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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

16 April 2018

**Case Document No. 3**

**European Roma Rights Centre v. Bulgaria**  
Complaint No. 151/2017

**RESPONSE FROM THE ERRC TO THE  
GOVERNMENT'S SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 7 March 2018**



EUROPEAN ROMA RIGHTS CENTRE (ERRC)

v

BULGARIA

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Observations on the Government's Observations

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1. These observations follow the format of the Government's observations and use the Government's headings. As the Government's observations do not contain numbered paragraphs, there are no references to specific paragraph numbers.

**I. General Comments**

2. The Government claim the research on which the collective complaint is based is not a "*national representative survey*". The ERRC does not know what a survey would have to look like to meet this criterion, but in any event there is no requirement under the Charter to present nation-wide evidence of a violation. The Government assert that it is "*unacceptable*" to introduce sentences that start with the phrase "*one of the Romani women said...*". The ERRC understands that the Government are objecting to the use of reported speech in a collective complaint where the speaker is not identified. The Social Charter and its Additional Protocol do not specify any rules of evidence which would exclude the use of such reported speech in a collective complaint. The women interviewed in the course of the research are in a particularly vulnerable position: they are Romani women claiming to have suffered racial abuse, including of a violent nature, from healthcare providers from whom they are likely to require future healthcare services. These women

were understandably unwilling to name themselves; indeed, their anonymity was essential to empowering them to speak truthfully about these serious matters. Regardless, the hospitals and cities are named. The essence of a collective complaint is that it is a mechanism that it allows systemic violations of the Charter to be addressed without requiring people to complain individually.

3. The Government claim that no complaint was made to the Commission for Protection against Discrimination. The absence of such a complaint is irrelevant: there is no requirement to exhaust domestic remedies before making a collective complaint. The fact that no individuals have made complaints before the equality body or the administrative courts is hardly a sign that there is no problem. Indeed, the Committee of Ministers of the Council of Europe recently published a recommendation to the member States on access to justice for Roma and Travellers to overcome the many barriers that Romani people – particularly Romani women – face in pursuing legal complaints.<sup>1</sup>
  
4. The Government's troubling suggestion that the Committee should not take into account the statements of minors flies in the face of international standards as well as the domestic principles the Government claim to be citing. While Article 4 of the Persons and Family Act does indeed prohibit minors from taking "*legal action*", this term is interpreted by legal scholars in Bulgaria as meaning "*actions that can create, preserve, modify, prescribe, or terminate rights and obligations*".<sup>2</sup> Of course minors can give evidence, in Bulgaria as everywhere in Europe. Under international human rights law, it is unthinkable to dismiss the views of a minor merely because she is under 18. Rather, Article 12 of the UN Convention on the Rights of the Child guarantees the right of children to express their views and to be heard:

*1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the*

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<sup>1</sup> CM/Rec(2017)10, adopted on 17 October 2017.

<sup>2</sup> See Pavlova, M. (1995). *Гражданско право: Обща част* (Том I). София: Софи-Р, стр. 232.

*views of the child being given due weight in accordance with the age and maturity of the child.*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

The Government's suggestion that the views of a person who is a minor "cannot be deemed objective and corresponding to the real situation" is incompatible with respecting the rights of children. Irrespective of the government's legally unfounded proposition, the research presented the views of women throughout the age range mentioned (14 to 46) and all of those interviewed offered consistent evidence of what goes on in maternity wards in the hospitals concerned.

## **II. ON THE SUBSTANCE OF THE COMPLAINT ALLEGATIONS**

### ***1. The current Bulgarian legislation guarantees that all Bulgarian citizens shall have equal access to healthcare services.***

5. The collective complaint does not concern the quality of Bulgarian legislation in general. The collective complaint only implicates domestic legislation to the extent that the domestic legal framework fails to ensure the right to social and medical assistance for the entire population and, in particular, leaves Roma disproportionately uncovered by the health insurance system; this, in turn, exacerbates the ill-treatment of Romani women in maternity wards and, in some cases, provides a pretext for discrimination against them. Therefore, the ERRC has little to respond to the statements made at pages 2-3 of the Government's observations. The ERRC accepts that, in theory, segregation is not a policy anywhere in Bulgaria, in the strictly legal sense; it is of course officially prohibited. It exists in reality, however, as the collective complaint sets out. The Government have not refuted the evidence in the collective complaint showing practices of racial segregation.
  
