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ПОВЕРЕНИК ЗА
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Acting in accordance with its competence to monitor the implementation of laws and other legal acts, to initiate the adoption of or amendments to regulations with an aim of implementing and improving protection against discrimination and to provide an opinion on the provisions of draft laws and other legal acts pertaining to the prohibition of discrimination (Article 33, point 7 of the Anti-Discrimination Law, "Official Gazette of RS, No. 22/09), the Commissioner for the Protection of Equality issues the

OPINION

On Pre-Draft Law on Legalisation of Sustainable Informal Roma Settlements

In the communication from 9 April 2015, the League of Roma – Standing Conference of the Roma associations of Citizens (SKRUG) requested an opinion of the Commissioner for the Protection of Equality on the Pre-Draft Law on Legalisation of Sustainable Informal Roma Settlements (hereinafter: Pre-Draft Law).

The Commissioner for the Protection of Equality first of all emphasizes that the institution of the Commissioner for the Protection of Equality, as an autonomous and an independent state authority in charge of suppressing and protection against discrimination, is interested in regulating the issue of legalisation of informal Roma settlements in the manner that will enable exercising the right to adequate housing by the inhabitants of these settlements, implementing at the same time the principle of equality, without any direct or indirect discrimination. In her annual reports, opinions and recommendations related to the discrimination against the Roma community members in the field of housing, the Commissioner has emphasised on several occasions that the problems existing in this field need to be fully and systematically solved.

The Commissioner has analysed the text of the Pre-Draft Law in detail and she thinks that this is a complete, coherent and high-quality text, both due to the solutions it offers and to its legal and technical qualities. Added value of this Pre-Draft Law is that the necessity to adopt the Law on legalisation of informal Roma settlements, and the proposed solutions, are justified with appropriate arguments. It is particularly important that the very concept of the Law is such that it offers realistic and optimal solutions to a very complex problem. It is important to point out that this Pre-Draft Law also clearly and precisely defines obligations of competent authorities, concrete measures that each



of the authorities needs to take and, particularly, proposes adequate sanctions for failing to comply with the obligations within the envisaged deadlines.

Strongly supporting the adoption of the Law on Legalisation of Sustainable Informal Roma Settlements, the Commissioner may indicate that equal exercising of the right to adequate living standard and adequate housing is guaranteed by many international documents that promote and guarantee human and minority rights.

This right is guaranteed by the provisions of Article 25, paragraph 1 of the Universal Declaration of Human Rights of 1948¹ and Article 11 of the International Covenant on Economic Social and Cultural Rights of 1966.²

The International Convention on the Elimination of All Forms of Racial Discrimination³ obligates its Member States to prohibit and eliminate all forms of racial discrimination and to guarantee to everyone the right to equality before the law, without making any differences based on race, colour or national or ethnical origin, particularly in relation to exercising some rights, including the right to housing.

The UN Convention on the Elimination of all Forms of Discrimination against Women⁴, in the provisions of Article 14 obligates the states to provide adequate living conditions, particularly in regard to housing.⁵

Under the Istanbul Declaration of 1996, adopted at the second UN Conference on Human Settlements⁶, states are obliged to meet the goals related to providing housing to all citizens and to establish a sustainable development of human settlements in the context of a progressive urbanisation all over the world. The Habitat Agenda was adopted at this Conference⁷, and its Article 11 emphasises the right of everyone to an adequate standard of living for him/herself and his/her family, including adequate housing and to the continuous improvement of living conditions. According to this document, rights to housing are considered to be progressive legal obligations, which means that the states are obliged to continuously invest efforts to strengthen economic, social and cultural rights, including the right to adequate housing. The idea of achieving the goals progressively, obliges a state to invest efforts to enable the right to housing as fast and as efficient as possible, and to ensure full enjoyment of this right.

Article 31 of the Revised European Social Charter⁸ envisages that for ensuring the effective exercise of the right to housing, the states should take measures designed to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without adequate resources. Article 34 of the

¹ Adopted by the Un General Assembly on 10 December 1948, translation of the text into the Serbian language available at: <http://www.sostelefon.org.rs/zakoni/12.%20Univerzalna%20deklaracija%20o%20ljudskim%20pravima.pdf>

² The Law Ratifying the International Covenant on Economic Social and Cultural Rights ("Official Journal of SFRY - International Treaties" No. 7/71)

³ The Law Ratifying the International Convention on the Elimination of All Forms of Racial Discrimination ("Official Journal of SFRY - International Treaties", No. 31/67)

⁴ The Law Ratifying the Convention on the Elimination of All Forms of Discrimination against Women ("Official Journal of SFRY - International Treaties", No. 11/81)

⁵ Besides the abovementioned ones, there are similar provisions in the International Convention on the Rights of the Child (Article 27; Law Ratifying the UN Convention on the Rights of the Child (Official Journal of SFRY - International Treaties", No. 15/90 and "Official Journal SRY - International Treaties" No. 4/96 and 2/97).), and the International Labour Organisation Convention related to the right to an adequate housing and living standards (ILO Convention No.. 82, 110, 117, 161, 169; texts are available at:

<http://www.minrzs.gov.rs/cir/dokumenti/medjunarodna-saradnja/mor>)

⁶ *Istanbul Declaration on Human Settlements and Habitat Agenda*, Resolution 1 /Report on the UN Conference on Human Settlements A/CONF.165/14 of 7 August 1996.

