

WRITTEN COMMENTS

of the European Roma Rights Centre, Concerning Macedonia

For Consideration by the Committee on Economic, Social and Cultural Rights
at its 56th Session (Pre-session working group 12-16 October 2015)



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

This list of critical issues with background information is presented by the European Roma Rights Centre (ERRC)¹ for consideration by the Committee on Economic, Social and Cultural Rights at its 56th Session (Pre-session working group 12 Oct- 16 Oct). It contains country-specific information on issues affecting Roma in the Former Yugoslav Republic of Macedonia (hereinafter “Macedonia”) that raises questions under the **International Covenant on Economic, Social and Cultural Rights** (hereinafter “the ICESCR” or “the Covenant”).

Macedonia has 2,022,547 inhabitants, of whom 53,879 (2.66%) have declared themselves to be Roma.² However, the available unofficial estimate for Roma is 197,000 (9.56%).³ Roma live in 75 out of 85 municipalities across the country.⁴ According to official data, the majority of Roma live in the capital, Skopje (23,475), with 56% of Skopje’s Roma concentrated in the municipality of Šuto Orizari (13,342).⁵

MAXIMUM USE OF AVAILABLE RESOURCES (ARTICLE 2.1)

As set out below, significant disparities between Roma and the majority population persist in the enjoyment of the rights enshrined in the Covenant, particularly social protection, an adequate standard of living (housing and water), and education.

Article 2(1) binds each State party to take the necessary steps “to the maximum of its available resources”. The Committee has interpreted⁶ this to mean that states should face particular scrutiny when failing to dedicate resources to meet the essential needs of vulnerable members of society in relation to food and water, primary health care, housing and education. Efforts to secure a basic level of enjoyment of rights under the Covenant should not be assessed in a vacuum, but rather alongside competing government spending. In this respect, we draw the Committee’s attention to the Skopje 2014 scheme to upgrade government buildings and public space which reportedly cost approximately 560 million Euro⁷, some 5% of Macedonia’s GDP.

Moreover, we ask the Committee to question whether the state is making adequate use of available EU funds. An evaluation by the European Commission⁸ of the impact of EU funds directed to support Roma communities in the Western Balkan countries, including Macedonia, concludes that “*funding was not reaching Roma*”. The report finds that with the exception of Serbia, less than 1% of funding went towards projects for Roma communities despite their representing on average 5.5% of the population in the region (9.56% in Macedonia) and these communities’ severe needs. Similarly, critics question the overall design of EU-funded programmes aimed at ethnic minorities, in particular the failure to identify Roma as a specific target group in various projects, to direct sufficient resources to the most socially deprived minorities, and to ensure the inclusion of the Roma population.⁹

1 The European Roma Rights Centre is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. See: www.errc.org.

2 Census of Population, Households and Dwellings in the Republic of Macedonia, 2002, available at: http://www.stat.gov.mk/pdf/kniga_13.pdf.

3 Council of Europe Estimates on Roma population in European countries, updated 2 July 2012, available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680088ea9>.

4 Statistical Yearbook of the Republic of Macedonia, 2013, available at: <http://www.stat.gov.mk/Publikacii/PDFGodisnik2013/03-Naselenie-Population.pdf>.

5 *Ibid.*

6 In its GC no. 3 on the nature of states’ obligations (art. 2.1).

7 See: <http://www.balkaninsight.com/en/article/true-cost-of-skopje-2014-revealed>.

8 Available at: http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/2015/20150806-thematic-evaluation-on-ipa-support-to-roma-communities.zip.

9 Available at: http://www.epi.org.mk/docs/use_of_eu_funds_in_rm_en.pdf.

NON-DISCRIMINATION PRINCIPLES UNDER THE GENERAL PROVISIONS OF THE COVENANT (ARTICLE 2.2.)

The Law for the Prevention of and Protection against Discrimination (LPPD) was adopted on 8 February 2010, and came into force in January 2011.¹⁰ It applies, *inter alia*, to the fields of labour and labour relations, education, social security, including the area of social protection, pension and disability insurance, health insurance and health protection, housing, public information and media, access to goods and services, membership and activity in unions, and culture, all of which fall within or overlap with the scope of rights guaranteed by the Covenant. The LPPD is not in compliance with the EU law standards to which Macedonia is expected, as a candidate country, to adhere, nor with international standards on anti-discrimination law. The points of contention include the absence of an explicit legal framework or established practice allowing the use of statistics as evidence of indirect discrimination and the failure to define and prohibit segregation as a special form of discrimination.¹¹

The Commission for Protection against Discrimination (CPD) is an independent body comprised of seven members selected by Parliament and which became functional in January 2011.¹² The CPD does not have a mandate to impose sanctions, but only to issue opinions and recommendations. This is not in full conformity with your Committee's General Comment no.20 on non-discrimination: "*These institutions should also be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition and public apologies, and State parties should ensure that these measures are effectively implemented. Domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways which facilitate and promote the full protection of economic, social and cultural rights.*"

If the discriminating party refuses to comply with the CPD's recommendation, the CPD may initiate proceedings before the relevant bodies (Article 28 LPPD), such as misdemeanour proceedings or a criminal complaint.

