



WRITTEN COMMENTS CONCERNING THE FOURTH PERIODIC REPORT OF SLOVAK REPUBLIC

*For Consideration by the United Nations' Human Rights Committee at the
118nd Session (17 October 2016 – 04 November 2016)*

**CENTER FOR CIVIL AND HUMAN RIGHTS
(PORADŇA PRE OBČIANSKE A ĽUDSKÉ PRÁVA)**

September 2016

Introduction

The Center for Civil and Human Rights (hereinafter „Poradňa“) hereby submits this report to the Human Rights Committee (hereinafter “Committee”) for the consideration at its 118nd Session (17 October 2016 – 04 November 2016). This report focuses on selected issues disproportionately impacting Roma minority in Slovakia including:

- police ill-treatment and lack of access to justice in this area;
- failure to ensure effective access to justice in cases of discrimination;
- segregation of Romani children in education.

In its 2011 Concluding observations (CCPR/C/SVK/CO/3)¹, the Committee touched upon most of the above mentioned issues. We are concerned that Slovakia has done little to address the Committee’s concerns and recommendations and that progress in complying with the International Covenant on Civil and Political Rights (hereinafter “Covenant”) is slow and insufficient.

Expertise of the submitting organization

The Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva, "Poradňa") is an independent non-governmental organization based in Slovakia focused on the protection of human rights with particular emphasis on the rights of minorities and protection from discrimination. Poradňa has for a long time worked on the issue of discrimination against Roma ethnic minority in various areas of public life. It has also been active in the protection of reproductive rights and protection from police brutality. Poradňa employs strategic litigation to combat discrimination and human rights abuses against minorities. Visit us at www.poradna-prava.sk.

¹ Human Rights Committee, 101th session, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations: Slovakia. 29 March 2011, CCPR/C/SVK/CO/3.

Police ill-treatment and lack of access to justice in this area - Article 2 and 26

The Committee in its last concluding observations recommended the Slovak Government to ensure effective investigation of the cases of police ill-treatment as well as access to justice for affected persons.² Since 2009, Poradňa has monitored cases of police ill-treatment particularly against Roma minority living in marginalized communities and provided free legal aid including legal representation in criminal proceedings. In this regard, we have also provided legal representation in widely reported cases of ill-treatment of Roma boys at the police station in Košice (March 2009) and police raid in a Roma settlement in Moldava nad Bodvou (June 2013). The legal development in both of these cases proves that serious deficiencies in access to justice in this area in Slovakia continue to be present.

On February 2015 the District court in Košice - after almost five years - decided the case of police ill-treatment of Roma boys at the police station in Kosice from 2009 and acquitted all the accused police officers.³ The court reasoned that the crime did not take place as alleged, and the prosecution thus failed to prove the abuse. The District court specifically considered the existing video recording of the incident to be illegal evidence and disregarded it. The prosecutor has appealed the verdict. In April 2016 the Regional court in Kosice allowed the prosecutor's appeal, squashed the first-instance decision and the case is currently again pending before the first-instance court. While we welcomed the recent decision of the Regional court, the legal proceeding has been running for more than seven years. Perpetrators still have not been brought to justice and injured Roma boys have not been remedied.

As to the case of police raid in Moldava nad Bodvou, the investigation of this case has fallen short of the effectiveness without doubts. The Inspection of the Ministry of Interior disregarded all the reports about alleged police brutality and the criminal investigation into the case has been initiated upon the intervention of the General prosecution as late as 7 months after the incident. The Inspection has particularly rejected as manifestly ill-founded also our criminal complaint that we filed a few weeks after the incident on behalf of one the affected Roma.⁴ In November 2015 and February 2016 the Police Inspection of the Ministry of Interior has progressively terminated all criminal proceedings in relation to this case. Our appeals have been rejected by the Regional state prosecution and in April and June 2016 we filed complaints to the Constitutional court, where the case is currently pending.

