



Written comments for the consideration of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on occurrence of cruel and inhuman treatment and deficiencies in investigation of such treatment in Slovakia.

Submitting non-governmental organization: Center for Civil and Human Rights (Poradňa), Slovakia

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Introduction

The Center for Civil and Human Rights (Poradňa), independent non-governmental organization, respectfully submits these written comments concerning Slovakia for consideration by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in relation to its planning monitoring visit in Slovakia in a course of 2013.

Given the focus of our work, we want to bring to the attention of the Committee actual documented information on occurrence of police ill-treatment against Roma minority during arrest or while in custodial detention and deficiencies in investigation process of such cases in Slovakia.

We also want to bring to the attention of the Committee the persisting issue of ineffective investigation of the reported cases of sterilization of Roma women without informed consent during their delivery in Slovak hospitals with regard to the fact that in the recent years the European Court of Human Rights (ECtHR) decided that sterilization intervention without informed consent amounted to cruel and inhuman treatment and violated the Article 3 of the European Convention.

These written comments follow from and supplement information that we provided to the UN Committee on the Elimination of Racial Discrimination (CERD) in February 2013 on the given issues and are available at our website: <http://poradna-prava.sk/wp-content/uploads/2013/03/PDF-236-KB.pdf>

Expertise and Interest of the submitting organization

The Center for Civil and Human Rights (*Poradňa*) is Slovak non-governmental, non-profit organization founded in 2001, focusing on the protection of human rights in Slovakia with special emphasis on the protection of the rights of minorities and freedom from discrimination. It carries out field monitoring and research, educational and advocacy activities and provides free legal help for victims of discrimination. *Poradňa* is specifically engaged in strategic litigation of numerous cases of discrimination against Roma in access to health care, public accommodation, employment and education in Slovakia. It also deals with the protection reproductive rights of Roma women and provides legal help for victims of racially motivated police violence. Additional information about the organization are available at: <http://www.poradna-prava.sk/>

Police ill-treatment against Roma minority and ineffective investigation of such cases

In its previous report on the monitoring visit in Slovakia published in February 2010 the Committee pointed at the persisting shortcomings in the treatment of persons deprived of their liberty by law enforcement officials in Slovakia, in particular using of excessive force at the time of apprehension and during detention. As well, the Committee further indicated shortcomings in the investigation process of cases of police ill-treatment and recommended to enhance the effectiveness and independence of investigation into such cases.

Since 2009 *Poradňa* has documented cases of police ill-treatment against Roma minority living in Eastern Slovakia and provided free legal aid including legal representation in criminal proceedings for affected individuals so that these cases are effectively investigated and alleged perpetrators are brought to justice. Till now, we have been providing legal representation in criminal proceedings for more than 20 Roma individuals claiming they have been mistreated in the hands of police. Following the nature of these cases, we have argued that they amounted to torture or inhuman and degrading treatment. In some of those cases violent behaviour of the police officers was accompanied by racial verbal abuses and indicated racial incentive of acting. Based on our work with the cases of police ill-treatment during last several years, we definitely cannot assess the overall trend - if the occurrence of such cases in Slovakia decreased comparing with years before. But we can say that we still documented emerging cases of police brutality against Roma and we have been repeatedly observing serious shortcoming in the investigation process of these cases which does not sufficiently meet criteria for effective investigation into cases of cruel and inhuman treatment laid down by the extensive jurisprudence of the ECtHR and the UN Istanbul protocol. We would like to describe existing deficiencies in the investigation of cases of police ill-treatment and demonstrate them on some of the concrete cases in which we provided legal aid.

