

Information submitted to

**THE COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION**

on the occasion of the second to fifth periodic report of Serbia due
in 2014

October 2017, Belgrade

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Submitting Organizations

Jednakost (Equality), former Regional Centre for Minorities, (contact details: Serbia, 1100 Beograd, Višnjićeva 11, local 3, tel: (+38111) 4087039, fax: (+38111) 3286235, info@jednakost.org, www.jednakost.org) strives against all forms of discrimination, rights violation and exclusion of minorities and marginalized groups and advocates for more just society founded on principles of equality, solidarity and respect of human dignity.

Network of the Committees for Human Rights in Serbia - CHRIS (contact details: Serbia, 18000 Nis, Obrenoviceva bb, TPC "Kalca", lamela B, II floor, local 42, tel: (+381 18) 526232, 526234, fax: (+381 18) 526233, e-mail: office@chris-network.org, www.chris-network.org). CHRIS Network was founded on 1 September 2000 as a unique human rights advocacy initiative in Serbia, formed first and foremost to provide free legal aid to citizens whose human rights have been violated. Today, the Network's programmes are carried out across Serbia by its five members: Committee for Human Rights Negotin, Civic Forum Novi Pazar, Committee for Human Rights Niš, Committee for Human Rights Valjevo and Committee for Human Rights Bujanovac.

General Remarks

The submitting organizations have opted to address in this reports obstacles that Roma specifically encounter attaining equality and fulfilling their rights while acknowledging with a grave concern various forms of racial discrimination encountered by other minorities particularly Albanians, Bosnjaks, refugees and migrants.

This report is based on violations approach which identifies specific cases of violation of treaty-protected rights as documented through our field work and cooperation with local human and minority rights organizations and desktop analysis of the existing legislation, strategic documents and judicial and para-judicial practice. In addition, we gave a serious consideration to the state report submitted in July 2016 especially in regard to the information on the implementation of the recommendations of the Committee from the Concluding observations issued in April 2011 (CERD/C/SRB/CO/1).

Article 3: Prevention and prohibition of racial segregation

Racial segregation of Roma in both housing and education remains prevalent.

Housing

While existing segregated Roma settlements reflect a historical social (and spatial) exclusion of Roma and demand willingness, time and resources to develop inclusive, ethnically dispersive housing models, what is particularly worrisome are newly established segregated settlements of walling-off of the existing settlements.

As the State reports mentions¹ since 2009 several informal settlements have been displaced in Belgrade providing housing for 303 relocated Roma families. While claiming that they have improved overall quality of life they failed to mention that the resettled families have been placed in Roma-only settlements established on the outskirts of the city. Metal containers (or mobile housing units as called by the city) which do not meet international standards on adequate housing were to accommodate a family within 14.8 m². Most have over the years been resettled to social housing in Jabucki Rit, Orlovsko naselje and Mislodjin, secluded neighborhoods with no or very limited access to employment opportunities and access to other social services.

The most recent example of walling off Roma settlement was building of a concrete wall around Romani settlement Marko Orlović in Kruševac in November 2016.² The length of the wall is 150 meters; the height of the wall is 2 meters. The authorities of city of Kruševac claimed that the only reason for placing the wall is so-called 'sound barrier'. The establishment of the wall caused huge public outrage and reaction of NGOs. The wall has as a consequence the ghettoisation as manifestation of segregation and curtailed access to services such as ambulance. Both the Ombudsperson and the Commissioner for the Protection of Equality have reacted and In September 2017 a court case was initiated by the Commissioner.

Education

Segregation in education exists in two forms: "special schools" for children with mental disability and Roma-only school and classes. The Committee urges the state in its concluding observations³ to address de facto public school segregation, yet the state omit to provide with any information on school segregation.⁴

A significant number of Roma children are still enrolled in the "special schools" for children with mental disability on no justifiable grounds. According to the Strategy for Social Inclusion of Roma from 2016 the share of Roma children in special education schools is about 30% of children in special schools while their representation in the general population is about 3-4%. In addition, there is still a very widely implemented practice of transferring Roma children from ordinary schools to special education schools. Finally, the "special schools" still exist where 70% of pupils are from the Roma community.