6. The Government object to data published by the European Union's Fundamental Rights Agency stating that 51% of Roma in paid work reported

that they are not covered by health insurance; yet the Government do not cite any competing research or statistics. The Government's objection is based on an assertion that all people in "*paid labour*" would be covered by health insurance if working legally. But the FRA report quoted in the collective complaint laid out clearly that this disparity was due to many Roma working informally in the "grey sector". The Government's suggestion is that Roma are to blame for not working formally ("*legally*"). The ERRC rejects this adamantly: Roma find themselves engaged in informal labour because rampant antigypsyism in Bulgaria creates significant barriers to the formal labour market. See § 16 of the collective complaint. The State bears the duty under the Charter of providing equal and adequate access to healthcare, regardless.

7. The collective complaint contains specific examples of six hospitals in five cities where there are de facto segregated maternity wards and where there is other evidence of discrimination against Romani women. The ERRC claims that the collective complaint creates a presumption that there is discrimination in these hospitals and that the burden of proof falls on the Government to show that there is no such discrimination (see § 76 of the collective complaint). The Government seem implicitly to be claiming that there is no such shift of the burden of proof and/or that the collective complaint does not meet the requirements for the burden of proof to shift onto them. To the extent that the Government reject the notion of the shift of the burden of proof altogether, the ERRC asserts that the shift of the burden of proof is a key element of international human rights law on the prohibition of discrimination and therefore forms a key part of the interpretation of Article E of the Revised Social Charter.<sup>3</sup> We are also now in a position to provide further evidence to the Committee in the form of several telephone calls which the Bulgarian Helsinki Committee made to the hospitals in question, in order to test for discrimination against Romani women. Transcripts of excerpts of those calls in Bulgarian and English are annexed to these submissions. The Government will be able to confirm that these phone calls have been submitted in evidence

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<sup>3</sup> See, e.g., EU Directive 2000/43/EC, Article 8 § 1; *E.B. v France* (judgment of the Grand Chamber of the European Court of Human Rights of 22 January 2008), § 74.

in domestic legal proceedings pending before Pazardzhik Regional Court.<sup>4</sup> The issue of the shift of the burden of proof is vital to the case. The ERRC hereby requests that, if the Committee is minded to dismiss the collective complaint on the basis that a prima facie case of discrimination has not been made, the Committee first convenes a hearing, in accordance with Rule 33 of the Committee's Rules and Article 7 § 4 of the Additional Protocol to give the Committee the opportunity to hear from the researchers who compiled the report. If the hearing can be held by electronic means, the ERRC and the Bulgarian Helsinki Committee's researchers will make themselves available at the Committee's convenience.

8. The Government comment that "*Bulgarian is the official language in the Republic of Bulgaria and Romani women are obliged to know this language, while the medical staff is not obliged to know [the] Romani language*". This statement in itself is evidence of a discriminatory attitude towards Roma. The Revised Social Charter not only prohibits discrimination based on race but also based on language. According to the 2011 census, only 7.5% of people who identify as Romani in Bulgaria indicated that Bulgarian was their native language.<sup>5</sup> While this does not necessarily mean that 92.5% of Roma do not speak Bulgarian, the assertion that "*Romani women are obliged to know this language*" is racist social commentary, not a legal or factual reality. The ERRC submits that the "appropriate measures" Article 11 of the Revised Social Charter requires States to take include ensuring that people who do not speak the majority language are treated respectfully and equally and have the right to access to services in a language they can understand.