From 2009 we have been providing legal representation in a widely publicized case of *police ill-treatment of six Roma boys who were in March 2009 ill-treated by several policemen at the police station 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. Two of the policemen repeatedly threatened the boys with loaded guns. Some of the policemen filmed the incident on their mobile phones and this video was subsequently posted on Internet and shown on television. The case was specifically highlighted also in the previous report of the Committee.¹ This particular case has been under strong public and media scrutiny being watched by the various international human rights institutions and was backed by the exceptionally clear evidence (video recording of the whole treatment). Given these circumstances, criminal prosecution conducted by the Control and Inspection Service Section of the Ministry of Interior (hereinafter "Inspection") could be considered effective and in spring 2010 the policemen, who harassed Roma boys, were charged with a crime of misconduct of public office with racial motive. However, to date, the case is still pending at the District Court in Košice as the court hearings are often postponed as accused policemen are using every possibility to prolong the whole proceeding (they often submit the medical report and request the hearing to be re-scheduled). The case is now pending before the first instance court for more than 3 years and perpetrators still have not been brought to justice and the injured Roma boys has not been remedied. The state authorities are obliged to secure access to justice for victims of human rights violation and the current procedural issues must be effectively tackled and resolved with a view of the future cases of this nature that may go to the civil courts. The current situation only dissuades other possible victims to resist police ill-treatment by legal means of protection and undermines their overall trust in getting justice in such cases.

It should be noted that the above mentioned case police ill-treatment of six Roma boys at the police station in Košice from March 2009 was unique with regard to the obvious clarity of evidence as well as public and media pressure being made and thus it actually does not speak much about common overall quality of investigation conducted by the Inspection of the cases of this nature in Slovakia. We claim that the investigation procedure into cases of police ill-treatment in Slovakia often falls short of the required effectiveness. The investigation

¹Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009; CPT/Inf (2010) 1, para. 16

into several other cases in which we provided legal aid particularly lacked required adequacy and thoroughness. The Inspection tended not to take all the necessary steps to identify and secure relevant evidence, search for all the relevant witnesses of the ill-treatment and give reasonable relevance of the existing medical records. It tended not to give the same credibility of the witnesses of police officers and victims of the ill-treatment and took into account evidences that obviously lacked independence like reports from the police intervention written by involved policemen or their supervisors themselves. We consider particularly worrying that a relatively high number of complaints alleging police ill-treatment obtained by the Inspection is reviewed and rejected within initial period of 30 days even before initiating criminal prosecution and on the ground of limited range of information or evidence which obviously indicates that investigation into complaints alleging police ill-treatment may not be thorough and thus not meet the criteria for effective investigation.²

We demonstrate these shortcomings in the following three cases which have been investigated by the Inspection. The first one was dropped down as a result of resignation of the parents of the injured boys. In the second one we exhausted all the domestic legal remedies and filed a complaint to the ECtHR. The third described case is currently pending at the General prosecution.

In the spring 2009, three Roma boys from Prešov region (two of them from the Roma minors) were taken to a police station and forced by several police officers to confess to the crime they allegedly committed. One of the boys testified that police officer beat him with hands and baton and kicked him. Another boy was chained up to the bar and the police officer kicked him in the leg, hit in his neck and stomped on his feet. Third boy was also chained up to the bar, police officer called him "black mug" and stepped on his feet so that he couldn't move. Two of the boys suffered minor injuries, but have not sought medical treatment. Upon our complaint, the investigator of the Inspection launched criminal prosecutions for a crime of "misconduct of public officer" but it was subsequently discontinued. We appealed to the District Military Prosecution Office arguing the investigator reached wrong legal conclusions, incorrectly assessed an evidence and insufficiently explained the facts, but our complaint was dismissed as manifestly ill founded. We subsequently appealed to the Higher Military Prosecution Office which complied with our claim and returned the case to the investigator for further action. However, the criminal prosecution has been discontinued again and parents of the affected boys decided not to legally pursue this case any further. According to our legal assessment of the investigation, the investigator gave virtually no weight to testimonies of boys pointed at their truancy which did not relate to the subject of the investigation. The investigator inclined to the claims of police officers without coping adequately with the claims of affected boys and any attempt to objectively verify them.

