

Alternative Report on the Republic of Serbia to the Human Rights Committee

for the 140th Session

5 February 2024



Introduction

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, the A 11 Initiative contributes to the better protection of economic and social rights, and to the improved understanding of the state's obligation to protect, promote and fulfill these rights through a combination of legal support and strategic litigation, advocacy, research, education, coalition and capacity-building and partnership. Since its establishment, the A 11 Initiative has provided counseling to over 2,000 individuals and has written over 13 submissions to international mechanisms for the protection of human rights. The A 11 Initiative is a member organization of the [Platform of organizations for cooperation with the UN mechanisms for human rights](#) and has been granted with the ECOSOC consultative status. A 11 Initiative welcomes the opportunity to provide the Human Rights Committee (hereinafter: the Committee) with information in relation to the Republic of Serbia, during its review of the State report. Some of the issues covered in this submission were mentioned in the report prior to the adoption of the List of Issues, submitted by the A 11 Initiative or in a joint submission with the Platform of organization for cooperation with the UN mechanisms for human rights. However, given the new development, particularly those related to the implementation of the Law on Social Card, the A 11 Initiative welcomes the opportunity to provide the Committee with additional information and fill the gaps in the Reply to the List of Issues concerning the following issues:

I Law on Social Card considering equal access to rights and services, right to privacy and due process of law (arts. 14, 17 and 26)

II Denial of Parental Allowance to Roma children (arts. 24 and 26)

III Access to health care for undocumented Roma children and pregnant women

IV Position of Roma health mediators

V Right of a child to birth registration immediately after birth and the right to a name (art. 24)

VI Problems in registration of permanent and temporary residence for internally displaced persons and Roma

LOI 8. Please provide information on the implementation and impact of measures taken to combat discrimination experienced by Roma, particularly Roma women and girls, including with regard to their access to basic services, such as health care, housing, education and employment.

Issue I: Law on Social Card in the light of equal access to rights and services, right to privacy and due process of law

Article 14 (access to justice and fair trial), Article 17 (right to privacy), Article 26 (non-discrimination)

For assessment of **the situation with regard Roma and non-discrimination**, it is of crucial importance to pay attention to the Law on Social Card¹, which generated numerous issues in access to social benefits disproportionately affecting Roma, due to their high representation in the welfare system. In addition to problems in access to social benefits, the social card system raised various concerns related to **the right to privacy, non-discrimination and fair process**.

In March 2022, the Law on Social Card came into force, with the proclaimed aim to introduce the automation of procedures and processes related to acting in the field of social protection, more efficient realization of rights and social protection services, fairer distribution of social assistance and improvement of the efficiency and proactivity of social protection authorities' work. However, from the beginning of its implementation in March 2022, until January 2024, at least **44,000 vulnerable individuals lost the status of beneficiaries of the social system**.

The proclaimed proactivity of the social card system is present only when it comes to tracking changes that may lead to the reduction or termination of benefits, without sufficient safeguards to prevent violations of human rights such as the right to privacy, fair process, and principles of human dignity and non-discrimination. If a system finds that a beneficiary no longer meets the condition for social benefits, the system does not enable him/her to adequately participate in the process and explain his/her situation before termination of benefits. Therefore, the social card system denies social benefits, but also **due process of law and an opportunity to be heard**, in stark contradiction with the declared goal of achieving a fairer distribution of social benefits. Another declared goal, the improvement of the efficiency of the social system, may not take precedence over the right of social beneficiaries to be heard before the termination of benefits, intended to meet the basic demands of subsistence. Unfortunately, automation of social benefits leads to this outcome.

The introduction of automation in a welfare system and in deciding on requests for financial social assistance, which already has been assessed as manifestly inadequate,² exacerbated existing flaws and structural discrimination.³ The Social Card Registry, utilizing automation to consolidate applicant's data from a range of government databases, relies on inaccurate earnings and assets data, leading to flawed outcomes.⁴

¹ The Official Gazette of RS, no. 14/2021.

² European Committee of Social Rights, Conclusions 2017 – Serbia – Article 13 Paragraph 1 – Adequate assistance for every person in need, available at: <http://hudoc.esc.coe.int/eng?i=2017/def/SRB/13/1/EN>. In the moment of adoption of the Conclusions in 2017, the individual financial social assistance amounted to 8.201 dinars (approximately 70 EUR) and it did not change significantly, and in January 2024 amounts 11.445 (approximately 97 EUR).

