



120 WALL STREET  
NEW YORK, NEW YORK 10005  
TEL 917 637 3600 FAX 917 637 3666  
WWW.REPRODUCTIVERIGHTS.ORG



August 2004

The Committee on the Elimination of Racial Discrimination

Re: Supplementary information on Slovakia  
Scheduled for review by the United Nations Committee on the Elimination of Racial  
Discrimination during its 65<sup>th</sup> Session

Dear Committee Members:

This letter is intended to supplement the report of the Slovak Republic to the Committee on the Elimination of Racial Discrimination (“the Committee”), which is scheduled to be reviewed by the Committee during its 65<sup>th</sup> session. The Centre for Civil and Human Rights (Porad\_ a pre ob\_ianske a \_udské práva, hereinafter “Porad\_a”), a nongovernmental organisation based in Ko\_ice, and the Center for Reproductive Rights (“the Center”), a nongovernmental organization based in New York, hope to further the work of the Committee by providing independent information concerning the Slovak Republic’s efforts to comply with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”).

Although the Slovak government has taken steps toward fulfilling its obligations under the Convention, its efforts have so far fallen short of ensuring full and effective implementation of the Convention. This letter highlights several areas of concern relating to the government’s shortcomings under Articles 2, 3, 5, and 6, specifically, with regard to condemning and eliminating discrimination against Romani women in the health-care sector, and ensuring Romani women’s right to effective protection and remedies against such discrimination.

The issues discussed in this letter have been set forth in detail in a report entitled, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, which will be submitted to the Committee. The report documents the results of a human rights fact-finding mission in eastern Slovakia in 2002 conducted by Porad\_a and the Center. The report cites 110 cases of forced and coerced sterilization of Romani women and reveals widespread patterns of discrimination in public hospitals, including verbal and physical abuse by medical staff, racially discriminatory standards of care, misinformation in health matters, and denials of access to medical records.

The breaches of Convention obligations discussed in this letter also relate to developments and incidents that have taken place subsequent to the release of *Body and Soul*. These include flawed and inadequate government investigations into the report’s findings that ultimately reached untenable conclusions of no wrongdoing or discrimination; harassment by law enforcement and public health officials of Romani women for reporting their sterilization and discriminatory treatment; and barriers that several forcibly sterilized Romani women and their attorneys have repeatedly encountered in seeking judicial remedies for their rights violations.

Upon consideration of the information provided in this letter, we hope the Committee will consider addressing the following questions to the Slovak government:

1. What measures are being taken to stop all sterilizations performed without informed consent?
2. What steps is the government taking to ensure that women are provided with complete, understandable information prior to consenting to sterilization?
3. What efforts are being made to end discrimination and segregation in the provision of gynecological and obstetrics services to Romani women?
4. What action is the government taking to ensure that Romani women receive equal protection and due process under the law?
5. What action is the government taking to provide remedial measures and award monetary compensation to victims of forced and coerced sterilization?

This letter is supplemented by the following documents for the Committee's reference:

- Book authored by the Center for Reproductive Rights & Porad\_ a pre ob\_ianske a \_udské práva, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia* (2003).
- Report of the Commissioner for Human Rights of the Council of Europe, *Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of the Law and Practice Relating to Sterilization of Women in the Slovak Republic* (2003).
- 2004 Human Rights Report by Amnesty International on Slovakia, covering events from January to December 2003.

## **I. Executive summary**

The Slovak government has failed to fulfil its obligations under Articles 2, 3, 5, and 6 of the Convention in protecting Romani women's right to nondiscrimination in the exercise of their human rights.

**Article 2:** Although Slovakia has recently passed legislation defining and prohibiting discrimination as mandated by Article 2, legislation is ineffective without enforcement. Discrimination and racial stereotypes against Roma are still pervasive in many aspects of Slovak life, particularly in medical services. Such discrimination underlies the forced and coerced sterilizations of Romani women, which occurred during both communist and post-communist times in Slovakia. Contrary to Article 2's mandate to condemn and eliminate discrimination, the Slovak government has ignored and at times encouraged discrimination against Romani women.

**Article 3:** The Slovak government has failed to comply with its Article 3 obligation to prohibit and prevent racial segregation. Racial segregation of Roma still exists in housing, education and the health-care system. In state hospitals in eastern Slovakia, for example, there is documented evidence of racial segregation in patient wards.

**Article 5:** The Slovak government has failed to comply with its Article 5 responsibilities to protect the right to nondiscrimination in public health and medical care for all citizens. The forced and coercive sterilization practices of hospitals in eastern Slovakia targeting Romani women are antithetical to the type of medical care the Convention envisioned in Article 5. The Slovak government also failed to protect

Roma minorities from police harassment after victims reported their sterilizations. This failure is in breach of the Slovak government's obligations under Article 5 to guarantee the right to security of person and protection by the state against violence or bodily harm.

