**Submission concerning Serbia to**

**The Committee on Economic, Social and Cultural Rights**

**For Consideration at the 65 Pre-Sessional Working Group**

**(21 Oct 2019 - 25 Oct 2019)**

**submitted by:**



**26th August 2019**

*Praxis is a national non-governmental organization established in 2004 in Belgrade that protects human rights by providing legal protection and advocating for elimination of systemic obstacles in access to rights.*

*Praxis acts in the area of status and socioeconomic rights, antidiscrimination, gender equality, migration, child rights and public administration reform.*

*In addition to providing free legal aid, Praxis achieves its goals through monitoring of public policies, research, analysis and advocating for systemic solutions and the elimination of obstacles to accessing rights by raising awareness of the problems faced by marginalized and socially excluded communities attempting to integrate, educational outreach, publishing of reports, and providing expert support for reforms, as well as through networking and cooperation.[[1]](#footnote-1)*

**Introduction**

1. This submission provides information on the implementation of certain provisions of the International Covenant on Economic, Social and Cultural Rights in Serbia. The focus of the submission is on the implementation of the provisions related to the prohibition of discrimination (Art. 2.2), social security (Art. 9), child, early and forced marriages (Art. 10.1.1) and the right to health (Art. 12). The submission specifically refers to the implementation of the aforementioned provisions and the exercise of these rights for the members of the Roma national minority.
2. Please be advised that the following comments should be read in conjunction with the Concluding observations on the second periodic report of Serbia on the implementation of the ICCPR (E/C.12/SRB/CO/2) and with the Third periodic report of Serbia on the implementation on the ICCPR.

