



**Written Comments
concerning the sixth, seventh and eighth periodic reports**

of the Slovak republic

**under the Convention on the Elimination of All Forms of Racial
Discrimination**

*For the consideration at the 76rd Session of the Committee on the
Elimination of Racial Discrimination (15 February – 12 March 2010)*

January 2010

Center for Civil and Human Rights

People in Need Slovakia

The preparation of these written comments was supported by:



Executive summary

The Center for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*, “*Poradňa*”) and People in Need Slovakia (*Člověk v Tísni, pobočka Slovensko*, “*ČvT*”) Slovak non-governmental organizations, respectfully submit these written comments concerning the Slovak Republic for consideration by the Committee on the Elimination of Racial Discrimination (“the Committee”) at its 76th session (15 February to 12 March 2010).

The submitting organizations have been closely following the efforts undertaken by the Slovak Government to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”), as detailed in sixth, seventh and eighth Periodic Report of the Slovak Government to the Committee (“the Periodic Report”). Given the focus of the work and expertise of the submitting organizations, these written comments do not aim to address all the relevant issues to the implementation of Convention or its provisions by the Slovak Republic.

They specifically focus on the issues in which the submitting organization work – that is on instances of violations of the provisions of the Convention in respect to the Roma minority living in Slovakia. Namely, these written comments focus on discrimination and segregation of Roma minority in the field of education and health care in Slovakia. They also included information concerning protection from racial discrimination and implementation of the Anti-Discrimination legislation in practice. The omission of other issues does not mean or imply that we find the performance of the Slovak Government in other areas fully satisfactory.

Although the submitting organizations recognize certain positive measures undertaken by the Slovak Government towards the compliance with the Convention, these comments highlight the following failures to fully implement its international obligations:

- As to **Article 2(c)** of the Convention: the Slovak Government has not yet fully and efficiently reviewed governmental policies, amended laws and regulations that have the effect of creating or perpetuating racial discrimination. In particular, the Slovak Government failed to repeal particular legal provisions which constitute an indirect discrimination of Roma minority in effect. In addition, the current school legislation still does not embrace principles of inclusive education and fails to prevent from segregation of Romani children.
- As to **Article 3** of the Convention: the Slovak Government has been inefficient to eradicate the racial segregation of Roma specifically in the field of education and health care. Racial segregation of Romani women still persists in maternities in Eastern Slovakia. Racial segregation of Romani children in educational system remains widespread.
- As to **Article 5** of the Convention: the Slovak Government has been inefficient to eliminate the racial discrimination and guarantee equal rights of Roma in a number of sectoral fields specified in the Convention; in particular, it failed to address the systemic discrimination of Romani children in schools.
- As to **Article 6** of the Convention: the Slovak Government has been inefficient to ensure effective, prompt and impartial investigation into the practice of forced and coercive sterilization of Romani women. The Slovak Government failed to provide victims of the practice with adequate compensation for such grave human rights violations. At the same time, the Slovak Government has been inefficient to assure effective remedies against the other acts of racial discrimination as well as adequate reparation or satisfaction. Legal remedies against discrimination are rarely provided in

practice and do not serve as an applicable and effective legal basis for victims of racial discrimination. The specialized state body, the Slovak National Centre for Human Rights (*Slovenské národné stredisko pre ľudské práva*) tasked to provide legal assistance to the victims of racial discrimination does not implement all possible measures to use effectively antidiscrimination legislation in practice.

We hope that this submission will complement the information provided by the Government and urge the Committee to take them into account during the review of the Periodic Reports. In view of shortcomings identified in this submission, we recommend the Slovak Government to recognize its failures in respective areas and adopt comprehensive policies and mechanisms to both prevent future violations and remedy the past ones.

Expertise and Interest of the submitting organizations

Poradňa is a non-governmental non-profit organization based in Košice, Slovakia, established in 2001. *Poradňa* has been focusing on the protection of human rights in Slovakia with special emphasis on rights of Roma minority and protection from racial discrimination. In order to do so, it implements projects where through research, litigation and advocacy aims to point the attention to a given problem, gain compensations for the victims of human rights violations and bring systematic changes. *Poradňa* is (among other issues) specifically engaged in advocacy and litigation of discrimination of Roma in health care system and strives for elimination of practice of coerced and forced sterilization and attempts to obtain compensations for the victims of these practices. Additional information about the organization, are available on the Internet at: <http://www.poradna-prava.sk/> In these written comments *Poradňa* has covered information on shortcomings in the field of health care, investigation of forced and coerced sterilizations and the implementation of Anti-discrimination legislation.