**Article 6:** The Slovak government is in breach of its Article 6 obligations in failing to ensure access to effective protection and remedies for forcibly sterilized Romani women.

## **II. Expertise and interest of Porad\_a and the Center**

Porad\_a is a nongovernmental organization that was established in 2001. It focuses on the protection of human rights in Slovakia, with an emphasis on the rights of minorities and protection against racial discrimination. Currently, Porad\_a is engaged in advocacy and litigation challenging discrimination against Roma in the health-care system and coercive and forced sterilization practices targeting Romani women, and is attempting to obtain compensation for victims.

The Center engages in international, regional and national-level legal advocacy with the goal of advancing women's reproductive rights through a human rights framework. In collaboration with women's organizations, the Center is currently involved in advocacy efforts in Africa, Asia, East Central Europe and the former Soviet Union, and Latin America and the Caribbean. The Center's work includes legal and policy research and analysis, public education and international litigation.

## **III. Government breaches of Convention obligations in the context of discrimination against Romani women**

### **A. Article 2: Prohibition of racial discrimination**

Although the Slovak government has recently passed legislation defining and prohibiting discrimination, few effective remedies for victims of discrimination exist today. Pervasive prejudice and discrimination against people of Roma descent still exist at all levels of Slovak society and government.

Roma face discrimination in almost every aspect of life, including in the health-care system and maternal health-care facilities. The most serious form of discrimination is the practice of forced and coercive sterilization of Romani women in state hospitals, which has been performed in Slovakia for decades (since late 1970s). *Body and Soul* documented this practice in state hospitals in the Pre\_ov and Ko\_ice regions in eastern Slovakia and found that medical personnel had been performing sterilization on Romani women with either no consent or coerced consent, often motivated by prejudice and racial discrimination. As this Committee has noted, Roma women are often victims of "double discrimination" based on race and gender.<sup>1</sup>

There are many discriminatory stereotypes about Romani women that are commonly accepted in Slovak society, including among health-care personnel, which then results in their discriminatory treatment of Romani patients. One of the most prevalent among medical practitioners is that Romani women have too many children.<sup>2</sup> The majority of Slovaks believe that Romani women have excessive numbers of children in order to obtain extra government benefits. Hospital personnel have even gone so far as to say that Roma deliberately intermarry in order to have children with disabilities and thus receive more state child support benefits.<sup>3</sup>

Another major stereotype about Romani women is that they are sexually promiscuous. A common belief among medical personnel is that Romani women engage in constant sexual activity with multiple partners.

Health providers' stereotypical beliefs about the sexual appetite of Romani women and men feed their justification for sterilizing them.

As a result of such discrimination and racism, Romani women do not even expect the basic dignity and respect that are their human rights as individuals and citizens of the Slovak Republic. Under Article 2 of the Convention, the Slovak government has a responsibility to condemn and eliminate such behavior and attitudes. However, government officials have refused to accept even the credibility of documented cases of abuse and discrimination against Romani women, let alone take measures to eliminate the racist beliefs and stereotypes at the root of such cases. Even in cases involving clear violations of Slovak law, for example, the sterilization of Romani minors without the consent of a legal guardian, government officials have consistently denied any wrongdoing or discrimination on the part of hospitals and medical personnel.<sup>4</sup> The Slovak government's failure to recognize and address deprivations of Romani individuals' rights not only perpetuates, but compounds existing discrimination against Roma. This failure is a grave violation of the government's obligations under Article 2.

### **B. Article 3: Prohibition of racial segregation and apartheid**

The Slovak government has failed to comply with its obligation to "condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." Throughout the Slovak Republic, Roma live in settlements that are isolated and segregated from the rest of society. The Slovak government has failed to take action to address and prevent such segregation and, in fact, condones segregation by its failure to act.

Widespread practices of racial segregation exist also in maternity wards in state hospitals in eastern Slovakia. In most cases, Romani women must use separate bathrooms and toilets and are not allowed access to other hospital facilities, such as dining rooms.<sup>5</sup> This practice has been documented in other hospitals in Prešov, Košice, Žilina, Spišská Nová Ves, Krompachy, Gelnica, Levoča, Bardejov, Vranov and Topoľčany Kráľovský Chlmec.

Medical personnel often try to justify this segregation by saying it is not truly along racial lines. Instead, they claim to separate patients according to "high hygiene" and "low hygiene," with Romani women consistently placed in the "low hygiene" rooms. Another category that is often used is "adaptable or non-adaptable." 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, and that multiple women will often share a single bed to avoid other patients. Other doctors claim that they must put Romani women in segregated rooms due to the wishes of white women, who do not wish to share rooms with Roma.

