

WRITTEN COMMENTS

OF THE EUROPEAN ROMA RIGHTS CENTRE AND CENTER FOR CIVIL AND
HUMAN RIGHTS, CONCERNING SLOVAKIA

for consideration by the United Nations Committee Against Torture, at its 55th
Session (27 July to 14 August 2015)



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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Introduction

The Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva, hereinafter also referred to as “Poradňa”)¹ and the European Roma Rights Centre (hereinafter also referred to as “ERRC”)² hereby jointly submit this report to the United Nations Committee against Torture (hereinafter also referred to as “Committee”) for the consideration to the 55 Session (27 July 2015 - 14 August 2015). The report focuses on the following issues:

- sterilisation of Romani women and girls without parental and informed consent;
- police ill-treatment and harassment of Roma;
- ineffective investigation of allegations of police ill-treatment and harassment.

In its 2009 Concluding observations (CAT/C/SVK/CO/2)³, the Committee touched upon the above-mentioned issues. It expressed concerns, among others, in relation to allegations of mistreatment of Roma by police and involuntary sterilisation of Romani women. However, the submitting organisations are concerned that Slovakia has done little to address the Committee’s concerns and recommendations and that progress in complying with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is slow and inadequate.

In recent years, the submitting organisations have recorded a significant number of verbal and physically violent attacks and incidents of harassment committed by police against Roma, including minors, which have not been investigated effectively. We have also advocated for effective investigation of the practice of sterilisation of Romani women and girls without parental

¹ The Center for Civil and Human Rights (*Poradňa pre občianske a ľudské práva* or *Poradňa* hereafter) is a 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 and protection from police brutality. *Poradňa* employs strategic litigation to combat discrimination and human rights abuses against minorities. *Poradňa* offers free legal advice to victims of discrimination and in selected cases free legal representation to victims of discrimination before courts. It also conducts monitoring in the field, advocacy, and educational activities on the topic of protection from discrimination for lay and expert audiences. Visit us at www.poradna-prava.sk

² The ERRC is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education. Since its establishment in 1996, the ERRC has endeavoured to provide Roma with the tools necessary to combat discrimination and achieve equal access to justice, education, housing, health care and public services. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations. Visit us at: www.errc.org

³ Committee against Torture, Forty-third session, Consideration of reports submitted by States parties under Article 19 of the Convention, *Concluding observations: Slovakia, 17 December 2009*

and informed consent in Slovakia. This also includes adequate compensation for affected women and girls, which the Slovak Government refuses to consider.

Police ill-treatment and harassment against Roma - Article 2

Poradňa and the ERRC are in general concerned that Slovakia has not duly addressed in its periodic report⁴ the human rights violations faced by Romani communities in Slovakia. Considering that there were numerous incidents of police harassment against Roma in the last few years, this is particularly alarming.

In recent years, Poradňa and the ERRC, have recorded a significant number of verbal and physically violent attacks and incidents of harassment against Roma including minors by both State actors (police) and non-State actors (private individuals). In most of the cases monitored, there have been no successful prosecutions of offenders. However, precise data is impossible to collect as many hate crimes go unreported, there is no hate crime data disaggregated on the basis of ethnicity and in certain cases racial motives are not taken into account.

Between January 2008 and February 2011 the ERRC carried out research on anti-Roma violence and impunity whose results were published in the *Imperfect Justice* report.⁵ In this research the ERRC documented several cases in which law enforcement officials were either directly involved in attacks against Roma or mistreated Roma during the investigation.

Since 2009, Poradňa has documented a number of cases of police ill-treatment against the Roma minority living in Eastern Slovakia and provided free legal aid including legal representation in criminal proceedings to affected individuals including Romani children to ensure that these cases are effectively investigated and perpetrators are brought to justice. In most cases, Poradňa documented that criminal complaints were dismissed even without the initiation of a criminal investigation into the matter.