Based on our several years experience of conducting regular human rights field monitoring of police ill-treatment in marginalized Roma communities throughout eastern Slovakia as well as providing legal representation in criminal proceedings in this area for more than 25 persons, we can state that:

- cases of police ill-treatment remain to be still reported by Roma in marginalized communities;
- Roma alleging police ill-treatment are very reluctant to file criminal complaint particularly because of being afraid of victimization and not trusting the law enforcement authorities;
- the investigation of the cases of police ill-treatment continue to fall short of effectiveness particularly in terms of its adequacy and thoroughness. The Inspection of the Ministry of Interior is very reluctant to initiate criminal proceedings into reported cases. It tends not to take all the necessary steps to

² CCPR/C/SVK/CO/3, para. 14.

³ We initially informed the Committee about this case in the report that we submitted with the partner NGO People in Need Slovakia in April 2010. Available at:

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/SVK/INT_CCPR_NGO_SVK_99_10072_E.pdf

⁴ For more information about the circumstances of this case we refer to our recent report submitted with the European Roma Rights Centre (ERRC) to the UN Committee on the Rights of the Child in July 2015, page 12. Available at: <https://www.poradna-prava.sk/en/documents/written-comments-for-the-un-committee-on-the-rights-of-the-child/>

identify and secure relevant evidence, search for all the relevant witnesses of the ill-treatment and give reasonable relevance of the existing medical records. It also tends not to give the same credibility to the witnesses of police officers and claimants of the ill-treatment.⁵

- the Inspection of the Ministry of Interior lacks necessary independence to investigate the cases of police ill-treatment and must to be replaced by the fully independent body.

Despite some measures undertaken by the Government - particularly as a result of the case of ill-treatment of Roma boys in Košice from March 2009 - we are convinced that deeper and more systemic changes are necessary to achieve a significant progress towards elimination of police ill-treatment in the country. The strengthening effectiveness of investigation should be imperative for the Government authorities. This must go hand in hand with additional measures to prevent police ill-treatment. Since we have repeatedly documented claims of Roma who experienced violence or threats during police interrogation, preventive safeguards have to be introduced in this regard as such cases are usually very difficult to prove.

We encourage the Committee to recommend the following to the Government:

- establish a fully independent autonomous institution, outside of the structures of the Ministry of Interior that will be responsible for investigation of complaints of alleged torture, cruel and inhuman treatment of the police officers as well as all complaints alleging possible racial motive;
- introduce a mechanism for the external evaluation of the effectiveness of investigations of police ill-treatment with an aim to identify systemic deficiencies in the investigation process of such cases in Slovakia;
- secure continuous education of all persons investigating cases of police ill-treatment as well as state prosecutors and judges with particular emphasis on standards of effective investigation of torture, cruel and inhuman treatment laid down by the jurisprudence of the ECtHR and the UN Istanbul protocol.

Failure to ensure effective access to justice in cases of discrimination – Article 2 and Article 26

a) Implementation of the antidiscrimination legislation in practice

The Government in its reply to the list of issues of the Committee⁶ provided data about the number of cases related to the right to equal treatment and protection against discrimination settled by courts in 2014 and 2015. A very low number of cases of this nature resolved by courts results from persisting barriers that discriminated persons continue to face in access to justice in Slovakia.

Poradňa (as one of very few local NGOs) provides legal representation in cases of discrimination, with a focus on racial discrimination. Since 2004, we have been provided legal representation in majority cases of racial discrimination that have been brought to Slovak courts. Moreover, in 2012 we collected court judgments concerning discrimination having been decided in previous years and comprehensively analysed Slovak court`s

⁵ In July 2015 we published a critical advocacy report in which we comprehensively described shortcomings in the investigation of police ill-treatment in Slovakia. Available in Slovak at: <https://www.poradna-prava.sk/sk/dokumenty/vysetrovanie-policajneho-nasilia-na-slovensku-kriticka-sprava-za-rok-2014/>

⁶ CCPR/C/SVK/Q/4/Add.1, para. 5.

decision making activities in cases of discrimination from the adoption of Anti-discrimination Law in 2004.⁷ Based on the given analysis as well as our legal experience we can state:

