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## REPORT

**by Thomas Hammarberg**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Slovakia  
from 26 to 27 September 2011

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## **Summary**

Commissioner Thomas Hammarberg and his delegation visited Slovakia from 26 to 27 September 2011. In the course of this visit the Commissioner held discussions with representatives of the Slovak authorities and institutions as well as with members of civil society. The present report focuses on the following selected human rights issues:

### **I. Protection of the human rights of Roma**

#### **General policy and action for promoting and protecting the human rights of Roma**

In line with the commitments expressed in the 2010 Strasbourg Declaration on Roma, policies aimed at Roma inclusion must constitute political priorities. The focus currently placed in Slovakia on combating social exclusion generally is an important tool to this end. However, the Roma inclusion agenda should not be limited to or identified with combating social exclusion generally. In particular, dimensions of Roma disadvantage linked to anti-Gypsyism and discrimination should be at the heart of Slovakia's Roma inclusion agenda. In this connection, it is particularly important that the anti-discrimination framework in place include an independent and adequately resourced equality body entrusted notably with assisting the implementation of antidiscrimination legislation. The Commissioner welcomes that the *Medium-Term Concept of the Development of the Roma National Minority* for the period 2008-2013 provides for a set of measures to improve the situation of Roma in a number of important interconnected areas. To ensure that progress in its implementation can be assessed, the collection of the necessary disaggregated data is key. The involvement of local authorities in promoting the inclusion of Roma remains a crucial challenge for the Slovak authorities to meet. An improvement of the system for monitoring the use of public funds for Roma inclusion by local authorities would be an important step in that direction.

#### **Anti-Gypsyism in public and political discourse**

The Commissioner stresses that measures for the inclusion of Roma cannot be successful without a genuine commitment to putting an end to anti-Gypsyism. However, racist and notably anti-Roma discourse, sometimes of a distinctively aggressive nature, is still common among mainstream politicians in Slovakia. Anti-Gypsyism also often surfaces in the broadcasting and print media. The Slovak authorities are therefore called upon to take measures against these phenomena, including by promoting self-regulation within political parties and the media. Further measures include a thorough implementation of the relevant criminal provisions and the ratification by Slovakia of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. Efforts to promote knowledge of Roma culture and history among the general public should be intensified. A meaningful contribution to this endeavour would be a wide dissemination and use, notably in schools, of the Council of Europe's *Factsheets on Roma History*.

#### **Violent hate crimes**

Instances of violent hate crimes targeting ethnic minorities, including Roma, continue to be reported. The Commissioner stresses the importance of ensuring that such cases are effectively investigated in accordance with the case law of the European Court of Human Rights (the Strasbourg Court) and that the perpetrators of such crimes are prosecuted to the fullest extent of the law. To this end, shortcomings in the implementation of the criminal law provisions against racially motivated violence, notably those establishing racial motivation as an aggravating circumstance in respect of all crimes, should be addressed using the extensive guidance provided by the Council of Europe in this area. The system for collecting data on racist incidents and offences and the state response to such incidents could also be complemented by the introduction of a more flexible and victim-friendly reporting system.

#### **Misconduct of law enforcement officers**

In spite of initiatives taken by the Slovak authorities to tackle misconduct of law enforcement officers targeting Roma, instances of this type of misconduct continue to be reported. Efforts underway must therefore be sustained and extended. In accordance with the case law of the Strasbourg Court, the Slovak

authorities must ensure that when there are indications of the existence of racist motives behind the conduct of law enforcement officials, an effective investigation takes place on this aspect and any officials found responsible are adequately punished. The establishment of a body, independent of the police and prosecution authorities, entrusted with the investigation of, *inter alia*, alleged cases of racial discrimination and racially-motivated misconduct by the police, is another important measure that should be considered by the Slovak authorities.

### **Segregation in the education system**

The Commissioner is concerned that many Roma children in Slovakia continue to receive education of lower quality than their non-Roma peers due to policies and practices resulting in segregation, whether in the form of the disproportionate placement of Roma children in special schools for children with mild mental disabilities or through the assignment of Roma children to Roma-only mainstream schools or classes. In spite of commitments made by the authorities against segregation and some legal initiatives to the same end, more determined steps are needed to counter this phenomenon. These steps must rest on an unequivocal public acknowledgment of eliminating segregation as a priority task, for which the state bears the primary responsibility, in co-operation with all stakeholders, including local authorities, schools and parents, both Roma and non-Roma. The Slovak authorities are called upon to make clear advances in the establishment of inclusive, de-segregated education, notably by setting clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. The focus should be on special measures to support Roma children and their parents during the transition process. It is also important that the legal and institutional framework in place is geared towards enforcing de-segregation in practice.

### **Right to adequate housing**

The enjoyment of the right to adequate housing by many Roma in Slovakia is currently hampered by a number of interconnected problems, including sub-standard material conditions, segregation, lack of security of tenure and difficulties accessing social housing, with discrimination underpinning all these aspects. It is particularly urgent to tackle segregation – in thorough consultation with the persons involved -- by investing in the development of safe and affordable housing solutions for Roma in integrated communities and by avoiding housing programmes and practices that currently result in segregation. The building of walls separating Roma from non-Roma areas should be countered. In the short term, improvements in the material conditions prevailing in many Roma settlements are urgent, including ensuring access to potable water, electricity, sewage and waste removal as well as transportation and road provisions. It is also necessary to make progress on the front of resolving the status of informal settlements. Forced evictions should in principle be avoided. When this is not possible, they should take place in full compliance with international standards, which include adequate alternative accommodation, due process and legal remedies, compensation and protection from homelessness.

### **Sterilisation of women without their full and informed consent**

Progress remains to be made in Slovakia in dealing with past practices and with cases of sterilisation of Roma women without their full and informed consent. Effective investigations into all such allegations and adequate punishment of those responsible must be ensured. Adequate reparation for these violations should also be secured. This includes both a public acknowledgment and expression of regret over forced sterilisations and compensation proportional to the gravity of the violations and the harm suffered by the women concerned. While some welcome progress has been made on the front of preventing the reoccurrence of forced sterilisation, notably through the introduction of a requirement of free and informed consent for sterilisations to be performed, the Commissioner invites the authorities to take measures to ensure that this requirement is adequately and uniformly understood by practitioners.

### **Placement of children in state care institutions**

The Commissioner is concerned at the reportedly disproportionate representation of Roma children among children placed in institutional care in Slovakia. In accordance with the case law of the Strasbourg Court, the Commissioner calls on the Slovak authorities to ensure that no child is placed in institutional care solely on grounds relating to the poor housing conditions or financial situation of his or her family. In

line with international standards, priority should be given to supporting and fostering the development of the child within the family, while the institutionalisation of children, including Roma children, should remain the exception.

## **II. Protection of the human rights of persons with disability**

### **The framework for the protection of the human rights of persons with disabilities**

The ratification by Slovakia of the UN Convention on the Rights of Persons with Disabilities (CRPD) in May 2010 is a welcome step towards ensuring the respect of these rights in Slovakia. The Commissioner calls on the Slovak authorities to adopt a strategy for the protection of the human rights of persons with disabilities, which should be instrumental to the implementation of the CRPD at domestic level and draw extensively on the Council of Europe Disability Action Plan 2006-2015. In order to ensure the implementation of this strategy the Slovak authorities are urged to establish an independent mechanism to promote and monitor the implementation of the rights of persons with disabilities and a government focal point or co-ordination mechanism for these matters, as required by the CRPD.

### **The right to live independently and be included in the community**

Many persons with disabilities in Slovakia live in large institutions separated from the rest of society. Although there has been some improvement in the availability of community-based services to help these persons to reside in living arrangements of their choice, the Commissioner considers that the Slovak authorities must make further progress in the field of securing the enjoyment by people with disabilities of their right to live independently and be included in the community. To this end, the authorities should adopt a comprehensive action plan on de-institutionalisation in close consultation with the representatives of persons with disabilities. The action plan should contain credible timetables for the progressive decrease of new admissions to large institutions and for the parallel establishment of community-based alternatives.

### **The right to inclusive education**

Most children with intellectual disabilities in Slovakia are currently educated in special schools. The Commissioner calls on the Slovak authorities to make concrete advances in meeting their obligation to provide these children with inclusive education in mainstream schools. In addition to the adoption of an action plan on inclusive education, the Slovak authorities should consider changes to the existing legal and regulatory framework that would facilitate the enforcement of inclusive education in practice, notably by developing the obligations on schools to reasonably accommodate children with special educational needs.

### **The right to make decisions**

People with psycho-social or intellectual disabilities in Slovakia can be totally or partially deprived of their legal capacity and placed under guardianship. Deprivation and restriction of legal capacity lead to an automatic presumption of incompetence in, *inter alia*: family matters; consenting to medical treatment; contractual matters; and political participation, including the exercise of the right to vote. The Commissioner calls on the Slovak authorities to ensure that any interference with a person's legal capacity is in full compliance with international standards. In particular, he encourages the Slovak authorities to establish a system of supported decision-making for persons with psycho-social or intellectual disabilities who need assistance to this end.

