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COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

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Following his visit to Slovakia
from 26 to 27 September 2011

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.

The Slovak authorities' comments on the Report are appended.

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 2011.¹ 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.

¹ 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 2008-2013² 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

² 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>

demographic and socio-economic criteria. Finally, concern has been expressed that the approach 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.³ 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.⁴
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 2007.⁵
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

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

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

⁵ Available at http://www.coe.int/t/dghl/monitoring/ecri/activities/Themes/Ethnic_statistics_and_data_protection.pdf

National Legislation to Combat Racism and Racial Discrimination, which provide extensive guidance in this field.⁶ 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 2011.⁷

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”.⁸
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.⁹

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.

⁶ 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.

⁷ See http://www.coe.int/t/congress/Sessions/20110922-Roma-Summit/default_en.asp

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

⁹ 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,¹⁰ 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.¹¹ 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.¹²

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.¹³
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.¹⁴ 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

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

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

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

¹³ ECRI Report on Slovakia, op.cit. paras. 89-95.

¹⁴ *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.¹⁵ 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".¹⁶
33. ECRI General Policy Recommendation No. 11 provides detailed guidance on how member states can fulfil their obligations in this field.¹⁷ 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.¹⁸ 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.

¹⁵ ECRI Report on Slovakia, op.cit. para. 92.

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

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

¹⁸ 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.¹⁹ 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 2010.²⁰ 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.²¹
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".²² The attention of the Slovak authorities is drawn to the Commissioner's Opinion concerning

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

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

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

²² *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.²³

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”.²⁴
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

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

²⁴ 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”.²⁵ 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,²⁶ 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.²⁷

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

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

²⁷ *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.²⁸

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%.²⁹ 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.³⁰
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

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

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

³⁰ 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 2000.³¹
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.³² 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

³¹ *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

³² *Body and Soul – Forced Sterilizations and other Assaults on Roma Reproductive Freedom in Slovakia*, Centre for Reproductive Rights and Poradňa 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.³³ 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).³⁴ 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”.³⁵ 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.³⁶

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.³⁷ 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

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

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

³⁵ *V.C v. Slovakia*, paras 110-117.

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

³⁷ 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.³⁸

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.³⁹
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.⁴⁰ 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.⁴¹

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.

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

³⁹ ERRC, *Life Sentence: Romani Children in Institutional Care*, June 2011

⁴⁰ *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.

⁴¹ 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.⁴² 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 2006-2015.⁴³ 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.⁴⁴
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

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

⁴³ 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.

⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷

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

⁴⁵ 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.

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

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

capacity restored.⁴⁸ 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).⁴⁹

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.⁵⁰
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.⁵¹ 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.⁵² 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.

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

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

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

⁵¹ 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.

⁵² 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.

Appendix

Comments of the Slovak Republic on the Report of the Commissioner for Human Rights of the Council of Europe

following his visit to Slovakia from 26 to 27 September 2011

I. Protection of human rights of the Roma

Several activities carried out by the Deputy Prime Minister for Human Rights and National Minorities ("DPM") in the field of human rights have had a direct positive impact on the situation of Roma and the protection of their human rights, although their focus is much broader. The DPM initiated several new measures to protect and promote human rights, which are also reflected in the Working Plan of the Government of the Slovak Republic and the Plan of Legislative Tasks of the Government of the Slovak Republic.

The initiatives supported by the Government and incorporated in the legislature include the establishment of a new permanent advisory body of the Government, **the Government Council for Human Rights, National Minorities and Gender Equality** ("Council"), creation of which was approved by the Government Decree No. 158/2011 from the 2nd of March 2011. The Council is a permanent professional, advisory, coordinating and consultative body of the Government of the Slovak Republic in the field of protection of the fundamental human rights and freedoms, political and civil rights, rights of persons belonging to national minorities and ethnic groups, economic, social and cultural rights, enforcement of the principle of equal treatment and equality, including gender equality.

The Council is chaired by the Deputy Prime Minister for Human Rights and National Minorities. Its Vice-Chairmen are the Deputy Prime Minister and Minister of Labour, Social Affairs and Family of the Slovak Republic, Minister of Justice of the Slovak Republic and a representative of the civil society (Government Decree No. 806/2011 from the 14th of December 2011)..The representative will be nominated by the Government on the proposal of the Committee for the non-governmental organizations.

Previous advisory bodies of the Government of the Slovak Republic in the field of human rights, anti-discrimination and civil society development were transformed into the Committees of the Council and each has a representative in the Council itself, who represents the specific groups of people or the human rights fields requiring increased level of protection. 8 committees were created in total. Relevant in the context of the report of the Commissioner are the following:

- Committee for the National Minorities and Ethnic Groups,
- Committee for the People with Disabilities,
- Committee on Research, Education and Training in the Field of Human Rights and Development Education,
- Committee on the Prevention and Elimination of Racism, Xenophobia, Antisemitism and Other Forms of Intolerance.

Following working groups were established under the Council to date:

- the Working Group on inclusive education
- the Multidisciplinary Working Group for the preparation of the methodology for the collection of data on age, sex, minority or ethnic group or other characteristics.

So far, four meetings of the Council have been held (April, June, September, November 2011); their agenda included questions with direct impact on the Roma communities in the Slovak Republic. Topics of the meetings included: the forthcoming reform of the institutional framework for the protection of human rights in the Slovak Republic, the Roma Integration Strategy up to 2020, parliamentary amendments on parental allowance and birth grants, amendment to the Building Code to which the Council issued statements.

The Council entrusted the Deputy Prime Minister for Human Rights and National Minorities with the preparation of **the Strategy for the Protection and Promotion of Human Rights in the Slovak Republic**, to define a comprehensive system of protection and promotion of human rights in the Slovak Republic and to align existing programs, strategies, action plans or concepts directly affecting the human rights issues. The first draft of the strategy should be prepared in March 2012; the text of the strategy should be submitted to the Government of the Slovak Republic for approval in September 2012 at the latest.

