

## Respecting the right to private and family life of Roma and nomads in European Union

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### **Abstract:**

*Situated at the “edge of the society”, Roma citizens did not represent in the collective conscience the example of a disliked society, unorganized due to poverty and humiliation, but a society with a high degree of internal organization, autonomous. Though the majority looks at their way of life as not being compatible with a “normal” life and all the less modern, it is specific for many Roma communities. It is rather considered a way of surviving than a way of life itself, where modern society is tolerated or ignored to a certain extent.*

**Keywords:** *discrimination, roma and nomads, human rights, forced sterilization*

Discrimination, as an explicit behavior of biases represents the negative attitude based on a person’s group belonging. Social stereotypes as the ones imposed by the ethnical, race, economic or confessional status are the foundation of social discrimination [1]. It is a well known fact that a great number of stereotypes maintained by the dominant groups (the majority) imply that minorities have a disadvantage because they are made up of people who are lazy, non educated or less motivated to work and make an effort. The majority’s discriminatory behavior with the disadvantaged groups is often justified by these stereotypes. As a consequence, the disadvantaged groups are interested in both fighting discrimination and the biases and stereotypes justifying these discriminatory behaviors.

And yet, why are the Roma citizens discriminated? Roma citizens are seen everywhere in the world as a population with an inferior status related to whom, the large population displays a more or less negative attitude to a different extent.

Situated at the “edge of the society”, Roma citizens did not represent in the collective conscience the example of a disliked society, unorganized due to

poverty and humiliation, but a society with a high degree of internal organization, autonomous. Though the majority looks at their way of life as not being compatible with a “normal” life and all the less modern, it is specific for many Roma communities. It is rather considered a way of surviving than a way of life itself, where modern society is tolerated or ignored to a certain extent. But the main condition is still as follows: they shouldn’t disrupt too much the “normal” social life or disturb too much.

### ***Forced sterilization of Roma women***

From the beginning of 1970’s under the influence of the Eugenics considerations of the late communism, sterilization as a method of birth control was a measure of the national and regional policy disproportionately promoted within the Roma community by the social workers. These practice represented from the beginning a worrying issue concerning human rights raised by the dissident Czechoslovakian group.

After communism fall, the new government stopped financing the promotion of women sterilization as a birth control method. Even so, some health department professionals acted against the law, not ceasing to practice sterilization of Roma women without their complete and informed agreement, in the post communist period both in Czech Republic and in Slovakia. Cases have been also identified in post communist Hungary.

This practice aimed mainly the Roma women. During communism the social workers aimed the Roma citizens living outside the society, whose families were considered as most likely to contribute to what it was called “a raised and unhealthy birth rate”. In the post communist era in Czech Republic and Slovakia social workers were not involved anymore but a recurrent script involved doctors sterilizing Roma women either during or after their second C- section. In some cases the consent was not expressed at all for the surgery to be performed. In other cases, women’s signature was obtained during the birth or just before the

birth, during the partum, in circumstances of possible intense pain or stress for the women. Another set of cases involves the agreement given upon a misunderstanding of the terminology used to describe the sterilization procedure, sometimes using false information and/or lacking explanation of the side consequences of sterilization or complete information concerning the birth control alternative options.

Frequently, mainly during communism, the social workers placed pressure on Roma women to choose sterilization, including material incentives or threats of stopping the social benefits (such a case was reported in the Czech Republic in 2007). In some of these cases, the race reasons seem to have played a role during doctor-patient consultation and the ethnical origin of the patients was noted in the medical documentation. Many of these women still suffer negative physical and psychical consequences as a result of their sterilization with no fully informed consent [2].

Among the three countries where illegal sterilization performed after 1990 were documented, only the Czech Republic admitted and manifested regret for “the error cases” in November 2009. The acknowledgement of the Czech government in 2009 was important whereas Slovakia denied many times the existence of such practice. Hungary never expressed regret concerning this issue.

None of these three countries adopted a general mechanism of remedy for the victims of this practice. The Czech court sentenced different ways of remedies for some of the victims, including financial compensation or written apologies from the hospitals. Added difficulties showed up because the medical documents of the victims were seemingly destroyed by the hospitals or lost during fires or floods. An important obstacle is that the three years limit was calculated from the moment of the sterilization, not from the moment when the victim became aware of this fact, which often occurred later.