## Introduction

1. The present Report is based on a visit to Slovakia by the Council of Europe Commissioner for Human Rights (the Commissioner) from 26 to 27 September 2011.<sup>1</sup> The aim of the visit was to review certain human rights issues in Slovakia focusing in particular on the protection of the human rights of Roma and persons with disabilities.
2. In the course of the visit, the Commissioner held discussions with representatives of the national authorities, including the Minister of Foreign Affairs, Mr Mikuláš Dzurinda, the Deputy Prime Minister for Human Rights and National Minorities, Mr Rudolf Chmel and the State Secretary of the Ministry of Labour, Social Affairs and Family, Ms Lucia Nicholsonová. He also met with the Office of the Plenipotentiary of the Slovak Government for Roma Communities and members of the Slovak delegation to the Parliamentary Assembly of the Council of Europe, as well as with the Public Defender of Rights, Mr Pavel Kandráč, and the Slovak National Centre for Human Rights. Commissioner Hammarberg also held discussions with a number of non-governmental organisations active in the field of protecting the human rights of Roma and persons with disabilities. He furthermore travelled to Plavecký Štvrtok, where he visited the local Roma settlement and nearby school, and met with the Mayor.
3. The Commissioner wishes to thank the Slovak authorities in both Strasbourg and Bratislava for their precious assistance in organising the visit and facilitating its independent and smooth execution. He wishes to thank all of his interlocutors, from the national authorities, civil society and the communities he visited, for their willingness to share their knowledge and insights with him.
4. The Commissioner considers that the treatment afforded by member states to minority groups such as Roma and persons with disabilities constitutes a litmus test regarding the effective observance of Council of Europe human rights standards by member states. This is also true for Slovakia, where the situation of these persons currently poses some of the most pressing human rights challenges the country has to face.
5. In the present Report, the Commissioner focuses on the following major issues concerning the protection of the human rights of Roma: general policy and action for promoting and protecting the human rights of Roma (Section I. 1.); anti-Gypsyism in public and political discourse (Section I. 2.); violent hate crimes (Section I. 3.); misconduct of law enforcement officers (Section I. 4.); segregation in the education system (Section I. 5.); right to adequate housing (Section I. 6.); sterilisation of women without their full and informed consent (Section I. 7.); and placement of children in state care institutions (section I. 8.). With regard to the protection of the human rights of persons with disabilities, the present report focuses on: the framework for the protection of the human rights of persons with disabilities (Section II. 1.); the right to live independently and be included in the community (Section II. 2.); the right to inclusive education (Section II. 3.); and the right to make decisions (Section II. 4.).

### I. Protection of the human rights of Roma

#### **1. General policy and action for promoting and protecting the human rights of Roma**

6. Although only approximately 89 000 persons identified themselves as Roma in the 2001 census (the last for which results are available), the Roma population of Slovakia is estimated at around 500 000 persons, or 9% of the total population. Many of the members of this community remain caught in a spiral of exclusion and discrimination that affects their daily lives across a range of areas, from housing to education, employment and personal safety to name just a few.
7. In the subsections below, the Commissioner focuses on a number of these areas, which he believes the Slovak authorities should address as priorities. Here, he wishes to address some more general issues concerning the protection and promotion of the human rights of Roma in Slovakia.

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<sup>1</sup> During his visit, the Commissioner was accompanied by his advisers, Ms Erliha Bičakčić and Mr Giancarlo Cardinale.

8. The Commissioner welcomes the commitment expressed by the Slovak authorities to promoting Roma inclusion, which is also reflected in a number of strategies adopted to this end. The most recent overall strategy covering the period 2008-2013<sup>2</sup> for instance, provides for a set of measures in important interconnected areas, including education, health, employment and housing, awareness raising among the general public about Roma, media portrayal and tackling poverty and social exclusion.
9. Roma inclusion is also supported by an institutional framework comprising: a government Plenipotentiary for Roma Communities, which advises the government on issues of relevance for the situation of the Roma communities and assists with the implementation of policies in this field; and, since its establishment in March 2011, the Council for Human Rights, National Minorities and Gender Equality, which provides forums for dialogue between national minorities and the national authorities. The Deputy Prime Minister for Human Rights and Minorities, Mr Rudolph Chmel, who also chairs the above-mentioned Council, has shared with the Commissioner his willingness to see advances in the human rights situation of minorities, including Roma, in Slovakia.
10. As is the case in many countries where strategies and institutional frameworks for Roma inclusion are in place, however, it is difficult to assess the extent to which progress on the ground has been made in Slovakia. In this respect, the Commissioner believes that the lack of statistical data broken down by relevant grounds, such as ethnic origin, limits the possibility of having a solid foundation for monitoring concrete outcomes brought about by Roma inclusion initiatives.
11. In commenting on progress achieved on the front of Roma inclusion, most interlocutors have underlined the crucial role of local authorities and drawn up a mixed picture, with some municipalities taking an active role and others taking no role or even working against the social inclusion of this part of the population. For instance, during his visit to Plavecký Štvrtok, the Commissioner noted the clear perception prevailing among the members of the local Roma community that the Municipality was distinctively uninterested in promoting their inclusion. Another related issue frequently raised at meetings with the Commissioner is the use of public funds for Roma inclusion, which include a notable component of EU funds. Thus, although € 200 million were allocated for Roma inclusion projects over the period 2007-2013, the extent to which the funds have actually been used to help excluded Roma communities out of marginalisation is unclear.
12. The Commissioner notes that currently, a strategic priority of the Slovak authorities in the field of tackling the disadvantaged position of Roma is the preparation of legislation on socially excluded communities. The Commissioner understands that the law aims at providing support to socially excluded communities, which will be determined -- in terms as geographically precise as possible -- on the basis of demographic, socio-economic and educational factors only, i.e. without consideration being given to ethnic background. The law will support inclusion through the establishment of community centres and social work and will introduce changes in a number of areas, including education, employment, housing, healthcare and the environment. The authorities have also explained that one of the aims of the law is to motivate people to work, by providing greater support to those socially excluded persons that show commitment towards inclusion. As clearly explained to the Commissioner by the State Secretary of the Ministry of Labour, Social Affairs and Family, Ms Lucia Nicholsonová, who is responsible for the preparation of this legislation, the ambition of the law is not to solve all the problems that currently result in the marginalisation of Roma. Therefore, in order to address these problems effectively, action in fields not strictly connected with poverty and exclusion will remain necessary.
13. In the view of civil society organisations however, the law on socially excluded communities increasingly appear to be the key government policy to tackle Roma marginalisation. These organisations are concerned that as a result, aspects of Roma disadvantage that are not immediately linked to poverty and exclusion are falling out of public policy focus. It has also been pointed out that although Roma make up the vast majority of the communities that will be concerned by the new law, they are increasingly less seen as relevant partners, due to the exclusive reliance of the law on demographic and socio-economic criteria. Finally, concern has been expressed that the approach

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<sup>2</sup> Medium-Term Concept of the Development of the Roma National Minority in the Slovak Republic SOLIDARITY-INTEGRITY-INCLUSION 2008-2013, available at <http://romovia.vlada.gov.sk/1799/vladne-materialy.php>

consisting in providing greater support to those socially excluded persons that show commitment towards inclusion might result in the poorest and most marginalised being definitively left behind.

14. Certainly, the fight against anti-Gypsyism and discrimination must, in the Commissioner's view, remain central in the priorities of the Slovak authorities' strategy to tackle the disadvantaged position of Roma. In this respect, the Commissioner welcomes the fact that an Anti-Discrimination Act was adopted already in 2004, prohibiting discrimination based on inter alia, race, national or ethnic origin, colour and language and covering employment, social security, healthcare, the provision of goods and services and education.<sup>3</sup> However, the Commissioner also notes that the Act is reported to remain largely under-implemented, notably due to: a somewhat limited knowledge about the Act itself and discrimination issues generally among the legal profession, including judges; court proceedings lasting several years; and a reported reluctance to granting meaningful compensation. Another important factor that has been highlighted in this connection is the limited role played so far by the Slovak National Centre for Human Rights (SNCHR), which is mandated inter alia to assist in the implementation of the Act.
15. In this respect, the Commissioner notes that an overhaul of the competencies of both the SNCHR and the Public Defender of Rights is currently ongoing. The Commissioner notes Deputy Prime Minister Chmel's assurances that the aim of this process is to strengthen the effectiveness of both institutions.

