



**Written Comments
Concerning the Ninth and Tenth Periodic Reports**

of the Slovak Republic

**Under the International Convention on the Elimination of All Forms of
Racial Discrimination**

*For the consideration at the 82nd Session of the Committee on the Elimination of
Racial Discrimination (11 February – 1 March 2013)*

January 2013

Center for Civil and Human Rights

People in Need Slovak Republic

Executive Summary

The Center for Civil and Human Rights (Poradňa) and People in Need Slovak republic; Slovak independent 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 82nd session (11 February to 1 March 2013).

We have been closely following the efforts undertaken by the Slovak Government (“Government”) to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”), as detailed in ninth and tenth Periodic Reports of the Slovak Government to the Committee (“the Government report”).¹ Given the focus of our work and expertise, in this report we want to bring to the attention of the Committee failures of the Government to respect the rights of the Roma ethnic minority in Slovakia as for:

- Discrimination in access to education, including segregation of Roma children in schools;
- Police violence against Roma and ineffective investigation of such cases;
- Failure to properly implement existing anti-discrimination legislation;
- Update on the Government action on forced and coerced sterilizations of Roma women, including a failure of the Government to implement previous recommendations of the Committee on this matter.

Although we recognize the progress made by the Government in some areas, we highlight the following failures to comply with the Convention:

- *Article 3 and Article 5* of the Convention: The Slovak Government has continued to be inefficient to guarantee equal rights of Roma minority and eliminate their discrimination in a number of areas, in particular, to effectively address the systemic discrimination of Roma children in public schools. *De facto* segregation of Roma children in educational system remains deep-rooted and widespread severely violating their right to equal access to education and undermining their human dignity. Racial segregation of Romani women in maternities in Eastern Slovakia is also persistent.
- *Article 5 (b)* of the Convention: the Slovak Government has failed to eliminate police ill-treatment against Roma as new abuses are continuously reported. Investigation into these incidents remains ineffective as perpetrators from police forces are not brought to justice. This indicates deep systemic flaws in handling such cases and must be addressed urgently.
- *Article 6* of the Convention: The Slovak Government has failed to ensure effective access to justice to victims of racial discrimination including adequate reparation or satisfaction. Legal remedies against discrimination are poorly implemented in practice. The specialized state body, the Slovak National Centre for Human Rights tasked to provide legal assistance to the victims of racial discrimination has continued to fall short of effective implementation antidiscrimination legislation in a court practice in favour of victims of racial discrimination.

¹ CERD/C/SVK/9-10.

- *Article 6* of the Convention: To this day, the Slovak Government has not undertaken effective, prompt and impartial investigation into the practice of forced and coercive sterilization of Roma women. Despite three major victories of the victims at the European Court and despite recommendations from many international bodies, the Government has not admitted its responsibility for the practice and has not compensated the victims at large. The Government keeps reducing the problem to occasional “individual failures” from the past, however, there has not been a single doctor who would be prosecuted for the practices. The amended legislation on informed consent to sterilization has not been fully and effectively implemented. Too often, obtaining “informed consent” to sterilization and other medical interventions from Romani patients has been a mere formality and its proper application with regard to the full understanding of patient is not monitored.

We regret that all these shortcomings have been already recognized by the Committee in their 2010 Concluding observations. We strongly believe that it is a time for the Government to recognize their persisting failures in respective areas and adopt comprehensive policies and mechanisms to both prevent future violations and remedy the past ones. We also encourage the Slovak Government to put particular emphasis on proper implementation of all the policies and mechanisms being adopted with a view to achieving real tangible progress in guaranteeing equal rights of citizens of the Roma minority in Slovakia in their everyday lives.

Expertise and Interest of the submitting organizations

The Center for Civil and Human Rights (“Poradňa”) - is non-governmental, non-profit organization founded in 2001, focusing on the protection of human rights in Slovakia with special emphasis on the protection of the rights of minorities and freedom from discrimination. It carries out field monitoring and research, educational and advocacy activities and provides free legal help for victims of discrimination. *Poradňa* is specifically engaged in strategic litigation of numerous cases of discrimination against Roma in access to health care, public accommodation, employment and education in Slovakia. It also deals with the protection reproductive rights of Roma women, provides legal help for victims of racially motivated police violence and combats racial segregation in Slovak society. 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 police ill-treatment against Roma, investigation of forced and coerced sterilizations, and the implementation of Anti-discrimination legislation.

People in Need Slovak republic - is non-governmental, non-profit organization based in Bratislava, 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 range of issues connected with Roma minority - in particular issues of social exclusion, integration of socially disadvantaged communities and existing barriers between Roma people and majority. As well, it develops community work in a number of localities in Eastern Slovakia with a significant proportion of Roma minority. People in Need extensively deals with issues of education of Romani children in the Slovak school system and carries out research and advocacy activities in this area. Moreover it also works in areas of employment and housing, and intensively cooperates with local authorities and municipalities. Additional information about the organization are available on the internet at: <http://www.peopleinneed.sk/> In these written comments People in Need has covered information on shortcomings in the field of education and persisting discrimination of Roma children in this area.