## **2. Adequate medical care is provided to uninsured pregnant women.**

9. The collective complaint does not allege that uninsured pregnant women are denied healthcare; the ERRC therefore does not dispute that pregnant women are able to secure pregnancy-related healthcare regardless of their insurance

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<sup>4</sup> The ERRC is the plaintiff in this *actio popularis* litigation, represented by the Bulgarian Helsinki Committee.

<sup>5</sup> The data can be found in English at [http://nsi.bg/census2011/PDOCS2/Census2011final\\_en.pdf](http://nsi.bg/census2011/PDOCS2/Census2011final_en.pdf), page 4.

status. The Government do not refute that in practice lack of health insurance is used as a pretext to provide Romani women an inferior level of care, as presented in the collective complaint.

10. The ERRC is not in a position to confirm or refute the information about funds spent on programmes as set out in the Government's observations. However, the European Commission has specifically noted that a major challenge in relation to funding for Roma inclusion in Bulgaria for the 2014-2020 period is the "*limited ambition of the objectives and budget allocation for the targeted investment priority*".<sup>6</sup> In any event, none of the information provided concerns any activities that would prevent segregated maternity wards or other forms of ill-treatment of Romani women.

**3. Particular attention is being paid to improving health care services provided to disadvantaged groups, including Roma.**

11. The ERRC welcomes the introduction of mobile gynaecological units, although these fall outside the factual scope of the collective complaint, which mainly concerns treatment in maternity wards in hospitals. The ERRC also wonders if BGN 50,000 (approximately €25,600) is enough to make any significant difference in overall access to care, given the needs and the size of the population.

12. Likewise, childhood vaccinations, educational activities, and urgent medical care fall outside the factual scope of the collective complaint. The ERRC does not have access to the "Centre for Urgent Medical Care" data to which the Government refer. If this was provided as an annex, it was not received. In any event, the ERRC suspects that if 25% of urgent medical care resources are being used for Roma in Bulgaria, this is a strong indicator of the problem created by the failure to guarantee access to health insurance for Romani people. It is a widely understood phenomenon, accepted in public health circles, that individuals who do not have health insurance are often reduced to

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<sup>6</sup> European Commission, Report on the implementation of the EU Framework for National Roma Integration Strategies 2015, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0299&from=EN>, page 6.



using emergency services in lieu of prophylactic or preventative care to cover their medical needs.

13. The ERRC notes that the Government fail to show how any of the policies referred to in this section of the Government's observations apply to the maternity wards in the six hospitals covered in the research on which the collective complaint was based.

**[4.] 3. *Compliance with the national health policy is guaranteed by the respective monitoring and control mechanisms.***

14. The ERRC does not dispute the existence Regional Health Inspectorates. The Government have not provided any documentation from the RHIs showing that they inspected the maternity wards in the cities mentioned in the report and found no problems. The failure to provide such documentation is part of the failure to rebut the presumption of discrimination raised in the collective complaint. The same is true of the Executive Agency Medical Audit. The ERRC again recalls that there is no requirement to exhaust domestic remedies before making a collective complaint, so it is irrelevant that no complaints have been lodged with these bodies, nor does this demonstrate an absence of discrimination. The ERRC also submits that these bodies appear to have a mandate to undertake their own inspections, so they should not have to wait for complaints before investigating these institutions.

**[5.] 4. *Bulgaria is implementing the National Strategy for Roma Integration 2012 – 2020.***

15. The majority of the Government's comments on the current Roma integration strategy fall outside the factual scope of the collective complaint. Indeed, nothing in this section bears on the allegations in the collective complaint. The collective complaint does not aim to impugn the strategy generally. The collective complaint in fact relies on the strategy itself and reviews of the strategy to show that healthcare remains an important challenge for Roma inclusion in Bulgaria and is an area in which Bulgaria is falling short in several ways. Nothing in the Government's observations indicate that implementation

of the strategy or the related action plan have had or would have any bearing on the treatment of Romani women in maternity wards.

