where the beating continued with other officers. The police did not notify the parents that their son had been taken to the station. Later on he was taken to the police inspector to whom he reported everything that had happened. On 1 August, 2011 ERRC and MRC submitted a criminal complaint to the Higher Public Prosecutor Office in Novi Sad against the six police officers involved, alleging in this case that they committed several criminal acts such as: Ill-treatment and Torture, Instigating National, Racial and Religious Hatred and Intolerance, Abuse of Office and Dereliction of Duty. At the same time, a criminal complaint was also filed against the police inspector who failed to take any action against the police officers after the child's report. In November 2011 Public Prosecutor rejected the claim due to lack of grounds to suspect that the police officers committed any crime. In December 2011 the ERRC and MRC submitted a request directly to the Higher Court in Novi Sad to open an investigation against the police officers. The case is still pending.
- In August 2008 in Kuršumlija, police brutally beat two Romani brothers while trying to force them to confess to a theft. According to reports, one of the officers involved pulled out a gun and pointed it at the younger brother.¹⁴

Anti-Roma violence also takes place in the aftermath of forced evictions. At least two attacks targeted Roma who had been forcibly evicted and relocated to new areas around Belgrade. On 1 May 2012, in the Jabucki Rit container settlement near Belgrade, a group of between 15 to 20 masked individuals attacked the settlement, shouting racist slogans including "Serbia for Serbs, Roma out of Serbia." They also drew a swastika on one of the metal containers to which the Roma had been relocated.¹⁵ On 8 April 2012, fourteen people were injured when residents of the Belgrade suburb of Resnik clashed with police on Sunday over the placement of temporary housing for a relocated Romani community. A dozen police officers, who were targeted with bricks and stones by disgruntled residents, were treated for minor injuries. Two demonstrators were hospitalised with head injuries. Four people were taken into custody. Residents established road blocks to prevent the establishment of 80 planned residential containers near their community. Police intervened to clear the roads. As a consequence of the disruptions, only eight of the residential containers were set up to accommodate the Roma who had been displaced from their previous homes.¹⁶

FORCED EVICTIONS

Serbia has failed to ensure the right to adequate housing and protection from forced evictions for Roma. From 2009 the ERRC has monitored an increase in forced evictions of Roma in Serbia, the vast majority of which are carried out in Belgrade. Since April 2009, the ERRC, MRC and other international and local NGOs have registered

¹³ Commissioner for Equality, Annual report, March 2011, available at: <http://www.ravnopravnost.gov.rs/lat/izvestaji.php?idKat=16>.

¹⁴ "Kuršumlija: Suspendovani policajci", 14 August 2008, available at: http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=08&dd=14&nav_id=313506.

¹⁵ "Uhapšen zbog upada u romsko naselje", *B92*, 1 May 2012, available at: http://www.b92.net/info/vesti/index.php?yyyy=2012&mm=05&dd=01&nav_category=16&nav_id=605434.

¹⁶ "Povredjeno četrnaest policajaca tokom nereda", *Blic*, 9 April 2012, available at: <http://english.blic.rs/News/8587/Fourteen-policemen-and-two-citizens-injured-during-protest>.

at least 17 cases of collective eviction of Roma in Belgrade. According to ERRC documentation and information from other organisations, during this period around 2,500 Roma have been forcibly evicted. Most of the forced evictions conducted in recent years are marked by the same human rights violations, notably the failure to provide evictees with adequate (or indeed any) alternative accommodation. The vast majority of the forced evictions took place in the absence of other safeguards required under international law such as genuine advance consultation with the people affected, failure to provide compensation or legal remedies, and failure to comply with both local and international due process requirements. Evictions also took place while legal action was pending.