Article 3 and Article 5

a.) Discrimination of Roma children in education

Education of Roma children in Slovakia remains one of the main concerns among the professionals in education and minority rights and various NGOs. The issue of unequal access to quality education of Roma children and their segregation in mainstream education is still actual and since the last periodic report elaborated by the Government and submitted to the Committee, unfortunately there have not been significant changes with this regards.

In the beginning of 2012 Slovak Republic adopted a very important strategic document concerning Roma minority, the National Roma Integration Strategy (NRIS), which encompasses the crucial areas of integration of Roma, among them also education. Moreover a year before, the Revised Action Plan on Decade of Roma Inclusion was adopted with extensive list of concrete measures that should be taken in order to improve the access to quality education of Roma children. However, there is a strong concern that the proposed and adopted goals and measures of both documents may remain only on paper. In case of implementation of Decade, all the measures should be put in practice by the end of 2015, so the stakeholders are not under pressure with their implementation. Due to the fact that last year there were new parliamentary elections and new government has been formed, the NRIS and majority of other strategic documents with their measures were put aside. Moreover, new Government Plenipotentiary for Roma Communities was elected in October 2012 and he prepared a new policy document, so-called Roma reform, which was criticized and commented by several NGOs and experts. This document proposes several rather discriminatory practices towards Roma minority and portrays them as a troubled and threatening minority that endangers safety of the majority.² Regarding the education, on one hand, this new political proposal supports the inclusive education, but on the other one, conditions the receipt of the social benefits by family upon the behaviour of the child.

However, in 2011 there was established a working group on inclusive education at the Slovak Government's Council for Human Rights, National Minorities and Gender Equity which was composed of relevant state bodies, representatives from NGOs and other experts. It was part of an advisory body to the Government of the Slovak Republic and was mainly focusing on possibilities and practices of introduction of inclusive education into the Slovak education system of the Slovak Republic. Unfortunately, due to the political changes, the working group have not been working for almost a year, so it did not have any significant impact on education in Slovakia.

Though in 2008 the amendment of School Act prohibited discrimination and segregation in education,³ several surveys have repeatedly pointed at an unequal access of Roma children to quality education in Slovakia and at their segregation and exclusion from the mainstream education. Moreover there is no legislative provision that would define and thoroughly explain what segregation or discrimination in education shall mean. The current legislative framework still enables to 'de facto' segregate Roma 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).

² The Right Way (Roma Reform) presented by the Government Plenipotentiary for Roma Communities and the Minister of Interior of the Slovak Republic on 23 October 2012. Available in Slovak language at: http://www.minv.sk/swift_data/source/mvsr/romsky_splnomocnenec/Romska_reforma_vzdelavanie.pdf (visited on 30 January 2013).

³ Act no. 245/2008 Coll. on Upbringing and Education (School Act); art. 3, sec.c) and d).

We still appreciate some of the supportive measures implemented by the Slovak Government towards Roma children (e.g. contributions to children to support their school attendance, scholarship program for students of high schools, assistants of teachers), however, there is still 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 pregradual 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*⁴ not being resolved, existence of preparatory classes at special primary schools).

The concept of inclusive education and clear guidelines on integration of Roma children into education are still missing, which further halts the progressive approach towards Romani children and fulfilment of their right to equal access to education.

Segregation within mainstream education

The tendency of formation of Roma-only schools, or schools with high concentration of Roma children has been persistent. They are usually formed as a result of the residential segregation and geographic isolation of excluded Roma localities as well as so-called *white flight* from schools with higher number of Roma pupils. There are some strategic documents and policies trying to target these phenomena,⁵ however, no significant change has been achieved yet. Moreover due to the political changes of past 2 years, the implementation of such policies was halted.

In many instances, at mainstream primary schools with higher 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 Roma children (as the above mentioned *white flight* trend already implied). Referring to the pre-school education, we still documented localities where Roma children are denied enrolment in kindergartens or separate kindergartens for Roma and non-Roma children are established.

The missing concept of inclusive education when formulating relevant school policies by the Government well illustrates the Ministerial Decree adopted in 2008 that allows for formation of specialized classes at primary schools.⁶ 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. Even though the child is supposed to attend such school only for the necessary limited period, it has been reported that at many schools such classes are utilised to factually and permanently segregate Roma children within the system of mainstream education.

⁴ Gallová Kriglerová E. - Gažovičová, T. (eds.): *Škola pre všetkých? Inkluzívnosť opatrení vo vzťahu k rómskym deťom*. Bratislava: Centrum pre výskum etnicity a kultúry, 2012, p. 62 – 63.

⁵ National Roma Integration Strategy up to 2020, adopted by the Slovak Government on 11 January 2012; Revised National Action Plan of the Decade of Roma inclusion 2005 – 2015 for years 2011 - 2015, adopted by the Slovak Government on 10 August 2011.

⁶ Decree of the Ministry of Education of the Slovak Republic no. 380/2008 from 23 July 2008 on Primary Schools; art. 13.

The overall discussion about the necessity to tackle segregation of Roma children in education has been spurred by the ground-breaking decision of the District court in Prešov from December 2011 which condemned the elementary schools in the village Šarišské Michaľany (Eastern Slovakia) of teaching Roma children in separate classes.⁷ It was the first domestic court decision outlawing practice of segregation of Roma children in mainstream education in Slovakia. Following provisions of domestic Anti-discrimination Law, the court stated that the elementary school by teaching Roma children in separate classes violated their right to equal access to education and discriminated them due to their ethnic origin. In October 2012 the appellate Regional court upheld the first-instance decision and it became final. While reviewing this concrete case, the court also considered a wider social context implying long-term failures of the schools and other relevant state institutions to introduce principles of inclusive education as a counterbalance to the existing segregation and ensure full realization of right to education for every child. This court decision shall strongly urge the Government authorities to introduce policies and measures that will finally put an end to segregation and make inclusive education in our society real.