Whether racial segregation is intentional or *de facto*, it is still counter to the mandate of Article 3. The Slovak government has not tried to prevent or prohibit the practices of hospitals that segregate Romani women. In fact, the government has repeatedly denied charges of racial segregation of Romani women in state hospital wards. In 2000, a Slovak-based nongovernmental organization filed a complaint with the Ministry of Health about the practice of segregated maternity wards in eastern Slovak hospitals. The Ministry responded by stating that Roma are separated in accordance with their own wishes and further noted that as a result of this, some Romani patients are undisciplined and do not respect hospital regulations.<sup>6</sup>

More recently, in its investigation into the findings documented in *Body and Soul*, the Ministry of Health again essentially dismissed the charges of racial segregation of Romani women in state hospital wards. The Ministry merely found that "the architecture of the ward does not provide for segregation."<sup>7</sup> This

conclusion has no bearing on the question of racial segregation and shows how little the authorities actually investigated the matter. The Ministry did not explain how the architecture could prevent the practice of having separate rooms for Romani women, the most common form of segregation documented in *Body and Soul*. The Ministry found that “rooms, including bathrooms, provide the same standard...”<sup>8</sup> However, the segregation of Romani women into separate rooms of equal standard still constitutes discrimination and is illegal. (See section on Article 5 for other Ministry of Health findings).

### C. Article 5:

#### 1. 5(a): The right to equal treatment before tribunals and all other organs administering justice

The Slovak government has failed to ensure Romani women’s right to equal treatment before tribunals and other organs of justice in Slovakia. This failure is in violation of Article 5(a) of the Convention and other international conventions and directives. These include Article 14.3(b) and 3(d) of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights, and the standards advocated in European Union Race Equality Directive 43/2000. The government has also failed to specify mechanisms for the provision of legal aid. The unavailability of legal aid makes it extremely difficult for many individuals, particularly members of the Roma community, either to defend themselves against criminal charges or to seek to vindicate their rights through the legal system. This difficulty is compounded by the costs of representation, court fees, and the possibility of being required to pay the legal costs of the opponent. These provisions often block low-income individuals’ access to justice, with a disproportionate impact on vulnerable groups such as Roma.

#### 2. 5(b): Right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

##### Freedom from coerced sterilization

Romani women’s right to security of the person and government protection against bodily harm is violated when they are sterilized without their free and informed consent. The specific targeting of Romani women because of their race and gender violates their right to racial and gender nondiscrimination in the enjoyment of this right.

During the Communist Era, the Czechoslovak government offered monetary incentives for undergoing sterilization.<sup>9</sup> Government documents indicated that the incentives were targeted at Romani women.<sup>10</sup> Slovakia no longer provides monetary incentives for undergoing sterilization.<sup>11</sup> Nevertheless, as documented in *Body and Soul*, doctors in state hospitals continue to sterilize Romani women.<sup>12</sup> Many of the Romani women who are sterilized did not want to undergo the procedure.<sup>13</sup>

While there is often documentation showing consent to the sterilization procedure, there is significant evidence that documents authorizing the procedure are not valid.<sup>14</sup> In many cases, doctors and nurses have furnished misleading or threatening information to Romani women in order to coerce them into providing last-minute authorizations for sterilizations that were being performed when women were undergoing a cesarean delivery. After two or three cesarean deliveries, doctors have told Romani women that they need to be sterilized because another pregnancy will result in either the death of their baby or themselves. In these cases, neither accurate information on the actual risks of future pregnancies<sup>15</sup> nor other options, such as alternative contraceptive methods was discussed.<sup>16</sup>

In other cases, Romani women have been given no information about sterilization procedures, nor were they informed that they would be sterilized prior to undergoing the procedure. In these instances, doctors or nurses notified the women that they had undergone the procedure only once it had been completed.<sup>17</sup> Women under the age of 18 have been forcibly sterilized without the authorization required by law from their legal guardians.<sup>18</sup> Many other women were never even told that they had been sterilized, leaving them to simply suspect that an unwanted gynecological intervention had taken place. It has taken some of these women years to confirm they have been sterilized; others never confirm their suspicions.<sup>19</sup>

Pursuant to this Committee's General Recommendation 27, States parties are obligated to protect and ensure the rights of Roma populations to be free from discrimination in the exercise of all their human rights, including the right to bodily integrity.<sup>20</sup>

#### Inadequacy of government investigation

The Slovak Republic has failed in its duty to carry out a thorough, impartial and effective investigation into the violations described above and to prosecute those responsible for the violations. Although the Slovak government initiated two investigations into the issue of forced sterilization (one criminal and one administrative), each investigation has been similarly flawed and reached hasty conclusions, ignored key facts and created an intimidating atmosphere for victims that has tended to dissuade them from voluntarily coming forward.

