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# **REPORT BY NILS MUIŽNIEKS**

**COMMISSIONER FOR HUMAN RIGHTS  
OF THE COUNCIL OF EUROPE**

**FOLLOWING HIS VISIT TO THE SLOVAK REPUBLIC  
FROM 15 TO 19 JUNE 2015**



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## SUMMARY

Commissioner Nils Muižnieks and his delegation carried out a visit to Košice and Bratislava, Slovakia, from 15 to 19 June 2015. In the course of the visit, the Commissioner held discussions with state authorities, national human rights structures and non-governmental organisations. The present report focuses on the following human rights issues:

### **1. Systematic work for the implementation of human rights**

Slovakia has a comprehensive legal and institutional framework for protecting and promoting human rights. The adoption last February of the first national human rights strategy represents an important step in framing a coherent, transversal approach to the protection of human rights as a key issue in all policy areas. The translation of the national human rights strategy's objectives into concrete action could be facilitated by future coordination between the strategy and existing governmental grant schemes for the promotion and protection of human rights.

The Commissioner notes with satisfaction that the ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) are under consideration. In addition, the authorities are encouraged to accede to Protocol No. 12 to the European Convention on Human Rights, which includes a general prohibition of discrimination, as well as to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.

The process of reforming the Slovak National Centre for Human Rights, with the purpose of giving it a statutory basis in line with the Paris Principles, is welcome. In this context, the centre's mandate as an equality body could be usefully enhanced with the authority to impose effective and dissuasive sanctions. The Commissioner is heartened by the Public Defender of Rights' proactive approach in raising awareness about human rights issues of serious concern and regrets that this essential work has not always been met with sufficient support from the authorities. Further consideration should be given to the resource needs of the above-mentioned institutions, as well as those of the Commissioners for the protection of the human rights of persons with disabilities and of the child, whose appointment is forthcoming. In addition, an efficient monitoring mechanism should be devised to ensure the accountability of local and regional authorities in the implementation of human rights and to avoid disparities in the quality of public services across municipalities and regions.

The inclusion of the improvement of human rights education as one of the priorities of the national human rights strategy is a positive development. The Commissioner welcomes the awareness-raising activities carried out by the Slovak National Centre for Human Rights. However, he is worried by reports indicating that current educational approaches in schools do not provide pupils with adequate competencies in valuing diversity and equality and combating all forms of discrimination and violence. He stresses that teaching methods should encourage critical thinking and create a participatory learning environment free from discrimination and intolerance and invites Slovakia to make full use of the Council of Europe's rich expertise in this domain.

### **2. Action against discrimination**

#### **2.1 Recent legislative and policy developments**

Slovakia has a comprehensive legal and institutional framework for the protection against discrimination. However, the level of protection varies depending on the applicable discrimination ground. The Slovak authorities should continue the reform of the anti-discrimination framework so as to close gaps in the level of protection afforded on various grounds of discrimination, including gender.

The Commissioner welcomes the recent amendments to the Anti-discrimination Act, extending the possibility to take affirmative action measures to private entities, in addition to public bodies, and broadening the grounds for taking such measures. The provisions of the Criminal Code establishing hatred based on ethnicity, race, skin colour and sexual orientation as an aggravating circumstance for specific offences should be extended to cover transphobic hate crime as well. The authorities are encouraged to accede to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Commissioner Muižnieks is particularly concerned at manifestations of anti-Gypsyism and hate speech which have been reported at local level. He urges Slovakia to pay particular attention to the recording of hate speech and hate crime data and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction hate crime. The authorities' attention is drawn to the Council of Europe's HELP programme (European Programme for Human Rights Education for Legal Professionals) and its valuable expertise in this field.

## **2.2 Human rights of Roma**

The frequent allegations of excessive use of force by police officers during raids carried out in Roma settlements, as well as the discontinuation or slow pace of investigations into these incidents are matters of grave concern. The Commissioner urges the authorities to ensure that all allegations of ill-treatment committed by law enforcement officers, including those with an alleged racist motive, are promptly and effectively investigated and that adequate, dissuasive penalties are imposed on those responsible. The establishment of an independent complaints mechanism covering the action of law enforcement authorities, in accordance with Council of Europe standards, would be a useful step in this direction.

The Commissioner is deeply concerned about the chronic, pervasive segregation of Roma children in the education system and their very high drop-out levels from school. While welcoming pilot projects and recent legislative proposals aimed at preventing the placement of Roma children in special schools, the Commissioner calls on the authorities to adopt and promote inclusive education policies and to take measures to reduce the isolation of Roma children in mono-ethnic schools, like the one he visited in Kecerovce, and encourage interaction between Roma and non-Roma children.

The lack of access of Roma to adequate housing and the continued practice of segregation of Roma settlements from non-Roma communities is also a matter of serious concern. The Commissioner welcomes the recent legislative developments which aim, *inter alia*, to regularise the situation of some 10 000 existing informal dwellings. In addition, the authorities should take measures to prevent the frequent evictions of large numbers of Roma from informal settlements or other dwellings without the provision of adequate alternative accommodation.