Poradňa is providing legal representation to a group of Romani boys from the city of Košice who were victims of ill-treatment by police . On 21 March 2009, after being arrested by police on suspicion of robbing and causing injury to an elderly woman, six Romani minors were brought to the police station in Kosice where they were physically abused, ordered to hit and kiss each other, and finally ordered to strip naked. Almost six years after the incident took place, after significant delays in proceedings, obstructions caused by defendants, a change made in the

⁴ Consideration of reports submitted by States parties under Article 19 of the Convention, Third periodic reports of States parties due in 2013, Slovakia, CAT/C/SVK/3/Rev.1, 23 September 2014

⁵ERRC, *Imperfect Justice*, 2011, available at: <http://www.errc.org/article/imperfect-justice-anti-romaviolence-and-impunity/3826> (accessed: 17 December 2012).

judges deciding on the case and dismissal of a relevant video as evidence, the District Court Kosice II issued a first instance decision acquitting the policemen charged.⁶ The state prosecutor appealed this decision and the case is yet to be decided by the Appeals Court.

In the autumn of 2012, four Roma settlements located in the Kežmarok District were raided by the police, Stráne pod Tatrami, Huncovce, Podhorany, and Rakúsy. Allegedly, no arrest warrants or search warrants were presented. Despite this, the police entered houses situated in settlements and searched them. Some people were physically and verbally abused, including children. The ERRC is currently working with a Slovak lawyer to pursue these cases of police brutality. Initially, the Inspection of the Ministry of Interior terminated the criminal proceedings without hearing any of the victims of the raids who filed complaints. The supervising prosecutor referred the matter back for further investigation, the case is still pending. It has been almost three years since the raids took place and the case is only at the pre-trial stage of investigation.

On 16 and 19 June 2013, two incidents took place in Moldava nad Bodvou, a town in Eastern Slovakia. The first incident took place on 16 June, 2013. The local Roma community held a small festival. The municipality police were consulted and visited the settlement during the afternoon, making no objections. At 11pm, the state police patrol arrived and requested for the music to be turned down, the community agreed to their requests. Later that night the police patrol arrived and harassed a Romani teenager. As a result, some children and a mentally disabled man threw stones at the police car. The police took the teenager (L.H.) and the Romani man (E.R.) into custody and initiated criminal proceedings against them. Charges were later dropped. However, Slovak criminal law requires criminal charges/accusations to be dropped immediately when the alleged perpetrator is found to be mentally disabled. The investigator was aware of E.R.'s condition detailed in an expert report, which also stated the man was not a danger to society, therefore he should have been released immediately. The investigator had the expert report for a month without acting accordingly. In total, E.R. was held unlawfully in custody for two and a half months.⁷

On 19 June 2013, more than 60 police officers returned to the Roma neighbourhood and conducted a violent police action resulting in injuries and damage to property to over 30 individuals (including children) who did not resist or obstruct the police. The Inspection of the Ministry of Interior did not find the police action to be unlawful. Upon the involvement of the prosecution, criminal proceedings were eventually initiated. However, two years after the incident took place, the Inspectorate of the Ministry of Interior has not brought charges against any particular individual from within the police force, despite an extensive collection of evidence and interviews with more than 50 witnesses.

⁶ Poradňa, 'Court acquitted police of torturing Romani boys from Lunik IX', available at: <http://poradna-prava.sk/wp-content/uploads/2015/02/PDF-55-KB.pdf>.

⁷ERRC, *Slovak investigation bodies disciplined after mentally-disabled Romani man forgotten in custody*, available at: <http://www.errc.org/article/slovak-investigation-bodies-disciplined-after-mentally-disabled-romani-man-forgotten-in-custody/4209>

In the morning of 2 April 2015, a large number of policemen entered the village of Vrbnica in Eastern Slovakia, allegedly to find people evading arrest warrants. A police house-to-house search reportedly resulted in injuries to at least 19 Roma individuals who – according to the media and the mayor – did not resist or obstruct the police.⁸ Among the injured were reported to be young children and women.⁹ No police misconduct was acknowledged by the authorities in Vrbnica.