³ See also Human Rights Watch, Submission to the Office of the United Nations High Commissioner for Human Rights on good practices and challenges to strengthen the fulfilment of the right to social security, available at: <https://www.hrw.org/news/2024/01/16/submission-office-united-nations-high-commissioner-human-rights-good-practices-and>, January 16, 2024

⁴ A 11 Initiative casework. See also: Human Rights Watch, op. cit.

The majority of persons who sought assistance from the A 11 Initiative due to the loss or reduction of social benefits resulting from implementation of the Law on Social Card, belonged to the Roma ethnic minority. Additionally, a significant number of cases leading to the termination of financial social assistance (FSA) were related to errors in the calculation of income (i.e. the social card system notification pointing that beneficiaries earned some income and that his/her FSA should be terminated or reduced).⁵ These errors in income calculation were often related to a collection of secondary raw materials (a work predominately performed by Roma) and resulted in the termination of financial social assistance without opportunity to explain or contest the reasons behind the termination of social benefits.⁶

Discrepancies and flaws in the social card system have a profound negative impact on the lives of citizens who are already in a vulnerable position. Considering the impact of loss of benefits for persons without any other income, and its consequences on human dignity and ability to meet existential needs, systemically addressing these issues must be a prerequisite for further implementation of the Social Card system. Given the frequency of errors and their impact on the most vulnerable citizens, it is unacceptable to rely solely on correcting the described widespread omissions through appellate procedures.

Lack of transparency and safeguards related to the protection of privacy rights are other serious human rights issues related to the social card system. The Law introduced disproportionate **processing of up to 135 personal data** of social beneficiaries and persons related to them. The algorithm that checks if the beneficiaries still meet the criteria for financial social assistance is not made public, although the freedom of information request was submitted to the relevant Ministry already in June 2022. When it comes to the automation of decision-making processes, two fundamental requirements need to be imposed on the system introducing the automation. The first requirement pertains to the transparency of the algorithm conducting automatic checks for compliance or non-compliance of data in the Social Card with the criteria for entitlement to social protection rights. The second requirement involves enabling the user of the social protection system to be heard on the circumstances related to the mentioned automatic processing of personal data. Neither of these two requirements is currently fulfilled in practice.

The automation of procedures in the social welfare system has far-reaching consequences for vulnerable citizens and their rights to social security, equality, privacy and fair proceedings. Due to the inconsistency of the Social Card Law with the provisions of the Constitution and international treaties that guarantee the above rights, the A 11 Initiative submitted an initiative for the review of its constitutionality in April 2022. **Members of the International Network for Economic, Social and Cultural Rights (ESCR-Net)**, with many years of experience in the field of human rights protection, especially in areas affected by the social card system, supported this initiative by submitting an Amicus Curiae Brief to the Constitutional Court of Serbia – a joint expert opinion in which, among other things, they **remind that the extensive processing of data of beneficiaries of the social protection system, as laid out in the Social Card Law, is contrary to the principles of personal data protection, the right to social protection, as well as the prohibition of discrimination**, particularly since there is a large Roma population in the social protection system. The Constitutional Court remained silent, despite receiving rush notices.

The submitting organization recommends the Committee to call upon the Serbian Government:

- **To abandon automation in the social protection system.**

⁵ For more details about problems caused by the social card system, please see a A 11 – Initiative for Economic and Social Rights, (Anti) Social Card, available at: <https://antisocijalnekarte.org/en>.

⁶ Ibid.

- To explain what safeguards are in place to ensure that the social card system does not infringe on the right to be heard and due process of law.
- To explain how the proportionality between data collection and the right to privacy are weighed in the social protection system.
- To ensure beneficiaries of social assistance are provided with the right to be heard and an effective opportunity to present their own arguments and evidence before the termination of social benefits.
- To ensure that efforts to ensure efficiency in the social protection system do not undermine the right of beneficiaries to privacy, human dignity, non-discrimination, and due process of law.
- To carry out necessary measures to provide the public with transparency about the algorithm and the source code of the Social Cards system, to provide the opportunity for undertaking of the human rights and algorithm impact assessment.

LOI 8

Issue II: Denial of parental allowance for Roma children

Article 26 (non-discrimination) and Article 24 (rights of a child)

For assessment of the State`s compliance with Article 26 of the ICCPR (requiring states to ensure that all persons are equal before the law and entitled to equal protection before the law), and with Article 24 (concerning equal measures of protection for children) - it is necessary to pay attention to certain conditions attached to support to families with children, which effectively deny access by certain disadvantaged and marginalized groups to different forms of support. 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 – as emphasized by the UN CESCR in its latest review of Serbia.⁷

A piece of legislation of immense importance for the assessment of the State`s compliance with Article 26 is the Law on Financial Support to Families with Children (hereinafter: LFSFC)⁸, which discriminates against Roma children. Article 25 of the Law prescribed additional conditions for parental allowance, i.e., that all children in the family must be fully and timely vaccinated and regularly attend (pre)school education. Although apparently neutral and not related to ethnicity, these conditions have a disproportionately negative effect on Roma children, who are among the most vulnerable in Serbia and face the greatest challenges in access to education and health care.