ČvT is a non-governmental non-profit organization based in Spišské Podhradie, Slovakia; established in 2004 as a branch of the Czech humanitarian and development organization of the same name and working independently. It focuses on a broader spectrum of issues connected with Roma minority - in particular issues of social exclusion, access to employment and existing barriers between Roma and majority. As well, it develops community work in a number of localities with a proportion of Roma minority. *ČvT* extensively deals with issues of education of Romani children in the Slovak school system and carries out research and advocacy activities in this area. Additional information about the organization, are available on the Internet at: <http://www.clovekvtisni.sk/> In these written comments *ČvT* has covered information on shortcomings in the field of education.

Discussion

Article 2(c)

Despite the fact that the Slovak legislation includes specific Constitutional and legal guarantees against discrimination, there still exist laws that violate both the Convention and domestic law.

Provisions of the Law on Child Birth Allowance¹ discriminate Romani women in provision of maternity benefits. However, as the legislation was specifically introduced to target Romani women, it might even constitute a case of direct discrimination.

Under the Law No. 235/1998 of the Coll. of Laws, the Law on Child Birth Allowance, as amended by the Law No. 471/2005 of the Coll., from 1 November 2005, one time benefit (birth allowance) is provided to every woman who gives birth to a child. It is a state social welfare benefit, aimed to assist the families to cover the costs associated with child birth. According to Article 3 para 5 of the Law, woman “who after the delivery left the child in the medical facility without the permission of the treating physician” does not have the right to receive the child birth allowance. This measure was introduced upon to prevent “escapes” of Romani women from maternities after they give birth which is common in Slovakia. This legislation has been amended by the Law n. 571/2009 effective from 1 January 2010. According to the amendment Article 3 para 5 states as follows: “ woman who after delivery leaves medical facility without the child without the permission of the treating physician” does not have the right to receive the child birth allowance.

There is an established practice in Slovakia that after delivery, woman should remain in the maternity for a certain time together with her child (usually minimum five days after natural delivery and seven days after a caesarean delivery). Such stay does not depend on the health state of either a woman or her new born baby; basically, she is required to stay there even if there both she and her child have no medical complications. After the expiry of this time, woman and her baby are formally “released” from the hospital.

In many instances, Romani women in Eastern Slovakia are refusing to respect this practice and “escape” from hospitals upon giving birth, that is they leave hospitals prior to expected period. Reasons for this are two fold. First of all, as already describe above, Romani women are subjected to inferior treatment and abuses in maternity. They are refusing to endure such treatment, in particular when their stay in hospital is not medically necessary. The second reason is that Romani women want to return to their families, especially their other children. As such, they cannot “afford” to stay in hospital for a longer period if it is not absolutely necessary. After the respective period, they come back to hospitals to take their babies as they usually do not manage to take the children away (e.g. often, children are housed in different wards). However, under the afore-mentioned legislation, such woman forfeits her right to receive the maternity benefit. Although she later returns to hospital for her child, and the child is eventually living with the biological family, she loses the right to the benefit.

It has been documented that the Law in its current form has a disproportionate impact solely on Romani women. According to the field research conducted by Poradňa in July-December 2006, the Law clearly targets Romani women and in practice, it is only Romani women who are affected by it.² Consequently, disproportionate impact of the Law on Romani women was

¹ The Act No. 235/1998 of the Coll., as amended by the Law No. 471/2005 and Law No. 676/2006 of the Coll.

² See the results of the field research of Poradna in 2006, available in Slovak at <http://www.poradna-prava.sk/dok/Terenny%20prieskum%20-%202006.pdf?PHPSESSID=8c20eabd3ebacd0d56496b5de67a5d97>.

confirmed by the expert statement of the Slovak National Center in the statement from 15th August 2007, which declared that the respective legal provisions do not allow for an effective protection and actual performance of rights guaranteed under the Constitution of the Slovak Republic and relevant international conventions. Poradňa recommended amending the legislation accordingly, however, up to date no amendment has been adopted. **Failure to amend the legislation with disproportionate impact on Romani women and its implementation in practice goes opposite of the obligations of the Slovak Government under Article 2 of the Convention. The submitting organizations urge the Slovak Government to remedy the situation immediately.**

