



Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities concerning shortcomings in the implementation of the Convention in Slovakia

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

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Background

This is the submission of the Center for Civil and Human Rights (Poradňa pre občianske a ľudské práva “Poradna”) – Slovak non-governmental organization focusing on the protection of rights of ethnic minorities and protection from discrimination. From our establishment in 2002 we have actively promoted human rights of Roma ethnic minority in Slovakia by conducting human rights field monitoring, strategic litigation in domestic and international courts as well as advocacy activities towards Slovak government authorities and international human rights bodies. We closely link our legal and advocacy work with extensive cooperation with many Roma activists, community engagement with Roma women, and support to Romani communities in pursuing their rights.

The submission results particularly from ongoing human rights field monitoring, strategic litigation and advocacy efforts of our NGO and outlines the selected issues of concern regarding equal enjoyment of human rights of Roma minority in Slovakia that are guaranteed by the Framework Convention for the Protection of National Minorities (Convention).

We are addressing these issues of concern in a comparative perspective of the previous five (5) years, while specifically describing ongoing shortcomings that have to be effectively tackled by the Slovak authorities in order to meet their obligations under the Convention. We are concerned that Slovak government authorities have fallen short of addressing these issues effectively over last years and that progress in implementing the Convention in this regard is insufficient.

a./ Racially motivated police violence and lack of effective investigation in this area

Based on our experience of monitoring racially motivated police violence and representing Roma ill-treated by the police in criminal proceedings – we argue that Slovak Government has been insufficient to effectively address these practices, secure that they are investigated by the independent body and improve access to justice in this regard. We have still documented cases of alleged police violence against Roma living in marginalized communities and we have been encountering serious shortcomings in the investigation of such cases which does not sufficiently meet criteria for effective investigation laid down by the international law. Possible racial motive is generally downplayed and falls short of effective investigation as well.¹

¹ For overview of shortcoming in the investigation of racial motive, see a joint statement to the Committee of Ministers of the Council of Europe concerning Slovakia that we submitted in cooperation with the partner NGOs in November 2020. We are confirming that the described shortcomings in this statement remain relevant. Available at: <https://www.poradna-prava.sk/en/documents/joint-statement-to-the-committee-of-ministers-of-the-council-of-europe-concerning-investigation-of-racial-motive/>

The criminal investigation into almost all cases, in which we have represented the affected Roma in previous several years, has been stopped at certain stage of the proceedings, not reaching the court, and we found the investigation ineffective. Some of them ultimately led to the recent decisions of the Strasbourg court in favour of our Roma clients and currently some of them are still pending before the Strasbourg court.²

Based on our experience of providing legal representation to ill-treated Roma over last years, we regrettably have not observed the improved quality of investigation in comparison to previous cases of this nature and we find these shortcoming to be symptomatic over years. The responsible Office of the Inspection Service (Police Inspection) tends not to take all the necessary steps to 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. Even though the current Government in its program declaration committed itself to analyse possibilities of enhancing independence of the current Police Inspection, no steps in this regard have been reported so far.

In November 2020, The Regional Court in Kosice dismissed the Prosecutor's appeal against the acquittal judgment of the District Court Košice II of December 2019 in a widely reported case of ill-treatment against six Roma boys at a police station in Košice from 2009. The evidence performed, including audio-visual recording, was insufficient for the condemnation of the accused policemen. The judgment is final. In our view, courts in this case were unable to decide fairly, without delay and within a reasonable time and were unable to provide victims with effective access to justice.³ This case also illustrates how difficult remains overall access to justice in cases of police violence.

In June 2021, the Slovak Government - arguably in response to the widely reported judgment of the Strasbourg court in favour of our two Roma clients from September 2020⁴ - apologised for the widely reported police raid in Moldava and Bodvou.⁵ We appreciate this public gesture from the Government, but so far – this has not been followed by the systemic measures that would improve the overall quality of investigation and enhance the prevention of police violence.

