



NGO's submission to the UN Committee on Economic, Social and Cultural Rights

For consideration when compiling the Concluding Observations on the Third Periodic Report of Slovakia under the International Covenant on Economic, Social and Cultural Rights

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

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Overview

The Center for Civil and Human Rights (Poradňa)¹ presents this submission to the Committee on Economic, Social and Cultural Rights (Committee) for its consideration in the context of its examination of Slovakia's third periodic report on compliance with the International Covenant on Economic, Social and Cultural Rights (the Covenant).

The submission results particularly from ongoing human rights field monitoring, strategic litigation and advocacy efforts of our NGO and outlines the selected issues of concern regarding equal enjoyment of human rights of Roma ethnic minority in Slovakia:

- discrimination of Roma women in reproductive and maternal health care,
- discrimination of Roma children in primary education,
- discriminatory legislation in the area of social security disproportionately impacting Roma women and children,
- lack of effective access to justice in cases of racial discrimination in enjoyment of economic, social and cultural human rights.

We are concerned that Slovak government authorities have fallen short of addressing these issues effectively and that progress in implementing the Covenant in this regard is insufficient.

a.) Discrimination of Roma women in reproductive and maternal health care - articles 2(2) and 12

1. Roma women are one of the most marginalized groups in Slovakia, experiencing multiple, and intersecting, forms of gender and racial discrimination.² The specific forms of discrimination they face are especially widespread and pronounced in the area of reproductive health care. In November 2017 our NGO in cooperation with an international NGO Center for Reproductive Rights published an advocacy report titled *Vakeras Zorales – Speaking Out: Roma Women's Experiences in Reproductive Health Care in Slovakia*. The report was based on in-depth interviews with 38 Roma women from marginalized communities and documented a wide range of human rights violations that Roma women experience in reproductive health care in Slovakia. That included practices of segregation in maternity wards, racial harassment and humiliation, neglect, physical restraint and abuse during childbirth and failures related to informed consent and decision making with regard to medical treatment.³

¹ The Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva, "Poradňa") is Slovak independent non-governmental organisation focused on the protection of human rights with an emphasis on the rights of minorities and protection from discrimination. From 2002 Poradňa has addressed the issue of discrimination against Roma minority in various areas of public life. It has also been active in the protection of reproductive rights of Roma women and protection from police ill-treatment. Poradňa pursues its mission by human rights monitoring, strategic litigation as well advocacy activities. For more information please visit us at <https://www.poradna-prava.sk/en/>

² The Committee on the Elimination of Discrimination against Women in its recent concluding observations on Slovakia drew particular attention to Roma women, recognizing them as disadvantaged and disproportionately affected by intersecting forms of discrimination in Slovak society. UN CEDAW, Concluding observations on the combined fifth and sixth periodic reports of Slovakia, CEDAW/C/SVK/CO/5-6, 25 November 2015.

³ The report is available in English at: <https://www.poradna-prava.sk/en/documents/vakeras-zorales-speaking-out-roma-womens-experiences-in-reproductive-health-care-in-slovakia/>

