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EUROPEAN SOCIAL CHARTER

Comments by the Forum for Human Rights
on provisions belonging to thematic group 2 on
health, social security, and social protection in relation to
the situation in Slovak Republic

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EUROPEAN REVISED SOCIAL CHARTER

The reporting procedure to the European Committee of Social Rights (ECSR) relating to the provisions belonging to thematic group 2 on health, social security, and social protection in relation to the situation in

SLOVAKIA

29 June 2021

INTRODUCTION

1. This submission, concerning **Slovakia**, provides comments relating to the provisions belonging to the belonging to the thematic group 2 on health, social security and social protection. This submission will focus on the following provisions of the Revised European Social Charter ("ESC"): Article 11 (the right to protection of health) and Article 30 (the right to protection against poverty and social exclusion).
2. The submission has been written by Forum for Human Rights (FORUM).
3. FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and leads domestic and

international litigation activities. FORUM has been supporting several cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored reports and information for UN and Council of Europe bodies on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit www.forumhr.eu.

SPECIFIC COMMENTS

1. This submission concerns the right to health of Roma living in marginalized Roma communities in Slovakia. It addresses the right to health in three important contexts: 1) Ensuring a healthy environment 2) the prevention of diseases, and 3) protection from poverty and social exclusion.

I. RIGHT TO HEALTH AND ENSURING A HEALTHY ENVIRONMENT

2. The right to health and its protection is closely connected to ensuring a healthy environment. The ECSR emphasizes that “states must guarantee the best possible results in line with the available knowledge.”¹ This includes the responsibility of states to “to remove the causes of ill-health resulting from environmental threats.”² However, in the context of Roma living in marginalized communities in Slovakia, the State Party has failed to ensure the right to a healthy environment on several levels (failure to provide access to safe drinking water and sanitation, and a failure to provide access to adequate waste disposal). This situation is aggravated by the disproportionate number of Roma children impacted.
3. Before elaborating on the specific situations surrounding drinking water, sanitation, and waste disposal, it is worth mentioning that the overall lack of infrastructure in marginalized Roma communities in Slovakia has been well-documented by UN treaty bodies. In 2018, the UN CERD noted that Roma people continue to live in settlements where basic facilities such as sanitation, drinking water, electricity, sewage systems and waste disposal are lacking.³ The UN CESCR, in its 2019 concluding observations, stated that “it is deeply concerned that in a high-income country, large numbers of Roma people, particularly those in segregated communities, lack permanent access to clean water”.⁴ Finally, the UN CRC, in its most recent observations in 2016, expressed its concern that “a significant percentage of Roma families

¹ Conclusions XV-2 (2001), Denmark, p. 1.

² Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6/12/2006, collective complaint no. 30/2005, para 202.

³ CERD/C/SVK/CO/11-12, 12 January 2018, para. 21.

⁴ E/C.12/SVK/CO/3, para. 33.

continues to live in segregated situations and many still do not have access to adequate housing and suffer from a lack of basic facilities such as sanitation, electricity, drinking water, a sewage system and waste disposal".⁵

(a) Failure to provide access to safe drinking water

4. The ECSR has emphasized that "that having access to safe drinking water is central to living a life in dignity and upholding human rights."⁶ The ECSR has also defined adequate housing as "a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal; sanitation facilities; electricity; etc and if specific dangers such as, for example, the presence of lead or asbestos are under control."⁷ To comply with the obligation to ensure a healthy environment, "adequate measures have been taken to ensure access to safe drinking water."⁸ As the ECSR has emphasize, a situation where drinking water is not available to a significant proportion of the population is in breach of the Charter, given the primacy of water for ensuring the right to a healthy environment.⁹
5. The obligation to ensure access to safe drinking water also derives from international authority. The human right to water is enshrined in the ICESCR, particularly through articles 11 and 12, which guarantee "an adequate standard of living" and "the enjoyment of the highest attainable standard of physical and mental health." The UN CESCR Committee explicitly emphasizes that "water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds."¹⁰ According to the World Health Organization, a sufficient water supply ranges from between 50 and 100 litres of water per person per day to ensure that most basic needs are met and few health concerns arise.¹¹
6. In Slovakia, the latest data published in the Atlas of Roma Communities (2019), (*hereinafter* the ATLAS), highlights that as many as 202 Roma neighbourhoods and settlements were found to have no access to public water pipelines whatsoever (approximately 19%).¹² This number is almost identical to the 2013

⁵ CRC/C/SVK/CO/3-5, para. 42 (b)

⁶ Conclusions 2013, Georgia, p. 9.