Roma-only school and classes are not that frequent but what causes concern is that there is a trend of its increase in the couple of years while there are no preventive measures in place, or desegregation measures for schools where segregation already occurred, nor measures to determine individual responsibility for the resulting state. An increased inclusion of Roma in education in some cases leads to the formation of segregated preschool groups, and schools/home classes where the majority are Roma, particularly in schools near Roma settlements. In cases like this, segregation is increased by a tendency among other parents to avoid to have their children educated in "Roma schools". Problems the segregated schools with large numbers of Roma have to cope with are: poor working conditions, low quality of

¹ State report, Second to fifth periodic reports of States parties due in 2014, CERD/C/SRB/2-5, para 65.

² Online, available at: <http://rs.n1info.com/a206917/Vesti/Vesti/Zid-okoromskog-naselja-u-Krusevcu.html>

³ Concluding observation of the CERD, CERD/C/SRB/CO/1, para. 15

⁴ Except when referring to the situation of Roma in Kosovo and report by the European Centre for Minority Issues Kosovo from January 2013 which documented segregation in three Kosovo schools.

educational work, other students leaving the school, low status the teaching staff in these schools enjoy among their colleagues and members of the local community, lack of support from other schools and local governments, all of which significantly reduces the quality of education for Roma children.⁵

Article 4: Criminal offences related to the racial discrimination and prohibition of organizations inciting racial discrimination and promoting discrimination

Racially motivated violence and hate speech against Roma are on-going problems in Serbia. 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 Law on Amendments to the Criminal Code, which was adopted in December 2012, introduced the institution of hate crime. Pursuant to Article 54a of the Law, if a criminal act was committed due to hatred on the basis of racial and religious, national or ethnic affiliation, sex, sexual orientation or gender identity of another person, the court shall deem such a circumstance aggravating unless it is stipulated as an attribute of the criminal act. Since 2012 to this day not a single racially motivated act of violence against Roma was qualified as such.

In the survey⁶ which aimed to examine if and to which extent the public prosecutors are applying Article 54a in hate crime cases conducted by the Regional Centre for Minorities in the late 2015 out of 83 requests sent to the district and county public prosecutors' offices (based to the right to access to information of public importance), 77 responded; seven district and county public prosecutors' offices replied that they do not possess the requested information or do not keep separate records on the use of Article 54a in charges or indictments when proposing sentence; 70 district and county public prosecutors' office didn't encounter any case since the introduction of Article 54a where this regulation could be applied.

The Committee requests that the State party provide, in its next periodic report, information on the enforcement and implementation of national legislation including statistics on and analysis of prosecutions launched and penalties imposed, in cases of acts prohibited under article 4 of the Convention⁷ but the state report omits to provide any data on application of Article 54a.

Article 5 (d) (iii): The right to nationality

Republic of Serbia had implemented a number of measures for the enhanced access to identity documents for Roma minority (birth registration and the ID cards). In 2012, with the adoption of the Amendments to the Law on Non Contentious Procedure⁸, Serbia had improved legal

⁵ Strategy for Social Exclusion of Roma Men and Women from 2016 to 2025, page 25, available at: <https://www.minrzs.gov.rs/>

⁶ Overcoming Inequality: Combating Discrimination and Hate Crimes Against Roma in Serbia, Regional Centre for Minorities, Belgrade 2015, page 15

⁷ Concluding observation of the CERD, CERD/C/SRB/CO/1, para. 13

⁸ Official Gazette of RS, no. 85/2012

framework and provided legally invisible Roma with the additional and flexible procedure that could be initiated in cases where they cannot be registered in administrative procedure. However, these procedures are often lengthy⁹ and even after the Court determine the date and time of a birth, Roma still need to initiate additional procedure – the one for the determination of citizenship. This precludes a number of Roma from accessing a number of human rights, even though they are registered in birth registry books (but not in citizenship registry). Finally, there is still no legally binding instrument that would provide Roma children born from undocumented mother to be registered in birth registry books immediately after the birth.