#### *Criminal investigation*

A criminal investigation into the practice of forced and coerced sterilization commenced on January 31, 2003, almost immediately after the launch of *Body and Soul*. The Slovak Government's Office for Human Rights and Minorities initiated the investigation by filing a criminal complaint that alleged the crime of bodily harm under the Slovak Criminal Code. The complaint was later changed to investigate the crime of genocide under the Code. In March 2003, the criminal investigation was turned over to the Regional Office of the Judicial Police of the Police Force in \_ilina. In October 2003, the criminal investigator halted the investigation of forced and coerced sterilization and concluded that no criminal wrongdoing was found. However, the investigation itself was riddled by a number of violations of standards for criminal investigative proceedings and wrongful assessment of evidence.

Porad\_a and the Center have several key concerns with the criminal investigative proceedings and conclusions. First, authorities have failed to examine the circumstances under which consent was given for sterilization. According to international standards on informed consent, a signature is not *de facto* evidence of full and informed consent.<sup>21</sup>

Second, investigators sought the advice of medical experts on whether sterilization was medically necessary in the cases they examined. 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.<sup>22</sup>

Third, despite the fact that the criminal investigation identified cases in which sterilization had been performed without the full and informed consent of the patient (in particular, cases of minors and those instances where doctors mislead patients into believing that they must be sterilized because of health risks), there were no prosecutions against perpetrators. The six cases of minors identified in the criminal proceedings who were sterilized in the absence of parental consent are unjustified as a matter of law and should be prosecuted as crimes under Slovak law. In addition, 11 interrogated women admitted that they signed consent forms to undergo sterilization solely because they were told that otherwise, their next pregnancy would be fatal for them or for their fetus. No other information was given to them.

Fourth, one of the medical experts commissioned by criminal enforcement agencies to provide an opinion in the criminal investigation was also a medical expert which carried out the Ministry of Health administrative inspection into the same matter. The Ministry of Health administrative inspection concluded six months earlier that there had been no practice of illegal sterilization in hospitals in eastern Slovakia.<sup>23</sup> Sharing of experts presents a conflict of interest and raises serious doubts about the impartiality of the criminal investigation.

Finally, shortly following the release of *Body and Soul*, Romani women reported harassment and intimidation by law enforcement authorities and public health officials. The improper manner in which the police first came to the settlements and brought potential victims to the police station for interrogation without any written notice or detailed information created an atmosphere of distrust and suspicion from the outset of the investigation.<sup>24</sup> This threatening atmosphere was exacerbated during interrogation sessions when police officers told women that they faced a three-year prison sentence if their cases failed to prove forced sterilization.<sup>25</sup> In addition, those women who were pregnant before they were 15 years old were told that their partners will be prosecuted under Article 242 of the Criminal Code.

#### *Administrative investigation*

The administrative investigation was conducted by the Ministry of Health between February–May 2003. The findings are summarized in a report entitled, “Report on the Findings of the Investigation of the State Control Section at the Ministry of Health of the Slovak Republic” (“Ministry Report”). As in the criminal investigation, this investigation was flawed in several respects.

First, the inspection team concluded that “no witnesses to genocide and segregation were discovered.”<sup>26</sup> The Ministry Report based its conclusions on an inspection of only Krompachy Hospital—the same facility that was the focus of the criminal investigation. In addition, Ministry of Health investigators examined the hospital’s sterilization practices from only 1999 to 2002, despite the fact that *Body and Soul* documents violations in ten hospitals throughout eastern Slovakia from the early 1990s. The Ministry generalized the findings of one hospital to all hospitals in the region. Also, the team only investigated the crime of genocide and not other crimes, such as violation of bodily integrity and damage to health.

Second, the Ministry Report ignores obvious violations of state and international law. The inspection team concludes that there is compliance with the sterilization regulation in Krompachy hospital, despite the fact that they found two cases of minors who were illegally sterilized—a blatant violation of Slovakia’s sterilization regulation.

Third, the Ministry Report notes that, “all patients who underwent sterilization [from 1999 to 2002], signed the application for sterilization permission and all applications had been reviewed and approved by the sterilization commission.”<sup>27</sup> However, the presence of a signature on a form is not determinative evidence of informed consent, especially if consent is given 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. These standards are clearly articulated in the European Convention on Human Rights and Biomedicine, which Slovakia has ratified, and by international medical associations such as the International Federation of Gynecologists and Obstetricians (FIGO).

Fourth, the Ministry has also denied charges of racial segregation of Romani women in state hospital wards. (See section on Article 3 above for specific findings).

Rather than undertake a thorough investigation in a systematic manner, with interviews of past and present patients, the Ministry Report merely states that that the inspection team did not “observe any complaints of the patients currently staying in the ward, including Roma patients.”<sup>28</sup> The Ministry Report gives no details of how it conducted its investigation or monitored the hospitals in question. In addition, the

presence of health-care personnel and the vulnerable position of patients who are still in the hospitals play a role in whether or not patients decide to complain about their treatment in the hospital. Given the fact that there are victims of illegal practices in these hospitals, it is highly questionable that the Ministry Report does not contain any of their complaints.

