

A 11 – Initiative for Economic and Social Rights

Submission to the Human Rights Council at the 43rd Session
of the Universal Periodic Review

1 May 2023 – 12 May 2023

THE REPUBLIC OF SERBIA

Introduction

1. A 11 – Initiative for Economic and Social Rights (hereinafter: A 11 Initiative) is a non-profit, non-partisan and non-governmental organization that promotes and protects the human rights of individuals from vulnerable, marginalized, and discriminated groups, with a particular focus on economic and social rights. Established in 2018, A 11 Initiative combines five complementary activities — legal aid and strategic litigation, advocacy, research, education, coalition and capacity-building and partnership — to improve the protection of economic and social rights as well as an understanding of the state’s obligation to protect, promote and fulfil these rights. Since its establishment, the A 11 Initiative has provided counselling to over 2,000 individuals and has written over 12 submissions to international mechanisms for the protection of human rights.
2. This submission focuses on the denial of parental and child allowance to Roma children; the exclusion of undocumented Roma from cash assistance to mitigate consequences of the pandemic; the human rights concerns raised by the social cards system; access to health care for undocumented Roma women and children; ratification of the Optional Protocol to the International Covenant on Economic and Social rights.

Previous UPR of Serbia

3. During the Serbia third-cycle Universal Periodic Review, multiple recommendations were made with respect to the position of Roma and their access to rights. Unfortunately, Serbia has failed to take effective action on these recommendations, and in fact, certain legislative changes and the State’s response to the outbreak of COVID-19 pandemic run counter to these recommendations, thus further excluding and marginalizing Roma. Germanyⁱ and Finlandⁱⁱ explicitly recommended Serbia to ensure the effective integration of Roma into Serbian society. Question on the position of Roma and their access to human rights was raised by Afghanistanⁱⁱⁱ, Italy^{iv} and Mozambique,^v which recommended that State take necessary steps to ensure the rights of minorities, particularly the Roma. France urged Serbia to continue efforts to promote the human rights of persons belonging to minorities, especially the Roma minority, while Albania recommended further measures to overcome prevailing discrimination of Roma in the enjoyment of economic, social and cultural rights.^{vi}
4. In the first cycle, Finland and Canada issued recommendations related to anti-discrimination and access to health-care for persons belonging to minorities, including Roma,^{vii} which the State supported. Similarly, in the third cycle, Mexico issued a recommendation to implement effective public policies to combat discrimination and ensure effective access to education and health-care services to ethnic minorities in the country,^{viii} while the Maldives issued a recommendation to ensure access to adequate maternal health care for Roma mothers and young children.^{ix} However, undocumented women and children are still denied access to health insurance.
5. During the third cycle, Costa Rica issued a recommendation to Serbia to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,^x which the State did not accept, nor implemented. However, during consideration of the third periodic report of Serbia before the Committee on Economic, Social and Cultural Rights (hereinafter: UN CESCR), the State’s delegation indicated a concrete plan for the ratification of the Optional Protocol to the Covenant

by the end of 2022 and received a recommendation from the UN CESCR to pursue the plans to ratify the Optional Protocol to the Covenant. Submitting organization welcomes announced plans to ratify the Protocol, but nevertheless reminds that this recommendation has not been implemented yet and that further steps are needed in that regard.

6. Finally, during the second UPR cycle, Kuwait recommended Serbia to continue its efforts to meet the needs of the elderly and improve the quality of their life regarding housing and transport.^{xi} However, Serbia failed to implement such recommendation, and imposed the COVID-19 prevention measures which exacerbated the situation of elderly people in care institutions.^{xii}