- the implementation of the provisions of Anti-discrimination Law by courts remains inconsistent and often flawed. Courts remain not sufficiently informed about antidiscrimination legislation and its proper application in practice. Specifically, the application of reversed burden of proof continues to fall short of a legal consistency, which also indicates the CERD's opinion in case V.S. v. Slovakia from 16 December 2015 (CERD/C/88/D/56/2014). We are providing more details about this case in the next chapter;
- the court proceedings concerning discrimination continue to last excessively long periods (rarely less than several years);
- the courts remain extremely reluctant to award any financial compensation for victims of discrimination. They tend to downplay seriousness of discrimination overlooking or not understanding its *prima facie* impact on human dignity. In some instances certain bias or preoccupation of courts when dealing particularly with cases of discrimination of Roma minority can be indicated. Moreover, low damages for racial discrimination do not have sufficient deteriorating effect on other discriminatory subjects and fall short of prevention and elimination of discrimination in our society. To illustrate this situation, in the spring 2016 the courts awarded the amount of 600 Euro to the Roma couple who faced racial discrimination in access to services. It is the first final decision of the Slovak court awarding some financial compensation in a case of racial discrimination. We consider this amount to be really symbolic comparing to the amounts granted by Slovak courts to the politicians to remedy interference into their personal rights by the media, which reach thousands of Euros.⁸

By conducting nationwide survey we mapped the reasons of not resisting discrimination by the affected persons from their perspective.⁹ The results of the survey showed that among most frequent reasons were particularly lack of trust in institutions that could successfully resolve discrimination, lack of evidence to prove discrimination, the fact that people who felt discriminated against, did not consider important to solve their case by legal tools and lack of information as to where and whom to turn to for legal aid. The results also indicated an overall scepticism and even resignation to any legal solution, as well as the conviction that discrimination in Slovakia is so normal and widespread that it makes no sense to oppose it and that in Slovakia it is not possible to achieve justice.

In order to improve the current situation the Slovak courts have to considerably speed up their decision making and produce more quality courts' decisions in favour of discriminated persons with adequate compensation granted for them and with sufficient deterrent effect on the offenders. Positive court rulings will gradually motivate other persons to actively pursue their rights and resist discrimination by legal remedies and will strengthen their trust in legal institutions. There is also a particular need to sensitize the judges when dealing with cases of discrimination of marginalized minorities to prevent any preoccupations in their decision making.

⁷ Act No 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection against Discrimination and on amendments and supplements to certain laws. The whole analysis is entitled "*Discrimination in Slovakia: Searching for barriers in access to legal means of protection from discrimination*", and it contains summary of all the relevant findings in English. It is available online at: <https://www.poradna-prava.sk/sk/dokumenty/diskriminacia-na-slovensku-hladanie-barier-v-pristupe-k-ucinnej-pravnej-ochrane-pred-diskriminaciou/>

⁸ For more information about this case see the press release in English: <https://www.poradna-prava.sk/en/documents/press-release-the-slovak-court-ordered-a-bar-owner-to-pay-compensation-for-discrimination/>

⁹ *Supra. Discrimination in Slovakia: Searching for barriers in access to legal means of protection from discrimination.* See summary of all the relevant findings in English.

We ask the Committee to urge the Government to intensify its efforts to make the domestic antidiscrimination legislation fully operational and recommend the following:

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

b.) Failure to ensure access to justice in a case of discrimination in line with UN treaty monitoring body's opinion

We would like to bring to the attention of the Committee the concrete domestic case of discrimination recently considered by the Committee on the Elimination of Racial Discrimination (hereinafter "CERD"), which shows that when discriminated person does not achieve justice before domestic courts in Slovakia and successfully turns to the UN treaty monitoring body with their individual complaint - the Slovak Government further rejects to provide them any individual remedy.