In late 2010, three Roma teenagers from Košice region were detained by a police patrol and taken to police station where police officers divided them into three rooms. They forced boys to confess to robbing another boy. Some of the officers slapped one boy across the face and head, the other boy was punched in the face and while falling to a ground he was kicked. Third of the boy testified that he got handcuffed and subsequently two officers kicked him. Attacks by members of the Police lasted until all the boys confessed to the crime. The boys testified, they were detained for about 15 hours without being able to lean, sit, or lie down. They were without food and water all that time. Following the release, all three boys sought medical treatment having light injuries with the overall treatment for 7 days. We filed a complaint, but investigator of the Inspection rejected without initiating criminal prosecution. He concluded that ill-treatment reported by Roma boys did not correspond with objective findings in medical examination and as affected Roma boys were recognized by robbed boy, the policemen had no reason to force them to confess to. We appealed to the Military District Prosecutor's Office pointing at ineffective investigation missing thoroughness. The complaint was however dismissed as manifestly ill-founded. The General Prosecutor's Office and subsequently the Constitutional court did not find any flaws in the investigation procedure either. After exhaustion of all available domestic remedies, in December 2012 we filed a complaint to the ECtHR arguing violation of Article 3 in conjunction with Article 14 of the European Convention.

²The Inspection separately collects statistics on received complaints of detained, arrested and accused persons related to injuries which can be allegedly caused by members of Police Forces. These statistics are available and made public in its annual "reports on crime of members of Police Forces." According to recent statistics available, during 2010 the Inspection received 184 complaints of this nature from which approx. 84% were reviewed and rejected without initiating criminal prosecution. During 2011 received 168 complaints of this nature from which approx. 89% were reviewed and rejected without initiating criminal prosecution. During the year 2012 received 158 complaints of this nature from which approx. 83 % were reviewed and rejected without initiating criminal prosecution. The reports from the last years are available in Slovak language at: <http://www.minv.sk/?posobnost-inspekciej-sluzby-na-useku-inspekciej-sluzby>

In the spring 2011, two policemen from the local police station came to the nearby Roma settlement in Prešov region. One of them allegedly took out the tear gas and started spraying towards Roma including children standing and playing in front of their house while shouting at them in an aggressive and racist way. The tear gas irritated children's eyes. Our complaint on this case was rejected by the Inspection without initiating criminal prosecution. The Investigator of the Inspection concluded that it is not possible to clarify this case, even though he took only limited investigatory steps. We appealed to the District Military Prosecution Office which confirmed the decision of the Investigator, but following our subsequent appeal, the Regional Prosecution Office abolished the decision of investigator and ordered him to commence the criminal investigation to search for possible evidences in the case. The investigator started the criminal prosecution and took some additional investigatory steps, but subsequently he again discontinued criminal investigation. We again appealed against his decision arguing that the conducted investigation still lacked required thoroughness as the investigator did not try to identify and hear all the relevant witnesses of the incident. Our appeal is currently dealt with the General Prosecution.

A necessary element of an effective investigation of cruel and inhuman treatment is also independence and impartiality of an institution and individuals who investigate such misconduct. In this regard we would like to raise two issues which, in our opinion, raise serious doubts if a work of the Slovak Inspection meets standards laid down by the jurisprudence of the ECtHR concerning independence.

1. It appears that not every case of alleged police ill-treatment is necessarily dealt and investigated by the Inspection. From our experience, when the Inspection receives information about alleged ill-treatment, it only rarely initiates criminal prosecution "ex officio" given the seriousness of received allegations of police misconduct. As we already implied, a relatively high percentage of such complaints is rejected by the Inspection as "manifestly ill-unfounded" during preliminary 30 days, but some may also be referred to the police headquarters supervising the policemen who allegedly ill-treated for their own administrative or disciplinary proceeding. Then the whole case is investigated by the disciplinary department of the headquarters under which the policemen serve, which obviously cannot be considered independent and thus effective. We assume that such approach to the complaints of police ill-treatment may be caused by the fact that the Inspection tends to downplay some exposures of ill-treatment not perceiving them as possible criminal conduct. For illustration, in December 2012 we addressed the Inspection the complaint describing the police intervention in one of the Roma settlements in the region of Prešov during which the policemen came in people's houses without court permission, mistreated several people and injured them. Some of these people possessed medical records as well. Two persons were also taken to the police station where they were beaten and threatened to confess to attacking the policemen which they did not commit. The Inspection subsequently informed us that our information was shifted to the Regional police headquarters in Prešov to deal with the case. To this date, the investigation within the Regional headquarters is still pending. With regard to the required independence, we also want to point out at the investigation of the ill-treatment of the members of the "municipality police" which does not fall within investigative competence of the Inspection.³ Even though the municipality/town policemen are also liable to interfere in guaranteed rights and freedom of citizens, cases of their alleged mistreatment are investigated by the investigators of the common state police forces which cannot be considered independent.