Issue 1 – Denial of parental allowance to Roma children

7. A piece of legislation of immense importance for the assessment of the State's compliance with recommendations on Roma inclusion is the Law on Financial Support to the Families with Children (hereinafter: LFSFC) which discriminates against Roma children.^{xiii} Article 25 of the Law, as amended in 2018^{xiv} and 2021,^{xv} introduced additional conditions for parental allowance, i.e., that children must be fully and timely vaccinated and that they must regularly attend elementary school and obligatory preschool education. Although these conditions, on the face of it, are neutral, their effects disproportionately affect vulnerable Roma children.
8. All data points to the existence of a gap between Roma and non-Roma children in (pre)school attendance, as well as in immunization coverage. Thus, a regional UNDP research about Roma shows that about one in six marginalized Roma children of school age is still not participating in the education system.^{xvi} Completion rate of compulsory education among Roma girls is only 57%, compared to 93% among non-Roma girls and 95% non-Roma boys.^{xvii} According to 2019 data from UNICEF and the Republic Statistical Office, the percentage of Roma children enrolled in school in early childhood is only 7% compared to 61% for the general population. The primary school completion rate among children living in Roma settlements is 64%.^{xviii} School attendance rates for children from Roma settlements are lower compared to the national average at all three levels, particularly at the level of early childhood education (7%). The completion rates for primary education in the general population are high, while these rates are significantly lower for children coming from Roma settlements.^{xix} Among children in the general population, the attendance rate in the preparatory preschool program remained very high (97%), while being substantially lower in Roma settlements (76%).^{xx} Immunization coverage is also lower among Roma children. Only around one-third (35%) of Roma children have received all vaccines on time, compared to 69% of children in the general population who have received all vaccines on time.^{xxi}
9. Presented data on school and preschool attendance and immunization among Roma and non-Roma children clearly suggest that **conditions for parental allowance have a disparate impact on Roma children**. Roma children who remain outside the education system and who are not covered by immunization are among the most marginalized in Serbia and conditions for parental allowance are putting them in an even worse situation and increasing the gap between Roma and non-Roma children. The LFSFC was amended in June and December 2021^{xxii}, including minor changes to Article 25^{xxiii}, but these amendments did not lead to any improvement regarding the eligibility of Roma children for parental allowance.

10. It is pertinent to mention that in March 2022, the **UN CESCR expressed its concerns about certain conditions attached to social assistance benefits, which effectively deny access by certain disadvantaged and marginalized groups to social security benefits.** These include the conditioning of parental allowances on certain criteria, such as school attendance and vaccination of children, which has a significant discriminatory effect on Roma families.^{xxiv} **The Committee recommended that the State party review the conditions attached to social assistance benefits, particularly to the parental allowance and financial social assistance, with a view to removing the conditions that are discriminatory or have a discriminatory effect and contradict human rights norms.**^{xxv} However, no action has been taken on these recommendations. On the contrary, in the procedure of normative review of the LFSFC, the Constitutional Court ignored explicit Committee's recommendations and rejected the initiative for assessment of constitutionality of the conditions for parental allowance, without assessing whether these conditions, which disproportionately affect Roma children, constitute indirect discrimination.^{xxvi}

Issue 2 - Limiting the number of children eligible for parental and child allowance

11. Limiting the number of children eligible for parental and child allowance is another condition that affects disproportionately the most vulnerable Roma families. LFSFC prescribes that families are eligible to receive parental and child allowance for up to four children, apart from several exceptional cases. This limitation of the number of children who are eligible for parental and child allowance disproportionately affects the most vulnerable families with children.
12. The data of the Statistical Office of the Republic of Serbia from the 2011 Census demonstrates that there are only 5,264 families with over five children in Serbia. Out of this number, there are as many as 1,719 families in which one or both parents stated that they are Roma. Although Roma make up 2.05 % of the population according to the 2011 Census, their share in families with five or more children is 32.66 %. Furthermore, out of this number, in 782 families one or both parents are illiterate, while there are 1,024 families in which both parents have no school education or have completed a maximum of three grades of primary school. These insights into the characteristics of families with five or more children show that **the most vulnerable families are particularly affected by the limitation regarding the number of children who can receive the parental and child allowance.** In addition, having in mind the ethnicity of parents with five or more children, the mentioned limitation raises the issue of discrimination. However, proposals for amending this piece of legislation to provide access to parental and child allowance to all children, were rejected by the competent ministry.^{xxvii}

Issue 3 – Introduction of automated decision-making processes in the system of social protection