Article 3 and Article 5

a. Discrimination of Romani children in education

A number of surveys³ have repeatedly pointed at an unequal access of Romani children to quality education in Slovakia and at their segregation and exclusion from the mainstream education. ČvT welcomes some of the supportive measures implemented by the Slovak Government towards Romani children⁴ (e.g. contributions to children to support their school attendance, scholarship program for students of high schools, assistants of teachers).⁵ However, we point at insufficient financing of some of these supportive measures (e.g. assistants of teachers). There is a strong lack of professional education of pedagogues for their work with Romani children from socially disadvantaged environment during the pre-gradual studies as well as after they come to practice (lack of training on bilingual methods of education, on child-focused pedagogic approaches, education on the issue of social exclusion, prejudice reduction programmes, etc.). At the same time, it is necessary to note that some of the implemented measures may have segregation impact (e.g. issue of integration of children after attending *zero grade*⁶ not being resolved, existence of preparatory classes at special primary schools).

Although ČvT welcomes the new provision of the School Act which declares the prohibition of all forms of discrimination and especially segregation⁷, this declaratory provision cannot be sufficient to eliminate segregation of Romani children. Neither this School Act nor any other domestic legislation do not include definition of segregation and further links to e.g. uncovering and sanctioning segregation as well as desegregation measures and programmes. The current legislative framework still enables to 'de facto' segregate Romani children in the educational system under various justifications (e.g. fulfilment of special educational needs of pupils, creation of specialised curriculum for children from so-called socially disadvantaged environment).

The submitting organizations believe that the missing concept of inclusive education entails that often partial and non-systematic measures are implemented in this area. These are

³ E.g. Equal Access to Quality Education for Romani Children, European Monitoring and Advocacy Program, Open Society Institute, 2007; Krieglervová, E.: Dopad opatrení zameraných na zlepšenie situácie rómskych detí vo vzdelávaní [Impact of measures to improve the situation of Romani children in education], SGI, 2006; Still Segregated, Still Unequal, Amnesty International, 2007; School as ghetto: Systemic overrepresentation of Roma in Special Education in Slovakia, Roma Education a Fund, 2009 .

⁴ Measures in this area are being aimed at children from 'socially disadvantaged environment' where Roma children are included very predominantly

⁵ Referring to CERD/C/SVK/6-8. point 79. points. 212-221.

⁶ *Zero grades* are established at primary schools and offered to pupils who at the age of 6 years are not yet ready for 1st grade, mostly because they have not attended kindergarten.

⁷ Act from 22 May 2008 on education (School Act), § 3, sections c) and d)

without a potential to significantly influence school success of Romani children and avoid segregation in educational system which strongly impacts the quality of provided education.

Segregation of Romani children within the mainstream education:

In the recent years there is a tendency of increasing numbers of Roma-only schools or schools with the high concentration of Romani pupils in Slovakia. These are formed as a result of the residential segregation and geographic isolation of excluded Romani localities as well as so-called *white flow* from schools with higher number of Romani pupils. The Governmental policies currently do not include any measures to cope with this phenomenon.

In many instances, at mainstream primary schools with high proportion of Roma children, these children are placed into separated classes. The education in such classes is provided under different conditions (e.g. placement into separated buildings with worse equipment) and/or lower quality of education (reduction of curriculum, more lessons of practical subjects on the cost of sciences). This separation generally stems from pressure of non-Roma parents who often do not want their children to attend classes and educate together with Romani children (as the above mentioned *white flow* trend already implied). Referring to the pre-school education, we documented a significant number of localities where Romani children are denied enrollment in kindergartens or separate kindergartens for Roma and non-Roma children are established. **The Government is recommended to concern with any patterns of segregation of Romani children in educational system and make efforts to eliminate them.**

The tendencies to exclude Romani children to separate classes in mainstream primary schools has also been spurred by the Decree of the Ministry of Education of the Slovak Republic on primary schools from July 2008 which provides for establishment of the so-called specialized classes at primary schools. These are designed for pupils, who are in need of compensation programme and/or development programme; come from disadvantaged environment or were educated according to the curriculum of special school in the past.⁸ Even though the child is supposed to attend such school only for the needed limited period, it has been reported that at many schools such classes are utilised to factually and permanently segregate Romani children within the system of mainstream education. **The submitting organizations urge the Slovak Government to review the school legislation which goes opposite of the inclusive education and enables segregation of Romani children in effect. The Slovak Government have to develop the relevant policy measure on the principles of inclusive education.**