2. We claim that the Inspection from its very nature - being established and functioning under the Ministry of Interior - lacks necessary independence and there is a need for new reformed institution for investigation of cruel and inhuman treatment in the police forces. Slovakia is constantly criticized by the relevant UN Treaty monitoring bodies and some other international human rights institutions for questionable independence of the current model of investigation of the cases of police ill-treatment.⁴ The current situation clearly shows that supervision of the prosecutor over the investigation is not a sufficient safeguard to prevent the existing shortcomings. The jurisprudence of the ECtHR established that there has not be any institutional and hierarchical relationship between the investigatory institution and police officers who are investigated for ill-

³ Establishment and competences of the municipality police regulates the Act No 564/1991 Coll. on Municipality police.

⁴ Most recently in March 2013 the UN Committee on the Elimination of Racial Discrimination repeatedly raised concerns over independence of the Inspection; CERD/C/ SVK/CO/9-10, para. 9.

treatment. Given that, the mechanism of investigation into police abuses in Slovakia should be revisited and put completely outside of the Ministry of Interior. In 2009 the CoE Commissioner for Human Rights Thomas Hammarberg published an opinion concerning an independent and effective police complaints system⁵ which could be a good conceptual basis for reshaping the mechanism of investigation in this area and strengthening its independence, but for the time being the Government authorities give no attention to this issue.

Despite some measures undertaken by the Government - particularly as a result of the widely reported case of ill-treatment of Roma boys in Košice from March 2009⁶ - we are convinced that deeper and more systemic changes are necessary to achieve a significant progress towards elimination of police ill-treatment. The Committee repeatedly highlighted the importance of the effective investigation to prevent police abuses and we assume that strengthening effectiveness of investigation should be imperative for the Government authorities. Trainings among police officers or other partial measures are apparently not sufficient to markedly decrease occurrence of police ill-treatment in Slovakia if the investigation process is continuously falling short and perpetrators are not brought to justice.

Strengthening effectiveness of the investigation must go hand in hand with additional measures to prevent police ill-treatment. Since we have repeatedly documented claims of Roma who experienced violence or threats during police interrogation, preventive safeguards have to be introduced in this regard as such cases are usually very difficult to prove. We specifically recommend to introduce mandatory video/audio recordings of police interrogation and significantly improve the access to free legal aid from the very outset of the detention and during interrogation if detainees ask for such assistance. We also find particularly important to continuously raise awareness of individuals of the guaranteed rights towards the police, particularly Roma living in marginalized communities and also how to reasonably secure evidence if they encounter such treatment (getting medical records, making records with mobile phones etc.) because many times without active approach of victims to secure evidence, police ill-treatment may not be possible to prove even if the investigation procedure is effective. Finally, we note that the each measure being taken and its impact on prevention of police ill-treatment should be properly evaluated since Government authorities tend to overlook this important aspect when adopting policy measures.