We urge the Government to develop and implement the relevant policy measure on the principles of inclusive education and eliminate segregation of Roma children in effect. In addition, we particularly stress the importance of the previous recommendation of the Committee advising to address de facto segregation of Roma in education in a broader social context, taking into account its close relation to segregation in the field of housing and discrimination of Roma minority in other areas in the Slovak society.

Segregation in the system of special schools

Roma children are still highly overrepresented in the special schools, but the exact numbers vary from 60 to 85% of their representation in these institutions.⁸ Independent surveys, evaluation reports of international institutions including Government's conceptual materials repeatedly point at high representation of Roma children in the system of special schools - in special classes at mainstream schools and schools for children with health disabilities (so-called *special schools*).⁹ Educational programmes of special schools and special classes at mainstream schools provide a different form, content as well as quality of education. Children who complete this type of educational programmes have very limited opportunities for further education and further professional career.

Process of enrolment of Roma 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

⁷ Šarišské Michaľany has organised separate mainstream classes on a different floor of the building attended by children of Roma ethnic origin. This situation was compounded in the school year 2008/2009 when the school transferred to the separate classes also the significant number of the remaining Romani children who had previously attended integrated classes with other children from the majority population. The strategic lawsuit has been filed and litigated by the Center for Civil and Human Rights (Poradňa) as an "actio popularis" claim based on the Anti-discrimination Law adopted in 2004. The full decision of the District court available online in english: <http://poradna-prava.sk/wp-content/uploads/2012/01/PDF-568-kB.pdf>

⁸ E.g.: National Roma Integration Strategy, 2012; Gallová Kriglerová E. - Gažovičová, T. (eds.): Škola pre všetkých? Inkluzívnosť opatrení vo vzťahu k rómskym deťom. Bratislava: Centrum pre výskum etnicity a kultúry, 2012; Still Segregated, Still Unequal, Amnesty International, 2007; School as ghetto: Systemic overrepresentation of Roma in Special Education in Slovakia, Roma Education a Fund, 2009; etc.

⁹ Ibid.

guidance centres are using them only to a very limited extent.¹⁰ 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 Roma children placed in special schools regardless of the fact that they do not suffer from irreversible mental handicap.¹¹

Additionally, the frequency of repeated testing (*re-diagnostics*) of children, which would provide for verification of the diagnostics and possible reintegration of the Roma 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. Although the Slovak Government repeatedly declares the commitment to decrease the percentage of (Roma) children attending special primary schools for children with mild mental disabilities and reintegrate them into the mainstream education, the number of pupils in special education remains the same in the recent years even if the decrease of number of children in the age of obligatory school attendance is taken into consideration.

We urge the Slovak Government to take effective measures to avoid segregation of Roma children in special schools and classes for children with mental disabilities, ensure their inclusion into the mainstream schools and introduce effective control mechanisms and sanction in cases of misdiagnosis. Full access to the documentation held by centres for educational guidance and prevention shall be secured for the parents and their representatives.

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 (visited on 30 January 2013).

¹¹ *Poradňa* documents cases where parents were denied full access to the documentation of their children held by the centres for educational guidance and prevention including results of psychological diagnosis. This obstacle is preventing them or their representatives to object the result of diagnosis and also possibly to consult the results of diagnosis with another independent expert.

b.) Segregation of Roma women in maternities

We remain to be concerned about the existence of segregated rooms for Roma women in maternity and gynaecological wards in hospitals in Prešov, Krompachy, Spišská Nová Ves and others, which we still document.

We also regret to inform that the Slovak Ministry of Health and the medical personnel of concerned hospitals on several occasions admitted this practice.¹² For example, the Prešov Hospital acknowledged the segregation practice in a case of *V.C. v Slovakia* held before the European Court of Human Rights. During a proceeding Slovak Government submitted to the European Court a letter prepared by the Prešov hospital. In this letter the Hospital explicitly admitted that it separates its patients based on “their own request or from hygienic and health isolation reasons”. The Prešov hospital gave further explanations on this practice and argued that such a separation of patients had to be seen in a context. As an example, the Prešov hospital said that beating of children in Slovakia was normal but the same conduct would be considered “by Americans” as abuse. Hence hospital asserted that different “norms” should apply to different states and different “cultures”. This statement of the Prešov hospital clearly documents that in Slovakia it is a standard that the medical personal on one hand denies segregation but admits separation on a ground of hygiene or by need to follow the wishes of other patients. The medical staff presented this arguments also during an oral hearing held in a case of *V.C. v Slovakia* before the European Court in Strasbourg on 22 March 2011.¹³

We urge the Committee to address this issue during the review and expressly ask the practice to be stopped.

Article 5 (b)

Police ill-treatment against Roma minority

In the last Concluding Observations, the Committee raised concerns over reports of police brutality against members of the Roma minority, including minors, during arrest or while in custodial detention and recommended the State party to intensify its efforts to combat and prevent ill-treatment of Roma by law enforcement officials.