Other conceptual documents should be built on the strategy: **The National Plan for Training and Education in the Field of Human Rights and the National Minorities Policy**. It is expected that an amendment to the Anti-Discrimination Act will be prepared, based on the evaluation of previous application practice and transposition of new EU directives.

All objectives and measures that the strategy should define and then implement should particularly focus on the improvement of the situation in the entire field of enforcement and protection of human rights and non-discrimination. At the same time, it should aim to establish effective mechanisms to achieve this objective, particularly through preventive measures. All concerned ministries should contribute to this effort so that it becomes a horizontal priority.

Following the Notification of the Commission to the European Parliament, the Council, the Economic and Social Committee and to the Council of Regions labelled as the "EU Framework for Roma Integration up to 2020" - the Office of the Government Plenipotentiary for Roma Communities - prepared the "**Strategy of the Slovak Republic for Roma Integration up to 2020**" ("Strategy"), which should be discussed in the Government in December 2011.

The Strategy reacts to the need to address challenges connected with social integration of Roma communities on the national and EU level. Principles of the Strategy should become the baseline of the policies to address the adverse situation of the target group for the period until the year 2020, as well as for the programming period from 2014 to 2020 for the use of Structural Funds.

The goal of the Strategy is to create a base for action plans and to formulate tasks and prepare measures, policies and legislative standards on all levels of state administration in the Slovak Republic for the period from 2012 to 2020.

The main aim of the Strategy is to stop the segregation of Roma communities, a significant positive upturn in the social integration of Roma communities, non-discrimination and changes of attitudes of the majority population towards the Roma minority. Basic Strategy principles are the following: destigmatisation, desegregation and deghettoisation.

In accordance with the EU Framework for Roma Integration up to 2020, the Strategy focuses on four main areas: access to education, employment, healthcare and housing. The Government adopted with the Decree No. 522/2011 the “Revised National Action Plan of the Decade of Roma inclusion 2005 - 2015 for the years 2011 – 2015” that serves as a baseline to define priority areas. In addition to the priority areas, the Strategy focuses on other areas as well - the issue of financial inclusion, the non-discrimination and the area of public opinion. In the coming period the Government of the Slovak Republic will pay attention to the preparation of inclusive policies to support minority rights and language use, security, fighting against criminality, gender and other issues. These areas will further be elaborated on in 2012.

Support of NGOs activities focused on Roma projects within the framework of grant programs

From the grant scheme of the Government Office of the Slovak Republic „Support of the Culture of Minorities and Ethnic Groups”, in 2010, 16 projects targeting the Roma minority were supported with a total amount of EUR 60,000; from the „Action Plan to Prevent All Forms of the Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance“, in 2010, 8 projects were supported in total amount of EUR 71,536.45.

The Deputy Prime Minister presented two calls in 2011 for submission of projects in the field of protection and promotion of human rights, in which the total granted amount of EUR 202,360 was distributed to 12 projects with the Roma topic.

On paragraph 13

In connection with paragraph 13 and the concerns of non-governmental organizations, the Government of the Slovak Republic is aware that the law on socially excluded communities (“SEC”) can not be the only tool in solving problems of the Roma minority in Slovakia and in improving of their status. This was particularly emphasized to the Commissioner during the meeting with the State Secretary of the Ministry of Labour, Social Affairs and Family, as mentioned in paragraph 12. As it was already mentioned, the Government of the Slovak Republic currently plans to introduce **the Strategy of the Slovak Republic for Roma Integration up to 2020**, which will represent a comprehensive strategic material emphasizing the broader approach to this issue, not just the one based on the struggle against poverty and social exclusion. In this sense the Act on SEC represents only one of the tools that would help address the problems of the Roma minority in Slovakia in the long run.

We are not quite sure about the logical connection to the Commissioner’s statement that “Roma ... are increasingly less seen as a relevant partner, due to the exclusive reliance of the law on demographic and socio-economic criteria.”. The reasons for the need to determine the demographic and socio-economic criteria are clear, consisting mainly of the need to define exactly the target group for the targeted interventions of state policies, which was indicated as a problem in the past when the concepts were based on ethnicity. The concept of the Act was prepared in close cooperation with the third sector, it has been repeatedly discussed with representatives of the Roma minority with no major objections to the socio-economic concept. The concept also emphasises the processes at the local level and the empowerment of target group position while developing local policies. From this perspective, we consider the opinion expressed in the report to be unjustified.

The issue of support of particularly those individuals who show interest in the inclusion we state that, of course, the policies aim to provide an opportunity to improve the social situation

of all regardless of their personal views. However, without interest in this opportunity by the target groups, the social policies may be limited only to providing basic living needs. The principle of individual responsibility and merit is fully consistent with the principles of continuous sustainability and consistency of public policies and has a significantly positive impact on the motivation of target groups and limiting the creation of dependency on the social system. We believe that on similar principles the majority of successful programs of non-governmental organizations at the local level is built. Efforts to focus the programs more strongly on motivated individuals are based just on experience in the field, where local actors have for long pointed at inefficiency and demotivative character of overall and non-targeted interventions. It is also necessary to distinguish the nature of the interventions - some of them (social and intervention cross services, building of infrastructure, basic social benefits, health interventions, provision of basic needs) are implemented generally, regardless of individual characteristics of the individual. Others, however, are suitably implemented, with emphasis at above principles (housing policy, labour market involvement, part of the social benefits, etc.).

On paragraph 14

Slovak National Centre for Human Rights (SNCHR) - activities focused on strengthening of the Equality Body and the implementation of the antidiscrimination legislation

On the 26th of November 2010 the Deputy Prime Minister for Human Rights and National Minorities published an open letter addressed to the Slovak National Centre for Human Rights based on several critical opinions and recommendations of international institutions and organizations¹ and called for an immediate debate on the future of the Centre. The launch of the debate was necessary to bring changes of a fundamental nature, which would allow to build modern and efficient institutional architecture for the protection and promotion of the fundamental human rights and freedoms including the rights of the child in Slovakia.