⁷ Conclusions 2003, France, Article 31-1, para. 1.

⁸ Conclusions 2013, Georgia, p. 9.

⁹ Ibid.

¹⁰ E/C.12/2002/11, para. 11 (c) (iii).

¹¹ https://www.un.org/waterforlifedecade/human_right_to_water.shtml

¹² The Atlas represents the most accurate and comprehensive sociographic territorial mapping of Roma settlements. The data is collected under the auspices of the Ministry of Interior, currently there 2019 version is available in Slovak online:

findings, according to which there were nearly 200 Roma settlements in Slovakia where no dwelling was connected to a public water supply.¹³ Apart from those totally segregated settlements that were not connected to any public utilities, there were approximately 70 Roma neighbourhoods without connection to a municipal water system, even though the non-Roma households in the area were fully connected.¹⁴ Additionally, inhabitants of 109 settlements use water from private wells as their only source of water. Public wells and taps located in open areas are used as only source of water in 47 settlements, and in 24 settlements people were found to be 100% dependent on another irregular water source.¹⁵ **Considering these numbers, the situation concerns several dozens of thousands of Roma, including as many as 15 000 children, and perhaps even more.** In these instances, the water supply does not reach the standard of sufficiency outlined by the World Health Organization and represents a failure on behalf of the State Party to ensure a healthy environment.

(b) Failure to provide access to sanitation

7. As previously mentioned, the ECSR has highlighted that “the notion of an adequate house implies a dwelling which is safe from a sanitary and health point of view,” which entails that dwellings must have access to “safe drinking water, electricity, sanitation facilities and waste disposal.”¹⁶ As with the right to water, the human right to sanitation is also enshrined in the ICESCR, particularly through articles 11 and 12, which guarantee “an adequate standard of living” and “the enjoyment of the highest attainable standard of physical and mental health.”¹⁷ In 2010 the UN CESCR issued a statement on the right to sanitation, recognizing it as an “essential component of the right to an adequate standard of living”, outlined in Article 11 of the ICESCR, and as being “integrally related” to the right to health, the right to housing, and the right to water.¹⁸ The provisions are subject to progressive realization, requiring states to cooperate and apply “the maximum of its available resources” in fulfilling the rights recognized in the covenant.¹⁹

<https://www.minv.sk/?atlas-romskych-komunit-2019>

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Conclusions 2003, France, Article 31-1, para. 1.

¹⁷ Human Rights Council, Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and association, A/HRC/12/24, 1 July 2009.

¹⁸ UN Committee on Economic, Social and Cultural Rights, Statement on the Right to Sanitation (UN Doc. E/C.12/2010/1, 19 November 2010) (Sanitation Statement'), para 7.

¹⁹ ICESCR, article 2(1).

8. The former Special Rapporteur on Safe Drinking Water and Sanitation, de Albuquerque, defined sanitation as a “system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene”, which includes “domestic wastewater, which flows from toilets, sinks and showers” given it “regularly contains human excreta and the by-products of the associated hygiene.”²⁰ This definition encompasses that States provide both physical and economic access to sanitation, without discrimination, “in all spheres of life,” and that the sanitation is “safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.” As affirmed by the UN CESCR, de Albuquerque underscored the right to sanitation is inextricably linked to the protection of other human rights, given it is “fundamental for life and are indispensable to human dignity.”²¹ In her most recent report, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, reiterated the UN CESCR’s position that “adequate access to sanitation is fundamental for human dignity and privacy, that the human right to water is indispensable for leading a life in human dignity and that it is inextricably related to the right to the highest attainable standard of health.”²²
9. These standards are not being upheld in Slovakia. The latest data published in the ATLAS (2019), highlights that there was no public sewerage system in 450 Roma neighbourhoods, and approximately one third of these settlements discharge sewage (a mixture of wastewater and excrement) to nearby surroundings.²³ The Slovak Academy of Sciences noted that 51.4% of Roma living in settlements (on the outskirts of villages, outside villages, and in rural settlements) have public sewerage available, yet only 35.4% can actually use it. This is significant given that the total population in settlements is estimated to be more than 200,000 people.²⁴ As with drinking water, the State Party has failed to consider sanitation as integral to the right to a healthy environment.