We regret that cases of police ill-treatment of Roma individuals have been still reported and documented over recent years, which raises serious concerns about the Government’s compliance with the Convention.

Since 2009, *Poradňa* has been providing legal assistance in criminal proceedings for more than 20 Roma individuals who have been mistreated in the hands of police. We have argued that these cases amount to torture or inhuman and degrading treatment. In some of those cases violent behaviour of the police officers was accompanied by racial verbal abuses and indicated racial incentive of acting. Based on our experience, the victims of police ill-treatment are obviously reluctant or feared of taking legal action against police officers, do not have trust in state authorities and investigation process or they do not have sufficient evidences to stand any chance of proving what they experienced. Generally low legal awareness of Roma living in marginalized

¹² See, e.g., *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, p 77 issued by Center for Reproductive 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.

¹³ The webcast of the oral hearing is available at: http://www.echr.coe.int/ECHR/EN/Header/Press/Multimedia/Webcasts+of+public+hearings/webcastEN_media?id=20110322-1&lang=en&flow=high

communities and limited access to legal help in practice are the other relevant factor preventing them to resist ill-treatment by existing legal tools.

Despite some measures undertaken by the Government, we are convinced that deeper systemic changes are necessary to achieve a significant progress towards elimination of police ill-treatment. The Government authorities shall accept that a low number of individuals claiming ill-treatment of the police officers does not necessarily mean low occurrence of such behavior. It can actually indicate various real barriers in access to justice that victims of police ill-treatment and particularly marginalized Roma are facing and that we mentioned above. Furthermore, the Government authorities shall accept that if criminal proceedings in cases of police ill-treatment only rarely bring perpetrators to justice - it does not necessarily mean that almost all the received complaints are clearly unfounded or impossible to prove. It can actually indicate deep flaws in the mechanism of investigation of such cases, as well as in the work of prosecution and courts.

Based on our legal practice from providing legal assistance to Roma victims of police ill-treatment, we have been repeatedly observing serious shortcoming in the investigation process of these cases. We are concerned that the procedure of investigation of these cases does not sufficiently reflect criteria for effective investigation into cases of cruel and inhuman treatment laid down by the extensive jurisprudence of the European Court of Human Rights and the UN Istanbul protocol.¹⁴ The independence in practice and investigation procedures of the Control and Inspection Service Section of the Ministry of Interior of the Slovak Republic (SKIS MV SR) - the state department responsible for conducting criminal investigation of the member of police forces - raise serious questions. We are concerned that a relatively high number of complaints alleging police ill-treatment obtained by the SKIS MV SR is reviewed and rejected within initial period of 30 days even before initiating criminal prosecution and thus on the ground of limited range of information or evidence which obviously indicates that investigation into complaints alleging police ill-treatment may not meet the criteria for effective investigation into cases of this nature as required.¹⁵ Based on our legal experience of providing legal assistance to Roma in cases of police ill-treatment we can also state that investigation of racial motive tends to be often downplayed or investigators are obviously not aware of the criteria for investigation of racial motive as required by the jurisprudence of the ECHR.¹⁶

A certain exception as regards the quality of criminal investigation into the incidents of police ill-treatment over recent years has been widely reported case of six Roma boys who were in March 2009 ill-treated by the several policemen at the police station in Košice. The officers forced the boys to take off their clothes, stand naked against a wall and hit and kiss each other while the officers shouted anti-Roma statements at them. Two of the policemen repeatedly threatened the boys with loaded guns. Some of the policemen filmed the incident on their mobile phones and the relative video was subsequently posted on the Internet and shown on television.¹⁷ This case has been under strong public and media scrutiny being watched also by the international human

¹⁴ We note that in 2010 and 2012 Slovak republic was condemned by the ECHR for the ineffective investigation conducted by law enforcement agencies in relation to the Article 2 and 3 of the European Convention in the cases: *Mizigrová v. Slovakia*; no. 74832/01. judgment of 14 December 2010 and *Koky and others v. Slovakia*, 13624/03, judgement of 12 June 2012. In both cases, victims were Roma individuals.

¹⁵ The SKIS MV SR separately collects statistics on received complaints of detained, arrested and accused persons related to injuries which can be allegedly caused by members of Police Forces. These statistics are available and made public in its annual "reports on crime of members of Police Forces." According to recent statistics available, during the year 2011 SKIS MV SR received 168 complaints of this nature from which approx. 89 % were reviewed and rejected without initiating criminal prosecution. The report is available in Slovak language at: <http://www.minv.sk/?sekcia-kontroly-a-inspeknej-sluzby-mv-sr&subor=145353>

¹⁶ It can be symptomatic that according to information provided by Ministry of Justice received on 26 September 2011 and 24 January 2013 upon the Requests for information from Poradňa, since 2007 no person has been ever convicted by Slovak courts of the crime of the "misconduct of public office" with racial motive where the cases of police ill-treatment against Roma are particularly supposed to amount under the Act No. 300/2004 Coll. (Penal Code).