**Principal subjects of concern and questions for the Government of the Republic of Serbia**

**Article 2, paragraph 2 - Non-discrimination (personal documentation)**

1. The Roma are the most discriminated against ethnic minority and one of the most discriminated against social groups in Serbia[[2]](#footnote-2). Such position and social marginalization have negative effects on the exercise of their economic, social and cultural rights and the Roma, therefore, face great problems every day when attempting to exercise these rights. They are disproportionately affected by poverty, unemployment, social exclusion and low level of education.
2. Among the members of Roma ethnic minority, persons who do not possess personal documents stand out as being in a particularly difficult position. These are primarily persons who are not registered in birth registry books and stateless persons, but also the persons who cannot register their permanent residence in the place they live or who, for some other reasons, cannot obtain an ID card, health booklet or other personal documents. They are all either deprived of access to most socio-economic rights or the possibility of enjoyment of these rights is significantly narrowed down. They cannot get employed, enjoy social welfare and health care rights, receive education without impediments, register their children right upon birth or enjoy a series of rights available to other citizens. In Serbia, the problem referring to the lack of personal documents is almost exclusively related to the members of Roma population.
3. In the Concluding observations on the second periodic report of Serbia, the Committee on Economic, Social and Cultural Rights (the Committee) recommended that Serbia “ensure effective access of refugees, returnees and internally displaced persons, in particular Roma without registered residence who live in informal settlements, to procedures for birth and residence registration in order to facilitate access to personal documents, including birth certificates, identity cards and work booklets. In the meantime, those affected should have access to economic, social and cultural rights” (recommendation no. 13).
4. However, the situation in Serbia has not significantly changed since the issuance of the Concluding observations on the second periodic report of Serbia. The greatest progress refers to the fact that the number of persons who do not possess personal documents has somewhat been reduced, primarily owing to the engagement of non-governmental organizations providing free legal aid, but the systemic obstacles hindering access to documents are still present.
5. The most important is the obstacle that prevents birth registration of every child immediately after birth. The provisions of two bylaws[[3]](#footnote-3) stipulate that parents’ data are entered into the birth notification form and birth registry books on the basis of their birth certificates (and marriage certificates if they are married) and identity cards (or passports for foreigners). This means that if a mother does not possess such documents, it will not be possible to determine the personal name of the child and the child will remain unregistered. Consequently, the child will remain without citizenship. It further means that it will be necessary to conduct one or more procedures: determination of personal name, subsequent birth registration or determination of the date and place of birth, while in some cases also a procedure for acquisition of citizenship. These procedures can last for several months, or up to a year or more in complex cases. During this time the affected children will be left without birth and citizenship certificates and, consequently, in the most vulnerable period of life, without the rights to health care and social welfare, while their families, usually belonging to the poorest group of citizens, will be left without parental and child allowance, thus only contributing to their social exclusion.
6. A UNHCR research from 2015, carried out in Roma settlements showed that 8% of children under the age of 4 are not registered in the birth registry[[4]](#footnote-4). In its work, Praxis is also constantly coming across new cases of Roma children who are not registered in the birth registries, while the reason for it is almost always the lack of documentation of children’s mothers.
7. The stated by-laws are inacceptable from the human rights perspective. The Article 7 of the Convention on the Rights of the Child and Article 24, paragraph 2 of the International Covenant on Civil and Political Rights guarantee the right to birth registration and to a personal name to every child*, immediately after birth*. UNICEF’s interpretation of legal standard immediately after birth states: “According to Article 7, the child should be registered “immediately after birth” which implies a defined period of days rather than months”.[[5]](#footnote-5) Furthermore, Serbian Constitution prescribes that every child shall have the right to a personal name and entry in the registry of births (Article 64, paragraph 2), while the Family Law stipulates that everyone shall have the right to a personal name and that the personal name shall be acquired by birth (Article 13).
8. Therefore, these acts unambiguously prescribe that every child has the rights to birth registration and a personal name, that these rights are acquired by birth, and that birth registration must be conducted immediately after birth, regardless of any other conditions, including whether parents possess personal documents or not. As opposed to that, the stated by-laws deprive a number of children of the right to timely birth registration, mainly Roma children who usually belong to the most sensitive, marginalized and discriminated against groups.