*Conclusions and recommendations*

16. In line with the commitment expressed by the member states of the Council of Europe in the Strasbourg Declaration on Roma in October 2010, it is crucial that Roma inclusion policies remain a high priority in Slovakia's human rights agenda.<sup>4</sup>
17. In this connection, the Commissioner welcomes the efforts underway in Slovakia to tackle social exclusion generally, which are likely to have a positive impact on a number of its Roma citizens. At the same time, it is clear that the Roma inclusion agenda cannot be limited to, or identified with, combating social exclusion generally. Indeed, the disadvantage that Roma experience does not only come from poverty and social exclusion, but also other factors which are specific to Roma, such as anti-Gypsyism and discrimination, and which profoundly entrench their disadvantage. In particular, the focus placed on social exclusion generally, should not result in Roma being excluded from consultation on the most important government policies aimed in substance at improving their position.
18. Reflecting the need for a Roma-specific angle to social inclusion policies, the Commissioner encourages the Slovak authorities to consider introducing a system for collecting statistical information broken down according to categories such as ethnic origin, which would allow for progress on the ground to be better assessed. This should of course be done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group, and in close consultation with the groups concerned and all relevant actors. In this endeavour, the Slovak authorities can find guidance in the study 'Ethnic' statistics and data protection in the Council of Europe countries published by the European Commission against Racism and Intolerance (ECRI) in 2007.<sup>5</sup>
19. The Commissioner strongly encourages the Slovak authorities to ensure that an adequate legal and institutional framework is in place to challenge racial discrimination, including against Roma. It is particularly important to ensure that an independent and adequately resourced equality body is entrusted with assisting the implementation of the anti-discrimination legislation. To this end, the Slovak authorities can draw inspiration from the Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality and ECRI General Policy Recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination, which provide extensive guidance

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<sup>3</sup> Act No. 365/2004 (Collection of Laws) on Equal Treatment in Certain Areas, on Protection against Discrimination and on Amending and Supplementing certain acts.

<sup>4</sup> CM(2010)133 final "The Strasbourg Declaration on Roma" 20 October 2010.

<sup>5</sup> Available at [http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic\\_statistics\\_and\\_data\\_protection.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf)

in this field.<sup>6</sup> The Commissioner also recommends that the Slovak authorities ratify Protocol No. 12 to the European Convention on Human Rights (ECHR), which provides for a general prohibition of discrimination.

20. Ensuring genuine commitment to Roma inclusion on the part of local authorities throughout the country remains a crucial challenge for the Slovak authorities to meet. To this end, the Commissioner believes that it would be beneficial for the Slovak authorities to improve the system for monitoring the use of public funds for Roma inclusion by local authorities. This includes improvements to the system for making the allocation and disbursement of these funds conditional to the achievement of clear and measurable Roma inclusion targets. The Commissioner considers that local authorities could also be encouraged to take part in the local authorities network for Roma inclusion launched in Strasbourg at the September 2011 Summit of Mayors on Roma on 22 September 2011.<sup>7</sup>

## **2. Anti-Gypsyism in public and political discourse**

21. In 2009 ECRI noted a “worrying increase”, in racist political discourse in Slovakia, notably directed towards Hungarian, Roma and Jewish people. This type of discourse had resulted in the spreading of negative attitudes against minorities among the general population. According to ECRI, “no measures appear[ed] to have been taken to sanction this type of discourse or to apply the relevant provisions of the Criminal Code to politicians who engage in it”.<sup>8</sup>
22. Generalisations and stigmatising speech targeting members of Roma communities have reportedly been resorted to by politicians across the political spectrum. However, the Slovak National Party (Slovenská národná strana - SNS), which was also a part of the governing coalition until June 2010, is reported to have been particularly vocal in this respect. For instance, in 2010 the SNS launched an advertisement campaign associating Roma with abuse of the welfare system. The ad showed a dark-skinned man with tattoos wearing a gold necklace over the slogan “so that we don’t feed those who refuse to work”. The Commissioner understands that a group of NGOs supported by over 400 public figures issued on this occasion an appeal against the display of racism in politics, which was left unanswered. In September 2011, in an apparent attempt to capitalise on rising inter-ethnic tensions in the neighbouring Czech Republic, the leader of the SNS publicly called on Roma people to create their own independent state. More generally, organisations active in the field of protecting the human rights of Roma highlight a certain harshening of political speech in Slovakia in recent years.
23. Anti-Gypsyism also often surfaces in the broadcasting and print media, with newspapers being reported for instance to regularly stereotype Roma as people who refuse to work or pay rent, steal and are violent, and to regularly and unnecessarily disclose the ethnic origin of criminal suspects of Roma origin. The Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) reported in 2010 that “several complaints have been lodged for negative portrayal of the Roma in broadcasting media”. The Advisory Committee also reported that there was an increase in racism and hate speech on the Internet, including on Internet social networks, which particularly affected persons belonging to the Roma minority.<sup>9</sup>

### *Conclusions and recommendations*

24. The Commissioner emphasises that all Council of Europe member states committed to protecting and promoting the human rights of Roma must place the fight against anti-Gypsyism at the centre of this endeavour. Without meaningful efforts in this field, no initiative or programme can achieve the full inclusion of Roma in society.

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<sup>6</sup> See *Opinion of the Commissioner for human rights on national structures for promoting equality*, Strasbourg, March 2011 and *ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination*, Strasbourg, February 2003.

<sup>7</sup> See [http://www.coe.int/t/congress/Sessions/20110922-Roma-Summit/default\\_en.asp](http://www.coe.int/t/congress/Sessions/20110922-Roma-Summit/default_en.asp)

<sup>8</sup> ECRI Report on Slovakia, adopted on 28 December 2008, published on 26 May 2009, para. 96.

<sup>9</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third opinion on the Slovak Republic, adopted on 28 May 2010, published on 11 January 2011, paras. 96-98.



25. Politicians have a crucial role to play in putting an end to anti-Gypsyism by adopting and promoting a discourse that favours inclusion and firmly rejects stigmatisation and prejudice. To this end, the Slovak authorities are invited to draw from the study and declaration on the use of racist, antisemitic and xenophobic elements in political discourse by ECRI,<sup>10</sup> which suggests a number of measures, including: i) self-regulatory measures which can be taken by political parties or national parliaments; ii) the signature and implementation by European political parties of the Charter of European Political Parties for a Non-Racist Society which encourages a responsible attitude towards problems of racism, whether it concerns the actual organisation of the parties, or their activities in the political arena; iii) the adoption and implementation of provisions penalising the leadership of any group that promotes racism, as well as support for such groups and participation in their activities; iv) the establishment of an obligation to suppress public financing of organisations which promote racism, including political parties; v) the effective implementation of criminal law provisions against racist offences and racial discrimination, which are applicable to all individuals.
26. The Slovak authorities are invited to promote dialogue among the media professions and other relevant civil society groups on how to ensure that the material they publish does not promote anti-Gypsyism, directly or indirectly. It is also important that the Slovak authorities remain vigilant in identifying and reacting promptly and clearly against cases where the media breaches the law prohibiting incitement to hatred.
27. The Commissioner also recommends that Slovakia ratify the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems.
28. In order to fight anti-Gypsyism more effectively, efforts to promote knowledge of Roma culture and history among the general public should be intensified. The Commissioner welcomes the commitment made in this sense by the Slovak government in its August 2010 manifesto.<sup>11</sup> A meaningful contribution to this endeavour would be a wide dissemination and use, notably in schools, of the Council of Europe's Factsheets on Roma History.<sup>12</sup>

### 3. Violent hate crimes

29. In 2009, ECRI was concerned by the rise in racially-motivated physical and verbal attacks against members of ethnic minorities such as Roma, which had been noted in the previous few years. In examining the Slovak authorities' response to these attacks, which were usually perpetrated by members of skinhead or neo-Nazi groups, ECRI highlighted a number of areas for improvement, notably as concerns the implementation of the provisions that establish racist motivation as an aggravating factor.<sup>13</sup>
30. The Commissioner notes that the same area for improvement was highlighted in the findings of research carried out by the European Roma Rights Center (ERRC), which reviewed state responses to anti-Roma violence in a number of countries including Slovakia, between January 2008 and December 2010. Over this period the ERRC registered ten attacks against Roma and/or their property in Slovakia and reviewed the state response to eight of these incidents.<sup>14</sup> These attacks, which included attacks at the hands of the police, took the lives of two Romani individuals and left eight people, including two minors, with injuries. The research identifies a number of shortcomings in the implementation of Article 149(d) of the Criminal Code, which provides that racial motivation is an aggravating factor in respect of all crimes. For example, the police investigation into a very high profile case of police ill-treatment of a group of Romani boys, which included anti-Romani remarks caught on video (see below, Section I. 4.) did not find evidence of racial motivation, although subsequently the

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<sup>10</sup> European Commission against Racism and Intolerance, *The use of racist, antisemitic and xenophobic elements in political discourse*, December 2005.

<sup>11</sup> *Civic Responsibility and Co-operation*, Manifesto of the government of the Slovak Republic for the period of 2010 – 2014, August 2010.

