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DH-DD(2023)166

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Meeting: 1459th meeting (March 2023) (DH)

Communication from NGOs (European Roma Rights Centre ("the ERRC"), Poradňa pre občianske a ľudské práva ("Poradňa"), Fórum for Human Rights ("FORUM")) (31/01/2023) in the case of R.R. and R.D. v. Slovakia (Application No. 20649/18) and reply from the authorities (06/02/2023).

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1459^e réunion (mars 2023) (DH)

Communication d'ONG (European Roma Rights Centre ("the ERRC"), Poradňa pre občianske a ľudské práva ("Poradňa"), Fórum for Human Rights ("FORUM")) (31/01/2023) dans l'affaire R.R. et R.D. c. Slovaquie (requête n° 20649/18) et réponse des autorités (06/02/2023) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

06 FEV. 2023

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ms Lubov Stoytcheva
Head of Section
Department for the execution of judgments
of the European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Your letter Nr. / Dated:

Our Nr.:

11908/2023/AB

Prepared by:

Bratislava

6 February 2023

Subject: Group R.R. and R.D. v. Slovakia (Application No. 20649/18), judgment of 01/09/2020, final on 01/12/2020

Dear Madam,

With reference to your letter of 31 January 2023, to which the communication from the NGOs European Roma Rights Centre, Poradňa pre občianske a ľudské práva and Fórum pro lidská práva relating to the above-mentioned group of cases was attached, I would kindly like to submit the response in accordance with the procedures laid out in Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

The submitting NGOs requested the Committee of Ministers to continue the examining the execution of the judgment in the case *R.R. and R.D. v. Slovakia* under the enhanced procedure and called the Committee of Ministers to (i) schedule the case for a next examination at the earliest convenience; (ii) call upon the Government of the Slovak republic (hereafter the "Government") to institutionally respond to hate speech, manifestation of racism and intolerance, threats and racially motivated crime against Roma communities; (iii) call upon the Government to establish an independent monitoring and oversight mechanism of complaints against the police misconduct; (iv) request the Government to take measures to effectively investigate hate crimes against Roma in general including due examination of racial motivation; (v) request the Government to provide data about the occurrence of hate crimes in Slovakia; and (vi) request the Government to report whether there was any measures adopted to ensure racial motivation behind hate crimes is effectively investigated.

First of all, it is necessary to underline that the Government submitted on 19 December 2022 action plan containing extensive information about the individual and general measures taken in the above group of cases to which I refer and on 30 January 2023 the Government submitted further information concerning the individual measures in the case *R.R. and R.D. v. Slovakia*.

The Government emphasise that the Office of Inspection Services produces annual report containing general overviews of criminal and other misconduct by members of the Police Corps – Report on

criminal activities of members of the Police Corps (with the deadline for submission by 30 April each year). The report also addresses the issue of investigation of submissions of detained, arrested and accused persons on injuries which, according to their statements, were inflicted on them by members of the Police Corps. The annual reports are published on the website of the Ministry of the Interior of the Slovak Republic. The more detailed information are included in the updated action plan of 25 November 2021 (DH-DD(2021)1289), the letter of 23 March 2022 (DH-DD(2022)366) and the action plan No. 2 of 19 December 2022 (DH-DD(2022)1427). Also specific measures concerning extensive training activities, relevant to the call of the NGOs to take measures to effectively investigate hate crimes against Roma in general including due examination of racial motivation, e.g. by appropriate and targeted education and methodological support, are listed in the mentioned documents.

In addition it is possible to point to the action report submitted by the Government on 13 October 2020 in the case *Lakatošová and Lakatoš v. Slovakia* (DH-DD(2020)903) in which information on prevention of racially motivated crimes and also information on prosecution of racially motivated crimes in the Slovak republic, including examples of domestic practice, were presented.

