

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
UA SVK 1/2017

28 November 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on minority issues and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/6 and 34/35.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations on legal persecution against members of the Roma minority in the settlement of Budulovská in Moldava nad Bodvou, as a result of their legal action against the alleged police misconduct during the raid in the said settlement on 19 June 2013.**

In this context, reference is made to the joint allegation letter (SVK 1/2013) by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on Minority Issues, regarding the alleged police violence and harassment against the residents of the Budulovská Roma settlement as a result of the police search raid on 19 June 2013. We would like to thank your Excellency's Government for the response of 13 October 2013. Nevertheless, additional information received on this case invite us to seek further clarifications from your Excellency's Government regarding this issue.

According to the additional information received:

On 24 June 2013, following the police raid of 19 June 2013 in the Roma settlement of Budulovská in Moldava nad Bodvou, two separate complaints were filed to the Department of Control and Inspection Service of the Ministry of Interior of the Slovak Republic ("Inspectorate") of behalf of members of the Roma minority who were present during the raid. These complaints denounced the actions taken by the police during the raid and requested that the police officers involved in that raid be investigated for possible misconduct. The complaints were allegedly rejected by the Inspectorate, without a proper motivation, on 15 August 2013.

On 30 August 2013, the then Public Defender of Rights, Jana Dubovcová, issued a report presenting the findings of her office's investigation on the police raid of

19 June 2013. The report was based on the information and statements provided by the law enforcement authorities, including the Regional Directorate and the District Directorate of the Police Corps in Kosice area, information by the Department of Control and Inspection Service of the Ministry of Interior of the Slovak Republic ("Inspectorate") and its field office in Kosice, as well as testimonies by the inhabitants of Budulovská settlement who were present during the raid. Based on the assessment of the provided and compiled information, the Public Defender of Rights came to the conclusion that the police action of 19 June 2013 in Budulovská settlement in Moldava nad Bodvou violated with its procedures fundamental rights and liberties of a number of individuals who happened to be at the place of the police intervention, and of those individuals who were brought to the police station to be identified, and who were ultimately held there for several hours, some of them allegedly suffering physical and verbal abuse.

According to Ms. Dubovcová, the police and the Inspectorate did not provide the Public Defender of Rights with all the documents concerning the preparation and course of the police action. The report also raised concerns about the real purpose of the police intervention on 19 June 2013. While the police affirmed the necessity of the intervention to safeguard public order and to intercept searched individuals and items allegedly deriving from criminal activity, the report concluded that the intervention was a "police repressive-search action" that was not inevitable. The report further highlighted that the testimonies by the inhabitants of Budulovská depicted a bleak picture of terror with the arrival in the settlement of 20 police cars with 63 riot police men, traffic and criminal police, beatings, intimidation, destruction of property, break-ins without warrants, as well as arbitrary arrests and involuntary detentions in the police station. In this connection, the report concluded that the conditions for the use of coercive measures by the police were not fulfilled.

In addition, in her report, the Public Defender raised concerns about the impartiality and effectiveness of the investigation led by the Inspectorate. One of the reasons put forward was the fact that the Minister of Interior of the Slovak Republic directly appoints the Regional Director of the Police Corps, while at the same time he also supervises the work of the Inspectorate, which is mandated to investigate law enforcement misconduct.

Reportedly, an investigation was eventually launched by the Inspectorate in January 2014, almost eight months after the incident. However, on 23 November 2015, the Inspectorate decided to stop the prosecution on four of the counts against police officers involved in the raid, including alleged violent assault against the arrested individuals while in detention at the police station. On 22 March 2016, it discontinued the prosecution on the other two counts on the alleged physical attacks by the police in the Budulovská settlement as well as alleged illegal police entry into the houses and apartments. The decision of the In-

spectorate allegedly discredited the testimonies by the Roma complainants by referring to psychological assessments of the Roma complainants which contained stereotypes about the Roma minority in general. These assessments allegedly referred to the "Roma mentality" as well as to witness personality as showing "clear signs of Romani ethnoplasmic stigmatization", "lack of self-discipline", "aggressivity", and "emotional unsteadiness". The Regional Prosecutor's Office in Presov dismissed all complaints in relation to all six counts against the police officers involved in the raid of 19 June 2013 and argued that the Inspectorate had acted lawfully in discontinuing the investigation.

According to the received information, on 15 April 2016 and 21 July 2017, two complaints have been tabled before the Constitutional Court, on behalf of some of the members of the Roma minority in Budulovská who were present during the police raid on 19 June 2013, namely Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. These complaints were tabled following the above-mentioned decision of the Inspectorate to discontinue the investigation against the police officers involved in the raid. The complaints laid down violations of human rights protected by the Constitution of the Republic of Slovakia and were based on articles 3, 8, 13 and 14 of the European Convention for Human Rights. They also challenged the alleged inevitability of the afore mentioned police intervention, the appropriateness of means and coercive measures used, and raised issues regarding non-respect of the inviolability of dwelling and the conditions in which persons were brought to the police station.

On 1 August 2017, the complaints were dismissed by the Constitutional Court.