2. In January 2019 the Slovak Government adopted updated action plans of the Strategy of Slovak republic for Integration of Roma till 2020 for years 2019 – 2020.⁴ The adopted policy material included specific goal and measures that partly responded to existing shortcomings concerning violations of Roma women`s rights in reproductive and maternal health care.⁵ However, we argue that these measures have only limited potential to prevent Roma women`s reproductive rights violations, if not accompanied with a range of other measures that would effectively address the very source of the existing discrimination that we consider to be a widespread deep-rooted negative attitudes of the majority society towards Roma minority.
3. Moreover, all efforts to address violations of Roma women`s rights in reproductive and maternal health care by legal means remain largely ineffective due to ongoing shortcomings in the implementation of antidiscrimination legislation as well as in decision making of courts and responsible state administrative bodies. For instance, our NGO currently litigates strategic "actio popularis" lawsuit based on the domestic Anti-discrimination Act targeting segregation of Roma women in a maternity ward of a state-run hospital in a town Prešov, but the court proceeding has been pending before the first instance court for more than five years without any meaningful progress.⁶ The initiated administrative control conducted by the responsible Office of Self-governing Region in the very same hospital in summer 2017 has appeared to be clearly ineffective since its results have been based solely on the statements of the medical personnel of the hospital. The Office did not conduct any inspection on the spot and rejected the claims of affected Roma women without proper justification.⁷ The Slovak Ombudsperson reviewed the conducted inspection control and specifically concluded that it was insufficiently directed towards a complete finding of the actual state of the matter and formalistic, and as a result violated the right for other legal protection guaranteed by the Slovak Constitution.⁸
4. We are convinced that in order to effectively prevent violations of Roma women`s rights in reproductive and maternal health, the State Party has to address behaviour and negative attitude of the medical practitioners towards these women by introducing effective measures that have preventive as well as repressive character. These should particularly include implementing effective awareness-raising and sensitizing programs for health care practitioners to eradicate stereotypes and prejudices that foster the discriminatory treatment of Roma women, improving access to justice for affected persons and effective monitoring and sanctioning of violations of Roma women`s rights in reproductive and maternal health care facilities.

⁴ Updated action plans of the Strategy of Slovak republic for Integration of Roma till 2020 for years 2019 – 2020. Adopted by the Government of the Slovak republic on 17 January 2019. Available in Slovak language at: <https://rokovania.gov.sk/RVL/Negotiation/963>

⁵ Ibid, attachment n. 5: D.2.3 Area of Health, partial goal n. 6 and related measures 6.1 and 6.2.

⁶ The case is conducted before the District Court Bratislava III under ref. No 14C 288/2014.

⁷ Notice of the Office of Self-governing Region on investigation of a complaint of the Center for Civil and Human Rights from 11 September 2017. Available in Slovak language at: <https://www.poradna-prava.sk/sk/dokumenty/odpoved-uradu-presovskeho-samospravneho-kraja-tykajuca-sa-zle-zaobchadzanie-s-romskymi-zenami-v-nemocnici-v-presov/>

⁸ Notice of the Public Defender of Rights on the results of handling a complaint of the Center for Civil and Human Rights from 19 July 2018. Available in Slovak language at: <https://www.poradna-prava.sk/en/documents/notification-from-ombudswoman-to-our-complaint-in-which-we-objected-an-inspection-by-the-presov-county-council-in-the-case-of-d/>

5. Based on our ongoing human rights field monitoring, we note that violations of rights in reproductive and maternal health care still continue to be widely reported by Roma women. The obligation to guarantee non-discrimination in the exercise of the economic, social and cultural rights stemmed from the Covenant is of immediate effect and not subject to progressive realization. Therefore we find it critical that the State Party is also particularly prompt in taking and implementing measures that would effectively prevent violations of Roma women's rights in reproductive and maternal health care.

Proposed recommendations for the State Party:

- Establish effective programs, procedures, and mechanisms to monitor, prevent, and sanction all forms of discrimination against Roma women in health care facilities and eradicate the harmful consequences of such practices;
- Implement effective training and awareness-raising programs for health care personnel providing reproductive health services designed to combat stereotypes and prejudices that foster the discriminatory treatment of Roma women.

b.) Discrimination of Roma children in primary education – articles 2(2) and 13

6. In previous years our NGO has monitored the occurrence of segregation of Roma children in primary education with particular focus on the region of eastern Slovakia, advocated for necessary desegregation measures and conducted strategic litigation in this area. Following our findings, we would like to bring to the attention of the Committee our recent written submissions presented to the UN Treaty monitoring bodies, which discussed the situation in this area and highlighted persisting shortcomings. In particular, our report submitted with the European Roma Rights Centre to the UN Committee on the Rights of the Child from June 2015 provided comprehensive information about the ongoing forms of this discriminatory practice in Slovakia, which still remains to be relevant to date.⁹ Thousands of Roma children in the country remain segregated in special schools and classes for children with “mild mental disabilities”, or segregated in separate classrooms and schools within mainstream education and we argue that the State Party has fallen short of preventing these forms of discrimination of Roma children effectively.
7. In our recent submission for the UN Human Rights Committee from September 2016 we elaborated on general reasons why the Roma children from marginalized environment continue to face discrimination in access to education and tangible progress in this regard is hardly noticeable given our ongoing monitoring in this area. We would like to draw attention of the Committee to these reasons and emphasize their particular ongoing relevance since, in our