<sup>12</sup> The factsheets are available at <http://romafacts.uni-graz.at/>

<sup>13</sup> ECRI Report on Slovakia, op.cit. paras. 89-95.

<sup>14</sup> *Imperfect justice. Anti-Roma violence and impunity*, ERRC, March 2011. This work covers the state response to anti-Roma violence in a selected number of cases in the Czech Republic, Hungary and Slovakia.

prosecutor's office did include racial motivation in the indictment sent to court. In another case, in which a young man shouted Nazi slogans while attacking a 61-year-old Romani man, the police ruled out racial motivation stating that it was a conflict between neighbours. In 2009, Slovak authorities reported to ECRI "that proving the racist motivation of a crime is difficult" and ECRI noted reports that as a result often prosecutors charge the offenders with a simple assault charge to increase the likelihood of conviction.<sup>15</sup> No specific guidance is reportedly available for police and prosecutors in addressing racially motivated crimes.

31. Further shortcomings relate to the collection of data on racist incidents and offences and the state response to such incidents. Although the Commissioner understands that a new system for gathering statistics on racist crimes was introduced in 2006, it still appears to be difficult to gain a clear picture of the number of reported incidents and offences broken down by group of victims and the follow-up given to them by the police, the prosecuting authorities and the courts.

#### *Conclusions and recommendations*

32. The Commissioner stresses the importance of ensuring that incidents of violence against Roma and other minorities, whether committed by the police or private parties, are effectively investigated and that the perpetrators of such crimes are prosecuted to the fullest extent of the law. According to the case law of the European Court of Human Rights (Strasbourg Court), the failure of a state to investigate seriously and expeditiously violent acts likely to have been motivated by racism entails a violation of the procedural aspect of Article 3 (prohibition of torture) and of Article 14 (prohibition of discrimination) in combination with the former. The Court has underlined that "[t]reating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights".<sup>16</sup>
33. ECRI General Policy Recommendation No. 11 provides detailed guidance on how member states can fulfil their obligations in this field.<sup>17</sup> Measures suggested by ECRI include the adoption of a broad definition of a "racist incident", which ensures that – as soon as an incident is reported in accordance with this definition – the police are required to pursue that line of investigation thoroughly. Suggested measures also include the establishment of units within each police division which specialise in dealing with racially motivated offences.
34. ECRI General Policy Recommendation No. 11 also provides detailed guidance to address the shortcomings noted above in the field of collecting data on racist incidents and offences, and the state response to these. In particular, it would be beneficial if the current system in Slovakia could be complemented with a more flexible and victim-friendly system of reporting racist incidents, as suggested in that Recommendation.
35. More generally, it is paramount that the authorities consistently and unequivocally state publicly that attacks against Roma and other minorities are not acceptable in Slovakia whenever an incident occurs.

#### **4. Misconduct of law enforcement officers**

36. Instances of police misconduct vis-à-vis Roma continue to be reported in Slovakia. They can take several forms, from mistreatment of Roma persons themselves to the fact that police may refuse, for instance, to take the testimony of Roma witnesses and not thoroughly investigate complaints brought by Roma.<sup>18</sup> There are not many successful prosecutions of police for alleged misconduct against, among others, members of ethnic minority groups. Accordingly, mistrust towards the police is reported to be rather high amongst the Roma of Slovakia.

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<sup>15</sup> ECRI Report on Slovakia, op.cit. para. 92.

<sup>16</sup> *Šečić v. Croatia*, Appl. No. 40116/02, judgment of 31 May 2007, para. 67.

<sup>17</sup> CRI(2007)39, *ECRI General Policy Recommendation No. 11: Combating racism and racial discrimination in policing*, Strasbourg, October 2007, see in particular Part III.

<sup>18</sup> ECRI Report on Slovakia, op. cit. para 144.

37. In perhaps the most prominent recent case of misconduct by the police – which is also one of the eight cases examined in the ERRC research referred to above – in March 2009, a number of police officers detained a group of six Roma boys aged 11 to 17 in Košice. The officers forced the boys to take off their clothes, stand naked against a wall and hit and kiss each other while the officers shouted anti-Roma statements at them. At least two of the policemen reportedly threatened the boys with loaded guns. Some of the officers filmed the incident on their mobile phones and the relative video was subsequently posted on the Internet and shown on television. The Commissioner understands that criminal charges were opened against seven policemen and that the trial is pending. He also understands that police investigators did not find evidence of racial motivation for this incident, but that the prosecutor included racial motivation in the indictment. As regards disciplinary measures, nine police officers were temporarily suspended immediately after the incident, and six of them were definitively dismissed shortly afterwards. Four senior officials (superior to the nine policemen involved) were dismissed in April 2009.
38. Following this incident, a series of measures were announced by the authorities, including psychological training of the police with special emphasis on minority communities and a review of the police academy's curricula. In 2010, the Advisory Committee on the FCNM reported that 120 police officers had been trained on policing in a multiethnic environment, focusing on policing in areas inhabited by the Roma minority.<sup>19</sup> The Commissioner also welcomes the fact that in its August 2010 manifesto the government committed to steps to build trust in state institutions within the Roma community, including by recruiting Roma police officers in the Police Force and municipal police. Furthermore, the Commissioner notes that on 17 September 2009, the Slovak Supreme Court issued a final judgment sentencing seven police officers whom it found guilty of beating a Romani man to death in July 2001, to imprisonment ranging from 1.5 to 8.5 years. In spite of these initiatives and positive developments, allegations of police misconduct targeting Roma individuals, sometimes entailing the use of violence, continue to be reported, indicating that efforts already undertaken must be sustained and extended.
39. The Commissioner also notes that a case regarding the death of a Roma man following a police operation during some riots in Trebišov and Čaklov is pending before the Strasbourg Court. The case was lodged on 17 October 2007 and communicated to the authorities on 13 December 2010.<sup>20</sup> The Court will examine the case under Articles 2 (right to life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the ECHR.

#### *Conclusions and recommendations*

40. In order to address racially motivated police misconduct it is imperative that the Slovak authorities effectively investigate relevant allegations and ensure as necessary that the perpetrators of these acts are adequately punished. The Strasbourg Court has underlined the obligation for the national authorities to carry out an investigation on the possible racist motives behind the conduct of law enforcement officials when there are indications of the existence of such motives. Failing a satisfactory investigation on this point, the state is responsible for violating article 14 of the Convention (prohibition of discrimination) in combination with another article, for instance article 2 (right to life) or article 3 (prohibition of torture) from the point of view of procedure.<sup>21</sup>
41. Other measures that may assist the Slovak authorities in countering racially-motivated police misconduct are presented and explained in ECRI's General Policy Recommendation No.11. Apart from training, awareness raising and victim-support measures, these measures include the establishment of "a body, independent of the police and prosecution authorities, entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police".<sup>22</sup> The attention of the Slovak authorities is drawn to the Commissioner's Opinion concerning

<sup>19</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Third opinion on the Slovak Republic, op. cit, para. 92.

<sup>20</sup> *Ludovít Puky v. Slovakia*, Appl No. 45383/07.

<sup>21</sup> *Nachova and Others v. Bulgaria* (GC), Appl. Nos. 43577/98 and 43579/98, judgment of 6 July 2005.

<sup>22</sup> *ECRI General Policy Recommendation N°11*, op. cit., see in particular paras 10 and 58-61.

Independent and Effective Determination of Complaints against the Police, which provides useful guidance on this subject matter.<sup>23</sup>