9. Various UN treaty bodies also emphasised in their recommendations to Serbia that the children whose parents do not possess documents must be enabled to register in the birth registry immediately after birth, without discrimination and regardless of the legal or documentation status of their parents (Universal Periodic Review of the UN Human Rights Council concerning Serbia from 2018 – recommendation 114.28; Concluding observations on the combined second and third periodic reports of Serbia of the Committee on the Rights of the Child – recommendation 31). Also, In the European Commission’s Serbia 2019 Report, the EC states that the procedure for registering the birth of children whose parents lack personal documents needs to be monitored, and related secondary legislation needs to be amended.
10. With regard to registration of permanent residence, the Roma residents of informal settlements and non-legalised buildings benefited from the Law on Permanent and Temporary Residence of Citizens (from 2011), as they were provided a possibility to register residence at the address of a social welfare centre. However, obstacles identified by the Committee and mentioned in the recommendation no. 13 of the Concluding observations, are still present.
11. In practice, persons who already have permanent residence registered are denied this option, even though they have not been living in their place of permanent residence for years or decades and have lost connection with that place (this primarily refers to Roma IDPs from Kosovo, who inhabited informal settlements in Serbia after fleeing Kosovo). Even though some progress was noticed in the past year in relation to this problem, and some police stations started enabling registration of permanent residence to these persons, the negative practice has recently reoccurred and the registration of permanent residence for these persons is again impossible.
12. There are also irregularities in the procedure for registering permanent residence at the address of a social welfare centre. In the procedure for registration of permanent residence, police station sends a form for registration to the social welfare centre, which is due to verify it, to give its consent to registration of permanent residence at their address. However, in some municipalities, social welfare centres stopped giving consent, resulting in rejection of requests for residence registration. Irregularities have also been observed in a number of police stations in which officers refused to receive the requests and referred the parties to first address the social welfare centre.
13. Furthermore, in a great number of police stations, those who wish to register permanent residence and obtain ID card for the first time are referred to the police station in their place of birth, even though these persons have not been living there for years or decades. This again especially refers to Roma IDPs from Kosovo.
14. In the Third periodic report on the implementation on the ICCPR, para. 122- 127, Government of Serbia provides some data on the number of persons for whom the procedures for determination of date and place of birth have been conducted or who have registered permanent residence at the address of a social welfare centre, as well as on regulations governing these issues. Information that a significant number of persons have been registered in the birth registry book and that they have had their permanent residence registered should be welcomed, but it is still worrying that not a small number of persons living in Serbia have still not been able to achieve the same[[6]](#footnote-6). Besides, these data do not alleviate the cause for concern of the Committee expressed in the recommendation no. 13, stating that many internally displaced Roma living in informal settlements without a registered residence did not have their permanent address re-registered. On the contrary, it is precisely the internally displaced Roma who live in informal settlements and still have permanent residence registered in the places they moved from that still cannot register residence in the places where they now live.
15. There was no reply of the Government of Serbia to the Committee’s recommendation that access to economic, social and cultural rights must be enabled to persons who do not possess documents (recommendation no. 13). Quite the contrary, nothing has changed with regard to this issue and the possession of documentation is almost always an obligatory condition for the exercise of these rights in Serbia.
16. In the Third periodic report of Serbia on the implementation on the ICCPR, para. 126, it is said that “the MIA contributes to resolving the problems of this national minority (Roma) by resolving them as priority and in accelerated procedure, according to their requirements for admission into the citizenship.” Unfortunately, the situation in practice does not match this information. On the contrary, one of the biggest problems in the procedures for acquisition of citizenship is the length of the procedures. In the cases in which Praxis is providing free legal aid to the Roma, the deadlines for issuance of decisions in the procedures for determination of citizenship and naturalization (which is two months) are always exceeded, often multiple times. Thus, the procedure for determination of citizenship lasts for three to four months at best, while the naturalization procedure is almost never completed in less than a year.[[7]](#footnote-7)