## **2.3 Human rights of persons with disabilities**

Commissioner Muižnieks welcomes the on-going legislative reform aimed at prohibiting the full incapacitation of persons with psychosocial and intellectual disabilities as of July 2016. He calls on the Slovak authorities to finalise this process as a matter of priority and to develop a flexible system of supported decision-making, based on individual consent. The authorities should also take all the necessary measures to ensure that persons with disabilities, including with intellectual impairments, are not deprived of their right to vote and to be elected 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.

The Commissioner is concerned at the persistence of large institutions housing thousands of persons with disabilities away from the community. However, he notes with satisfaction the commitments made by Slovakia to deinstitutionalise social care services and to enable persons with disabilities to live independently within the community. Notwithstanding these commitments, the deinstitutionalisation process remains very slow, consisting at present of only a few pilot projects affecting a very limited number of persons with disabilities and institutions. The authorities are urged to speed up the implementation of the national strategy and action plan for the deinstitutionalisation of social care services. As a first step, they should refrain from placing additional persons with disabilities in residential institutions.

Slovakia has not yet developed a concept of inclusive education addressing the situation of children with disabilities. The authorities should address the deficiencies in domestic legislation which support the practice of placing children with intellectual and psychosocial disabilities in special schools. Improvement is necessary also in ensuring the access of children with physical or sensory disabilities to mainstream schools. The authorities are urged to adopt all the necessary measures to clearly enshrine and give effect to the right of persons with disabilities to inclusive education, and to design ambitious plans for the transfer of children with disabilities from special to mainstream education units.

## 2.4 Human rights of LGBTI persons

The Commissioner commends the progress made in the past few years by Slovakia in strengthening the policy and institutional framework for the promotion and protection of the human rights of LGBTI persons. The on-going work on the adoption of an action plan concerning the human rights of LGBTI persons and the establishment of an advisory committee with competencies in this area are positive developments. The authorities are encouraged to collect data on LGBTI persons, while ensuring respect for the principle of confidentiality, informed consent and the individual's voluntary self-identification as a member of a particular group.

The Commissioner invites the authorities to consider favourably the possibility of providing cohabiting different sex and same-sex couples with legal means to address the practical problems related to the social reality in which they live. In this context, the authorities are encouraged to take into account the case-law of the European Court of Human Rights (hereinafter: the Court) regarding the protection of the relationships of cohabiting same-sex couples living in stable *de facto* partnerships.

The authorities are called on to improve the protection afforded to trans and intersex persons, including intersex children. Attention should be paid to countering unlawful practices imposing medical interventions and non-marriage requirements for the official recognition of gender reassignment. The Commissioner urges the authorities to set up strong, explicit guarantees protecting intersex children from unnecessary surgical procedures aimed at assigning them a sex without their free and informed consent.

The Commissioner is worried about the growing negative rhetoric and hate speech directed against LGBTI persons in recent years and urges the authorities to take measures to extend the provisions of domestic hate speech legislation to cover sexual orientation and gender identity. The Commissioner calls on the authorities to ensure that law enforcement officials and legal professionals are adequately equipped to recognise and effectively confront such incidents, which have deeply destructive effects not only on the victims, but also on society.

The report contains the Commissioner's conclusions and recommendations addressed to the authorities of the Slovak Republic and is published on the Commissioner's website.

## INTRODUCTION

1. The present report follows a visit to Košice and Bratislava, Slovakia, by the Council of Europe Commissioner for Human Rights (“the Commissioner”) from 15 to 19 June 2015.<sup>1</sup> The visit focused on the systematic work for the implementation of human rights and the fight against discrimination, making particular reference to the protection of the human rights of Roma, persons with disabilities and LGBTI persons.
2. During his visit, the Commissioner engaged in a dialogue with the national authorities, including: the Deputy Prime Minister and Minister of Foreign and European Affairs, Mr Miroslav Lajčák; the Deputy Prime Minister and Minister of Interior Mr Robert Kaliňák; the Minister of Justice, Mr Tomáš Borec; the Minister of Education, Science, Research and Sport, Mr Juraj Draxler; the Minister of Labour, Social Affairs and Family, Mr Ján Richter; the First Deputy Prosecutor General, Mr René Vanek; and the Deputy Prosecutor General, Mr Jozef Szabó. The Commissioner also held meetings with the Public Defender of Rights, Ms Jana Dubovcová; the Executive Director of the Slovak National Centre for Human Rights, Mr Marian Mesároš; the Plenipotentiary of the Slovak Republic for Roma Communities, Mr Peter Pollák; and the Deputy Speaker of the Slovak Parliament Ms Erika Jurinova and the Parliamentary Committee for Human Rights and National Minorities. Furthermore, Commissioner Muižnieks met with civil society representatives. While in Košice the Commissioner met with representatives of the local and regional authorities and carried out visits to the social care institution for persons with disabilities in Šemša; the elementary school in Kecerovce; and the Roma settlements of Moldava nad Bodvou and Veľká Ida.
3. The Commissioner wishes to thank sincerely the Slovak authorities in Strasbourg and in Bratislava for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
4. The Commissioner notes the efforts made by the Slovak authorities to strengthen the human rights protection framework in several areas covered by this report. However, a number of issues still remain to be addressed effectively. The Commissioner wishes to continue his dialogue with the Slovak authorities and trusts that this dialogue will be facilitated by the present report.

