

It's bad being an old Roma in Bulgaria...

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Roma minority in Bulgaria are disproportionally dependant on the Social care system to maintain the minimal living standard but their access to health and social services are restricted by both discriminatory attitude and prejudices among the governmental officials and legislative requirements constituting barriers towards receiving social and health services. Monitoring Roma rights we can clearly testify that Roma social rights are violated on daily bases due both – social workers reluctance to pay necessary attention to their struggles and legislative criteria to access social system set for as the barrier that Roma persons cannot overcome themselves.

Social human rights are one of the basic human rights that relate to the conditions necessary to meet basic human needs; they are proclaimed within the Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights and the European Social Charter. They place a positive obligation on governments to ensure that their people can live and work in conditions, which are suited to a basic level of human dignity. Social rights, therefore, are rights to which the individual citizen is entitled, which he/she can exercise only in his/her relationship with other human beings, as a member of a group and which can be made effective, only if the state acts to safeguard the individual's social environment.

For a long period of time social rights were perceived as “non-justiciable” thus, distinguished from their older and more classical counter-parts, civil and political rights and alleged to be statements of desirable goals but not rights. However, at the European level, the European Committee of Social Rights¹ has adopted major decisions in regard to violations of social rights of Bulgarian Roma /European Committee of Social Rights decisions under complaint № 48/2008² and 46/2007³ - European Roma Rights Centre (ERRC) v. Bulgaria regarding incompliance of Bulgarian Social Care system and Health Care system with the European Social Charter/. The Committee on Economic, Social and Cultural Rights⁴ have been done significant theoretical works in defining of the scope and nature of social human rights, /for further information, please refer to CESCR' General Comments №: 20 Non discrimination in Economic, Social and Cultural rights⁵, 19 The right to social security⁶; 14The right to the highest attainable standards of health⁷ and 6 The economic, social and cultural rights of older persons⁸ /, furthermore, with developing of optional protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by GA resolution A/RES/63/117⁹, once ratified, shall enable those whose economic, social and cultural rights are violated and who are denied a remedy in their countries to seek justice at the UN level. At the national level Constitution of the Republic of Bulgaria¹⁰ proclaiming the Republic of Bulgaria to be “social State”, acknowledge, among the others social rights, right to social security and social assistance – art.51, 1; art. 51, 2 – securing the right to social security towards unemployed and art. 51, 3 emphasizing on special protection towards particularly vulnerable groups, however that so far thorough investigation of social rights haven't been done by the Constitutional Court.

Violated social rights of Roma in the cases presented below, under the International Covenant on Economical, Social and Cultural Rights, refers to the right to **health**, to **social security** and to **non-discrimination**.

Case of Stefan Manev, 63 year old Roma man from Strahilovo village, suffering from aging-associated diseases, unemployed and not receiving pension his only incomes are the social monthly welfare and reliefs for heating. He approached the project coordinator to alarm him that he was cut out of his social monthly welfare, a local Roma lady who was helping him in his household find a job and leave the village, thus leaving him unattended as he doesn't have any family members to look

after him. Further investigation on the case reveals that he was cut out of the social monthly welfare because he ceased to attend monthly local State Labour Agency bureau to declare that he is unemployed and during the visit in Strahilovo village a social worker determines the fact that an old lady from the local Roma community is looking after Stefan in his daily necessities. Thus he violates legal requirements set for in the social assistance legal act – to monthly declare that he is unemployed and to declare the incomes of his household members. /Social worker made an assumption that Mr. Manev cohabitates with a woman without being legally married to her, in such case under the social assistance legal act the concubine is treated as a legal wife of the person applying for social welfare and her income should be declared along with the applicant one. /

The Social worker, Mrs. Petrova, which ceased Mr. Goranov welfare, was approached by the project coordinator to ask explanation why an assumption was made without thorough investigation and at least questioning the neighbours if Manev is living with the lady or she is just helping in the household. She barely remembered the case and answered “I did what I must do – he received the administrative act for ceasing his welfare and do not contested it.” Mrs. Petrova didn’t visit Manev ever since and was unaware of his current condition. Legal review of the case reveals that though there is no explicit rule set for in the Social Assistance Legal Act, the legal act on employment affirmation proclaims that persons who have reached pension age do not need to register in the local bureaus of state Labour Agency as unemployed, thus they can receive social welfare /if they do not receive pension/ under the Social Assistance Legal Act. Director of the State Social Agency was approached with a petition to abolish local social worker administrative act issued in ceasing Manev’s social welfare. Petition was approved and Manev restored his right to monthly social welfare.