In addition, the Ministry Report has demanded that the authors of *Body and Soul* give the names of anonymous victims whose stories were detailed in the report. The Slovak government's insistence that the Center and Porad\_a disclose the names of the victims interviewed and other potentially confidential information to the police is not, as stated by the Ministry Report, "conduct that may be considered covering up possible perpetrators."<sup>29</sup> Rather, it is a human rights practice that the government of Slovakia has refused to accept. The Slovak government, in challenging this practice of confidentiality in human rights reporting and threatening the authors of *Body and Soul* with criminal charges for failure to disclose confidential information, undermines the work of human rights defenders who expose abuses and international bodies that rely on such reports to carry out their work.

#### *International and national criticism of sterilization practice and investigation*

The failure of the Slovak government to conduct an impartial and thorough investigation into the allegations of forced and coerced sterilization of Romani women in Slovakia has been criticized by a number of reports or statements of human rights organizations, governmental bodies and inter-governmental regional bodies, including: the Commissioner for Human Rights of the Council of Europe; the Council of Europe; the Europe Commission Against Racism and Intolerance; the United Nations Human Rights Committee on the Convention on Civil and Political Rights; the United States Helsinki Commission; Amnesty International; the European Roma Rights Center; Human Rights Watch; and the International Helsinki Federation for Human Rights. Several human rights organizations in Slovakia have also expressed criticism, including the Consortium Let's Do It; People Against Racism; and the Slovak Helsinki Committee.

Moreover, some of the above-mentioned institutions have conducted their own fact-finding missions in Slovakia subsequent to the initiation of the criminal investigation by Slovak authorities. For example, the Report by the Commissioner for Human Rights of the Council of Europe, which was issued in October 2003, concludes that:

*In view of the difficulties encountered during the investigations, and limitations surrounding them, initiated by the Government, it is unlikely that they will shed full light on the sterilizations practices ...[h]owever ... it can reasonably be assumed that sterilizations have taken place, particularly in eastern Slovakia, without informed consent.<sup>30</sup>*

The Commissioner recommends that the Slovak government accept its responsibility under international law for such acts and ensure a "speedy, fair, efficient and just redress."<sup>31</sup> (The Commissioner's report will be submitted to the Committee for its consideration.)

#### Freedom from retaliation for claiming rights

Since the publication of *Body and Soul*, Romani women have faced increased hostility and threats from state police and medical personnel. This is in clear violation of Article 5 of the Convention.

During the criminal investigative process, police rounded up Romani women for interrogation and threatened them with three years in prison for false charges if they filed complaints of forced or coerced sterilization against health-care workers. Further, through discussion with law enforcement officials in Ko\_ice, it came to light that the police identified potential victims for questioning and interrogation through unverifiable information provided to the police by potential perpetrators, namely Krompachy Hospital and its director and chief gynecologist.



In addition, the local police targeted individuals in response to the publication of *Body and Soul*. The Regional Office of Judicial Police Košice informed Porada that they were considering proceedings to prosecute the common law husband of an illegally sterilized Romani woman for child molestation. The woman gave birth for the first time at the age of 14, which is below the age of consent for sexual intercourse. The threats of prosecution and possible imprisonment of the woman's common law husband illustrate the abuse in the investigative process.

Health-care personnel in Krompachy hospital also verbally abused pregnant Romani women because of the testimonies in *Body and Soul*. They accused the women of suing the hospital and of ingratitude for their good health care. Such harassment and verbal abuse intimidate women and prevent them from using essential health-care services for fear of retaliation.

It is the obligation of law enforcement authorities to ensure the safety of Romani women and their families who have been sterilized against their will, as well as the settlements to which they belong. Threats and intimidation of victims and others in the Romani settlement is an obstruction of justice and in violation of both Slovak and international law. The Slovak republic is obligated under international law to ensure that any persons whose rights or freedoms are violated have a legal remedy. Moreover, under international law public officials cannot engage in any activity aimed at the destruction of the right of persons to seek legal redress. Intimidation and threats similar to those reported are in violation of the Slovak government's national and international obligations. In addition, the Romani women who are being targeted for harassment by health-care workers in public hospitals are denied their right to equal treatment in health-care facilities and, effectively, to the right to health, which is protected both by the Slovak Constitution and international law.

### **3. 5(e): Economic, social and cultural rights**

Section (iv) of Article 5(e) guarantees the right to freedom from racial discrimination in the enjoyment of the right to public health and medical services.

However, racially-motivated illegal sterilizations performed by state medical personnel targeting Romani women deprive women of this right. Such practices undermine Romani women's enjoyment of the rights to health, bodily integrity, reproductive self-determination, and informed consent on an equal basis with non-Romani individuals in using public health services. Regardless of whether the sterilization is performed on an unsuspecting patient or consent is obtained through coercion, intimidation or incorrect medical advice, state medical personnel violated the Convention through their actions.