Available in English at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/025/00/PDF/G9602500.pdf?OpenElement>

⁷ And the footnote 6

⁸ Law ratifying the Revised European Social Charter (Official Gazette of RS - International Treaties" No. 42/09)

Charter of Fundamental Rights of European Union⁹ guarantees the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources¹⁰.

Besides the international documents and standards, national legislation also prohibits the discrimination against the Roma national minority members.

The Constitution of the Republic of Serbia¹¹, in the provisions of its Article 21 prescribes that everyone is equal before the Constitution and law, everyone shall have the right to equal legal protection, without discrimination, all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, and other personal features shall be prohibited, and special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.

Provisions of Article 4 of the Law on Prohibition of Discrimination¹² prescribes that all persons shall be equal and enjoy equal status and equal legal protection regardless of personal characteristics, and that everyone shall be obligated to respect the principle of equality, that is to say, the prohibition of discrimination. The very term 'discrimination' is defined in Article 2, paragraph 1, point 1 of this Law which says that "discrimination" and "discriminatory treatment" designate any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of race, skin colour, national affiliation or ethnic origin, language, and other real or presumed personal features. Article 24 particularly prohibits the discrimination against national minorities and their members on the grounds of national affiliation, ethnic origin, religious beliefs and language, and it also prescribes the manner of realising and protecting the rights of members of national minorities shall be regulated by a special law.

Provisions of Article 3 of the Law on the Protection of the Rights and Freedoms of National Minorities¹³ prohibit all forms of discrimination against persons belonging to national minorities based on national, ethnic, linguistic or racial grounds. Under Article 4, paragraph 1 of this Law, authorities may, in accordance with the Constitution and the Law, pass regulations, individual legal acts and take measures with the aim of ensuring full and effective equality among the persons belonging to national minorities and members of the majority nation. Paragraph 2 of the same Article stipulates that authorities will pass legal acts and take measures with the aim of improving the position of persons belonging to Roma national minority, while paragraph 3 of this Article stipulates that the abovementioned legal rules, individual legal acts and measures will not be regarded as acts of discrimination. The Law on Housing¹⁴ stipulates, in the provisions of Article 2, that the state shall take measures to create favourable conditions for building housing units and provide conditions for meeting the housing needs of socially vulnerable persons in line with the Law.

⁹ EU Charter of Fundamental Rights 2010C 83/02, adopted on 7 December 2000

¹⁰ In April 2006, the European Parliament passed the European Housing Charter, and in May 2007 the Decision on Housing and Regional Policy which give a major political importance to the necessary improvement of housing conditions in EU. The European Housing Charter, adopted by the European Parliament Parliamentary Group "Urban Housing" on 26 April 2006 The Proposal of this document is available in English at: http://www.iut.nu/EU/Housing%20Charter/HousingCharterENG_040406.pdf; the European Parliament Decision of 10 May 2007 on Housing and Regional Policy (2006/2108(INI)), the text available in English at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0183+0+DOC+XML+V0//EN>

¹¹ "Official Gazette of RS", No. 98/2006

¹² "Official Gazette of RS", No. 22/2009

¹³ „Official Journal FRY“, No. 11/2002, „Official Journal SMN“, No. 1/2003 - Constitutional Charter and „Official Gazette of RS“, No. 72/2009 - other law and 97/2013 - Constitutional Court Decision

¹⁴ „Official Gazette of RS“, No. 50/92, 76/92, 84/92 - corr., 33/93, 53/93, 67/93, 46/94, 47/94 - corr., 48/94, 44/95 - other law, 49/95, 16/97, 46/98, 26/2001, 101/2005 - other law and 99/2011

The Strategy for Improvement of the Status of Roma in the Republic of Serbia¹⁵ indicates that the main goal of the integration of Roma settlements is the provision of basic benefits and facilities and equal access to basic social services, departments and infrastructure, which should contribute to the reduction and gradual elimination of social segregation. The main goal of improving housing conditions is to ensure the legal use of housing and property in all aspects, enabling healthy life of a family and an individual, making the life a woman and a child easier, providing adequate conditions for the way of life that is acceptable to Roma, and fostering the housing culture that is accepted by the entire society. The Strategy for Prevention and Protection against Discrimination¹⁶, envisages a special measure aimed at enabling an active participation of the Roma in planning of their housing, respecting their needs and the right to participate in making decisions on all the issues related to them, particularly in local self-government units, including their resettlement and the manner of their social integration and enabling the conditions for social housing, in line with international standards and guidelines for relocating the citizens from informal settlements.

