



Council of Europe
DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
By email only: dgi-execution@coe.int

10 July 2024

RULE 9.2 SUBMISSION

with regard to the execution of:

R.R. AND R.D. GROUP v. SLOVAK REPUBLIC

**Leading case: R.R. and R.D. v Slovak Republic, application no. 20649/18,
judgment of 01 September 2020**

I. INTRODUCTION

1. Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights, “Poradňa”) and the European Roma Rights Centre (“the ERRC”) make this submission in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

2. Poradňa¹ is Slovak grassroots non-governmental organisation focusing on the protection of human rights with an emphasis on the rights of Roma minority. It addresses police ill-treatment and various forms of discrimination against Roma in Slovakia. Poradňa pursues its mission by human rights monitoring, strategic litigation as well as domestic and international advocacy. Attorney working with Poradňa has represented the applicants in all three supervised cases in this group. She also represented the applicants in the case *M.B. and others v. Slovakia (no. 2)* (application no. 63962/19) in the related proceeding before the Constitutional Court of Slovak Republic and continues representing them in ongoing criminal proceedings before Slovak general courts. Furthermore, she represented applicants in the recent case

¹ www.poradna-prava.sk

T.K. and others v. Slovakia (application no. 57085/18), in which the ECtHR by its decision stroke the application out of the list of cases as a result of the friendly settlement reached by the parties to the proceedings, given the similarity of the issues raised by the applicants with the supervised case of *R.R. and R.D. v Slovakia* (application no. 20649/18).

3. The ERRC² is a Roma-led international public interest law organisation whose vision is for Romani women and men to overcome antigypsyism and its legacy, to achieve dignity, equality, and full respect for their human rights, and to use their experience to contribute to a more just and sustainable world. The ERRC has represented the applicants in the related case of *M.H. and others v. Slovakia* (application no. 14099/18) in which the ECtHR stroke the application out of the list of cases as a result of the friendly settlement reached by the parties to the proceedings. It also currently represents the applicants of the related cases *M.H. and others v. Slovakia* and *R.R. and R.D. v Slovakia* in criminal proceedings that – following the judgments of the ECtHR - were resumed in January 2023 by the Regional Prosecutor's Office in Prešov, following the instruction of the prosecutor of the Criminal Division of the General Prosecutor's Office of the Slovak Republic.³

II. SPECIFIC COMMENTS

4. In addition to our direct engagement in legal representation of the applicants - we have been closely monitoring the execution of the supervised group of judgments in question by the Government of the Slovak Republic (“the Government”). Moreover, we have been advocating for the adoption of effective measures that would effectively prevent human rights violations found by the ECtHR in these cases from reoccurring again in the future in Slovakia. On 30 January 2023, our NGOs have submitted a similar submission regarding the execution of the *R.R. and R.D. v Slovak Republic* judgment. **We are writing this submission because we believe that the Government still continues to fall short of taking effective measures to fully comply with the supervised group of judgments.**

5. The UN Committee against Torture (CAT) in its recent concluding observations on Slovakia of June 2023 expressed its ongoing concerns about a.) reports of excessive use of force, along with verbal threats and verbal abuse by law enforcement officials, notably against members of the Romani community and b.) low number of complaints, prosecutions and convictions in such cases. It also specifically referred to the supervised judgment in the case *R.R. and R.D. v. Slovakia*, raising its concerns that despite the findings of the ECtHR that torture or ill-treatment had occurred, law enforcement

² www.errc.org

³ The reopening of the proceedings was reported by the Slovak government authorities in its communication of 30 January 2023 concerning the case of *R.R. and R.D. v. Slovakia* of 30 January 2023 (DH-DD(2023)166).

personnel implicated in the incidents were cleared of any wrongdoing. More generally, the Committee also raised concerns about previous judgments of the ECtHR addressing the failure of the Slovak authorities to adequately investigate the discriminatory motives related to the excessive use of force by law enforcement personnel against members of the Romani community.⁴