⁹ Written comments to the UN Committee on the Rights of the Child concerning Slovakia for Consideration by the UN Committee on the Rights of the Child at the 72nd Pre-Sessional Working Group, June 2015, pp. 4-7. Available at: <https://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-rights-of-the-child/>

view, the State Party has still not sufficiently recognized them.¹⁰ We particularly argue that the key obstacle to achieve a tangible progress in this area is the State Parties' reluctance to implement systemic and sustainable policies and measures supporting desegregation and inclusion of Roma children in schools that inevitably require considerably higher investments from public sources when considering the current extent and structural character of this problem in Slovak society and factual necessity to reform the whole primary educational system into more inclusive.

8. The State Party reiterated in its replies to the list of issues information about fundamental legislative changes initiated by the Ministry of Education and adopted in 2015, which specifically focused on addressing segregation of Roma children in mainstream and special education.¹¹ Our follow-up submission to the UN Committee on the Rights of the Child from April 2016 particularly discussed these legislative changes and considered them highly insufficient since they were not accompanied by any concrete and sustainable desegregation policies and measures.¹²
9. The State Party specifically informed in the appendix to its replies to the list of issues about decreased percentage of children being enrolled and educated in the first school year in special primary schools under variant A in comparison throughout years 2015 - 2017.¹³ We note that recent research data of the Ministry of Finance published in January 2019 mapping overall percentage of children educated in special education provides a broader perspective and indicates insufficient progress. The Ministry of Finance concluded that according to the last international comparison from 2014 a number of children in special education in Slovakia was almost four times higher (5.9 %) than the average in the other countries of the European Union (1.9 %) and this proportion has not significantly changed over previous years. Its research data shows that the number of children educated in special education in Slovakia in the school year 2017/2018 still accounted for 5.8%, which confirms ongoing pronounced overrepresentation of Roma children in special education system. In the school year 2017/2018 more than 16 percent of Roma children from marginalized communities were educated in special education, which is five times more than in the overall Slovak population.¹⁴ As one of the consequences, only less than half of Roma children from marginalized communities continue in education after

¹⁰ Written comments of the Center for Civil and Human Rights (Poradna) concerning the fourth periodic report for Consideration by the United Nations' Human Rights Committee at the 118nd Session, September 2016, pp. 7-9. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fSVK%2f25193 &Lang=en

¹¹ List of issues in relation to the third periodic report of Slovakia: Replies of Slovakia to the list of issues, E/C.12/SVK/Q/3/Add.1, para. 85.

¹² Written comments of the European Roma Rights Centre and the Center for Civil and Human Rights concerning Slovakia for Consideration by the UN Committee on the Rights of the Child at the 72nd Session. April 2016, pp. 6-9. Available

at: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/SVK/INT_CRC_NGO_SVK_23781_E.pdf

¹³ List of issues in relation to the third periodic report of Slovakia: Appendix to the Slovakia's replies to the list of issues, E/C.12/SVK/Q/3/Add.1, para. 84.

