

# WRITTEN COMMENTS

OF THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING SLOVAKIA

List of issues prior to reporting (LOIPR) for the International Covenant on Civil and Political Rights (CCPR) at its 139th Session (9 Oct 2023 - 03 Nov 2023)

CHALLENGING DISCRIMINATION PROMOTING EQUALITY

## TABLE OF CONTENTS

<b>Introduction</b>	<b>3</b>
<b>Romani Children in State Care</b>	<b>4</b>
<b>Policing</b>	<b>6</b>
<b>Access to Justice</b>	<b>7</b>
<b>Residential Segregation, Environmental Racism and Access to Water</b>	<b>9</b>
<b>Segregation and Discrimination in Education</b>	<b>11</b>

## INTRODUCTION

The European Roma Rights Centre (hereinafter also referred to as the “ERRC”) hereby submits its list of issues prior to reporting (LOIPR) for the 139<sup>th</sup> Session (09 Oct 2023 - 03 Nov 2023) of the CCPR - International Covenant on Civil and Political Rights. The list of issues concerns human rights of Roma that more generally relate to freedom from torture and other cruel, inhuman or degrading treatment or punishment; fair trial rights and access to justice; privacy, home and family life; and equality and non-discrimination. In particular, based on the ERRC’s strategic litigation, advocacy and research in Slovakia, this submission focuses on:

- Romani children in state care
- Police ill-treatment and harassment
- Lack of access to justice
- Residential segregation, environmental racism and access to clean water and sanitation
- Segregation and discrimination in education

# ROMANI CHILDREN IN STATE CARE

## SUMMARY

The overrepresentation of vulnerable children in care institutions has long been the source of profound official neglect. Very many at-risk Romani families do not have access to social supports and preventative measures remain scarce, often non-existent. As a consequence, underfunding combined with institutional discrimination results in removals of Romani children from their families being a first rather than final option for the authorities. Despite the declared lack of ethnically disaggregated data, ERRC's research over the past decade confirms that despite progress on deinstitutionalisation, hugely disproportionate numbers of Romani children still end up in state care institutions.

In Slovakia, where Roma account for 6-8% of the total population, an estimated 63% of children in state care were of Romani origin. A visiting delegation from the European Parliament to Slovakia reported a *“lack of implementation of the existing good strategies and the strikingly slow speed of the deinstitutionalisation process.”*

In its 2016 Concluding Observations on Slovakia, the UN CRC expressed concerns that the majority of children in institutional care were Roma, that very few were adopted, and alternative and foster care options were limited.

Based on the interviews carried out by ERRC researchers in 2020, the most common causes for removing children from their families included discrete incidents such as school truancy, a tragedy such as the death of a parent, and wider issues related to extreme poverty, lack of income, and precarious housing conditions in segregated settlements.

This concurs with the European Commission's 2020 Country Report which found that, despite the legal system prohibiting the placement of children into care on the grounds of poverty or deprivation, poor housing conditions are one of the most frequent reasons for removing Romani children from their biological families:

*“Child poverty, in particular among Roma communities, is a major reason for children being placed in the state foster care system. Formal long-term care continues to be dominated by residential facilities, and the process of deinstitutionalising care for persons with disabilities is proceeding slowly. There is a lack of financial resources and of a clear and integrated approach addressing the increasing demand for healthcare and social services in long-term care. Access to quality healthcare, in particular primary care, remains relatively poor and uneven.”*

The discrimination at play is a manifestation of deeply-rooted structural racism that reproduces and exacerbates inequality: the fact that 85% of Roma live below the poverty line places vast numbers of Romani children at risk. This official neglect renders family life in marginalised communities ever more vulnerable and precarious. This is especially the case in disadvantaged regions and racially segregated localities, where access to social and essential services is, as the European Commission phrased it, *“uneven and hampered by missing infrastructure.”* A subsequent visiting delegation from the European Parliament to Slovakia reported a *“lack of implementation of the existing good strategies and the strikingly slow speed of the deinstitutionalisation process.”*

The UN Committee on the Rights of Persons with Disabilities described progress of the deinstitutionalisation process as too slow and partial, called for it to be expedited and recommended that Slovakia stops the allocation of resources from the national budget into institutions and that it reallocates resources into community-based services.