As to the call of the NGOs to establish an independent monitoring and oversight mechanism of complaints against the police misconduct, the Government point out that according to the unifying position of the Criminal Law Chamber of the Supreme Court of the Slovak Republic of 29 September 2015, file no. Tpj 62/2015, an inclusion of the Inspection within the organizational structure of the Ministry of Interior is an expression of subsidiarity of the Police Corps to the Minister of Interior, however, such formal inclusion does not change the fact that the Inspection is part of the Police Corps as a service and unit of the Police Corps and during the performance of activities of the Inspection, it is the performance of competence or meeting of tasks of the Police Corps during revelation and investigation of criminal offences by the police. Therefore, the investigator included upon duty in the Inspection is a policeman in sense of Article 10 § 8 (a) of the Code of Criminal Procedure. Under these circumstances, during investigation the investigators are under command of the competent director, but within the extent set by the Code of Criminal Procedure they underlie to the supervising competence of the prosecutor. They are in particular independent which follows from the provision of Article 7 § 1 of the Act on Police Corps as well from the provision of Article 201 § 3 of the Code of Criminal Procedure. It is necessary to point out in this context that the European Court of Human Rights has never held in the cases against the Slovak Republic a violation of Article 3 in its procedural limb due to the alleged non-independence of the investigation body – Office of the Inspection Service.

Yours faithfully,



Miroslava Bálintová

Agent of the Slovak Republic
before the European Court of Human Rights



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: dgl-execution@coe.int

30 January 2023

RULE 9 SUBMISSION
with regard to the execution of:

***R.R. and R.D. v Slovakia*, application no. 20649/18, judgment of 01
September 2020**

I. INTRODUCTION

1. This joint submission is made in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments. It has been written by a collation of national and international NGOs, the European Roma Rights Centre ("the ERRC"), Poradňa pre občianske a ľudské práva ("Poradňa") and Fórum for Human Rights ("FORUM").
2. Poradňa¹ is a Slovak grass root non-governmental organisation focusing on the protection of human rights with an emphasis on the rights of the Roma minority. It addresses police ill-treatment and various forms of discrimination against Roma in Slovakia. Poradňa pursues its mission through human rights monitoring, strategic litigation as well as domestic and international advocacy. Poradňa has represented the applicants in this case.
3. The ERRC² is a Roma-led 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 parties to the proceedings reached a friendly settlement.
4. FORUM³ is a Central European legal non-governmental organisation focusing on

¹ www.poradna-prava.sk

² www.errc.org

³ <https://forumhr.eu/>

international human rights litigation and advocacy in Central Europe. FORUM works to ensure that human rights are respected, protected, and fulfilled following relevant international human rights standards, using litigation and advocacy to promote human rights before national and international courts and domestic and international human rights bodies. It provides support and leads domestic and international litigation and advocacy activities.

II. CASE DESCRIPTION

5. The case concerns the applicants' complaint of police ill-treatment during police action in the Roma community in Moldava nad Bodvou, subsequent lack of a proper investigation, and discrimination on the grounds of their Roma origin. In its judgment, the European Court of Human Rights ("the ECtHR") ruled in favour of the applicants. In particular, the Court found that there has been a substantive violation of Article 3 (prohibition of torture) because the Government have failed to show that the use of force against the applicants was indispensable and not excessive; procedural violation of Article 3 due to deficiencies in the procedure and errors in the decisions at the initial stage of investigation and the fact that the investigation did not involve assessment of the adequacy and necessity of the use of coercive measures against the applicants; and a violation of Article 14 of the European Convention on Human Rights (prohibition of discrimination), taken in conjunction with Article 3 on account of the lack of investigation into the alleged discrimination in the planning of the operation of 19 June 2013, in so far as it concerned the applicants.
6. The police raid which took place in Moldava and Bodvou in 2013 is perhaps the most notorious case of police brutality against Roma in Slovakia. More than sixty police officers armed with batons and dogs raided a Romani community on Budulovská Street. During the investigation, some of the victims were labelled as suffering from "*Roma mentality*" which, according to the expert in the field of psychology and the investigating officer, is characterized by features as: a lack of self-discipline, neglect of commitments towards others, aggression, being asocial, and an inability to adapt to social standards. After the investigation was concluded, criminal charges of perjury were brought against some of the Romani people who were beaten by the police.⁴ They were acquitted only recently after the ECtHR's judgment in *R.R. and R.D. v Slovakia*.
7. The submitting organisations would like to note that, during the events three days before the police raid which eventually resulted in the raid itself, a young mentally handicapped Roma man had been arrested and placed in pre-trial custody allegedly for throwing stones at the police car. Although the investigating authorities were aware of the fact that he cannot be held responsible for his actions due to his diagnosis, he was kept in custody for two and half months before he was released. In 2022, he was awarded by court a compensation of 4.000,- EUR for unlawful detention and related ill-treatment.⁵