(c) Failure to provide access to adequate waste disposal

10. As with water and sanitation, the ECSR has also recognized the importance of waste disposal in ensuring the right to adequate housing.²⁵ This position is consistent with international authorities; waste management has been cited

²⁰ A/HRC/12/24, para 63.

²¹ de Albuquerque, C. (2014). Realizing the human rights to water and sanitation: A handbook by the UN Special Rapporteur Catarina de Albuquerque. Lisbon: UN, p. 37.

²² A/HRC/47/28, para 47.

²³ Richard Filčák, Daniel Škobla & Dušana Dokupilová, Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia (2020) Slovak Academy of Sciences, p. 30.

²⁴ Ibid., p. 90.

²⁵ Conclusions 2003, France, Article 31-1, para. 1.

as an integral element to both the right to health and the right to housing under the ICESCR, specifically through articles 11 and 12, which guarantee “an adequate standard of living” and “the enjoyment of the highest attainable standard of physical and mental health.” The UN CESCR Committee also notes that “states are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data” and “should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil,” inclusive of waste collection and disposal and harmful exposure to dumpsites or landfills.²⁶

11. The UN CESCR committee has emphasized waste disposal in both the “Availability of services, materials, facilities and infrastructure” and “habitability” requirements of the right to housing, noting that it includes “sustainable access” to “refuse disposal” among others such as safe drinking water and sanitation facilities.²⁷ Moreover, the UN CESCR committee notes in the context of location that “housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”²⁸ In the context of children, the UN CRC Committee has highlighted that in the context of article 24 of the CRC (right to health) states should take measures to address environmental pollution, including the “effective management of waste and the disposal of litter from living quarters and the immediate surroundings.”²⁹

12. These obligations have been reflected in regional case law. In *Öneryıldız v. Turkey*, where a poor community was devastated by the explosion on a landfill in proximity to the community, the European Court of Human Rights held that waste disposal, and its impacts on health, were intricately related to the right to life, and that in the context of waste collection and dumping there is “positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.”³⁰ Per the UN treaty bodies and other regional authorities, waste management, both through the form of waste collection, but also the level of exposure to waste in the context of living conditions, is integral to the right to health.

13. In Slovakia, data from the ATLAS has identified three areas of concern with regards to adequate waste disposal: a high number of Roma settlements

²⁶ E/C.12/2000/4, para. 36.

²⁷ E/1992/23, para. 8.

²⁸ Ibid.

²⁹ CRC/C/GC/15, pg. 6.

³⁰ The European Court of Human Rights, *Öneryıldız v. Turkey*, Judgment of November 30, 2004, para. 65.

existing: 1) without waste collection 2) within and in proximity to informal landfills, and 3) in proximity to large formal landfills.

