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THE COMPLIANCE OF THE SLOVAK REPUBLIC WITH THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Issues for the Discussion with the Committee against Torture

**Submitted by the Centre for Civil and Human Rights
(Poradňa pre občianske a ľudské práva)**

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Introduction

The Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva, *hereinafter* “Poradňa”), a non-governmental human rights organization based in Košice, Slovakia, respectfully submits these written comments concerning the Slovak Republic for consideration by the Committee against Torture (*hereinafter* “the Committee”).

Poradňa has a number of concerns in respect to the compliance of the Slovak Republic with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*hereinafter* “the Convention”). However, given the particular expertise of Poradňa, this alternative report focuses solely on the situation concerning the practice of forced and coerced sterilization of Romani women. The omission of other issues does not mean or imply that Poradňa finds the performance of the Slovak Government in other areas satisfactory.

Poradňa asserts that the practice of forced and coerced sterilization of Romani women in Slovakia and the failure of the Slovak Government to conduct effective investigation into the practice violated the obligation of the Government under the Convention, in particular with respect to Articles 10, 12, 13 and 14 of the CAT.

Regarding Article 10: the Slovak Government failed to train the medical personnel on obligations to conduct sterilization with full and informed consent of patients and to ensure that all interventions would be performed in full compliance of such obligations.

Regarding Articles 12, 13 and 14: the Slovak Government has failed to comply with its obligation to conduct effective, prompt and impartial investigation into the practice of forced and coercive sterilization of Romani women. At the same time, the Slovak Government failed to provide those Romani women who brought complaints against the medical personnel with adequate compensation for such a grave violation.

In view of these inadequacies, the Poradňa recommends the Slovak Government to recognize its failures in respective areas and adopt comprehensive policies and mechanisms to both prevent future violations and remedy the past ones.

Expertise and Interest of Poradňa

Poradňa is a non-governmental nonprofit organization, based in Košice, Eastern Slovakia, established in 2001. Since its establishment, Poradňa has been focusing on the protection of human rights in Slovakia with special emphasis on protection of the rights of minorities and protection from racial discrimination. In order to do so, it implements projects and programs where through research, litigation and advocacy aims to point the attention to a given problem, gain compensations for the victims of human rights violations and bring systematic changes. Currently, Poradňa is engaged (among other issues) in advocacy and litigation of discrimination in health care system and fights for elimination of practice of coerced and forced sterilization and attempts to obtain compensations for the victims of these practices.

Poradňa welcomes the opportunity to submit additional information for the consideration of the Committee and hopes the Committee would be able to utilize this report when analyzing where the Government of the Slovak Republic has failed to live up the Convention.

Critical Issues for Discussion

Article 10

Failure to provide the information and to educate the medical personnel regarding the performance of sterilization and obtaining the informed consent

In the information provided to the Committee, the Slovak Government asserted¹ that the a new legislation in the field of performing the sterilization intervention has been adopted and the special commission was set up to re- educate responsible health professionals under the direction of the Ministry of Health of the Slovak Republic.²

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

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

¹See Replies by Slovakia to the List of issues to be considered during the examination of the second periodic report of SLOVAKIA by the Committee against Torture, Article 10, answer on the question 14, p. 14 and Article 14, answer on the question 26, p. 25

² Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare, amending certain acts (hereinafter the “Healthcare Act”), effective from 1 January 2005 and amended Penal Code No. 140/1961 Coll.

According to Poradňa, also based by the information provided by the Government to the Committee, there is lack of such a specific consistent education of the medical personnel within the life – long education scheme. This constitutes the violation of the Article 10 of the Convention.

Articles 12, 13 and 14:

Failure of the conduct the prompt and impartial investigation into the allegation of victims of forced and coerced sterilization and to provide the adequate compensation for such a grave human rights violations.

The practice of forced and coerced sterilization of Romani women in Slovakia constitutes a grave violation of Articles 12, 13 and 14 of the Convention. This practice towards Romani women has been going on for decades on the territory of Slovak Republic.

a) History of the practice

There is a long history of the practice of forced and coercive sterilization, dating back to communist regime in a former Czechoslovakia. During late 70s and 80s, Romani women became a special target group of the Governmental program that provided financial incentives to all citizens who had undergone sterilization. Although the law that instituted this practice did not explicitly state that its aim was to regulate the birth rate of the Roma, its implementation resulted in violation of the Romani women reproductive rights as they were coerced to undergo the sterilization.