During 2011 the public was informed about the findings of the report about the long-term unsatisfactory situation in the SNCHR, adopted by the Government at its June meeting which authorized the Deputy Prime Minister for Human Rights and National Minorities to undertake further steps towards transformation of the Centre into an institution for equal treatment and transfer its competencies in the field of protection and promotion of human rights to the public defender of rights (ombudsman).

On paragraph 18

The lack of statistical data regarding ethnicity and so on, and the need to implement the system of such statistical data collection.

The Department of the Deputy Prime Minister for Human Rights and National Minorities, in particular the Section for Equal Treatment and Gender Equality in the Government Office of the Slovak Republic prepared an extensive yearlong project for 2012 called "Discrimination in Slovak reality" supported from the European Commission's program PROGRESS 2011. One of the priorities of the project is to analyze the needs in terms of collection of relevant data for regular monitoring of the compliance with the principle of equal treatment (including data on ethnicity or belonging to autochthonous or non-autochthonous minorities, sexual orientation, social status, etc.). The goal of this project is to identify the needs of collection of relevant data on compliance with the principle of equal treatment with particular regard to social exclusion, the

¹ ECRI, Amnesty International, Human Rights Committee of United Nations, EU FRA oriented to the urgent need to ensure real and full independence of the Centre and strengthening the mandate of the Slovak National Centre for Human Rights so that it complies with the standards of national institutions for human rights - the so-called Paris Principles

summary of existing measurement tools, possibilities for their deeper application, development of new indicators and new data collection methods for mapping of the situation in the area, creating a platform for informed debate on the topic of data collection and put them into practice, and a draft of recommendations, policies and methodologies for the purpose of relevant data collection.

The Deputy Prime Minister for Human Rights is aware of the urgency of improvement of the statistical data collection focusing on the grounds of discrimination. This has been proven also by **the Multidisciplinary Working Group on the preparation of methodology for collecting data on age, sex, minority or ethnic group background** or other characteristics, which was established under the Government Council for Human Rights, National Minorities and Gender Equality. The Group will intensify its activities in conjunction with the implementation of the above mentioned project during 2012.

2. Anti-Roma attitudes in public and in political debates

The Deputy Prime Minister for Human Rights and National Minorities PM, being aware of the unsatisfactory situation of political, media and overall public debates regarding the Roma population, was actively involved in public discourse whenever possible and entered into dialogue with the public, especially by publishing his opinions, statements and declarations.

In February this year he published his opinion to the verdict in the case of Marián Kotleba ceasing the prosecution in the case of statements of the named in the election campaign for the Head of the Banská Bystrica region. He stated that the use of defaming and hate-initiating statements labelling the entire ethnic group as "Gypsy parasites" in the election campaign is in sharp contrast with morality and the law and should be clearly rejected from legitimate debates about public affairs. He urged the authorities of law enforcement, judiciary and all authorities of state administration to the consistent application of all available resources and procedures to prevent escalation of interethnic tensions and enforcement of negative stereotypes against any group of inhabitants of the Slovak Republic. The statement of the Deputy Prime Minister for Human Rights at the International Roma Day in April this year had a similar nature.

In June 2011 he published a statement of the Government Council for Human Rights, National Minorities and Gender Equality of the Slovak Republic to the unveiled bust of Ferdinand Ďurčanský in Rajec where the installation of Jozef Tiso memorial plaque and the unveiled bust of Ferdinand Ďurčanský are described as steps in direct contradiction with the principles of human dignity, by defending a leading and co-founder of a non-democratic regime and a state that abolished political pluralism, restricted the fundamental rights and freedoms, made anti-Jewish measures in cooperation with Nazi Germany taking part in the murder of tens of thousands of Jews.

In July this year the Deputy Prime Minister for Human Rights issued a statement to the media case concerning the affair of the neighbours conflict in the town of Malacky. In the declaration he expressed his cardinal dissent with ethicizing of the situation concerning the problematic behaviour of the Galbavý family and its description - whether in media or in speeches of some politicians - such as the conflict between Roma and the majority population as well as with the misuse of the case for negative profiling of Roma as such. He noted that the way the situation is presented in the media contributes to the strengthening of negative stereotypes about Roma and calls for a public aversion to the whole ethnic group, and thus represents a potential threat to the society. He also urged all involved - mainly local authorities and relevant

government authorities, but also activists, media and politicians to consider the impact of their actions on the coexistence of the majority and the minorities in Slovakia.

In September 2011 the Office of the Deputy Prime Minister for Human Rights DPM published its opinion concerning the court verdict in the highly publicized affair of the attack in the bar Obluda; Rastislav R., one of the attackers was acquitted by the District Court Bratislava III from the accusation of promoting fascism and was sentenced only for disorderly conduct to suspended sentence of imprisonment for 7 months. In the opinion he notes that the verdict will be an important signal about whether the Slovak society and all its components take fighting with extremism seriously as Rastislav R. is known as one of the most famous figures of the neo-Nazi movement in Slovakia and the impact of this case will therefore be much wider. This result is not a positive signal for all victims of crimes whose motive is racial, ethical, religious or other hate and undermines the confidence of victims in the legal state and its instruments.

In order to undertake implementation of the tasks arising for the Ministry of Interior of the Slovak Republic from the Strategy of the Government of the Slovak Republic on addressing the problems with Roma minority and the series of measures for its implementation, an order was issued by the Minister of Interior of the Slovak Republic No. 14/2006 on the update of measures on the Strategy of the Government of the Slovak Republic on addressing the problems with Roma minority and the series of measures for its implementation. In that order the Police Force was imposed, i.a. also the implementation of the measures to address the problems of the Roma minority, especially when dealing with issues that would prevent racially motivated crime.

Crimes committed in the context of national, ethnic or racial hate are within the frame of criminal proceedings are considered under the first part of the twelfth head of the Criminal Code (Art. 423, Art. 424 and Art. 424A). Under various provisions of the above mentioned crimes their committing is performed publically, i.e. with the possibility of using computer systems to broaden and initiate propaganda directed to national, racial and ethnic hate.

