



Submission to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance concerning shortcomings in Slovakia to secure racial justice through reparations mechanisms

Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights), Slovakia

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Introduction

This is the submission of the Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva) – Slovak non-governmental organization focusing on the protection of rights of ethnic minorities and protection from discrimination. From our establishment in 2002 we have actively pursued human rights of Roma ethnic minority in Slovakia by conducting human rights field monitoring, strategic litigation in domestic and international courts as well as advocacy activities towards Slovak government authorities and international human rights institutions and bodies.

We welcome UN Special Rapporteur`s call for submissions concerning reparations, racial justice, and equality. In our submission, we seek to provide information on existing barriers and challenges for achieving racial justice through reparations mechanisms for persons of Roma ethnic minority who were subjected to human rights violations.

In particular, we describe the Slovakian experience in respect to two specific groups of Roma minority survivors who, in our view, shall be effectively remedied through establishing appropriate reparations programmes outside the judicial system: a.) Roma women who have been forcibly sterilized without providing informed consent in previous years b.) Roma or other individuals who were subjected to racial discrimination, Slovak courts failed to redress them and based on their individual complaint the UN Committee on the Elimination of Racial Discrimination found violations of their rights and recommended the state party to redress them.

In the section c.) we also shortly describe barriers and challenges that Roma subjected to racial discrimination encounter in access to justice within the Slovak judicial system.

a.) Barriers and challenges to secure reparations and remedies for forcibly sterilized Roma women in Slovakia

Roma ethnic minority remains one of the most marginalized groups in Slovakia, experiencing various forms of social exclusion and discrimination.¹ A significant number of Roma live in socially disadvantaged conditions of segregated communities. For many years, international human rights bodies have repeatedly expressed concern about the persistent discrimination and human rights violations Roma face and have called on Slovak authorities to take effective measures to address and

¹ According to available data from 2013 there are approximately 400,000 Roma in Slovakia, which accounts for approximately 7.45 percent of the country`s population. See First results of ATLAS of Roma Communities in Slovakia 2013. Available in Slovak language at: http://www.minv.sk/?atlas_2013

prevent these violations.² Roma women are particularly marginalized and are at risk of multiple, and intersecting, forms of racial and gender discrimination. One of the most serious and pervasive form of human rights violations against Roma women that has been well-documented in Slovakia and former Czechoslovakia (existed till 1992) were forced sterilizations.

In 2003, our NGO in cooperation with the international NGO Center for Reproductive Rights published a report *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* which exposed cases of forced and coercive sterilization and other violations of Roma women's rights in reproductive health care facilities.³ This monitoring followed up on information concerning violations of Roma women's reproductive rights in Czechoslovakia brought forth in the 1970s by a civic initiative against the communist regime from that time.

The report's findings were based on 230 interviews conducted with Roma women from marginalized communities throughout eastern Slovakia and provided evidence to suggest that most of them have been sterilized without prior and informed consent. The report called on Slovak authorities to investigate these incidents of forced or coercive sterilization, provide effective remedies to affected women, and adopt legislative and other measures to prevent this practice. In 2004 new legislation was adopted in Slovakia introducing informed consent procedures, including a specific provision on informed consent prior to sterilization.⁴

The new legislation provided reasonable safeguards to prevent performing sterilizations without informed consent, but the Slovak state authorities have failed to address past forced sterilizations that might affect a considerable number of Roma women. They failed to conduct an effective investigation into this practice and to establish an accessible and appropriate reparations programme to provide compensation and satisfaction to the survivors, including through an apology and acknowledgment of responsibility. As a result, a number of affected Roma women initiated and pursued individual civil claims, but domestic courts either dismissed their petitions altogether or awarded them inadequate financial compensation.⁵ Between 2011 - 2013 a few Roma women after many years achieved justice in the European Court of Human Rights (ECHR) that recognized they were forcibly sterilized without informed consent and financially compensated them.⁶

It should be noted that our NGO has been able to provide legal representation in only a small number of court cases, which had a character of strategic litigation.⁷ These cases have essentially been leverage for advocacy towards the executive and legislative branches of the state power to recognize the given human rights issue and take responsibility for its resolution in line with the