### **5. Segregation in the education system**

42. The Commissioner is concerned that many Roma children in Slovakia continue to receive education of lower quality than their non-Roma peers due to policies and practices resulting in segregation. There are two main ways in which segregation manifests itself: the disproportionate placement of Roma children in special schools or classes for children with mild mental disabilities; and the assignment of Roma children to Roma-only mainstream schools or classes.
43. As regards the disproportionate placement in special schools or classes for children with mild mental disabilities, the Commissioner notes that according to a 2009 survey by the Roma Education Fund, across Slovakia Roma children represent 85% of all pupils attending such schools. In 2009, ECRI noted reports indicating that these children are erroneously placed there in up to 50% of cases and that “approximately 10% could be immediately reassigned to mainstream education”.<sup>24</sup>
44. The factors that contribute to this situation are numerous and interconnected. One aspect appears to be that in Slovakia social disadvantage, which is prevalent among many Roma children, is lumped together with mental disability in determining a child’s special education needs. Therefore, the approach that currently tends to deal with mental disability through special education instead of integration in mainstream classes (see below, Section II. 3.) is somewhat echoed in the manner in which the education system deals with social disadvantage. Another aspect is connected with the child assessment procedures, which reportedly do not fully take into account certain specificities (such as that Slovak may not be the language the children speak at home) and leave room for conscious and unconscious prejudice on the part of the assessors. There are then economic factors which play a role. For instance, the fact that special schools are provided with three times more funding than mainstream schools in direct proportion to the number of registered children is reported to be an incentive for these schools to enrol Roma children.
45. Although a child can be placed in a special school only with the prior consent of the parents, in practice the consent is apparently often given on the basis of insufficient information about the consequences of this decision. A lack of long-standing tradition of formal education among some Roma families may also play a role as does the fear that children may be mistreated by their non-Roma peers in mainstream schools. The Commissioner was informed that some Roma parents view special education as a viable alternative because their children obtain higher marks in these institutions. Clearly, however, more could be done to thoroughly inform them about the real implications of this choice for the future of their children and more generally, to assist them in securing better long-term educational opportunities.
46. Once a child is placed in a special school or class, reintegration in mainstream schools is very rare. Reassessment of pupils is not required by law and generally only happens if a parent requests it. Reintegration is also all the more difficult as special education has already considerably reduced the child’s ability to follow the curriculum in mainstream schools. The Commissioner had a clear illustration of these difficulties when he visited the school in Plavecký Štvrtok (a Roma-majority mainstream school with a special education section), whose Headmaster confirmed that no child there had ever been able to make the transition from special education back to mainstream education.
47. As regards segregation resulting from the placement of Roma children in Roma-only mainstream schools or classes, the Commissioner notes that there are again different concurring factors. First, since schools draw pupils from the surrounding areas, this type of school segregation is in part the result of the residential segregation of Roma (see below, Section I. 6.). However, parental choices and the policies of some local authorities and schools are reported to compound the problem. Thus, many

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<sup>23</sup> CommDH(2009)4 *Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police*, Strasbourg 12 March 2009.

<sup>24</sup> ECRI Report on Slovakia, op. cit. para 44; See also Open Society Institute, EU Monitoring and Advocacy Program, Education Support Program, Roma Participation Program, “Equal Access to Quality Education for Roma”, Vol. 2, 2007, p. 412.

non-Roma parents tend to choose schools with few or no Roma pupils or transfer their children to these establishments when the Roma pupil population of the school their children initially attended increases (so called “white flight”). For instance, the Commissioner was informed that over the last four years, more than one hundred non-Roma and twelve Roma students had left the school in Plavecký Štvrtok. As a result, the school now has 139 pupils, 90% of whom are Roma. The Commissioner also notes reports according to which in some cases, school catchment areas are designed so that all Roma families of a given neighbourhood send their children to the same school.

48. Furthermore, in some mainstream schools Roma children receive education -- but also eat and play -- in separate facilities. Amnesty International reports that in some schools visited by the organisation Roma children were “literally locked into separate classrooms, corridors or buildings to prevent them from mixing with non-Roma pupils”.<sup>25</sup> In some cases, these policies are explained by school directors with the need to address lack of hygiene or proper behaviour among Roma children, and therefore as necessary measures to prevent “white flight”. While the participation of Roma children in kindergarten education is still low, the Commissioner notes reports according to which these practices exist in kindergartens too.
49. In segregated mainstream schools or classes, Roma children also frequently end up receiving a lower standard of education. Teachers in Roma-only classes are reported to often have lower expectations of their students and fewer resources and poorer quality infrastructures at their disposal. In Plavecký Štvrtok for instance, the Commissioner understands that although the Headmaster managed to secure replacements until now, six teachers have left the school in the last few years.
50. The Commissioner is pleased to note that the Slovak authorities have taken some steps to address the segregation of Roma children in schools. For instance, the Education Act,<sup>26</sup> which was adopted in 2008, prohibits segregation in schools. However, according to organisation that work in the field of protecting the human rights of Roma, concrete measures to enforce this ban are lacking in practice. In particular there is no adequate definition of “segregation” and initiatives to monitor breaches of the ban -- and sanctions on schools and authorities that violate the ban -- are similarly lacking.
51. The Commissioner also welcomes that the Slovak government has included a commitment to addressing segregation in schools in its manifesto. However, progress must now be made to translate this positive commitment into concrete action. In this connection, civil society organisations have reported in particular that in public discourse, the emphasis often put on the need for Roma parents to take greater responsibility in the education of their children has at times tended to overshadow the state’s obligations in this subject area.

#### *Conclusions and recommendations*

52. The Commissioner considers that more determined steps are needed in Slovakia to address the segregation of Roma children in education. These steps must first and foremost rest on an unequivocal public acknowledgment of eliminating segregation as a priority task, for which the state bears the primary responsibility, in co-operation with all stakeholders, including local authorities, schools and parents, both Roma and non-Roma.
53. The Strasbourg Court has ruled on several cases concerning practices resulting in the segregation of Roma children into separate, substandard educational arrangements. In particular in 2007, ruling in the case of *D.H. and Others v. Czech Republic*, the Court’s Grand Chamber found, also on the basis of statistical evidence showing dramatic disparities in the placement of Roma children in special schools for children with mild mental disabilities, that the applicants had been discriminated against in the enjoyment of their right to education.<sup>27</sup>

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<sup>25</sup> Amnesty International, *Unlock their future, End the segregation of Romani children in Slovak schools*, September 2010.

<sup>26</sup> Act No. 245/2008 (Collection of Laws) on Upbringing and Education.

<sup>27</sup> *D.H. and Others v. the Czech Republic* (GC), Appl. No. 57325/00, judgment of 13 November 2007.

54. In order to ensure that Roma children's right to education is respected, the Commissioner calls on the Slovak authorities to make clear advances in the establishment of inclusive, de-segregated education, notably by setting clear and measurable targets for transfers of children from special to ordinary education and for overall desegregation of the school system. The focus should be on special measures to support Roma children and their parents during the transition process.
55. It is also important that the legal and institutional framework in place is geared towards enforcing de-segregation in practice. To this end, the Slovak authorities are invited to consider the following measures:
  - introducing a duty on all schools to desegregate, accompanied by detailed guidance on the steps that are required of schools to comply with such a duty
  - defining segregation in statute and empowering the school inspectorate with a specific mandate and guidelines on how to identify, monitor and combat segregation in practice.
56. The Commissioner underlines that these suggested measures rest heavily on the availability of data on education disaggregated notably by gender and ethnicity and calls on the Slovak authorities to gather such data, in accordance with Council of Europe standards on this subject matter.<sup>28</sup>

## **6. Right to adequate housing**

57. The enjoyment of the right to housing by many Roma in Slovakia is reported to be currently hampered by a number of interconnected problems, including sub-standard material conditions, segregation, lack of security of tenure and difficulties accessing social housing, with discrimination underpinning all these aspects. Conditions of security, peace and dignity, which are integral parts of the right to housing, are in particular out of reach for the many Roma (approximately half of Slovakia's total Roma population) who presently live in marginalised communities, including segregated settlements in rural areas or on the outskirts of towns, and Roma-majority neighbourhoods in urban areas.
58. Material conditions in most of these settlements are seriously sub-standard, especially in eastern Slovakia and the southern districts of central Slovakia, where the authorities report for instance that a water supply is lacking in 37% of settlements, electricity in 9%, sewage systems in 81%, gas in 59% and a paved access road in 20%.<sup>29</sup> Material conditions in Roma settlements in other parts of the country are reportedly somewhat better. However, for instance, in Plavecký Štvrtok the Commissioner noted that only one source of water was available – for four hours daily, two in the morning and two in the evening -- to the several hundred residents of the local settlement. Heaps of garbage at the entrance of the settlement also indicated that an adequate waste collection system was not in place.
59. Residential segregation is also reported to be rather widespread. The Commissioner notes reports according to which this phenomenon has in some instances been accentuated by housing programmes aimed at providing municipal flats to marginalised Roma. Although these programmes did help to improve living conditions for some Roma families, civil society organisations highlight that “much of the housing made available was built for Roma only, often in existing segregated settlements or even further from the town centre than the housing from which the inhabitants were moved”, with a corresponding increase in segregation.<sup>30</sup>
60. A relatively new tendency enhancing segregation in Slovakia appears to be the building of walls to separate Roma from non-Roma areas, a trend which civil society organisations link notably to increased concerns in public and political discourse around “Roma criminality”. The Commissioner understands that such walls were erected, in some cases with municipal funds, in a number of towns around the country, including Ostrovany, Michalovce, Lomnička, Trebišov and Prešov. In Plavecký Štvrtok, the residents of the Roma settlement showed to the Commissioner a wall that had recently been built across a nearby street and indicated that as a result, children were obliged to take a long de-tour to go to school. The Commissioner notes that the Ombudsman and, more recently, the Deputy

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<sup>28</sup> See above, *General policy and action for promoting and protecting the human rights of Roma*.

<sup>29</sup> See Medium-Term Concept of the Development of the Roma National Minority, op.cit.

<sup>30</sup> ERRC, *Standards do not apply. Inadequate Housing in Romani Communities*, December 2010, pp. 17 and 57.