The police action in Vrbnica as well as the other raids detailed above were reportedly carried out as part of a coordinated series of police interventions in the Košice region under Code-Action 100. Media reported that, in April 2015, altogether, 139 policemen participated in these actions, allegedly searching for people evading justice.¹⁰ According to the Košice Regional Police Chief Juraj Leško, "The action was deliberately carried out in this period because we know that people return home for holidays. Especially those who permanently reside abroad and a search may have been ordered to find them. During this region-wide action, 46 problematic sites were searched according to information that some people against whom arrest warrants have been issued might stay there. During the action altogether seven people were traced and five people were taken to police stations".¹¹ The ERRC carried out a freedom of information request of the Presidium of Police Forces about the localities in which Code-Action 100 had been relied on. Interestingly, the ERRC was informed that the police do not record such information.

The ERRC has filed a complaint in relation to this case with the Police Inspection as well as with the Slovak Ombudsperson. While the investigation with the Inspection is still pending, the Ombudsperson issued a report from her investigation a few days ago. She concluded that the police intervention in Vrbnica violated the rights of protection of one's home and right to private and family life of Roma concerned. She also reported that the Code-Action 100 is relied on more frequently in areas with significant Romani communities.¹²

Recommendations

Poradňa and the ERRC encourage the Committee to recommend the following to the Slovak Government:

⁸ GypsyTV, 'Roma injured after the police action', available at:

<https://www.youtube.com/watch?v=goEDlyRylrg#t=37>

⁹ Romea, 'Romani mayor and Romani residents say police brutalized them, police deny it' available at:

<http://www.romea.cz/en/news/world/slovakia-mayor-and-romani-residents-say-police-brutalized-them-police-deny-it>

¹⁰ Aktuality.sk, 'Policemen have allegedly beaten 19 people, they claim a searching for people', available at:

<http://www.aktuality.sk/clanok/273448/policajti-vraj-zbili-19-ludi-tvrdia-ze-patrali-po-osobach/>

¹¹ Pravda.sk, 'Another questionable action, Roma claim being beaten by during the police search', available at:

<http://spravy.pravda.sk/regiony/clanok/350870-dalsi-sporny-zasah-romovia-tvrdia-ze-ich-policajti-pocas-patracej-akcie-bili/>

¹² The Ombudsperson's report will be published shortly.

1. Introduce measures in relation to police actions involving large numbers of policemen to prevent violent incidents and to facilitate effective investigations of allegations of police ill-treatment;
2. Introduce mandatory recordings of police interrogation also in cases of minors under 18.

Ineffective investigation of allegations of police ill-treatment and harassment – Article 12

The alleged acts of police brutality and unlawful actions of the police are investigated by the Control and Inspection Service Section of the Ministry of Interior of the Slovak Republic.¹³ The Slovak Government has indicated in the submitted periodic report the numbers of complaints filed in relation to police misconduct without outlining the numbers of policemen found guilty of misconduct. However, it is even questionable how many of the inspection proceedings carried out were effective according to internationally recognized standards for effective investigation.

The NGOs making this submission note that there are serious concerns in relation to the independence and impartiality of the supervising body as both the police forces and the Inspection fall within the same branch of government and under the same Ministry. Moreover, none of the violent police actions mentioned above resulted in speedy or effective criminal proceedings or in any charges being brought against perpetrators. The issue of independence of the Inspection was brought up also by the Slovak Ombudsperson.¹⁴

The Inspection by its very nature, established and functioning under the Ministry of Interior, lacks the necessary independence, required by a newly reformed institution for investigation of ill-treatment committed by the police forces. The jurisprudence of the ECtHR established that no institutional or hierarchical relationship should exist between the investigatory institution and police officers who are being investigated for ill-treatment. Given this, the mechanism and office for investigations into police abuse in Slovakia should be revisited and made independent of the Ministry of Interior. Strengthening the effectiveness of investigations must go hand in hand with additional measures to prevent police ill-treatment.