The considerable attention by the Police Force is given to detecting and documenting of the above mentioned crimes because of its severity and social danger. The Police Corps operates strong and qualified when dealing with other criminal activities against national minorities.

3. Violent hate crimes

In 2011 the issue of violent crimes motivated by racial, ethnic and other similar hate was also dealt with by the expert departments of the Deputy Prime Minister for Human Rights and National Minorities DPM. In order to ensure fair, prompt and effective investigation of such cases and punishment of the perpetrators, several steps were taken towards strengthening the capacities of prosecutors and police forces in this direction and also some preparatory steps were initiated towards the amendment of the Criminal Code.

In June 2011 the representatives of the Department of Human Rights and Equal Treatment of the Government Office attended an educational event for prosecutors and judges focused on the issue of hate crimes and entered into negotiations with the Office for Democratic Institutions and Human Rights of the OSCE (OSCE-ODIHR) to implement training programs for police forces and prosecutors in the conditions of the Slovak Republic to fight with the hate crimes. At the same time, a working group was created, composed of representatives of the Ministry of Interior, Presidium of Police Force and the Ministry of Justice, task of which was to analyze the

possibilities of amending the provisions of the Criminal Code, which currently cover the offences falling within the category of hate crimes.

4. Misconduct of law enforcement officers

On paragraph 37

The Investigator of then Third Inspection Division of the Office of Inspection Service of the Police Force completed the investigation of the case of breach of authority of public agent by Police Officers at the District Police Force Department Košice - Juh (South) on 21 March 2009 by the proposal for indictment.

The investigation file, together with the proposal for indictment of 10 accused police officers of the Slovak Republic has filed at the General Prosecution of the Slovak Republic. The proposal for indictment also contained a racial motive (that is that the investigator gathered and confirmed evidences of racial motivation and included them into the present indictment).

The Attorney of General Prosecution of the Slovak Republic, after examining the investigation file, filed the indictment at the District Court in Košice. Currently the main proceedings are ongoing at the District Court Košice II.

As the foregoing shows, the prosecution started against ten police officers and not to seven, as indicated in the report. At the same time, because of the above mentioned facts, it can not be even agreed with the statement that the Investigator did not confirm the racial motive of this action.

On paragraph 39

The case of death of Roma male Radoslav Puky was investigated by the District of the Police Force Directorate in Trebišov on suspicion of crime under Art. 224 of the Criminal Code valid until 31 December 2005 as a personal injury due to negligence.

The case was finished on 16 June 2005 by discontinuation of criminal prosecution under Art. 172, paragraph 1 letter b) of the Code of Criminal Proceedings in force until 31 December 2005 due to the fact that the act was not the crime and there was no reason for the referral of the case.

As the case was investigated by the investigator of the Police Force under the supervision of the District Prosecutor's Office in Trebišov and the suspects were not members of the Police Force, there was no reason for referral of the case to the Control and Inspection Service Section of the Ministry of Interior of the Slovak Republic.

5. Segregation in the educational system

Rights for inclusion in education

In 2010, the Government through the Office of the Government Plenipotentiary for Roma Communities, proceeded to revise the National Action Plan for the Decade of Roma Inclusion 2005 - 2015. The process of preparation was completed in June 2011, after that the Government of the Slovak Republic approved the **Revised National Action Plan of the Decade of Roma inclusion 2005 - 2015 for the years 2011 - 2015** with the Decree No. 522/2011.

The main goal of the strategy in the field of education is - to improve access to quality education, including education and early childhood care as well as primary, secondary and higher education with particular emphasis on the prospective elimination of segregation in schools, to prevent early school leaving and to ensure successful changing the school for work, to implement

such policies that will eliminate the differences in educational level of Roma and the rest of the population. The plan contains a series of specific partial goals together with indicators that could allow measuring the progress reached.

One of them is the commitment to improve the diagnostic process and the placement of children into the special education system and to eliminate the cause of improper placement of children into the system, procedures to eliminate the unwarranted placement of children in the special schools and special classes of elementary schools and to ensure mainstream education with increased number of teacher's assistants who speak Romany language.

The Working group for issues of inclusive education was established under the the Government Council for Human Rights, National Minorities and Gender Equality, aimed to mainstream the topic of inclusive education in the upcoming package of reform laws in education from the perspective of international human rights obligations of the Slovak Republic and the new European trends in this field. The aim is also to provide a platform for the promotion of inclusive education targeted to make quality education accessible for all, regardless of circumstances beyond their control (racial or ethnic origin, socioeconomic background, disabilities and others) in conjunction with the development of the necessary conditions in terms of education and training to human rights, global education and intercultural dialogue.

The role of the working group includes to identify and to map the main problems of desegregation in schools and to analyze the conditions, human and material conditions to build a fully inclusive education. The working group is composed of representatives from government, independent human rights institutions, non-governmental organizations working in the field of inclusive education and representatives of educational and academic communities.

The Government Office in cooperation with the non-governmental organizations (Amnesty International Slovakia, People in Need - Slovakia, Slovak Governance Institute) and with the participation of members of the working group held an international conference entitled "Projections of inclusive education in Slovakia". The conference was held on the 8th of November 2011 under the auspices of the Deputy Prime Minister for Human Rights and National Minorities Rudolf Chmel. The event aimed to thematize the conditions for applying the principles of inclusive education in Slovakia and sharing experiences in the implementation of those principles in selected European Union member states. The conference focused on the technical assumption of the concept of segregation in education, on identification causes of possible symptoms of segregation in the Slovak Republic and measures for its prevention.

The Deputy Prime Minister within his competence actively participates on the reform of the school system. In April 2011 he initiated a meeting with the Minister of Education and his professional departments in order to apply human rights approaches during the revision of the education acts and in correcting the largest deficiencies in the regional education (issues of minority education). On the level of higher education the Deputy Prime Minister is active in strengthening the UNESCO Department for HR education at Comenius University in Bratislava (one of the oldest in the world) as the leader and coordinator of enforcement HR as the educational and research course as well as settings of the human and legal environments and atmosphere at Slovak universities.