13. In March 2022, the Law on Social Cards^{xxviii} came into force, with one of the aims to introduce the "automation of procedures and processes related to acting in the field of social protection." However, the research shows that the application of the automated decision-making processes in the social protection **decreased the number of beneficiaries for more than 10%, even without full implementation of the Law.**^{xxix} This piece of legislation introduced disproportionate processing of personal data of beneficiaries of financial social assistance and persons related to them,^{xxx} since

it **processes up to 140 personal data**. Furthermore, if the Registry, during the data processing finds that the beneficiary does not meet the criteria for social assistance anymore, this person cannot take part in the process and explain the reasons behind this discrepancy between the criteria and his personal situation. Because of that, this ADM introduced by the Law is in contradiction with the Personal Data Protection Law, as well as with Art. 9 of ICESCR. Additionally, the Law is in contradiction with other international documents Serbia ratified - the Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Issue 4 - Exclusion of Roma without ID and permanent residence from cash assistance to mitigate consequences of the pandemic

14. Roma without an ID card and permanent residence were excluded from the cash benefit of € 100^{xxxix} in 2020 and € 80^{xxxix} in 2021 – state measures introduced to mitigate the consequences of the COVID-19 pandemic, which all adult Serbian citizens with an ID and registered permanent residence were eligible for. However, persons who do not have an ID card and registered permanent residence (and these are almost exclusively Roma) were not eligible for this form of assistance. These measures are among the most obvious examples of the exclusion of vulnerable Roma from measures aimed at mitigating the economic consequences of the COVID-19 pandemic.
15. It should be recalled that requiring documents (such as birth certificates or IDs) to access certain rights can discriminate against ethnic minorities who are not in possession or have been denied such documents.^{xxxix} Furthermore, the exclusion of undocumented Roma from the possibility of receiving this cash assistance is fundamentally at odds with the recommendations of international organizations and human rights treaty bodies regarding the response to the epidemic, which indicate that the needs of marginalized groups should be prioritized in the response to the epidemic and the allocation of resources.^{xxxix} On the contrary, Serbia has allocated significant resources for the payment of financial assistance to all adult citizens (with valid ID cards), many of whom are certainly not in a state of vulnerability.^{xxxix} Contrary to the principle of social justice and non-discrimination, Roma without ID and permanent residence, who are the most marginalized and have no access to other types of assistance because they lack personal documents, could not receive this assistance.
16. **The Commissioner for the Protection of Equality pointed out that the requirement of residence registration and ID card for access to support measures mainly affected Roma individuals, and recommended that the competent Ministry of Finance take measures to include these persons in the support measures**, either by amending the relevant regulation or by passing a new regulation.^{xxxix} However, the Ministry of Finance ignored the recommendation and took no steps to include Roma without an ID card and residence registration in measures intended to mitigate the consequences of the pandemic. In the meantime, the law regulating this type of assistance was amended and envisaged additional financial assistance of € 20, but the same conditions regarding residence registration and ID card were maintained – once again confirming the discriminatory position towards undocumented Roma.^{xxxix} The same conditions were maintained for payment of financial assistance introduced in January 2022 to youth aged between 16 and

17. In March 2022, in its Concluding observations on the third periodic report of Serbia, **the UN CESCR expressed its concern about the absence of specific COVID-19 response measures to protect disadvantaged and marginalized individuals and groups and the failure to reach out to the most disadvantaged and marginalized individuals and groups.**^{xxxix} The Committee also recommended the State to immediately rectify the situation by providing the COVID-19-related cash benefits to those who were excluded, including due to a lack of permanent residence and identity documents.

Issue 5 – Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

18. Following repeated initiatives^{xl} to ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, and after initial rejection of the initiatives, the Ministry for Human and Minority Rights and Social Dialogue eventually included ratification of the Protocol in the Work Plan of the Government of Serbia for 2022. This was noted by the UN CESCR, which recommended the State to pursue plans to ratify the Protocol.^{xli} However, no further actions were conducted since the beginning of 2022 and the reception of the concluding observations of the Committee.

Issue 6 – Access to health care for undocumented Roma mothers and children

19. Undocumented Roma still face difficulties in access to health insurance, which particularly impacts Roma women and their access to adequate maternal health care. Roma women giving birth without health insurance are faced with high bills and threats to pay for medical treatment, i.e., for giving birth in a hospital without health insurance.^{xlii} The Law on the Realization of Health Care for Children, Pregnant Women and New Mothers,^{xliii} adopted back in 2013, regulates the manner of exercising the right to health care for children, women and new mothers whose health insurance documents are not certified. However, it ignores women and children who are not able to obtain health insurance documents at all, such as undocumented Roma.
20. The situation of Roma in the area of health care led the Committee on the Rights of the Child to conclude that *Roma mothers and young children are “particularly vulnerable and continue to have limited access to adequate maternal and general health care, resulting in high mortality rates (...).”*^{xliv} This Committee further recommended the State to **“strengthen efforts to ensure that access to adequate health care, including prenatal care for uninsured pregnant women, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas”**.