² See e.g., Committee on the Elimination of Racial Discrimination, Concluding Observations: Slovakia, U.N. Doc. CERD/C/SVK/CO/11-12 (2018); Human Rights Committee, Concluding Observations: Slovakia, U.N. Doc. CCPR/C/SVK/CO/4 (2016); Committee on the Elimination of Discrimination against Women, Concluding Observations: Slovakia, U.N. Doc. CEDAW/C/SVK/CO/5-6 (2015);

³ The report is available in English at: <https://www.poradna-prava.sk/en/documents/body-and-soul-forced-sterilization-and-other-assaults-on-roma-reproductive-freedom-in-slovakia/>

⁴ Act No. 576/2004 Coll. of Laws on Healthcare, Healthcare-related Services and on Amending and Supplementing Certain Acts, as amended, secs. 6, 18, 40.

⁵ For more detailed information about the course of criminal and civil proceedings concerning forced sterilizations in Slovakia see a joint submission of NGOs Center for Civil and Human Rights – Poradňa, Citizen, Democracy and Accountability, Women's Circles and Center for Reproductive Rights to the UN Human Rights Committee, 118th session, Review of Slovakia's 4th Periodic Report, September 2016, pp. 1 – 3. Available at: <https://www.poradna-prava.sk/en/documents/together-with-partner-ngos-we-submitted-additional-information-to-the-un-human-rights-committee/>

⁶ V.C. v. Slovakia, No. 18968/07 Eur. Ct. H.R. (2011); N.B. v. Slovakia, No. 29518/10 Eur. Ct. H.R. (2012); I.G. and Others v. Slovakia, No. 15966/04 Eur. Ct. H.R. (2013).

⁷ In total our NGO provided legal assistance to 12 Roma women affected by the practice in civil proceedings before domestic courts, criminal proceedings as well as before the ECHR.

international human rights law. Over years we presented several arguments stressing why forcibly sterilized women shall be effectively remedied outside judicial system through established reparations programme:

- The length of domestic court proceedings made the process ineffective; only one forcibly sterilized Roma women has been duly compensated by domestic court till now and the whole legal proceeding took over 11 years;
- Considering the length of the court proceedings and number of possibly affected Roma women, pursuing justice through individual court cases within the existing system of free-of-charge legal aid operated by the state would be incomparably more expensive than establishing reparations programme;
- Courts, from its very nature, deal with individual cases and cannot elaborate on overall nature and extent of this practice as such. They essentially cannot make general conclusions based on assessment of a wider number of cases;
- The reparations programme can be established *ex gratia* and thus be based on less strict standard of evidence and non-adversarial procedure, which also takes into account the fact that Roma women have been forcibly sterilized considerably long time ago;
- There is a good practice with establishing reparation programmes concerning forcibly sterilized women from other countries Slovakia can follow from (such as Sweden or Switzerland).

In November 2018, the existing barriers of forcibly sterilized Roma women to get justice in courts have also been highlighted by the Slovak Public Defender of Rights (Ombudswoman) who called on the Slovak Government authorities to take responsibility and secure redress for survivors.⁸

The position of the Slovak government authorities concerning this issue can be summarized as follows⁹:

- Slovakia fully implemented the decisions of the ECHR relating to the cases of the forced sterilisation of Roma women, with the enforcement of judgments in these cases monitored by the Committee of Ministers of the Council of Europe. It was not proven that this was an organised policy or that the behaviour of the medical personnel was racially motivated;
- There have been taken measures to prevent illegal sterilizations;
- The conducted investigations did not confirm that the Government has supported an organised, discriminatory sterilisation policy;
- State authorities do not have available information on new motions in relation to the problem of the sterilisation of Roma women without their free and informed consent.

In addition, in its reaction to the petition campaign initiated by survivors and an open letter of a group Slovak human rights NGOs from August 2018¹⁰, the Ministry of Justice considered the establishment of reparations programme for the affected Roma women to be ineffective measure

⁸ See the report of the Slovak Public Defender of Rights "Redress of victims of illegal sterilizations in Slovakia." Available in Slovak language at:

http://www.vop.gov.sk/files/Stanovisko_%20VOP_2018_Odskodnenie_obeti_protipravnej_sterilizacie_fin.pdf

⁹ The combined eleventh and twelfth periodic report of Slovakia to the Committee on the Elimination of Racial Discrimination, CERD/C/SVK/11-12 (2016), paras. 180 – 188.