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<sup>1</sup> During the visit, the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and Ms Patricia Ötvös, Adviser to the Commissioner.

# 1 SYSTEMATIC WORK FOR THE IMPLEMENTATION OF HUMAN RIGHTS

## 1.1 LEGAL AND POLICY FRAMEWORK

5. The Commissioner welcomes the recent steps taken by Slovakia to systematise the implementation of human rights, in particular through the adoption, last February, of the country's first National Human Rights Strategy<sup>2</sup> (NHRS). While the drafting process was lengthy, the Commissioner was pleased to learn that it took place with the active participation of civil society representatives and of national human rights structures, including the Slovak National Centre for Human Rights and the Council for Human Rights, National Minorities and Gender Equality (hereinafter "Human Rights Council"). At the same time, the development of the NHRS was marked by turbulent debates related notably to the human rights of LGBTI persons and faced significant resistance from certain segments of society.
6. The Commissioner commends the NHRS's focus on strengthening the institutional protection and the enforceability of human rights, improving human rights education, advancing civil, cultural and economic rights, and fighting discrimination and intolerance. He also welcomes the NHRS's aim to facilitate the involvement of a broad range of stakeholders, including authorities, civil society, and educational, research and cultural institutions in the achievement of its objectives. In light of reported lacunae in the collection of data concerning the implementation of human rights, the Commissioner is particularly pleased that the NHRS establishes as a priority task the defining of a methodology for continuous monitoring and data collection in this area.
7. The NHRS covers the time frame corresponding to the EU programming period 2014–2020 and includes elements concerning the use of structural funds. A comprehensive evaluation and update of the NHRS in a long-term perspective is scheduled for 2020, in addition to the biannual monitoring and evaluation of its implementation until that date.
8. The Commissioner notes the concerns expressed by several of his interlocutors that despite being a strong declarative document, the NHRS does not define clear objectives, tasks and benchmarks or assign coordination, implementation and monitoring responsibilities to concrete bodies. The annexes to the NHRS, which provide an in-depth analysis of sectorial issues that need to be addressed<sup>3</sup> and identify specific objectives to be attained, are not part of the NHRS, but represent only non-binding support documents.
9. In this respect, it is to be noted that the NHRS aims to provide an "umbrella vision" for the strengthening of human rights protection in Slovakia, which will be made more specific in the future. The Commissioner was informed that the annexes to the NHRS, which make extensive reference to Slovakia's obligations under international human rights treaties and to recommendations made by international monitoring bodies, will be used as background material for the developing of sectorial action plans by the end of 2015.
10. Concerning the ratification of European and international human rights instruments, the authorities emphasised that Slovakia follows a practice of ensuring domestic compliance with treaties prior to their ratification. While in 2013 Slovakia introduced amendments to its Criminal Code in view of complying with the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), it has not as yet ratified this instrument. In 2012, Slovakia ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights but has not yet ratified the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
11. The Slovak authorities have informed the Commissioner that the ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) is under consideration. As to Protocol No. 12 to the European

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<sup>2</sup> National Strategy for Human Rights Promotion and Protection in Slovakia, adopted on 18 February 2015.

<sup>3</sup> Issues covered by the annexes include, *inter alia*: the rights of persons belonging to national and ethnic minorities, of children, persons with disabilities, LGBTI persons, persons living in poverty, the fight against racism, and human rights education.



Convention on Human Rights, which includes a general prohibition of discrimination, the Slovak authorities have indicated that its possible ratification is subject to further examination.<sup>4</sup>

## 1.2 NATIONAL HUMAN RIGHTS STRUCTURES

12. The Commissioner welcomes the emphasis placed by the NHRS on the need to consolidate the institutional framework for the protection of human rights in Slovakia, which has undergone significant changes in the past years. Following the abolishment of the position of Deputy Prime Minister for Human Rights and National Minorities in September 2012, the human rights portfolio and the coordination of the Human Rights Council, an advisory body including both government and civil society representatives, were transferred to the Ministry of Foreign and European Affairs. The Commissioner was informed that as of 1 September 2015 the human rights portfolio will be transferred to the Ministry of Justice.
13. Concerns have been raised by a number of actors in respect of the fact that the post of Plenipotentiary for national minorities, an advisory body to the government with competencies related to the implementation of the Framework Convention on National Minorities (FCNM) and of the European Charter for Regional and Minority Languages, has remained vacant as of July 2013, with its functions being entrusted to a delegate *ad interim*.
14. The placing of the office of the government's Plenipotentiary for Roma communities<sup>5</sup> under the Ministry of the Interior, as of 2012,<sup>6</sup> has also raised concerns among national and international actors, not least because of the perceived risk that this move would reinforce negative conceptions about Roma as being a security concern. NGOs have highlighted fears that the transfer of the plenipotentiary under a line ministry may serve as an incentive for other ministries to abandon their Roma integration agendas.
15. As a positive step, in 2014 the government established the National Coordination Centre for Dealing with Violence against Children. The bill concerning the setting up of a Commissioner for children and of a Commissioner for persons with disabilities was adopted shortly after the Commissioner's visit to Slovakia. The Commissioner was informed that these two positions shall be independent and that specialist NGOs shall have a key role in nominating candidates to them, with the launching of the first election procedures being scheduled before the end of 2015.
16. The Commissioner notes with interest the NHRS's focus on the "urgent need" to reform the Slovak National Centre for Human Rights (SNCHR), which fulfils a double role as a general human rights institution and an equality body. In particular, the NHRS recommends the enhancing of the SNCHR's mandate with quasi-judicial powers, in addition to its competencies to represent individuals before courts and to initiate public interest actions. The NHRS also addresses the insufficiency of the SNCHR's resources. As of 2012 the SNCHR operates only three regional offices, as opposed to seven in the past.
17. The authorities have informed the Commissioner about the on-going legislative process aimed at bringing the set-up and functioning of the SNCHR, which has a grade "B" status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in line with the Paris Principles. These efforts are meant to strengthen the institution's mandate, independence and pluralism and to address its resource needs. While commending these positive steps, the Commissioner is worried by the views expressed by a number of his interlocutors that the authorities do not consistently respond positively to the SNCHR's proposals and recommendations.
18. The Commissioner welcomes the high status conferred in Slovakia's human rights architecture to the Public Defender of Rights (Ombudsperson), established as an independent institution by the Constitution. In 2006,