Recommendations

Poradňa and the ERRC encourage the Committee to recommend the following to the Slovak Government:

¹³ Ministry of Interior, *Competences of Inspectorate*, available at: <http://www.minv.sk/?posobnost-inspekciej-sluzby-na-useku-inspekciej-sluzby>

¹⁴ MECEM, 'Ombudsperson: Ministry of Interior nor Police Inspection can independently investigate the incident in Moldava na Bodvou', available at: <http://www.mecem.sk/1498/ombudsmanka-mv-ani-inspekcia-nie-su-nezavisle-na-posudenie-moldavy>

1. Establish a fully independent autonomous institution, outside of the structures of the Ministry of Interior that will be responsible for the investigation of complaints of alleged torture, cruel and inhuman treatment by the police officers as well as all complaints with a possible racial motive;
2. Introduce a mechanism for the external evaluation of the effectiveness of investigations of police ill-treatment with an aim to identifying systematic deficiencies in the investigation process of such cases;
3. Secure continuous education of all persons investigating cases of police ill-treatment as well as state prosecutors and judges with particular emphasis on standards of effective investigation of torture, cruel and inhuman treatment laid down by the jurisprudence of the ECtHR and the UN Istanbul protocol;
4. Secure continuous education of experts in the field of psychology and medicine who are engaged in the investigation of police ill-treatment with particular emphasis on familiarity with the UN Istanbul protocol and;
5. Gather and disseminate data disaggregated by ethnicity to identify the extent of racially motivated police violence against Roma and the outcomes of these investigations.

Sterilisations of Romani women and girls - Article 2

Although the Committee in its last concluding observations¹⁵ urged the State party to take urgent measures to investigate promptly, impartially, thoroughly and effectively all allegations of involuntary sterilisation of Romani women and effectively enforce the Healthcare Act¹⁶ by issuing guidelines and conducting trainings of public officials, we regret to inform the Committee that the State party still fails to do so.

Both submitting organisations in the early 2000s investigated the practice of sterilisation of Romani women without informed consent in Slovakia.¹⁷ Since then we have been continuously advocating for redress for all affected Romani women and for introducing effective safeguards preventing involuntary sterilisation. Poradňa has been also providing legal aid to a limited number of sterilised Romani women and brought their cases also before the ECtHR.

In those cases the ECtHR delivered three judgements condemning Slovakia. The ECtHR clearly declared that sterilisation without informed consent violated their right to be free from inhuman and degrading treatment, guaranteed by Article 3 of the European Convention.¹⁸ The

¹⁵ CAT/C/SVK/CO/2 para 14.

¹⁶ Act no. 576/2004 Coll of Laws on healthcare and services related to healthcare

¹⁷ For more information about this documented practice see: ERRC, *Ambulance Not on the Way. The Disgrace of Health Care for Roma in Europe*, 2006, p. 47; *Poradňa* and the Center for Reproductive Rights: *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, issued on 28 January 2003. Available online at: <http://poradna-prava.sk/dok/bodyandsoul.pdf>

¹⁸ ECtHR, Decisions of the European Court of Human Rights in a case *V.C. v. Slovakia*, no. 18968/07, judgment of 8 November 2011, final as of 8 February 2012; *N.B. v. Slovakia*, no. 29518/10, judgment of 12 June 2012, final

sterilisations of Romani women without informed consent in hospitals were performed during delivery of their children by caesarean section under anaesthesia. In the judgement issued in November 2012 (*I.G. and others v. Slovakia*) the ECtHR also specifically found that the investigation led by the Slovak authorities into the cases of forced sterilisations of Romani women in 2003 and subsequently in 2007 did not meet the standards of effective investigations laid down by the European Convention (procedural aspect of Article 3).

On 20 February 2012, the advisory body to the Slovak Government, the Government's Council for Human Rights, National Minorities and Gender Equality adopted Resolution no. 37 on unlawful sterilisations.¹⁹ The Council expressed regret for the individual case of Ms. V.C. and also for other possible cases of unlawful sterilisations, which might have occurred in the past due to insufficient legislation or concrete failures in practice.