The Commissioner for the Protection of Equality indicates that the Roma housing issue in Serbia is very complex, having in mind that inadequate housing conditions and life in informal settlements significantly impede the access to other economic and social rights. About two thirds of the Roma population in Serbia live in illegal settlements in the conditions that are far below the living standards of their fellow citizens. This is not their intentional choice, nor is it culturology-based lifestyle, but rather a strategy to survive in bad socio-economic conditions. Supporting the initiative to regulate the issue of legalisation of informal Roma settlements by a special legal act, the Commissioner for the Protection of Equality reiterates that under the General Comment No. 4 of the UN Committee for Economic, Social and Cultural rights¹⁷, the issue of legal security of tenure is pivotal for exercising the right to adequate housing which guarantees legal protection against forced eviction, harassment and other ways of impeding the realisation of the right to housing.

The Commissioner emphasises that the process of providing housing to and integration of displaced persons who are members of the Roma national minority should be conducted in cooperation with the displaced persons and with their active participation, respecting their needs and the right to participate in making decisions on all the issues related to them, which includes their resettlement and the manner of their social integration, in line with international standards and guidelines for relocating citizens from informal settlements. In this regard, the provision of article 5 of the Pre-Draft Law is very progressive, and it obliges a local self-government to actively assist the citizens in organising associations of citizens whose main goal is a mutual cooperation and information during the settlements legalisation process, later support to the legalisation of individual objects, and participation of citizens in the issues of planning and maintaining the settlements and common or public area and infrastructure.

Article 12 of the Pre-Draft Law prohibits forced eviction in the legalisation process without previous provision of an adequate alternative housing which is of equal or higher quality than the housing conditions in these settlements, and it needs to meet the criteria of an adequate housing. This provision establishes a standard of protection against eviction in cases when the facilities are a part of facilities placed in a wider space and will not be included in the zone of a sustainable Roma settlement, or of facilities within sustainable settlements that will not be able to meet the criteria of safety and durability or will be in the space that needs to get a different purpose so that they will need to be removed.

¹⁵ "Official Gazette of RS", No. 27/2009

¹⁶ "Official Gazette of RS", No. 60/2013

¹⁷ General comment No. 4: Right to adequate housing (Article 11 (1) of the Covenant); Available in English at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en

The Commissioner approves this solution and emphasises that even the resettlement procedure needs to be conducted in line with international standards that include some measures and fulfilment of some criteria before, during and after the resettlement. In this regard, we should point out that the UN Committee for Economic, Social and Cultural rights in its General Comment No.7¹⁸ stipulates that evictions, or demolitions should not result in rendering individuals homeless or vulnerable to the violation of other human rights and that the State party must take all appropriate measures to ensure an adequate alternative housing or resettlement. The opinion of the European Court for Human Rights is that the eviction from a facility, in case when a public authority has not provided an adequate alternative housing, is a breach of the right to private and family life under Article 8 of the European Convention on Human Rights¹⁹. The Commissioner highlights that Amnesty International indicates in its reports that Serbia should pass the Law on the Prohibition of Forced Evictions, and provide administrative guidelines that would guarantee that potential future evictions will be conducted in line with international standards.²⁰

The Commissioner points out that establishing settlements that would meet the sustainability requirements and that would have a legally defined status would enable development and prevent further decay of these settlements, enable a better access of habitants of these settlements to public services and improve their social integration, and would also facilitate solving the environmental issues and avoiding conflicts over the use of land, ethnic tensions and unequal status of the Roma population. Providing the inhabitants of Roma settlements with a possibility to legalise their housing facilities would not only ensure some legal security within this sensitive area, but also accelerate the process of remedying the historical and socio-economic injustice done to Roma women and men in Serbia and ensure their faster social and economic integration.

Having in mind all the above mentioned facts, the Commissioner for the Protection of Equality fully supports the proposed Pre-Draft Law and recommends to competent authorities to adopt it as soon as possible because this is an important prerequisite for integration of the Roma population and achievement of equality in all segments of social life.

COMMISSIONER FOR PROTECTION OF EQUALITY

Dr Nevena Petrusic

¹⁸ General comment No. 7: Right to adequate housing (Article 11 (1) of the Covenant); Forced eviction; Available in English at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en

¹⁹ Stanková v Slovakia [2007] ECHR 7205/02 (9 October 2007), available at: <http://www.hrlrc.org.au/files/6LlYX75PV/Stankova%20v%20Slovakia.pdf>

²⁰ It was agreed with the European Commission that this Law would be adopted by the end of 2015, since this is one of the legal requirements that needs to be met by Serbia on its path towards the full EU membership. Nevertheless, the Organisation for Security and Cooperation in Europe, which will provide a technical assistance in drafting the Law, claimed in February 2015 that the Ministry of Justice and the Office for Human and Minority Rights had not even started drafting this Law. Amnesty International called the Serbian Government to adopt the Law on the Prohibition of Forced Eviction by the end of 2015, in line with international standards. *Serbia: The Roma are still waiting for adequate housing, Amnesty International, April 2015.*

