

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; 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 34/5, 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 **criminal charges laid against members of the Roma minority of the settlement of Budulovská in Moldava nad Bodvou, which appear to be a direct reprisal due to legal actions filed by them for alleged police misconduct during the raid in the said Roma settlement on 19 June 2013 and mistreatment during their subsequent detention.**

We would like to refer to two previous communications that were transmitted to your Excellency's Government on this matter (SVK 1/2013, SVK 1/2017). We would like to thank your Excellency's Government for the responses of 13 October 2013, and 19 January 2018. Due to ongoing developments in the case, we seek further clarifications from your Excellency's Government regarding this matter.

According to the information received:

On 19 June 2013, more than 60 police officers entered the Roma settlement in Moldava nad Bodvou (Slovakia) and conducted a violent raid, which resulted in injuries to over 30 Roma individuals and property damage. Subsequently 15 members of the Roma community were taken to the police station, where they were detained. There are allegations that some of those detained were severely ill treated by the authorities during their detention.

The Public Defender of Rights determined, following a detailed investigation, that police officers had committed human rights violations during the raid. Despite receiving information about possible ill-treatment of detainees by the Police, the Police Inspectorate of the Ministry of the Interior did not lodge any criminal proceedings. Criminal proceedings were only initiated in January 2014 following the intervention of the General Prosecutor's Office, seven months after the incident occurred.

In November 2015, the Inspectorate of the Ministry of Interior terminated the criminal proceedings against the Police in most of the cases, including in respect of police mistreatment of several Roma detainees at the police station. In January 2016, the proceedings were terminated in all remaining cases. As part of the investigation, an expert psychologist was engaged by the Government of Slovakia. This expert report contained negative stereotypes and discriminatory statements about the Roma victims. Despite several flaws in the investigation, some of which were highlighted by a report published in August 2013 by the Public Defender of Rights, the decision to terminate all cases against the Police was confirmed by the supervising prosecutor and subsequently by the Constitutional Court of Slovakia. Currently, the case is pending before the European Court of Human Rights.

In 2017, the Regional Prosecutor's Office of Presov launched a criminal investigation against six of the Roma victims of the raid, which led to criminal charges being laid against them. One of the victims was charged with false testimony under Article 346 (1) of the Criminal Code, the other five were charged with false accusation (perjury) under Article 345(1). They each face up to five years of imprisonment if found guilty. In 2018, the prosecutor's office submitted the relevant indictments to the court. In five of the six cases, the court issued a criminal order against the defendants. In one of the cases, the judge convened a trial without issuing a criminal order. The defendants who received criminal orders have lodged their appeals, and the court has scheduled the trials.

The first hearing, which was scheduled for 24 September 2018 was postponed, as the judge had failed to inform the legal representative of one of the accused about the hearing, and had failed to deliver the indictment to that lawyer, in violation of basic due process rights. The trials have been rescheduled for 8 and 15 November 2018.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern about these criminal proceedings against members of the Roma minority in the settlement of Budulovská in Moldava nad Bodvou, allegedly in relation to legal proceedings filed by them against the police.

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case, we would like to recall articles 1, 2, 3, 7, 8, 9, 10 and 19 of the Universal Declaration of Human Rights (UDHR) and article 2, 9, 14, 19, 22 and 2 of the International Covenant on Civil and Political Rights (ICCPR), to which Slovakia has been a party since 28 May 1993. These rights are of universal nature and apply to everyone without distinction of any kind.

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).

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).

In this regard, we further note that the Committee on the Elimination of Racial Discrimination, in its 2017 Concluding Observations on Slovakia, (CERD/C/SVK/CO/11-12), took note of this case, and expressed its' concerns that "an investigation for alleged false accusations has been initiated against the victims of excessive use of force during the raid in a Roma settlement in Moldava nad Bodvou, as this could deter other victims to report cases of police abuse or excessive use of force." We are also aware that the European Court of Human Rights also remains seized of the matter.

In further direct relation to this case, 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).

Finally, we would like to draw your attention to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Right Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

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 safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 observations on the following matters:

1. Please provide any additional information you may have on the above-mentioned allegations.
2. Please provide information about the status of the criminal proceedings launched by the Regional Prosecutor's Office and what measures have been taken to ensure that the defendants' due process rights are guaranteed.
3. Please indicate what measures have been taken or are envisaged to eliminate discrimination against Roma minorities in law and practice.
4. Please provide information about measures taken 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.
5. Please indicate what measures have been taken to ensure that those who defend the rights of minorities in the Slovak Republic are able to carry out

their peaceful and legitimate work in an enabling environment, free from judicial harassment and reprisals.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns in a few weeks 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.

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

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