We welcome a formal acknowledgement of the injustice of involuntary sterilisations by the authorities. Nevertheless, we do not consider this to constitute an effective remedy. Without conducting extensive investigations into these cases throughout Romani communities in Slovakia we can only assume how many Romani women and girls have been affected exactly by this practice. It is necessary to emphasise that a significant number of cases of Romani women and girls involuntarily sterilised were documented; however appropriate remedies were not provided and/or compensation was not awarded in all these cases.²⁰ Individual cases litigated at civil courts by human rights NGOs cast only a glimpse on these systematic practices. Therefore the State party should take all necessary steps to investigate the full extent of this practice in Slovakia and introduce a comprehensive compensation mechanism for all victims of involuntary sterilisations.²¹

As for the effective enforcement of domestic healthcare legislation, the Slovak Government is still failing to implement this recommendation. We welcome the fact that the Ministry of Health in 2014 adopted legally binding regulations that contain templates for acquiring informed consent when performing sterilisations,²² but we do not consider this sufficient to secure proper implementation of the legislation and prevention of involuntary sterilisations in the future.

as of 12 September 2012; *I.G. and others v. Slovakia*, no. 15966/04, judgment of 13 November 2012, final as of 29 April 2013.

¹⁹ Council for Human Rights, National Minorities and Gender Equality, *Resolution on Unlawful Sterilisations*, available at <http://www.radavladyp.gov.sk/5-rokovanie-rady/>

²⁰ See: *Poradňa* and the Center for Reproductive Rights, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*

²¹ ERRC, *Submission to the CEDAW pre-sessional working group reviewing the Czech Republic*, 8 June 2015, available at: <http://www.errc.org/cms/upload/file/czech-cedaw-submission-8-june-2015.pdf>

²² See: Regulation of Ministry of Health n. 56/2014 Coll. Of Laws on providing details on the content of instruction before obtaining informed consent with the sterilization and templates of informed consent prior to sterilization in state languages and languages of national minorities (*Vyhláška Ministerstva zdravotníctva SR č. 56/2014 Z.z., ktorou sa ustanovujú podrobnosti o poučení, ktoré predchádza informovanému súhlasu pred vykonaním sterilizácie osoby a vzory informovaného súhlasu pred vykonaním sterilizácie osoby v štátnom jazyku a v jazykoch národnostných menšín*).

Medical personnel should be trained to fully understand the importance of informed consent, that it is not a mere signature on a form but rather their responsibility to provide adequate information to patients in light of their individual circumstances in order for them to make an informed decision. Therefore medical staff must take into consideration the cognitive and language abilities and actual psychological well-being of a particular patient and adequately explain the nature of the medical intervention and its consequences to them. The existing regulations on obtaining informed consent have to be properly implemented to prevent involuntary sterilisations. There is currently no monitoring of medical practitioners in the implementation of the legislation, therefore the failings in the level of protection provided by this legislation go undetected.²³

Recommendations

Poradňa and the ERRC ask the Committee to recommend the government of the Slovak Republic to undertake the following:

1. Establish an independent commission to investigate the full extent of the practice of coerced and forced sterilisation 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 affected women and girls. This commission should include also independent and highly qualified members of civil society and members of the Roma community in this commission.
2. Conduct a thorough effective criminal investigation into all relevant cases of sterilisation focusing on conditions under which consent was provided and criminally prosecute those responsible for these human rights violations.
3. Introduce clear guidelines for medical staff and provide long term and systematic training of healthcare personnel on how to ensure informed consent for any medical intervention including sterilisations. The training should focus on the practical aspects of communication between the healthcare providers and patients when obtaining informed consent and also on overcoming the prejudice of healthcare providers against Roma and other marginalized groups. The State party should also monitor the implementation of the current legislation by healthcare providers and introduce effective sanctions if violations occur.

²³ See: Citizen and Democracy, Women's Human Rights in Obstetric Care in Healthcare Facilities in Slovakia, 2015, available at: <http://odz.sk/en/women-mothers-bodies/>. The full report documenting failures to implement effectively the institute of informed consent during child birth is available in Slovak at: <http://zenskekruhy.sk/temy/respekt-slobodna-volba/zeny-matky-tela/>