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<sup>4</sup> UN Human Rights Council, Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, Slovakia, 8 November 2013 (paragraph 74).

<sup>5</sup> The Plenipotentiary for Roma communities was established in 1999 as an advisory body mandated to propose, coordinate and monitor activities aimed at achieving equality for ethnic Roma with other citizens, with a focus on education, employment, housing, healthcare, non-discrimination and economic inclusion.

<sup>6</sup> Previously the Office of the Plenipotentiary for Roma communities functioned under the Government Office and the Deputy Prime Minister for Human Rights and National Minorities.

Act no. 564/2001 was amended to institute the obligation for public bodies to comply with the Ombudsperson's recommendations concerning remedial measures in cases of violations of human rights.

19. The Commissioner is heartened by the Ombudsperson's proactive approach in bringing human rights issues of serious concern, such as those concerning Roma and excessive use of violence by the police, to the attention of the authorities. He is also encouraged by the initiative taken by the Ombudsperson's office to dedicate a larger part of its activity to field work, and to act increasingly *ex officio*. However, he regrets that this essential work has not always been met with sufficient support from the authorities. In this context, the recommendations made by the NHRS that the Ombudsperson's activity should be seen as a constructive discharge of the institution's role are welcome. In addition, the authorities should pay attention to the resource needs of the Ombudsperson's office, which is currently understaffed and lacks sufficient funds to carry out its substantive activities.

### 1.3 CO-OPERATION WITH CIVIL SOCIETY

20. In recent years Slovakia has taken steps to strengthen co-operation between the authorities and civil society. In 2012 the government adopted a Strategy for civil society development until 2020 and an action plan for the years 2012-2013. These documents aim, *inter alia*, to set up effective co-operation mechanisms between the authorities and civil society and to define areas in which NGOs can play an active role in providing public services, in equal conditions with public providers. In July 2012, the position of Plenipotentiary for the Development of Civil Society was established, with competencies in promoting and monitoring the effectiveness of the dialogue between public bodies and civil society.
21. While these steps have stimulated dialogue within the Council for NGOs, set up by the government in 2012, civil society representatives have highlighted that the aforementioned instruments have remained largely unimplemented and no follow-up action plan has been adopted. Moreover, the position of Plenipotentiary for the Development of Civil Society remained vacant from October 2013 to November 2014.
22. NGO representatives who met the Commissioner underlined that despite the existing framework, consultation with civil society is often formal, with authorities frequently failing to take into consideration their substantive input. However, both the SNCHR and the Ombudsperson maintain close co-operation with NGOs.
23. At present, the provision of grants remains one of the main tools of co-operation between the government and civil society. As of 2013, the Ministry of Foreign and European Affairs is responsible for the grant scheme "Support and protection of human rights and freedoms". Annually, the scheme supports some 50 projects consisting primarily in awareness-raising, training, education, research and publication activities aimed at the promotion, support and protection of human rights and the prevention of all forms of discrimination, racism, xenophobia, homophobia, antisemitism and intolerance. The Commissioner was informed that in 2015, the scheme covers 54 projects, for a total amount of 759 500 euros.
24. Further grant schemes run by other ministries and public bodies are aimed at supporting gender equality (the Ministry of Labour, Social Affairs and Family and the Ministry of Culture), national minorities' cultures (the Government Office), and the cultural rights of persons belonging to disadvantaged social groups, including persons with disabilities and persons affected by poverty and social exclusion (the Ministry of Culture). The Plenipotentiary for Roma communities manages a grant scheme supporting projects which focus, *inter alia*, on improving living conditions in Roma settlements, through the development of essential infrastructure, as well as on supporting schools and community centres. The amount of resources allocated within this grant scheme in 2015 is 650 000 euros.
25. Despite these grant schemes, NGOs have voiced concerns about the financial sustainability of their activities, in particular owing to the fact that available funds do not usually cover operational costs. Therefore, the activities of many NGOs are project-based, with some being forced to suspend their activities in between grants. The Commissioner was informed that some grants, such as those supporting the cultural rights of national minorities and the prevention of and fight against homophobia, have decreased in the past years.
26. In addition, the Commissioner notes that no connection has yet been established between the NHRS and the aforementioned grant schemes. He encourages the authorities to coordinate the implementation of the

NHRS with the existing grant schemes, making full use of the possibilities for co-operation between state and civil society actors in the promotion and protection of human rights.