In accordance with the laws of the Slovak Republic every citizen has the right to education, including children of the Roma community. The Government of the Slovak Republic

and the Ministry of Education, Science, Research and Sport of the Slovak Republic provide all the conditions from the legislative aspect, together with repressive measures to prevent any segregation, or discrimination of any citizen of the Slovak Republic, including Roma children, not only in the education system but in any human activity.

In the educational system in Slovakia significant changes took place from 1 September 2008 in the framework of transformation of the regional education. Moreover it is essential that new legislative regulations are based on the principle of prohibition of all forms of discrimination and notably segregation. The control of the implementation of the abovementioned principle is carried out by the State School Inspection (Act No. 596/2003 Coll., Art. 13).

No measures in the School Act (No. 245/2008 Coll.) lead to exclusion of Roma children from the standard school system and their placement in special educational and training facilities, and thus to persistent segregation. Pupils complete compulsory school attendance in elementary schools in the school district in which they have their residence if the legal guardian does not select a different elementary school for his/her child. This applies to all children regardless of nationality, gender, race, religion and so on.

The rights provided by the School Act are guaranteed equally to everyone in accordance with the principle of equal treatment in education given by the Anti-discrimination Act.

Unfortunately, the allegations in the Commissioner's report do not reflect the real situation and the depth of the problem. Problems are described unilaterally; ignore the complexity and breadth of the factors influencing the formation, current status and development of the situation.

On paragraph 43

It is striking that in the report the Commissioner refers to findings of ECRI while its members were not entitled to collect personal data of children and schools, including diagnostic tests. Because of it we believe that it is not appropriate to argue with data, which objectivity is not guaranteed. The presented fact is really unreliable and unverifiable. The same applies to data from the Roma Education Fund, on which Ministry of Education, Science, Research and Sport of the Slovak Republic commented more than once. Under current legislation in the Slovak Republic, only the State School Inspection is allowed to carry out the inspections. It can also provide re-inspection diagnosis.

Since the school year 2007/2008 the State School Inspection ("SSI") annually inspects placement of children in special schools and special classes of primary schools. Reports from the relevant years revealed that in several schools psychological and special pedagogical tests of pupils were carried out as late as after registration of the pupils in school. In one school in Prešov region 6 pupils were registered in first class in the SPS with no diagnosis of mental disability and they were not students from socially disadvantaged background. Based on the findings of the school inspection, the pupils were re-diagnosed and all confirmed light mental disability. At present this issue except SSI is carefully addressed by county school authorities, who are founders of special schools and consultancy facilities.

On paragraph 44 et seq.

The combination of a social disadvantage with mental underdevelopment points possible misunderstanding of legislative and professional contexts.

Roma children and pupils in the educational system of the Slovak Republic have equal position with the same guaranteed rights and obligations as all children and students. However, in order to guarantee the education in accordance with the Convention on the Rights of the Child (the role of state and local governments to create conditions for equal opportunities of children in access to education, with particular emphasis on those groups which are due to social and cultural specifics disadvantaged in the education system) and PISA results (the level of education in the Slovak Republic is below the OECD average and is strongly influenced by socio-economic background) was necessary to ensure a **targeted and personalized assistance to children from socially disadvantaged background** (hereinafter referred to as "SDB").

If the child and pupil is from the SDB, **support of access to education is ensured systemically** (both financially and institutionally): free preschool education from 5 years of age, the "zero" classes in elementary schools, specialized classes in primary schools - the compensation and development program, teacher assistants, allowance for the pupils from the SDB, subsidies for food and school supplies; benefits in material need to provide basic living conditions of children if the children complies compulsory school attendance, school support - development projects, ESF, development and standardization of relevant diagnostic tools. These measures are of conceptual nature (the Concept of Education of Roma Children and Pupils, including the Development of Secondary and Higher Education approved by the Government Decree No. 206/2008) and address the causes of school failure of Roma children from SDB in primary schools, or failure to achieve school readiness.

The School Act (No. 245/2008 Coll.) defines the term "the child or pupil with special educational and training needs" and within this broad group the group of children and of pupils with disabilities is **clearly separated** from children and pupils from socially disadvantaged backgrounds, as well as the way of their education.

The child or pupil with special educational and training needs have the right to education and training using specific forms and methods that correspond to their needs and to creation the necessary conditions which allow this education.

Children and pupils from socially disadvantaged backgrounds (hereinafter referred to as "SDB") mentioned in the Art. 2. letter p) of the School Act ("The child from socially disadvantaged backgrounds, or pupils from socially disadvantaged background shall mean the child or pupil living in an environment which with regard to social, domestic, economic and cultural conditions under-stimulates mental development, will power, emotional characteristics of the child or pupil, does not support their socialization and does not provide them sufficient amount of adequate incentives for the development of their personality") were for the first time included among children and pupils with special educational and training needs (hereinafter "the SETN") based on the results of the survey on the status of children and pupils from socially disadvantaged background in the school system in the Slovak Republic. **This category is not identical with the category of children and students with disabilities (which includes mental handicaps).**

**No separate schools for students from the SDB are established!
On paragraphs 47 to 49**

The problem in the village Plavecký Štvrtok is very complex and specific problem (the base is the conflict of 3 groups in the Roma settlement), which is then through the pupils and parents transferred to the school.

'White flight' and teachers' leaving - it is presented as negative. In this connection we want to attract the attention to the provision of Art. 144 paragraph. (5) of the Act No. 245/2008 Coll. Which stipulates: "The legal guardian has the right to choose for his child a school or school facility, which provides education and training under this Act, relevant to its skills, health status, hobbies and interests of the child, its religion, belief, nationality and ethnicity, the right to choose the school or school facility may be applied in accordance with the possibilities of the educational system." It is the right of parents of children (accordingly of teaching staff), which may not be restricted, nor may they be criticized or punished for exercising this right.