All three countries revised their legislation or general policy concerning avoiding this practice; even so, the possibility of performing an “emergency”

sterilization of the women without their informed consent is still a legal possibility in Hungary. New cases were reported in the Czech Republic, Hungary and Slovakia. No doctor or social worker was ever punished in any of these three countries for forced sterilization.

The former Commissary, Alvaro Gil-Robles expressed, in his 2006 report concerning Roma citizens, his concern about the Czech Republic and Slovakia, concluding: *„sterilization of the women without their informed consent is a serious violation of human rights. All accusations regarding these sterilizations including the possibility of race reasons must be effectively investigated. While the victims may look for legal compensation, in these cases, the trial faces drawbacks. These include slowness and the costs of legal representation, extremely high probative standards, investigations' and court's difficulties to work for Roma's needs. It is therefore important to offer other remedies also, for example an independent commission requesting the right to compensations or apologies for the victims.”*

Commenting the sterilization problems, as a follow-up of his visit in November 2011 in the Czech Republic, Commissary Hammarberg said that he saluted expressing the regrets by the Czech government in 2009 regarding the illegal sterilization of women, a phenomenon affecting mainly Roma women. However, he noticed that the majority of the Czech Ombudsman's 2005 recommendations, when he investigated this problem, have not been implemented yet. The Commissary finds especially unjust the fact that the women affected by this practice have no possibility of obtaining an effective remedy currently, compensations, situation that needs to be urgently addressed according to the international legal standards.

In October 2010, UN Committee for the Elimination of all Forms of Discrimination Against Women (CEDAW) asked the Czech government to compensate Roma women who were subject to forced sterilization and adopt proper measures to prevent forced sterilization in the future. As for Slovakia, on March 25<sup>th</sup> 2010, UN Committee for Elimination of Racial Discrimination (CERD)

summoned the Slovakian authorities to: *„establish clear directory lines concerning the necessity of the informed consent and to make sure that these are well known by the probationers and the public, especially amongst Roma women.”* The Committee also recommends that all reports concerning sterilization without an informed consent to be acknowledged and the victims to be provided with appropriate remedies, including apologies, compensations and restitution if possible. UN Committee Against Torture (CAT) made similar recommendations to the Slovakian authorities in December 2009.

A number of cases concerning forced sterilization are currently waiting at Strasbourg Court against Czech Republic and Slovakia and some were declared acceptable. The Court accepted to examine the cases in the light of article 3 (forbidding the torture), article 8 (right to private and family life), article 12 (right to marriage), article 13 (right to effective remedy) and article 14 (forbidding discrimination) of the European Convention of Human Rights. The Court already considered that Slovakia violated the Convention in a case regarding access to personal medical files of the Roma women sterilized by the Slovakian doctors. On August 29<sup>th</sup> 2006, CEDAW sentenced that Hungary violated the Convention in case A.S. against Hungary, a Roma woman sterilized during emergency obstetrical procedure without her informed consent. In 2009 Hungary paid compensation based on the facts found by the Committee [3].

Czechoslovakia and its successor states and Hungary are not the only countries confronting these problems. The increase of Eugenics on a state program level in Nazi Germany turned forced sterilization a key element of the Nazi program, especially before Second World War and then on a large scale program of killing all Jews, “Gipsy” and others found “unworthy to live”. Sweden and Switzerland apologized publicly in 1980s and 1990s for sterilization programs and connected practice performed starting the 1920s till beginning of the 1970s. Sweden approved a compensation mechanism but debates on national level developed starting with the premise that the practice did not aim especially Roma, while reality proved this being frequently the truth.

Compensation mechanism *ex gratia* established by Sweden in 1999 allowed victim compensation even if sterilizations were considered legally when performed and a long time has passed since that moment. In Norway, in 2003, a working group reporting about Roma compensation and nomads forced to sterilization during a historical similar time concluded that Norwegian authorities should implement compensation, including resources for extended legal assistance during requisitions.

As a result of these cases reported worldwide, International Federation of Gynecology and Obstetrics (FIGO) adopted new directory lines concerning contraceptive sterilization in 2011. These state that sterilization should be considered as an irreversible procedure and that patients must be informed; that sterilization for preventing future pregnancies can't be ethnically justified based on medical emergencies; that the consent for sterilization should never be a condition to access medical services or other benefits such as medical insurance or social assistance.

The Commissary believes that member states should be publicly informed that these serious violations of human rights happened, express their regret and take responsibility.