¹⁷ This case was i.a. specifically raised in the Report of the Commissioner for Human Rights of the Council of Europe Thomas Hammarberg following his visit to Slovakia, from 26 to 27 September 2011. para 37. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1885987>

rights institutions and cannot reflect the overall quality of investigation into cases of police ill-treatment in Slovakia. Furthermore, the case was backed by the exceptionally clear evidence (video recording). *Poradňa* has been providing legal representation to the injured Roma boys. The policemen, who harassed Roma boys, were charged with a crime of misconduct of public office with racial motive in the spring 2010 and, to date, the case is still pending at the District Court in Košice. However, the court hearings are often postponed as accused policemen are using every possibility to prolong the whole proceeding (they often submit the medical report and request the hearing to be re-scheduled). The case is now pending before the first instance court for almost 3 years, and Roma boys still did not achieve justice and has not been remedied.

The following summary of the selected case from the recent years that we have provided legal assistance can demonstrate some of the shortcomings in this area:

In late 2010, three Roma teenagers from Eastern Slovakia (Košice region) were detained by a police patrol and taken to police station where the police officers divided them into three rooms. They forced them to confess to robbing another boy. Some of the officers slapped head and face of the boys, one of the boys was hit by fists in the face and after falling to the ground he was kicked. Third of the boys got handcuffed and subsequently two officers kicked him. Attacks by members of the Police lasted until all the boys confessed to the crime. The boys were detained for about 15 hours without being able to lean, sit, or lie down. They were without food and water all the time. Following the release, all three boys sought medical treatment having light injuries with the overall treatment till 7 days. A criminal complaint has been filed, but investigator of 'SKIS MV SR' rejected as manifestly ill founded. The investigator concluded there was no reason to initiate criminal prosecution. He also concluded that physical attacks boys being reported did not correspond to objective findings in medical examination and as affected Roma boys were recognized by robbed boy, injured cops had no reason to force them to confess to. *Poradňa* filed on behalf of Roma boys complaint to the Military District Prosecutor's Office pointing at ineffective investigation missing required criteria for adequateness and thoroughness. The complaint was however dismissed as ill founded. The General Prosecutor's Office and subsequently the Constitutional court did not find any flaws in the investigation procedure as well. After exhaustion of all the domestic remedies the case is now pending before the ECHR. Within the proceeding the applicant is arguing violation of Articles 3,13,8 and 14 of the European Convention. Among other legal arguments, we are pointing out also at the ineffectiveness of investigation in this case.

We are convinced that ensuring effective investigation into cases of ill-treatment including investigation of racial motive should be imperative for the Government authorities in order to prevent and eliminate occurrence of such treatment of Roma individuals. Educational activities among police officers or other partial measures are not sufficient to eliminate police abuses and meet obligations of the Government under the Convention. We particularly urge the Government to establish a fully independent autonomous institution, built outside the structures of the Ministry of Interior that will be responsible for investigation of complaint into possible torture, cruel and inhuman treatment as well as all the complaints suggesting possible racial motive of acting.¹⁸

In addition, it is necessary to secure continuous education of all the investigators as well as medical or psychological experts that may be involved into investigation of cases of police ill-treatment about the criteria of effective investigation of torture, cruel and inhuman treatment, including investigation of racial motive, with special emphasis on the rigorous knowledge of the Istanbul Protocol and the relevant case-law of the European Court of Human Rights. We also find particularly important to introduce supportive measures aimed at people who may face police ill-treatment and particularly vulnerable groups in the society. It is necessary to continuously raise awareness of individuals of the guaranteed rights towards the Police, particularly Roma living in marginalized communities and also how to reasonably secure evidences if they encounter such treatment given the fact that many cases may not be possible to sufficiently prove even if the investigation procedure is effective.

¹⁸ In line with the extensive Opinion of the Commissioner for Human Rights of Council of Europe concerning Independent and Effective Determination of Complaints against the Police from 2009 as well as the other relevant recommendations.

Since we have repeatedly documented serious claims of Roma who faced violence or threats during police interrogation, preventive safeguards have to be introduced in this regard. We specifically recommend to introduce mandatory video/audio recordings of police interrogation and significantly improve the access to legal aid from the very outset of the detention and during interrogation if detainees ask for such assistance.

In line with the obligations of the Convention, we urge the Government to adopt effective policies and measures towards prevention and elimination of police ill-treatment of Roma and ensure effective investigation of such cases including investigation of possible racial motive.

Article 6

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

The Government has continued to be inefficient to ensure effective implementation of anti-discrimination legislation and access to justice for victims of racial discrimination including adequate reparation or satisfaction in line with its obligations under the Convention.

Although the 2004 Anti-discrimination Law¹⁹ and its later amendments significantly improved access to justice for victims of discrimination on the normative level - available legal remedies are not being used in practice. We attribute this fact to the failure of the Government to make the Law fully operational.

Poradňa (as one of very few local NGOs) provides legal representation to victims of racial discrimination free-of-charge in limited capacities and without or with minimal support from the Government. Since 2004, we provided legal representation in majority cases of racial discrimination that have been brought to Slovak courts. Moreover, in 2012 *Poradňa* collected court judgments concerning discrimination having been decided in previous years and comprehensively analysed Slovak court's decision-making activities in cases of discrimination from the adoption of Anti-discrimination Law in 2004.²⁰ Based on the given analysis as well as our legal experience from courts we can state:

- The number of cases of racial discrimination dealt by Slovak courts since 2004 under Anti-discrimination Law remains extremely low. Our research documented only 15 cases in which Slovak courts dealt with racial discrimination and at least first instance decision was already issued, all together since 2004.
- Implementation of the provisions of Anti-discrimination Law by courts in cases of racial discrimination is inconsistent and seriously flawed (i.a. using reversed burden of proof).
- The court proceedings last excessively long periods (several years). For example, we still have pending cases of racial discrimination brought to domestic courts in 2006 or 2007.