**[6.] 5. Action on improving the social situation of Roma**

16. In this collective complaint the ERRC does not call on the Committee to make findings concerning the failures of Bulgaria in the field of employment. The comments in the collective complaint about high rates of Roma unemployment instead provide important background to explain why Romani women find themselves in particularly vulnerable circumstances when admitted to hospital to give birth, including why many are at risk of discrimination with lack of insurance used as a pretext. The Government offer no information about how Roma mediators or any other programmes address the issues complained of in the collective complaint.

European Roma Rights Centre  
7 March 2018



Đorđe Jovanović  
President

Adam Weiss  
Managing Director

**Annex – Excerpts of Transcripts of Telephone Conversations Between the Testers from the Bulgarian Helsinki Committee and Hospitals in Bulgaria Covered in the Research Submitted with the Collective Complaint**

<p><b>1. Тест 1, МБАЛ – Пазарджик, доктор в АГ отделениято (АГО), 31.05.2016 г., 13:48 ч.</b></p> <p>[...]</p> <p>Tester – В една стая и настаняват българки и ромки?</p> <p>Доктор – не, не ги мешаме.</p> <p>[...]</p> <p>Д – те [ромките] са отделно. Отделен санитарен възел си имат, изобщо не се мешат с тях.</p> <p>[...]</p>	<p><b>1. Test 1, “Multispecialty Hospital for Active Treatment – Pazardzhik” (MHAT – Pazardzhik), Doctor in the Maternity Ward, 31 May 2016, 13.48 hours</b></p> <p>[...]</p> <p>Tester – Do you place ethnically-Bulgarian women and Romani women in the same room?</p> <p>Doctor – No, we don’t mix them.</p> <p>[...]</p> <p>Doctor – They [Romani women] are separated [...]. They use separate sanitary facilities, there is absolutely no overlap with them.</p> <p>[...]</p>
<p><b>2. Тест 2 – МБАЛ – Пазарджик, заместваща началника на АГО, 01.06.2016 г., 12:12 ч.</b></p> <p>[...]</p> <p>Tester – [...] искам да ви питам в една стая ли настаняват българки и циганки?</p> <p>Д – не, в отделни стаи, имаме си 3 стаи, отделни ВИП стаи за българки [...]. [...] всеки си има отделен контингент. Имат си баня и тоалетна българките, нямат нищо общо с другите жени.</p>	<p><b>2. Test 2 – MHAT – Pazardzhik, Acting Director of the Maternity Ward, 1 June 2016, 12.12 hours</b></p> <p>[...]</p> <p>Tester – [...] I wanted to ask you whether you place ethnically-Bulgarian women and Romani women in the same room?</p> <p>Doctor – No, in separate rooms. We have 3 [types of] rooms, separated “VIP” rooms for Bulgarian women [...]. [...] each [group] has a separate. Bulgarian women have a bathroom and a toilet, and there is no overlap with the other women.</p>
<p><b>3. Тест 1 – МБАЛ – Велинград, доктор в АГО, 14.06.2016 г., 16:38 ч.</b></p> <p>Tester – [...] жена ми в една стая ли ще бъде с ромки, ако роди при вас?</p> <p>Д – значи по принцип има всякакви, има и циганки, има и жени, които не са нали</p>	<p><b>3. Test 1 – “Multispecialty Hospital for Active Treatment – Velingrad” (MHAT – Velingrad), Doctor in the Maternity Ward, 14 June 2016, 16.38 hours</b></p> <p>Tester – [...] will my wife be placed in the same room as Romani women if she gives birth [at your hospital]?</p> <p>Doctor – So, in general, there are all sorts of people, there are gypsies [sic], there are other women who are not...in general, they are in</p>