⁴ ERRC: SLOVAK GOVERNMENT TO PAY DAMAGES TO ROMA FROM MOLDAVA NAD BODVOU POLICE RAID, 02 June 2022, available at: <http://www.errc.org/press-releases/slovak-government-to-pay-damages-to-roma-from-moldava-nad-bodvou-police-raid>

⁵ ERRC: ROMANI MAN WINS UNLAWFUL DETENTION CASE AGAINST SLOVAK POLICE, 05 May 2022, available at: <http://www.errc.org/press-releases/romani-man-wins-unlawful-detention-case-against-slovak-police>

8. Eventually, altogether 10 applicants (victims of the raid) in the *R.R. and R.D. v Slovakia* (application no. 20649/18) and *M.H. and Others v Slovakia* (application no. 14099/18) ended up before the ECtHR complaining about ill-treatment they suffered during the raid and later at the police station and about the ineffective investigation. The cases eventually ended with judgment and friendly settlement, respectively. After the judgment in *R.R. and R.D. v Slovakia* had been issued by the Court, the Slovak Government made a formal apology “*for the injustice and suffering inflicted on the victims and their families*”. The Government emphasised that the apology is “*not only a human gesture in relation to the victims, but also means a commitment for the State to avoid similar failures in the future. The apology is likewise a signal that law-enforcement authorities are sincerely interested in regaining the trust of civil society.*”⁶

III. SPECIFIC COMMENTS

9. We are writing this submission because **we believe that despite the official apology the Slovak Government have not taken the necessary measures to fully comply with this judgment and to address the issues highlighted by the ECtHR.** Cases of police brutality against Roma in Slovakia continue to stack up. Investigations of violent acts, falling either under Article 2 or Article 3 of the Convention, are most often not effective and the potential racial motivation of the perpetrators goes unexamined. This applies to actions by state agents as well as those by private individuals.
10. In their most recent Concluding observations on Slovakia, the UN Committee on the Elimination of Racial Discrimination (UN CERD) stated the following “*The Committee is concerned about reports of racial profiling and racially motivated excessive use of force by the police, particularly against Roma. The Committee, furthermore, regrets the lack of information on measures taken to address the issue of racial profiling by law enforcement officials. The Committee is concerned about the insufficient independence of the Bureau of the Inspection Service regarding the investigation of complaints about excessive use of force and racial discrimination by the police.*” The UN CERD gave the following recommendation to the Slovak Government: “*The Committee recommends that the State party establish an adequately resourced and fully independent monitoring mechanism responsible for investigating complaints about excessive use of force and racial discrimination by the police, and that this mechanism is made organizationally independent from the Ministry of the Interior. Furthermore, the Committee recommends that the State party develop and implement comprehensive measures to address the issue of racial profiling in accordance with its general recommendation No. 36 (2020) on preventing and combating racial profiling by law enforcement officials.*”⁷
11. In its 2020 report on Slovakia, the European Commission against Racism and Intolerance (ECRI) shared concerns about the reports of large-scale police

⁶ The Slovak Spectator: Cabinet apologised for the police raid in Roma settlement in 2013, 23 June 2021, available at: <https://spectator.sme.sk/c/22688383/cabinet-apologised-for-the-police-raid-in-roma-settlement-in-2013.html>