Case of Dimitar Goranov, 75 year old Roma man from the town of Polski Trambesh, living alone, suffering from cardiovascular insufficiency with no incomes apart of his minimal pension. Both of his children living in UK but do not help him financially, his wife deceased ten years ago. Mr. Goranov has been granted on regular bases urgent reliefs by the State Social Agency, Polski Trambesh bureau to cope with his electricity bills, to buy coal and wood for heating and medicines needed for his illness; thus the local SLA bureau social workers are aware about his health condition and the low incomes he’s struggling living with. Polski Trambesh hospital head, d-r Ancheva testified to the organization that Goranov needs perpetually to be looked after at his home due to his medical condition. We have approached his physician and his expert statement was that Goranov should be admitted in an elderly shelter as there he will have designated medical personnel to provide him necessary medical care needed. Mr. Goranov asked the organization to help him enter in the elderly shelter.

Mrs. Stankova, Director of State Social Agency /SSA/ – Svishtov was approached with request to admit Goranov in “Mariya Luiza” elderly shelter in the town of Svishtov, one of the best maintained elderly shelters in the District of Veliko Tarnovo, 40 kilometres away from the town of Polski Trambesh. A regulation based on the Social Assistance Legal act, requires Goranov to present several papers along with the request for admittance - statement from the psychiatry dispensary /located in the Veliko Tarnovo city/ stated his mental condition and a declaration from the State Tax Agency that he doesn’t owe any taxes or other duties to the State.

Mr. Goranov has been admitted in the desired elderly shelter and we have visited him to assure that he receives adequate medical and social care. The elderly shelter that accommodates 120 inhabitants has permanent staff of eight nurses and two physicians, who permanently monitor health condition of the older persons admitted in the shelter and twelve social workers working with older persons. Mr. Goranov is free to travel to his home town whereas his medical condition let him so and he is often taking half hour bus trip to the town of Polski Trambesh, visiting his friends.

Right to social security includes:

Right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents. Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion. States parties must take effective measures, and periodically revise them when necessary, within their maximum available resources, to fully realize the right of all persons without any discrimination to social security, including social insurance. Measures that are to be used to provide social security benefits cannot be defined narrowly and, in any event, must guarantee all peoples a minimum enjoyment of this human right. These measures can include:

(a) Contributory or insurance-based schemes such as social insurance, which is expressly mentioned in article 9 of ICESCR. These generally involve compulsory contributions from beneficiaries, employers and, sometimes, the State, in conjunction with the payment of benefits and administrative expenses from a common fund;

(b) Non-contributory schemes such as universal schemes (which provide the relevant benefit in principle to everyone who experiences a particular risk or contingency) or targeted social assistance schemes (where benefits are received by those in a situation of need). Non-contributory schemes are required since it is unlikely that every person can be adequately covered through an insurance-based system.

While the elements of the right to social security may vary according to different conditions, a number of essential factors apply in all circumstances. In interpreting these aspects, it should be borne in mind that social security should be treated as a social good, and not primarily as a mere instrument of economic or financial policy.

Presented cases reveal that there are violations of State obligation to provide those essential factors, as defined in the CESCR GC № 19, being:

Creating social security system towards *social risks and contingences* related to old age – even though that social security or other assistance exists for older persons who have reached retirement age but not receiving pension, on equal basis with other persons “qualified” for welfare allowances, Roma are in fact excluded from it. The obligation to establish such system is, however, narrowed “within the limits of available resources” but it would be nonsense for a State to claim that there are available resources to send social worker to investigate whereas a person could be struck out of the welfare allowances /does one live alone or not, in the case of Manev/ but there are no available resources to send same social worker to investigate if there is a need to provide social services to an older person who has reached pension age, do not receive pension and do not have financial means to cope with daily necessities.