When legal compensation requests are a subject, time limits should consider the obstacles such as destroying medical records and the fact that women don't always immediately realize the procedures they were subjected to or the restitution possibilities. It is also possible for them to need to overcome the shame and file a complaint. Any time limit should start with the moment the victims became aware of the sterilization. Victims should be assisted in accessing their own medical files.

Authorities must also consider establishing the compensation procedure *ex gratia* for the victims of the forced sterilizations whose restitutions expired/prescribed. It is also important to adopt legislative changes regarding sterilization, including a reflection time for the patient, in order to prevent the recurrence of forced sterilization. Judicial and administrative sanctions must be

determined for the persons responsible for women sterilization without their complete and informed consent.

### ***Removing Roma children from the care of their biological parents***

Roma children represent a big percentage of the children placed outside their own families, including institutions and foster families. An important factor in determining this situation is the fact that these kids are removed from their families only based on the fact that the economical situation of their parents and social conditions are inappropriate, as a result of an analysis undertaken by social workers who can discriminate for racial reasons. In some of these cases, raised levels of institutionalizing Roma children stem from the policy inheritance from the communist era when the state was considered superior to the parents in raising children, especially when children came from poor, vulnerable environments or they had a form of a handicap. Children not enrolling in school or failing to attend classes were important factors influencing institutionalization of Roma children in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia. In all the above mentioned countries there's a lack of "preventive measures from the protection authorities for the children in report to the needs of the Roma families risking separation."

Thus, in its report about Bulgaria in 2008, ECRI reported that rehabilitation institutions host a huge disproportioned number of poor Roma children. Roma children represent approximately 50% of the children in the state centers and about 33% of the children in the state centers for children with mental handicaps, according to the official data [4]. According to a report published in 2011 by ERRC, 63% of the children in the 15 institutions in question were Roma. In the Czech Republic, about 40% of the children in the 17 institutions from 5 regions of the country were Roma. In 2009 ECRI showed that a highly disproportionate number of Roma children continue to be placed in institutions in this country.

Comparing with the non Roma children, motivating the removal of the Roma children from their families include more subjective interpretation of the social workers and not effective proof of the negligence. In Italy, about 10% of the children in the institutions visited by ERRC were Roma and this figure reached 45% in a centre in Rome where the Roma population is estimated at only 0,23% of the whole country's population. Public and religion authorities justify institutionalizing Roma children in institutions or with by references to "unhygienic life conditions", "exploiting under-aged" and "abandon", criteria often not used when it comes to non Roma families. The majority of the institutionalized children in Romania, up to 80,9% in some regions are Roma [5].

This practice might restrain some of the rights settled by international legislation for human rights, including the Convention on the Rights of the Child and article 8 (right to private and family life) of the European Convention for Human Rights. In case *Wallova and Walla versus Czech Republic*, Strasbourg Court found that the Czech Republic violated article 8 by institutionalizing children based just on the fact that families were numerous and it was not possible to find appropriate accommodation. Protection authorities for children were found to have offered no form of assistance except institutionalizing children to help families overcome difficulties.

The Commissary is mainly worried for the discriminatory practices of removing Roma children from their parents and their disproportionate representation among the institutionalized children according to the Strasbourg Court cases, member states should make sure that no child is placed in an institution based just on reasons related to poverty or unsatisfying accommodation. Exploring the solutions for helping out families with special needs should be a priority and member states should offer prevention services, in cooperation with NGO. Institutional placing of a child should remain an exception and the primary goal should be the child's interest. Adoption, placing within foster families or institutionalizing must comply with clear procedures according to international standards in force and it should not be a subject for



discrimination based on sex, race, color, social or ethnical status, expressed opinions, language, poverty, religion, handicap, birth or any other status of a child and/or of his parents. When circumstances allow it, the selected placement must be as close as possible to the child's environment and organized in such a way that the contact between the child and the parents is regularly maintained. Social workers and judges must be ready to stop these illegal practices.

There are solutions for all these problems, such as: cooperation within projects on a national scale, with common purposes, interaction, becoming familiar by means of different kinds of actions, campaigns for the majority population to become aware of different aspects, of public relations, and so on. The lack of dialogue that must be overcome in the relationship minorities-majorities requires patience because Roma are expected to react quickly by fulfilling the requests of the majority population, forgetting the fact that these people were wronged many centuries living in the shadow of the society, being sidelined. More attention is needed, many times these people being omitted willingly or unwillingly.

Roma population must be helped continuously in the effort to become part of a modern competitive economy, emphasizing the preoccupations of professional training, qualification and motivation for school and work.

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