Minister for Human Rights and the Slovak Centre for Human Rights have spoken out against the building of these walls.

61. Lack of secure tenure of land, housing and property is also a crucial problem which exposes many Roma to other violations of their right to adequate housing and increases their vulnerability to forced evictions. Although by far not the only example, the case of Plavecký Štvrtok, where the approximately 500 residents of the local Roma settlement have been living in unregistered dwellings for decades, illustrates this reality. The residents have shared with the Commissioner their worries regarding the Municipality's plans to demolish a number of dwellings, notably due to security concerns linked to the presence of a gas line which runs underground. The Commissioner understands that the majority of the residents were requested by the municipality to provide proof of legal title on their homes and that demolition orders were actually issued to some of the households located on the gas line's protected zone, although in the autumn of 2010 the district prosecutor revoked these orders due to the fact that they did not clearly identify the buildings and the owners. At his meeting with the Commissioner, the Mayor confirmed his intention to proceed with evictions and demolitions, although it did not appear that plans were being made to consult with the residents, provide alternative housing or prevent homelessness, as required by international standards.
62. As noted by ECRI in 2009, intolerant attitudes towards Roma among segments of the general population also continue to have a negative effect on the housing situation of Roma. In this respect, the Commissioner notes that in March 2005, the United Nations Committee on the Elimination of Racial Discrimination found that Slovakia had discriminated against Roma as the state authorities had not taken any measures against a resolution of the local Municipal Court of Dobšina. This resolution cancelled a prior resolution of the same municipality on the construction of low-cost housing for Roma, which followed a petition signed against this plan by some inhabitants of Dobšina.

*Conclusions and recommendations*

63. The Commissioner urges the Slovak authorities to step up their efforts to counter the segregation of Roma in housing. He considers that the main focus should be on investing in the development of safe and affordable housing solutions for Roma in integrated communities. Housing programmes and practices that currently result in segregated Roma communities should be avoided. Thorough and genuine consultation of all Roma currently living in excluded communities should be ensured to maximise the chances of success of all housing interventions concerning them.
64. In the short term, improvements in the material conditions prevailing in many Roma settlements are urgent. This includes providing adequate access to potable water, electricity, sewage and waste removal as well as transportation and road provisions to communities which presently lack them.
65. It is also necessary to make progress on the front of resolving the status of informal settlements. In close consultation with the communities concerned, the Slovak authorities should ensure formal tenure at the current location or relocation to adequate alternative housing in integrated communities. Forced evictions should in principle be avoided. When this is not possible, they should take place in full compliance with international standards, which include notably adequate alternative accommodation, due process and legal remedies, compensation and protection from homelessness.
66. The Commissioner draws the attention of the Slovak authorities to the Recommendation of the Committee of Ministers of the Council of Europe on improving the housing conditions of Roma and Travellers in Europe, which contains a series of recommendations relating to general principles, legal frameworks, preventing and combating discrimination, protection and improvement of existing housing, frameworks for housing policies, financing of housing and housing standards. The Commissioner also recalls the commitments made by the member states of the Council of Europe on 20 October 2010, and reflected in "The Strasbourg Declaration on Roma", in the field of housing, including to "take appropriate measures to improve the living conditions of Roma".
67. Finally, the Commissioner invites the Slovak authorities to ratify the Additional Protocol to the European Social Charter, which entitles social partners and non-governmental organisations to lodge collective complaints of violations of the Charter in States which are parties to it.

## **7. Sterilisation of women without their full and informed consent**

68. The Commissioner notes that in a Recommendation concerning allegations of sterilisation of Roma women, his predecessor, Commissioner Gil-Robles, concluded in 2003 that it could “reasonably be assumed that sterilisations have taken place, particularly in eastern Slovakia, without informed consent”. While information available did not suggest that an active or organised government sterilisation policy had existed (at least since the end of the communist regime), Commissioner Gil-Robles considered that the Slovak government had “an objective responsibility in the matter for failing to put in place adequate legislation and for failing to exercise appropriate supervision of sterilisation practices” in spite of allegations made throughout the 1990s and early 2000.<sup>31</sup>
69. Cases of forced sterilisation of Roma women in post-communist Slovakia, especially eastern Slovakia, have been reported for several years now. In particular, the report “Body and Soul – Forced sterilization and other assaults on Roma Reproductive Freedom in Slovakia (“the Body and Soul report”)) brought international attention to the issue.<sup>32</sup> Since then, many human rights monitoring bodies and national and international non-governmental organisations have called on the Slovak authorities to: conduct thorough investigations; publicly acknowledge and apologise for these cases; provide the victims with fair and adequate compensation; and take all necessary measures to prevent any future violations in the field of reproductive health. In spite of some initiatives taken, progress remains to be achieved on most of these fronts.
70. As concerns investigations, the Commissioner notes that in 2003, following the publication of the Body and Soul report, the Slovak government initiated a criminal investigation into allegations of unlawful sterilisation concerning a number of Roma women. Several decisions were issued by the investigator, public prosecutors at several levels and the Constitutional Court. The proceedings were ultimately discontinued in December 2007 on the ground that no offence had been committed. In this respect, the Commissioner notes that in 2009, ECRI expressed concern at the fact that the authorities continued to investigate these allegations under the crime of genocide (which requires higher standards of proof) rather than, for example, under the crimes of assault or of inflicting grievous bodily harm. However, the Commissioner understands that individual criminal cases brought under crimes other than genocide have also been unsuccessful. The Commissioner furthermore notes reports according to which criminal investigations have tended to focus on the issue of consent forms being signed rather than on whether full prior information had been provided. A failure to recognise a violation of the law in cases of minors who were allegedly sterilised without parental consent has also been reported.
71. The Commissioner also notes that a further investigation into allegations of unlawful sterilisations of Roma women was initiated in 2003 by the Ministry of Health, which established a group of experts to this end. The group concluded, inter alia, that no unlawful behaviour had taken place in the healthcare facilities inspected and that all cases of sterilisation examined had been based on medical indications. However, it also highlighted certain shortcomings and established non-compliance with the regulations on sterilisation (such as failure to observe the prescribed administrative procedure) in several cases. Special measures were therefore recommended such as cultural diversity training for medical staff as well as the setting up of a network of trained health care assistants who would operate in Roma settlements.
72. The Commissioner notes that no acknowledgment or apologies for practices of forced sterilisation have been issued by the Slovak government.
73. As regards compensation, the Commissioner notes that some of the women concerned have filed civil lawsuits requesting both an apology and non-pecuniary damages. The Commissioner understands that several of the court proceedings are still pending. Of the six cases that have been decided, the request for an apology was upheld in one case whereas requests for non-pecuniary damages were

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<sup>31</sup> *Recommendation of the Commissioner for Human Rights concerning certain aspects of law and practice relating to sterilization of women in the Slovak Republic*, October 2003, paras. 51-52

<sup>32</sup> *Body and Soul – Forced Sterilizations and other Assaults on Roma Reproductive Freedom in Slovakia*, Centre for Reproductive Rights and Porandňa pre občianske a ľudské práva, in consultation with Ina Zoon, 2003.



dismissed in three cases, including on grounds that the applicable statute of limitation had expired. Damages were granted in the remaining three cases, although the Commissioner understands that the amounts involved in each case are of approximately 1500 €

74. As regards measures to prevent any future violations in the field of reproductive health, the Commissioner welcomes the fact that Slovakia amended its legislation regulating sterilisation in 2004, thereby requiring free and informed consent and a period of thirty days after the giving of such consent for sterilisations to be performed.<sup>33</sup> While this is a positive step, some shortcomings in the implementation of this legislation continue to be reported, notably linked to the lack of guidelines to standardise procedures that the medical personnel must follow to obtain such consent. Civil society organisations have indicated that as a result, each hospital has tended to develop their own procedures.
75. The Commissioner notes that the Strasbourg Court has addressed issues relating to coercive sterilisation of Roma women in Slovakia. In particular, in a judgment delivered in November 2011 relating to the alleged forced sterilisation of a Roma woman in Prešov in 2000, the Court found that Slovakia had violated Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private and family life).<sup>34</sup> The Commissioner notes that in finding a violation of Article 3, the Court noted that the intervention had not been an “imminent medical necessity” since sterilisation is not generally considered a life-saving surgery and that the patient’s informed consent was therefore a prerequisite. However, “in practice, the applicant was not offered any option but to agree to the procedure which the doctors considered appropriate in view of her situation”.<sup>35</sup> In another case concerning the sterilisation of eight Roma women, the Court found Slovakia in violation of the ECHR in relation to the women’s access to medical files.<sup>36</sup>