This practice has been identified and documented by several statistical studies and by international human rights organizations. For example, a study entitled “Statistical Evaluation of the Cases of Sexual Sterilisation of Romani Women in East Slovakia”³ noted that in Prešov (a district in Eastern Slovakia), 60% of the sterilisation operations performed from 1986 to 1987 were on Romani women, who represented only 7% of the population of the district. Another study found that in 1983, approximately 26% of sterilised women in eastern Slovakia (the region where the Applicants reside) were Romani women; by 1987, this figure had risen to 36.6%.⁴ In 1992, a report by Human Rights Watch addressed the practice of coercive sterilisation in Czechoslovakia, noting that many Romani women were not fully aware of the irreversible nature of the intervention and was forced into it because of their poor economic situation or pressure from authorities. The report also documented complaints about sterilisation after caesarean deliveries or abortions without consent, or as a result of deliberate attempts to mislead women in order to obtain their consent.⁵

³ Ruben Pellar and Zbyněk Andrš, *Statistical Evaluation of the Cases of Sexual Sterilisation of Romani Women in East Slovakia* – Appendix to the Report on the Examination in the Problematic Sexual Sterilisation of Romanies in Czechoslovakia, 1990.

⁴ MUDr. Posluch and MUDr. Posluhová, *The Problems of Planned Parenthood among Gypsy Fellow-citizens in the Eastern Slovakia Region*, *Zdravotnícka pracovníčka* No. 39/1989, p. 220-223.

⁵ HUMAN RIGHTS WATCH, *Struggling for Ethnic Identity: Czechoslovakia's Endangered Gypsies (1992)*

Provision of financial incentives for sterilization was abolished after the fall of communism, however, these practices have never been investigated. No post-communist government of the Slovak Republics has ever publicly condemned the policy or the practice of coercion related to it.

b) Continuation of forced sterilization in post-communist Slovakia

Notwithstanding the official abolition of this policy in 1990, the Romani women continue to be subject to unlawful sterilisation interventions through hospital practices. Cases of coercive sterilisation of Romani women after the fall of communism in eastern Slovakia were documented in two publications of the Open Society Institute in 2001.⁶ These publications documented recent cases of coercive and forced sterilisation and noted that in 1999 nurses working in Finnish refugee reception centres told researchers from Amnesty International that they noticed unusually high rates of gynaecological interventions such as sterilisation and removal of ovaries among female Romani asylum seekers from eastern Slovakia. Despite the calls in all of these reports to investigate the practice and provide remedies, the Slovak government failed to respond or conduct an effective and transparent investigation into the practices.

The latest report documenting the practice in recent years is the report of Poradňa and the Center for Reproductive Rights, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia (hereinafter "Body and Soul report")*.⁷ The findings in this report clearly indicate the continuation of the practice and clear violations of the Convention requirements. As documented in the Body and Soul report, coercive sterilization practices were occurring while Romani women were undergoing caesarean sections, and when doctors performed sterilizations without their informed consent. The lack of full and informed consent in performing sterilizations is striking. Some women knew they have been sterilized and while other women only suspected they have. Women that did know they have been sterilized were told by doctors that the next pregnancy was life threatening; that either they would die or their child would die during birth, therefore they should be sterilized during the caesarean section operation. These women are usually coerced to authorize sterilization under situations where they are not able to make clear, informed decisions. Many women were first told of the purported future "risk" of their next pregnancy and were asked to sign a consent document while on the operating table and in great pain. Others were told nothing except that if they wanted to live they had to be sterilized, and still other women were told to sign documentation authorizing sterilization, *after* they were sterilized. In addition, there were documented cases in which unmarried minors were sterilized during a caesarean section without parental consent.

The practice can be specifically illustrated by the following stories of Romani women.