#### 1.4 HUMAN RIGHTS EDUCATION

27. In 2008 human rights education was included in national education programmes for primary, lower secondary, and upper secondary schools. The SNCHR regularly carries out educational and awareness-raising activities in schools and universities, as well as for professionals, in particular in the field of administration, law enforcement and justice. In addition, the Slovak Youth Institute “Iuventa”, an organisation governed by the Ministry of Education, carries out awareness-raising activities aimed primarily at young people.
28. However, a number of deficiencies remain in respect of the effective integration of human rights education into educational programmes. At present, human rights education does not constitute a compulsory part of the state educational curriculum and there are no statistics available on the extent of the provision of human rights education in schools. Moreover, very little resources are allocated to teacher training in this field.
29. The Commissioner is worried by the recent findings of the National Lifelong Learning Institute of Slovakia that the educational approaches and teaching methods used in schools cannot ensure that pupils acquire adequate competencies in valuing diversity and equality, particularly between different faiths and ethnic groups, settling disagreement and conflicts in a non-violent manner, and combating all forms of discrimination and violence, especially bullying.<sup>7</sup> In the Institute’s view, the lack of prioritising by decision-makers, the lack of awareness, interest or support among education professionals, and the decentralised education system are among the key challenges to the promotion and development of human rights education in Slovakia.
30. Against this background, the Commissioner welcomes the inclusion of the improvement of human rights education as one of the priorities of the NHRS. Concrete steps provided in the NHRS include the setting up of a National Commission for Education and Awareness of Human Rights and Democratic Citizenship and the preparation of a relevant action plan for 2015–2020, supervised by the Ministry of Education.

#### 1.5 THE ROLE OF LOCAL AND REGIONAL AUTHORITIES

31. Starting in 2002, Slovakia underwent a complex decentralisation process whereby various competencies have been transferred from central government to local and regional authorities. For example, self-governing regions and municipalities are now responsible for specific areas in the field of social services, youth care, health care, housing and education.
32. While acknowledging the potential presented by the new allocation of powers in helping to adapt services to local specificities and individual needs, several of the Commissioner’s interlocutors have underlined that decentralisation has not been accompanied by an adequate transfer of human rights expertise. At present, significant disparities exist in the level of protection of human rights across regions and municipalities. There is a persistent need to raise awareness of human rights standards within regional and municipal authorities, as well as to overcome their resistance to fully implement human rights in some areas, such as the rights of persons with disabilities.
33. In addition, no effective mechanisms have been put in place for the monitoring of the human rights implications of the decentralisation process. The Commissioner wishes to stress the importance of ensuring that decentralisation does not have a negative impact on the enjoyment of human rights. It is essential that the government ensure the central monitoring of the quality of services provided across the country and the effective accountability of local and regional authorities for the implementation of human rights.

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<sup>7</sup> Mid-term review on education for democratic citizenship and human rights education in accordance with the provisions of the Council of Europe Charter, reply to questionnaire, 6 February 2015.

## 1.6 CONCLUSIONS AND RECOMMENDATIONS

34. The Commissioner commends Slovakia for its efforts to systematise the implementation and monitoring of human rights through the NHRS. The explicit reference to Slovakia's obligations under international human rights treaties, the emphasis on strengthening the institutional protection of human rights and on improving the situation of disadvantaged and vulnerable individuals and groups, as well as the aim to ensure the broad participation of civil society in human rights work are positive features of the strategy.
35. The authorities are urged to include ambitious and measurable goals in the sectorial action plans for the implementation of the NHRS. They are encouraged to use the drafting of the plans as an important opportunity to effectively address outstanding challenges and to strengthen their capacity to pursue systematic work on the protection of human rights. The setting up of a mechanism for the independent evaluation of the implementation of the strategy, based on clear benchmarks and timeframes, is essential. The Slovak authorities are invited to draw inspiration on these issues from the Commissioner's [Recommendation](#) on systematic work for implementing human rights at the national level (2009).<sup>8</sup>
36. The Commissioner encourages Slovakia to accelerate the ratification process of the Optional Protocol to the UN Convention against Torture and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. He also urges the authorities to accede to Protocol No. 12 to the European Convention on Human Rights as well as to the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.
37. The Commissioner welcomes the planned reform of the Slovak National Centre for Human Rights with the purpose of bringing it fully in line with the Paris Principles. He invites the authorities to consider extending the SNCHR's mandate with the power to issue effective and dissuasive sanctions in cases of human rights violations. The authorities are urged to lend their full support to the SNCHR's and the Ombudsperson's work and to provide these institutions with adequate human and financial resources enabling them to effectively carry out their mandates.
38. The government's initiative to provide support to civil society projects for the promotion and protection of human rights through various grant schemes is noteworthy. The Commissioner encourages the authorities to use the grant schemes to give effect to the priorities enshrined in the National Human Rights Strategy.
39. As regards human rights education, the Commissioner invites the Slovak authorities to explicitly include human rights in the attainment targets for primary and secondary education and to take measures to ensure that civil servants working at central and local levels are systematically trained on human rights issues.
40. Further consideration should be given to the role and responsibility of regional and local authorities in implementing national human rights policies. Central authorities should provide the necessary guidance, systematic training and co-ordination on provisions of services to ensure respect of international human rights standards on the ground and avoid disparities in the protection of rights across regions and municipalities. Efficient mechanisms should be devised for the monitoring of the quality of services provided at local and regional level.
41. The Vienna World Conference on Human Rights of 1993, which recommended the adoption of national action plans on human rights, called on states to develop programmes and strategies on human rights education and awareness-raising as well. The Commissioner urges the Slovak authorities to address the existing shortcomings in the integration of human rights education into educational plans. He stresses that teaching methods should encourage critical thinking and create a participatory learning environment free from discrimination and intolerance. The principles developed in the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)7](#) on the Charter on Education for Democratic Citizenship and Human Rights Education provide useful guidance in this context. Slovakia is also invited to draw upon the Council of Europe's rich expertise in this domain.<sup>9</sup>