6. Following its concerns, the CAT Committee addressed to the Government authorities a range of specific recommendations: a.) to carry out prompt, impartial, thorough and effective investigations into all allegations of excessive use of force, including torture and ill-treatment by law enforcement officials, and ensure that those suspected of having committed such acts are immediately suspended from their duties throughout the period of investigation b.) Prosecute persons suspected of having committed torture or ill-treatment under article 420 of the Criminal Code and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress in a timely manner; c.) Ensure that motives relating to discrimination are sufficiently investigated when they are suspected to have played a role in the commission of an offence, and ensure that such motives are considered as an aggravating circumstance in criminal prosecution; d.) Video record all actions by the police, including during interrogations and through the use of body cameras, and ensure that persons who report acts of torture and ill-treatment, as well as witnesses to such acts, are protected from reprisals, including criminal charges; e.) Continue to work to combat negative attitudes, stigmatization and discrimination towards members of the Romani community and other minority groups present in Slovakia, including through the implementation of community outreach and awareness-raising programmes for the general public. The Government shall recognize these recommendations in order to comply with its human rights obligations arising from the UN Convention against Torture.

7. Notably, on 6 May 2024, the human rights record of Slovakia was examined by the UN Human Rights Council's Universal Periodic Review (UPR) Working Group and ongoing gaps in ensuring effective protection from police brutality, including with racial motives, have been recognised. The Government was recommended to take appropriate measures to prevent racist attacks and to combat hate rhetoric and ensure that all racially motivated crimes, incidents of hate speech, as well as allegations and complaints of excessive use of force by police officers, including torture and ill-treatment are properly investigated.⁵

⁴ UN Committee against Torture (CAT), Concluding observations on the fourth periodic report of Slovakia of 7 June 2023. CAT/C/SVK/CO/4, para. 15. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FSVK%2FCO%2F4&Lang=en

⁵ Report of the Working Group on the Universal Periodic Review concerning Slovakia of 17 May 2024. A/HRC/57/13. Available at [Home \(ohchr.org\)](https://www.ohchr.org)

8. In February 2024, the submitting organisations approached the Minister of Interior with an open call⁶ to strengthen the quality and independence of investigations of ill-treatment by police officers - in direct response to the supervised judgments of the ECtHR against Slovakia as well as other judgments concerning police ill-treatment against members of the Roma minority and its ineffective investigation from previous years.⁷ On the basis of our human rights monitoring and engagement in providing legal representation to Roma facing police ill-treatment, we highlighted our belief that shortcomings in the investigations into alleged police brutality, which the ECtHR addressed, have symptomatic character and can be associated with a number of other cases of this nature, into which criminal proceedings were previously conducted. We argued that Slovakia has not yet adopted effective measures which would ensure an effective and independent investigation of alleged police ill-treatment, including an investigation of possible racial motives. As a result, we called upon the Minister of Interior of the Slovak Republic to support the adoption of comprehensive measures to effectively remove the existing shortcomings, while specifying the effective measures on three levels. We assert that: a.) the procedures for investigating police ill-treatment and its possible racial motives - shall be subjected to rigorous analysis, given they are subject to specific requirements arising from the jurisprudence of the ECtHR. We find it particularly important to ensure that investigators of the responsible investigation body work in accordance with clear, detailed, and consistent rules being adhered to the given international human rights obligations; b.) the Government authorities shall identify, develop and implement measures beyond ensuring effective investigation, which have proven successful in preventing police ill-treatment in other countries. These measures may include the introduction of body cameras worn by police officers, as supported by relevant comparative research findings in this area; c.) the Government authorities have to either considerably strengthen the independence of the current responsible investigation body - Office of the Inspection Service or entrust investigations in this area to an independent external body to which adequate resources will be allocated. We advocate for the creation of a fully independent investigation body, which will stand completely outside the organisational structure of the police forces and will be fully independent both formally and in practice. We have not received any written response to our open call, nor recorded any particular action indicating that the proposed measures were considered by the government authorities.

