

STATEMENT

UPR Pre-Session on Montenegro

Geneva, 3 - 6 April 2023

This presentation will focus on the human rights of Roma in Montenegro. It is delivered on behalf of **Phiren Amenca**, a Roma-led civil society organisation, and one part prepared in cooperation with the **European Network on Statelessness**, a civil society alliance committed to addressing statelessness in Europe, and the **Institution on Statelessness and Inclusion**, a human rights NGO dedicated to working on statelessness at the global level.

I will focus my presentation on three issues concerning Montenegro's international commitments to:

1. Access to education and right to education in the mother tongue
2. Civil and political rights of Roma in Montenegro
3. Roma Statelessness determination procedure and the rights of stateless people and Children's right to birth registration and to a nationality

Out of 14 recommendations for the inclusion of Roma that Montenegro received in the last cycle, 3 are related to education and none have been implemented. There was one recommendation from Namibia to resolve legal status and statelessness, which was partially implemented. while there was no recommendation for the rights on political representation of the Roma.

1 issue: Access to education and right to education in the mother tongue

The regime for organizing school transportation for Roma students was established in 2012, based on the decision of the Government of Montenegro in order to close the segregated school department in which only children from the Roma community attended.

Roma parents are denied the opportunity to enroll their children in the nearest primary school, which does not require organized school transportation, which has not been organized regularly for years. more than 200 children do not even attend classes for up to two months at the beginning of each school year. Roma children and their parents are put in an unequal position compared to other children and non-Roma parents, which is contrary to Article 14 of the Convention for the Protection of Human Rights and Freedoms and Protocol 12.

The Current Law on Higher Education in Article 93 and 99 foresees the possibility of applying the principle of affirmative action when enrolling in faculties for students with disabilities, but not for students from the Roma community, whose number is decreasing compared to the previous report.

Montenegro has ratified the European Charter on Regional and Minority Languages, which stipulates that education in minority languages must be provided at all levels of education. Roma children still cannot learn in their mother tongue, which puts them in an unequal position compared to other non-Roma children. During the Third Cycle, Montenegro received a recommendation by Albania and Peru to strengthen the efforts to development of culture, education and information in Roma language which not realized.

Therefore, we call upon reviewing States to recommend Montenegro the following:

- I. **Take measures to achieve factual equality of Roma students**
- II. Eliminate discrimination and its further repetition, in such a way that the Ministry of Education **adopt and implement the appropriate Act on organizing school transport** for Roma children who are denied enrollment in the nearest schools.
- III. Take concrete measures to create preconditions and opportunities for **Roma children to be educated in their mother tongue**.
- IV. **Amend and supplement the Law on Higher Education**, which will define **affirmative action** for students from the Roma community when enrolling in colleges.

2 issue: Civil and political rights of Roma in Montenegro

The legal system of Montenegro has not yet improved measures for the effective participation of Roma in the decision-making process and electoral bodies at the national and local level. Montenegro is the only country in the Western Balkans that in its history has never had a Roma representative in the Parliament. Electoral legislation on political parties representing national minorities does not promote their representation in the legislature. According to the last census, there are 6,251 Roma in Montenegro. Although there are only 230 more Roma than Croats who have a privileged census, the Roma are subject to the same census as Bosnians or Albanians, who are up to 8 times more than Roma according to the census. In 2021, a Roma political party was formed, but due to discriminatory electoral legislation, it is unable to actively participate in the political life of society.

Therefore, we call upon reviewing States to recommend Montenegro the following:

- I. Redefining the existing electoral solutions with the aim of enabling the effective application of the principle of affirmative action in the candidacy procedure and election of political representatives of minorities.
- II. Adopt amendments to Article 94, paragraph 1, point 2 of the Law on the Election of Councilors and Members of Parliament (the legal principle of the right to one parliamentary mandate, which for now only applies to members of the Croatian nation) in order to realize the general principle of non-discrimination in the political participation of the Roma community.

3 issue: Roma Statelessness determination procedure and the rights of stateless people and Children's right to birth registration and to a nationality

Legal status of Roma hasn't yet been resolved. More than 400 persons identified without legal status. Identifying stateless people is the first step to providing protection in line with the 1954 Convention. During the Third Cycle, Montenegro received a recommendation by Namibia to introduce a mechanism to expedite the determination of statelessness, which it accepted. It is very welcome that Montenegro introduced a dedicated statelessness determination procedure in 2018 that facilitates the identification of stateless people and access to the protection they are entitled to under international law. There are, however, significant shortcomings both in the procedure and in the range of rights that are afforded to people recognised as stateless.

Lack of information for applicants, as well as inflexible application requirements. Evidentiary rules to assess statelessness are not yet determined in law. Applicants don't have the right to work nor access other rights. Only nine people have been recognised stateless since the procedure was operational.

Recognition as a stateless person under the SDP does not constitute a dedicated statelessness status in law nor does it result in automatic lawful residence in Montenegro or a renewable residence permit, which are also essential to access a facilitated pathway to acquire Montenegrin nationality. The statelessness status does not ensure access to all other rights as stipulated in the 1954 Convention and in UNHCR guidance. Montenegro received recommendations in the Second Cycle to simplify the procedure for birth registration, to achieve an effective registration of all births, especially of children belonging to ethnic minorities (by the Holy See, Mexico, and Brazil). Montenegro developed a new birth registration process in 2019, however there are serious implementation issues and reports from civil society highlight specific barriers to registration, disproportionately impacting on Roma communities.

Registering births happening outside medical institutions may be subject to a difficult procedure. Montenegrin law doesn't have any guidance on how to determine the child's nationality status at birth or later. In practice, parents must initiate the registration of the child's nationality in the nationality registry and sometimes authorities record a presumed nationality of Kosovo or Serbia without confirming whether the child has acquired it. Bureaucratic barriers exist to registering a child's birth if one of the parents are undocumented, particularly if they aren't receiving support or advice from an NGO.

Such obstacles, together with discrimination and antigypsyism, contribute to low birth registration rates among Roma and Egyptian communities.

Therefore, we call upon reviewing States to recommend Montenegro the following:

- I. Take concrete steps to facilitate access to the statelessness determination procedure for all stateless persons in Montenegro, regardless of their residence status, and ensure its implementation is harmonised across the territory and in line with UNHCR guidance and good practice.
- II. Amend the Law on Foreigners to allow for persons recognised as stateless to be automatically granted a residence permit and all rights protected under the 1954 Convention.
- III. Ensure that policies and practices relating to birth registration take into account UNHCR guidance and remove all practical barriers to birth registration, with a particular focus on Roma, so that all children are registered immediately regardless of their parents' documentation or residence status.
- IV. Ensure that children's nationality status is determined as soon as possible after birth in order to ensure that otherwise stateless children born in Montenegro acquire a nationality.