## RECOMMENDATIONS

- Amend domestic legal standards to provide full and adequate protection to Romani children and families at risk of separation, to fully ensure that child removal on the basis of poverty or material concerns is prohibited in law and in practice, and ensure regular court review of administrative decisions to place children in state care. Close any legal loopholes that allow placement of Romani children in harmful institutions as a de facto ‘measure of first resort’.
- Revise national child protection policy to include Romani children and families as at particular risk of endangerment; review all national policies and programs to assess whether seemingly neutral provisions have a deleterious or discriminatory impact on Roma.

- Collect comparable annual data that is disaggregated by ethnicity, gender, disability, and other relevant factors in the areas of child protection, education, housing, employment, and health care, with appropriate measures to protect the personal data of children and families.
- Provide information about free legal support to families at risk of child removal, especially Romani families endangered by discrimination and social exclusion.
- Develop and adopt a detailed description of child endangerment and methodological guidance to facilitate objective and consistent assessment.
- Ensure regular and systematic monitoring and evaluation of both basic and the professional care services, including children's rights representatives, which takes account of the perceptions of families and children and their level of satisfaction with child protection services.
- Implement positive action programmes to facilitate the employment of Romani professionals in child protection services.
- Make anti-discrimination and multi-culturalism training an obligatory component of school curricula for child protection and social work professionals, and ensure care professionals meet consistent professional standards. Work with Romani organisations to deliver trainings on Romani language, history and culture with child protection workers and children in state care.
- Prioritise funding for basic child welfare services on a service provision basis to ensure an adequate level of preventative work and avoid the under-financing of the regions and city districts most in need.

## **RECOMMENDED QUESTIONS**

- Can the Slovak government outline how it intends to speed up the process of deinstitutionalization, and what concrete steps it has taken to reduce the number of Romani children in state care, increase the number of preventative social workers serving marginalized communities, and provide alternative community-based services?
- Following years of recommendations, can the Slovak government outline precisely what it has done/ or plans to do to bring local prevention services to marginalised neighbourhoods to support Romani families at risk of separation due to poverty?
- What steps has the Slovak government taken to ensure that adequate information and guidance is available to Romani families at risk of separation about their rights and duties, and ensure free legal aid is available for such families?

# POLICING

## SUMMARY

On 2 June 2022, the Slovak Government reached a friendly settlement agreement with eight Romani men who were brutalised by police officers in 2013 during a notorious mass police raid on a Romani community in Moldava nad Bodvou. The ERRC has represented victims since 2013, and ERRC Operations Director Marek Balaz provided a succinct summary of how the case unfolded over a decade:

*“The real story is one of a completely botched internal investigation of the raid; scapegoating of the victims by prominent politicians; deliberate obstruction of the Ombudsperson’s investigation; blocking victim testimonies at the parliament; and finally adding insult to grievous injury, by charging some of the victims with perjury. These are some of the essential ingredients of a case where the combination of corruption, lies and racist malice beggar belief.”*

The Moldava case is emblematic of a wider malaise, and as ERRC’s 2022 report on policing Roma in the EU highlighted, law enforcement in Slovakia is institutionally racist, antigypsyism is clearly evident in the ways Romani communities are policed, and there is a culture of impunity within law enforcement when it comes to mistreatment of Roma. UNCERD expressed ‘serious concerns’ in 2018, at the numerous reports of excessive use of force, verbal and physical abuse against Roma, and the violent police raids on Roma settlements, often carried out without arrest or search warrants, which left many Roma injured. As for follow-up, the Committee noted with great concern that the majority of these reports are, either not duly investigated or when investigations have been initiated, they have been suspended, and most complaints against law enforcement officers have been dismissed.

In its 2020 report on Slovakia, ECRI noted 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. In addition, ECRI noted that *“the intervention of the police and army during the Covid 19 pandemic caused a lot of fears of stigmatisation among the Roma.”*

## RECOMMENDATIONS

- Authorities at national level must 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, while ensuring that the principle of presumption of innocence is observed;
- Prosecute persons suspected of having committed torture or ill-treatment 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. Victims who register complaints must be protected from intimidation and reprisal actions by police officers;
- Ensure that offences motivated by discrimination constitute an aggravating circumstance in criminal prosecution;
- Establish an independent monitoring and oversight mechanism that complies with the requirement of institutional independence in order to avoid conflict of interest in the investigation of complaints by peers.