All data points to the existence of a gap between Roma and non-Roma children in school and pre-school attendance, as well as in immunization coverage. As pointed out in the Strategy for Social Inclusion of Roma for 2022-2030, adopted by the Government of the Republic of Serbia, and in the regional research on Roma, **one in six marginalized Roma children of school age is still not participating in the education system.**⁹ Only 17% of Roma children aged between 3 and 6 years are enrolled in preschool education. In Western Balkan, the gap between Roma and non-Roma children in the field of education is highest in the Republic of Serbia, when compared to other countries in the Western Balkan. According to

⁷ UN CESCR, Concluding observations on the third periodic report of Serbia, 6 April 2022, para. 50.

⁸ The Official Gazette of RS, no. 113/2017, 50/2018, 46/2021, 51/2021, 53/2021, 66/2021, 130/2021, 43/2023, and 62/2023.

⁹ Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2022-2030; UNDP, Roma at glance, Serbia, available at:

https://www.eurasia.undp.org/content/dam/rbec/docs/Factsheet_SERBIA_Roma.pdf, page 2.

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%.**¹⁰ 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 and secondary education in the general population are high, while these rates are significantly lower for children coming from Roma settlements.¹¹ The Strategy for Social Inclusion of Roma points out that in 2019, the overall coverage of child immunization in Roma settlements (aged 24–35 months) was 63% in 2019, compared to 80% in the general population. In the general population, 69% of children (aged 24–35 months) received all vaccines on time, while in Roma settlements, this percentage is only 35%.¹²

Presented data on school and preschool attendance and immunization coverage among Roma and non-Roma children clearly suggest that conditions for parental allowance have a disparate impact on Roma children.

The Committee for Economic, Social and Cultural Rights already expressed its concern about substantive discrimination faced by disadvantaged and marginalized individuals and groups, in accessing social protection, among other rights. The Committee recommended the State to review the conditions attached to social benefits, particularly to the parental allowance and financial assistance, with a view to removing the conditions that are discriminatory or have discriminatory effects and contradict human rights norms. No steps have been taken in that regard.

It is pertinent to remember that discrimination in access to social protection is prohibited not only in the ICESCR, but also by Article 26 of the ICCPR. Also, as underlined by the Constitutional Court of Serbia, parental allowance is primarily directed toward meeting the basic needs of a child,¹³ and its purpose is to improve the position of newborn child. As such, this form of support to families with children falls within the domain of Article 24 of the ICCPR, and special measures intended to protect children, which may also be economic, social and cultural.¹⁴

The Covenant requires that children should be protected against discrimination on any grounds. In this connection, the Committee notes that, whereas non-discrimination in the enjoyment of the rights provided for in the Covenant also stems, in the case of children, from Article 2 and their equality before the law from Article 26, the non-discrimination clause contained in Article 24 relates specifically to the measures of protection referred to in that provision. *Reports by States parties should indicate how legislation and practice ensure that measures of protection are aimed at removing all discrimination in every field.* In addition to these general obligations, Serbia received from the Human Rights Committee specific questions concerning the impact of the LFSFC, particularly Article 25, on Roma community, but Serbia failed to provide the information.

10 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>

11 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)

12 Strategy for Social Inclusion of Roma in the Republic of Serbia for the period 2022-2030.

13 Constitutional Court of the Republic of Serbia, IUz-104/2014.

14 UN HRC, General comment No. 17: Article 24 (Rights of the child), para. 3.

Specifically, at the end of the 119th session, the UN Human Rights Committee requested Serbia to provide the Committee with follow-up information on the implementation of recommendations contained in paragraph 15 (Roma exclusion). After the State submitted its follow-up report, **the Human Rights Committee concluded that Serbia failed to act on the recommendations related to the exclusion of Roma and requested that, within the next reporting cycle, Serbia should provide, inter alia, specific information on how amendments to the Law on Financial Support for Families with Children, and especially Article 25 of that Law, which regulates the right to parental allowance, affect the Roma community.** In the fourth periodic report submitted by Serbia, the State did not provide any information about amendments to the Law on Financial Support for Families with Children, nor about its impact on Roma children, despite the Committee's questions about this issue. Similarly, in the reply to the List of Issues, Serbia did not mention any information about impact of LFSFC to Roma children, nor about any measures to combat discrimination against Roma and Roma children.