The discriminatory standards of care that continue to exist in Slovak hospitals, whether it is segregation of Romani and non-Romani women or verbal abuse directed at Romani patients, create a hostile environment that keeps many Romani women from seeking medical attention. This is in direct violation to the guarantees of the Convention. This Committee has specifically recommended that states should "...ensure Roma equal access to health care ... and eliminate any discriminatory practices against them in this field."<sup>32</sup> In its concluding observations on Slovakia, this Committee also recommended that the Slovak government "take all necessary measures to ensure that the Roma enjoy the full right to health and health care."<sup>33</sup>

**D. Article 6: Right to effective protection and remedies against any acts of racial discrimination and right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination**

The Slovak government has failed to meet its obligation under Article 6 to ensure effective protection and remedies against acts of racial discrimination, to protect the rights of the victims and their rights to reparation. As mentioned above in the discussion of Articles 2 and 5, there is little protection against discrimination of Romani women in health-care facilities. Moreover, Slovak civil and criminal authorities have continued to deny justice with regard to acts of forced sterilization of Romani women.

For example, Romani women are unable to claim compensation for harm caused to them by acts of forced sterilization as they are prevented from accessing their medical files and unable to meet formal standards for filing the applications for compensations due to obstacles the lawyers have faced from hospitals, local gynecologists, and civil courts. This Committee has specifically recommended that States parties “take appropriate measures to secure ... effective remedies ... and that justice is fully and promptly done” in cases involving violations of Roma individuals’ fundamental rights.<sup>34</sup>

Denial of access to files

Romani women have been prevented from accessing their medical files, either themselves or through their counsel, thus making it functionally impossible for them to file civil lawsuits. Although Slovak law provides for the right of a patient to see her own medical file and for a legal counsel with power of attorney to do so on her behalf, Slovak hospitals in eastern Slovakia have failed to respect these rights. Porad\_a attorneys filed complaints with the Ministry of Health based on the violation of this legal right.<sup>35</sup> The Ministry refused to provide a remedy and in fact ordered hospitals not to release the files to Porad\_a attorneys.<sup>36</sup> Similarly, protection has been denied by the Slovak courts in regard to access to files in hospitals in Pre\_ov, Spi\_ská Nová Ves and Krompachy. The courts ruled that the patients have right to see their files but denied their right to photocopy them, claiming that the patients would “abuse” their files.

On January 8, 2003, Porad\_a filed 26 court claims requesting various courts to order hospitals to release their clients’ medical files. The hospitals involved are in eastern Slovakia, specifically in the towns of Krompachy, Spi\_ská Nová Ves, and Pre\_ov. So far, only the district court in Pre\_ov has issued a decision ordering the hospital in Pre\_ov to make 12 files of Romani clients available to Porad\_a attorneys, including the right to photocopy the files.<sup>37</sup> The decision is, however, not yet effective. The court in Spi\_ská Nová Ves held a hearing on the claims of nine other clients on March 20, 2003, but gave notice only to the plaintiffs, not their counsel. The court halted the proceeding because allegedly all the plaintiffs withdrew their petitions and cancelled their counsel’s power of attorney at the hearing. Of the nine plaintiffs, at least one did not appear at the hearing and stated she never withdrew her petition, nor cancelled the power of attorney,<sup>38</sup> but was simply advised of the court’s decision. Porad\_a attorneys have filed an appeal.

The practice of Slovak hospitals, with the complicity of the Ministry of Health, violates the right to access to justice. According to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which supercedes domestic law according to the Slovak Constitution, everyone is entitled to a fair and public hearing in a court of justice. For the judicial proceedings to be fair, the principle of equality of arms must be respected. This principle implies that each party to the proceedings must be afforded a reasonable opportunity to present her case and all evidence to a court under conditions that do not place her at a substantial disadvantage vis-à-vis her opponent.<sup>39</sup>

The inability of Porad\_a attorneys to access their clients’ medical files obstructs their lawyers’ ability to gather and present evidence before a court, placing plaintiffs at a significant disadvantage vis-à-vis

hospitals, which have full access to their patients' files. Patients who may be illiterate or unfamiliar with medical terminology rely on the power-of-attorney of their counsel in order to have meaningful access to and understand the content of their files.

Denial of damage evaluation

Local gynecologists present further barriers to the ability of Porad\_a attorneys to file civil claims for compensation. Under Slovak law, the amount of civil damages is determined according to legal guidelines set forth in the Decree on the Compensation for Pain Suffered and Limitation of Further Societal Functions.<sup>40</sup> Pursuant to the Decree, the monetary value of damages is determined by points set forth in the Appendix to the Decree.<sup>41</sup> In cases of sterilization, the number of points must be established by the plaintiff's treating gynecologist. As of April, all of the plaintiffs' treating gynecologists had refused to evaluate damages, despite the fact that they are required by law to do so. Porad\_a has filed complaints against those doctors with the Ministry of Health and the Slovak Medical Chamber. A decision has not yet been handed down.