Given the ongoing shortcomings, we encourage the Advisory Committee to raise this issue in its Opinion. We are convinced that the Slovak government authorities have to intensify its effort to prevent police ill treatment against Roma minority by securing effective investigation of concrete cases including racial motive and by introducing additional preventive measures in this area.

b./ Discrimination of Roma women in reproductive and maternal health care and failure to ensure access to justice for survivors of forced sterilisations

Roma ethnic minority remains one of the most marginalized groups in Slovakia. Roma women are particularly marginalized and are at risk of multiple, and intersecting, forms of gender and racial discrimination. The specific forms of discrimination they face are especially widespread and pronounced in the area of reproductive health care.

In November 2017 our NGO in cooperation with an international NGO the Center for Reproductive Rights published an advocacy report titled Vakeras Zorales – Speaking Out: Roma Women's Experiences in Reproductive Health Care in Slovakia. The report documented a wide range of human

² See our press releases in English informing about these decisions: <https://www.poradna-prava.sk/en/documents/?topic=police-violence&type=press-releases>

³ See our press release in English: <https://www.poradna-prava.sk/en/news/the-police-officers-accused-of-abusing-roma-boys-at-a-police-station-in-kosice-are-innocent/>

⁴ Judgment in case R.R. and R.D. v. Slovakia, no. 20649/18 from 1 September 2020.

⁵ For additional information in English see: https://www.euractiv.com/section/politics/short_news/slovak-government-to-apologise-to-roma-victims-for-2013-police-raid/

rights violations that Roma women experience in reproductive health care in Slovakia. That included practices of segregation in maternity wards, racial harassment and humiliation, neglect, physical restraint and abuse during childbirth and failures related to informed consent and decision making with regard to medical treatment.⁶ Despite of our subsequent advocacy efforts towards the Slovak Government – no systemic policies and measures that would effectively prevent the given shortcomings have been taken.

Four years later - In July 2021 - the Slovak Public Defender of Rights (Ombudswoman) reiterated the problem of ill-treatment of Roma women in maternity health care including their segregation in her report exploring the observance of human rights in reproductive health care.⁷

We continue to document the human right violations against Roma women in maternity health care and resolute response from the Government is finally needed. We encourage the Advisory Committee to raise this issue in its Opinion.

The widespread practice of forced and coercive sterilization of Roma women was reported in Slovakia in the past, suggesting that significant proportions of Roma women in Slovakia had been subject to forced and coercive sterilization.⁸ Since then the practice has been the subject of repeated condemnation by international human rights mechanisms and in judgements of the European Court of Human Rights. Time and again the Slovak Government has been called upon to provide effective remedies, including reparation, for the human rights violations involved. Most recently, in July 2021, the Council of Europe Commissioner for Human Rights called on the Slovak Government to take action to address the situation of survivors of this practice.⁹

We appreciate that – while obviously reflecting the recent adoption of the similar compensation law in the Czech republic – The Slovak Government authorities started dealing with this issue. The Slovak Parliamentary Committee for Human Rights in July 2021 discussed this issue in presence of representatives of our NGO and the affected Roma women and recommended to take decisive measures that would ensure justice for survivors.¹⁰ However, there is still no legislative proposal on the table and its adoption still appears uncertain and remote.

We encourage the Advisory Committee to amplify the calls of many international human rights bodies and raise the importance of compensating the illegally sterilized Roma women in its Opinion.

c./ Discrimination of Roma children in primary education

In previous years our NGO has monitored the occurrence of segregation of Roma children in primary education with particular focus on the region of eastern Slovakia, advocated for necessary desegregation measures and conducted strategic litigation in this area. Following our findings, thousands of Roma children in Slovakia still remain segregated in special schools and classes for children with “mild mental disabilities”, or segregated in separate classrooms and schools within mainstream education. We argue that the Government has fallen short of preventing these forms of discrimination of Roma children effectively.

⁶ The report is available in English at: <https://www.poradna-prava.sk/en/documents/vakeras-zorales-speaking-out-roma-womens-experiences-in-reproductive-health-care-in-slovakia/>

⁷ The report is available in Slovak at: https://www.vop.gov.sk/files/Sprava_porody_FINAL.pdf (see pp. 65 – 69).