The ERRC and MRC are supporting affected Roma to pursue litigation in several cases which highlight key concerns in this area:

- In April 2011, 17 predominantly Romani families (78 people, including 35 minors and four people over the age of 65) who lived in buildings owned by the City of Belgrade were informed by the municipal authorities that they were planning to move the community to metal containers. Some of the Roma had been living in this location for more than 40 years and most of them had contracts to live in the apartments indefinitely. The ERRC and MRC submitted a lawsuit to the Second Basic Court in Belgrade on behalf of five plaintiffs, asking the court to establish the right to provision of adequate accommodation in the event of eviction, with the proposal for adoption of interim measure, to prohibit the Municipality of Obrenovac from conducting the eviction before conclusion of the court procedure. The case is still pending.¹⁷
- In November 2010, local authorities in Sabac evicted and demolished the homes of a Romani family of nine, including one pregnant woman and eight children under nine years of age. The family was told to sign the decision on demolition under threat from police. The City of Sabac did not offer any form of alternative accommodation, leaving the family homeless. The ERRC and MRC filed a case which is pending before the First Basic Court in Belgrade.¹⁸
- On 7 October 2010, eight Romani families were evicted from a building in New Belgrade. At first, the municipal and city authorities refused to provide any alternative accommodation. After several days of pressure from NGOs and other institutions, six of the families were provided with accommodation in metal containers, each measuring 16m². The Municipality of New Belgrade executed the eviction upon the request of the Belgrade Land Development Public Agency (BLDA), which had provided the housing to the families in 2003 after they were forcibly evicted from an abandoned factory in Dorcol, Municipality of Stari Grad, Belgrade.¹⁹ The ERRC submitted a complaint against the eviction order as being unlawful, on behalf of four families. In two of these four cases, the Secretariat for Property Rights, Building and Urban Inspection (the second instance administrative body) brought a decision nullifying the eviction orders as illegal and returned DPLAH to renew the procedure and bring a new decision on this matter. However, the second instance decision came too late as the Roma were already evicted and their homes demolished.

The ERRC and MRC are also challenging discriminatory practices in the award of social housing. The criteria used by the City of Belgrade have a negative impact on Roma wishing to access social housing. On 19 October 2010 the groups submitted an initiative for assessing constitutionality and legality of the criteria to the Constitutional Court of Serbia.²⁰ The initiative challenged the following criteria – a maximum of five household members, history of formal work and importance of workplace which looks at educational attainment – as discriminatory against Roma. The ERRC and MRC argue that, considering the low level of education of Roma, and the fact that many work in informal sector and have larger households, they are de facto prevented from successfully applying for social apartments in Belgrade. In November 2010 the City of Belgrade eliminated the “importance of work place” criteria. In March 2012 the Constitutional Court dismissed the initiative. In June 2012 the ERRC and MRC submitted a request to the President of the Constitutional Court, arguing that the conclusion on dismissal has substantial errors, since it does not refer to the disputed articles.²¹

17 *M.I. vs Obrenovac Municipality* (P-1897/11), *D.L. vs Obrenovac Municipality* (P-1899/11), *Z.M. vs Obrenovac Municipality* (P-1896/11), *G.V. vs Obrenovac Municipality* (P-1900/11), *B.N. vs Obrenovac Municipality* (P-1898/11) Second Basic Court in Belgrade/.

18 *Nikolic vs Rep. of Serbia and City of Sabac*, 35P-3205/11, First Basic Court in Belgrade.

19 “Romi iz Vojvodjanske iseljenji buldozerima”, E-novine, 7 October, 2010, available at: <http://www.e-novine.com/drustvo/41226-Romi-Vojvoanske-ulice-iseljeni-buldozerima.html>.

20 Decision on conditions and manner of distributing apartments built based on the Project of construction of 1.100 apartments in Belgrade (Official Gazette of City of Belgrade No. 20/03, 9/04, 11/05, 4/07, 29/07, 6/10, 16/10 and 37/10).

21 Initiative for initiating procedure for assessing constitutionality and legality of the Decision on conditions and manner of distributing apartments built based on the Project of construction of 1.100 apartments in Belgrade (Official Gazette of City of Belgrade No. 20/03, 9/04, 11/05, 4/07, 29/07, 6/10, 16/10 and 37/10), Constitutional Court of Rep. of Serbia, IUo – 428/03.

MIGRATION AND ASYLUM

Visa requirements for Schengen travel were lifted for citizens of Serbia, Macedonia and Montenegro in December 2009. According to the information from the media, over the course of the following 12 months, 17,000 people from Serbia requested asylum in the EU, mostly in Sweden, Belgium and Germany.