Article 5 (e) (iii): The right to housing

Access to housing remains one of the most pressing issues Roma are facing in Serbia. There is a huge number of informal Roma settlements with dire living conditions and with no or little support of the local or central governments. Most Roma living in informal settlements are in a constant threat from forced evictions. Furthermore, the social housing stock is not sufficient for the housing crisis Serbia has to deal with.¹⁰

Even though the new Law on Housing and Maintenance of Buildings¹¹ introduced the procedure for collective resettlements (cases of resettlements of informal Roma settlements), this law is still not in line with international human rights standards.¹² There are several reasons for that. First of all, the law does not guarantee that the forced evictions are conducted solely as a last resort, in cases when all other alternatives are not feasible. Furthermore, the law does not provide affected communities with sufficient opportunities for consultations with the authorities, nor ensures that alternative accommodation, in cases when eviction needs to be conducted, is of the same quality as social housing. This opens up the space for the authorities to provide Roma in these cases with the poor accommodation, segregated and isolated from the rest of the population, as it is the case in Belgrade, after forced evictions of Roma settlements ‘Gazela’ and ‘Belvil’.

Additionally, in some cases Roma living in informal settlements are being subjected to the lack of infrastructure and basic services, such as electricity and access to potable water and sanitation, on a discriminatory basis. For example, on 22 August 2016, Romani settlement ‘Crvena Zvezda’ in South-eastern Serbia City of Niš which comprises of 100 dwellings was cut off from electricity due to a debt to the electricity company. The settlement exists from 1960 and it has substandard infrastructure. The electricity was provided by two collective electrical meters. Previously the electricity was disconnected in 2014, for four months. As a result of the 2014 disconnection, the Serbian Commissioner for the Protection of Equality issued a recommendation on the case, deeming the disconnection discriminatory, and recommending that electricity be provided to the inhabitants of the settlement “on an equal basis with other

⁹ Praxis, Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of Rights to Citizenship and Registration of Permanent Residence, Belgrade, December 2016, p. 2.

¹⁰ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo, 26 February 2016, UN Doc A/HRC/31/54/Add.2

¹¹ Official Gazette of RS, no. 104/2016

¹² Amnesty International, Proposed Law on Housing Would Violate Human Rights, <http://www.minoritycentre.org/news/serbia-proposed-law-housing-would-violate-human-rights>

persons in Serbia”, i.e. with individual meters and individualized billing. The residents of the settlement claimed that both electricity disconnections are part of abusive pressure to force the community to abandon the settlement since part of the land where the settlement is placed belongs to the State, part is owned by private company. NGOs planned a protest called ‘Light up Zvezda’¹³ as a result of the fact that the settlement is without electricity. The settlement got the electricity on 26 December 2016 as a result of negotiations between the representatives of Roma and the electricity company.¹⁴

Furthermore, it has been noted that in a number of cases, local non-Roma residents protest against the resettlements where Roma would be settled as their neighbours. However, almost none of these cases was prosecuted. Residents of village Prekodolce, South Serbia protested on November 3rd 2016 against the beginning of construction of new houses for nine Romani families whose houses were damaged during the floods in May 2014. The families are waiting their new homes in containers as temporary accommodation. The residents are protesting against them claiming that the land belongs to the residents and that these people are bad and problematic people coming to live here¹⁵. The Commissioner refused to conduct the mediation between host and resettled Roma upon the complaint filed by NGO Jednakost (Equality).