The independence and expertise of the members of the Commission are questionable, considering that some of the members were until recently or are still employed in state institutions, and not all of them have experience of working on human rights issues.¹³ The European Commission 2013 report on Macedonia noted that "*concerns remain about the Commission's independence, given its persistent lack of financial and human resources.*"¹⁴

Your Committee emphasises in General Comment no.20¹⁵ that institutions such as the CPD should be independent and impartial.

THE RIGHT TO SOCIAL SECURITY (ARTICLE 9)

On 6 March 2015, the president of the Social Democratic Union of Macedonia presented recorded conversations¹⁶ to the press which suggest that the former Minister for the Interior, Gordana Jankulovska and other high-level officials could be involved in unlawfully manipulating Roma by making promises in relation to their social assistance benefits in order to obtain their vote for a particular political party.¹⁷

10 Law on Prevention and Protection from Discrimination („Службен весник на Република Македонија“ бр.50/2010), available at: http://nkt.mtp.gov.mk/nkt/content/Documents/anti_discrimination_law_mkd_2010.pdf.

11 ERRC submission to UN CEDAW on Macedonia, January 2013, available at: <http://www.errc.org/cms/upload/file/macedoniacedaw-submission-30-january-2013.pdf>.

12 *SETimes*, "Macedonians get new resource against discrimination", 19 January 2011, available at: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/01/19/feature-03.

13 For an assessment see European Network of Legal Experts in the Non-Discrimination Field, "FYR Macedonia - The Assembly of the Republic of Macedonia appointed the members of the first Commission for Protection against Discrimination", available at: http://www.non-discrimination.net/content/media/MK-7-Members_of_first_equality_body_appointed.pdf (last visit); for the biographies see the website of the Commission for Protection against Discrimination available at: <http://www.kzd.mk/mk/za-kzd/clenovi>.

14 European Commission, *Commission Staff Working Paper – the Former Yugoslav Republic of Macedonia Progress Report 2013*, 16 October 2013, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf.

15 On Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights).

16 Zoran Zaev at the press conference of the Social Democratic Union of Macedonia, 06 March 2015, available at: <http://www.sdsm.org.mk/default.aspx?mId=55&agId=5&articleId=11779>.

17 ERRC letter of concern to the Public Prosecutor's Office of the Republic of Macedonia, 26 March 2015, available at: <http://www.errc.org/cms/upload/file/macedonia-letter-to-macedonian-public-prosecutor-26-march-2015.pdf>.

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING (ARTICLE 11)

FORCED EVICTIONS

The Committee on Economic, Social and Cultural Rights, in its concluding observations concerning the Republic of Macedonia, stated that it is deeply concerned about the living conditions of Roma, their lack of tenure to the places where they live, and their vulnerability to forced evictions. The Committee also urged the Macedonian authorities to ensure improvements through legalisation of informal settlements and improving access to public utilities and other services.

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

Recently, the ERRC became aware of a Roma neighbourhood in Kavadarci called Teneke Mahala which is at risk of eviction and removal to inadequate, unacceptable accommodation in containers in an unknown area. The neighbourhood consists of 18 houses, all of which are Roma, originally established in 1976. The families live in substandard living conditions, lacking electricity, sewer systems and adequate, accessible water supplies. According to information obtained by the ERRC, no attempts have been made by the authorities to date to improve the living conditions of the residents of Teneke Mahala. In June 2015, in response to a racially-charged petition from neighbours, the local authorities decided to evict the neighbourhood. Money was set aside from the municipal budget to purchase “second-hand containers” for re-housing the affected Roma community. The decision specified that containers would be available for eight families of “Roma nationality” who are currently residing in the informal settlement at Teneke Mahala but the ERRC does not know how these families will be selected from those facing eviction. In any event, the majority of the families will most likely become homeless. The families have not yet been given eviction notices and there have been no consultations with the affected communities. ERRC filed a discrimination complaint to the Commission for Protection against Discrimination against the authorities of the municipality of Kavadarci. The ERRC views the municipality’s action as a form of racial harassment aimed at ethnically cleansing the town.

The actions of the municipality in the outlined case are in direct violation of the state parties’ duty to pursue non-discriminatory practices, policies and legislation in line with its obligations under the ICESCR, as well as with above the aforementioned CESCR’s concluding observations of the CESCR.

THE RIGHT TO WATER AS PART OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING (ARTICLE 11) AND THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ARTICLE 12)

Since 2014 the ERRC has been conducting research in seven European countries including Macedonia.¹⁹ The ERRC has collected evidence on access to safe and affordable drinking water and sanitation in Romani communities. The research focused on analysing problems with accessibility, affordability and quality of drinking water resources and sanitation in Romani neighbourhoods and settlements and examining potential cases of ethnic discrimination in the distribution and availability of these public utilities.