Based on the above information, the submitting organization urges reviewing States to make the following recommendations to the Republic of Serbia:

- I. Review the conditions for benefits aimed at families with children with a view to remove discriminatory conditions for the parental allowance which excludes marginalized Roma children.
- II. Abandon the limitation on the number of children eligible for the children and parental allowance which denies these entitlements to the most vulnerable families and children.
- III. Abandon automated decision-making processes in social protection and revisit criteria for receiving social assistance.
- IV. Ensure access to financial assistance for citizens who were unable to receive financial assistance to mitigate the consequences of the pandemic due to the lack of an ID card and registered permanent residence.
- V. Include undocumented Roma and other vulnerable citizens in future pandemic mitigation measures.
- VI. Take additional measures to end the prevailing discrimination against Roma in access to social rights and state aid and services.
- VII. Introduce human rights-based approach to elderly care in social care institutions.
- VIII. Ensure access to health care to members of Roma national minority, particularly to pregnant women, new mothers and children.
- IX. Ratify the Optional Protocol to the International Covenant on the Economic, Social and Cultural Rights

i Human Rights Council, Report of the Working Group on the Universal Periodic Review (Serbia), 18 April 2018, A/HRC/38/17, Recommendation 113.74.

ii Human Rights Council, Report of the Working Group on the Universal Periodic Review (Serbia), 8 January 2009, A/HRC/10/78,

iii Human Rights Council, A/HRC/38/17, (op.cit.), Recommendation 113.67.

iv Ibid, Recommendation 113.14.

v Ibid, Recommendation 113.72.

vi Ibid, Recommendation 113.10 and 114.103.

vii HRC, A/HRC/10/78, op. cit., para. 22, page 19.

viii HRC, A/HRC/38/17, op. cit., Recommendation 113.58.

ix Ibid, Recommendation 113.71.

x Ibid, Recommendation 114.8.

xi A/HRC/23/15/, Recommendation 132.84.

xii Results from the field research, published in: Lj. Pantović, B. Radovanović, A. Zaharijević, Caregiving for the Elderly in Times of Covid 19 Pandemic in Serbia A Gendered Perspective

xiii Official Gazette of the Republic of Serbia, no. 113/2017, 50/2018, 46/2021 – CC Decision, 51/2021 – CC Decision, 53/2021 – CC Decision, 66/2021 and 130/2021.

xiv The LFSFC (Official Gazette of the RS, No. 113/2017 and 50/2018).

xv Law on Amendments to the LFSFC, Official Gazette of the RS, No. 66/2021.

xvi UNDP, Roma at glance, Serbia, available at: https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf, page 2.

xvii Ibid.

xviii UNICEF and Statistical Office of the Republic of Serbia, Serbia, Multiply Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019, Survey findings report, Belgrade, October 2020, xvii; hereinafter: MICS 2019, available at:

<https://www.unicef.org/serbia/media/16726/file/MICS%206%20Multiple%20Indicator%20Cluster%20Survey%20for%202019.pdf>

xix Serbia Multiple Indicator Cluster Survey 2019 and Serbia Roma Settlements Multiple Indicator Cluster Survey 2019, Statistical Snapshot, page 37, available at:

[https://www.unicef.org/serbia/media/16301/file/Serbia%20\(National%20and%20Roma%20Settlements\)%202019%20MICS%20Statistical%20Snapshots_English.pdf](https://www.unicef.org/serbia/media/16301/file/Serbia%20(National%20and%20Roma%20Settlements)%202019%20MICS%20Statistical%20Snapshots_English.pdf)

xx Ibid, 35.

xxi MICS 2019, xv.

xxii Law on Amendments to the LFSFC, Official Gazette of the RS, No. 66/2021 of 30 June 2021 and 130/2021 of 29 December 2021.

xxiii Law on Amendments to the LFSFC, Official Gazette of the RS, No. 66/2021 of 30 June 2021.