9. The ongoing failure of the Government to effectively address the structural shortcomings in proceedings of investigating police ill-treatment including possible racial motives is clearly visible in pending criminal proceedings that were resumed in January

⁶ Open call of the Center for Civil and Human Rights (Poradňa), European Roma Rights Centre (ERRC) and Amnesty International Slovakia to the Minister of Interior of the Slovak Republic to strengthen the quality and independence of investigations of ill-treatment by police officers following the judgments of the ECtHR against Slovakia of 13 February 2024. Available in Slovak language at <https://rb.gy/9jify8>

⁷ Mižigárová v Slovakia, Application no. 74832/01, judgment of 14 December 2010; Koky and Others v Slovakia, Application no. 13624/03, judgment of 12 June 2012; Adam v Slovakia, Application no. 68066/12, judgment of 26 July 2016; A.P. v Slovakia, Application no. 10465/17, judgment of 28 January 2020.

2023 by the Regional Prosecutor's Office in Prešov. The proceedings were resumed following the instruction issued by the prosecutor of the Criminal Division of the General Prosecutor's Office of the Slovak Republic, in response to the judgment of the ECtHR delivered in the case *R.R. and R.D. v Slovakia* and the related case *M.H. and others v. Slovakia*, in which the parties to the proceedings reached friendly settlement. In March 2023, the Office of the Inspection Service re-launched criminal prosecution for suspicion of abuse of power of a public official and torture and other inhuman and cruel treatment. However, the criminal investigation has been assigned to the same investigator, who in 2015-2016, discontinued the original investigation, which was found to be ineffective by the judgment of the ECtHR. In the decision on discontinuation of criminal proceedings regarding clients represented by ERRC, he stated his belief that the victims of the police raid had lied and, subsequently, he filed a motion amounting to a criminal complaint, which led to indictment against Romani applicants themselves for the alleged crime of perjury. Naturally, the Romani applicants fear that reopened criminal proceedings carried out by the same officer may again lead to their indictment. They objected this assignation on the grounds of bias. In May 2023, the then Minister of Justice Jana Dubovcová, publicly commented on this development, while finding the objections of the applicants in this regard reasonable.⁸ However, despite that, neither the supervising prosecutor nor the Prosecutor General's Office accepted the argument of bias. They confirmed that the same investigating officer shall carry out the reopened investigation.

10. We find it particularly concerning that despite the fact that the criminal investigation in this case was resumed to ensure the full execution of the relevant ECtHR judgment supervised by the Committee of Ministers and the case being under strong media and public scrutiny in Slovakia – this major failure in the investigation procedures has not been avoided. We draw this conclusion directly from the legal engagement of the ERRC that represents the applicants in criminal proceedings and identified this failure. It suggests that the Office of the Inspection Service has not fundamentally changed its overall approach to investigations of police ill-treatment and prosecution authorities that supervise criminal investigations also continue to largely ignore ongoing shortcomings in this area.

11. Since our last joint Rule 9.2 submission on 30 January 2023, the ECtHR has communicated two new cases concerning police ill-treatment of the Romani community members. The applicants in both cases are represented by the ERRC. The first case, *Andrej Bystrý and Marian Bystrý against Slovakia* (Application no. 46293/22), was lodged on 17 September 2022, and communicated on 10 July 2023. The case involves a father and son, who were subjected to coercive police measures during an intervention on 12 April 2020, in a Romani community in Bardejov. This intervention occurred during Easter Sunday festivities, which contravened anti-Covid sanitary measures. The first applicant, Andrej Bystrý, alleges that he was arrested for not wearing a face mask,

⁸ "Raid in Moldava is being handled by the same investigator who years ago said the Roma were making things up". Article in the newspaper SME of 25 May 2023. Available in Slovak language at <https://domov.sme.sk/c/23173831/moldava-nad-bodvou-razia-policia-romovia-vysetrovanie.html>