⁸ See the report published in 2003 by our NGO in cooperation with the Center for Reproductive Rights, available in English: <https://www.poradna-prava.sk/en/documents/body-and-soul-forced-sterilization-and-other-assaults-on-roma-reproductive-freedom-in-slovakia/>

⁹ Her letter is available at: <https://www.coe.int/en/web/commissioner/-/slovak-republic-the-government-should-deliver-justice-to-victims-of-forced-sterilisation-through-a-compensation-mechanism>

¹⁰ See our press release in English: <https://www.poradna-prava.sk/en/news/slovakia-must-finally-come-to-terms-with-the-practice-of-illegal-sterilization-we-owe-justice-to-injured-roma-women/>

We are convinced that key obstacle to achieve a tangible progress in this area has been remaining the same over recent years – which is essentially the Governments’ reluctance to implement systemic and sustainable policies and measures supporting desegregation and inclusion of Roma children in schools that inevitably require considerably higher investments from public sources when considering the current extent and structural character of this problem in Slovak society and factual necessity to reform the whole primary educational system into more inclusive. Moreover, the measures in this area are generally unpopular, which further reinforce the reluctance of the government authorities to take necessary action.

The quantitative research of the Ministry of Finance from January 2019 also confirmed that Roma children from marginalised communities remain severely overrepresented in the special education system and are segregated in mainstream schools and classes. For a concise overview of this research in English as well as our overall assessment of the ongoing shortcomings in this area, we would like to bring to the attention of the Advisory Committee the EC Country report on Non-discrimination concerning Slovakia 2020, which fully reflects our independent opinion.¹¹

The fact that infringement proceedings by the European Commission in this regard is still pending against Slovakia essentially confirms that the Government has been unable to effectively address the given problem and ensure Roma children equal access to education without segregation.

From 2015 onwards our NGO has been litigating three strategic *actio popularis* lawsuits based on domestic Anti-discrimination Act against the state and local municipalities, addressing school segregation of Roma children in selected localities in Slovakia. The Ministry of Education in these court proceedings rejects the government’s responsibility to take positive measures in order to remove and prevent the argued segregation.¹²

The Slovak Government in April 2021 adopted the ‘Strategy for Inclusion, Equality and Participation of Roma till 2030’, which recognises and describes ongoing unequal access of Roma children to education including their widespread segregation and proposes a range of reasonable goals that have to be pursued.¹³ But we are concerned that the strategy may lack effective implementation in the coming years. We encourage the Advisory Committee to urge the Slovak Government to take systemic action in this area and effectively and long-term implement the recently adopted strategy.

d./ Lack of effective access to justice in cases of racial discrimination

Our monitoring and extensive experience of representing discriminated Roma in court proceedings confirm that - despite facing racial discrimination in various areas of public life – Roma rarely defend themselves by legal means of protection and, in our view, this is due to various ongoing barriers preventing them to effectively achieve justice in domestic courts, as follows:

- Widespread reluctance of courts to determine racial discrimination, and if this is the case, the application of reversed burden of proof continues to fall short of a legal consistency;
- Extreme reluctance of courts to award financial compensation for non-pecuniary damages; if compensation is awarded, it is generally symbolic;

¹¹ Available at: <https://www.equalitylaw.eu/country/slovakia> (pp: 45 – 54) The Country report concerning Slovakia 2021 is supposed to be made public on the same website in the upcoming weeks.

¹² Two of these court proceedings address segregation of Roma children in mainstream schools, which are attended solely by marginalised Roma children. The third one challenges the decisions of a regional school office and the Ministry of Education that have set a local school district in a way that concentrates Roma children in one school. Details about court decisions in two of these cases from recent years are available in our English press releases: <https://www.poradna-prava.sk/en/documents/?topic=discrimination&type=press-releases>

¹³ Available at: <https://rokovania.gov.sk/RVL/Material/25860/1>

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

We regrettably keep observing all these barriers till now.