⁷ UN CERD, Concluding observations on the thirteenth periodic report of Slovakia of 16 September 2022, CERD/C/SVK/CO/13, para. 20-21. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FSVK%2FCO%2F13&Lang=en

violence against Roma and noted that failings in the investigation procedures made it “*obviously difficult for courts to determine whether and to what extent there was police brutality*”, and expressed its concern that despite “*the substantial number of complaints relating to serious acts of violence committed by members of the police services against Roma*”, none of the subsequent investigations of police interventions between 2013 and 2020 resulted in a conviction or disciplinary sanction against officers involved. The ECRI noted that some observers have pointed out that these shortcomings are chiefly due to the lack of independence of the Ministry of the Interior Inspectorate in charge of these investigations. Victims of alleged abuse and violence by the police are reluctant to lodge complaints with institutions that cooperate closely and daily with the police. Such is the mistrust engendered by the workings of the internal investigation system, that ECRI encouraged the prosecution service to be especially attentive “*to any retaliatory action by members of the police services or their superiors, including through complaints against alleged victims or witnesses of disputed police actions for slander and false testimony.*”⁸

12. The ERRC and FORUM have cooperated on research⁹ which indicates that the criminal justice system in Slovakia is discriminatory towards Roma who end up in it both as victims and perpetrators. Here are some key findings from the research:
- In Slovakia, police officers interviewed estimated that Roma accounted for between 30% and 80% of those arrested within their precincts. While prosecutors, judges, and defence lawyers were more reticent to provide estimates, most conceded that there was some degree of over-representation. Lawyers estimated that Roma accounted for between 20% and 50% of criminal cases in their respective practices.
 - While judges and prosecutors in Slovakia downplayed or denied outright the existence of discrimination in the criminal justice system, most defence lawyers described patterns of discrimination against Roma. One interviewee stated that: “*Roma cases are often not properly investigated; evidence seems to be unreliable, and the criminal responsibility of the defendants is doubtful.*”
 - Interviewees - police officers, prosecutors, judges, and defence lawyers stated that the majority of those Roma who came into conflict with the criminal justice system were charged with minor crimes, such as petty theft, or offences relating to ‘endangering the moral upbringing of a child’, which is how failing to ensure compulsory school attendance is defined. While judges and prosecutors downplayed or emphatically denied that anti-Roma prejudice played any role in decisions made in the system, they would only acknowledge that Roma were disadvantaged by a “*lack of understanding of the criminal justice system.*”
 - While some police and prosecutors spoke of ‘communication challenges’ and ‘failures to understand societal norms’, with the obvious inference that

⁸ ECRI, Report on the Slovak Republic (sixth monitoring cycle). Published on 8 December 2020. Available at: <https://rm.coe.int/ecri-6threport-on-the-slovak-republic/1680a0a088>

⁹ Bernard Rorke, Justice Denied: Roma in the Criminal Justice System. A summary of findings from reports in Czech Republic, Slovakia, Serbia and North Macedonia. ERRC, 2022. Available at: http://www.errc.org/uploads/upload_en/file/5357_file1_justice-denied-roma-in-the-criminal-justice-system.pdf

the blame lay with Roma, only one prosecutor, who also pointed out that communication was a key challenge, laid the onus of responsibility for overrepresentation of Roma in the criminal justice system on the state's failure to make appropriate procedural accommodations. The prosecutor pointed to the "*lack of accommodations aimed to inform Roma properly about the content and purpose of the criminal proceedings ... Information about their procedural rights is formalistic, too long, improperly worded, provided only in writing and not explained ... Working with Roma communities properly would require appropriate methods of communication.*"