14. In the context of the first scenario, the research identified that there are 28 Roma settlements in 24 municipalities (3285 inhabitants) in Slovakia where no waste collection is provided, either by household waste bins or large capacity containers. The data also indicated that if the group of settlements at increased risk were to include municipalities where only a maximum of 10% of households have waste collection, the list of households at risk would almost double to 738, or 4949 inhabitants. While 28 settlements had no waste collection at all, of the 50 municipalities included in the ATLAS, less than 50% of the households in those municipalities had any kind of waste collection, affecting a further total of 8119 inhabitants.³¹
15. With regards to the second situation, or municipalities living with informal landfills (where waste is informally dumped), **the research identified that 295 municipalities, with a total of 393 settlements (and over 124, 865 inhabitants) have been located in the presence of municipal waste landfills.** The communities most at risk from the presence of landfills included: Trebišov (6685 inhabitants), Jarovnice (6022), Richnava (2458), Chminianske Jakubovany (2249), and the following villages, all of which have more than 1000 inhabitants each: Veľká Lomnica, Stráne pod Tatrami, Ostrovany, Jasov, Sečovce, Sol', Veľká Ida, Michalovce, Krížová Ves, Medzev, Čaklov, Rožňava, Spišský Štiavnik, Huncovce, Spišská Nová Ves, Žehra, Svinia, Krásnohorské Podhradie, and Jakubany. Overall, **a total of 36,414 people were identified as at risk due to the presence of municipal waste landfills in their communities.** The biggest threats exist in the form of water contamination and flooding, which can pollute surrounding areas.³²
16. Finally, many marginalized Roma communities live beside formal landfills, posing serious health concerns. Research has identified 3 problematic regions in particular: Košice Myslava (affecting 320 inhabitants from marginalized Roma communities), Bambusky (with 285 marginalised Roma community inhabitants) and Svinia (with 1135 marginalized Roma community inhabitants).³³ These findings demonstrate the failure of the Slovak Central government to ensure adequate waste management for marginalized Roma communities in Slovakia.

II. RIGHT TO HEALTH AND THE PREVENTION OF DISEASES

³¹ ATLAS

³² Ibid.

³³ Ibid.

17. As part of ensuring the right to health, the ECSR has affirmed that States Parties are required “to take appropriate measures designed inter alia to prevent as far as possible epidemic, endemic and other diseases.”³⁴ This reflects the position taken by international authorities. In articulating that relationship between the right to health and the right to housing, the UN CESCR’s General Comment No.4 expressly encourages states parties to “comprehensively apply the Health Principles of Housing prepared by the World Health Organization which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses.”³⁵ The Health Principles define adequate housing as having protection from diseases through the disposal of solid wastes.³⁶
18. The former UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tancak, has emphasized that the obligation to protect against toxic exposure is related to article 24 CRC, which requires states to ensure the provision of clean drinking water, taking into consideration the “the dangers and risks of pollution and contamination.”³⁷
19. As noted above, the failure of the Slovak authorities to ensure access to water infrastructure, alongside access to sanitation and waste disposal, for Roma living in settlements has recently been documented by the Slovak Ombudsperson,³⁸ the Slovak Academy of Sciences,³⁹ the European Union bodies,⁴⁰ as well as international human rights NGOs.⁴¹ It has also been documented that the persisting situation of the absence of water and sanitation has serious consequences on health,⁴² for example a higher prevalence of hepatitis B.⁴³

³⁴ European Social Charter, Article 11(3).

³⁵ E/1992/23, para. 8.

³⁶ World Health Organization (WHO), Health Principles of Housing (Geneva, 1989), pg. 12.

³⁷ A/HRC/36/41, para. 10.

³⁸ The Access to Drinking Water and Information about Fire Safety in Romani Settlements (Prístup k pitnej vode a informácia o zabezpečení protipožiarnej ochrany v rómskych osadách), 2016, available in Slovak at: http://www.vop.gov.sk/files/Prístup_k_vode.pdf

³⁹ Richard Filčák, Daniel Škobla & Dušana Dokupilová, Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia (2020) Slovak Academy of Sciences.

⁴⁰ FRA, A persisting concern: anti-Gypsyism as a barrier to Roma inclusion, 2018, p. 42.

⁴¹ ERRC, Thirsting for Justice, Europe’s Roma Denied Access to Clean Water and Sanitation, March 2017.

⁴² Richard Filčák, Daniel Škobla & Dušana Dokupilová, Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia (2020) Slovak Academy of Sciences, p. 27.

