

**4 June 2013**

Michael GUET  
Secretary of the CAHROM / Secrétaire du CAHROM  
Support Team of the Special Representative of  
the Secretary General for Roma Issues /  
Equipe d'appui du Représentant Spécial du Secrétaire Général  
sur les questions roms Council of Europe / Conseil de l'Europe  
Agora Building - Office B6.46.C  
F-67075 Strasbourg cedex, France

**OPEN LETTER ON THE OCCASION OF THE HURBANOVO MASSACRE REMEMBRANCE**

Dear Mr Guet

On 16 June 2012 three members of the Roma minority were violently murdered and two others were seriously injured by an off-duty policeman. The 51-year-old municipal police officer shot dead a 44-year-old man, his son (19) and son-in-law (24). The offender was found guilty of the serious crime of premeditated murder, partly attempted and partly completed, and sentenced to nine years imprisonment. The court simultaneously imposed three years of protective psychiatric supervision.

One year after the murder, the European Roma Rights Centre and the Roma Parliament in Slovakia are calling attention to serious problems with the criminal proceedings.

We are convinced that the criminal proceedings leading to the judgment contained several serious errors which led to an inconsistent and ineffective investigation, and therefore a judgment which essentially contradicts several provisions of the Penal Code, Constitution of the Slovak Republic, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The failures can be summarised into four general categories.

Racial motivation was not taken into account. Despite a number of testimonies by the offender stating his calling to 'solve the Roma problem', the court irrationally declared that a racial motivation was absent.

One of the other most serious failures is linked with the expert opinion on the mental health of the convicted murderer, Milan Juhasz. The legal representative of the Romani families criticised the expert opinion as it contains inconsistent, inaccurate and contradictory arguments, and conflicting opinions. It is crucial to emphasise that based on this expert opinion, the court applied an extraordinary measure available in criminal proceedings, by choosing to apply an exceptional reduction of the custodial penalty. Under this provision, the offender was given a penalty of nine years, which is significantly lower than the minimal penalty of 25 years specified in the Penal Code.

We furthermore consider the fact that the court did not deal with additional evidence to represent another eminent error. The quality and adequacy of the expert opinion was called into question throughout the whole criminal proceedings and the legal representative for the family submitted a request to commission an alternative auditing expert opinion. The court however omitted entirely to deal with the request, and thus it failed procedurally to decide on the request. By not making a decision on whether to accept or reject the commission of the audit of the expert opinions, the court was unable to review it and it also removed the possibility (if the audit had been rejected) to request the senate to decide on the additional evidence supply. This action has subsequent effects on the insufficient investigation of the facts of the case.

Finally, the court did not allow various sets of questions from the family of the victim during the examination of witnesses, which would have helped to establish the circumstances of the case. The European Court of Human Rights pointed out in this regard that the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests. There is hardly any doubt that in this case the legitimate interests to be involved in the fair and adequate investigation into the right to life and effective penalty for the offender existed.

We believe that, based on the circumstances above, the investigation into the violation of the right to life was in this case clearly ineffective. In this regard, it is important to point out the role of the Prosecutor's office in the system of the law protection as the 'guardian and securer of lawfulness (legality)'. Despite all the objected circumstances of the case and the exceptionally low custodial penalty, the responsible prosecutor gave up his right to appeal, and thus the last instance to legally contest the judgement of the Special Criminal Court, the branch in Banská Bystrica. This prosecutor's omission can be considered as an absolute resignation to perform its obligations as well as a failure in securing the interests of the state.

The aggrieved family, represented by their attorney, appealed the decision and filed a Constitutional complaint. However, the Slovak legislature does not provide for the aggrieved party to file an appeal against the holding of the decision on custodial penalty, which means the decision was impossible to legally appeal by the aggrieved party. The only other remaining legal instrument which the Slovak state provides to the aggrieved party is a motion to the Ministry of Justice to file an extraordinary appeal [dovolanie]. However, the Ministry of Justice is not obliged to comply with such a motion.

As we believe that the resignation of the responsible bodies of criminal proceedings' and court's authorities on their obligation brought about serious violations of human rights and fundamental freedoms, we would like to ask you to take a stand in this situation.

Simultaneously, we would like to invite you to attend the reverent remembrance event dedicated to the victims of the Hurbanovo massacre, which will take place on 16 June, at 13:00 in the town of Hurbanovo, Komárňanská street 3/5. We invite you to express this way your opinion, that you are not indifferent to the victims' death and suffering and that you honour rights and freedoms of all the citizens regardless their ethnic background.

Sincerely,

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Director of the Slovak Roma Parliament  
PhDr. Ladislav Fízik, PhD.

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European Roma Rights Centre  
Dezideriu Gergely