- Defence lawyers tended to agree that Roma and Romani communities are subject to over-policing and discriminatory treatment, with one describing how "*police are often at odds with Roma communities*" and that such petty conflicts frequently escalate into violent clashes. They also noted having heard police officers openly use pejorative language and hate speech when referring to Roma. Opinions differed as to whether discriminatory practices such as profiling were part of a wider pattern of systemic discrimination, or whether they were the result of individual prejudices of individual officers.
13. Poradňa in its recent research report noted that criminal investigation in almost all cases concerning alleged police ill-treatment against Roma it litigated in the previous years has been halted at a certain stage of the proceedings, before reaching the court. Based on its field monitoring, Poradňa stressed that many cases in this area may not be reported at all, as the affected Roma may be afraid of victimization and do not trust the institutions responsible for investigation and justice.¹⁰
 14. In the last few years, there have been several instances of violent attacks against Roma in Slovakia and many of them involved police officers. Romani victims of the attacks usually ended up as applicants before the ECtHR. In the vast majority of those cases, racial overtones have not been examined by the investigating authorities, although, the victims claimed that the attacks might have been racially motivated. Some Romani victims faced barriers to achieve justice in domestic criminal courts. The existing shortcomings can be illustrated by particular cases.
 15. 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 judgment by which the accused policemen were acquitted has become final. Several police officers detained six Roma boys between the ages of 11-15, forcing them to strip and slap each other, threatening them with loaded weapon and forcing them to carry out other police orders that violated their human dignity. Some of the actions were recorded on a mobile phone and the edited recording was subsequently published on the Internet. The criminal proceedings lasted for almost 12 years and the proposed evidence, including audio-visual recording, was insufficient for the condemnation of the accused policemen. Poradňa, while representing the affected Roma boys in proceedings,

¹⁰ Equality and justice on the sidelines: Comparative report on discrimination against Roma and their access to justice in Slovakia and Slovenia Minority Rights Group Europe, Poradňa pre občianske a ľudské práva, EPEKA Slovenia, November, 2022, available at: <https://poradna-prava.sk/en/publications/equality-and-justice-on-the-sidelines-comparative-report-on-discrimination-against-roma-and-their-access-to-justice-in-slovakia-and-slovenia/>

is convinced that the courts in this case were clearly unable to decide fairly and within a reasonable time. The application following from this case is currently pending before the ECtHR (*M.B. v Slovakia* application, no. 63962/19). It should be noted that this was a rare case of alleged police brutality against Roma that reached Slovak courts and investigation into it was not dismissed in early stages of criminal proceedings.¹¹

16. Another widely reported and recent case concerned ill-treatment of several Roma children from Krompachy, who were beaten with a truncheon by a police officer in April 2020 during the Covid-19 pandemic, when the whole local Roma community was under quarantine. In February 2022 – after almost two years - the criminal investigation into the case was discontinued.¹² Poradňa, while representing the affected children in the criminal proceedings, considered the investigation of this ill-treatment and its possible racial motive to be ineffective. However, in this case parents of the affected children decided not to take further legal steps to pursue justice.
17. In November 2021, authorities announced that two linked investigations into police brutality against Roma were dismissed. The cases involved severe beatings meted out by police officers to two Romani men and three women. The incidents, which occurred in the village of Milhost' close to the city of Košice, on 23 July 2019, involved a 17-year-old and his 18-year-old cousin, who were arrested and severely beaten by police officers after a dispute at a local bar, and two female relatives (mother and aunt) who were detained during a raid on their homes and assaulted by police.¹³ Both cases were closed by the Office of the Inspection Service of the Ministry of Interior. The decisions were upheld by the prosecutor. One of the cases is currently pending before the Constitutional Court of the Slovak Republic and the other one is under examination of the European Court of Human Rights.
18. In April 2021, two Romani men from the village of Lascov were taken to a police station in Svidnik, Slovakia to be questioned by the police for an alleged theft. During the questioning, the police officers physically attacked them by beating them on their bare heels and heads.¹⁴ In September 2022, the investigation was discontinued by the Office of the Inspection Service with the reasoning that the alleged ill-treatment had not happened.
19. Very recently, on 08 September 2022, the ECtHR issued a judgment in the case of *P.H. v Slovakia* (application no. 37574/19) concerning a detained Roma woman who fell out of the window from the 2th floor at the police station. As a result, she suffered serious injuries. The applicant's brother who has also been detained at that time claimed that he had heard a voice shouting threats, insults and racial