The social worker perceived her duties as to check whether the person is non-conforming with the regulations set for in the Social Assistance Legal Act, but not to examine real needs and the situation in which one lives, furthermore, to check if a change in the circumstances occurs and he falls under these criteria; it appears rather than provide social services and be in fact a “public servant” the social worker define hers authority as to investigate whereas one is in breach of legal restrictions towards receiving social service and act as a “law enforcement agent” who punishes the Roma misdemeanours. Furthermore, there is no special social security system towards old age persons /as defined by the CESCR, GC 19, 2 “c”, third sentence – please see above/, they are applying for a monthly welfare on equal bases with every other who is in need of social system’ help,

obtaining sufficient means to meet the necessary costs of living in a manner consistent with human dignity. Combining this with widespread prejudices towards Roma minority within the country being “dependant on social welfare by profession” /widely used term towards unemployed Roma in the Media by the journalists, political leaders, social workers, and even the former social minister, Mrs. Maslarova/, results in inevitable harsh treatment of Roma older persons by the social workers.

Adequacy – State provided benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their rights. Ceasing ones welfare allowances based on legislative criteria that do not include ones current social needs situation is a major breach to the benefits adequacy requirement. The Social security system do not monitors situation of the persons who were cut out of the welfare due to their incompliance with the criteria set for in the Social Assistance Legal Act /struck out because of incompliance/ or those who did received social welfare for the period of twelve months /termination of social welfare on timing criteria/.

Accessibility of social care system is also breached under *Coverage* - All persons should be covered by the social care system, especially individuals belonging to the most disadvantaged and marginalized groups. Whereas Roma are not explicitly excluded from the Social Care system, exactly the most disadvantaged and marginalized groups within the society can be more easily struck out of it. Due to low incomes /which to be the primary purpose for receiving the monthly welfare/ they hardly can afford legal counselling or /as in the case of Manev presented above/ even a bus ticket to reach the municipality centre to submit a contestation against administrative act issued ceasing their welfare allowances. Furthermore, legislative criteria for receiving social welfare and other social relief funds in the Social Assistance Legal Act disproportionately affect Roma. Various studies determines that the high rates of poverty and low levels of employment leave Roma households heavily dependent on social welfare, which in a significant number of cases is the primary source for their survival. The most recent to be 2002 UNDP survey in which 44.4% of the Roma in Bulgaria had indicated that social assistance was the usual source of income for their households during the last six months and 2006 survey on Roma Integration and economic reform by the OSI – Sofia, which estimated that between 62% and 98% of Roma relied on social assistance. Thus, legislative measures applied to “tighten” welfare allowances disproportionately affect the Roma.

Eligibility – Qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable and subject to due process. Whereas there are no specially elaborated criteria disqualifying Roma from the social benefits provided to, legislative changes in introducing new criteria in ceasing social welfare disproportionately affected Roma, as they being the larger group depending on the social welfare allowances as the only source of income. It is also arbitrary whereas termination of social welfare on timing criteria, without account if one after being ceased from welfare allowances can maintain sufficient means to meet the necessary costs of living in a manner consistent with human dignity or no, falls within reasonable scope of eligibility. Furthermore, one other criterion to receive social welfare can hardly be found reasonable. Regulations on Social Assistance Legal Act, persons do not have right to receive social welfare if: Art.11, 2 - their relatives has legally bounded obligation to take care of them /there is no question if their relatives, whereas bearers of the obligation to provide them with care have or not have financial means to do so /.

Participation and information - Beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should ensure the right of individuals to seek receive and impart information on all social security entitlements in a clear and transparent

manner. Through civil society efforts, representation of Roma in the State Social Agency personnel is climbing up, but it is still far from the needed one, having in mind that Roma prevails among others vulnerable and marginalized groups dependant on the social security system. In the case of Manev, barely mentioning on the administrative act issued in ceasing his welfare allowances that it can be contested in a given period of time hardly can be found enough to assure clear and transparent manner of information required under participation and information scope of the right.

Accessibility of the **health care**, however, is a State obligation with immediate effect. Health care services must be accessible to all, especially the most vulnerable or marginalized sections of the population. With regard to the realization of the right to health of older persons, the importance of an integrated approach, combining elements of preventive, curative and rehabilitative health treatment is emphasized. It is impossible that, Roma older man, suffering from a chronic illness, with low incomes, to afford him travelling to the District centre – Veliko Tarnovo City to prepare needed papers. Non-existed knowledge about the social security system requirements to be admitted in elderly shelter also prevents ones access to health care provided in these shelters.