"I was sterilized in January 2000 during a caesarean section delivery of my second child in hospital in Krompachy at the age of 16. The sterilization was performed on

⁶ See Ina Zoon, *On the Margins: Slovakia - Roma and Public Services in Slovakia (hereinafter "On the Margins")*, 2001; Open Society Institute, *Monitoring the EU Accession Process: Minority Protection in Slovakia (hereinafter "Monitoring the EU Accession Process")*, 2001;

⁷ Center for Reproductive Rights & Poradňa pre občianske a ľudské práva, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, issued on 28 January 2003

me after I came to the hospital in a progressed labour at 05:30 p.m. and gave birth shortly afterwards (at 07:00 p.m.) I do not remember giving my consent to sterilization. However, since I was a minor at the time of sterilization, the consent of my legal guardian with the intervention was required by the Slovak legislation. However, my legal guardians were not asked and did not grant their consent to the intervention, thus, the surgery was clearly illegal. I found out that I had been sterilized only several years later, in 2003, when I and my lawyer from POradňa examined my medical record in the hospital.”

(The testimony of Ms. X - sterilized in 2000 at the age of 16)

“I was sterilized in 2002, during the caesarean delivery of my fourth and fifth child (twins- boys), at the age of 30, in hospital in Krompachy. It was my first delivery performed via caesarean section. The sterilization was performed after I came to the hospital in a progressed labour after 10:00 p.m. The delivery was concluded in the early morning hours of the next day. I was not informed about the nature of sterilization before it had been performed, its consequences or alternative contraception methods. Nobody talk to me. I only remember the physician giving me some document to sign when I was being released from the hospital seven days later. Only then, the physician informed me that the sterilization had been performed on me. I had not given my prior informed consent with the intervention. My medical file contains a statement that I requested sterilization for “medical reasons”, however, it fails to document what medical reasons those should be.”

(The testimony of Ms. Y - sterilized in 2002 without her informed consent)

“I was sterilized in hospital in Prešov during the delivery of my second child- boy, via caesarean section. I do not clearly remember the circumstances of the delivery as I was already in labour when I arrived at the hospital. My medical record shows that I was received in the hospital at about 08:00 a.m. Approximately one hour before the delivery, when I was in a great pain and was lying in hospital bed, the staff told me I had to sign the request for sterilization, otherwise I or my baby would die if I got pregnant again in future. Being frightened, I signed the form with a shaking hand directly in her medical record. The signature itself is shaky and does not correspond with my usual signature. The delivery was concluded with a caesarean section at 10:35 a.m. The staff did not tell me anything about the nature of the intervention before it had been performed or its consequences or about alternative ways of contraception.”

(The case of Ms. Z - sterilized in 2000 without her informed consent.)

c) Investigation into the matter.

Despite obvious violations of the Convention and other international obligations, the Slovak Government has failed to effectively and adequately investigate the aforementioned practices and did not prosecute those responsible. As such, Poradňa asserts that it further violated its obligations and even silently condoned the practices.

Although - under international pressure - the Slovak Government initiated two investigations into the practices (one administrative with the Ministry of Health and one criminal- with law enforcement agencies), those have proven completely insufficient and similarly flawed: each governmental entity has reached hasty conclusions, ignored key facts and created an intimidating atmosphere for victims that has tended to dissuade them from voluntarily coming forward with their complaints.

As for the investigation of the Ministry of Health, it was conducted only in one hospital – Krompachy hospital, only concerned a limited period of time (from 1999 to 2002), and depended fully on information provided by the hospital. The Ministry ignored also the obvious violations, as for example, in its final report, it concludes that there is compliance with the sterilization regulations, despite the fact that they have found two cases of minors who were illegally sterilized (they concluded those were only “administrative mistakes”). The major failure of the investigation, however, is that the Ministry focused merely on whether medical records contained signature of patients, without examining the conditions under which the signatures were provided. The Ministry noted that, “all patients who underwent sterilization ..., signed the application for sterilization permission and all applications had been reviewed and approved by the sterilization commission.”⁸ The Ministry disregarded that the presence of a signature on a form is not *de facto* evidence of informed consent, especially if this occurs in a coercive environment or if the risks and benefits of the procedure are not explained to the patient in a way that allows the patient to comprehend the information.

As for the investigation by law enforcement agencies, it suffered from similar insufficiencies. The investigation has been particularly lengthy, pending since January 2003 and being challenged at the Constitutional Court already three times.⁹ The criminal investigation continued during the year of 2007 in a highly formal manner, resulting in final closing of the investigation on 28 December 2007.