<p>така...по принцип те са в отделни стаи и то така се разделят по принцип по контингент.</p>	<p>separate rooms and they are generally separated according to "group".</p>
<p>Т – [...] Принципно казвате, че ги делите българките и циганките?</p>	<p>Tester – [...] So, in general, you say, you separate Bulgarian women and gypsy [sic] women?</p>
<p>Д – по принцип ги делим така, защото не може една жена, която видимо изглежда добре, интелигентна, да я сложим с някаква жена, която нали...разбирате ме какво искам да кажа</p>	<p>Doctor – In general, we separate them in that way, because it cannot be allowed that a woman, who is obviously decent, intelligent, be put with some woman, who...you know...you understand what I am trying to say.</p>
<p><b>4. Тест 2 – МБАЛ – Велинград, началничка АГО, 15.06.2016 г., 12:40 ч.</b></p>	<p><b>4. Test 2 – MHAT – Velingrad, Director of the Maternity Ward, 15 June 2016, 12.40 hours</b></p>
<p>Т – [...] жена ми в една стая ли ще бъде с циганки след като роди?</p>	<p>Tester – [...] will my wife be placed in the same room with gypsy [sic] women after giving birth?</p>
<p>Д – какво? Кой? Е как ще бъде с циганки в една стая, недейте да говорите такива неща...</p>	<p>Doctor – What? Who? How [could you say] "will [she] be placed with gypsy [sic] women in the same room" ... Don't you dare say such things...</p>
<p>Т – в смисъл?</p>	<p>Tester – In what sense?</p>
<p>Д – ами разбира се, че не.</p>	<p>Doctor – Of course, she won't [be.]</p>
<p><b>5. Тест 1 - МБАЛ „Д-р Иван Селимински“ – Сливен, доктор в АГО, 10.06.2016 г., 13:44 ч.</b></p>	<p><b>5. Test 1 – “Multispecialty Hospital for Active Treatment – Sliven” (MHAT – Sliven), Doctor in the Maternity Ward, 10 June 2016, 13.44 hours</b></p>
<p>Т – [...] раждат ли ромки при вас?</p>	<p>Tester – [...] do Romani women give birth in your hospital?</p>
<p>Д – хахаха, изобщо не се притеснявайте. Цветнокожото население е отделно.</p>	<p>Doctor – Hahaha, don't worry at all. The dark-skinned population is separated.</p>
<p>Т – отделено?</p>	<p>Tester – Separated?</p>
<p>Д – абсолютно! Между българките не слагаме ромки.</p>	<p>Doctor – Completely! We do not place Romani women amongst Bulgarian women.</p>
<p><b>6. Тест 2 - МБАЛ „Д-р Иван Селимински“ – Сливен, докторка в АГО, 10.06.2016 г., 15:35 ч.</b></p>	<p><b>6. Test 2 – MHAT – Sliven, Doctor in the Maternity Ward, 10 June 2016, 15.35 hours</b></p>
<p>Т – дали жена ми ще е в една стая с ромки?</p>	<p>Tester – Will my wife be placed in the same room as Romani women?</p>

