

PARALLEL REPORT

BY THE EUROPEAN ROMA RIGHTS CENTRE AND CHIRICLI, CONCERNING UKRAINE

To the Human Rights Council, within its Universal Periodic Review, for consideration at the 14th Session (22 October to 5 November 2012).



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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INTRODUCTION

1. The European Roma Rights Centre (ERRC)¹ and Chiricli² submit this parallel report to the Human Rights Council commenting on the second periodic review of Ukraine. This report highlights some of the key human rights concerns for Roma in Ukraine, based on ERRC monitoring of the human rights situation of Roma in the country ongoing since 1996.
2. Ukraine was reviewed under the Universal Periodic Review in 2008. The recommendations to the Government on national minorities, including Roma, included:
 - to continue its efforts to improve legislation and policies and to create institutional mechanisms to combat all forms of discrimination;
 - to follow through on creating an advisory council to address discrimination, to adopt comprehensive anti-discrimination legislation, as recommended by the Committee on Economic, Social and Cultural Rights in 2007, and to continue to direct attention to enhance human rights training for police officers and more effective ways of dealing with hate crimes;
 - to mainstream tackling racism throughout its departments and in its policy-making; and
 - to step up its struggle against racism, *inter alia* through implementing recommendations by the Committee on the Elimination of Racial Discrimination³ concerning identity documents for Roma.⁴
3. However the present situation indicates that little has been done by the Government to follow these recommendations and implement them in practice. The Government has not created an advisory council, has not adopted a comprehensive anti-discrimination law and has made little progress to tackle the key issue of identity documents for Roma.
4. A 2001 census shows there are 47,587 Roma living in Ukraine, out of a general population of approximately 46 million (as counted in 2011).⁵ However, unofficial statistics show that the number of the Roma in Ukraine might be between 120,000 and 400,000.⁶ Many Romani communities in Ukraine live in conditions of extreme poverty, with little or no access to basic social services. The Ukrainian Government does not collect and disseminate data disaggregated by ethnicity, therefore it is difficult to assess the extent of the problems faced by the Roma minority in different spheres of life, such as education, employment or housing. However, anecdotal information indicates that Roma in Ukraine continue to face discrimination and serious obstacles to access to employment, housing, education and personal documents. In a recent report, the Ukrainian government claimed it could not properly tackle these issues because it lacks resources and capacity.⁷

INADEQUATE LEGAL, INSTITUTIONAL AND POLICY PROVISIONS TO COMBAT DISCRIMINATION

5. No comprehensive anti-discrimination legislation exists in Ukraine. The Constitution of Ukraine contains a general provision banning discrimination. Article 21 states that all people shall be free and equal in their

¹ The European Roma Rights Centre (ERRC) 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.

² Chiricli is a Roma NGO focused on women's rights based in Kiev, Ukraine.

³ UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Draft Concluding Observations, Ukraine*, 19 October 2006, para 11 available at: <http://www.unhcr.org/refworld/docid/45c30bc9c.html>.

⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Ukraine*, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/UA/A_HRC_8_45_Ukraine_E.pdf.

⁵ State Statistics Committee of Ukraine, *All-Ukrainian Population Census*, available at: <http://2001.ukrcensus.gov.ua/eng/>.

⁶ European Commission, *An EU Framework for National Roma Integration Strategies up to 2020*, Brussels, 2011, available at: http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

⁷ Council of Europe, *Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities*, Strasbourg, 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf.

dignity and rights. This is contradicted in Article 24, which limits equality before the law to “citizens”, stipulating: “citizens have equal constitutional rights and freedoms and are equal before the law”.⁸ It has been pointed out by international organisations and human rights monitoring bodies that the principles of equality before the law and of non-discrimination on the grounds mentioned in Article 24 of the Constitution, namely race, colour of skin, religious and other beliefs as well as ethnic and linguistic characteristics, should be guaranteed to all individuals and not just citizens.⁹ Any ambiguity or limitations on legal protections created by the term “citizens” should be eliminated by clearly stating that the right to equality and non-discrimination shall be enjoyed by all persons under Ukrainian jurisdiction.¹⁰ Nevertheless, the provision remains unchanged and the principle of equality strictly extends only to Ukrainian citizens. This is problematic as many Roma do not possess personal documents or passports and thus might not be regarded as citizens for the purposes of Article 24 of the Ukrainian Constitution. It is especially obvious in light of Article 56 of the Constitution, which guarantees to *citizens* belonging to *national minorities* the right to be educated in their native language or to study their native language in state educational institutions.