Segregation in the system of special schools:

Independent surveys, evaluation reports of international institutions including Government's conceptual materials repeatedly point at high representation of Romani children in the system of special schools - in special classes at mainstream schools and schools for children with health disabilities (so-called *special schools*). According to the research of the Methodical-Pedagogic Centre - branch Prešov, implemented in 2007/2008,⁹ pupils from socially disadvantaged environment make 63% of all pupils at special schools with children with mild mental disabilities. In regions of Prešov and Košice (i.e. in regions with the highest percentage of excluded Romani localities) this number is over 75%. Similar results were

⁸ Decree of the Ministry of Education of the Slovak Republic no. 380/2008 from 23 July 2008 on primary schools, § 13

⁹ Report on status of pupil from the socially disadvantaged environment in the environment of special primary schools. Methodical-pedagogic centre - workplace Presov, Bratislava, 2008.

presented as the outputs of a representative study of Roma Education Fund implemented at special schools and special classes at mainstream primary schools in 2007/2008, according to which 60% of all pupils in special schools are Roma. In special classes at mainstream primary schools it is already 85%¹⁰, which is several times higher than the percentage of Roma in the society. Educational programmes of special schools and special classes at mainstream schools provide a different form, content as well as quality of education. Children who finish this type of educational programmes have very limited opportunities for further education and following professional career.

Process of enrolment of Romani children in special education is carried out on the basis of decision of the director of special primary school; this decision is supported by the informed consent/application of the legal representative of the child and written recommendation of the centre for educational guidance and prevention, issued on the basis of diagnostic examination of the child. Despite the design of the specific diagnostic tools for children from socially disadvantaged environment to evaluate children's schooling ability and to exclude mental retardation - the implementation of these diagnostic tools is insufficient and the guidance centres are using them only to a very limited extent.¹¹ Process of diagnostics is accompanied by further obstacles (e.g. not taking the language barrier into consideration, preserving the diagnosis of "social retardation" in the non-official expert discourse, using of group testing, etc.). These can result in a high number of Romani children placed in special schools regardless of the fact that they do not suffer from irreversible mental handicap. Additionally, the frequency of repeated testing (*re-diagnostics*) of children, which would provide for verification of the diagnostics and possible reintegration of the Romani children from special schools - in case they were not properly diagnosed at their first examination - is not regulated in legislation and is kept in the hands of schools.

Another problem, which has been often pointed at by the NGOs and some state institutions (e.g. the Slovak National Centre for Human Rights) is the duplicity in the system of institutions of guidance and prevention, which conduct diagnostics of children. There are currently two systems of guidance which exist next to each other - centres for *pedagogic-psychological guidance* and the centres for *special-pedagogic guidance*. Their competences are overlapping. The employees of the schools are often also the employees of the guidance centres, which creates potential for conflict of interests in decision about enrolment of the child into the special school.

The financial contributions currently provided to schools for children with special educational needs (pupils with diagnosed mild mental handicap) are significantly higher than the contributions on education of children from socially disadvantaged environment within mainstream classes. This may have a negative impact and motivate establishers of the school and school management in enrolment of children into special education.¹²

Although the Slovak Government repeatedly declares the commitment to decrease the percentage of (Romani) children attending special primary schools for children with mild mental disabilities and reintegrate them into the mainstream education,¹³ the number of pupils in special education remains the same in the recent years even if the decrease of

¹⁰ School as Ghetto: Systemic Overrepresentation of Roma in Special Education in Slovakia, Roma Education a Fund, 2009. Available at: http://www.romaeducationfund.hu/documents/special_education_slovakia.pdf

¹¹ Ibid.

¹² To compare: in 2009 the amount of yearly normative (*per pupil funding*) with health handicap (light and intermediate mental handicap) was between 1830.12 - 1906.33 EUR., in case of a pupil from a socially disadvantaged environment it was between 1135.78 - 1179.33 EUR. (Which was about only 90 EUR per year more compared to the *normative* for other regular pupils in mainstream schools).