Parental allowance, as a form of support for families with children, has a potential to contribute not only to meeting the basic needs of children, but also to mitigate discrimination against Roma children. However, by conditioning this form of support with school attendance and complete immunization coverage – conditions that many vulnerable Roma children find challenging to meet without additional assistance – the state is exacerbating the existing gap between Roma and non-Roma children.

The submitting organization recommends the Committee to call upon the Serbian Government:

- **To review the conditions attached to the parental allowance, with a view to removing the conditions that are discriminatory or have a discriminatory effect and contradict human rights norms.**
- **To describe the impact of Article 25 of the Law on Financial Support to the Family with Children regarding school attendance and immunization on vulnerable Roma children.**
- **To take measures to prevent discrimination of vulnerable Roma children in the access to parental allowance and other forms of support for families with children.**

LOI 8

Issue III: Access to health care for undocumented Roma children and pregnant women

In reply to the List of Issues, the State asserts that according to the Law on Health Care and the Health Insurance Act, every person residing in the territory of the Republic of Serbia has the right and grounds to use healthcare services and the right to health insurance and that persons who do not have health insurance can exercise their right to bring provided with healthcare services in emergencies. However, conditions for health insurance are further regulated in bylaws and include requirements such as possession of proof of residence. Consequently, undocumented Roma, including children and pregnant women, do not have access to preventive health care only being able to receive healthcare in emergency situations. This may lead to high bills (for instance, in cases of childbirth without health insurance).

The Law on the Realization of Health Care for Children, Pregnant Women and New Mothers,¹⁵ adopted back in 2013, regulates the exercise to the right to health care for children, pregnant women and new mothers whose health insurance documents are not certified. Regrettably, this piece of legislation **ignores those pregnant women and children who are not able to obtain health insurance cards at**

¹⁵ Official Gazette of Republic of Serbia, No. 104/2013.

all, such as undocumented Roma. The difficult situation of Roma women and children 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 (...)”.¹⁶ This Committee recommended the State to “strengthen efforts to ensure that access to adequate health care, including prenatal care for pregnant women without health insurance, is extended to families living in the most vulnerable situations, particularly those living in marginalized and remote areas”.

Submitting organization urges the Committee to recommend to the State:

- **To ensure access to adequate healthcare, including prenatal healthcare, for uninsured pregnant women, particularly undocumented Roma**
- **To ensure access to preventive healthcare for undocumented Roma children**

LOI 8

Issue IV: Position of Roma Health Mediators

In reply to paragraph 8 of the List of Issues, the State asserts that there has been an increase in the number of female health mediators. This submission intends to provide additional information about the precarious position of Roma health mediators, whose role is important for the mitigation of challenges Roma face in access to basic healthcare.

Regarding the situation of Roma health mediators, the persisting issues revolve around their service contracts, which entail payment below the minimum wage. Over the past year, the situation has worsened, with the added challenge of losing health insurance for health mediators.¹⁷

Roma Health Mediators have never been formally employed but rather engaged through service contracts lacking substantive protection of their labor rights. The compensation Roma Health Mediators receive is significantly below the minimum wage, approximately 230 EUR compared to the minimum wage of 380 EUR. Additionally, their positions are not integrated into the healthcare system they collaborate with, and they are not officially recognized as healthcare professionals. In the circumstance of pregnancy, Roma Health Mediators must conceal it as contract extensions are unlikely.¹⁸

Submitting organization urges the Committee to recommend to the State:

- **To cease further subjecting health mediators to precarious positions and to take necessary measures to streamline their placement in organized workplaces, fostering the establishment of formal employment relationships and enabling their access to health insurance.**

¹⁶ Committee on the Rights of the Child, Concluding observations on the combined second and third periodic reports of Serbia, 7 March 2017, para. 45 (b).

¹⁷ Information from focus groups with Roma Health Mediators from 1 November 2022 and 31 October 2023.

¹⁸ Ibid.

LOI 8(a). Please respond to reports indicating that: (a) births of Roma and other children whose parents do not have identity documents are not registered in a timely manner

Issue V: Right of a child to birth registration immediately after birth and the right to a name

Article 24

The Response to the List of Issues by the Republic of Serbia asserts that „each healthcare institution duly registers each delivery performed in that institution and each newborn child.“ This submission aims to provide additional insight and information about remaining systemic gaps and unresolved issues regarding birth registration and residence registration.

