

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



15 July 2008

Case document No. 4

European Roma Rights Centre (ERRC) v. Bulgaria
Complaint No. 46/2007

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

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Comments by the European Roma Rights Centre to the Written Submission by the Government of Republic of Bulgaria on the Merits of Collective Complaint No 46/2007, European Roma Rights Centre v. Bulgaria¹

1. Issues Unaddressed by the Written Submission of the Bulgarian Government

The document “Position of the Government of Republic of Bulgaria on Collective Complaint No 46/2007 of the European Roma Rights Centre v. Bulgaria, filed with the Council of Europe pursuant to the collective complaints system under the European Social Charter” (hereinafter the “Position”) does not provide a satisfactory account of actions undertaken by the Government to provide a long-term solution to the problem of exclusion of Roma from health insurance coverage. Another major issue which is not addressed by the Government’s document is sanitary conditions in compact Romani neighbourhoods and prevention of infections and other health risks.

1.1. Collective Complaint 46/2007, at part II.2.A. Legal Restrictions on Access to Health Insurance for Socially Vulnerable Individuals, claims that Roma are disproportionately affected by lack of health insurance coverage which is a serious obstacle for many of them to access health care services. It is noted that the Bulgarian government has acknowledged the problem in the document *Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities* and articulated the expansion of health insurance coverage for disadvantaged Roma as one of its strategic priorities. The latter document refers to a study which indicated that around 46% of Roma in Bulgaria are not covered by health insurance. The findings of this study are corroborated by anecdotal evidence gathered by the ERRC in the course of field research in 2004-2005.

¹ Document “Position of the Government of Republic of Bulgaria on Collective Complaint No 46/2007 of the European Roma Rights Centre v. Bulgaria, filed with the Council of Europe pursuant to the collective complaints system under the European Social Charter” (hereinafter referred to as “Position”) submitted to the European Roma Rights Centre by the Executive Secretary of the European Committee of Social Rights on May 6, 2008.

1.2. The Government's "Position" does not elaborate measures to expand the health insurance coverage for disadvantaged Roma and others belonging to ethnic minorities. The Government challenges the data referred to in the ERRC Collective Complaint on the grounds that it was produced by a study in 2002-2003 performed in several Romani communities "with low social status" and "cannot be viewed as valid for the population of the country or for the Roma community as a whole".² However, the Government has not produced any recent or representative data for Roma to indicate the level of health insurance coverage as of 2008.

1.3. ERRC considers that, given the fact that the Government is aware of the problem of many uninsured Roma in Bulgaria, and has committed to undertake measures to enlarge the scope of health insurance coverage for disadvantaged persons, the Government is obliged to produce concrete data to reveal what is the situation of health insurance coverage for Roma. Such data should provide information on a) how many Roma are still not covered by health insurance and b) how many Roma were covered by health insurance as a result of Government interventions.

1.4. The Government partially addresses the issue of lack of health insurance in the chapter "Regarding the statement that there is a violation of Article 13, para. 1, 2, and 3 (right to social and medical care of the European Social Charter (Revised)". This part explains at length the motives behind the legislative amendments to the Social Assistance Act which limit eligibility to social aid to 18 months. The Government contends that individuals who lose the right to monthly social assistance pursuant to the recent amendments in the Social Assistance Act will not automatically lose the right to health insurance provided from the state budget because, pursuant to the Health Insurance Act, persons who receive targeted assistance for heating are also entitled to health insurance coverage provided from the state budget.³

1.5. The ERRC notes that there is a separate Collective Complaint against Bulgaria challenging the introduction of a time-limit for the provision of monthly social aid to persons in active working age without adequate resources.⁴ The ERRC maintains that this provision has a disparate impact on Roma and will deepen social exclusion of individuals already in vulnerable social position.