6. The only other existing anti-discrimination provision is found at Article 26 of the Civil Code, which includes a general provision stating: “all people are equal in their ability to have civil rights and freedoms.”¹¹
7. The Ukrainian Constitution contains various provisions directly applicable to national minorities in the country. Article 10 guarantees the free use of national minorities’ languages. Article 11 guarantees that the State shall promote the consolidation and development of the Ukrainian nation, and the ethnic, cultural, linguistic and religious originality of all national minorities of Ukraine.
8. There are concerns with regard to limitations on the practical applicability and relevance of the Law of Ukraine on the Development and Use of Languages in Ukraine¹² and the Law on National Minorities in Ukraine¹³ with respect to Roma, as both laws clearly refer only to “citizens”. In addition, the Law on National Minorities does not offer adequate protection against racial discrimination and incitement to racial hatred. The Law does not contain provisions prohibiting direct or indirect racial discrimination; it does not identify national minorities and only contains vague criteria as to which groups can be considered to be a national minority. It does not explicitly name Roma as a national minority. Although it enumerates certain rights and freedoms for national minorities in Ukraine (the right to primary or pre-school education in the national minority language), the law does not define the mechanisms through which these rights and freedoms are to be practically implemented.
9. Article 161 of the Criminal Code provides for criminal responsibility for deliberate actions whose aim is inciting ethnic, racial or religious animosity as well as hatred aimed at humiliating the national honour and dignity of a person or offending citizens’ feelings based on their religious views. This provision has seldom been included in convictions, as it requires proof of deliberate action on the part of the perpetrator, which is difficult to establish.¹⁴ Furthermore, the applicability of Article 161 is limited to citizens; protections afforded to a person’s dignity and feelings have not been extended to include the grounds of race, colour, ethnic origin and language.
10. There is no longer an independent body in Ukraine that is responsible for dealing with national minorities. On 9 December 2010, the President of Ukraine signed a decree dissolving the State Committee for National Minorities and Religions and transferred it to the Ministry of Culture, reducing it to the status of a department.¹⁵

⁸ Constitution of Ukraine, available at: <http://www.rada.gov.ua/const/conengl.htm#r2>.

⁹ ECRI *Report on Ukraine (fourth monitoring cycle)*, adopted on 8 December 2011, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>.

¹⁰ Ibid.

¹¹ Civil Code of Ukraine, Article 26, available at: <http://meget.kiev.ua/kodeks/grazdanskiy-kodeks/glava-4/>.

¹² Law of Ukraine on the Development and Use of Languages in Ukraine, available at: <http://www.usefoundation.org/view/628>.

¹³ The Law on National Minorities in Ukraine, available at: <http://sevkrimrus.narod.ru/ZAKON/nazmen.htm>.

¹⁴ ECRI *Report on Ukraine (fourth monitoring cycle)*, adopted on 8 December 2011, para. 22-24, 15, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>.

¹⁵ Presidential Decree No.1085/2010, 09.12.2010.