As the information provided in this letter shows, there remains a significant gap between the provisions of the Convention and the discrimination Romani women experience in reality. We hope this information is useful during the Committee's review of the Slovak government's compliance with the Convention. If you have any questions, or would like further information, please do not hesitate to contact us.

Sincerely,

Christina Zampas  
Legal Adviser for Europe  
Center for Reproductive Rights

Barbora Bukovska  
Executive Director  
Porad\_a pre ob\_ianske a \_udské práva

---

<sup>1</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation XXVII: Discrimination against Roma* (57th Sess., 2000), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.5 (2001) [hereinafter CERD, *General Recommendation XXVII*].

<sup>2</sup> CENTER FOR REPRODUCTIVE RIGHTS & PORADNA PRE OBCIANSKE A LUDSKE PRAVA (CENTER FOR HUMAN AND CIVIC RIGHTS), *BODY AND SOUL: FORCED STERILIZATION AND OTHER ASSAULTS ON ROMA REPRODUCTIVE FREEDOM IN SLOVAKIA* 54 (2003) [hereinafter *BODY AND SOUL*].

<sup>3</sup> *Id.*

<sup>4</sup> CENTER FOR REPRODUCTIVE RIGHTS & PORADNA PRE OBCIANSKE A LUDSKE PRAVA, *THE SLOVAK GOVERNMENT'S RESPONSE TO REPRODUCTIVE RIGHTS VIOLATIONS AGAINST ROMANI WOMEN: ANALYSIS AND RECOMMENDATIONS* 4–5 (May 2003).

<sup>5</sup> *BODY AND SOUL*, *supra* note 2, at 75.

<sup>6</sup> *Id.* at 78 n.238

<sup>7</sup> See Press Release, Ministry of Health, *Správa o v\_sledkoch \_estrenia MZ SR v súvislosti so správou Telo a du\_a* [Report on the findings of the investigation of the State Control Section at the Ministry of Health of the Slovak Republic], available at <http://www.health.gov.sk/redsys/rsi.nsf/0/57A619F14F13A70BC1256CEE0053706C?OpenDocument> (last visited Nov. 25, 2003) [hereinafter Report on the findings of the investigation of the State Control Section at the Ministry of Health of the Slovak Republic].

<sup>8</sup> See *id.* at 4.

<sup>9</sup> See, e.g., *BODY AND SOUL*, *supra* note 2, at 42; HUMAN RIGHTS WATCH, *WORLD REPORT 1993*, [www.hrw.org/reports/1993/WR93/index.htm#TopOfPage](http://www.hrw.org/reports/1993/WR93/index.htm#TopOfPage) (visited June 16, 2003) [hereinafter HUMAN RIGHTS WATCH, *WORLD REPORT 1993*].

<sup>10</sup> See e.g., *BODY AND SOUL*, *supra* note 2, at 42; HUMAN RIGHTS WATCH, *WORLD REPORT 1993*, *supra* note 23.

<sup>11</sup> See e.g., *BODY AND SOUL*, *supra* note 2, at 45–46; HUMAN RIGHTS WATCH, *WORLD REPORT 1993*, *supra* note 23.

<sup>12</sup> *BODY AND SOUL*, *supra* note 2, at 52.

<sup>13</sup> *Id.* at 56–57.

<sup>14</sup> See *id.* at 61.

<sup>15</sup> See EUROPEAN ROMA RIGHTS CENTER, THE INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, and THE SLOVAK HELSINKI COMMITTEE, *JOINT STATEMENT OF THE EUROPEAN ROMA RIGHTS CENTER (ERRC), THE INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS (IHF) AND THE SLOVAK HELSINKI COMMITTEE (SHC) ON THE ISSUE OF COERCIVE STERILIZATIONS OF ROMANI WOMEN, ON THE OCCASION OF THE OSCE SUPPLEMENTARY HUMAN DIMENSION MEETING ON ROMA AND SINT 1–2* (April 9, 2003); see *BODY AND SOUL*, *supra* note 2, at 72.

<sup>16</sup> *BODY AND SOUL*, *supra* note 2, at 71–72.

<sup>17</sup> *Id.* at 57.

<sup>18</sup> *Id.* at 66–67, 106–107.

<sup>19</sup> *Id.* at 90–92.

<sup>20</sup> CERD, *General Recommendation XXVII*, *supra* note 1.