¹⁹ Act No 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendments and supplements to certain laws.

²⁰ The analysis is entitled "*Discrimination in Slovakia: Searching for barriers in access to legal means of protection from discrimination*" and it contains summary of all the relevant findings in English. It is available online at: <http://poradna-prava.sk/wp-content/uploads/2012/11/Publik%C3%A1ciu-si-m%C3%B4C5%BEete-stiahnu%C5%A5-tu-105-MB.pdf>
The analysis was made within the broader project PROGRESS coordinated by the Office of the Government of Slovak republic.

- Courts remain extremely reluctant to award any financial remedies for victims of discrimination. They tend to downplay seriousness of racial discrimination overlooking or not understanding *prima facie* impact on human's dignity. In some instances certain bias or preoccupation of courts when dealing with cases of discrimination of Roma can be indicated. Moreover, low damages for racial discrimination do not have sufficient deteriorating effect on other discriminatory subjects and fall short of prevention and elimination of racial discrimination in our society.

These problems can be demonstrated on the case in which Slovak courts for the first time ruled in favour of injured Roma claimants under the Anti-discrimination Law and which was finally concluded in October 2010:

The case concerned several Roma who were not allowed to enter a cafe in the town Michalovce in Eastern Slovakia in 2005. The café personnel claimed that the café was a private club and required all "patrons" to purchase "club membership". However, non-Roma patrons were served without such membership cards and the alleged club membership served only as a disguise to prevent Roma from entering the café. The injured Roma subsequently decided to sue the café owner on the basis of Anti-discrimination Law. District Court in Michalovce decided the case for the first time in August 2006, finding that although the Roma were discriminated, ethnic origin was not the reason of their discrimination. The Court did not explain on what basis Roma were discriminated against at all. The Roma appealed this controversial decision to the Regional Court in Kosice. The Regional Court, as the Court of Appeal in 2007, cancelled the first instance decision and returned the case to the District Court for a re-trial. The District Court repeatedly heard the case and this time finally declared that Roma were actually discriminated on the ground of their ethnic origin. It also ordered the cafe owner to send a written apology to the claimants. However, the District Court again rejected a claim for damages and did not order any financial compensation for discrimination, which caused harm to the dignity of victims. In September 2010 the Regional Court in Košice decided as an Appeal Court and upheld the District Court decision. Even though In this particular case the court finally acknowledged that Roma had been discriminated against on the ground of their ethnic origin, the court's reasoning on not granting any financial compensation for victims was unsatisfied and we found it contrary to the obligation of Article 6 of the Convention. As a result, we submitted the Individual Complaint that is currently pending before the CERD Committee.

Apart from shortcomings in the application of Anti-discrimination Law by courts, victims of racial discrimination remain to face various other barriers in access to justice in Slovakia. The results of nationwide survey we conducted in 2012 showed that only a tiny percentage of respondents who subjectively felt discriminated against, have sought legal aid or defended against discrimination by legal means. It showed that the most frequent reasons for not resisting discrimination among people was lack of trust in the institutions that could successfully resolve discrimination, lack of evidences to prove discrimination, fact that people who felt discriminated against, did not consider important to solve their case by legal tools and lack of information as to where and who to turn to for legal aid. The nationwide research results also indicated an overall skepticism and even resignation to any solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that in Slovakia it is not possible to obtain justice.²¹ A smaller separate field survey focused on marginalized Roma communities indicates that among the main reasons for not defending against discrimination were lack of information about where and who to turn to for help in cases of discrimination, insufficient trust in the courts, the police and other institutions and fear and apprehension of the discriminating person.²²

²¹ Ibid. See summary of all the relevant findings in English.

²² Ibid. See summary of all the relevant findings in English.

There is still lack of information about existing possibilities of free legal aid for victims of discrimination among people and overall capacities of such legal aid remain insufficient. We particularly stress the importance to significantly strengthen the legal capacities of The Slovak National Centre for Human Rights (Slovak "equality body") that must be capable of providing free and qualified legal aid for victims of racial discrimination including legal representation in court proceedings. During the last three years (2010 - 2012) Slovak National Centre provided legal representation only in one single initiated case of racial discrimination which is alarming.²³ We are convinced that providing effective legal assistance to victims and implementation of anti-discrimination legislation must be imperative for the work of the Slovak equality body.

As well, it is necessary to continuously raise awareness of legal remedies against discrimination, especially among population that faces such treatment largely like marginalized Roma communities as well as raise awareness on how to secure evidences for proving discrimination. There is unfortunately still very few court cases that can positively motivate victims to resist discrimination via legal means in Slovakia thus good practice from courts should be disseminated as well. Finally, it is particularly important to ensure continuous training of judges focusing on consistent application of national anti-discrimination legislation in accordance with international law, including EU law and constant practice of the European Court of Human Rights, the Court of Justice of the EU and the UN Treaty monitoring bodies.