¹¹ „The police officers accused of abusing Roma boys at a police station in Košice are innocent – it was confirmed today by the appeal court, which dismissed the appeal of the prosecutor against the acquittal judgment“ Press release of Poradna of 11 December 2020, available at <https://bit.ly/3j7V1jq>

¹² Korzár Spiš, 'Policajt mal zbit' päť detí z osady. Skutok sa nestal, uzavrela inšpekcia', 1 February 2022, available in Slovak language at: <https://bit.ly/3DlqzzV>

¹³ For more details on the case see: NO CASE TO ANSWER: SLOVAK AUTHORITIES DISMISS ANOTHER TWO POLICE BRUTALITY CASES AGAINST ROMA, 24 November 2021. Available at <http://www.errc.org/news/no-case-to-answer-slovak-authorities-dismiss-another-two-police-brutality-cases-against-roma>

¹⁴ <https://www.facebook.com/EuropeanRomaRightsCentre/photos/two-romani-men-from-lascov-were-taken-to-a-police-station-in-svidnik-slovakia-to/3994137717320921/>

slurs at the applicant. The ECtHR found that Slovakia had violated the right to life of the applicant, including the ineffective investigation of the incident, and thus violated Article 2 of the Convention in both substantive and procedural aspects. The ECtHR reproached the Slovak authorities that the investigation and its conclusions were in fact based solely on the statements and records submitted by the police officers involved and did not adequately deal with the contradictions that arose in the investigation.

20. In April 2021, the ECtHR issued a judgment in the first of the two *M.B. v Slovakia* cases (application no. 45322/17) in which Romani applicants (minors at the relevant time) alleged to be ill-treated by police in a police car after their arrest. The ECtHR found that Slovakia had violated the applicants' right to an effective investigation into the alleged ill-treatment, thus violated the procedural limb of Article 3 of the Convention. According to the ECtHR, it is an objective fact, well known to the law enforcement authorities including Slovak courts, that the alleged incident investigated into in this particular case fell into a bigger picture involving the incident (ill-treatment) that allegedly followed immediately afterwards at the police station. The police officer accused in the present case was also accused in the second criminal proceedings being conducted. The ECtHR thus found that Slovak courts should have assessed the conduct of the accused police officer in the broader context of the subsequent event and thoroughly investigate a possible racial motive.
21. Another case - *Lakatošová and Lakatoš v Slovakia* (application no. 655/16) concerned the failure of investigating authorities and courts to expose and deal with the potential racist motivation of the murder perpetrated by an off-duty police officer in Hurbanovo, Slovakia. In its judgment, the ECtHR found in favour of the applicants. In particular, the Court found that Slovakia had violated Article 14 of the European Convention on Human Rights taken in conjunction with Article 2 due to the above-mentioned failure to effectively examine racial motivation of the perpetrator. The ECtHR held, in particular, that "*the prosecuting authorities failed to examine a possible racist motive in the face of powerful racist indicators and in particular failed to give any reasons whatsoever whether the attack of 16 June 2012 had or had not been motivated by racial hatred. In the absence of any reaction by the courts to the limited scope of the investigation and prosecution, the adequacy of the action taken by the authorities dealing with the investigation and prosecution in this case was impaired to an extent that is irreconcilable with the State's obligation in this field to conduct vigorous investigations, having regard to the need to continuously reassert society's condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence*".
22. In the recent past, the ECtHR issued judgments in several other cases in which Romani applicants from Slovakia claimed to be victims of violations of their rights under Articles 2 or 3 of the Convention (*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). The ECtHR held that rights of the applicants in those cases were violated, although, it did not find violation of Article 14 of the Convention in them.