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<sup>8</sup> See also the Commissioner's [thematic webpage](#) on systematic human rights work.

<sup>9</sup> See the Council of Europe's [website](#) on Education for Democratic Citizenship and Human Rights Education.

## 2 ACTION AGAINST DISCRIMINATION

### 2.1 RECENT LEGISLATIVE AND POLICY DEVELOPMENTS

#### 2.1.1 GENERAL ANTI-DISCRIMINATION LEGISLATION

42. Slovakia has a comprehensive legal and institutional framework for the protection against discrimination. The Commissioner has noted, however, that the level of protection varies depending on the applicable ground of discrimination. The Slovak Constitution and the 2004 Act on equal treatment in certain areas, protection against discrimination and on amending and supplementing certain other laws (“Anti-discrimination Act”) contain the core anti-discrimination provisions.
43. Article 12 (2) of the Constitution guarantees basic rights and freedoms to everyone, without discrimination, on the grounds of sex, race, skin colour, language, religion, belief, political or other convictions, national or social origin, affiliation to a nation<sup>10</sup> or ethnic group, property, descent, or any other status. In 2005 the Constitutional Court ruled that sexual orientation is a constitutionally prohibited ground of discrimination.<sup>11</sup>
44. The Anti-discrimination Act, which was amended several times between 2008 and 2013, sanctions direct and indirect discrimination (including acts which could potentially lead to discrimination), harassment, victimisation, and instruction and incitement to discriminate in the fields of employment, social security, healthcare, education and in the provision of goods and services. Discrimination grounds cover, in addition to the grounds explicitly mentioned in the Constitution, disability, age, marital status, family status, sexual orientation, and property. According to the act, discrimination based on sexual or gender “identification” is deemed to constitute discrimination based on gender.
45. In 2013, the provisions of the Anti-discrimination act concerning positive measures were amended to make such measures available also to private entities, in addition to public bodies. At the same time, the grounds for taking positive measures were extended to cover racial, national or ethnic background, sex, gender, age, and disability. The previous ground consisting in “social disadvantage” was repealed.
46. Concerning procedural provisions, Article 11 of the Anti-discrimination Act shifts the burden of proof to the defendant in cases where the plaintiff provides the court with information from which it may be reasonably inferred that a discriminatory act has occurred. In 2008 the Anti-discrimination Act was amended to allow the SNCHR, NGOs and other persons whose objective or activity is protection against discrimination to lodge public interest complaints (*actio popularis*). Following an amendment in 2011, public interest actions are no longer limited as concerns their object.
47. The Commissioner welcomes the legislative amendments of 2012 increasing the maximum threshold allowed for accessing legal aid, which facilitate access to justice for victims of discrimination. The Legal Aid Centre funded by the Ministry of Justice is responsible for organising the provision of legal aid across Slovakia.
48. Moreover, the Commissioner is pleased to note that the NHRS has set as a priority the adoption of “systemic measures for the prevention and removal of barriers to achieving real equality and life in dignity for all groups of the population”. In this context, the NHRS establishes as a target the improvement of the implementation of sectorial plans concerning vulnerable and marginalised groups and individuals and the adoption of systematic and comprehensive measures aimed at the prevention and elimination of all forms of intolerance.

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<sup>10</sup> According to the comments of the Slovak Republic to ECRI’s report on Slovakia, CRI(2014)37, the Slovak authorities interpret the concept of “affiliation to a nation” as including citizenship.

<sup>11</sup> Constitutional Court of the Slovak Republic, decision no. PL. ÚS 8/04-202 of 18 October 2005.