On paragraph 51

"... emphasis is 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 obligation in this subject area. "

This comment of Commissioner has a risk to be interpreted that the emphasis given to the need for greater accountability of Roma parents for the their children's education is not legitimate. The Ministry of Education, Science, Research and Sport of the Slovak Republic disagree with that interpretation, because the School Act establishes the rights and obligations of guardians of children and therefore their duties have the same weight as the obligations of the state.

In this context, we assure that the Ministry of Education, Science, Research and Sport of the Slovak Republic in the educational and training process based on the principle of equality of access to education for every child takes into account the educational and training needs of an individual. On the other hand, there are also obligations of the child, pupil and their guardian or the representatives of the facilities provided for by the School Act:

Art. 144

(4) The child or student is obliged

- a) not to limit the rights of others involved in education, by their conduct,
- b) to comply with School Rules of the school and other internal regulations of the school or school facility,
- c) to protect property of a school or school equipment and property which the school or school facility uses for education against damage,
- d) to protect books, textbooks and teaching tools which they were lent them free of charge against damage ,
- e) regularly participate in education and properly educate themselves, unless this Act states otherwise,
- f) to act the way not to endanger their health and safety, as well as health and safety of other persons involved in the education and training,
- g) to respect dignity of their classmates and school or school facilities staff,
- h) to respect instructions of school or school facilities staff, which are in accordance with generally binding legal regulations, internal regulations of the school and good morals.

(7) The legal guardian of the child or pupil or the representative of the facility is obliged to

- a) create conditions for a child to prepare for education and training in school and the school performance of duties,
- b) comply with the terms of the educational process of their child designated by school rules,
- c) ensure the social and cultural background of the child and respect their special educational needs,

- d) inform the school or school facility about changes of the health status of the child, health problems or other serious matters that could affect the course of education,
 - e) replace any damage intentionally caused by the pupil.
- (8) The legal guardian of the child or representative of the facility is obliged to register the child into compulsory schooling and to ensure that the child goes to school regularly and on time, if they fail to provide another form of education under this Act, the reasons for the absence of the child on education will document in accordance with school rules.
- (9) If the child or pupil can not participate in education at school or at school facility, their legal guardian or representative of the facility shall notify the school or school facility without undue delay, the reason for their absence. As an excusable reason for the absence of the child or pupil is considered mainly a disease or medically prohibited school attendance confirmed by the doctor „particularly adverse weather conditions or sudden interruption of traffic of collective transport, special events in the family or child or pupil's participation in competitions.
- (10) The absence of the minor or pupil, which lasts more than three consecutive teaching days, excuses the legal representative or the representative of the facility; in exceptional and justified cases the school may require a medical certificate about the illness of the child or pupil, or other document confirming the reasonableness of this absence. If the child or pupil's absence due to illness lasts more than three consecutive teaching days, the child, the pupil, the legal representative or the representative of facility submits certificate written by the doctor.

The Ministry of Education, Science, Research and Sport of the Slovak Republic considers to be important to note that the successful completion of a joint effort requires in particular cooperation of guardians of children, because only the willingness and initiative of one side can not bring the desired results for obtaining the highest quality of education corresponding to the ability of children. Without their initiative, effort and good will to change their life it is not possible to achieve satisfactory results for all citizens of the Slovak Republic.

7. Sterilization of women without their full and informed consent

The decision of the ECHR in the case of V.C. vs. SR will be on agenda of the forthcoming session of the Government Council for Human Rights, National Minorities and Gender Equality that will deliver its opinion. The opinion should contain a proposal of measures especially in relation to inadequate directives for standardization of procedures that medical staff is to comply with to obtain informed consent and the possible expression of regret in relation with the encroachment in reproductive rights occurred in the past.

The Minister of Justice in her statement from the 12th of December 2011 expressed regret in relation with the individual case of infringement of rights of the applicant by the sterilization performed in August 2000 and stated that already in 2004 a change in legislation (the Act No. 576/2004 Coll. on Health Care) was introduced, with effect from the 1st of January 2005 to align patients' rights with international standards and thus avoid such situations in future.

8. Placement of children in state care institutions

We would like to stress that the Slovak Republic adopts and implements a number of measures of legislative and non-legislative nature which are intended to protect the rights and interests of children.

Social protection regulated in the Act No. 305/2005 Coll. on Social Protection of Children and Social Guardianship is a set of measures to ensure protection of the child, which is necessary for its welfare and respects its best interest to provide education and general development of the child in its natural family environment and to secure a substitute background for the child, which cannot be raised in its own family. Measures of social protection of children and social guardianship are taken to prevent crises in families, aimed at limitation and elimination of negative influences that threaten the mental development, physical development or social development of the child.

Children's rights laid down in the Act on Social and Legal Protection of Children and Social Guardianship are equally guaranteed to everyone in accordance with the principle of equal treatment. In accordance with the principle of equal treatment discrimination is prohibited on grounds of sex, religion or faith, marital status and family status, colour of skin, language, political views or other views, trade union activity, nationality or social origin, disability, age, property, descent or other status.

Measures of social and legal protection of children are carried out for each child who is a customary resident of the Slovak Republic or is staying here unaccompanied by guardians and also for a child who is a citizen of the Slovak Republic and is unaccompanied on the territory of another country.

Slovak legislation of the system of social protection of children and social guardianship is based on, i.a.:

- The principle of the natural family environment - children remain in their natural family environment and children's return to their natural family environment in case of their exclusion is an absolute priority.
- The principle of priority of placing children who can not grow in their natural family environment to a substitute family environment with the priority of close relatives instead of care in facilities for the execution of the order of the court.
- The principle of priority of placing children placed in orphanages into professional families instead of other organizational units of orphanages.
- The principle of priority of execution of the order of the court in groups established in separate houses or flats where it is not possible to place a child into a professional family.
- The principle of priority of placing children in orphanages established as homes of children instead of children's homes established as centres of children.
- The principle of preservation of sibling relationships and not splitting sibling groups.
- The principle of placing children whose parents can not take care of them for various reasons as close to their natural family environment as possible.