**Suggested Questions:**

• The Committee may wish to ask the Serbian Government:

- Which measures does the Government of Serbia undertake in order to enable the registration in the birth registry book of every child immediately after birth, including children whose parents do not possess personal documents?

- Does the Government plan to amend the by-laws which prevent timely birth registration of the children of undocumented parents?

- Which measures does the Government of Serbia undertake in order to enable every person to register permanent residence in the place where they already live and have settled in, especially the internally displaced persons and Roma who live in informal settlements but still have permanent residence registered in the places where they used to live and have no intention to return to?

**-**  How long do the procedures for acquisition of citizenship last on average for the members of Roma minority before the Ministry of Interior and are the legally stipulated deadlines for issuance of decisions in these procedures exceeded?

- Which measures does the Government of Serbia undertake in order to enable the persons who are not registered in the birth registries, who have not acquire citizenship and do not have permanent residence registered to exercise economic, social and cultural rights?

**Article 9 - social security**

1. Instead of improvements, the situation related to the access to social protection for Roma in Serbia is becoming more difficult. Such trend mainly comes from inadequate regulations that limit the access to social protection services for the Roma. Primarily, the regulations in question refer to the Law on Financial Support for Families with Children, Decree on the measures of social inclusion of beneficiaries of financial social assistance and the Law on Social Protection.
2. The Law on Financial Support for Families with Children prescribes in Article 25, paragraph 1 that the right to parental allowance cannot be exercised if the new-born child of the mother applying for the parental allowance or her previously born children have not been vaccinated in accordance with regulations in the field of health protection, or if the children do not regularly attend pre-school or primary school. In practice, this means that the parents, whose at least one child has not received all the required vaccines, as stipulate by the regulations, will be deprived of the right to parental allowance.
3. The survey conducted by the Statistical Office of the Republic of Serbia and UNICEF shows that the percentage of children in Roma settlements aged 24-35 months who received all vaccinations recommended in the national immunization schedule by their first birthday (and by their second birthday for measles) is 12.7, while it is 70.5% of children among general population in Serbia. This problem has also been recognized in the Roma Social Inclusion Strategy for the period 2016-2025. It is clear that these provisions of the Law are discriminatory and that they will disproportionately affect Roma children in comparison to general population.
4. Recently, Praxis came across a case in which parents, whose request for parental allowance was rejected because one child in the family had not been vaccinated, were once again denied the access to this right after their child received all necessary vaccines. Even though the law does not exclude the possibility of applying again after the stipulated conditions have been met, the parents in question were not allowed by the competent body to submit a new request.
5. Regarding the attendance of pre-school programme and primary schools, the percentage of children who leave school early or do not attend pre-school programme is also drastically higher among Roma population in comparison to general population (only 6% of children in Roma settlements aged 3-4 attend pre-school (50% in general population); 85% attend primary school (99% in general population), while 64% finish primary school (93% in general population)). The reasons for the above-mentioned are manifold, related to specific difficulties faced by members of Roma minority and should, in no way, be resolved by additionally punishing particularly vulnerable children, but by prescribing measures that would lead to resolution of identified problems.
6. Law on Financial Support for Families with Children also prescribes that the father may also access the right to parental allowance if the mother of the child is a foreign citizen (Article 22, paragraph 8 of the Law), but excludes this possibility if the mother of the child is without citizenship. This provision is discriminatory as it puts in unequal position the children whose mothers are stateless or at risk of statelessness. This has also been confirmed by the Constitutional Court in a decision in which it assessed the legality of the provisions of the law regulating this right, upon the initiative by the Serbian Commissioner for the Protection of Equality. However, the Law completely neglected the category of mothers without citizenship, thus leaving their children without this much needed type of assistance.
7. The Decree on the measures of social inclusion of the beneficiaries of financial social assistance, adopted in 2014, is still in force. The Decree conditions exercise of the right to financial social assistance, as a form of social welfare benefits, by putting an obligation on beneficiaries to participate in public works, trainings, etc. If they fail to do so, they will lose the right to financial social assistance as one of the social protection rights guaranteed by the Constitution. Even though Praxis and other civil society organizations submitted the initiative to the Constitutional Court for assessment of constitutionality and legality of the Regulation back in 2014, five years later there is still no reply from the Court. A particular concern is that the Draft Law on Amandmends to the Law on Social Protection contains almost identical provision, which shows that the Government of Serbia has no intention to stop conditioning the exercise of social welfare benefits which is contrary to the basic principles of the ICCPR.
8. Furthermore, the Law on Social Protection (LSP) imposes another requirement for obtaining this kind of assistance, thus posing an insurmountable obstacle to the exercise of the rights by 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 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.
9. The introduction of mandatory lawsuits against the nearest relatives further complicates the already complex 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 groups 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.

**Suggested Questions:**

• The Committee may wish to ask the Serbian Government:

- To provide information and data about the number of persons who have been deprived of the social welfare benefits because:

 ⋅ their children do not attend pre-school or school regularly or because they have not been vaccinated;

 ⋅ they have not fulfilled the obligation to participate in public works and other prescribed activities;

 ⋅ they did not initiate the said lawsuit against their relatives.

- In particular, to provide information to what extent the above-mentioned measures affect the Roma population, i.e. what is the share of Roma in the total number of citizens who have been deprived of social welfare benefits due to the above-mentioned.

- Whether the Government of Serbia plans to or undertakes measures that may enable the mothers who do not have citizenship or personal documents to access to right to parental allowance?