¹³ Konceptia vzdelávania rómskych detí a žiakov, vrátane rozvoja stredoškolského a vysokoškolského vzdelávania [Concept of Education of Romani Children and Pupils Including Development of High School and College Education]; approved by the Decree of the Government 206 from 2 April 2008.

number of children in the age of obligatory school attendance is taken into consideration. We regret to say that realized reform of education did not bring any significant changes in legislation linked to the placement of children in special schools and classes, to the required diagnostic procedures, *re-diagnostics*, monitoring or possible reintegration of mistakenly placed children. Within the current legislative framework we cannot expect that the situation of overrepresentation of Romani children in special education will improve. **The submitting organizations urge the Slovak Government to take effective measures to avoid segregation of Romani children in special schools and classes for children with mental disabilities and ensure their inclusion into the mainstream schools.**

b. Segregation of Romani women in maternities

The Slovak Government has yet failed to eradicate the practice of segregation of Romani women in maternities in Eastern Slovakia. As Poradňa informed the Committee in its alternative report from August 2004, practice of segregation of Romani women was documented a number of hospitals. Maternity and gynaecological wards have so called "Gypsy rooms" where Romani women are accommodated separately from white women and are prevented from using the same bathrooms and toilets as white women, and are prevented from entering the dining rooms (that, in addition to being the dining room, also have TV). This practice was documented by Poradňa in hospitals in Prešov, Košice, Krompachy and others.

The Slovak Ministry of Health and the medical personnel of concerned hospitals on several occasions admitted racial segregation.¹⁴ However, they argued that it only "appeared to be according to the racial lines." For example, the former chief gynaecologist of Krompachy Hospital, doctor Ján Králik, claimed that patients are first categorized as "adaptable" or "non-adaptable" and as "low hygiene" or "high-hygiene," patients, and are then segregated accordingly. As for the specific evaluation criteria, he claimed that those are set on an individual basis by him, as he can see immediately who will fall into which category.¹⁵ Not surprisingly, the adaptability criterion also breaks down along racial lines, separating Romani women from others. Some doctors claim that Romani women wish to be segregated, going so far as to sleep multiple women in a single bed to avoid all others. Other doctors claim they must place Romani women in segregated rooms due to the wishes of white women, who do not wish to share rooms with Roma or that the practice was necessary to "respect the intimacy of white women".¹⁶

Despite the practice being widely documented, the Slovak Government has failed to eradicate it. Hence, **the submitting organizations urge the Committee to address this issue during the review and expressly ask the practice to be stopped.**

c. Legislation on sterilization

Practice of forced sterilization was already brought to the attention of the Committee during the previous review in 2004.

¹⁴ See, e.g., *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, p 77 issued by Center for Civil and Human Rights and Poradňa pre občianske a ľudské práva on 28 January 2003. Available online at: <http://www.poradna-prava.sk/go.php?p=505>; Good Romani Fairy Kesaj Foundation, "Segregation with the Silent Consent of the Authorities", in *White Book 2000*, 2000, p. 23–25.

¹⁵ See *Body and Soul*, p. 77.

¹⁶ *Ibid.*

In response to the practice, the Slovak Government amended its legislation on sterilization¹⁷ and adopted requirement to obtain free and informed consent for medical procedures. The implementation of this legislation remains problematic.

Poradňa participated in the process leading to the new legislation in question (provided comments to it). As such, it welcomed the new legislation, but at the same time, we also pointed out that the legislation was only the first step; and that it was necessary for the Government to ensure its consistent implementation. Even though the new legislation explicitly introduced the institute of “informed consent” to medical interventions, according to our information, the Ministry of Health Care of the Slovak Republic, has not yet issued any internal guideline to the provisions related to performance of sterilization and obtaining the informed consent to this intervention. Such guidelines are essential in standardizing procedures of medical personnel when executing their legal obligations and would give them detailed information on the current legislation. Such internal guidelines should, for example, unify the way of granting the informed consent to sterilization.

During the research conducted by Poradňa after the adoption of the new legislation, it was found out that each hospital had developed its own “sterilization request forms” and has incorporated the informed consent into them. However, it is necessary that the medical personnel understands the concept of informed consent; that is to understand it is not a mere signature on a form containing lengthy wordings, but, most of all, interactive communication between the physician and the patient reflecting the individual circumstances of each case. The health care staff has to take into consideration also the cognitive and language abilities of a particular patient and to adequately explain the nature of the medical intervention to them. The medical personnel shall also be trained in this regard taking into the account the human rights background of this institute and also the possible specifics of marginalized groups and ethnic minorities.

There is lack of such a specific consistent education of the medical personnel within the life-long education scheme. The existing formal regulation on obtaining informed consent have to be properly put in practice to prevent thoroughly from the possible sterilization interventions of Romani women without full informed consent.