For illustration from the most recent time, the Supreme court dismissed an extraordinary appeal of several Roma men concerning their alleged racial discrimination in access to services in a local pub in a village Čaklov.¹⁴ The lawsuit was filed in 2006 and it was one of the first cases concerning discrimination on ground of ethnic origin brought before the Slovak courts after the adoption of the Anti-Discrimination Act in 2004. The overall course of this court proceedings and the reported decision points at the ongoing serious barriers in access to justice in cases of racial discrimination in Slovakia, in particular slow and inconsistent decision making of general courts in some of these cases. As well, courts' racial prejudices or stereotypes towards Roma minority can be arguably seen in many cases including this decision.¹⁵

We encourage the Advisory Committee to point out the ongoing barriers in access to justice for ethnic and national minorities in its Opinion and urge the Slovak Government authorities to effectively address them.

e./ Shortcomings in the effective functioning of the Slovak National Centre for Human Rights

Within our activities, we have also regularly monitored the overall effectiveness of the work of Slovak National Centre for Human Rights (the Centre), having a mandate of Equality Body as well as National Human Rights Institution (NHRI). The Centre has been subject to criticism by NGOs, international human rights bodies and others who are active in the field of human rights, particularly for its insufficient functioning and independence and this criticism still persists.

We find it positive that the Ministry of Justice recognises the necessity to strengthen the functioning and independence of the Centre in line with the Paris principles and in 2019 submitted to the Slovak Parliament and amendment to the Act on the Centre.¹⁶ However, in June 2019, the Parliament, without publicly giving any specific reasons, rejected the amendment. It was reported that the repeated submission of this legislative proposal to the parliament was not included in legislative tasks of the Ministry of Justice for 2020 and is also not included in its planned legislative tasks for 2021.¹⁷ It appears that there is lack of political will to introduce legislative changes proposed by the Ministry of Justice, which we find concerning.

We consider the overall work of the Centre to be generally independent, since it addresses relevant issues concerning human rights of national minorities towards the Government authorities and

¹⁴ Decision of the Supreme Court of the Slovak republic from 29 June 2021, no. 5Cdo/91/2019 (delivered on 26 July 2021). The decision is available in Slovak at the website of the Supreme court: <https://www.supcourt.sk/rozhodnutia/5cdo912019/>

¹⁵ The EC flash report in English on this decision will be published in the upcoming days at the website of the European Equality Rights Network: <https://www.equalitylaw.eu/country/slovakia>

¹⁶ The proposed amendment and information about the course of the legislative process are available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=7&ID=1264>

¹⁷ Response of the Ministry of Justice of 20 January 2021 to a request for information of 8 January 2021 (on our file).

proposes relevant recommendations. But we still observe a range of shortcomings in its functioning. In particular, the Centre:

- keeps falling short of its public visibility and ultimately has insufficient outreach to victims of discrimination,
- a number of discriminated persons represented by the Centre in court proceedings remains strikingly low,¹⁸
- the Centre does not prioritise the fundamental and widespread grounds of discrimination; a significant number of cases in which the Centre provided legal representation before courts over recent years related to discrimination in employment on the ground of 'other status' and as regards its litigation the Centre does not sufficiently address pressing and widely documented discrimination in Slovak society on the grounds such as national or ethnic origin.

In December 2019 the mandate of the executive director of the Centre expired and after several unsuccessful elections the new director was appointed as late as September 2020. A new director arguably increased visibility of the Centre in the media, but strengthening visibility and credibility remains to be a challenge for the Centre to the coming years.

In our view, The Office of the Public Defender of Rights (the Ombudswoman) in recent years has been significantly more active in addressing the pressing minority rights issues in Slovakia, in comparison with the Centre. For instance, the Centre remained without executive director just in the period when the Covid-19 pandemic emerged in Slovakia, which gave rise to new serious issues concerning human rights, including discrimination of minorities. While the Ombudswoman publicly opposed controversial government measures endangering rights of people and kept using its legal competences, the Centre was less visible. The Ombudswoman even raised specific discriminatory issues, that should have been addressed by the Centre as being equality body in the first place. Even if the Centre took critical stand to some of the controversial measures of the government authorities having possible discriminatory impacts (particularly in autumn 2020), this appeared to be overshadowed by efforts of the Ombudswoman in terms of their visibility and overall public impact.