#### *Conclusions and recommendations*

76. The Commissioner underlines that sterilisation of women without full and informed consent constitutes a type of gross or systematic human rights violation that needs to be carefully examined by the Slovak authorities. The 2005 UN ‘Basic Principles and Guidelines’ concerning reparation for victims of gross human rights violations may be usefully drawn upon.<sup>37</sup> In line with this document, the public acknowledgment of and expression of regret over these occurrences represents a key step towards the restoration of the rights of the women concerned.
77. The Commissioner urges the Slovak authorities to take measures to ensure that all allegations of forced sterilisations of Roma women are investigated promptly, impartially, thoroughly and effectively, and that the perpetrators are prosecuted and punished. It is also crucial that investigations focus on the conditions under which signatures on sterilisation forms were given and therefore on whether genuine consent was actually obtained. Allegations of sterilisations of minors without parental consent must be investigated with the utmost seriousness.
78. The Commissioner stresses that adequate, effective and prompt reparation, including compensation, should be made available to women who have been sterilised without their full and informed consent, and should also be proportional to the gravity of the violations and the harm suffered. Domestic statutes of limitations, including time limitations applicable to civil claims, should not be unduly restrictive. Examples of ex gratia compensation mechanisms for victims of coercive sterilisation exist in other countries and it is hoped that the Slovak authorities will review these examples and consider establishing a similar one in Slovakia.
79. It is also important to ensure that the law and practice in this field are geared towards preventing the re-occurrence of coercive sterilisations. In this respect, the Commissioner welcomes the fact that

<sup>33</sup> Act No. 576/2004 Coll. on Healthcare, Services Related to the Provision of Healthcare, amending certain acts.

<sup>34</sup> *V.C v. Slovakia*, Appl. No. 18968/07, judgment of 8 November 2011 (not final).

<sup>35</sup> *V.C v. Slovakia*, paras 110-117.

<sup>36</sup> *K.H. and others v. Slovakia*, Appl. No. 32881/04, judgment of 28 April 2009.

<sup>37</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Commission on Human Rights, Resolution 2005/35, 19 April 2005.

since 2004 full and informed consent and a period of thirty days after the giving of such consent are required for sterilisations to be performed. However, it is crucial that the Slovak authorities act to ensure that the requirement on consent is uniformly understood as implying more than a formal signature, and as including notably interpersonal communication to thoroughly inform the patient of all aspects and implications of the intervention. The issuance of specific guidelines and targeted training of medical personnel would be two welcome steps in this direction. The attention of the Slovak authorities is furthermore drawn to the guidelines adopted by the International Federation of Obstetrics and Gynaecology (FIGO) on the performance of contraceptive sterilisation in 2011, which state inter alia that this type of sterilisation is not an emergency procedure and therefore does not justify departure from the general principles of free and informed consent.<sup>38</sup>

### **8. Placement of children in state care institutions**

80. Although there is no official disaggregated data on the ethnic background of children in state care institutions in Slovakia, the Commissioner notes reports indicating that a disproportionate number of these children are Roma. For instance, research undertaken by the ERRC in six countries and published in June 2011, indicates that 82,5% of children in homes visited in Slovakia were Roma.<sup>39</sup>
81. According to Slovak legislation, poverty and material conditions cannot serve as grounds for the removal of children from their families. However these grounds are reported to be the most common reason for child removal. The Commissioner notes that this practice is also at variance with the case law of the Strasbourg Court, which indicates that poor housing conditions or financial situation cannot be the only reasons for placing children into institutional care.<sup>40</sup> In particular, in finding violations of Article 8 of the ECHR (Right to respect for private and family life) in cases relating to the placement of children in state care institutions, the Court has paid attention to the extent to which the social protection authorities make efforts to help parents to overcome their difficulties and get their children back as soon as possible.<sup>41</sup>

#### *Conclusions and recommendations*

82. The Commissioner is concerned at the disproportionate representation of Roma children among children placed in institutional care in Slovakia. In accordance with the case law of the Strasbourg Court, the Commissioner calls on the Slovak authorities to ensure that no child is placed in institutional care solely on grounds relating to the poor housing conditions or financial situation of his or her family.
83. The attention of the Slovak authorities is drawn to the Council of Europe Committee of Ministers' Recommendation (2005) 5 on the rights of children living in residential institutions, by which member states are invited to adopt legislation, guidelines and action plans inspired by a number of principles, including the following:
  - the placement of a child should remain the exception and have as the primary objective the best interests of the child;
  - the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society
84. The above Recommendation further stresses that the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents.

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<sup>38</sup> FIGO, "Female Contraceptive Sterilization", Executive Board Meeting, June 2011, pp 192 -194.

<sup>39</sup> ERRC, *Life Sentence: Romani Children in Institutional Care*, June 2011

<sup>40</sup> *Havelka and Others v. the Czech Republic*, no. 23499/06, judgment of 21/06/2007; *Wallová and Walla v. the Czech Republic*, no. 23848/04, judgment of 26/10/2006.

<sup>41</sup> Press release issued by the Registrar - Chamber judgment *Wallová and Walla v. the Czech Republic*.

## II. Protection of the human rights of persons with disabilities

### 1. The framework for the protection of the human rights of persons with disabilities

85. The Commissioner welcomes the commitment to protecting the rights of persons with disabilities expressed by the Slovak authorities during his visit. A crucial step in this direction was made in May 2010 with the ratification by Slovakia of the UN Convention on the Rights of Persons with Disabilities (CRPD). Although no strategy on the implementation of the CRPD is in place yet, a national programme on developing the living conditions of persons with disabilities has been under preparation. The Commissioner understands that the intention is to finalise this plan once the newly established Committee for Persons with Disabilities (one of the committees under the umbrella of the Council for Human Rights, National Minorities and Gender Equality) has decided on its priorities and work plan. The Committee was to convene for the first time shortly after the Commissioner's visit.
86. The Commissioner notes that so far the Slovak authorities have neither established an independent mechanisms to promote and monitor the implementation of the CRPD nor a government focal point or co-ordination mechanism for matters relating to the implementation of the CRPD, as required respectively by Article 33.2 and 33.1 of the Convention. As regards the establishment of an independent mechanism, the Commissioner understands that this question is being examined in the framework of the review of the independent human rights structures which is currently underway in Slovakia, as mentioned above.<sup>42</sup> As regards the second aspect, the Commissioner understands that the discussion is presently focusing on whether such a focal point or co-ordination mechanism should be located within the Ministry of Labour, Social Affairs and Family or at government cabinet level.
87. As regards the collection of data and statistics, to which states parties to the CRPD have committed themselves by virtue of Article 31 of the Convention, the Commissioner notes that the Slovak authorities gather relevant data in the areas of education up to secondary level, some of which is referred to below, and unemployment.

#### *Conclusions and recommendations*

88. The Commissioner strongly encourages the Slovak authorities to adopt a strategy for the protection of the human rights of persons with disabilities. The strategy should be instrumental to the effective implementation of the CRPD and draw extensively from the Council of Europe Disability Action Plan 2006-2015.<sup>43</sup> As highlighted in the Issue Paper he published in 2008 on the subject, the Commissioner underlines that the strategy should be an integral part of an overarching effort towards systematic human rights work, and include in particular: a high level of political support and allocation of adequate budgetary resources; concrete measures, indicators and attribution of responsibilities; thorough involvement of all concerned actors during the entire process; effective evaluation; and the gathering of the necessary data to monitor progress.<sup>44</sup>
89. In order to ensure the implementation of this strategy and secure concrete advances in the enjoyment by persons with disabilities of their rights, the Commissioner calls on the Slovak authorities to establish without delay an independent mechanism to promote and monitor the implementation of the rights of persons with disabilities and a government focal point or co-ordination mechanism for these subject matters, as required by the CRPD.

### 2. The right to live independently and be included in the community

90. At present, many persons with disabilities in Slovakia continue to live in large institutions separated from the rest of society. Although community-based services are available in some cases to help these persons to reside in living arrangements of their choice, the enjoyment of the right to live

<sup>42</sup> See *General policy and action for promoting and protecting the human rights of Roma*.

<sup>43</sup> Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

<sup>44</sup> Commissioner for Human Rights, Issue Paper (2008)2, *Human Rights and Disability: Equal Rights for All*, Strasbourg, October 2008.

independently and be included in the community is presently out of reach for the majority of persons with disabilities in Slovakia. The Commissioner understands that in 2008, there were 12,813 adults and 2,312 children with intellectual disabilities living in social care institutions. The number of adults living in these institutions has reportedly increased since 2005 (when it was 10,477), whereas the number of children living in these institutions registered a decrease from 2005 to 2007, although it apparently increased again in 2008. The Commissioner also understands that there has been an increase in both sheltered housing facilities allowing persons with disabilities to live independently (from 11 in 2005 to 18 in 2009) and large social care institutions, of which there are at present more than 250 throughout the country.