¹⁰ The open letter "Let's face the practice of illegal sterilization of Roma women" addressed to the Ministry of Justice on 22 May 2016 is available in Slovak language at: <https://www.poradna-prava.sk/sk/dokumenty/verejna-vyzva-vlade-sr-vyrovnajme-sa-s-praxou-nezakonnych-sterilizacii-romskych-zien/> See also the English press release informing about this initiative: <https://www.poradna-prava.sk/en/news/public-and-non-governmental-organizations-urges-the-slovak-government-to-finally-establish-an-independent-body/>

without further reasoning and advised the affected Roma women to claim their rights in civil courts. It generally pointed out that decisions of the ECHR on this issue positively influenced decision-making of Slovak courts and the Slovak judicial system enables the women to get justice.¹¹

When assessing the overall discourse of our NGO and the state authorities on this issue, it can be argued that the state authorities communicate this issue selectively and react only to some of the raised arguments. They do not comment on discussed advantages of the reparations programme and also tend to avoid commenting on the recent recommendation of the UN Human Rights Committee that has been very specific in supporting views of our NGO while urging the Government to "establish an independent body to investigate the full extent of the practice of sterilization without informed consent and to provide financial and other reparation to the victims."¹² Furthermore, the state authorities tend to point out at the fact that litigated cases did not prove the forced sterilizations were an organized state policy, but this essentially does not refrain them the responsibility to compensate the women harmed. Somewhat paradoxically, they tend to interpret successful litigation in the ECHR as an evidence that the affected Roma women shall effectively claim their rights in domestic civil courts and the other solution is not effective.

The overall experience of forcibly sterilized Roma women in Slovakia over last 15 years shows the ongoing reluctance of the Slovak government authorities to take responsibility for this human right violation that appears to have far-reaching systemic character and may affect a large number of women. Their standpoint has not been essentially changed neither by successful litigation including ground-breaking decisions of the ECHR, nor continuous international and domestic advocacy of NGOs and specific recommendations of the UN Human Rights Committee and the Slovak Public Defender of Rights. We assume there are arguably broader social and political barriers that hinder the progress in this area. In particular, providing redress for forcibly sterilized Roma women is clearly a measure that would be negatively perceived by the majority society and given that chances to get broader public and policy support to advance this issue are very limited.

b.) Barriers and challenges to secure reparations and remedies for individuals subjected to racial discrimination who achieved justice at the UN Treaty monitoring bodies

The Slovak state authorities fall short of fully respecting decisions of the UN Treaty monitoring bodies in favor of individual petitioners from Slovakia based on their individual complaints and providing them recommended remedies. This includes also a petitioner who was subjected to racial discrimination.

In December 2015 the Committee on the Elimination of Racial Discrimination (CERD) adopted an opinion in a case *V.S. vs. Slovakia* regarding the violation of the right of Roma woman to equal access to employment. In its opinion the CERD considered that the Slovakia violated the Convention by not preventing her from discrimination in her access to employment and failed to ensure adequate legal protection from discrimination and among others recommended that Slovak Government expresses apology to the petitioner and grants her adequate compensation.¹³

The Government in its note submitted to the CERD on 9 March 2016 argued that it does not have any legal possibility to implement these recommendations as it has to respect the decisions of the domestic courts which (according to the Government's opinion) cannot be replaced by separate opinion of the UN Committee, which has quasi-judicial character and is not legally binding, nor

¹¹ Reply of the Ministry of Justice to our NGO concerning the open letter "Let's face the practice of illegal sterilization of Roma women" from 13 August 2018.

¹² Human Rights Committee, Concluding Observations: Slovakia, U.N. Doc. CCPR/C/SVK/CO/4 (2016), para. 27.

¹³ Opinion of the Committee adopted at its 88th session on 16th December 2015. CERD/C/88/D/56/2014.

directly enforceable.¹⁴ Following our recent communication with the responsible state authorities, the Ministry of Justice in its letter from 25 October 2018 reiterated non-binding character of the decisions of the UN Committees and recommended the affected persons to claim their rights in the European Court of Human Rights, which judgments are legally binding and also enable to reopen the case in domestic courts.