## RECOMMENDED QUESTIONS

- In view of the concerns expressed by UN and Council of Europe bodies in recent years about the substantial number of complaints related to police violence against Roma, what concrete steps has the government taken to ensure that prompt, impartial and effective investigations will take place into all allegations of excessive violence, torture and ill-treatment by law enforcement officials?
- What steps has the government taken to reduce the frequency and severity of violent police responses, ethnic profiling of Roma, and large-scale raids targeting entire Romani neighbourhoods?

# ACCESS TO JUSTICE

## SUMMARY

Research by ERRC conducted in partnership with Fair Trials showed how, beyond police brutality, Roma experience racial bias at every stage of criminal proceedings, which leads to skewed decisions and unjust outcomes. This abject failure of the criminal justice system is rooted in antigypsyism. Below are some key findings from the research:

- Police officers interviewed estimated that Roma accounted for between 30% and 80% of those arrested within their precincts. Though 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 downplayed or denied 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.”*
- Judges and prosecutors did however acknowledge that Roma were disadvantaged by a “lack of understanding of the criminal justice system.” Rather than admit prejudice, they spoke of ‘communication challenges’ and ‘failures to understand societal norms’ by Roma.
- One prosecutor identified systemic failures to make appropriate procedural accommodations, they 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 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.

## RECOMMENDATIONS

- The government must provide prompt and effective remedies for victims of discrimination in law and in practice. Procedures for the initiation of complaints should be simple and flexible and expeditiously handled. Dissemination of information concerning the availability of remedies, including recourse procedures, should be widespread, and victims should be provided with legal assistance to pursue remedies.
- Decriminalise acts that cause no social harm, provide alternatives to custodial sentences, ensure fining practices are sensitive to individual circumstances, and reduce pre-trial detention through objective, individualised assessment of risks, free from socio-economic and racial bias, and through greater promotion of non-custodial alternatives.
- The targeted over-policing of Romani communities – which amounts to racial harassment and includes practices of imposing fines for petty offences must cease. Criminal law responses to the committing of petty offences that are often a symptom of poverty, serve no purpose beyond further aggravating social exclusion.
- Where criminal sanctions are appropriate or necessary, fining policies and practices should be sensitive to individual circumstances, and there should be alternative, non-custodial sanctions for those who cannot afford to pay.
- Training for all those involved in the administration of justice, including law enforcement officers, the judiciary, and prosecutors, should focus not on ‘unconscious bias’, but rather on officials’ obligations under national and international law to discharge their responsibilities in a non-racist and human rights compliant fashion. Training should be reinforced by the incorporation of international human rights standards into the working rules, regulations, and procedures of the criminal justice system.
- The government should adopt ECRI’s General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, which asserts that racial profiling constitutes a specific form of racial discrimination and must be expressly prohibited by law.

## RECOMMENDED QUESTIONS

- What concrete steps have been taken in response to ECRI's 2020 recommendations that the Slovak authorities (i) substantially reinforce the independence of the Police Force Inspectorate or task another body, which is independent of the police and the prosecution service and allocated adequate resources, with investigating allegations of bias motivated discrimination, misconduct and violence by the police?
- In light of the concerns expressed and recommendations made by UN, EU and CoE bodies, what have the authorities done to ensure all professionals involved in the administration of justice are fully aware, and capable of, discharging their responsibilities in a non-racist and rights-compliant manner, that fully aligns with international human rights standards?



# RESIDENTIAL SEGREGATION, ENVIRONMENTAL RACISM AND ACCESS TO WATER

## SUMMARY

In Slovakia, housing policy has long been characterized by mass forced evictions and the erection of walls separating Roma from non-Roma. Surveys have confirmed that increasing numbers of Roma in Slovakia live in poor and segregated settlements in substandard housing, unprotected from environmental hazards that include toxic industrial waste, rubbish tips, seasonal flooding, and the intermingling of waste and drinking water.

According to the Slovak Anti-Poverty Network “housing and the protection of the right to housing is the weakest component of public policies”. There is an acute shortage of affordable accommodation; just 2.7% of dwellings are publicly owned (EU average 18%). In 2015, Commissioner for Human Rights at the Council of Europe, Nils Muižnieks noted that partly as a result of lack of tenure, many Roma in Slovakia live with the threat of forced eviction and that although there are several state mechanisms allowing for the construction of flats for marginalised communities, housing interventions remain limited, with many municipalities reluctant to use existing resources to promote inclusion.