resulting in physical assault by the police. His father, Marian Bystrý, claims he was beaten with a baton and punched while trying to locate his son. Both suffered significant injuries, and although criminal proceedings were initiated against unidentified officers, they were terminated, concluding the use of force was lawful and adequate. The applicants allege that the force used was unwarranted and the investigation lacked thoroughness, invoking Article 3 of the Convention. The second case, *Katarína Kuruová and Helena Horváthová against Slovakia* (Application no. 29229/22), was lodged on 7 June 2022, and communicated on 6 November 2023. This case involves two Romani sisters who were arrested on 23 July 2019, following an altercation involving their relatives at a local pub. The applicants claim they were subjected to physical and verbal abuse by police officers during and after their arrest. They allege being called derogatory names and being held in degrading conditions at the police station. Following their release, medical examinations confirmed injuries consistent with their claims of ill-treatment. Despite an investigation being opened against unknown officers, it was suspended due to insufficient evidence. The applicants contend this treatment violates Articles 3 and 14 of the Convention. These cases underscore the continuing issues related to police ill-treatment of Romani individuals and the necessity for thorough and impartial investigations into such allegations.

12. We are concerned that the Government has not addressed the recommendations of the international human rights bodies highlighting the lack of independence of the Office of the Inspection Service, responsible for the investigation of police ill-treatment and its possible racial motives. The European Commission against Racism and Intolerance in its most recent 2020 report on Slovakia highlighted that while the head of the Office of the Inspection Service answers directly to the Government, the Office is still located in the premises of the Ministry of the Interior and depends on its budget. Concerns in this regard were recently reiterated by the UN Committee against Torture and the Government shall address them given that independence is necessary component of ensuring effective investigation of police ill-treatment laid down by the jurisprudence of the ECtHR.⁹

13. We recall that according to Section 4a of the Act no. 171/1993 Coll. on Police Forces, the Office of Inspection Service is part of the Police Forces, i.e. the body that is investigated by them. Both the Office of Inspection Service and the Police Forces fall within the same branch of the Government under the Ministry of Interior. Here, the submitting NGOs also point to the fact that in the last 3 years, the Office of the Inspection Service has brought charges only against one police officer out of 310 complaints submitted by arrested, charged or detained persons regarding injuries they suffered.

14. The lack of independence leads to lack of impartiality during criminal proceedings. The ERRC, which is still engaged in pending criminal proceedings, still come across such cases in which the same patterns arise during the investigation carried out by the

⁹ UN Committee against Torture (CAT), Concluding observations on the fourth periodic report of Slovakia of 7 June 2023. CAT/C/SVK/CO/4, para. 33-34.

Office of the Inspection Service. The evidence (including testimonies of their colleagues) is taken and evaluated in favour of police officers suspected of ill-treatment and the testimonies of Romani victims and witnesses from Romani communities do not have the same value when the investigating officers close the investigation and evaluate the evidence. With extremely rare exceptions, virtually all criminal proceedings in which the submitting NGOs secured legal representation to Romani victims of police ill-treatment, the proceedings did not even reach the stage of bringing charges against concrete police officer(s). Racial motivation is not being investigated by the Office of the Inspection Service even in cases when the victims state that they were verbally abused with racially motivated slurs. Similarly, to what happened in the case of *R.R. and R.D. v Slovak Republic*, there are still cases which are being closed even without hearing the testimony of the person claiming he/she was the victim of police harassment.

15. Furthermore, we find it of the utmost importance that the Government effectively address obstacles to accessing justice for individuals facing police ill-treatment, including members of the Roma minority - beyond investigation procedures. Indictments against police officers for alleged police ill-treatment against Roma have been very rare in Slovakia and investigations of such cases almost never reached Slovak courts. However, we argue that serious barriers to access to justice for Roma facing police ill-treatment exists also in courts and the Government should effectively respond to them. The serious shortcomings in this regard are demonstrated in ongoing criminal proceedings associated with the case *M.B. and others v. Slovakia (no. 2)*. In May 2023, the Constitutional Court of the Slovak Republic (taking into account the respective judgment of the ECtHR) upheld the constitutional complaint filed by an attorney working with Poradňa in 2021 on behalf of the applicants by finding a violation of the applicants' right to protection against torture, cruel, inhuman or degrading treatment or punishment and discrimination under Article 16(2) and Article 12(2) of the Constitution of the Slovak Republic, as well as under Article 3 in conjunction with Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁰ The Constitutional Court highlighted a range of serious failures in decision making of general courts particularly in terms of their evaluation of evidence. It quashed the acquittals of the general courts of the accused police officers and remitted the case back to the Košice II District Court for further proceedings. After 14 years from filing indictment by the General Prosecution of the Slovak Republic for this alleged police ill-treatment of Romani applicants - the Slovak general courts in August 2023 resumed the court proceeding against the accused police officers. However, the case was assigned to the same senate of the first instance court as before. The applicants' attorney objected to its bias, claiming its incapability of correcting the errors that the Constitutional Court highlighted. The first instance court rejected this objection and on 23 February 2024 again acquitted the