On 16th December 2015 the CERD adopted an opinion in a case *V.S. vs. Slovakia* regarding the violation of the right of Romani woman to equal access to employment. In its opinion the CERD considered that the Slovak Republic violated the International Convention on the Elimination of Racial Discrimination (hereinafter "Convention") by not preventing her from discrimination in her access to employment and failed to ensure adequate legal protection from discrimination and among others recommended that Slovak Government expresses apology to the petitioner and grant her adequate compensation.¹⁰

We have provided the affected Romani woman a legal representation before domestic courts as well as in the procedure before the CERD and we are deeply concerned that the Government has rejected to associate itself with the recommendations to express her apology and grant her adequate compensation. The Government in its note submitted to the CERD on 9 March 2016 argues that it does not have any legal possibility to implement these recommendations as it has to respect the decisions of the domestic courts which (according to the Government's opinion) cannot be replaced by separate opinion of the UN Committee, which has quasi-judicial character and is not legally binding for the State, nor directly enforceable.

We argue that the Government is by no means legally bound to follow the domestic court decision, which upon the Committee's Opinion proved to be contrary to the Convention. It is however enforced to fulfil the recommendations of the Committee based on their derivation from the legally binding Convention. Furthermore, the Government's denial to fully implement the recommendations of the Committee may have adverse effect on the credibility and authority of the individual complaint's procedures under the UN Treaties in Slovakia as such.

The presented case as such also ultimately demonstrates that deficiencies in implementation of antidiscrimination legislation and access to justice in this area, described in the previous chapter, indeed persist.

¹⁰ Opinion of the Committee adopted at its 88th session on 16th December 2015. CERD/C/88/D/56/2014.

We urge to Committee to question the Government about its denial to provide individual remedies for the petitioner in the given case and make the following recommendations:

- introduce a legal mechanism that would enable to effectively provide individual remedies for petitioners in cases when UN treaty monitoring bodies find violations of their guaranteed human rights upon the individual complaints procedures;
- provide individual remedy for the petitioner in line with the opinion of the CERD in the case *V.S. vs. Slovak republic*.

Segregation of Romani children in education – Article 24 and Article 26

Discrimination of Romani children in a form of their segregation from majority children remains to be widely documented in Slovakia.¹¹ In April 2015, the European Commission launched infringement proceedings against Slovakia for violating the EU Race Equality Directive for persisting segregation of Romani children in mainstream schools as well as special schools and classes for children with mental disabilities. This proceedings is currently still pending and as such confirms that the Government has been unable to effectively address the given problem and ensure Romani children equal access to education without segregation.

In the previous several years we have regularly monitored the occurrence of segregation of Romani children in education throughout the region of eastern Slovakia, advocated for necessary desegregation measures and conducted strategic litigation in this area. Given our first-hand experience from the field, we would like to elaborate on reasons why a range of legislative changes and various projects reported by the Government proved to be insufficient and their impacts are hardly noticeable in a school practice.

From our perspective, the key obstacle to achieve a tangible progress in this area is the Government's constant reluctance to take systemic policies and measures on supporting desegregation of Romani children in schools that inevitably require considerable investments from public sources. The primary education in Slovakia remains severely underfinanced and primary schools are short of sufficient resources, pedagogic staff as well as methodical support to successfully desegregate and facilitate the inclusion of disadvantaged Romani children. The projects aimed at inclusion of Roma children in education funded from the structural funds of the European Union lack the necessary sustainability and are clearly insufficient to prevent exclusion of Romani children with regard to its current extent.

Further, the Government institutions seem not to fully embrace all forms of segregation of Romani children in mainstream education. They fail to effectively address the broader social processes that spur the segregation in education, in particular the poverty and social exclusion of marginalized Roma communities outside the area of education and weakening of social relationships between Roma minority and majority in many local areas. This, for instance, results to the increasing "white flight" of children from the minority and the rise of segregated Roma-only schools in the country, which discriminatory nature is not sufficiently addressed by the Government institutions.