xxiv CESCR, Concluding observations on the third periodic report of Serbia, para. 50.

xxv Ibid, para. 51 b.

xxvi Constitutional Court, IUZ-299/2018. For more details, please see particularly Tijana Šurlan, Separate Opinion on the Decision of the Constitutional Court in the Case IUZ-229/2018 of 21 April 2022, as well as A 11 Initiative, Constitutional Court rejected initiative for assessment of constitutionality of the Article 25 of the Law on Financial Support to the Family with Children.

xxvii A 11 – Initiative for Economic and Social Rights, Comments on the Law on Support to the Families with Children, 2 April 2021, available at: https://www.a11initiative.org/wp-content/uploads/2021/04/Komentar-ZFPPD_Inicijativa-A-11.pdf

xxviii Official Gazette of the RS, no. 14/2021.

xxix Research shows that the number of beneficiaries of financial social assistance declined from 211,266 (1 February 2022) to 189,036 (1 August 2022), Ministry of Labor, Employment, Veterans and Social Affairs, Act no. 07-00-395/2022-05, 29 September 2022.

xxx Article 9 of the Law on Social Cards.

xxxi Article 15 of the Decree on Fiscal Benefits and Direct Benefits to Private Sector Companies and Financial Assistance to Citizens to Mitigate the Economic Consequences of COVID-19 stipulates that all adult citizens of the Republic of Serbia be paid one-time financial assistance in the amount of 100 € in dinars equivalent.

xxxii Law on the Temporary Registry of Adult Citizens of the Republic of Serbia Eligible for Financial Assistance for Mitigating of the Consequences of the Covid-19 Pandemic Caused by the SARS-COV-2 Virus, Official Gazette of the RS, No. 40/2021 and 96/2021) stipulates that all adult citizens of the Republic of Serbia will receive financial assistance in the amount of 60 €, paid in two installments. Later amendments of this Law (Official Gazette of the RS, No. 96/2021) introduced additional financial assistance in the amount of 20 which was also available only to adult Serbian citizens with registered permanent residence and valid ID card.

xxxiii For a similar conclusion see CESCR, General comment no. 20 (Non-discrimination), para. 10(b).

xxxiv CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, 17 April 2020, para. 14.

xxxv A 11 – Initiative for Economic and Social Rights, Human Rights in Serbia during the First Wave of Coronavirus: from denial of danger to state of emergency, August 2020, pp. 20-21.

xxxvi The Commissioner for the Protection of Equality, Recommendations of measures to the Ministry of Finance, No. 07-00-00353/2021, from 26 August 2021, available (in Serbian only) at: <http://ravnopravnost.gov.rs/rs/preporuka-mera-ministarstvu-finansija-2/>.

xxxvii Law on Amendments to the Law on the Temporary Registry of Adult Citizens of the Republic of Serbia Eligible for Financial Assistance for Mitigating the Consequences of the Covid-19 Pandemic Caused by the SARS-COV-2 Virus (Official Gazette of the RS, No. 96/2021).

xxxviii Law on the Temporary Registry of Citizens of the Republic of Serbia aged 16 to 29 Eligible for Financial Assistance for Mitigating the Consequences of the COVID-19 Pandemic caused by the SARS-CoV-2 virus (Official Gazette of the Rs, No. 3/2022 and 20/2022).

xxxix CESCR, Concluding observations on the third periodic report of Serbia, E/C.12/SRB/CO/3, paras 20(b) and (c).

xl For further information, please see: <http://www.a11initiative.org/en/the-initiative-for-the-ratification-of-optional-protocols-to-the-convention-on-the-rights-of-the-child-and-the-international-covenant-on-economic-social-and-cultural-rights/>.

xli Information from the conference organized by the Ministry of Human and Minority Rights and Social Dialogue on 10 December 2021.

xlii For more details, please see A 11 Initiative, Economic and Social Rights in Serbia – Distorted Image (in Serbian only), 2022, p. 66. Hospital bills can be as high as 2.000 EUR.

A 11 Initiative, The Application of the Law on Free Legal Aid, 2020, p. 26.

xliii Official Gazette of Republic of Serbia, No. 104/2013.

xliv CRC, [Concluding observations on the combined second and third periodic reports of Serbia](#), 7 March 2017, para. 45 (b).