At beginning of May 2011, Serbia's Interior Minister Ivica Dačić announced more rigorous control of borders, tourist agencies and transport companies. He said that the measures were aimed at preventing fake asylum seekers from going into the EU. He also stated that a series of talks would be held with Roma and ethnic Albanians from southern Serbia, who were believed to be most frequently "abusing" the visa liberalisation with the EU, in an effort to bring down the number of cases. Minister Dačić reported that border police would introduce more rigorous controls, noting that "no one from those communities will be able to leave the country if they do not have a return ticket, means to support their stay and cannot state the reason for the journey." Minister Dačić announced draft legal amendments that would allow the option for those who jeopardise the non-visa regime to be deprived of their passports for a period of up to two years and would criminalise the organisation and aiding of illegal migration.²² As of May 2012, an amendment to the Criminal Code was pending, introducing the crime, "Enabling/facilitating abuses to exercise rights in foreign country", as:

Whoever, with the intent to obtain for himself or another any benefit, performs or arranges transportation, transfer, reception, accommodation, hides or otherwise provides that a citizen of Serbia may misrepresent that there is a threat to his human rights and freedoms in a foreign country and request the acquisition of political, social, economic or other rights, shall be punished with imprisonment from three months to three years.²³

According to media reports and ERRC documentation, these measures have resulted in the discriminatory treatment of Roma on Serbian borders. Roma from other countries in the region have also faced problems at Serbia's borders in entering and crossing Serbia. A case from 2011 illustrates this situation. On 17 October 2010, R.D., a Romani man from Macedonia was not allowed to enter Serbia on his way to Germany to visit family. R.D. travelled by van together with 12-13 other Macedonian nationals from Stip, all of Romani ethnicity and all of whom were denied entry to Serbia. The Preševo border police did not review each case individually; they collectively prohibited the whole group of Roma from entering the country although they had first stamped their passports and later invalidated the entry stamps. Witnesses said that the border police explained that they "were ordered not to let groups of Roma travel together across the border." The ERRC and MRC jointly filed a case against the Ministry of Interior, claiming discrimination.²⁴ The case is pending before the First Basic Court in Belgrade.

RECOMMENDATIONS

The ERRC and MRC submit the following recommendations to Serbian authorities:

- 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;
- Make segregation on the basis of ethnicity illegal in Serbia and explicitly mandate school desegregation of Romani children as part of a wider process of implementing a fully inclusive educational system for all;
- Adopt a concrete plan and timeline commencing in 2012 with clear annual targets to eliminate school segregation and secure the full integration of all Romani children and children with an actual or perceived disability into an inclusive education setting within five years;

²² Rade Ranković, Pooštravanje zakona o azilu, Glas Amerike, 10 May 2011, available at: <http://www.voanews.com/serbian/news/glas-amerike-serbia-law-against-asylum-seekers-05-10-2011-121580899.html>.

²³ Predlog Zakona o izmenama i dopunama Krivičnog Zakonika, član 21 Predloga, Proposal for amendment of Criminal Code of Republic of Serbia, article 21 of the Proposal, last accessed on 16 July 2012, available at: <http://www.zakon.co.rs/predlog-zakona-o-izmenama-i-dopunama-krivicnog-zakonika.html>. Unofficial translation by the ERRC.

²⁴ *Demirov vs Republic of Serbia*, 73P-7556/11, First Basic Court in Belgrade.

- Regularly collect, publish and analyse data disaggregated by ethnicity on violence against Roma, including hate crimes, and their investigation and prosecution, as well as access to education and housing;
- Ensure full assistance, protection and compensation to the victims of violence;
- Prosecute to the fullest extent of the law all perpetrators of violence and hate crimes against Roma;
- Ensure respect for due process in the conduct of evictions of Romani communities;
- Ensure the provision of adequate alternative accommodation for forcibly evicted Roma – adopt a policy that metal containers do not constitute adequate accommodation in any circumstance;
- Provide free legal aid, advice and representation related to housing rights to ensure that individuals can protect and defend their rights or seek effective remedy, including judicial redress;
- Provide new, unmarked, travel documentation to the individuals affected by border controls;
- Eliminate any punitive laws, policies and practices that limit the right to free movement;
- Investigate and stop any official or informal measures that directly or indirectly discriminate against Roma crossing the border to travel outside of the country; and
- Review any official policies for non-discrimination and compliance with international human rights standards.