We encourage the Committee to address the Slovak Government these recommendations:

- Establish a fully independent autonomous institution, built outside the structures of the Ministry of Interior that will be responsible for investigation of complaints of alleging cases of torture, cruel and inhuman treatment of the police officers as well as all complaints suggesting possible racial motive of acting.
- Introduce the mechanism of external evaluation of the effectiveness of investigation of the selected cases of police ill-treatment with an aim to identify symptomatic deficiencies in the investigation process of such cases in Slovakia;
- Secure continuous education of all persons investigating cases of police ill-treatment as well as state prosecutors and judges with particular emphasis on knowing standards of effective investigation of torture, cruel and inhuman treatment laid down by the jurisprudence of the ECHR and the UN Istanbul protocol;
- Secure continuous education of experts in the field of psychology and medicine who are engaged in the investigation of police ill-treatment with particular emphasis on knowing UN Istanbul protocol with regard to its working engagement;

⁵ Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police; 12 March 2009; CommDH(2009).4.

⁶ We particularly refer to the measures about which the Government authorities informed the Committee in 2010 and 2011; CPT/Inf (2010) 2; CPT/Inf (2011) 2.

- Introduce mandatory recordings of police interrogation and improve access to a legal help from the very outset of the detention and during interrogation if detainees ask for such assistance.

Investigation of the practice of sterilization of Roma women without informed consent in Slovak hospitals

In the last two years the European court issued three judgements against Slovakia concerning unlawful sterilization of Roma women in Slovak hospitals and declared that sterilization intervention without informed consent violated their right to be free from inhuman and degrading treatment, guaranteed by Article 3 of the European Convention.⁷ The sterilizations of Roma women without informed consent in hospitals were performed during delivery of their children when making caesarean section under anaesthesia. In the last judgment issued in November 2012 (*I.G. and others v. Slovakia*) the Court also specifically found that the investigation led by the Slovak authorities into the cases of forced sterilization of Roma women in 2003 and subsequently in 2007 did not meet the standards of effective investigation laid down by the European Convention (procedural aspect of Article 3).

Despite the judgments of the ECtHR in favour of the affected women and despite recommendations from many international human rights bodies,⁸ the Slovak Government has not admitted its responsibility for the practice and keeps reducing the problem to individual failures of doctors or consequence of imperfect health legislation from the past. It should be noted that over previous years we have been able to provide legal assistance only to very small number of women who were sterilized without their consent.⁹ Significantly higher number of illegally sterilized Roma women was identified in 2002 during our fact finding mission in Roma communities in Eastern Slovakia.¹⁰ Without conducting extensive investigation of these cases throughout the Roma communities in Slovakia we can only assume how many Roma women have been exactly affected by this practice violating their right to be free from inhuman and degrading treatment over previous decades in Slovak hospitals.

We encourage the Committee to raise this issue with the Government authorities and recommend to:

- Establish an independent commission to investigate the full extent of the practice of sterilization without informed consent in the communist and post-communist period in Slovakia and recommend adequate financial and other reparations for affected women. This commission should include also independent and highly qualified members of civil society and members of the Roma community. When establishing this commission, the Slovak Government should draw from experiences of other countries that have dealt with or are currently dealing with similar issues, such as Sweden, Norway and Peru;
- Conduct a thorough effective criminal investigation into all relevant crimes in sterilization cases with focusing on conditions under which signature on sterilization forms were given and criminally prosecute those responsible for this human rights violation.

⁷ Decisions of the European Court of Human Rights in a case *V.C. v. Slovakia*, no. 18968/07, judgment of 8 November 2011, final as of 8 February 2012; *N.B. v. Slovakia*, no. 29518/10, judgment of 12 June 2012, final as of 12 September 2012; *I.G. and others v. Slovakia*, no. 15966/04, judgment of 13 November 2012, final as of 29 April 2013.

⁸ Most recently in March 2013 the UN Committee on the Elimination of Racial Discrimination recommended the Slovak Government to ensure full reparation and compensation for all victims of these practices and thoroughly investigate all incidents of forced sterilization of Roma women and prosecute those responsible; CERD/C/SVK/CO/9-10, para. 13.

⁹ *Poradňa* has been providing legal representation only to 15 Roma women in proceedings before domestic courts and European Court of Human Rights in Strasbourg.

¹⁰ For more information about this documented practice see: *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, issued by *Poradňa* and the *Center for Reproductive Rights* on 28 January 2003. Available online at: <http://poradna-prava.sk/dok/bodyandsoul.pdf>