In view of the Article 6 of the Convention we urge the Government to ensure effective implementation of Anti-discrimination Law and access to justice for victims of racial discrimination including adequate reparation or satisfaction.

b.) Ineffective investigation of practice of forced and coerced sterilization - follow up development

The Slovak Government has been insufficient to implement the recommendation of the Committee regarding the failure to investigate the practice of forced sterilization of Roma women. The Slovak Government still has not recognized its responsibility for the practice has not conducted any effective investigation and has not compensated the targeted Roma women. In order to complement the facts of the Government reports, Poradňa respectfully submits the Committee with the follow up information on this matter. In particular, we wish to highlight that the Slovak Government lost 3 major cases at the European Court of Human Rights concerning this practice, all brought to the Court by *Poradňa*:

- November 2011, *V.C. vs Slovakia*²⁴: The case concerned the Roma woman who was sterilized on 23 August 2000 in Prešov hospital without her informed consent. The European Court found violations of Articles 3 and 8 of the Convention and awarded her with financial compensation of 31 000 €.
- June 2012, case of *N.B. vs Slovakia*²⁵: case concerning a Roma woman who was sterilized as an under-aged minor without the consent of her legal guardian in Gelnica Hospital in 2002. The European Court again found violation of Articles 3 and 8 of the Convention.

²³ Response of the Slovak National Centre for Human Rights from 29.1.2013 to the Request for information from Poradňa.

²⁴ Decision 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.

²⁵ Decision of the European Court of Human Rights in a case of *N.B. v. Slovakia*, no. 29518/10, judgement of 12 June 2012, final as of 12 September 2012.

- November 2012, case of *I.G. and others vs Slovakia*²⁶: case concerning three applicants, who were forcibly sterilized in Krompachy Hospital under different circumstances in 1999-2002, with two of them sterilized as under-aged minors. Apart of confirming the earlier findings, the Court also found that the investigation led by the Slovak law enforcement authorities into the case did not meet the standards of effective investigation guaranteed by the Convention (procedural aspect of Article 3).

The European Court in each of the three cases which have been decided did not find necessary to determine separately whether the facts in each case gave rise to a breach of Article 14 of the Convention (protection from discrimination),²⁷ so the European Court has never concluded there was no discrimination in a cases of Applicants and never examined whether there was a practice of forced sterilization of Roma women in Slovakia, as Slovak Government interprets.²⁸

The Slovak government in its reaction to the first decision of the European Court of Human Rights in a case of *V.C. v Slovakia* in January 2012 issued the statement of the Minister of Justice Mrs. Zitnanska stated the regret for the interference into the rights of Ms V.C. and also for the other possible cases of unlawful sterilizations which might occur in the past due to the insufficient legislation and individual's failures. Also Deputy Prime Minister Rudolf Chmel publicly welcomed the decision of the European Court in this case. On 20 February 2012 the advisory body to the Slovak Government, the Government's Council for Human Rights, National Minorities and Gender Equity has adopted the resolution n. 37 on unlawful sterilizations. The Council stated the regret for the individual case of Ms. V.C. and also for other possible cases of unlawful sterilizations.

We welcome a regret expressed by the governmental representative to the individual forcibly sterilized Roma woman and other possible cases. Anyhow, we do not consider it to be sufficient remedy to the all victims of these serious human rights violations. As we emphasized in our 2010 report to the Committee, significantly higher number of forcibly sterilized Roma women were identified in 2002 during our fact finding mission in Roma communities in Eastern Slovakia. *Poradňa* has been able to provide legal assistance only to very small number of victims.²⁹ Without conducting extensive investigation of these cases throughout the Roma communities in Slovakia we can only assume how many Roma women have been exactly affected by this practice over previous decades in Slovakia.

In view of the Article 6 of the Convention we urge the Government to conduct 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 all its victims. Till now despite the European Court's decisions which found the investigation led by Slovak authorities into the practice ineffective, the Slovak Government failed to do so.

²⁶ All applicants were forcibly sterilized in Krompachy Hospital; while applicants I.G. and M.K were underage minors at the time of the interventions. The applicant I.G. was sterilized in 2000, during the delivery of her second child. She was not informed about the intervention at the time and found out about it only three years later, after she examined her medical records in the Krompachy Hospital. The applicant M.K. was sterilized in 1999, also during the delivery of her second child. She and her parents found about the intervention only after it was already performed on her. The applicant R.H. was sterilized in 2002 without her informed consent. In its decision from 13 November 2012, the European Court ruled in favor of the applicants I.G. and M.K. Since the third applicant, R.K., died during the course of the proceedings, the European Court did not consider her complaint.

²⁷ See for example decision of the European Court, *I.G. and Others v. Slovakia*, app. 15966/04 of 13 November 2012, para 167.

²⁸ Compare CERD/C/SVK/9-10 para 187.

²⁹ *Poradňa* has been able to provide legal representation only to 15 Romani women in proceedings before domestic courts and European Court of Human Rights in Strasbourg.

c.) Implementation of the Legislation on sterilization

The Slovak Government failed to implement the Committee recommendation to establish clear guidelines concerning the requirement of “informed consent” and to ensure that these guidelines are well-known among practitioners and the public, in particular Roma women. We regret that the Government also failed to systematically monitor circumstances under which consent to medical intervention is provided.