We encourage the Advisory Committee to urge the Government authorities to ensure the adoption of the legislation that would strengthen the independence and effective functioning of the Centre. The Government shall also particularly make sure that the Centre primarily focuses on pressing and widely documented discrimination in Slovak society on the grounds such as national or ethnic origin.

f./ The measures of the Slovak state authorities against the Covid-19 pandemic and their disproportionate impact on marginalised Roma communities

From March 2020 the Slovak state authorities and local municipal governments have taken a range of measures with an aim to prevent the spread of COVID-19 in the Slovak society, including its spread in marginalised Roma communities. Some of these measures, in our view, clearly had disproportionate impact on the marginalised Roma communities. In particular, the Slovak state authorities from March 2020 to the spring 2021 (during the first and the second wave of the pandemic in Slovakia) imposed area quarantines on a number of marginalised Roma communities.

The introduction of area quarantines during the pandemic must be essentially seen as a result of the Government's long-term failures to take effective policies and measures that would lead to social inclusion of marginalised Roma and desegregation of communities. When assessing the epidemiological context in the communities under area quarantines and the factual reasons on which

¹⁸ According to the data provided by the Centre, in 2019 it represented 4 persons in 2 court proceedings concerning discrimination, in 2020 2 persons in 2 proceedings. In 2020 it does not provide legal representation in any new court proceeding at all.

the decisions of imposing area quarantines were made – the given measures clearly appeared disproportionate in restricting individuals’ freedom of movement and other liberties of thousands of Roma as well as they could be considered discriminatory as they hit only marginalised Roma communities.¹⁹

We also found as a serious issue of concern a lack of positive measures from the government authorities that would effectively protect the health of marginalised Roma communities during the pandemic such as effective access to drinking water as well as equal access to vaccination after these started to be gradually available in Slovakia early in 2021. The registration for vaccination has been essentially provided through online registration system, requiring tech skill and access to PC/smart phone and Internet, which many marginalised Roma are missing. The marginalised Roma also faced unequal access to places of vaccination due to their residential segregation.

The pandemic created a range of other inequalities, which have not been effectively addressed by the government authorities, such as discrimination of marginalised Roma children in access to education. Due to the pandemic the primary schools were closed for significant periods of time and they introduced online distant forms of home-schooling requiring PC and internet. In practice, many marginalised Roma children were excluded from distant educational process, while not having access to PC and/or Internet. The Ministry of Education has failed to effectively respond to this issue till now.²⁰

We encourage the Advisory Committee to urge the Slovak government to effectively address inequalities faced by marginalised Roma communities during the Covid-19 pandemic and address these inequalities also after the pandemic is over.

In general, the unequal access of marginalised Roma to online registration for vaccination or Roma children to online education in Slovakia during the pandemic highlighted the broader systemic problem affecting not only marginalized Roma communities but also some other disadvantaged social groups – and that is “digital divide” between them and the rest of the society. The digital skills and technologies are increasingly required from the people in a number instances, and the Government is neglecting the widespread disadvantages of some social groups in this regard.

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¹⁹ See EC flash reports in English describing this issue, which was made based on our findings and assessment: <https://www.equalitylaw.eu/downloads/5144-slovakia-slovak-state-authorities-imposed-area-quarantine-on-selected-marginalised-roma-communities-and-adopted-specific-restrictive-measures-on-people-over-65-years-in-order-to-prevent-the-spread-of-covid-19-106-kb>

²⁰ The Institute of Educational Policy working under the Ministry of Education found that 7.5% of pupils were completely excluded form distant forms of education in the spring 2020 and the most critical situation were on school with high percentage of socially disadvantaged children and special schools education children with disabilities. Main findings of the research available at: <https://www.minedu.sk/data/att/17338.pdf>