11. The Office of the Human Rights Ombudsman is not specifically tasked with covering issues pertaining to racism and racial discrimination.¹⁶ However, the Ombudsman initiated a monitoring programme examining the status of national minorities, which noted that Roma suffer the most from human rights violations.¹⁷
12. Ukrainian authorities have been urged by the European Commission Against Racism and Intolerance¹⁸ to establish and implement a system of ethnic data collection to assess and redress any racial discrimination that may exist in the country, in full compliance with all relevant national laws as well as European and international regulations and recommendations on data protection and the protection of privacy, as stated in ECRI's General Policy Recommendation No.1 on combating racism, xenophobia, anti-Semitism and intolerance.¹⁹ However, no such policy has been implemented and there is no reliable data available.
13. The Government of Ukraine has not adopted a comprehensive policy to address the disadvantaged situation of Roma in the country. It is not a party to the Decade of Roma Inclusion, although there are ongoing discussions of the necessity for Ukraine to join the Decade.
14. Currently, the country works in close partnership with the European Union (EU) through the EU neighbourhood policy, which allows the EU to impose certain conditions on Ukraine, while offering political, economic and administrative support.²⁰ Consequently, as the situation of Roma is an area of interest for the EU, Roma issues are afforded some attention within this context. In 2010, the EU, in cooperation with the Council of Europe (CoE), supported the Ukrainian government in several areas: building capacity to work with Roma towards integration; empowering Romani women; and improving access to healthcare through the introduction of Roma health mediators.²¹ The Ukrainian government submitted a report to the CoE outlining the policies they had implemented to improve the overall living conditions of the Roma in the country.²² The authorities reported that they worked to provide equal access to education, and provided the opportunity for the native language of the national minorities (including Romani language) to be studied at the schools, better access to health services, increased presence of Roma in media and constant discussions with Roma representatives to identify the needs of the community. However, the government also admitted that the Roma in the country face serious issues in employment, housing, education, and everyday discrimination. Many children beg on the streets due to the fact that their parents have little or no income. Many Roma lack identification documents, which exclude them from accessing a number of state-provided services. For example, according to the government's research, Romani children in Odessa oblast have problems accessing education due to the lack of documents.²³ Although the government has identified some of the challenges, its actions to address the problems have been severely limited. The measures implemented by the Ukrainian Government to date are not enough to fully and efficiently address and resolve the current problems of Roma in Ukraine.
15. There are almost 90 Romani NGOs in Ukraine working at national and international levels, mainly to preserve local culture, language and traditions.²⁴ However, most of the Romani NGOs working in Ukraine lack practical experience on how to effectively promote Roma rights. Support from the government to strengthen NGOs and promote networking and capacity building has been inadequate and prevents Romani NGOs from realising and expanding their mission and goals.

16 The office is focused on protecting human and citizens' rights and freedoms, among other tasks, see *On the Ukrainian Parliament Commissioner for Human Rights*, Article 3, available at: <http://www.ombudsman.kiev.ua/zakon-ue.htm>.

17 European Ombudsman Institute, *Special Report of the Ukrainian Parliament Commissioner for Human Rights*, available at: <http://www.eoi.at/d/Menschenrechte/Ukraine/SPECIAL%20REPORT%20OF%20THE%20UKRAINIAN%20PARLIAMENT%20COMMISSIONER%20FOR%20HUMAN%20RIGHTS.pdf>.

18 ECRI *Report on Ukraine (fourth monitoring cycle)*, adopted on 8 December 2011, para. 22-24, 15, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>.

19 ECRI, *General Policy Recommendation No. 1 on Combating Racism, Xenophobia, anti-Semitism and Intolerance*, 6(B), available at: http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n1/Rec01en.pdf.

20 European Union, External Action, Ukraine, available at: http://eeas.europa.eu/ukraine/index_en.htm.

21 European Union, *European Instrument for Democracy and Human Rights, Improving living conditions and integration of Roma, 2010*, available at: http://www.eidhr.eu/files/dmfile/eidhr-campaign-factsheet-14_en.pdf.

22 Council of Europe, *Third Report Submitted by Ukraine Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities*, Strasbourg, 2009, available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Ukraine_en.pdf.

23 Ibid.

24 Ibid.

KEY ISSUES BY THEME

16. Recent ERRC research and monitoring in Ukraine has focused on the Odessa oblast, identifying four main areas in which Roma suffer most from discrimination. Research was carried out between June and November 2011 in the Odessa oblast. It was conducted in seven settlements,²⁵ where a total of approximately 3,500-4,000 Romani people live. There is a lack of official or unofficial data to indicate how many Romani people live in the region in total. The ERRC research found that members of the Romani minority in Odessa oblast often have significant problems accessing quality education, housing, healthcare, and employment. Obstacles in each of these areas are aggravated because many Roma lack identification documents. Consultation with national partners suggests that these issues are common in other parts of Ukraine, such as Zakarpatye region and Donetsk region.