Both legislation and policies discriminate Roma in their enjoyment and fulfilment of the right to social security and right to health. Roma older persons facing multiple discrimination and are one of the most vulnerable part of the Roma communities, especially those who lost their families and leave alone, without any help from other community members. Presented cases indicate the discriminatory policy and legislative standards that constitutes a barrier towards Roma fulfilment of social rights. Approaches used by the social and health care providers are highly discriminatory in nature, in the case of Goranov – both social worker and the medics knew his poor medical condition and his needs to receive daily cares as well as there is no one to help him with, but did do nothing to ensure that he will be attended and receives medical and social cares needed. In the case of Manev the social worker perceives as his duty to check if the person could be ceased from the monthly welfare, but not to periodically check his condition or to thoroughly explain him his rights and possibilities in receiving social care and services. Based on our experience in other similar cases, please refer to <http://www.romatogether.org/Database8.php>, we observe that the attitude of social and health workers towards Roma, inadequate approaches towards their problems, the legislative and regulations barriers that disproportionally affecting them, non-persecution of public officials that violates Roma rights, in their complexity constitutes public policy for exclusion of Roma minority from the State social and health care systems. Where no strong will enforced by the State to abolish all forms of discrimination towards most vulnerable and marginalized social groups exists, prejudices, discrimination and hatred among the society shall prevail.

Non-discrimination is an immediate and cross-cutting obligation in the ICESCR. Article 2(2) requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.

The effective enjoyment of social rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. Discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organisation, often involving unchallenged or indirect

discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups

States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups.

It is a State obligation to take measures to combat poverty and social exclusion and provide supporting social services; to consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups; States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising their social rights; States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information. States parties are also obliged to provide the right to social security when individuals or a group are unable, on grounds reasonably considered to be beyond their control, to realize that right themselves, within the existing social security system with the means at their disposal. States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection. Special attention should be given to ensuring that the social security system can respond in times of emergency.

¹ The mission of the European Committee of Social Rights (ECSR) is to judge that States party are in conformity in law and in practice with the provisions of the European Social Charter. In respect of national reports, the Committee adopts conclusions, in respect of collective complaints, it adopts decisions. The Committee is composed of 15 independent, impartial experts, elected by the Committee of Ministers for a 6-year term of office, renewable once.

² Full text of the decision to be found at http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC48Merits_en.pdf

³ Full text of the decision to be found at http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC46Merits_en.pdf

⁴ The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of “concluding observations”. The Committee meets in Geneva and normally holds two

sessions per year, consisting of a three-week plenary and a one-week pre-sessional working group. The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments.

⁵ Full text of the General Comment № 20 to be downloaded at http://www.romatogether.org/documents/GR20_CESCR.pdf

⁶ Full text of the General Comment № 19 to be downloaded at http://www.romatogether.org/documents/GR19_CESCR.pdf

⁷ Full text of the General Comment № 14 to be downloaded at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/40d009901358b0e2c1256915005090be?Opendocument>

⁸ Full text of the General Comment № 6 to be downloaded at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/482a0aced8049067c12563ed005acf9e?Opendocument>

⁹ With regard to individual complaints, on 10 December 2008, the General Assembly unanimously adopted an Optional Protocol (GA resolution A/RES/63/117) to the International Covenant on Economic, Social and Cultural Rights which provides the Committee competence to receive and consider communications. The General Assembly took note of the adoption by the Human Rights Council by its resolution 8/2 of 18 June 2008, of the Optional Protocol. The Optional Protocol will be opened for signature at a signing ceremony in 2009. In addition to the Committee on Economic, Social and Cultural rights, other committees with competence can consider individual communications involving issues related to economic, social and cultural rights in the context of its treaty. Full text of the adopted optional protocol by the UN General Assembly to be downloaded at <http://www2.ohchr.org/english/bodies/cescr/docs/A-RES-63-117.pdf>

¹⁰ Constitution of the Republic of Bulgaria /English/ available at <http://www.parliament.bg/?page=const&lng=en>