Article 6

a. Investigation of practice of forced and coerced sterilization

In 2004, Poradňa informed the Committee on the practice of forced and coercive sterilization of Romani women in Slovakia and on the failure of the Slovak Government to conduct effective and impartial investigation into this practice.¹⁸ We appreciate that the Committee addressed this issue during the review of the fourth and fifth periodic report of Slovak Republic in 2004.¹⁹

¹⁷ Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare, amending certain acts (hereinafter the “Healthcare Act”), effective from 1 January 2005.

¹⁸ For details see alternative report submitted to the Committee by Poradňa and Center for Reproductive Rights in August 2004 available at <http://www.poradna-prava.sk/dok/CRR%20and%20Poradna%20-%20alternative%20report%20CERD%202004.pdf>

¹⁹ CERD/C/65/CO/7 point 12.: „The Committee strongly recommends that the State party take all necessary measures to put an end to this regrettable practice, including the speedy adoption of the above-mentioned draft law on health care. The State party should also ensure that just and effective remedies, including compensation and apology, are granted to the victims“

We note that the Slovak Government has failed to implement the recommendation of the Committee. The Government still has not recognized its responsibility for the practice, has not conducted effective investigation into the practice and has not compensated forcibly sterilized Romani women.

Although the Slovak Government initiated two investigations into the practices (one administrative with the Ministry of Health and one criminal - with law enforcement agencies), those have proven completely insufficient and similarly flawed.

We regret to say that each governmental entity has reached hasty conclusions, ignored key facts and created an intimidating atmosphere for victims that has tended to dissuade them from voluntarily coming forward with their complaints. In order to complement the facts of the state report regarding investigation into this matter²⁰, Poradňa respectfully submits the Committee with the follow up information on this matter:

As for the investigation of the Ministry of Health, it was conducted only in one hospital (Krompachy hospital), only concerned a limited period of time (from 1999 to 2002), and depended fully on information provided by the hospital. The Ministry ignored also the obvious violations, as for example, in its final report, it concludes that there is compliance with the sterilization regulations, despite the fact that they have found two cases of minors who were illegally sterilized (they concluded those were only “administrative mistakes”). The major failure of the investigation, however, is that the Ministry focused merely on whether medical records contained signature of patients, without examining the conditions under which the signatures were provided. The Ministry noted that, “all patients who underwent sterilization ..., signed the application for sterilization permission and all applications had been reviewed and approved by the sterilization commission.”²¹ The Ministry disregarded that the presence of a signature on a form is not *de facto* evidence of informed consent, especially if this occurs in a coercive environment or if the risks and benefits of the procedure are not explained to the patient in a way that allows the patient to comprehend the information.

As for the investigation by law enforcement agencies, it suffered from similar insufficiencies.²² The investigation has been particularly lengthy, pending since January 2003 and being challenged at the Constitutional Court already three times.²³ The criminal investigation continued during the year of 2007 in a highly formal manner, resulting in final closing of the investigation on 28 December 2007. Despite the creation of the specific „specialized” team for conducting the criminal investigation into the matter, the investigation faced serious problems. The major problems in the criminal investigation are similar to those of the administrative proceedings at the Ministry of Health. Law enforcement agencies also failed to examine the circumstances under which victims signed the consent forms and concluded

²⁰ CERD/C/SVK/6-8. points. 199-209

²¹ See Report on the findings of the investigation of the State Control Section at the Ministry of Health of the Slovak Republic, p. 4.

²² For comparison particularly see CERD/C/SVK/6-8. points. 206-209.

²³ The investigation was initiated on 30th January 2003 by the Section for Human Rights and Minorities of the Office of the Government of the Slovak Republic. On 31st January 2003, the Regional Judicial and Criminal Police Office in Košice initiated criminal prosecution for the criminal offence of genocide. Some Romani women, victims of the practice, joined in the criminal prosecution as aggrieved parties. On 23 October 2003, the police investigator terminated the proceedings, stating that the act, for which the proceedings were held, had not occurred. Romani victims filed a complaint against this decision in October 2003. Their complaint was later, on 9th March 2004, dismissed by the Regional Prosecutor's Office in Košice, claiming that they, despite of having the status of aggrieved parties in the criminal proceeding, were not entitled to file a complaint against the decision. This decision was subsequently dismissed by the decision of the Constitutional Court No. III.ÚS 86/05-45 from 1 June 2005. The Constitutional Court held that the Regional Prosecutor's Office in Kosice did not act appropriately if it had dismissed the aggrieved party complaint and therefore ordered the Prosecutor to act in the case again. The Regional Prosecutor's Office speedily issued its decision on the matter on 28th September 2005 dismissing the complaint of the victims as groundless. This was again challenged at the Constitutional Court, which, by the decision no. III.ÚS 194/06-46 of 13 December 2006, declared the investigation as inadequate.