<sup>21</sup> WORLD HEALTH ORGANIZATION (WHO), *FEMALE STERILIZATION: A GUIDE TO PROVISION OF SERVICES* 72 (1992). See Letter from Dr. Wendy Johnson, Board of Directors, Doctors for Global Health, to Christina Zampas, Legal Adviser for Europe, Center for Reproductive Rights (Mar. 13, 2003) (on file with the Center for Reproductive Rights); Letter from Dr. Douglas W. Laube, Vice President, American College of Obstetricians and Gynecologists (ACOG), to Christina Zampas, Legal Adviser for Europe, Center for Reproductive Rights (Mar. 14, 2003) (on file with the Center for Reproductive Rights); Letter from Dr. Joanna Cain, Chair, Committee for the Ethical Aspects of Human Reproduction and Women's Health, International Federation of Gynecology and Obstetrics (FIGO) (Mar. 15, 2003) (on file with the Center for Reproductive Rights).

<sup>22</sup> The World Health Organization (WHO) notes that in cases where pregnancy poses a serious health risk, women should still make voluntary and informed decisions about whether or not to undergo sterilization. In addition, the Resolution also concludes no serious bodily harm could be done by illegal sterilizations as sterilization is not a permanent medical procedure. Given the universally accepted medical practice on sterilization as noted by the World Health Organization, sterilization procedure is a permanent or irreversible medical procedure.

<sup>23</sup> Report on Results of the State Supervision and Inspection Section of the Ministry of Health of the Slovak Republic/MH SR/ (May 28, 2003).

---

<sup>24</sup> See Press Release, Center for Reproductive Rights, Slovak Government Officials Retaliate Against Romani Women and Legal Advocates for Exposing Human Rights Violations (Feb. 6, 2003), *available at* [http://www.reproductiverights.org/pr\\_03\\_0206slovakia.html](http://www.reproductiverights.org/pr_03_0206slovakia.html) (last visited May 27, 2003). Romani women in the Bystrany settlement were given no written notice of the interrogations conducted on the 13 August 2003 in Spisske Vlasy, Slovakia.

<sup>25</sup> Interrogations were held on 13 and 14 of August 2003 at local police stations in Spisske Vlasy and Krompachy.

<sup>26</sup> Report on the findings of the investigation of the State Control Section at the Ministry of Health of the Slovak Republic, *supra* note 10, at 4.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Council of Europe, Commissioner for Human Rights, Recommendation of the Commissioner for Human Rights Concerning Certain Aspects of Law and Practice Relating to Sterilization of Women in the Slovak Republic ¶¶ 50-51 (2003), *available at*

[http://www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/Documents/CommDH\(2003\)12\\_E.asp#TopOfPage](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/CommDH(2003)12_E.asp#TopOfPage) (last visited Apr. 16, 2004) [hereinafter Commissioner for Human Rights].

<sup>31</sup> *Id.* ¶ 53.4.

<sup>32</sup> *Id.*

<sup>33</sup> *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Slovakia*, 57th Sess., U.N. Doc. CERD/C/304/Add.110 (2001).

<sup>34</sup> CERD, *General Recommendation XXVII*, *supra* note 1.

<sup>35</sup> During September 2002, legal counsel of the patients filed complaints challenging the denial of access to files and requesting permission to photocopy the files to directors of hospitals in Prešov (Old and New Maternity), Krompachy, Váca and Ústie nad Ľupčou.

<sup>36</sup> In November 2002, the Ministry ruled that the complaints of Poráč were ill-founded and no violation of patients' rights was found. On January 28, 2003 the Ministry of Health sent out an instruction to all hospitals stating that hospitals should not make files available to lawyers.

<sup>37</sup> Decision of the District Court in Prešov, NcPO 1/2003 (Mar. 4, 2003).

<sup>38</sup> See Interview with client, in Bystrany settlement (Apr. 2, 2003).

<sup>39</sup> See *e.g.*, *Dombo Beheer B.V. v. Netherlands*, 274 Eur. Ct. H.R. (ser. A) at ¶ 33 (1993). For other non-criminal cases on equality of arms, see *Feldbrugge v. Netherlands*, 99 Eur. Ct. H.R. (ser. A) ¶ 44 (1986) and *Van de Hurk v. Netherlands*, 288 Eur. Ct. H.R. (ser. A) (1994).

<sup>40</sup> Decree No. 32/1965 of the Coll. on the Compensation for Pain Suffered and Limitation of Further Societal Functions as Subsequently Amended (1965).

<sup>41</sup> *Id.* art. 2, para. 1. The appendix provides an exact number of points, for certain health damage. Currently, a value of each point is 60 SK (1.46 USD) while an amount granted as damages cannot exceed 240,000 SK (5,854 USD)—out of which a maximum of punitive damages can be 72,000 SK (1,756 USD). The appendix does not establish a specific number of points for coercive sterilization and the most similar health damage would have to be used as an indication. Most likely, this would be a loss of male reproductive organs which corresponds with 800 points up to the age of 45. Thus, punitive damages for coercive sterilization would most likely reach 48,000 SK (1,170 USD).