23. Currently, there are other cases challenging the ill-treatment of Roma by Slovak police. The second *M.B. v Slovakia* application (application no. 63962/19) was submitted by applicants who alleged to be ill-treated by police at the police station after their arrest (see para 15. above). In another pending case, *T.K. and Others v Slovakia* (application no. 57085/18) applicants claim that they were mistreated by police during police action that took place in a Roma community in Vrbnica on 02 April 2015. Similarly, the applicants in *Kováčová and Others v Slovakia* (application no. 31975/19) claim to be victims of ill-treatment in the course of a police operation on 16 April 2017 in a Roma community in Zborov. *Bystrý v Slovakia* (application no. 46293/22) is a case concerning alleged disproportionate and unnecessary use of coercive measures by police against two Romani men – father and his son.
24. According to the well-established ECtHR's case-law, domestic authorities have duty to take all reasonable steps to unmask any racist motivation and to establish whether ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights (see e.g. § 160 in *Nachova and Others v Bulgaria*, Grand Chamber judgment of 06 July 2005, Applications no. 43577/98 and 43579/98). Although, to prove racial motivation will often be extremely difficult in practice, the respective States' obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not an absolute one (see e.g. § 66 in *Šečić v Croatia*, judgment of 31 May 2007, Application no. 40116/02). However, the authorities must do what is reasonable in the circumstances of the case (see e.g. § 66, in *Fedorchenko and Lozenko v Ukraine*, judgment of 20 September 2012, Application no. 387/03). They shall collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may imply racially motivated violence (see e.g. § 69, in *Bekos and Koutropoulos v Greece*, judgment of 13 December 2005, Application no. 15250/02).
25. The submitting NGOs believe that Slovak authorities have been systematically failing to comply with their obligations to effectively investigate possible racial motivation of violent acts against Roma as required by Article 14 taken in conjunction with the procedural limb of Articles 2 or 3 of the Convention. As it is described in paras. 13-19 above, in recent years there have been plenty of ECtHR judgments issued and application filed in which the Romani applicants from Slovakia claimed to be victims of ill-treatment. It is apparent that authorities have not properly investigated racial motivation in any of them, even though Romani applicants reasonably claimed it in criminal proceedings.
26. Two of the submitting NGOs directly secure legal representation to Roma applicants claimed to be victims of ill-treatment in the proceedings pending at the ECtHR and while knowing details of criminal investigation in these cases they believe that authorities have not properly investigated racial motivation in any of them. They also currently secure legal representation to Roma claimed to be victims of ill-treatment in pending domestic criminal proceeding and observe ongoing reluctance of the authorities to properly investigate racial motivation in such cases. Most of those cases concern police violence against Roma.

27. The submitting organisations note that complaints of police misconduct in Slovakia were, at the time relevant to the events examined by the Court in the *R.R. and R.D. v Slovakia* judgment, investigated by the Control and Inspection Service Section of the Ministry of Interior, which was one of the departments of the Ministry. In 2019, this body has been renamed as the Office of Inspection Service. However, this was only a cosmetic change since there is no real difference can be seen in practice between how it functions now as compared to before. 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.
28. Naturally, there are serious concerns about the independence and impartiality of this body. Both the Office of Inspection Service and the Police Forces fall within the same branch of government under the Ministry of Interior. In some cases, the seat of the regional branch of the Office of Inspection Service is in the same building as the seat of the police. Investigations into the cases mentioned above have been significantly delayed, those claiming to be victims have often not been heard, and the evidence given by Roma claiming to be victims of police brutality have been given far less weight than that of the police officers they accused. In some cases, even the video evidence which was available was not deemed sufficient to punish the perpetrators. Even though, the Slovak Government may claim that the investigation carried out by the Office of Inspection Service is supervised by the prosecution, prosecutors cannot make up for these failings. See, e.g., *Kummer v the Czech Republic* (2013), § 87.
29. Furthermore, it is of utmost importance to note that investigation which does not effectively examine racial motive, where appropriate, is not only carried out in violation of Article 14 taken in conjunction with the procedural limb of Articles 2 or 3 of the Convention. It basically prevents the victims to successfully prove that the attack was indeed perpetrated on the basis of racial/ethnic hatred.
30. The ECtHR (as well as domestic courts in criminal cases) require an applicant alleging discrimination to demonstrate it “*beyond reasonable doubt*” (e.g. § 147, in *Nachova and others v Bulgaria*). However, vulnerable victims alleging racially motivated violence are particularly unlikely to discharge this burden of proof when they are also victims of a failure on the part of the authorities to investigate what happened to them. If the authorities fail to investigate the events effectively, it leaves the applicants unable to establish a violation of Article 14 taken with the substantive limb of Article 2 or 3 of the Convention. The existence of sufficient evidence in any particular case is completely out of the hands of the applicants.
31. This issue clearly constitutes a huge obstacle to the victims of discriminatory treatment in their access to justice. In the *R.R. and R.D. v Slovakia* judgment, the ECtHR examined among others, whether or not, racism was a causal factor in the planning of the police operation during which the Roma applicants suffered injuries. However, due to lack of any investigation in this regard, it had to state that: “*In these circumstances, and taking into account the material in its possession as well as the applicable standard of proof (see, mutatis mutandis, Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005 VII, with further references), the Court is unable to take a position on whether racist attitudes played a role in the planning of the operation of 19 June 2013.*”