## 2.1.2 HATE CRIME AND HATE SPEECH LEGISLATION AND POLICY

49. Article 140 of the Criminal Code provides for “special motives” which constitute aggravating circumstances applicable to specific crimes. Such motives include, *inter alia*, the intent to publicly incite violence or hatred against a group of persons or an individual because of their race, nation, nationality, skin colour, ethnicity, gender or origin and religion, and the intent to commit a crime because of ethnic or racial hatred or hatred based on skin colour. Sexual orientation was introduced as an aggravating circumstance in 2013. Other specific crimes defined in the Criminal Code that are classified as hate crimes or hate speech crimes include incitement to national, racial and ethnic hatred and incitement, defamation and threats against persons because of their race, nation, nationality, colour, or ethnic origin.
50. In 2010 the government adopted the “Conception for the Fight against Extremism for the years 2011 – 2014”, a document which may be updated on a yearly basis depending on the relevant developments in the country. In March 2011, the government set up a Committee on Prevention and Elimination of Racism, Xenophobia, Antisemitism and Other Forms of Intolerance as part of its Human Rights Council. The Commissioner is pleased to note that Slovakia joined the Council of Europe’s “No hate speech” movement in 2013. However, he remains seriously concerned at the reported increase of hate speech, notably in political discourse, in the media and on the Internet, targeting in particular Roma and foreign nationals (see also following section on Roma).
51. The Slovak authorities have indicated to the European Commission against Racism and Intolerance (ECRI) that Slovakia would accede to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems as soon as the Criminal Code is amended to provide for the criminal liability of legal persons for such acts.<sup>12</sup>
52. The Ministry of Interior, the Ministry of Justice and prosecutor’s offices collect hate crime data, which are published as part of the Ministry of Interior’s annual Report on Extremism. According to the OSCE Office for Democratic Institutions and Human Rights, (ODIHR), only seven hate crime cases were recorded by the police in 2013, compared to 101 in 2012 and 242 in 2011.<sup>13</sup> The Slovak authorities have not recorded the bias motivations of hate crimes.

## 2.1.3 CONCLUSIONS AND RECOMMENDATIONS

53. The Commissioner welcomes the recent amendments to the Anti-discrimination Act, extending the possibilities to implement affirmative action measures. The provisions of the Criminal Code establishing hatred based on ethnicity, race, skin colour and sexual orientation as an aggravating circumstance for specific offences should be extended to cover transphobic hate crime as well. The Commissioner underlines that anti-hate speech legislation and practice should be reviewed and be brought fully in line with the Council of Europe Committee of Ministers [Recommendation No. R \(97\) 20](#) on “hate speech”.
54. The authorities are encouraged to continue the reform of the anti-discrimination framework so as to close gaps in the level of protection afforded on various grounds of discrimination, including gender. The reform of the equal treatment legislation should be accompanied by continued awareness-raising work and training of concerned professionals, as well as of local and regional authorities.
55. The Commissioner wishes to highlight the important role of independent equality bodies as low-threshold complaints mechanisms and advocates of equality. The Commissioner’s 2011 [Opinion on national structures for promoting equality](#) provides detailed guidance on the equal treatment legislation which should underpin such bodies.
56. The authorities are encouraged to accede to the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems in the shortest time possible.

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<sup>12</sup> ECRI report on Slovakia, CRI(2014)37, 16 September 2014.

<sup>13</sup> Available at: <http://hatecrime.osce.org/slovakia>.

57. Lastly, Slovakia is urged to pay particular attention to the recording of hate speech and hate crime data and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction hate crimes. The authorities are invited to make use of the Council of Europe's expertise in this area, notably through the [HELP programme](#).

## 2.2 HUMAN RIGHTS OF ROMA

### 2.2.1 GENERAL

58. At the census carried out in 2011, 105 738 persons declared themselves as Roma, representing 2% of the country's population of some 5.4 million persons. The "Atlas of Roma communities" published in 2013 by the UNDP in co-operation with, *inter alia*, the Slovak government's Plenipotentiary for Roma communities, estimates the Roma population at 400 000 persons, representing 7.45 % of the total population.
59. Slovakia participates in the EU Decade of Roma Inclusion 2005-2015 and has adopted a revised national action plan for Roma inclusion for 2011–2015 and a National Roma Integration Strategy (NRIS) until 2020. Currently, the NRIS is under revision by a steering committee set up by the Plenipotentiary for Roma communities. In addition, working groups have been set up for the preparation of action plans in the four specific areas covered by the NRIS (housing, education, employment, and health) as well as in three transversal areas (non-discrimination, financial inclusion and integration into the majority community by means of communication).
60. The Commissioner notes the NGO reports pointing to the need to enhance coordination between multiple levels of management, especially between ministries and regional and local authorities, in the implementation and monitoring of the NRIS.<sup>14</sup> He encourages the authorities to use the upcoming reports prepared by the Plenipotentiary for Roma communities, assessing the implementation of the NRIS in the period 2012-2014, as well as the input of civil society on this matter, to improve their involvement in the implementation of the NRIS.
61. The Commissioner also notes the concerns raised by a number of actors in relation to the "Roma reform – The Right Path", an initiative launched in 2012 by the Minister of Interior and the Plenipotentiary for Roma communities, aimed at reforming Slovakia's approach to its Roma communities. Doubts were expressed by various interlocutors regarding, *inter alia*, the extent to which this new initiative was meant to replace or complement the NRIS. The Plenipotentiary for Roma communities has informed the Commissioner that the "Roma reform" is part of the NRIS and all measures adopted under this initiative aim to achieve the implementation of the NRIS.
62. The Commissioner is pleased to note that in November 2013 the Slovak authorities launched a three-year plan for the implementation of the Council of Europe's campaign "Dosta! (Go Beyond Prejudices, Meet the Roma)", as well as the ROMED 2 and ROMACT programmes.<sup>15</sup>
63. The NHRS does not contain a chapter or annex on Roma integration. However, specific challenges faced by Roma communities are reflected, *inter alia*, in the annex concerning the "Rights of people living on the edge of poverty"<sup>16</sup> and the annex on "Preventing and eliminating racism, xenophobia and other forms of intolerance". In this latter context, the Commissioner wishes to refer to the concerns expressed by the Advisory Committee on the FCNM in its recently published report on Slovakia that "anti-Roma and other racist messages have increasingly been propagated in the media, public discourse and sometimes in the