Same type of discrimination against Roma by protesting against construction of new homes for Romani families who lost their homes during the May 2014 floods were in two Belgrade Municipalities, Lazarevac and Obrenovac. 37 Romani families (21 family in Obrenovac and 16 in Lazarevac) among them lot of elderly and children still don’t have their new homes being undesirable as neighbors. The beginning of the construction was delayed for five times.¹⁶ Thirty residents of Obrenovac and 200 members of the association of citizens “Šljivice” protested for the same reason as in Lazarevac. After series of meetings with the president of Obrenovac Municipality, finally the construction started in late December 2015. In Lazarevac the construction started in March 2017¹⁷.

Article 5 (e) (iv): The right to public health, medical care, social security and social services

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.

Although the beneficiaries of financial social assistance already encounter numerous problems, the Law on Social Protection¹⁸ (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

¹³ Online, available at: <http://chris-network.org/2016/12/press-konferencija-osvetlimo-zvezdu/>

¹⁴ Online, available at: <https://www.youtube.com/watch?v=7yJyvDpUYZk>

¹⁵ Online, available at: <http://rs.n1info.com/a205734/Vesti/Vesti/Mestani-sprecavaju-izgradnju-kuca-za-ugrozene-porodice.html>

¹⁶ Online, available at: <http://www.gemrtv.rs/?vesti2015%2Foktobar%2Flazarevac-mesna-zajednica-gornji-grad-miran-protest-mestana-zbog-izgradnje-stambenog-objekta.html>

¹⁷ Online, available at: <http://www.autonomija.info/rasizam-dovodi-do-humanitarne-katastrofe.html>

¹⁸ Serbia, Law on Social Protection (“Official Gazette RS” no. 24/2011), available at: http://paragraf.rs/propisi/zakon_o_socijalnoj_zastiti.html

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.¹⁹

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.

The emergency protection measure for the most vulnerable citizens²⁰ 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 assistance²¹. 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.

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 social housing is 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 Tax²² on the grounds that social housing tenants are liable to pay taxes because they

¹⁹ 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

²⁰ *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.

²¹ 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".

²² 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.

have the status of leaseholder of an apartment or building in accordance with the law governing housing, for a period exceeding one year or indefinitely²³.

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". In addition, the Committee encouraged the Republic of Serbia to consider developing social housing programmes for Roma.²⁴

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 state report mentions that The National Employment Service (NES) has been advertising special calls for bids since 2010 for granting subsidies for self-employment of unemployed persons of the Roma ethnicity and calls for granting subsidies to employers for opening new positions for employment of unemployed persons of the Roma ethnicity. Yet, according to the Strategy for social inclusion of Roma Through a subsidy for hiring unemployed persons from the category of less employable, 50 Roma (28 Roma women) were employed, accounting for only 2.8% of the total number of subsidised employments. This reveals severe prejudices employers have towards Roma which present an unavoidable obstacle for Roma employment.²⁵

Recommendations

Article 3:

- Implement inclusive education as required and regulated by the relevant legislation;
- 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;

²³ 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.

²⁴ Concluding observation of the CERD, CERD/C/SRB/CO/1, para. 14

²⁵ Strategy for Social Exclusion of Roma Men and Women from 2016 to 2025, page 44, available at: <https://www.minrzs.gov.rs/>

Article 4:

- 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;

Article 5:

- Ensure registration of children at birth irrespective of the status of their parents;
- Immediately provide Roma registered in birth registry books with access to citizenship and residence registration;
- Provide Roma in informal settlements with access to basic infrastructure and services, on non-discriminatory basis and introduce additional measures and activities aimed at improving housing situation in informal Roma settlements in Serbia;
- Provide Roma with the security of tenure in all cases, particularly those related to Roma in informal settlements;
- Ensure that evictions of informal Roma settlements are not conducted before all other alternatives are being exhausted and the affected community consulted and provided with alternative;
- Ensure that sufficient social housing is provided for particularly vulnerable Roma from informal settlements, Roma refugees and internally displaced from Kosovo;
- Ensure that social housing is affordable for vulnerable population, particularly Roma from informal settlements, Roma refugees and internally displaced persons.