91. Civil society organisations have clearly pointed out that the focus in Slovakia has been more on improving material conditions in large institutions for persons with intellectual disabilities than on progressively replacing these institutions with community-based alternatives (de-institutionalisation). They have also emphasised that Slovakia has no action plan on de-institutionalisation yet, although the Commissioner understands that work has been underway to this end.
92. The Commissioner notes the assurances given to him by State Secretary Nicholsonová that the process of de-institutionalisation will continue. The State Secretary has also underlined that the pace of the de-institutionalisation process must take into account the need to ensure that all the necessary support services are available in the communities before persons can reside there. In this connection, the Commissioner notes that € 20 million have been allocated from the European Union's structural funds for de-institutionalisation projects to be implemented before 2015.

#### *Conclusions and recommendations*

93. The Commissioner calls on the Slovak authorities to make progress in the field of securing the enjoyment by people with disabilities of their right to live independently and be included in the community. Pursuant to Article 19 CRPD, Slovakia is under an obligation to take effective and appropriate measures in this field, including by ensuring that persons with disabilities are not obliged to live in a particular living arrangement and have access to a range of in-home, residential and other community support services, including the personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.
94. It is particularly important that a comprehensive action plan on de-institutionalisation be drawn up in close consultation with the representatives of persons with disabilities. The action plan should establish credible timetables for the progressive decrease of new admissions to large institutions and for the parallel establishment of community-based alternatives.

### **3. The right to inclusive education**

95. Most children with intellectual disabilities in Slovakia are currently educated in special schools. The Commissioner understands that in 2010 this was the case for approximately 75% of the 25,000 children with intellectual disabilities in schools around the country, while education in mainstream classes with special support could be secured for the remaining 25%.
96. According to civil society organisations this situation is in part the result of the fact that the legal and regulatory framework in place is not geared towards securing the enjoyment by children with disabilities, including intellectual disabilities, of their right to inclusive education. Thus, although the Education Act (see above, Section I. 5.) allows these children to attend mainstream schools, certain conditions must be met for this to happen and the law does not establish a preference for integration in mainstream classes nor for a right of the child to be taught primarily in an inclusive setting. In particular, it has been highlighted that there is no obligation for schools in general to make reasonable accommodation for children with disabilities. Therefore, in case a specific school does not have an appropriate environment available for the child, which is reported to be the case in most mainstream schools, the school can refuse enrolment. Other shortcomings highlighted include the establishment of maximum limits on the number of children with disabilities in mainstream classes and the possibility for school directors and assessment centres to decide against the education of a child in mainstream classes if it is deemed to be not in the interest of the child or to restrict the rights of other children. The Commissioner notes that in 2008 the Committee of Social Rights concluded that the situation in

Slovakia was not in conformity with Article 15§1 (education and training for persons with disabilities) of the Charter on the ground that it had not been established that mainstreaming of persons with disabilities was effectively guaranteed in education and training.<sup>45</sup>

97. The Commissioner notes that in June 2011 the Council for Human Rights, National Minorities and Gender Equality adopted a document on the education of children with special needs, which contains inclusive education as a basic principle. However, he notes the wish expressed by civil society organisations to see the commitment to inclusive education, which Slovakia has made by ratifying the CRPD, translated into concrete national policy by means of a detailed action plan.

#### *Conclusions and recommendations*

98. As a state party to the CRPD, Slovakia has committed itself to establishing an inclusive education system that would ensure the full development of the human potential of people with disabilities and their effective participation in society. The Commissioner calls on the Slovak authorities to ensure that concrete advances are made to meet this obligation. As part of this effort, the Commissioner considers that the Slovak authorities should adopt an action plan on inclusive education in close consultation with the representatives of persons with disabilities. The authorities should also consider changes to the existing legal and regulatory framework that would facilitate the enforcement of inclusive education in practice, notably by developing the obligations on schools to reasonably accommodate children with special educational needs.
99. In this connection, the attention of the Slovak authorities is also drawn to the decisions of the European Committee of Social Rights of the Council of Europe in cases relating to the right to education of children with disabilities.<sup>46</sup> The Committee has stated that both legal and practical measures have to be taken to give full effect to the rights protected by the Charter. When implementation is complex and expensive, states must take progressive measures to give full effect to these rights, within a reasonable time using the maximum of its available resources. The Resolution of the Parliamentary Assembly of the Council of Europe on guaranteeing the right to education for children with illnesses or disabilities provides further guidance on the steps that member states should take in this area.<sup>47</sup>

#### **4. The right to make decisions**

100. People with psycho-social or intellectual disabilities in Slovakia can be totally or partially deprived of their legal capacity and placed under guardianship. The Commissioner understands that in 2009 approximately 1110 applications for total deprivation of legal capacity and thirty applications for partial deprivation were accepted. Two main criteria are applied to establish deprivation and restriction of legal capacity: a medical determination of mental disorder; and the inability to manage one's affairs.
101. Deprivation and restriction of legal capacity result in plenary or partial guardianship, which is regulated under the Civil Code (whose relevant provisions have not been modified since the adoption of the Code in 1964) and the Code of Civil Procedure. Deprivation and restriction of legal capacity lead to an automatic presumption of incompetence in, inter alia, family matters (marrying and parental rights); consenting to medical treatment; contractual matters; and political participation, including the exercise of the right to vote.
102. The Commissioner understands that the Ombudsman has received a considerable number of complaints concerning deprivation of legal capacity. The Commissioner also notes that the Strasbourg Court has found Slovakia in violation of the ECHR in cases relating to deprivation of legal capacity. In one case the Court held that there had been a violation of Article 8 (right to respect for private and family life) because the applicant had been prevented for too long from applying to have her legal

<sup>45</sup> European Committee of Social Rights Conclusions XIX-1 (Slovakia) Articles 1, 9, 10, 15 and 18 of the Charter and Article 1 of the 1988 Additional Protocol, Strasbourg November 2008.

<sup>46</sup> *Autism-Europe (IAAE) v. France* (No. 13/2002), 3 November 2003; *Mental Disability Advocacy Centre (MDAC) v. Bulgaria* (No. 41/2007), 3 June 2008.

<sup>47</sup> PACE Resolution 1761 (2010), *Guaranteeing the right to education for children with illnesses or disabilities*, adopted on 7 October 2010.

capacity restored.<sup>48</sup> In another case, the Court noted that the Slovak courts had not acted with the necessary diligence or assembled sufficient evidence to make an assessment of the applicant's faculties and to avoid any miscarriage of justice and found a violation of Article 6 § 1 (right to a fair hearing).<sup>49</sup>

103. The Commissioner notes that Slovak legislation does not currently provide for a system of supported decision-making for persons with psycho-social or intellectual disabilities. However, the Commissioner notes that a reform of the relevant provisions of the Civil Code is currently underway in Slovakia and welcomes the fact that the introduction of such a system features among the proposals that are currently being examined.

*Conclusions and recommendations*

104. The Commissioner encourages the Slovak authorities to establish a system of supported decision-making for persons with psycho-social or intellectual disabilities, in accordance with Article 12 of the CRDP and the Council of Europe's 2006-2015 Action Plan.
105. The Commissioner recalls that the Strasbourg Court has acknowledged that the non-recognition of a person's legal capacity severely limits his or her human rights and that full deprivation of legal capacity is a very serious interference with the right to private life protected by article 8 of the ECHR. The sole existence of a mental disorder, even a serious one, cannot in itself justify such incapacitation.<sup>50</sup>
106. The attention of the Slovak authorities is also drawn to the recommendation of the Committee of Ministers of the Council of Europe on the rights of adults who need assistance in making decisions, which enumerates basic principles for interfering with a person's legal capacity.<sup>51</sup> The main principles include maximum preservation of capacity and respect for the choices of the individual concerned. Nobody should be automatically deprived of their right to draw up a will, consent or refuse any medical intervention or take decisions of a personal nature. As concerns in particular the right to vote, the Commissioner draws the attention of the Slovak authorities to the Recommendation of the Committee of Ministers of the Council of Europe on the participation of persons with disabilities in political and public life, which states that persons with disabilities, including intellectual impairments, should not be deprived of eligibility and voting rights by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity.<sup>52</sup> The Commissioner furthermore underlines that procedures interfering with a person's legal capacity must be surrounded by effective procedural safeguards to protect against abuse, including the right to be heard in person, the right to appeal and a periodic review of the relevant decisions.

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<sup>48</sup> *Berková v. Slovakia* no. 67149/01, judgment of 24 March 2009.

<sup>49</sup> *H.F.v. Slovakia* no. 54797/00, judgment of 8 November 2005.

<sup>50</sup> *Shtukaturov v. Russia*, no. 44009/05, judgment of 27 March 2008.

<sup>51</sup> Recommendation No (99)4 of the Committee of Ministers to member states on the principles concerning the legal protection of incapable adults, adopted by the Committee of Ministers on 23 February 1999.

<sup>52</sup> Recommendation No (2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life, adopted by the Committee of Ministers on 16 November 2011.