¹⁰ Ruling of the Constitutional Court of the Slovak Republic of 24 May 2023. Ref no.: II. ÚS 329/2021-108. For overall details in English see press release of Poradňa to this ruling: <https://poradna-prava.sk/en/news/the-case-of-ill-treatment-of-roma-boys-at-the-police-station-in-kosice-returns-to-the-district-court-the-constitutional-court-of-the-slovak-republic-ruled/>

accused police officers. The acting prosecutor appealed, and the court proceeding is currently pending before the Regional court in Košice, being a court of appeal. The case is under strong public scrutiny and has been long spurring public debate about access to justice in cases of racially motivated police ill-treatment in Slovakia. We argue that the legal development in this case is widely concerning and can ultimately deter Roma and other individuals from seeking justice in cases of police ill-treatment.¹¹

16. In addition, we find concerning the position of the Slovak Government in the already referred case *T.K. and others v. Slovakia* (application no. 57085/18), in which a friendly settlement was reached by the parties to the proceedings and the application was struck out of the list by the ECtHR on 28 March 2024. We appreciate that the Government undertook to pay each of the applicants non-pecuniary damage and cost and expenses, but we point out that it disagreed to provide an apology. In our view, it suggests that the Government may still be reluctant to fully acknowledge that the applicants were subjected to police ill-treatment. We claim that making the apology would give the Slovak government a great opportunity to send out a strong public signal to the Roma minority that failures in this area from the past are not downplayed but are fully recognized and reflected. It would contribute to strengthening their overall faith in justice, which has been long undermining. We find it regrettable that the Government has not made use of this opportunity.

17. We recognize the Communication of the Slovak authorities from 16 May 2024 concerning the group of cases of *R.R. and R.D. v. Slovakia* providing information concerning general measures within the execution of the judgments in the supervised cases.¹² The information was provided particularly by the Police Forces in regard of the actual situation and practice in Slovakia. We take particular note of the reported fact that by 1 February 2021 with effect of the Order no. 3/2021 search operations „100“ were cancelled. We previously documented that these operations were disproportionately conducted in marginalised Romani communities and were linked to numerous claims about police brutality, including against the applicants in the cases *R.R. and R.D. v. Slovakia*, *M.H. and others v. Slovakia* and *T.K. and others v. Slovakia*. Importantly, in April 2024 the discriminatory character of the operation related to the case *T.K. and others v. Slovakia* has been explicitly recognised by the Municipality Court Bratislava IV, concluding that it amounted to racial discrimination of the victims of the police raid.¹³ Within our human rights monitoring in this area, we have not come across search operations of such character in marginalised Romani communities anymore. However, the Government has to ensure that Roma living in marginalized communities do not face other instances of excessive use of police force against them, amounting to violation of Article 3 of the Convention and if such cases are raised by complainants, to investigate

¹¹ See the press report of Poradňa of 23 February 2024 responding to the judgment of the first instance court. Available at <https://poradna-prava.sk/en/news/kosice-municipal-court-acquits-police-officers-accused-of-abusing-roma-boys-from-lunik-ix/>

¹² Communication of the Slovak authorities concerning the group of cases of *R.R. and R.D. v. Slovakia* to the Secretariat of the Committee of Ministers of 13 May 2024. DH-DD(2024)553.

¹³ Judgment of the Bratislava IV Municipal Court of 19 April 2024. Ref no.: B1-16C/87/2016.

them effectively.