While the Commissioner acknowledged the potential presented by the new allocation of powers in helping to adapt services to local specificities and individual needs, concerns were raised that that decentralisation has not been accompanied by an adequate transfer of human rights expertise. Significant disparities, and in some cases resistance, were noted in the level of protection of human rights across regions and municipalities. This remains a concern.

In 2018, UNCERD echoed these concerns about living conditions in settlements where the basic facilities such as sanitation, drinking water, electricity, sewage systems and waste disposal are lacking. CERD called for explicit prohibitions against the construction of walls that separate Roma and non-Roma communities, and to hold accountable local authorities that encourage or adopt segregation policies. Slovakia was urged to intensify efforts to provide security of tenure to Roma communities in order to prevent forced evictions. Where evictions cannot be avoided, the state was called upon to ensure that the families and individuals affected are provided with alternative adequate housing and compensation.

The 2020 report, *The social and employment situation of Roma Communities*, data from the 2019 update of the Atlas of Roma Communities reveals that:

- **48% of all settlements (498) are located on the outskirts of a municipality, 34% inside a municipality (351 settlements) and 18% are outside of a municipality or are remote (194 settlements);** there is no road or walkway leading to 17 of these settlements.
- A common problem in these settlements is access to **drinking water**. In **13% of the settlements**, more than 50% of the population gets water from a public tap on the street, and in **5% of the settlements (56 settlements)**, **more than 50% of the population of the settlement uses non-standard water sources such as a river or puddles.**
- There is also a problematic situation in connection with the **sewer system** and treatment of sewage. In **44% of settlements (463 settlements)**, **more than 50% of the population of the settlement does not use any sewage system, septic tank, or treatment mechanism and the sewage is freely discharged.**
- The **electrical grid** is accessible to more than 50% of the population in 97% of the settlements. Based on the data from the Atlas of Roma communities, it is possible to conclude that there are still 67 settlements where the connection on the electrical grid is used by less than 10% of the population of the settlement and **53 settlements, where the connection to the electrical grid does not exist.**
- Gas (or green sources) as a source of heat is virtually not used; in case of 83% of the settlements (872), more than 50% of the population uses solid fuel for heating. Waste management is also a problem; 38% of the settlements have no solid waste landfill in their vicinity.
- A major problem is the **ownership of the land** under the individual settlements and the ownership of the individual dwellings. Difficulties with the land ownership is also one of the basic obstacles in the implementation of investment projects in the municipalities. Based on the information from the Atlas

of Roma communities, **approximately two thirds of the people living in Roma settlements** (about 170 000 people) **live in houses or apartments with a conscription number**, therefore it is possible to conclude that these are legal buildings. Even though these may be legal dwellings, ownership of these dwellings may not be resolved, or quality of the dwellings may be substandard.

In short, despite numerous recommendations over the past decade and more, and the availability of considerable amounts of EU funding, little or no discernible progress has been made with regards to the living conditions of marginalised Romani communities.

## RECOMMENDATIONS

- Resolve urgent issues of land ownership arising from the transition to a market economy and decentralised governance;
- End forced evictions of Roma and ensure that evictions are a means of last resort; which are carried out in accordance with both national and international obligations, including provision of alternative accommodation;
- Adopt or amend appropriate national legislation to ensure sufficient procedural safeguards according to the international law obligations when it comes to evictions; to ensure that social or alternative housing meets acceptable standards for human habitation;
- Ensure that Roma in segregated localities have access to safe, clean drinking water; adopt law explicitly recognizing the human right to water and sanitation and ensure that all people in Slovakia enjoy the access to safe drinking water and sanitation; adopt policies and allocate budgets for connecting Roma settlements to public drinking water and sewage systems; make sure that quality of all alternative water resources, which serve as a drinking water supply, is periodically checked and the quality of water is guaranteed.