Finally, in the beginning of 2017, the Regional Prosecutor's Office in Presov launched a criminal investigation against the individuals who filed the two Constitutional complaints, namely Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. It is reported that these individuals have been charged with making false accusations under article 345(1) of the Criminal Code of the Slovak Republic, and risk up to five years of imprisonment if found guilty. The criminal charges brought against these individuals have also allegedly been confirmed by the acting Public Defender of Rights, Mária Patakyová.

While we do not wish to prejudge the accuracy of the information made available to us, we would like to express our serious concerns at the reported absence of thorough, impartial and independent investigation by the Department of Control and Inspection Service of the Ministry of Interior and the Regional Prosecutor's Office on the police conduct during the police raid on 19 June 2013. In addition, we express our serious concern at the reported criminal investigation, launched by the Regional Prosecutor's Office against some of the members of the Roma minority who were present during the police raids, namely Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], for allegedly making false accusations. It is regrettable that provisions of the Criminal Code may be used, in some cases, to persecute victims of alleged human

rights violations for perjury, and particularly in cases where the investigation of the alleged human rights violations may appear to lack effectiveness and independence. Combatting impunity and ensuring effective redress to victims of human rights violations are fundamental state obligations. Thorough and impartial investigations on alleged human rights violations as well as concrete actions to hold perpetrators accountable should always be applied in order to fulfill these obligations.

The allegations presented in this letter appear to contravene the rights of every individual to non-discrimination, liberty and security, equality before the law, presumption of innocence, effective remedy, freedom of expression and freedom of association, as laid down, inter alia, in articles 1, 2, 3, 7, 8, 9, 10 and 19, of the Universal Declaration of Human Rights (UDHR) and articles 2, 9, 14, 19, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR) to which the State has been a party since 28 May 1993. These rights are of a universal nature and apply to everyone without distinction of any kind.

We would also like to remind your Excellency's Government of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the State has been a party since 28 May 1993. In particular, we would like to recall article 1 on the prohibition of racial discrimination; article 2 on the obligation of the States to eliminate any act or practice of racial discrimination against persons and/or groups of persons; article 5 on the right of everyone, without any distinction, to equality before the law; and article 6 on the right of everyone to effective protection and remedy against any acts of racial discrimination. We also recall that the Committee on the Elimination of Racial Discrimination, in its General Recommendation XXVII on discrimination against Roma, urges States to provide effective remedies to members of Roma communities and to ensure that justice is fully and promptly done in cases concerning violations of their rights (para.7). In particular, the Committee calls upon States to prevent racially motivated violence against Roma as well as the illegal use of force by the police against them; to ensure prompt action by the police, prosecutors and the judiciary to investigate such acts; and to ensure that perpetrators are punished (paras. 12-13).

Furthermore, as stipulated by the Human Rights Committee in its General Comment no. 32, "[T]he requirement of competence, independence, and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception" (CCPR/C/GC/32, para. 19). Further, the Committee clearly noted that "[d]eviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times" (CCPR/C/GC/32, para. 6).

We would also like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of every individual not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

On 8 September 2015, the Committee against Torture expressed its concern that no charges were brought against the police officers who participated in the raid on 19 June 2013 on the Roma settlement of Moldava nad Bodvou. The Committee called on the Government to, inter alia: a) carry out prompt, impartial, thorough and effective investigation into all allegations of excessive use of force, including torture and ill-treatment, by law enforcement officials; b) prosecute persons suspected of having committed torture or ill-treatment; c) ensure that offences motivated by discrimination constitute an aggravating circumstance in criminal prosecution; and d) establish an independent monitoring and oversight mechanism that complies with the requirement of institutional independence in order to avoid conflict of interest in the investigation of complaints by peers (CAT/C/SVK/CO/3, paragraph 11).

We also call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the ICCPR, as well as the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to effectively investigate the allegations of police misconduct following the police raids in the settlement of Budulovská in Moldava nad Bodvou and to drop the charges, which are based on false accusations, as per articles 345(1) of the Criminal Code of the Slovak Republic against Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED].

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and where available the results, since 8 October 2013 (the date of your Excellency's Government's response), of any new investigation, judicial or other inquiries on the police search raid on 19 June 2013, and/or any criminal charges brought against law enforcement officers in relation to this event. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide information on the legal basis upon which the Regional Prosecutor's Office, on 23 November 2015, dismissed the complaints in relation to the six counts against the police officers involved in the raid of 19 June 2013 and approved the discontinuation of the criminal investigation by the Department of Control and Inspection Service of the Ministry of Interior.
4. Please provide information on the legal basis upon which the Constitutional Court decided to dismiss the complaints filed by Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED].
5. Please provide information about the criminal proceedings launched against Mr. [REDACTED], Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] by the Regional Prosecutor's Office, as well as detailed information about the status of this investigation.
6. Please provide information about measures taken to ensure the effectiveness, independence and impartiality of investigation of cases of law enforcement misconduct.
7. Please indicate the measures undertaken to ensure that provisions of laws in the Slovak Republic are not used to criminalize the right to access to justice and to seek effective remedy.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to prevent acts of violence, harassment and intimidation against members of the Roma minority perpetrated by law enforcement authorities, and to ensure that the any person responsible of any such act be held accountable, and that victims are provided with protection and effective redress.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no

way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

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