The major problems in the criminal investigation are similar to those of the administrative proceedings at the Ministry of Health. Law enforcement agencies also failed to examine the circumstances under which victims signed the consent forms and concluded that the presence of signatures proves the interventions were performed with the consent of victims. The agencies

⁸ See Report on the findings of the investigation of the State Control Section at the Ministry of Health of the Slovak Republic, p. 4.

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

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

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

Poradňa also provides free-of-charge legal representation to the forcibly sterilized Romani women who are seeking justice via civil court proceedings. Some of the women filed the civil lawsuits with the relevant courts against the hospitals whose employees performed the illegal sterilizations on them claiming damages to their health or non-pecuniary damages for unlawful interference with their personality. So far, there has not been a single effective court decision issued in favor of the Romani women. In most cases, the court proceedings are still pending and evidence is being performed. In most cases, the courts dismiss the complaints of Romani women reasoning their decision that performing the sterilization was necessary from the medical point of view.

d) Hostility and threats to the victims of violations

Poradňa would also like to point out that the Slovak Government created an environment of hostility and threats from state police and medical personnel towards Romani women that discouraged them to seek justice. For example, the police was threatening concerned Romani women with three years in prison for false charges if they filed complaints of forced or coerced sterilization against health care workers. The Slovak Government also targeted members of Poradňa for exposing the practice and claiming they would be prosecuted for documenting the practice of forced sterilization. Finally, health care personnel in the Krompachy hospital have been verbally abusing pregnant Romani women for their complaints and bringing charges against doctors; accusing the women of suing the hospital who is giving them good care. Such harassment and verbal abuse intimidates women into not using the health care system that they so rely on for fear of retaliation

Poradňa asserts that by failure of the Slovak Government to recognize the practice of forced sterilization during communism and provision of compensations to victims, as well as failure to ensure equal treatment of Romani women in the area of maternal health care, contributed to continuation of the practice after the fall of communism. Ignorance and reluctance to the

continuous practice, despite international criticism, caused that the doctors in public hospitals freely continued in the practice and have abused their position and responsibilities by performing illegal sterilizations on Romani women. Whether the sterilization is done on an unsuspecting patient or consent is achieved through intimidation and incorrect medical advice, sterilizations have been conducted by doctors in public hospitals for whose action the Slovak Government is responsible.

e) Racial stereotypes, prejudices and hostile attitudes toward Romani women

Poradňa also wishes to note here that racial stereotypes, prejudice, and hostile attitudes toward Romani women are highly prevalent among state medical personnel and played a decisive role in the implementation of forced sterilization practices. This has become particularly clear in the actions of state medical personnel in regional hospitals in Eastern Slovakia. As Poradňa has documented, the staff of many hospitals (including hospitals in Prešov, Košice, Krompachy and Gelnica) has been performing forced and coercive sterilizations on Romani women, while there are strong indications that reasons for these sterilizations, were prejudices and racial discrimination.¹⁰

There are many false attitudes toward Romani women which are commonly accepted in Slovak society. Two major stereotypes common among medical practitioners is that Romani women are promiscuous and that they have too many children.¹¹ The majority of Slovaks believe that Romani women have excessive numbers of children in order to get extra government benefits – a belief in keeping with a broader stereotype that Roma exploit the system and thieve whenever they can. The existences of these attitudes towards the Romani women have been documented also among health care personnel in several reports.¹² For example, the former chief gynaecologist of Krompachy Hospital, doctor Ján Králik, in an interview he gave for a *Body and Soul* report, which documents over 100 cases of illegal sterilisation of Romani women in eastern Slovakia. Specifically, stated that “*Roma do not know the value of work,*” that they abuse the social aid system and have children only to obtain more social benefits from the state.¹³ This stereotype has even more insulting emanation; for example, one hospital administrator thought that Roma deliberately intermarry in order to have handicapped children and thus receive more state money.¹⁴

¹⁰ Center for Reproductive Rights & Poradňa pre občianske a ľudské práva, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, issued on 28 January 2003, p. 87.

¹¹ See *Body and Soul*, p. 54

¹² See, e.g., Ina Zoon, *On the Margins: Slovakia - Roma and Public Services in Slovakia (hereinafter “On the Margins”)*, 2001; Open Society Institute, *Monitoring the EU Accession Process: Minority Protection in Slovakia (hereinafter “Monitoring the EU Accession Process”)*, 2001; Dena Ringold, *Roma and the Transition in Central and Eastern Europe: Trends and Challenges*, 2002; Organization for Security and Co-operation in Europe (OSCE), High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Areas*, 2000; *Body and Soul*.