LACK OF PERSONAL DOCUMENTS

17. Lack of access to personal documents remains one of the main problems for Roma in Odessa oblast. Although more comprehensive research is needed, ERRC research to date indicates that this problem clearly requires the most immediate intervention and resolution. Out of 191 people interviewed by the ERRC in Odessa oblast, 42 people (22%) did not have personal documents.
18. The lack of personal documents has several causes: Some Roma missed deadlines for exchanging documents following the collapse of the Soviet Union; some did not have documents during Soviet times and now cannot prove their birthplace, length of Ukrainian residence, etc. as is required to obtain personal documents; and others lack registration of their place of residence, which is a prerequisite for a passport.²⁶
19. Roma often face significant problems accessing other rights because they lack identification documents. Out of 191 people interviewed by the ERRC in Odessa oblast, 53 people (28%) did not have documents certifying their property rights for land or house, making them vulnerable to forced eviction and 30 children of school age could not enrol in school because of the lack of personal documents
20. Research carried out by the ERRC's partner in Ukraine, Chiricli, has revealed the same problems concerning access to personal documents and land/housing documents to be present in Donetsk, Lviv, Kiev and Zakarpatye oblasts.²⁷ During a social mediator project implemented by Chiricli in Romani communities in Ukraine, it became obvious that barriers to accessing healthcare and medicines beyond emergency treatment very often stemmed from the fact that many Roma do not have personal documents.²⁸
21. The circular effect as concerns access to personal documents and the effective exercise of other rights is significant. Despite this, there has been a lack of concerted Government action to facilitate access of Roma to personal documents and associated rights, documentation and processes. To date there has been no effective government policy in place concerning lack of documents for Roma, despite repeated recommendations from international monitoring bodies.

EDUCATION

22. Romani children continue to face problems accessing education in Ukraine, identified in previous research by the ERRC and Roma NGOs in Ukraine.²⁹ Some schools refuse to enrol Roma children because of documentation issues. If they are enrolled there is a high probability they will attend Roma-only schools or classes in which the curriculum is different than in regular mainstream schools.

²⁵ Interviews were conducted in the following settlements: Bolshhevik, Izmail, Shevchenko, Korsunsi, Lubashovka, Kiliya, Krasnoselka.

²⁶ Information provided by respondents during ERRC interviews carried out in the Odessa oblast: June-November 2011.

²⁷ See: <http://www.enjoyyourlife.ru/2012/01/370/na-otsutstvie-pasportov-i-priyutov-zhaluyutsya-tsigane-zakarpatya.html>.

²⁸ Starting from April 2010, with the help of the Open Society Institute and the Council of Europe, this project initially aimed at resolving the problem of poor health status and access to healthcare of Roma population in Ukraine.

²⁹ Romani Children Face Problems in Accessing Quality Education in Ukraine, summary of research available at: <http://www.errc.org/article/romani-children-face-problems-in-accessing-quality-education-in-ukraine/2977>.

23. ERRC research in the Odessa oblast indicates that many Romani children do not attend school. In some cases, this is due to a lack of personal documents as indicated above, which is illegal, since everyone has the right to free general primary and secondary education in Ukraine, according to the Constitution.³⁰ However, the Law on Education limits the right to education to “citizens”, which may render a significant number of Romani children unable to enrol in primary or secondary education in practice.³¹ In other cases, Romani children are put in segregated schools or sent to special schools for children with mental disabilities, often without the necessary testing. The distance between Romani settlements and schools and cost of education were also raised as obstacles to school attendance during ERRC research.
24. In the village of Korsunsi, Odessa oblast, according to Romani parents interviewed by the ERRC, only 30% of the 40 Romani children (12 children) of school age living there attend school. The majority do not attend school either because of a lack of the requisite documents, the lack of a school in close proximity or because of serious financial constraints as most of the Roma in this village live in extreme poverty.³²
25. The ERRC has raised concerns about segregated schooling (in both mainstream and special schools) in Ukraine in the past and current research shows that this problem persists.³³ For example, in the city of Izmail, Odessa oblast, there is a Roma population of approximately 300³⁴ in an overall population of approximately 75,000.³⁵ However Romani children constitute 33% of the total number of pupils (80) of School No. 5 for children with mental disabilities, according to the director of the school.³⁶ Most of the Romani children in Izmail use the Romani language as their mother tongue and cannot read, write or speak well in Ukrainian when they start school.³⁷ Once children are placed in special schools in Ukraine, there is no further testing on an ongoing basis to reassess the pupils, thus there is no record of any improvement or opportunity to integrate back into mainstream schooling.³⁸
26. In the village of Nerubaiskoe, Odessa oblast, there is a segregated school where only Romani children are studying. One of the teachers noted that:
- There are only Romani children studying in our school; around 100. We have four classes in the school, where children from seven to 15 are studying, where they study a curriculum, not different from mainstream schools. Romani children have problems studying in mainstream schools, because they create conflicts and also non-Romani parents don't want Romani children in one class with their children.³⁹
27. It should be noted that the education policy in Ukraine does not contain any measures specifically dealing with the education problems of Roma.