¹⁴ Revision of expenses for groups threatened by poverty and social exclusion: Interim report, January 2019, The Ministry of Finance, pp. 43 - 44. Available in Slovak language at: <https://www.minedu.sk/revizia-vydavkov-na-skupiny-ohrozene-chudobou-alebo-socialnym-vylucenim-2019/>

completing compulsory school attendance. Only 4 percent of them study at universities while the overall average in Slovak society is 31 percent.¹⁵ The reported data also confirmed an ongoing segregation of Roma children in separate classes and schools within mainstream education.¹⁶

10. In May 2018 the Slovak Ombudsperson published a report specifically assessing the implementation of measures on the prevention of discrimination of Roma children that she proposed the Ministry of Education in the recent years. The report states that the Ministry has been continuously working on introducing steps to improve fulfilment of the rights of all children to education. However, it concludes that these steps did not lead to obvious progress and calls on the government authorities to introduce and implement desegregation measures that should be as specific and sustainable as possible.¹⁷
11. In April 2015, the European Commission launched infringement proceedings against Slovakia for violating the EU Race Equality Directive for persisting segregation of Roma children in mainstream schools as well as special schools and classes for children with mental disabilities.¹⁸ The fact that this proceedings is currently still pending essentially confirms that the Government has been unable to effectively address the given problem and ensure Roma children equal access to education without segregation.
12. We would specifically like to bring to the attention of Committee three pending *actio popularis* lawsuits initiated in recent years by our NGO relying on domestic Anti-discrimination Act against the state and local municipalities, addressing segregation of Roma children in selected localities in Slovakia and about their legal developments. As such they also demonstrate some of the existing forms of discrimination of Roma children in the country that we documented. Two of these court proceedings address segregation of Roma children in mainstream schools, which are attended solely by socially disadvantaged Roma children. The third one challenges the decisions of a regional school office and the Ministry of Education that have set a local school district in a way that concentrates Roma children in one school and incites their segregation, instead of supporting their integration in other local schools. Two out of these three cases are already pending before appeal courts after being dismissed by the first-instance courts by decisions that we considered contrary to the international antidiscrimination law.¹⁹ In addition, we also provide legal representation in an individual case

¹⁵ Ibid, pp. 37 - 41.

¹⁶ Ibid, pp. 45 - 48.

¹⁷ Report by the Public Defender of Rights on the progress in the implementation of the measures proposed in 2013, 2014 and 2015 in the educational process in Slovakia to improve the protection and observance of individuals' basic rights and freedoms, The Office of the Public Defender of Rights, May 2018. Available in English at: https://www.vop.gov.sk/files/EN_SPRAVA_VOP_vn%c3%batorny_audit_skolstvo.pdf

¹⁸ European Commission's decision to initiate infringement proceedings against Slovakia, 'Non-conformity with Directive 2000/43/EC on Racial Equality - Discrimination of Roma children in education' from 29 April 2015.

¹⁹ For more detailed information about these two court decisions in English see:

1. <https://www.equalitylaw.eu/downloads/4013-slovakia-district-court-education-of-roma-children-in-segregated-roma-only-school-does-not-constitute-discrimination-based-on-ethnic-origin-pdf-162-kb>,

2. <https://www.equalitylaw.eu/downloads/4875-slovakia-first-instance-court-state-authorities-have-no-obligation-to-take-measures-on-the-elimination-of-segregation-of-roma-children-in-a-local-primary-school-pdf-110-kb>

concerning three Roma children who claimed to be groundlessly educated in special class for children with mental disability and located separately outside the main school building near a segregated Roma community. For a broader perspective, when filing the lawsuit in 2016 nearly 90 percent of all school-age Roma children living in this community attended special classes. We note with particular concern that the Ministry of Education in these court proceedings clearly objects discriminatory nature of the reported segregation and does not fully recognise the positive obligation of the Government to prevent and eliminate discrimination and introduce in cooperation with school founders (municipalities) desegregation policies and measures.