On 20 February 2012, the advisory body to the Slovak Government: The Government's Council for Human Rights, National Minorities and Gender Equity has adopted the resolution n. 37 on unlawful sterilizations. The Council recommended the Slovak Government to adopt the regulation which will unify the performance of sterilization with informed consent, to adopt the measures to monitor the implementation of the current legislation on performing sterilization with informed consent, to secure the training for medical personnel on obtaining the informed consent when performing sterilization and to overcome the prejudice towards Roma and other marginalized groups.

The Government states in its periodic report that Ministry of Health distributed template of informed consent in Roma language to all health care institutions in Slovakia. The State party also stated that in 2012 the Ministry of Health planned to introduce written instruction to the all health care providers to provide trainings to their medical staff focused on consistent application of the current legislation and awareness raising about adverse effects of illegal sterilizations or about the criminal law responsibility in case of performing sterilization without prior informed consent.³⁰ According to the information provided by the Slovak Ministry of Health on 28 January 2013, the Ministry is planning to amend the current legislation and introduce the legally binding regulation (*všeobecne záväzný právny predpis*) providing details on a content of instruction given by the medical personnel before obtaining informed consent. The regulation will also contain the templates of informed consent in languages of national minorities. The Ministry of Health did not provide us with any template of informed consent in Roma language, nor with information if they conduct any systematic training of the health care providers in this field.³¹

We welcome these steps of the Government, but we do not consider them sufficient to secure proper implementation and prevent the illegal sterilizations in a future.³² 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 (even in Roma language), 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 still lack of such a specific consistent education of the medical personnel within the life-long education scheme. We are not aware such trainings take place in systematic way. 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. The State party also shall monitor the implementation of the current legislation in a practice by health care

³⁰ CERD/C/SVK/9-10 paras 111, 112.

³¹ Response of the Ministry of Health of Slovak republic from 28.1.2013 to the Request for information from Poradňa.

³² Also UN Human Rights Committee in its letter addressed to the State party is concerned about the practice of obtaining the „informed consent“ by health care providers and in a follow up procedure requested the State party to provide additional information into this matter, for details see <http://www2.ohchr.org/english/bodies/hrc/hracs101.htm>

providers and introduce the effective sanctions in cases of violation. According to our information the State party still fails to do so.

In order to fulfill the recommendation of the Committee, the State Party shall introduce clear guidelines to the medical staff and provide the long term and systematic training of the health care personnel on how to obtain the informed consent with any medical intervention including sterilization. The training should focus on the practical aspect of communication between the health care providers and patients when obtaining the informed consent and also on overcoming the prejudice of the health care providers towards Roma and other marginalized groups. The State party also shall monitor the proper implementation of the current legislation by health care providers and introduce effective sanctions in cases of violations.

Recommendations:

As outlined above, the 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:

Discrimination of Roma children in education

- Approve the definition of racial segregation in education 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 Roma children into the mainstream education and eliminate segregation of Roma children in effect; address *de facto* segregation of Roma in education in a broader social context, taking into account its close relation to segregation in the field of housing and discrimination of Roma minority in other areas in the Slovak society;
- Introduce effective control mechanisms and sanction in cases of misdiagnosis in cases of Roma children and secure the parents and their representatives a full access to the documentation held by centres for educational guidance and prevention;
- 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;

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

- Ensure effective implementation of Anti-discrimination Law and access to justice for victims of racial discrimination including adequate reparation or satisfaction;
- Take measures to raise awareness of legal remedies against discrimination in the society and ensure continuous education of judges on the application of anti-discrimination legislation;
- Ensure the more active role of Slovak National Centre for Human Rights in implementing the anti-discrimination legislation in practice;

Police ill-treatment against Roma minority

- Adopt effective policies and measures towards prevention and elimination of police ill-treatment of Roma and ensure effective investigation of such cases including investigation of possible racial motive;
- Establish a fully independent autonomous institution, built outside the structures of the Ministry of Interior that will be responsible for investigation of complaint into alleging cases of torture, cruel and inhuman treatment as well as all the complaints suggesting possible racial motive of acting;
- Raise awareness of individuals of the guaranteed rights towards the Police, particularly Roma living in marginalized communities;
- Introduce mandatory recordings of police interrogation and improve the access to legal help from the very outset of the detention and during interrogation if detainees ask for such assistance;

Investigation of practice of forced and coerced sterilization, implementation of the legislation on sterilization and prevention from segregation in maternities

- Publically recognize a long-term practice of forced sterilization practices and publicly 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 effective 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;
- Adopt clear regulation and/ or guidance on unifying the process of performing the sterilization with informed consent in accordance with international standards introduced by FIGO;
- Provide trainings to medical personnel on issues related to informed consent and establish comprehensive monitoring mechanisms to monitor the implementation of Act No. 576/2004 Coll. to ensure that all women, particularly Romani women, who seek sterilisation services at health facilities, have given their full and informed consent through the necessary procedures. The Slovak government shall also introduce the effective control mechanisms and sanctions in cases of violations of guaranteed rights;
- Establish control mechanisms to prevent and sanction segregation of medical facilities and physical and verbal abuses towards Roma women from medical personnel.