that the presence of signatures proves the interventions were performed with the consent of victims. The agencies also failed to recognize a clear violation of the law in cases of sterilization of minors who were sterilized in the absence of parental consent are thus unjustified as a matter of fact. Additionally, the agencies claimed that sterilizations could have been performed without consent of women because they were “medically necessary”. However, it should be noted that according to standard medical practice, sterilization is never a life-saving intervention that would need to be performed under extenuating circumstances without the patient’s full and informed consent.

Moreover, the investigation focused solely on whether there have been committed a crime of genocide (requiring high standard of proof), and disregarded a possibility that medical personnel could have committed other crimes, as for example crimes of assault or violation of bodily integrity. Even when investigating genocide, they focused only on the period between 1999-2002, despite the fact that the cases of forced and coerced sterilization date back to the fall of communism. Plus, if they were investigating the practice of forced and coerced sterilization as a crime of genocide, they should have necessarily conducted interviews with non-Romani women in order to have comparative data. However, Poradňa knows of no non-Romani women have been identified or interviewed during the investigation. The investigation suffered of a number of other violations that Poradňa is able to specify on request.

Poradňa provides a legal and social support to the forcibly sterilized Romani women who are seeking justice. Some of the women, apart of taking part in the criminal proceeding which has been definitely ended by the conclusion that no crime was committed, filed also the civil lawsuits with the relevant courts against the hospitals whose employees performed the illegal sterilizations. In those, they are claiming damages to their health or non-pecuniary damages for unlawful interference with their personality. Several of the court proceedings are still pending. In most cases, the courts dismissed the complaints of Romani women reasoning their decision that performing the sterilization was necessary from the medical point of view. After exhaustion of domestic remedies some of the cases are now pending before the European Court of Human Rights in Strasbourg. Currently, Poradňa represents 5 Romani women in such proceedings. In two cases, the European Court declared the applications admissible and will be considering them on the merits.²⁴

We find necessary to emphasize, significantly higher number of forcibly sterilized Romani women were identified in 2002. Our organization has been able to provide legal assistance only to very small number of victims. The number of victims is far higher that those currently represented by Poradňa domestically and at the European Court. Hence, **the submitting organizations urge the Committee to make sure that the Slovak Government conducts independent action to trace and document the extent of this practice and to assure the moral satisfaction via formal apology as well as financial compensations to its victims.**

b. Failure to implement Anti-Discrimination Legislation in cases of racial discrimination

Although the Slovak Republic has a comprehensive legal framework on protection from racial discrimination, this has not been fully implemented in practice. The Anti-Discrimination Law²⁵ has only rarely been applied in practice and there is only a small number of cases of racial discrimination which were brought before Slovak courts. We believe that the effective

²⁴ Application n.15966/04, in case *I.G. and Others vs Slovakia* and Application n. 18968/07, in case *V.C. vs Slovakia* available at <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>)

²⁵ Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on the Protection from Discrimination, and on amending and supplementing certain other acts (the Anti-discrimination Act), as amended.

implementation of Antidiscrimination legislation is one of the key instruments for combating racial discrimination in Slovak republic

Poradňa is one of few civil society organizations that provide legal representation to victims of racial discrimination free-of-charge in their limited capacities and without any support from the Government. Based on our experience, we can state that :

- the practice of implementation of the Law varies (with varied understanding of the Law among judges);
- The court proceedings last excessively long (several years);
- The courts are extremely reluctant to award any financial remedies for victims: in cases litigated by Poradňa, the first instance courts awarded applicants, complaining of racial discrimination in access to public accommodation) with financial compensations in amounts from 83 EUR to 663 EUR. In some cases no financial compensation for racial discrimination has been awarded.