1.6. The ERRC accepts the contention that in theory, according to the Health Insurance Act, persons who are entitled to targeted assistance for heating, which is not time-limited, are also entitled to health insurance provided by the state budget. However, we claim that due to lack of data, Bulgarian Government is not aware whether the suspension of the monthly social assistance pursuant to the recent amendments of the Social Assistance Act affected health insurance coverage. Generally, as noted earlier, Bulgarian Government lacks recent data to show what number of Roma and others in disadvantaged position do not have health insurance coverage.

² Position, p. 12.

³ Position, p. 13-15.

⁴ European Roma Rights Centre v. Bulgaria, Complaint No 48/2008.

1.7. The ERRC further notes that regardless of the effects of the recent introduction of time-limit for monthly social assistance, the problem of lack of health insurance for a large number of Roma remains. As noted in Collective Complaint 46/2007, anecdotal information suggests that a certain number of Roma do not receive monthly social aid because they do not qualify for it, despite their low income. These people are not affected by the time-limit for monthly social aid. Nevertheless, they are not insured by an employer, cannot provide for their own health insurance, and are not entitled to health insurance from the state budget either.

1.8. The Government refers to Council of Ministers Decrees No 17 of 31 January 2007 and No 13 of 30 January 2006 on determining the terms and conditions for spending of targeted funds for diagnostics and treatment at hospitals for Bulgarian citizens who do not have any income or personal property.⁵ While the enactment of these decrees was acknowledged in Collective Complaint 46/2007, the ERRC pointed out that these decrees are not an effective mechanism to ensure access of uninsured Roma to health care. First, the decrees cannot be such mechanism because of their limited scope, i.e. these decrees only provide for hospital care but leave out primary outpatient medical and dental care and specialised outpatient medical and dental care.⁶ Second, anecdotal evidence suggests that the complicated bureaucratic procedure for the enforcement of the decrees also makes them an ineffective instrument for ensuring access to health services for uninsured persons.⁷

1.9. The data about the numbers of people who benefitted from the funds allocated on the basis of the decrees is not disaggregated by ethnicity and it is not clear what is the percentage of Roma who benefitted from this measure. Absent such information, the Government's statement that the decrease of the number of individuals who received hospital treatment on the basis of the decrees in 2007 compared to 2006 is due to Regulation No 26 of June 14, 2007 on free provision of obstetrical care for uninsured women, is questionable.

1.10. Collective Complaint 46/2007 raises the issue of poor living conditions prevailing in some compact Roma neighbourhoods, and especially poor sanitary conditions.⁸ The Government's "Position" lacks information on measures undertaken to improve the sanitary conditions in some compact Roma neighbourhoods and prevent the outbreaks of infectious diseases. The ERRC maintains that the Government has no proactive policy to reduce health risks for Roma through improving the housing conditions.

⁵ Position, p. 15.

⁶ Ibid.

⁷ Part II.2.11. of the Collective Complaint ERRC v. Bulgaria.

⁸ Part II.2.21-25.

2. Discrimination against Roma in the Provision of Medical Services

This part addresses Government comments “Regarding the claim of violation of Art. E (non-discrimination) of the European Social Charter (revised) in relation to Art. 11 of the European Social Charter (revised)”.

2.1. The Government challenges ERRC’s claim about systematic discriminatory practices against Roma in the provision of health services on the basis of evidence provided by the Commission for Protection against Discrimination (CPD) which indicates that the Commission dealt only with two cases of discrimination against Roma concerning denial of emergency services as well as on the basis of the decrease in the numbers of registered complaints for discrimination filed by Roma with the CPD in 2007 compared to 2006.

2.2. The ERRC considers that the data provided by the Government is not sufficient to substantiate the conclusion that there is no systematic discrimination against Roma in the provision of health services. The fact that there are few complaints filed by Roma with the CPD cannot be taken as evidence of the frequency of discriminatory practices against Roma in the provision of health care services.