⁴³ Central European Journal of Public Health, High Hepatitis B and Low Hepatitis C Prevalence in Roma Population in Eastern Slovakia, available at: http://apps.szu.cz/svi/cejph/show_en.php?kat=archiv/2014-sup-09

20. **During the years 2014–2018 there were 4693 cases from the Sanitation/Diseases List recorded in 681 Slovak municipalities.** As much as 72–87% of the cases occurred in municipalities with a Roma community, which may be due to the absence of water and sewerage networks and/or their connection to them. Municipalities with significant Roma communities living in segregation and with no official infrastructure (sewerage, sewage treatment plant, or cesspool) constituted the worst situations — cases from the Sanitation/Diseases List were recorded here every year.⁴⁴ Here, the research identified the villages of Chminianske Jakubovany, Svinia, Drienovec, Moldava nad Bodvou, Rakúsy, Lunik IX, and Banská Bystrica. ⁴⁵The village of Šalov, in the district of Levice, is an example of an extremely vulnerable settlement. The 363 inhabitants, of whom 56% are of Roma origin, live without an official water supply. Residents use their own wells and 80% of them discharge sewage water without any treatment, leading to the danger of polluting wells.⁴⁶ The research observed that in municipalities in which the inhabitants do not use any method of sewage treatment, significantly more Sanitation/Diseases List cases per capita have been recorded than in municipalities that are connected to the sewerage network.⁴⁷
21. This situation does not meet the obligation to ensure a sufficient quality of water, which the CESCR Committee defines as the obligation to ensure that water designated for personal or domestic use is “safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to person’s health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.”⁴⁸ Even though the duty “to take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation” is an obligation requiring immediate effect,⁴⁹ Slovakia has been documented as continuously failing to comply with this requirement.
22. With so many marginalized Roma communities living without water, sanitation or waste infrastructure, disproportionately impacting marginalized Roma communities through the proliferation of diseases, the State Party is failing in its obligation to prevent diseases under the right to health.

⁴⁴Richard Filčák, Daniel Škobla & Dušana Dokupilová, *Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia* (2020) Slovak Academy of Sciences, p. 95.

⁴⁵ *Ibid.*, 96.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ E/C.12/2002/11, para. 12 (b).

⁴⁹ E/C.12/2002/11, para. 37 (i).

III. RIGHT TO HEALTH AND PROTECTION FROM POVERTY AND SOCIAL EXCLUSION

23. The ECSR has emphasized “the fight against social exclusion is one area where the notion of the indivisibility of fundamental rights takes a special importance,” highlighting the close link between Article 30 and rights recognized by other provisions, including the enjoyment of the right to health (in Article 11) and the right to housing (Article 31).⁵⁰ As the ECSR has noted, poverty created by deprivation due to a lack of resources can arise from a failure of States Parties to fulfil the obligation to adopt a “coordinated approach to promote the effective access to housing to persons being or risking to find themselves in a situation of social exclusion or poverty.”⁵¹
24. The UN Special Rapporteur on the human right to safe drinking water and sanitation, Leo Heller, states that “from a human rights perspective, effective usage means that States specifically target resources towards populations in vulnerable situations and underserved areas.”⁵² As Heller notes, arbitrary state practices can further entrench vulnerability, for example, when affordability thresholds for water or sanitation services are “arbitrary and do not account for the diversity of households’ composition and needs.”⁵³
25. The UN CRC Committee’s General Comment no. 19 on the public budgeting for the realization of children’s rights (art. 4) clearly emphasizes that ensuring the right to life for *all* children is inevitably connected with significant budget allocations that respond to the differing needs of different groups of children within areas pertaining to the structural determinants of life. In particular, the CRC Committee highlights that “underinvestment in children in their early years can be detrimental to cognitive development and can reinforce existing deprivations, inequalities and intergenerational poverty. Ensuring the right to life, survival and development includes the need to consider budgets for different groups of children within the current generation, while also taking future generations into account by developing sustainable multi-year revenue and spending projections.”⁵⁴

⁵⁰ ERRC v. France, complaint No. 51/2008, decision on the merits of 19/08/2009, para. 99.

⁵¹ International Movement ATD Fourth World v. France, complaint No. 33/2006, decision on the merits of 5/12/2007, paras. 169-170.

Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, decision on the merits of 6/12/2006, collective complaint no. 30/2005, para 202.