**Article 10, paragraph 1, item 1 – child, early and forced marriages**

1. The problem of child, early and forced marriages (CEFM) in Serbia mostly affects the Roma population and is largely associated with patriarchal attitudes towards the woman’s role in society and family, and Roma culture and tradition. The CEFM hinders child development and regular education, economic growth and development, gender equality, stability, and overall human rights goals.
2. According to UNICEF’s 2014 MICS, the rate of child marriages amongst the Roma is 20 times higher than the average among the Serbian population. This is particularly evident amongst girls who entered into marriage before their 15th birthday – 16.9% of Roma girls in comparison with 0.8% of non-Roma girls, or before their 18th birthday - 57% of Roma girls in comparison to 6.8% non-Roma girls. However, CEFM within the Roma community are predominantly common-law marriages and may therefore not be registered by institutions. In addition, the statistics show that 4% of women have given birth before the age of 15, and even 38% of women aged 20-24 have given birth before the age of 18.[[8]](#footnote-8)
3. Adequate addressing of child marriages by relevant government institutions is still missing, mainly because they still see child marriages just as a part of Roma culture and tradition, and not as a serious violation of the rights of children, particularly girls. Specifically, instead of acting in accordance with the binding national and international legislation, they give a higher priority to the common law. In addition, discriminatory behaviour is still present among the representatives of the relevant institutions (schools, SWCs, police, health institutions, prosecution, courts) and needs serious and continuous intervention in terms of sensitization trainings.
4. The lack of effective measures aimed at prevention of child marriages has particularly harmful effects on Roma girls. Tolerating practice of child marriages leads to multiple discrimination against Roma girls and has detrimental effects on their access to other basic human rights, such as the rights to education, health and work and exposes them to a higher risk of becoming victims of trafficking, sexual and gender based violence and exploitation. Particular attention should be paid to girls and women who are not registered in birth registry and are at risk of statelessness and who are consequently exposed to higher risk of violence and exploitation due to the impossibility of regulating their legal status.
5. Besides the lack of coordinated action of all competent stakeholders, as well as the lack of data collection on CEFM, there are gaps in the legal framework that also contribute to occurrence of CEFM. The generally accepted legal definition of the term child is still missing in the Serbian legal framework, while the Family Law still provides for exceptions in which persons younger than 18 may conclude marriage.

**Suggested Questions:**

• The Committee may wish to ask the Serbian Government:

- Which measures directed at the prevention of child, early and forced marriages does the Government of Serbia undertake, including those referring to increasing awareness within the Roma community and all relevant authorities of the negative effects of child marriages?

- Which measures does the Government of Serbia undertake in order to introduce in the normative framework a statutory definition of the term ‘child’ in line with the Article 1 of the Convention on the Rights of the Child and to amend the Family Law so as to remove all exceptions that allow marriage under the age of 18 years?

- Which measures does the Government of Serbia undertake in order to ensure systematic data collection and data recording system on CEFM in relevant government institutions?

**Article 12 – right to health**

1. 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.
2. The Law on Health Insurance, which provides for the possibility of exercising the right to health insurance for Roma individuals without permanent or temporary residence was applied consistently only in the period from July 2010 to March 2012. However, after the adoption of the Law on Permanent and Temporary Residence of Citizens, the Republic Fund for Health Insurance (RFHI) sent to its branch offices an instruction stating that Roma without registered permanent or temporary residence must support their application for health insurance with the evidence of their registered permanent residence at the address of an institution or social welfare centre. However, a significant number of people still cannot register permanent residence at the address of a social welfare centre (see para. 12 - 15).
3. IDPs who have their permanent residence registered in Kosovo also encounter difficulties in exercising the right to healthcare. These persons are entitled to health insurance in the place of actual residence if they have temporary residence registration in Serbia and an IDP card. However, upon their arrival from Kosovo, a large number of internally displaced Roma settled in informal settlements, where it is not possible to register temporary residence. These persons can exercise the right to health insurance only at the place of permanent residence.
4. Persons who are not registered in the civil registry books and do not have personal documents can only access emergency medical assistance. Not even children or pregnant women, who are defined as particularly vulnerable groups of population under the Law on Health Care, cannot apply for health insurance unless they are registered in birth registry books and obtain other required documents (depending on the basis of insurance).
5. Pregnant women who do not possess health cards are in a particularly vulnerable position. A health institution may not refuse to assist women without a health card in child delivery, since birth is considered an emergency, but those women and their children will lack health care in the pre and post-natal period. Praxis still occasionally encounters cases where child-bearing women and members of their families were threatened that they would not be allowed to take the new-born from the maternity ward until all hospital bills were paid, although according to the Law on Health Care the medical assistance in such cases is paid from the budget of the Republic of Serbia.