As an example, in the case of racial discrimination in access to services when Roma were refused the entrance to the local disco club, the first instance court refused to award the applicants any non pecuniary damage for racial discrimination reasoning that the apology from the disco bar owner is sufficient.²⁶

In other case of five Roma who were denied the services in the local pub with explanation that Roma are not served here, the first instance court awarded the applicants non-pecuniary damage in amount 166 € . The Appeal Court changed this decision and dismissed the claim of the applicants with reasoning that the racial discrimination has not been proved despite the fact that the Appeal Court admitted racial statements from the waiter towards the applicants. The court also stated that the racial discrimination is a sensitive issue and cannot be abused by the people with Roma ethnic origin.²⁷

Besides judicial bodies, there is the lack of proper implementation of anti-discrimination legislation by the Slovak National Centre. Although the Centre is tasked with the implementation of antidiscrimination legislation, it reduced its work to research or awareness raising activities. Those are important but not sufficient. The Slovak National Center is not active in applying the Antidiscrimination Law and provides legal representation to victims of racial discrimination in a very limited manner. According to Periodic report, between 2004-2008 the Slovak National Centre “processed more than 1,300 written submissions from natural persons, most of them alleging discrimination in employment relationships and in similar legal relationships, in the provision of goods and services, in education, in healthcare and in social security”.²⁸ The submitting organizations are aware of only few legal proceedings concerning racial discrimination which have been litigated by the Slovak National Centre so far which is obviously a very small number with respect to its capacity.

In order to fulfil the obligation of Article 6 under the Convention **the Slovak Government has to assure more effective implementation of the anti-discrimination legislation via courts and other state institutions.**

²⁶ Decision of the District Court in Michalovce from 29 January 2008, File number 12 c 139/2005

²⁷ Decision of the Regional Court in Prešov from 29 September 2009, File number 12Co 36/2009

²⁸ CERD/C/SVK/6-8. point 79.

Recommendations

As outlined above, the Slovak Government failed to comply with the requirements of the Convention. Accordingly, the submitting organizations recommend the following measures should be adopted immediately by the Slovak Government:

- Publically recognize a long-term practice of forced sterilization practices and public apologize to all its victims;
- Establish an independent commission to investigate the full extent of the practice of coerced and forced sterilization in the communist and post-communist period in Slovakia, to propose institutional and administrative measures to prevent the recurrence of the practice and to recommend financial and other reparations for victims. This commission should include also independent and highly qualified members of civil society and members of the Romani community. When establishing this commission, the Slovak Government should draw from the experiences of other countries that have dealt with or are currently dealing with similar issues, such as Sweden, Norway and Peru;
- Conduct a thorough criminal investigation into all relevant crimes in sterilization cases with focusing on conditions under which signature on sterilization forms were given and criminally prosecute those responsible for blatant violation of the Slovak law (in particular sterilizations of minors);
- Provide support and information to victims of sterilization practices on how to seek compensations and necessary medical care;
- Provide clear guidance and trainings to medical personnel on issues related to informed consent and establish comprehensive monitoring mechanisms to ensure that sterilizations are performed only when patients gave their full and informed consent as mandated by international standards;
- Establish control mechanisms to prevent and sanction segregation of medical facilities and physical and verbal abuses towards Romani women from medical personnel;
- Officially acknowledge the problem of segregation of Romani children in education, approve the definition of segregation and present systemic measures to immediately stop it as well as define responsibilities and competences in the area of monitoring and sanctioning;
- Approve systemic measures and tools to secure inclusion of Romani children into the mainstream education;
- Analyse and revise the system of financing of schools so that it does not motivate special and mainstream schools to enrol children into the system of special education, but *vice versa*, that it privileges inclusive approaches to education and provides adequate funding for pro-integration measures;
- Prepare obligatory methodical guidance aimed on procedures for diagnostics of children (strict use of the existing culturally and socially sensitive diagnostic tools; presence of person speaking the mother tongue of the child; re-diagnostics and others). Legislatively secure obligatory re-diagnostics for children in special education with yearly frequency;

- Support the professional education of pedagogues for their work with Romani children from socially disadvantaged environment during the pre-gradual studies as well as after they come to practice;
- Amend the legislation on the Childbirth Allowance in a non-discriminatory manner;
- Ensure more effective implementation of the anti-discrimination legislation by courts and ensure that the redress for victims of racial discrimination is effectively sought in practice; ensure the more active role of Slovak National Centre for Human Rights in implementing the anti-discrimination legislation in practice;
- Introduce specific training programs for judges on national and international standards related to discrimination, in particular comprehensive education within the lifelong education scheme for current as well as future judges (starting from curriculums of law faculties) in order to foster more sensitivity to violations of rights of minorities and prevent the prejudices against Roma and other groups who are facing the racial discrimination.