When assessing the position of the state authorities on this issue, we perceive a general reluctance to act in due diligence in respect to international human rights law, but also the fact that there is no specific reparations mechanism within domestic legislation that would establish a comprehensible procedure and responsibilities of the state authorities for providing remedies for individuals in such cases, analogously to the procedure of enforcement of the decisions of the European Court for Human Rights.

c.) Barriers and challenges to get justice in cases of racial discrimination within the Slovak judicial system

Despite the fact that Roma in Slovakia continue to face racial discrimination in various areas of public life, they rarely defend themselves by legal means of protection and, in our view, this is due to various barriers preventing them to effectively achieve justice in domestic courts.

From 2004 Slovakia has antidiscrimination legislation¹⁵ derived from antidiscrimination directives of the European Union, but in practice it is very rarely implemented, and particularly in cases of racial discrimination. Our NGO is one of very few in the country that provides free-of-charge legal representation in cases of racial discrimination within its strategic litigation program. It is symptomatic that over last 15 years we have been provided legal representation in not more than 30 cases of racial discrimination and these actually account for majority of cases of racial discrimination that have been brought to Slovak courts over this time. Based on our long-term contacts with Roma facing discrimination and legal experience in representing them before Slovak courts we see the following barriers in access to justice:

- Widespread reluctance of courts to determine racial discrimination, and if this is the case, the application of reversed burden of proof continues to fall short of a legal consistency;
- Extreme reluctance to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic;
- The courts tend to downplay the seriousness of racial discrimination, overlooking or not understanding its prima facie impact on human dignity. In some instances there remains a certain bias or preoccupation since they deal with cases of discrimination against Roma minority;
- Extreme length of the judicial proceedings (usually at least several years) and extreme endurance required on the side of the complainants and their legal representatives to carry on with the proceedings;
- Lack of engagement of the Slovak Equality body/NHRI institution in addressing cases of racial discrimination in courts, even though it has this competence.

Given this situation many Roma facing discrimination do not trust courts and do not believe they can reasonably get remedies within the Slovak judicial system at all.

¹⁴ In May 2017 the Slovak Government reaffirmed its position concerning this issue in its note submitted to the Committee on the Elimination of Discrimination against Women (CEDAW) in response to its View adopted in November 2016 in a case D.S. vs. Slovakia. CEDAW/C/65/D/66/2014.

¹⁵ Act No 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendments and supplements to certain laws.

Conclusion and recommendations

Despite Slovak state authorities recognise the Slovakia's obligation to provide effective remedies against any racial discrimination in line with article 6 of the ICERD, they largely consider it to be a task of judicial state power that individuals subjected to racial discrimination shall approach with their claims for remedies. Arguments of NGOs stressing the legal obligation and advantages of redressing the affected persons especially in cases of systemic racial injustice also by the other state authorities are largely neglected and there has been no political discourse that would give these arguments greater importance. Even before courts individuals subjected to racial discrimination face serious barriers to achieve justice that strongly discourage them to claim their rights in court proceedings.

We believe that the Special rapporteur should stress in her report:

- the importance to secure effective implementation of antidiscrimination legislation and to remove various barriers in accessing justice in cases of racial discrimination within judicial systems;
- the responsibility of the executive and legislative branches of state powers to provide access to justice in cases of racial discrimination, specifically when they appear to have far-reaching systemic character and may affect a large number of individuals. This may include establishing ad hoc interim independent body that would investigate the given violations in a complex manner and effectively provide the survivors adequate redress through established compensation scheme;
- the widespread reluctance of the states to redress individuals subjected to racial discrimination when UN Treaty monitoring bodies found violations of their rights and recommended the state party to redress them. We argue that there is a fundamental responsibility of the non-judicial state powers to provide remedies in such cases and specific reparations mechanism established in domestic legal orders can provide an effective basis for it.

Expertise of the submitting organization:

The Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva, "Poradňa") is an independent non-governmental organization based in Slovakia focused on the protection of human rights with particular emphasis on the rights of minorities and protection from discrimination. Poradňa has for a long time worked on the issue of discrimination against Roma ethnic minority in various areas of public life. It has also been active in the protection of reproductive rights of Roma women and protection from police ill-treatment. Poradňa employs strategic litigation to combat discrimination and human rights abuses against minorities. It also actively cooperates with many local Roma women activists and supports their efforts on the protection of human rights of Roma minority in Slovakia. Visit us at <https://www.poradna-prava.sk/en/>

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