⁵² A/HRC/45/10, para. 29.

⁵³ Ibid., para. 39.

⁵⁴ CRC/C/GC/19, para. 51,

26. The emphasis by both the UN Special Rapporteur and the CRC Committee on targeting resources towards vulnerable groups is significant in the context of Slovakia, where residents have remained unconnected to the water supply due to unaffordability.
27. In 2017, the European Roma Rights Centre reported that while water is generally subject to payments in Slovakia, the costs disproportionately impact Roma: approximately 70% cannot afford to pay costs for public water supply and other charges levied.⁵⁵ Identical findings were reported by the Slovak Academy of Sciences and the ERRC : some 76.3% of people in concentrations (on the outskirts of villages, outside of villages, and distant settlements) have an available public water supply, yet only 59.4% can actually use it.⁵⁶
28. Due to the lack of safe drinking water and sanitation, Roma living in marginalised communities in Slovakia are significantly deprived of life opportunities. This deprivation results from their social and territorial exclusion, where poverty imposes a social status that excludes them from society and the segregated localities in which they live exclude them territorially. The persisting situation of extreme poverty, taking the form of, inter alia, the inadequate or insufficient supply of safe drinking water, sanitation, and waste disposal, is a striking example of an avoidable impairment of fundamental human needs resulting in the precarity of Roma people in Slovakia.
29. Under Article 4 of the Slovak Constitution⁵⁷, underground waters are property belonging to the Slovak Republic and under Article 40 of the Constitution, everyone has the right to the protection of their health. These provisions are accompanied by law no. 369/1990, which obliges municipalities to manage water and waste management (Art. 4(3)(g)) and to secure the health of its citizens (Art. 4(3)(h)). Similarly, law no. 442/2002, which pertains to public water pipelines and public sewage, further obliges municipalities to take specific steps to implement the right to water and health, including the creation of conditions for supplying drinking water through public water pipelines.

⁵⁵ European Roma Rights Centre, *Thirsting for Justice, Europe's Roma Denied Access to Clean Water and Sanitation*, 2017, p. 32. Recent example of the case of Dobšiná municipality where low-cost housing was built for 101 Roma families. The water is accessible in these apartments only on pre-bought credit. See in Slovak: <https://roznava.dnes24.sk/nove-najomne-byty-v-dobsinej-domov-v-nich-zafial-naslo-101-rodin-voda-qj-elektrina-na-kredit-325215>

⁵⁶ Richard Filčák, Daniel Škobla & Dušana Dokupilová, *Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia* (2020) Slovak Academy of Sciences, p. 90.

⁵⁷ The Constitution is available in English at: <https://www.prezident.sk/upload-files/46422.pdf>.

Moreover, Slovakia is an EU member state and EU law is directly applicable, including the 1991 Urban Waste Water Treatment Directive. The Directive prescribes the collection and treatment of wastewater in urban agglomerations with more than 2000 inhabitants, and more advanced treatment in places with a population that exceeds 10,000 in 'sensitive areas'. Even though this clear obligation of progressive realisation does not discriminate against Roma, its implementation highlights that Roma communities are burdened by an obvious different treatment. Recent research has showcased that when it comes to the implementation of EU and/or national legislation and the enforcement of the fundamental rights framework, the approach to Roma communities is often based on 'beyond the pale' syndrome: marginalised Roma communities are treated as spaces in which the 'normal' or 'common' rules of operation do not apply.⁵⁸

30. The Guidelines for the realization of the right to drinking water and sanitation obliges States to "establish a regulatory system for private and public water and sanitation service providers that requires them to provide physical, affordable and equal access to safe, acceptable and sufficient water and to appropriate sanitation and includes mechanisms to ensure genuine public participation, independent monitoring and compliance with regulations."⁵⁹