18. We take note of the assurance reported in the Communication from the Slovak authorities of 16 May 2024 that the Police forces pay significant attention to promoting the policy of “zero tolerance” of ill-treatment among police officers. However, we argue that the Communication fall short of describing concrete measures that have been tangibly introduced to ensure effective investigation of police ill-treatment and its prevention. There is a general consensus among international and domestic human rights bodies and NGOs, as well as proved by comparative research, that using body cameras by police officers makes effective impact on the prevention of ill-treatment. Even though the Government made initial efforts to introduce this measure, we are concerned that it has still not been fully implemented. Moreover, due to the fact that in several cases victims of police ill-treatment (including, for example, in *M.B. and others v. Slovak Republic*) alleged that the ill-treatment took place at the police stations, the submitting NGOs believe that cameras should be installed also there and, most importantly, in premises where people, who had been deprived of liberty, are kept and interrogated.

19. The submitting NGOs would like to shortly address some of the measures aimed at prevention of ill-treatment perpetrated by police officers. Medical checks, records of suffered injuries and records of coercive measures used may, in theory, be positively evaluated. However, in practice, their implementation might be problematic. The ERRC being still engaged in pending criminal investigations have encountered cases in which there were no records of injuries suffered and no report on use of coercive measures written, even though, the person in question suffered injuries while detained which were after their release confirmed by a doctor. Regarding the written statements informing of rights of detained persons, the experience of ERRC shows that most detained Roma do not understand these documents. Often, they are not even informed of the document's content, and they later report that they were given a paper to sign without knowing what it was.

20. We further argue that the Government has also to address the fact that many cases of police ill-treatment may not be reported by affected Roma at all for instance due to their fear of victimization, the lack of trust in responsible investigation body and domestic courts, and their low awareness of existing legal means. As well, we claim that there are only limited possibilities to get free legal aid in these cases at initial stages of criminal proceedings in Slovakia. Human rights monitoring of Poradňa confirms that Roma facing police ill-treatment continue to be widely hesitant to complain about eventual police ill-treatment, while the fear of reprisals from those who ill-treated them is often present.¹⁴ It should be imperative for the Government to take all the necessary measures for the Roma minority to believe that justice in these cases can be effectively achieved before

¹⁴ See Center for Civil and Human Rights (Poradňa), Minority Rights Group Europe, EPEKA Slovenia. *Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia*, November 2022, p. 9. Available at <https://rb.gy/q27g9m>

domestic courts. This will potentially lead to more received complaints by the responsible investigation body and will ultimately contribute to overall prevention of police ill-treatment.

III. CONCLUDING REMARKS

For the reasons above, the submitting NGOs respectfully recommend the Committee of Ministers to continue examining the execution of the judgment in the R.R. and R.D. group of cases under the enhanced procedure, and call on the Government of the Slovak Republic to:

- Intensify its efforts to ensure that all reported cases of excessive use of force by law enforcement officials are effectively investigated, including the investigation of possible racial motive of such ill-treatment e.g. by identifying and addressing causes of shortcomings in investigation of these cases and ensuring that these are investigated according to clear, detailed and consistent rules laid down by the jurisprudence of the ECtHR,
- Ensure that all other persons who are directly involved in the investigation of police ill-treatment including experts from the field of medicine, psychology and psychiatry, are fully independent as well as they meet the other requirements for effective investigation of torture, cruel, inhuman or degrading treatment or punishment and know the procedures of effective investigation into these cases in detail,
- Secure continuous education of all persons investigating cases of police ill-treatment as well as state prosecutors and judges on standards of effective investigation of torture, cruel and inhuman treatment laid down by the jurisprudence of the ECtHR of the UN Istanbul protocol;
- Ensure that low-income persons, including Roma in marginalized communities, who experience police ill-treatment have access to effective early free-of-charge legal aid so that they are able to effectively submit complains in these cases and raise awareness of such available legal aid;
- Fully acknowledge and fulfil all recent recommendations issued by the UN Committee against Torture from June 2023, calling for the enhancement of the overall effectiveness of the investigation of police ill-treatment including its independence as well as its prevention and fully implement them in practice, given their particular relevance for the full implementation of the group of cases.