- The principle of integration of children who require special or increased care because of health status, behavioural disorders, drug addiction, abuse, or exploitation.

From among various forms of substitute care the institutional care is the most material and exceptional form of substitute care, which the court orders only if the upbringing of the child is at serious risk or seriously disturbed and other educational measures have not led to correction or if parents can not provide personal care of the child because of other major reasons. The following are not considered as a serious threat or serious disruption of upbringing of the child: **poor housing conditions or financial circumstances of the child's parents. An important feature of the institutional care is its temporary nature.**

Taking the child from parents is one of the most serious interferences to their parental rights. Therefore, according to the Act No. 36/2005 Coll. on the Family, such intervention can be decided only by the court. This provision is in accordance with Art. 9 of the Convention on the Rights of the Child, under which states shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures that such separation is necessary for the best interests of the child. Similarly, also in accordance with Art. 41 paragraph 4 of the Constitution of the Slovak Republic, the rights of parents may be limited and minors can be separated from their parents against the parents' will only by a court's decision, based on the law. In the Slovak Republic, the judiciary is administered by independent and impartial courts.

It should be emphasized that the court is legally obliged before issuing decision about institutional care always consider whether the minor can not be place to substitute personal care (formal care of relatives and close relatives) or in foster care, which take precedence over institutional care. At the same time the court may order institutional care only if other measures (such as educational actions decided by either the court or authority of social and legal protection of children and social guardianship) have not led to correction. This rule can be broken in exceptional cases while the exceptionality must be proved. The judicial system of child protection and the system of social and legal protection of children are closely linked, so that it was avoided that one branch of the child protection system could circumvent the fundamental rules, including the rule that as a serious threat or serious disruption of upbringing of a child are not considered poor housing conditions or the financial circumstances of parents of the child.

Facilities that carry out court decisions may be established by the Central Office of Labour, Social Affair and Family, higher territorial units, municipalities, accredited bodies (for example orphanages are established by the state administration and non-state actors while about 1/3 of orphanages are established non-state actors).

The Government of the Slovak Republic in the ongoing transformation of substitute care and increasing of efforts in this field adopted the Strategy of deinstitutionalization of social services and substitute care in the Slovak Republic (Government Decree No. 761/2011 of 30 November 2011). The Slovak Republic by adopting this document endorses the global trend of systematic removal of consequences exercised in the long term but historically overcome model of institutional isolation and segregation of people that require long-term support and care in specialized institutions, namely children in substitute care and its replacement with an alternative model of arrangements, by their nature as similar to conditions of daily life as possible. In addition to basic baseline of the Strategy of deinstitutionalization in the system of substitute care, the Strategy includes a description of the concept and the baseline of deinstitutionalization in

terms of international commitments and trends, describes the current situation in these areas of institutional care in Slovakia, the definition of the basic objective and specific aims of the Strategy as well as the proposal of the main measures to arrange them.

Strategic tasks to support the deinstitutionalization of substitute care are elaborated in the new Concept of exercising of court's orders in orphanages for years 2012 - 2015 with a view to 2020 - The plan of transformation and deinstitutionalization of substitute care. The Concept of deinstitutionalisation of substitute care elaborates objectives and regulations of the United Nations Directive on Substitute care, Recommendation of the Committee of Ministers of the Council of Europe No. 5 (2005) on rights of children living in residential institutions, while respecting the bases and recommendations in the Report Ad Hoc Expert Group of the of the European Commission on the transition from institutional care to community care into specific tasks and procedures for conditions of the Slovak Republic.

The Concept represents a plan of concrete measures to support the enforcement of measures of social and legal protection of children and social guardianship in the natural environment of families, to support substitute care (including formal care of relatives) and to reduce the number of children in residential / institutional care, while great attention is directed towards development of professional parenting. For example, in the field of professional families conditions are created to further increase the number of children placed in professional families (currently, every child under the age of six in case if for some reason it can not grow up in its family or in substitute family must be placed in the professional family), so that in 2015 every child at least until eight years of age and in 2020 every child at least until the age of ten was placed in a professional family of an orphanage (the existence of exceptions in cases of maintaining sibling relations or health status requiring special care in a specialized separate group). In connection with the Concept it is necessary to mention the upcoming National Project to support implementation of those conceptual plans.

One of the new tools to support work with Roma families in their natural and open environment and to prevent any child exclusion from the family is represented by the prepared new national projects of the Social Development Fund aimed to support field social work and community centres, or the specifically aimed call to make young adults independent after completing institutional care, etc.

The perspective of the best interest of the child is taken into account by competent persons when taking measures in all areas, which is confirmed by the laws governing individual areas of social and legal protection of children.

II. Protecting human rights of persons with disabilities

Rights of people with disabilities

The framework for protection of human rights of persons with disabilities.

Slovak authorities acknowledge the need to adopt the Strategy for the Protection of Human Rights of Persons with Disabilities. The Government Office and the Deputy Prime Minister for Human Rights and National Minorities prepared amendments to the legislation under

which the independent mechanism of promotion and monitoring of the Convention on the Rights of Persons with Disabilities shall be established under responsibility of the Ombudsman. Because of the recent election of the new ombudsman and the forthcoming parliamentary elections in spring 2012, the Government has decided to negotiate first the changes with the new Ombudsman and then present them to the parliament.

The new approach in the implementation process embedding in the Convention on the Rights of Persons with Disabilities resulted in the preparation of the "Strategy for the Protection and Promotion of Human Rights in the Slovak Republic" by the Deputy Prime Minister for Human Rights and National Minorities. The aim of the Strategy that should be submitted to a Government session in 2012 is the analysis and proposal of further steps in exactly those areas that are addressed under the Article 33 of the Convention on the Rights of Persons with Disabilities (implementation, institutions, coordination, monitoring, participation), as well as across the all human and legal obligations and commitments.