2.3. First, as in other fields, discriminatory practices against Roma in the provision of health care are underreported. The procedure before the CPD is a formal one, i.e. based on submission of a written complaint. This formal procedure requires that the applicant is well-educated to be able to present his/her case or is provided with legal assistance to do so. Many Roma cannot meet either condition. The CPD can also act on its own initiative when there is public information about actions involving discriminatory treatment. It should be noted, however, that the cases of human rights abuse and/or discrimination against Roma which reach the public (usually through the media) are the most egregious incidents in which the victim died or suffered serious health damage. Instances of discriminatory treatment by health care practitioners which occur on a daily basis are not reported.

2.4. Second, the two-year period (2006-2007) for which comparison of data from the CPD was provided lacks the necessary continuity to mark a stable tendency. Furthermore, in view of the fact that the CPD has been operating for a relatively short period of time (established with a delay in 2005⁹) and that it operates through a single office based in Sofia, with no subdivisions throughout the country, it could be reasonably argued that the CPD services are not widely known and accessible.

2.3. The ERRC further notes that Collective Complaint No 46/2007 makes reference to two surveys carried out in 2003 and 2005 respectively, both of which indicate high levels of perceived discrimination in the provision of health services by Roma.¹⁰ The information of these studies is public. In addition, ERRC’s own investigation as well as

⁹ The Protection against Discrimination Act was adopted by Bulgarian Parliament in 2003 and has been in force since January 1, 2004. The Act specified that the Commission for Protection against Discrimination should be established three months following the entry into force of the Act. The CPD started functioning only in January 2006.

¹⁰ Paragraphs II.2.29.

reports by Bulgarian non-governmental organizations also reveal frequent allegations of discrimination in the provision of health services by Roma throughout the country.

2.4. Despite widespread allegations of discriminatory practices against Roma by health care providers, the Government has failed to conduct thus far any surveys to explore the extent and types of discriminatory treatment in the provision of health care services.

3. Government Policies to Ensure Equal Access for Roma to Health and Health Care Services

3.1. The ERRC maintains that, although the Government has produced several policy documents to address the problems of access to health care by Roma and disparities in the health status of Roma, the actions undertaken in the last 10 years do not constitute consistent policy in that area and have not been commensurate with the extend of the problem. The information provided by the Government confirms that conclusion.¹¹

3.2. The Government “Position” makes reference to three PHARE Projects, activities implemented by the regional structures of the Ministry of Health, and a number of small-scale projects launched at the end of 2007 by the Regional Inspectorates for Prevention and Control of Public Health (RIPCPh). These activities do not have systematic character; they are one-time interventions with a limited scope. There is no evidence that, following the implementation of the various projects a needs assessment was carried out and the interventions were continued after the end of the project.

3.3. Most of the activities reported by the Government do not address the systemic problems facing Roma in access to health care, i.e. lack of health insurance and

physical access to health services. For example, the Government reports a number of prophylactic examinations in 2007 for uninsured persons. The report, however, does not make clear what follow-up measures were taken after the examinations; whether the persons who needed treatment had access to such treatment in view of the fact that these persons did not have health insurance.¹² The project BG 04/IB/SO/04 described by the Government did address the lack of access to medical services but only in two areas (Vratsa and Smolyan).¹³ The Government, however, did not indicate that the project will be implemented in other areas.

¹¹ On April 24, 2007, the results of a study on the implementation of the Bulgarian Government Action Plan on the Decade of Roma Inclusion 2005-2015 was presented in Sofia. The study had been carried out in the period November 2006-February 2007 by the Sofia-based S.E.G.A. Foundation and the Department of Sociology of St. Kliment Ohridki University of Sofia. The study concluded that, although there are strategies and action plans for the inclusion of Roma at both central and local level of government, there is no implementation of the measures formulated in these documents. There is no mechanism for regular monitoring of the implementation of Government policies and to measure their effect. More information regarding the results of the study is available in Bulgarian language at:

<http://www.cega.bg/news.php?lang=bulgarian&year=2007&cp=0&newsid=114>

¹² “Position”, p. 9.