32. In February 2022 - in response to the above mentioned judgments of the ECtHR against Slovakia including *R.R. and R.D. v Slovakia – Poradňa* addressed the Slovak Government a letter calling on the immediate adoption of effective measures to ensure independent and effective investigation of the alleged police ill-treatment including the investigation of the possible racial motive and systemic measures for the prevention of police violence as such. The Government ministries forwarded the letter to the Presidium of the Police Forces, which further forwarded it to the Office of the Inspection Service itself being responsible for investigation, which replied. It responded that in order to ensure the better independence and effectiveness of this body the Security Council of the Slovak Republic established a working group analysing the measures in this area and the process of reforming the Office of the Inspection Service is still in progress.¹⁵ The very fact that the written call was responded directly by to the current inspection body indicates that the Government might only consider making internal changes in functioning of the current inspection body, rather than fundamentally transform it into the new fully independent institution. Moreover, *Poradňa* found it concerning that the Government did not give the written call a direct attention and did not provide comprehensible information about adopted or planned measures to ensure effective investigation of police ill-treatment including possible racial motive as well as effectively prevent such cases.
33. In conclusion, we submit that the Slovak Government have not taken the measures necessary to comply with the judgment in *R.R. and R.D. v Slovakia* and to address the issues highlighted by the ECtHR.

IV. CONCLUDING REMARKS

34. For the reasons above, the submitting NGOs respectfully request the Committee of Ministers to continue examining the execution of the judgment in the *R.R. and R.D. v Slovakia* case under the enhanced procedure.
35. Further, considering the continuation of hate and discriminatory attitudes against Roma and the apparent difficulties of the Government to tackle relevant issues that have arisen in this judgment, as well as several others, we respectfully call on the Committee of Ministers to:
- Schedule the case for a next examination at the Committee's earliest convenience;
 - Call upon the Government to institutionally respond to hate speech, manifestations of racism and intolerance, threats and racially motivated violence by police against Romani communities;
 - Call upon the Government to establish an independent monitoring and oversight mechanism of complaints against the police misconduct that complies with the requirement of institutional independence in order to avoid conflict of interest in the investigation of complaints by peers;
 - Request the Government to take measures to effectively investigate hate

¹⁵ Written replies of the Office of the Inspection Service from 24 February 2022 and 25 May 2022 in response to the written call of *Poradňa* for the adoption of effective measures to strengthen independence and quality of investigation of the police officers, following the recent judgments of the ECtHR, 13 February 2022 (on file with *Poradňa*).

crimes against Roma in general including due examination of racial motivation, e.g. by appropriate and targeted education and methodological support;

- Request the Government to provide data about occurrence of hate crimes in Slovakia including disaggregated data about victims of such crimes and the success rate of prosecution in those cases;
- Request the Government to report whether there were any measures adopted to ensure racial motivation behind hate crimes is effectively investigated.

European Roma Rights Centre
Fórum pro lidská práva
Poradňa pre občianske a ľudské
práva

30 January 2023