## RECOMMENDED QUESTIONS

- What, if any, concrete steps are planned by the authorities to meet the UN Sustainable Development goals by 2030 for marginalised Romani populations in particular, and with specific reference to SDGs 1, 4, 6, 7, 10 and 17?
- What progress has been made in improving access to clean water and sanitation, and electricity for marginalised Romani populations identified in the 2019 Atlas of Roma Communities; and what specific targets have the authorities set, and what resources have been earmarked to resolve these issues by 2030?
- What steps have been taken, or are planned to address the concerns expressed by Commissioner Muižnieks in 2015 about the fact that decentralisation was not accompanied by an adequate transfer of human rights expertise, and that significant disparities, and in some cases resistance, were noted in the level of protection of human rights across regions and municipalities?

# SEGREGATION AND DISCRIMINATION IN EDUCATION

## SUMMARY

The ERRC has, in collaboration with its local partners, campaigned and litigated to end school segregation and promote equal access to quality integrated education for Romani children in Slovakia for two decades.

**In April 2015, the European Commission** launched infringement proceedings against the Slovak Republic regarding discrimination, segregation and access to education for Romani children.

**In 2017, the ERRC and Amnesty International** produced a report reviewing recent legislative changes intended to tackle the erroneous placement of Romani children in special schools and classes for children with “mild mental disabilities” and examined broader structural factors driving segregation and discrimination across the education system. The research found that the legislative changes adopted in 2015 had minimal impact on the discrimination Romani children faced in education. As the report stated, Romani children are continuously confronted with other obstacles to realizing their right to education, such as racism, prejudice, stigmatization and lack of expectations from educational staff, observed in all locations studied for the report.

**In 2018, Commissioner Muižnieks** called on the Slovak authorities to start addressing the continuing segregation of Roma children and children with disabilities in education in a more comprehensive manner. Noting that little meaningful progress has been achieved in this field since his visit in June 2015, the Commissioner stressed that “measures to tackle school segregation cannot be ad hoc, piecemeal and temporary” and that current efforts were not commensurate to the inclusion challenges facing the country.

**In 2020, the EU-commissioned report, *The social and employment situation of Roma Communities*,** found that at the primary school level, Roma children encounter school segregation and discriminatory practices, extensive and unjustified enrolment in ethnically segregated special schools and classes. Schools are not adequately equipped to provide inclusive education due to a lack of professional pedagogical personnel (e.g. special education teachers) and pedagogical assistants. Another contributing factor is the low quality of professional preparation of teachers to enable them to create a safe and friendly school environment and develop school-parent cooperation in the context of the education of children and students from disadvantaged backgrounds.

Only one third of Roma children between the age of four (and the beginning of compulsory education at the primary level) attend pre-school facilities in Slovakia. Plans to introduce compulsory pre-school education for 5-year-old children did not address the low quality of teaching, shortage of professional pedagogical personnel, or other supportive measures that would foster regular attendance. At the national level, there are no systematic public early childhood education and care programs targeting children aged 0-3, and fostering parenting competences.

**In March 2023, ECRI** published **conclusions** following up on its Sixth Round of Monitoring in Slovakia. Despite steps taken by the government to desegregate schools, amend the ‘School Act’ legislation, and increase pre-school education for Romani children, ECRI concluded that its recommendations to desegregate had “*overall been only partially implemented.*”

**On 19 April 2023, the European Commission** decided to refer Slovakia to the **Court of Justice of the European Union** for failing to effectively tackle the issue of segregation of Roma children in education. In its statement the Commission said that after carefully assessing the legislative reforms, strategies and action plans adopted to foster Roma inclusion in education, and monitoring the situation on the ground, the Commission concluded that “the reforms undertaken so far are insufficient.”

## RECOMMENDATION

- There are over a decade’s worth of recommendations from expert bodies of educators and advocates in Slovakia, international Roma rights and human rights organisations, the Council of Europe, the European Commission and UN bodies such as CERD, CRC and UNICEF. It would be redundant to repeat them here. In light of the European Commission’s latest action, the authorities should, as a matter of urgency, draw upon this wealth of research and expertise to devise a comprehensive, time-bound and fully-costed action plan to finally and fully eradicate segregation and all forms of anti-Roma discrimination in education.

### RECOMMENDED QUESTION

- In light of the decision taken by the European Commission to refer Slovakia to the Court of Justice of the European Union for failing to tackle the issue of segregation of Romani children in education, could the state authorities outline how they intend to address these failures, by way of response to the Commission and the Court?