The ERRC mapped the legal and policy frameworks and conducted field research in 93 Romani neighbourhoods and settlements, including 12 in Macedonia. The ERRC conducted visits and interviews with local Roma residents, Roma activists, public authorities, water providers, water experts, civil society and social care workers. In each country we selected a sample for empirical research according to the geographic, population-size, segregation-level, and land- and water-network-ownership criteria. The selected places included communities

¹⁸ ERRC “Standards do not apply”, December 2010, available at: <http://www.errc.org/cms/upload/file/standards-do-not-apply-01-december-2010.pdf>.

¹⁹ The others are Slovakia, Hungary, France, Montenegro, Albania, and Moldova.

that were: (1) integrated, at outskirts of towns, or entirely segregated; (2) in different regions; (3) of varying sizes; (4) covered by public and public-private water providers; (5) formal and informal; and (6) with different forms of tenancy (state and private).

The ERRC research revealed that Roma suffer disproportionately from the failures of public authorities to secure access to water and sanitation. Roma, especially those living at the outskirts of towns or in completely segregated settlements, are often treated differently by local authorities when it comes to the provision of these public utilities.²⁰

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

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

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

THE RIGHT TO EDUCATION (ARTICLE 13)

According to a research report compiled by the CPD, national and municipal level²¹, the percentage of Roma children in Macedonia who are categorised as persons with psychological disabilities is disproportionately high. According to the report, this results from a variety of factors, including lack of institutional capacities and inter-institutional cooperation, procedural and legislative omissions, as well as lack of awareness among the parents and officials.²²

The report concludes, *inter alia*, that in the period from 2010-2014, there was a high percentage of segregated Roma children both in the regular schools (as part of regular and special classes) and in special schools; according to the report, these practices amount to indirect, systemic and persistent discrimination. This discrimination does not end with the educational process; it impacts the further development of the person as well. There is of course an impact on the prospects of these segregated Roma pupils in the labour market: due to their reduced and narrowed qualifications, these persons are not competitive. They receive lower wages and are at a higher risk of job instability.²³

20 A map showing where the ERRC carried out its research is available at: <https://www.google.com/maps/d/edit?mid=zPYT6ATnCdMQkrFMQRruSZco&usp=sharing>

21 The designed sample is a structured sample, i.e. it includes the municipalities which have registered a child from the Roma ethnic community. The total percentage of segregation does not reflect the situation on national level, because the municipalities that did not fill out the questionnaires are not processed (filled out by 57 municipalities) as well as the municipalities where there are no categorized Roma children.

22 Commission for Protection Against Discrimination "Segregation of Roma children in the education process", November 2014, available at: <http://www.kzd.mk/mk/dokumenti/2014>.

23 *Ibid.*

Suggested questions to the Government:

Maximum use of resources:

- Is the government taking steps to the maximum of its available resources with a view to progressively achieve the rights in the Covenant?
- Is civil society, particularly Roma civil society, meaningfully involved in determining the effective use of available resources to secure the enjoyment of the rights guaranteed by the Covenant?
- What mechanisms are in place or envisaged to ensure that EU funds reach Roma communities, and actively foster inclusion rather than entrenching existing patterns of segregation?

Non-discrimination

- How does the government plan to ensure the independence and impartiality of the CPD?
- What measures are envisaged to strengthen the effectiveness of the CPD in combating discrimination? In particular, are there plans to give the CPD the power to impose sanctions, award compensation and impose other appropriate remedies in line with General Comment no. 20?

Right to an adequate standard of living

- Does the government have annual statistical data on the number of forced evictions and/or arrangements for alternative housing?
- What kinds of measures have been taken to improve the infrastructure and amenities of Roma settlements?
- What has been the impact of the land and property legalisation processes and how have they affected the Roma community in Macedonia? Does the government possess data on how many Romani informal settlements have been legalised? If so, how does this compare to the total number of such settlements?
- Does the government possess data on how many Roma have been able to legalise their homes, as a percentage of the total number of Roma without tenure to the place where they are living?
- Is there 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?
- Has the government considered mapping all informal Romani settlements throughout Macedonia 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?
- Does the government 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?
- Does the government 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? Does the government possess data on the number of forced evictions affected Romani settlements?

Right to water

- What measures does the Government of Macedonia envisage to fulfil the right to water in terms of availability, quality and accessibility, and in a non-discriminatory manner for Roma communities, in particular those which are segregated and/or on the outskirts of towns?

Right to education

- How does the government seek to combat segregation in education, and particularly, the overrepresentation of Romani children in the special education schools and/or special classes in the mainstream schools in Macedonia?
- What measures does the government intend to introduce to implement inclusive education?
- What measures did the government introduce to implement the objective in the National Action Plan for the Decade of Roma Inclusion 2010-2015 to “Ensure equal access to all levels of the educational system for children and youth from the Roma minority”?

- Is the government considering explicitly prohibiting segregation on ethnic grounds in Macedonian schools, especially in schools for students with disabilities? If so, how?

General

- What is the number of court judgments dealing with discrimination on the basis of Roma ethnicity in relation to economic, social or cultural rights?
- In what areas (e.g. education) are data disaggregated by ethnicity collected and in what way are these data used to shape public policy?