For children whose parents do not have identity documents, *registration of birth remains incomplete*, and child will remain without determined name and without documents (birth certificate, citizenship certificate and registration of permanent residence), which are prerequisites for accessing all rights and services in Serbia. A child cannot obtain these documents until additional procedures are completed. These procedures (determination of name, if a child is born in health care institution, or late birth registration or court procedure for determination of date and place of birth, for births outside healthcare institutions) do not align with obligations stemming from the Article 24(2) of the ICCPR, which stipulates that every child shall be registered *immediately after birth* and shall have a name. Children of undocumented parents cannot be given a name immediately after birth due to bylaws¹⁹ that require that parents, or at least mother, in order to register the birth and the name of their child immediately upon birth, parents, need to possess birth certificate and identity documents (ID card, or passport, if they are foreigners). Consequently, children whose parents are undocumented still cannot be given a name at birth and obtain birth certificate with a name.

Submitting organization urges the Committee to recommend to the State:

- **To amend bylaws that leave children of undocumented parents without *complete* and timely birth registration and without personal name determined promptly after birth.**
- **To take necessary measures to ensure that all children born in Serbia are registered in birth registry books immediately after birth and issued birth certificate with entered personal name.**

¹⁹ 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, no. 93/2018, 24/2022 and 88/2023). For additional information and about problems in the access to personal documents and citizenship see particularly Praxis, Overview of obstacles to exercising the right to registration in birth registry books, acquisition of citizenship and registration of permanent residence in 2022, 2023, available at: https://www.praxis.org.rs/images/praxis_downloads/UNHCR_Annual_Report_2022.pdf

LOI 8(c) Please respond to reports indicating that: some internally displaced Roma still face difficulties in registering their place of residence.

Issue VI: Problems in registration of permanent and temporary residence for internally displaced persons and Roma

Article 26 and Article 24

The problem of registration of permanent and temporary residence is still ongoing and the **registration of residence is still among the major obstacles to assessing basic rights and services for vulnerable Roma, especially for Roma from Kosovo and Roma living in informal settlements.**

The adoption of the Law on Permanent and Temporary Residence of Citizens in 2011 was the most significant step in enabling residence registration for vulnerable Roma. This Law introduced the possibility of determining permanent residence for Roma from informal settlements and other citizens who are unable to register their permanent residence in any other way at the address of a Social Welfare Centre (SWC).²⁰ However, problems still frequently occur in these procedures. Also, in practice, persons who have already registered their permanent residence in places they left many years or even decades ago are denied the establishment of permanent residence at the address of the SWC, with the explanation that this option is intended for persons who have no registered residence at all. Roma from Kosovo are particularly affected by this practice. If they live in informal settlements, they are often prevented from registering their residence in the place where they actually live. This affects their access to the majority of social rights and services.

Another obstacle is the arbitrary refusal of SWCs to grant permission to register permanent residence at their address to a person who is unable to register permanent residence in any other way.²¹ The police station shall not continue the procedure for establishing residence until the SWC has given its consent to register residence at the address of the SWC. If the SWC refuses to give its consent, the Ministry of Interior shall reject the application for the establishment of residence without further examination of whether the application was justified and whether the refusal to give consent to the registration of residence at the address of the SWC was unjustified.

It is pertinent to recall that **access to rights in Serbia requires proof of residence** and that the residence mechanism in Serbia and problems faced by the poor people, Roma and internally displaced persons not only hinder the exercise of a number of human rights but, according to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right not to be discriminated against in this context, also increase social exclusion, stigmatization and discrimination.²²

Internally displaced persons can exercise some rights and access to basic services such as health care and health insurance in the place where they have registered temporary residence. However, registration of temporary residence requires legal proof for housing. Internally displaced persons from informal settlements and without legal proof of housing are in a particularly disadvantaged position, as they are

²⁰ The option for persons without legal grounds for residence to have their permanent residence registered at the address of social welfare centre, was introduced by the Article 11 of the Law on Temporary Residence in 2011.

²¹ A 11 Initiative casework. See also Praxis, Permanent Residence Registration For Marginalised Citizens – Law and Practice, available at: https://www.praxis.org.rs/images/praxis_downloads/Permanent_Residence_Registration_For_Marginalised_Citizens_Law_and_Practice.pdf, June 2023.

²² Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Serbia and Kosovo, 26 February 2016, para. 41, p. 9, available at: <https://digitallibrary.un.org/record/831292>.

not even able to register temporary residence and consequently do not have access to basic rights and services in the place of their actual residence.

Submitting organization urge the Committee to recommend to the State to:

- **Take additional steps to enable vulnerable Roma from informal settlements to register permanent residence in their actual place of residence.**
- **Extend the possibility of establishing permanent residence at the address of the social welfare centre for Roma from Kosovo who wish to change their permanent residence registration and to register residence in their actual place of residence.**