

Council of Europe

DGI - Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the ECHR

By email only: dgl-execution@coe.int

20 November 2020

RULE 9 SUBMISSION

with regard to the execution of:

Lakatošová and Lakatoš v Slovakia, judgment of 11 December 2018

1. The European Roma Rights Centre (“the ERRC”), Fórum pro lidská práva (“FORUM”) and Poradňa pre občianske a ľudské práva (“Poradňa”) make this submission in accordance with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. The ERRC¹ is a Roma-led organisation whose vision is for Romani women and men to overcome antigypsyism and its legacy, to achieve dignity, equality, and full respect for their human rights, and to use their experience to contribute to a more just and sustainable world. The ERRC represented the applicants in this case.
3. FORUM² is a Central European legal non-governmental organisation focusing on international human rights litigation and advocacy in Central Europe. FORUM

¹ www.errc.org

² <https://forumhr.eu/>

works to ensure that human rights are respected, protected, and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international courts and domestic and international human rights bodies. It provides support and leads domestic and international litigation and advocacy activities.

4. Poradňa³ is a Slovak grass roots non-governmental organisation focusing on the protection of human rights with an emphasis on the rights of Roma. It addresses police ill-treatment and various forms of discrimination against Roma in Slovakia. Poradňa pursues its mission by human rights monitoring and strategic litigation as well as domestic and international advocacy.
5. The case concerns the failure of investigating authorities and courts to expose and deal with the potential racist motivation of the murder perpetrated by an off-duty police officer in Hurbanovo, Slovakia. In its judgment⁴, the European Court of Human Rights (“the ECtHR”) found in favour of the applicants. In particular, the Court found that Slovakia had violated Article 14 of the European Convention on Human Rights (prohibiting discrimination in the protection of human rights), taken in conjunction with Article 2 (the right to life), due to the above-mentioned failure to effectively examine racial motivation of the perpetrator. The ECtHR held, in particular, that *“the prosecuting authorities failed to examine a possible racist motive in the face of powerful racist indicators and in particular failed to give any reasons whatsoever whether the attack of 16 June 2012 had or had not been motivated by racial hatred. In the absence of any reaction by the courts to the limited scope of the investigation and prosecution, the adequacy of the action taken by the authorities dealing with the investigation and prosecution in this case was impaired to an extent that is irreconcilable with the State’s obligation in this field to conduct vigorous investigations, having regard to the need to continuously reassert society’s condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence”*.
6. We are writing this submission because we believe that the Slovak Government have not taken the necessary measures to comply with this judgment and to

³ www.poradna-prava.sk

⁴ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-188265%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-188265%22]})

address the issues highlighted by the ECtHR. Investigations of violent acts against members of Romani communities, falling either under Article 2 or Article 3 of the Convention, are often not effective and the racial motivation of those acts goes unexamined. This applies to actions by state agents as well as those by private individuals.

7. In its 2018 Concluding observations on Slovakia⁵, the UN Committee on the Elimination of Racial Discrimination expressed concerns “*about reports of verbal and physical attacks against ethnic minorities, including Roma...*”. It asked the Government to “*ensure that all racially motivated crimes, including verbal and physical attacks, are investigated, that perpetrators are prosecuted and punished, and that motives based on race or on skin colour, descent or national or ethnic origin are considered as an aggravating circumstance when imposing punishment for a crime.*” Similarly, the UN Committee Against Torture in its 2015 Concluding observations stated that Slovakia should “*ensure that offences motivated by discrimination constitute an aggravating circumstance in criminal prosecution.*”⁶
8. In the last few years, there have been several instances of violent attacks against Roma in Slovakia. Romani victims ended up as applicants before the ECtHR. In most of those cases racial overtones have not been examined, although the victims claimed that the attacks might have been racially motivated.
9. Very recently, in September 2020, the ECtHR issued a judgment in the case of *R.R. and R.D. v Slovakia* (Application no. 20649/18). It held that Slovak authorities did not fulfil their positive obligation to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic prejudice may have played a role in the applicants’ treatment. In particular, they failed to investigate whether the police action which took place in a Romani community in Moldava nad Bodvou on 19 June 2013 was contaminated by racism. The ECtHR found violation of Article 14 in conjunction with Article 3 of the Convention.
10. The case of *M.H. and Others v Slovakia* (Application no. 14099/18) has been pending before the ECtHR and concerns the same police action as was at issue

⁵ UN CERD: Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia, CERD/C/SVK/CO/11-12, 12 January 2018

⁶UN CAT: Concluding observations on the third periodic report of Slovakia, CAT/C/SVK/CO/3, 8 September 2015

in *R.R. and R.D v Slovakia*. Two *M.B. v Slovakia* applications (Applications no. 45322/17 and no. 63962/19) were submitted by applicants who alleged to have been ill-treated by police in a police car and at the police station when they were minors. In another pending case, *T.K. v Slovakia* (Application no. 57085/18) applicants similarly claim that they were mistreated by police during police action that took place in a Romani community in Vrbnica on 02 April 2015. Similarly, the applicants in *Kováčová and Others v Slovakia* (Application no. 31975/19) claim to have been victims of ill-treatment in the course of a police operation on 16 April 2017 in a Romani community in Zborov. On 4 September 2020, the ECtHR communicated *P.H. v Slovakia* (Application no. 37574/19) - another case concerning a detained Romani woman who fell out of a window from the 7th floor at the police station.