¹³ “Position”, p. 7.

3.4. The Government refers to the appointment of health mediators in 28 municipalities in 2007. While the practice of appointing health mediators to facilitate access of Roma to health care has been positively assessed in some countries, the Government “Position” does not make clear what has been the role of the health mediators appointed in Bulgaria and how their appointment improved access to health care for Roma. It is not clear whether and how was the status of health mediators regulated by the Government; whether the health mediators are part of health care system; and what is the sustainability of this measure.

3.5. With regard to government policies, the ERRC notes the conclusion made by the Committee on Social Rights in “As regards the adequacy of the measures taken by the government, national authorities are better placed to evaluate the needs of their country. Nonetheless, the measures taken must meet the following three criteria: (i) a reasonable timeframe, (ii) a measurable progress and (iii) a financing consistent with the maximum use of available resources.”¹⁴

4. Data on Roma in the Health Care System

4.1. The Government “Position” makes evident that the Government has not carried out representative surveys to evaluate either the health status of Roma or the effect of the Government initiatives to address health problems of Roma. Neither has the Government indicated that it is planning to do so in the near future. Lack of systematic data on the health situation of Roma and their access to health care services puts into question the

relevance and effectiveness of government policies. Furthermore, the argument that a problem does not exist merely because there is no data about it is unacceptable.¹⁵

4.2. The studies referred to in Collective Complaint 46/2007 reveal that the health status of Roma is inferior to that of the general population. Some of these studies have also been referred to in the Government *Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities*. The ERRC considers that the fact that the Government cannot produce recent data on the health status of Roma is a problem of the implementation of health care policies and not a weakness of the argumentation of Collective Complaint 46/2007.

4.3. With regard to data in the area of health care, we note Recommendation Rec(2006)10 of the Committee of Ministers to member states on better access to health care for Roma and Travellers in Europe which calls on governments to “consider

¹⁴ Council of Europe Committee of Ministers, Resolution CM/ResChS(2007)2 Collective Complaint No. 31/2005 by the European Roma Rights Centre against Bulgaria, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResChS\(2007\)2&Language=lanEnglish&Site=CM&BackColorIntranet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResChS(2007)2&Language=lanEnglish&Site=CM&BackColorIntranet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

¹⁵ See for example, “Position”, p. 12, paragraph 5.

introducing the collection of census data on a strictly voluntary basis so that individuals from Roma and Traveller communities may be included in the planning of health services to these communities. National and local health bodies should be encouraged to do research and build up a knowledge base of information on the health needs of Roma and Traveller communities and the effectiveness of services to them and how to best meet those needs”¹⁶.

5. Conclusions

The ERRC considers that the Government of Bulgaria did not provide satisfactory evidence to counter the claim of violation of Articles 11 and 13 in connection to Article E of the European Social Charter (Revised). There is data indicating serious disparities in the health status of Roma and non-Roma in Bulgaria. Along with factors arising from inequalities facing Roma in access to social and economic rights, such disparities are also caused by factors arising from the functioning of the health care system in Bulgaria. Disadvantaged persons, amongst whom Roma are overrepresented, have been marginalized in the health care system and denied access to adequate health care. Lack of health insurance is a major obstacle for many Roma to access primary health care. Although the Government has acknowledged this problem, there have been no adequate measures to solve it. Practices of discriminatory treatment by health providers such as refusal to provide health services, including emergency health services, segregation in maternity wards and inferior medical treatment have a direct negative impact on the right to access to health care. Patterns of discrimination against Roma by health care providers are neither acknowledged nor addressed by the Government.

Sincerely

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¹⁶ Council of Europe Committee of Ministers Recommendation Rec(2006)10 of the Committee of Ministers to member states on better access to health care for Roma and Travellers in Europe, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1019695&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>