While this strategy document should touch all international human rights obligations, Slovak authorities are aware of the urgency of the establishment of the coordination mechanism and the focal point under the Art. 33 of the Convention on the Rights of Persons with Disabilities and believe that practical solution will be found before the upcoming parliamentary elections. Basic planning document for the implementation of the Convention on the Rights of Persons with Disabilities will be prepared in cooperation with the Committee on the Rights of Persons with Disabilities.

While preparing these materials available recommendations of the Council of Europe will be used, including the above mentioned Council of Europe Action Plan on Disability for the period 2006 - 2015.

Section 93

Support of self reliance and independence of persons with severe physical disability is also implemented through the Act No. 447/2008 Coll. on Monetary Allowances to Compensate the Heavily Disabled. The purpose of this Act is to preserve, restore or develop the abilities of individuals and their families to live independently, create conditions and support for integration of individuals and their families into society and their active participation in this process and overcoming or mitigating the social consequences of severe disability. The rights established by this act are guaranteed equally to everyone in accordance with the principle of equal treatment set out by the Antidiscrimination Act.

Monetary allowances for compensation may be granted to persons with severe disability when the conditions provided for by law are met. Citizen whose rate of malfunction is determined according to WHO to at least 50% is considered a person with severe disability. One of the most advanced tools of social assistance to persons with severe disability are in particular the monetary allowances for personal assistance. By this form the individuals with severe disability are provided with effective assistance in mobility, communication, or in self-servicing and assistance in household work. Its progressiveness lies mainly in that it supports the independence of persons with severe disability, their work, education, domestic and civic activities that lead to the social integration, and as a result it is a significant tool for supporting social inclusion of the persons with severe disability. In case of meeting all the statutory conditions, there is no reason not to give the financial allowance to the individual with severe disability.

3. The right to inclusive education

For the child or pupil with special educational and training needs, what include particularly pupils with disabilities, the right to education and training using specific forms and methods that corresponds to his needs and create the necessary conditions that such education and teaching allow is guaranteed by the Act No. 245/2008 Coll. - the School Act (Art.144 paragraph. 2 and 3).

The current wording of the School Act, in accordance with the Convention on the Rights of Persons with Disabilities, provides three equivalent forms of education of children or pupils with disabilities:

- a) in special schools,
- b) in special classes (of regular schools),
- c) in the form of school integration (in regular schools).

Special classes are set up in regular schools generally for children or pupils with the same type of disability, part of the educational process in these classes can take place in a different classroom, along with other students and some of the subjects or activities students can attend outside the special classes.

In the education of pupils in the form of school integration in the classroom or educational groups together with other students, if necessary, the pupil with disabilities is educated according to an individual education program, prepared in cooperation of the school and the center of special educational counselling. The legal guardian has the right to be familiarized with this program.

The children or pupils may be registered into the special classes or special schools only with the consent of the legal guardian if the child or pupil was diagnosed with a disability. The registration of the child or pupil with special educational and training needs, is decided by the school director based on the written request of the legal guardian and the written statement of the center of special educational counselling, issued on the basis of diagnostic tests. The school director, before the registration of the child or pupil in the school with educational programs for pupils with special educational and training needs, instructs the legal guardian about all child's learning opportunities.

If during the attendance of pupils in the primary school with educational programs for pupils with special educational needs the nature of pupils' needs changes and their inclusion does not correspond with the nature of their needs, director of primary school recommends, after decision of the relevant centre of special pedagogical counselling, the pupil's legal guardian submitting a proposal to accept the student to another school, or at the request of the guardian, the director decides to exempt a student from the obligation to attend school. The form of pupil's education may be changed only if the guardian is not acting in the interests of the child, and when the consent of the parent is absent it is only a court which can decide this and not the school director.

On paragraph 96

The school where the pupil is to complete compulsory school attendance, can not refuse educating of a student. The obligation to create conditions to ensure the education of children and pupils with special educational and training needs in schools and school facilities, which the

same founded, i.e. in regular schools, not specialized, arises for municipalities as the founders of primary schools from Art 6 para. 3 letter c) of Act. 596/2003 Coll. on State Administration in the School System and School Self -Government. The same obligation to create conditions in secondary schools shall arise for the municipalities as founders of secondary schools under Art 9, para. 4 of Act No. 596/2003 Coll. on State Administration in the School System and School Self -Government for pupils with special educational needs.

The limits on the number of students with disabilities in regular classroom of elementary school, that Commissioner's report points out, have been repealed by a legislative change with effect from 1 September 2011 (Decree of the Ministry of Education, Science, research and Sport of the Slovak Republic Nr. 224/2011 Coll. which is amending and completing the Decree of the Ministry of Education No. 320/2008 Coll. on Elementary School). In high school, the limit was not introduced.

In addition to the legislative change it is necessary to give to the attention legislative revision under which, from 1 January 2012 an extra pay for teachers in primary schools is introduced for working with pupils with disabilities or with pupils from socially disadvantaged backgrounds depending on the number of pupils in the class, if the class does not have a teacher assistant (the Act No. 553/2003 Coll. on Remuneration of Some Employees Performing Work in the Public Interest, as amended by the Act No. 390/2011 Coll.)

Neither centres of special pedagogical counselling nor any other facilities did not have or currently do not have the competence to decide on the form of education of pupil with disabilities. Following diagnostic examinations they suggest an optimal form of student's education based on its current dispositions. School director decides on admission to the school in which the pupil would like to be educated while pupil is accepted with the consent of guardian.

In the opinion of the Ministry of Education, Science, Research and Sport of the Slovak Republic current version of the the School Act is not inconsistent with the Convention on the Rights of Persons with Disabilities.

4. The right to make decisions

Slovak authorities support the recommendations of the Commissioner and the inclusion of assisted decision-making in the Civil Code.

In relation to the given case *Berková vs. Slovakia*, No. 67149/01, it should be noted that the relevant provision of the Code of Civil Proceedings have been amended and now if the application for restoration of legal capacity made by a person deprived of legal capacity is dismissed and when it cannot be expected that his/her status could improve, the court may decide that the applicant will not have the right to apply for restoration of legal capacity again for the period not exceeding one year.