¹³ See *Body and Soul*, p. 87

¹⁴ *Ibid.*

e) Segregation of Romani women in maternities

Discrimination of Romani women is also manifested in a form of racial segregation in maternities in Eastern Slovakia. It has been documented that public hospitals segregate patients according to their ethnic origin. Maternity and gynaecological wards have so called “Gypsy rooms” where Romani women are accommodated separately from white women and are prevented from using the same bathrooms and toilets as white women, as well as were prevented from entering the dining room (which, in addition to being the dining room, was also a place where there was a TV). This practice has been documented by Poradňa in hospitals in Prešov, Košice, Gelnica, Krompachy and others.

The Slovak Ministry of Health and the medical personnel of concerned hospitals on several occasions admitted to racial segregation,¹⁵ but argued that it only “appears to be according to the racial lines.” For example, the chief gynaecologist of Krompachy Hospital, doctor Ján Králik, claimed that patients are first categorised as “adaptable” or “non-adaptable” and as “low-hygiene” or “high-hygiene,” patients, and are then segregated accordingly. As for the specific evaluation criteria, he claimed that those are set on an individual basis by him, as he can see immediately who will fall into which category.¹⁶ Not surprisingly, the adaptability criterion also breaks down along racial lines, separating Romani women from all others. Some doctors claim that Romani women wish to be segregated, going so far as to sleep multiple women in a single bed to avoid all others. Other doctors claim they must place Romani women in segregated rooms due to the wishes of white women, who do not wish to share rooms with Roma or that the practice was necessary to “respect the intimacy of white women”.¹⁷ The Slovak Government has not tried to prevent or prohibit the practices of the hospitals that segregate Romani women. Due to these stereotypes and racist actions directed toward them, Romani women do not even expect the basic dignities and respect that are their right as human beings and citizens of the Slovak Republic.

Poradňa also points out that the practice of forced sterilization and segregation of Romani women in maternities represent the acts of cruel and inhuman or degrading treatment based on the both gender and racial discrimination.

Until today, no Romani women has obtained any compensation from the Government for the acts of cruel, inhuman or degrading treatment.

Thus, the Slovak Government violated the Convention through their actions. **Failure to stop this practices, condone it, compensate the victims and effectively investigate it constitutes a direct violation to the guarantees of the CAT under the Articles 12,13 and 14.**

¹⁵ See, e.g., Body and Soul, p. 77; Good Romani Fairy Kesaj Foundation, “Segregation with the Silent Consent of the Authorities”, in *White Book 2000*, 2000, p. 23–25.

¹⁶ See Body and Soul, p. 77.

¹⁷ See Body and Soul, p. 77.

Recommendations

As outlined above, the Slovak Government failed to comply with the requirements of the CAT. Accordingly, Poradňa recommends the following measures should be adopted immediately by the Slovak Government:

- Publically recognize a long-term practice of forced sterilization practices and public apologize to all its victims.
- Establish an independent commission to investigate the full extent of the practice of coerced and forced sterilization in the communist and post-communist period in Slovakia, to propose institutional and administrative measures to prevent the recurrence of the practice and to recommend financial and other reparations for victims. This commission should include also independent and highly qualified members of civil society and members of the Romani community. When establishing this commission, the Slovak Government should draw from the experiences of other countries that have dealt with or are currently dealing with similar issues, such as Sweden, Norway and Peru.
- Conduct a thorough criminal investigation into all relevant crimes in sterilization cases with focusing on conditions under which signature on sterilization forms were given and criminally prosecute those responsible for blatant violation of the Slovak law (in particular sterilizations of minors).
- Provide clear guidance and trainings to medical personnel on issues related to informed consent and establish comprehensive monitoring mechanisms to ensure that sterilizations are performed only when patients gave their full and informed consent as mandated by international standards.
- Provide support and information to victims of sterilization practices on how to seek compensations and necessary medical care.
- Establish control mechanisms to prevent and sanction segregation of medical facilities and physical and verbal abuses towards Romani women from medical personnel.