31. The Slovak Government has failed to comply with these obligations. The regulatory framework in place for water and sanitation services does not meet all the above requirements deriving from the rights to water and sanitation. The obligations to ensure the availability and accessibility (including affordability), of these services for all, including Roma living in the territory of the State Party, are particularly at issue in Slovakia. In fact, the Slovak legislation limits itself in this regard, stipulating that it is the duty of local municipalities to ensure the supply of public interest services, including the supply of water, and that this duty forms part of the self-governance of the local municipality.⁶⁰ Since the right to self-governance of local municipalities is protected directly by the Slovak Constitution,⁶¹ the central Government considers themselves limited to monitoring and enforcing the compliance of local municipalities with these obligations pertaining to the right to access to water and sanitation. The only steps taken by the central Government aim to enhance access to water

⁵⁸ Richard Filčák, Daniel Škobla & Dušana Dokupilová, Ensuring Access to Sanitation Infrastructure: Roma settlements and structural inequalities in Slovakia (2020) Slovak Academy of Sciences, p. 47.

⁵⁹ Guidelines for the Realization of the Right to Drinking Water and Sanitation, guideline 2.3 (e).

⁶⁰ See Act no. 369/1990 Coll., § 4 (3) (g).

⁶¹ See the Constitutional Act no. 460/1992 Coll., Article 67.

and sanitation through opening project calls for the possibility of material and financial support, usually using the scheme of EU funds, while local municipalities are still free to choose whether to apply or not. The available funding additionally has been scarcely utilized and overall sums available mostly remained undepleted. The projects funded were all too often small-scale operations consisting of installation of publicly accessible water taps or dispensing machines in municipalities and Roma neighbourhoods, in disregard of the obligation to secure access to safe and affordable drinking water in each individual household.⁶²

32. In *Centre on Housing Rights and Evictions (COHRE) v. Italy*, the ECSR affirmed that “positive measures in the field of housing must be adopted in respect of vulnerable persons, paying particular attention to the situation of Roma and Travellers.”⁶³ In a separate complaint coming from Portugal, the ECSR has also noted that “housing policies which have resulted in the spatial and social segregation of Roma (poorly built housing, on the outskirts of towns, segregated from the rest of the population),” also breached the Charter, using Article 11 of the international binding ICESCR.⁶⁴ The ECSR emphasized that such housing, which had inadequate water and hygiene services, was the result of “indirect discriminatory practices” and highlighted that “the notion of an adequate house implies a dwelling which is safe from a sanitary and health point of view,” which entails that dwellings must have access to “safe drinking water, electricity, sanitation facilities and waste disposal.”⁶⁵ The ECSR determined, given that the percentage of Roma living in inadequate housing was far above the national average and created a distinctly “disadvantaged situation,” the situation triggered “a positive obligation of the authorities to take such difference into account and accordingly respond to it with discernment.”⁶⁶

33. Therefore, the Slovak central Government should adopt all appropriate legislative, administrative and other measures to ensure that:

(1) local municipalities take all steps to fully comply with the normative scope and content of the rights to health and the protection from poverty and

⁶² See MÁČAJ, A.: Securing Human Right to Water through Public Procurement in Slovakia, *International and Comparative Law Review*, Vol. 20, No. 2 (2020), pp. 254-273.

⁶³ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, decision on the merits of 25/06/2010, collective complaint no. 58/2009; Digest of the case law of the ECSR, December 2018, p. 226.

⁶⁴ *European Roma Rights Center (ERRC) v. Portugal*, decision on the merits of 30/06.2011, collective complaint No. 61/2010, para 11.

⁶⁵ *Ibid.*, para 6, 31, 31.

⁶⁶ *Ibid.*, para 30.

exclusion (with specific attention to safe drinking water, sanitation, and waste disposal) as determined by the ECSR and UN treaty bodies, including the CRC Committee and the UN Special Rapporteur on the human rights to safe drinking water and sanitation.

(2) local municipalities have adequate resources, including personal and financial resources, to effectively comply with legal obligations deriving from the right to health and the right to protection from poverty and exclusion.

(3) the central Government regularly monitors and effectively enforces the legal obligations of local governments deriving from the right to health and the right to protection from poverty and exclusion to remedy the existing situation of poverty and exposure to unhealthy environments facing Roma communities in Slovakia.

In Prague 28 June 2021

Maroš Matiaško

FORUM, senior human rights counsel