<p>Д – в една стая не. Това е изключено! Те са си отделно там в няколко стаи. [...] Даже така са отделени в друг коридор.</p>	<p>Doctor – In the same room, no. That [possibility] is excluded! They are separated there in several rooms. [...] In fact, they are on a completely different hall.</p>
<p><b>7. Тест 1 - Специализирана болница за активно лечение по акушерство и гинекология „Проф. д-р Димитър Стаматов“ – Варна, старша акушерка, АГО, 16.06.2016 г., 11:10 ч.</b></p>	<p><b>7. Test 1 – “Specialised Hospital for Active Treatment in Obstetrics and Gynaecology” – Varna (OB-GYN – Varna), Senior Midwife in the Maternity Ward, 16 June 2016, 11.10 hours</b></p>
<p>Т – Жена ми като роди след това в една стая ли ще бъде с жени от ромски произход?</p>	<p>Tester – After my wife gives birth, will she be placed with women of Romani ethnic origin?</p>
<p>Акушерка – [...] ние такова нещо не правим тука. [...] винаги ги отделяме. [...] успокойте се за това, гарантирам ви.</p>	<p>Midwife – [...] we do not do that sort of thing here. [...] we always separate them. [...] you can relax about this, I assure you.</p>
<p><b>8. Тест 2 - Специализирана болница за активно лечение по акушерство и гинекология „Проф. д-р Димитър Стаматов“ – Варна, главна акушерка на цялата болница, 15.06.2016 г., 13:03 ч.</b></p>	<p><b>8. Test 2 – OB-GYN – Varna, Head Midwife of the entire hospital (sic), 15 June 2016, 13.03 hours</b></p>
<p>Т – съпругата ми, след като роди, след това ще дели ли една стая с жени от цигански произход?</p>	<p>Tester – My wife, after she gives birth, will she be put into a room with women of gypsy [sic] ethnic origin?</p>
<p>А – не, не, ние винаги ги подбираме. [...] ние си подбираме жените. Съобразяваме се с етноса [...].</p>	<p>Midwife – No, no, we always select them. [...] we select the women. We consider the ethnicity [of the woman] [...].</p>
<p><b>9. Тест 1 – МБАЛ „Св. Анна“ – Варна, старша акушерка, АГО, 16.06.2016 г., 10:49 ч.</b></p>	<p><b>9. Test 1 – “Multispecialty Hospital for Active Treatment – Varna” (MHAT – Varna), Senior Midwife in the Maternity Ward, 16 June 2016, 10.49 hours</b></p>
<p>Т – жена ми като роди после ще бъде ли в една стая с жени от ромски произход?</p>	<p>Tester – After my wife gives birth, will she be in the same room as women of Romani ethnic origin?</p>
<p>А – не, тук ги разделяме, [...] не ги събираме на едно място, настаняваме ги в различни стаи.</p>	<p>Midwife – No, we separate them here, [...] we don’t put them in the same place, we place them in different rooms.</p>
<p><b>10. Тест 2 – МБАЛ „Св. Анна“ – Варна, заместник-началник, АГО, 24.06.2016 г., 12:41 ч.</b></p>	<p><b>10. Test 2 – MHAT – Varna, Deputy Director of the Maternity Ward, 24 June 2016, 12.41 hours</b></p>
<p>Т – [...] Жена ми в една стая ли ще е с жени от ромски произход?</p>	<p>Tester – [...] Will my wife be in the same room with women of Romani ethnic origin?</p>

<p>Д – не, не, категорично не, моля ви се. Те са в съвсем отделно място. В различни стаи и в различни коридори са.</p> <p><b>11. Тест 1 – УМБАЛ „Св. Анна“ – София, акушерка, АГО, 20.07.2016 г., 12:08 ч.</b></p> <p>Т – Настаняват ли циганките и българките в общи стаи?</p> <p>А – не.</p> <p><b>12. Тест 2 – УМБАЛ „Св. Анна“ – София, докторка, АГО, 18.10.2016 г., 11:10 ч.</b></p> <p>Т – настаняват ли циганките и българките в общи стаи?</p> <p>Д – при избор на екип няма други, освен българки. [...] Въпросът е, че няма такива, каквито казвате вие. При избор на екип такива няма.</p>	<p>Doctor – No, no, categorically no, of course not. They are in an entirely separate place. They are in different rooms and on different halls.</p> <p><b>11. Test 1 – “General Hospital for Active Treatment ‘St. Anna’” – Sofia (GHAT – Sofia), Midwife in the Maternity Ward, 20 July 2016, 12.08 hours</b></p> <p>Tester – Do you place Bulgarian women and gypsy [sic] women in the same rooms?</p> <p>Midwife – No.</p> <p><b>12. Test 2 – GHAT – Sofia, Doctor in the Maternity Ward, 18 October 2016, 11.10 hours</b></p> <p>Tester – Do you place Bulgarian women and gypsy [sic] women in the same rooms?</p> <p>Doctor – By choice of the staff, there are no women, other than Bulgarian women [...] The fact is, there are none of those, as you call them [Romani women]. By the choice of the staff, there are none.</p>
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