Proposed recommendations for the State Party:

- condition the distribution of national, regional and local funds for education on the development of desegregation policies and measures, including effective transportation of disadvantaged Roma children to non-segregated schools;
- significantly increase financial support for primary schools to enable them to employ sufficient teaching (including support) staff and to effectively integrate children from various social backgrounds and fulfil their individual educational needs and learning potential;
- develop and implement policies to challenge the phenomenon of "white-flight" from primary schools and thoroughly promote ethnic and social diversity in primary schools.

c.) Discriminatory legislation in the area of social security disproportionately impacting Roma women and children - articles 2(2), 9, 10 and 11

13. The current legislation of the State Party contains several legal provisions especially in the area of social security which have disproportionate impact on Roma living in marginalized communities, and thus constitute their discrimination. The specific legislative provisions have conditioned the rates of payments of child benefit, parental care allowance and child birth allowance on compliance with other preventive measures, and if these are not met, these benefits are cut. Although they apply to all people and on paper appear neutral, in practice they have a disproportionate negative effect on Roma women, in particular their children.²⁰
14. The Slovak Government introduced these legal provisions in order to achieve a specific and allegedly legitimate aim, such as to reduce child criminality, secure compulsory school attendance and support responsible parenthood; however the means in achieving this aim have disproportionately impacted on the socio-economic well-being and right to social security of marginalized Roma families and their children. The conditions for obtaining the above

²⁰ We refer specifically to: Article 4 para 3 of the Law n. 571/2009 Coll. of Laws on Parental Care Allowance („rodičovský príspevok“); Article 3 para 4 of the Law n. 383/2013 Coll. Of Laws on Child Birth Allowance (“príspevku pri narodení dieťaťa”); Article 12a of the Law n. 600/2003 Coll. of Laws on Child Allowance (“prídavku na dieťa”).

mentioned social benefits and/or the related accompanying sanctions resulting in their withdrawal, do not take into account the broader social context and specific circumstances of marginalized Roma families, including discrimination of Roma children in education, lack of safe and effective school transportation and discrimination of Roma women and girls in health care including also their segregation, verbal abuse and harassment experienced. The introduced legislative provisions deepen poverty and social exclusion of marginalized Roma families.

15. In July 2016, The Committee on the Rights of the Child in its recent concluding observation on Slovakia already raised the given problem and expressed its concern over these legal provisions recognising their negative impact on Roma families and their children.²¹ However, the reported legal provisions are still in force and there are no indications that the State party considers their amendment. We find the current legal state of affairs in this area contrary to the Covenant.

Proposed recommendation for the State Party:

- amend the discriminatory legislation making the rates of payment of child benefit, parental care allowance and child birth allowance in order to remove their discriminatory impact on marginalized Roma families and their children.

d.) Lack of effective access to justice in cases of racial discrimination in enjoyment of economic, social and cultural rights – article 2(2)

16. The Committee in its previous concluding observations on Slovakia specifically recommended the State Party to strengthen the preventive and protective measures in place to combat social and societal discrimination against the Roma in all domains, in particular by ensuring full enforcement of the Anti-Discrimination Act.²² We note that from 2012 there has been no significant progress made by the State Party in this regard. The domestic antidiscrimination legislation in cases of racial discrimination of Roma minority remains to be rarely and poorly implemented in practice.

17. Despite the fact that Roma in Slovakia continue to face racial discrimination in various areas of public life, they rarely defend themselves by legal means of protection and, in our view, this is due to various barriers preventing them to effectively achieve justice in domestic courts. Based on our long-term contacts with Roma facing discrimination and legal experience in representing them before Slovak courts we see the following barriers in access to justice:

- Widespread reluctance of courts to determine racial discrimination, and if this is the case, the application of reversed burden of proof continues to fall short of a legal consistency;

²¹ UN CRC, Concluding observations on the combined third to fifth periodic reports of Slovakia, CRC/C/SVK/CO/3-5, 20 July 2016, para. 42-43.

²² UN CESCR, Concluding observations on the second periodic reports of Slovakia, E/C.12/SVK/CO/2, 8 June 2012, para. 9.

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

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

Proposed recommendations for the State Party:

- identify the barriers that discriminated persons face in access to justice and make all the necessary efforts to remove them;
- significantly enhance the speed and efficiency of court proceedings concerning discrimination;
- introduce programs for sensitization of judges in the area of the protection of human rights of minorities including Roma.

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