¹¹ We would particularly like to draw attention of the Committee to our recent reports submitted with the European Roma Rights Centre (ERRC) to the UN Committee on the Rights of the Child in July 2015 and April 2016, which provide comprehensive information about the current forms and prevalence of this discriminatory practice in Slovakia including relevant research data and conclusions. The both reports are available at: <https://www.poradna-prava.sk/en/documents/?type=submissions-to-international-institutions>

We would like to illustrate the current situation as well as the Government's standpoint on a widely reported case of the segregation of Romani children at a primary school in a village Šarišské Michaľany. As a result of our strategic litigation, in 2012 the Regional court in Prešov confirmed the decision of the District Court in Prešov which found the local school and the municipality accountable for segregation of Romani children in separate classes.¹² It was for the first time the domestic courts condemned segregation of Romani children in mainstream education. The Government acknowledged the decision, but in reality did not provide the school with the sufficient complex support to its successful implementation. The condemned school struggled to facilitate the successful inclusion and most of the Romani children remained still segregated. In addition, the given school obviously lacks capacities and its school founder (municipality of village Šarišské Michaľany) in the spring 2016 terminated the joint school catchment with nearby village Ostrovany from which mostly Romani children attend the school. As a result, the municipality of Ostrovany intensified its efforts to build up a new school building close to a local Roma settlement. Such step would effectively transform the segregation of Romani children within the primary school in Šarišské Michaľany to their segregation in segregated ghetto school. The municipality of Ostrovany is obviously not searching for a pro-inclusive solution of this situation and Government institutions so far proved to be unable to introduce such solution themselves and enforce it in practice.

Another case, which well describes the situation in this area in the country, is segregation of Romani children in separate classes at a primary school in Košice – Šaca. In the spring 2015, based on our written motion, the State school inspection found education of Romani children in separate mainstream classes at the given school discriminatory. It was one of the first administrative decisions of the inspection recognizing racial segregation in education. The inspection ordered the school to remove segregated classes from the school year 2015/2016 and integrate Romani children with other children. According to information that we recently documented via our human rights monitoring, the school indeed removed segregated classes, but since quality of teaching in these classes was low, Roma children had difficulties to catch up and keep up with the other children. As a result, the school has already proceeded with psychological diagnostics of some Romani children who could not catch up, which might lead to their removal to special education for children with mental disabilities. Such development shows that without significantly increased support from the Government institutions, the mainstream schools will continue to struggle to provide Romani children equal educational chances.

We would also like to inform the Committee about four currently pending public interest court cases against the state, addressing segregation of Romani children in selected localities in Slovakia. These are *actio popularis* claims brought by our NGO in recent time under domestic antidiscrimination legislation. Two of these court proceedings address segregation of Romani children in mainstream schools, which are attended solely by socially disadvantaged Romani children and specifically target those selected localities where the Government supported building modular school annexes close to segregated Roma settlements. We assume that this measure maintains the segregation of Romani children in the given localities.¹³ Another case specifically addresses segregation of Romani children in special classes for children with mental disabilities, placed separately near a segregated local Roma settlement, attended by 90 percent of all school-age Romani children living in this settlement. The last case challenges the decision of a regional school office that has set a local school district in a way that concentrates Romani children in one school, instead of supporting their integration in other local schools. Three of these court proceedings are still in their early stages. One of the given cases against segregation of Romani children in segregated school in the town Stara Ľubovna is in a later stage and is supposed to be decided by the first-instance court on 6 October 2016.¹⁴ We find it regrettable that the Ministry

¹² The both court decisions are available in English at: <https://www.poradna-prava.sk/en/documents/?type=decisions>

¹³ The Government particularly refers to the project of building modular schools in order to solve lack of school capacities in selected localities in addendum to its reply to the list of issues, CCPR/C/SVK/Q/4/Add.1, para. 38-43.

¹⁴ We widely informed about the initiated lawsuit against segregation of Romani children in Stara Ľubovna after the court hearings in November 2015 and June 2016. The press releases with further information about the proceeding in English are available at: <https://www.poradna-prava.sk/en/documents/?topic=discrimination>

of Education in 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 plans.

We ask the Committee to emphasize in a dialogue with the Government the absolute necessity of implementing systemic desegregation policies and measures to secure equal access of Romani children to education and recommend the following:

- condition the distribution of national, regional and local funds for education on the development of desegregation plans;
- significantly increase financial subsidy 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;
- address segregation of Roma in education, accounting for its close relationship with housing segregation and discrimination of Roma in other areas.