11. In the past, the ECtHR has issued judgments in several other cases in which Romani applicants from Slovakia claimed to be victims of violations of their rights under Articles 2 or 3 of the Convention (*Mižigárová v Slovakia*, Application no. 74832/01, judgment of 14 December 2010; *Koky and Others v Slovakia*, Application no. 13624/03, judgment of 12 June 2012; *Adam v Slovakia*, Application no. 68066/12, judgment of 26 July 2016; *A.P. v Slovakia*, Application no. 10465/17, judgment of 28 January 2020). The ECtHR held that rights of the applicants in those cases were violated, although it did not find violation of Article 14 of the Convention in them.
12. According to well-established ECtHR case-law, domestic authorities have a duty to take all reasonable steps to unmask any racist motivation and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so, and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones, would be to turn a blind eye to the specific nature of acts that are particularly destructive to fundamental rights (see e.g. § 160 in *Nachova and Others v Bulgaria*, Grand Chamber judgment of 06 July 2005, Applications no. 43577/98 and 43579/98). Although proving racial motivation will often be extremely difficult in practice, the respective States' obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not an absolute one (see e.g. § 66 in *Šečić v Croatia*, judgment of 31 May 2007, Application no. 40116/02). However, the

authorities must do what is reasonable in the circumstances of the case (see e.g. § 66, in *Fedorchenko and Lozenko v Ukraine*, judgment of 20 September 2012, Application no. 387/03). They shall collect and secure the evidence, explore all practical means of discovering the truth, and deliver fully reasoned, impartial, and objective decisions, without omitting suspicious facts that may imply racially motivated violence (see e.g. § 69, in *Bekos and Koutropoulos v Greece*, judgment of 13 December 2005, Application no. 15250/02).

13. The submitting NGOs believe that Slovak authorities have been systematically failing to comply with their obligations to effectively investigate possible racial motivation of violent acts against Roma as required by Article 14 taken in conjunction with the procedural limb of Articles 2 or 3 of the Convention. As it is described in paras. 9-10 above, 7 applications were filed altogether in the last 3 years in which the Romani applicants from Slovakia claimed to be victims of ill-treatment. It is apparent that authorities have not properly investigated racial motivation in any of them, even though the Romani applicants reasonably claimed it in criminal proceedings.
14. Two of the submitting NGOs directly secure legal representation to Romani applicants claiming to be victims of ill-treatment in the proceedings pending at the ECtHR, and while knowing details of criminal investigation in these cases they believe that authorities have not properly investigated racial motivation in any of them. They also currently secure legal representation to Roma claiming to be victims of ill-treatment in pending domestic criminal proceedings and observe ongoing reluctance of the authorities to properly investigate racial motivation in such cases. Most of those cases concern police violence against Roma. The submitting NGOs would like to note that the *Communication from the Slovak Republic concerning the case of Lakatosova and Lakatos v. Slovak Republic* does not indicate any case of police violence against Roma which ended with a decision sentencing the perpetrators.
15. Furthermore, it is of utmost importance to note that an investigation which does not effectively examine racial motive, where appropriate, is not only carried out in violation of Article 14 taken in conjunction with the procedural limb of Articles 2 or 3 of the Convention, but also basically prevents the victims being able to successfully prove that the attack was indeed perpetrated on the basis of

racial/ethnic hatred.

16. The ECtHR (as well as domestic courts in criminal cases) require an applicant alleging discrimination to demonstrate it “*beyond reasonable doubt*” (e.g. § 147, in *Nachova and others v Bulgaria*). However, vulnerable victims alleging racially motivated violence are particularly unlikely to discharge this burden of proof when they are also victims of a failure on the part of the authorities to investigate what happened to them. If the authorities fail to investigate the events effectively, it leaves the applicants unable to establish a violation of Article 14 taken with the substantive limb of Article 2 or 3 of the Convention. The existence of sufficient evidence in any particular case is completely out of the hands of the applicants.
17. This issue clearly constitutes a huge obstacle to the victims of discriminatory treatment in their access to justice. In the very recent judgment *R.R. and R.D. v Slovakia* mentioned above, the ECtHR examined whether or not racism was a causal factor in the planning of the police operation during which the Romani applicants suffered injuries. However, due to a lack of any investigation in this regard, it had to state that: “*In these circumstances, and taking into account the material in its possession as well as the applicable standard of proof (see, mutatis mutandis, Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005 VII, with further references), the Court is unable to take a position on whether racist attitudes played a role in the planning of the operation of 19 June 2013.*”
18. In conclusion, we submit that the Slovak Government has not taken the measures necessary to comply with the judgment in *Lakatošová and Lakatoš v Slovakia* and to address the issues highlighted by the ECtHR.
19. For the reasons above, the submitting NGOs respectfully recommend the Committee of Ministers to continue examining the execution of the judgment in the *Lakatošová and Lakatoš v Slovakia* case under the enhanced procedure, and call on the Government of the Slovak Republic to:
 - institutionally respond to hate speech, manifestations of racism and intolerance, threats and racially motivated violence against Romani communities;
 - take measures to effectively investigate hate crimes against Roma

including due examination of racial motivation, e.g. by appropriate and targeted education and methodological support;

- provide data about the occurrence of hate crimes in Slovakia including disaggregated data about victims of such crimes and the success rate of prosecution in those cases;
- report whether there were any measures adopted to ensure racial motivation behind hate crimes is effectively investigated.

European Roma Rights Centre
Fórum pro lidská práva
Poradňa pre občianske a ľudské práva

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