HOUSING

28. In addition to the problems experienced by Roma in acquiring legal title to land and houses raised above, many Roma also reside in inadequate housing conditions. Most Romani homes that were visited by the ERRC in the last year lacked basic amenities, such as heating, water, electricity and sewage. Some Romani settlements (such as the one in Odessa called “Indian quarters”) are situated close to rubbish dumps, creating unsafe living environments.⁴⁰ Such poor living conditions have a negative impact on the health of the Romani residents.

³⁰ Article 56 of the Constitution of Ukraine.

³¹ Article 6 of the Law on Ukraine

³² ERRC interviews with Romani parents. Korsunsi, Odessa oblast: 4-8 August 2011.

³³ ERRC, Romani Children Face Problems in Accessing Quality Education in Ukraine, 18 August 2008, available at: <http://errc.org/cikk.php?cikk=2977>.

³⁴ Data from Izmail Municipality, available at: <http://izmail.es/article/10527>.

³⁵ Estimated figure, based on data from State Statistics Committee of Ukraine, *All-Ukrainian Population Census*, available at: <http://2001.ukrcensus.gov.ua/eng/>.

³⁶ ERRC interview with the Director of School No.5. Izmail, Odessa oblast: 21 June 2011.

³⁷ ERRC interview with the Director of School No. 5 and Romani parents. Izmail, Odessa oblast: 21-22 June 2011.

³⁸ ERRC interview with the Director of School No. 5. Izmail, Odessa oblast: 21 June 2011.

³⁹ ERRC Interview with a School Teacher. Nerubaiskoe, Odessa oblast: 5 October 2011.

⁴⁰ Ibid.

CONCLUSIONS AND RECOMMENDATIONS

29. Research undertaken by ERRC in 2011 in Odessa and Odessa oblast has revealed the overwhelming problem with the lack of identity documents and legal titles for lands and houses which underpin all other impediments to accessing basic rights that Roma face. The ERRC has highlighted these issues several times in the past, but the problem persists. Access to education, employment, housing and healthcare are negatively affected by the lack of documents, and Romani individuals are further excluded from the rest of society. Lack of documentation is not the only obstacle faced by Roma in Ukraine in access to human rights, however as long as they are unable to access the necessary documents they will not be able to fully realise their basic human rights.
30. The ERRC emphasises that the current situation of the Romani minority in Ukraine calls for immediate action and effective improvements. In particular, the ERRC considers the following recommendations to be of primary importance to the Ukrainian Government:
 - Adopt a comprehensive anti-discrimination law, and create implementation mechanisms to ensure effective protection against all forms of discrimination, as a matter of priority;
 - Join the Roma Decade and develop a National Action Plan for Roma, putting emphasis on anti-discrimination policies and developing effective programmes to address the most pressing human rights problems for Roma in Ukraine such as housing, education, employment and the lack of personal documents;
 - Address the lack of personal documents and facilitate access to property titles for land and houses, simplifying the procedure for Roma to obtain these documents, to address this widespread problem;
 - Ensure that Romani children are enrolled in mainstream schools, according to the Law on Education in Ukraine, and ensure that they are not denied access to education due to a lack of personal documents;
 - Ensure that all Romani school children have equal access to education in a desegregated school environment and that schools have anti-discrimination policies in place;
 - Develop programmes to relocate segregated Romani communities into safe, integrated areas, particularly those located in hazardous or remote areas offering substandard living conditions;
 - Resolve the status of informal settlements and housing and include all informal communities in urban plans; and
 - Provide, without delay, adequate potable water, electricity, waste removal, public transport, road provisions and other public infrastructure in Romani settlements that presently lack one or more of the above.