**Suggested Question:**

• The Committee may wish to ask the Serbian Government:

- Which measures does the Government of Serbia undertake in order to enable access to health care for persons who are not registered in the birth registry book, who do not possess ID card or health booklet and who do not live in their place of permanent residence, in particular pregnant women, women in postpartum period and new-born children?

1. [www.praxis.org.rs/index.php/en/](http://www.praxis.org.rs/index.php/en/) [↑](#footnote-ref-1)
2. See annual reports of the Commissioner for Protection of Equality: <http://ravnopravnost.gov.rs/en/reports/> [↑](#footnote-ref-2)
3. Article 5 of the Rulebook on the procedure for the issuance of birth notification and form of the issuance of birth notification in a health care institution (Official Gazette of RS, nos. 5/2011, 9/2016, 16/2016, 36/2016 and 103/2018) and points 10 and 24 of the Instruction on administering registry books and forms of registry books (Official Gazette of RS, nos. 109/2009, 4/2010, 10/2010, 25/2011, 5/2013.94/2013 and 93/2018). [↑](#footnote-ref-3)
4. See: S. Cvejić, Persons at Risk of Statelessness in Serbia, Progress Report *2010-2015*, UNHCR, 2016, available at: <http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_ENGLESKI.pdf> [↑](#footnote-ref-4)
5. Implementation Handbook for the Convention on the Rights of the Child, fully revised third edition (2007), p. 100, available at: <http://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf>. [↑](#footnote-ref-5)
6. According to research conducted by the United Nations High Commissioner for Refugees (UNHCR) in 2015, 1% of all Roma, Ashkali and Egyptians (RAE) who live in ‘Roma’ settlements are not registered in birth registries, 5.2% of all RAE who live in ‘Roma’ settlements have no identity cards, 38% of RAE who are at risk of statelessness have no residence registration and 50% of RAE who are at risk of statelessness are not registered in the vital records of citizens, see: <http://www.unhcr.rs/media/docs/UNHCR_Brosura_Apatridi_ENGLESKI.pdf> [↑](#footnote-ref-6)
7. For more information about the problems in the procedures of birth registration, acquisition of citizenship and registering of residence see: *Analysis of Practical Application of the Law on Non-Contentious Procedure - Determining the Date and Place of Birth*, Praxis, 2014; *Procedures for determining the date and place of birth – a brief analysis of the remaining challenges*,Praxis, 2014; *The Right to Citizenship in the Republic of Serbia – a brief analysis of the remaining challenges*, Praxis, 2014; *Registration of Permanent Residence in the Republic of Serbia – a brief analysis of the remaining challenges*, Praxis, 2014; *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*, Praxis, 2015; *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*, Praxis, 2016; *Determining the Date and Place of Birth, Right to Citizenship and Permanent Residence Registration - Analysis of Remaining Obstacles*, Praxis 2017; Review of the remaining obstacles in exercise of the right to birth registration, acquisition of citizenship and permanent residence registration, Praxis 2018, available at [www.praxis.org.rs](http://www.praxis.org.rs) [↑](#footnote-ref-7)
8. UNICEF’s Multiple Indicator Cluster Survey (MICS): <https://www.unicef.org/serbia/media/7041/file/Multiple%20indicator%20cluster%20survey%202014.pdf> [↑](#footnote-ref-8)