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<sup>14</sup> Roma Institute, Milan Šimečka Foundation, Quo Vadis, "[Updated civil society monitoring report](#) on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and 2013 in Slovakia", 2013.

<sup>15</sup> The key aim of ROMACT is to boost Roma inclusion efforts at local level, by increasing co-operation between local authorities and Roma communities and enhancing Roma participation in the planning of local inclusion measures. The ROMED 2 programme deals with "Democratic governance and community participation through mediation".

<sup>16</sup> The results of surveys carried out by the United Nations Development Programme (UNDP), the World Bank and the European Commission, and by the European Union's Fundamental Rights Agency (FRA), showed that in 2011, 87% of Roma in Slovakia were at risk of poverty, and less than 30% of those aged 20 to 64 were involved in paid employment (FRA/UNDP/EC, "The situation of Roma in 11 EU Member States", 2012).

political arena, particularly during pre-election periods.”<sup>17</sup> In 2013 CERD noted with concern the reported increase of hate speech in the media and on the Internet, including social networks, as well as in sports, targeting in particular Roma, ethnic Hungarians and foreign nationals.<sup>18</sup>

64. The Commissioner is particularly concerned by manifestations of anti-Gypsyism and hate speech which have been reported at local level and which show the need for the authorities to redouble their efforts aimed at eradicating intolerance and racism. On several occasions representatives of local authorities have used racist speech against Roma during anti-Roma marches and protests. In fact, the European Roma Rights Centre (ERRC) identified 11 anti-Roma marches between 2011 and 2012.<sup>19</sup> However the Commissioner wishes to highlight and commend an example of good practice: the “Roma Spirit Awards”, organised in Slovakia by the Association for Culture, Education and Communication to acknowledge individuals and organisations involved in projects and activities aimed at improving the situation of Roma, is a useful initiative for showcasing Roma inclusion practices. In 2014 Zuzana Nebusová, the mayor of the village of Spišské Tomášovce in the Košice region, received the award for her work for the “long-term and continuous improvement of living standards of Roma families.”<sup>20</sup>
65. The Commissioner notes with regret that the issue of the sterilisation of Roma women without their free and informed consent has still not been fully solved by the Slovak authorities. In 2012 the Strasbourg Court delivered further judgments in this matter,<sup>21</sup> in addition to the earlier judgments already addressed by the Commissioner’s predecessor.<sup>22</sup> Despite recommendations from international bodies and the Human Rights Council, the authorities have not yet adopted uniform standards concerning the obtaining of free and informed consent in cases of sterilisation. Moreover, they have not taken responsibility for unlawful sterilisations committed in the past.
66. The Commissioner wishes to reiterate the importance of introducing a system for collecting ethnic data, with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. He refers the authorities to the study “[‘Ethnic’ statistics and data protection in the Council of Europe countries](#)” published by ECRI in 2007.
67. In the following subsections the Commissioner shall focus on some major outstanding concerns regarding the excessive use of force by law enforcement officers against Roma, the segregation of Roma children in the school system, and the spatial segregation and housing situation of Roma.

### 2.2.2 POLICE VIOLENCE AGAINST ROMA

68. In recent years, human rights defenders and other civil society actors have recorded a growing number of violent attacks against Roma by both the general population and police forces.<sup>23</sup> Precise data concerning the number of racist hate crimes are not available, as many incidents go unreported and hate crime data are not disaggregated on the basis of ethnicity.<sup>24</sup> Moreover, in most of the monitored cases there has been no successful prosecution of the offenders for racist hate crimes.<sup>25</sup>
69. As a particularly disturbing development, last February, six years after an incident previously addressed by the Commissioner’s predecessor concerning six Roma boys aged 10-16 who were detained by the police in Košice in 2009 and were forced to strip naked, kiss and slap each other, a district court acquitted all 10 of

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<sup>17</sup> Advisory Committee on the FCNM, Fourth Opinion on the Slovak Republic, 3 December 2014.

<sup>18</sup> Available at: <http://tb.ohchr.org/default.aspx?country=sk>.

<sup>19</sup> ERRC, [Slovakia country profile 2011-2012](#), July 2013.

<sup>20</sup> <http://www.acec.sk/en/udalosti/roma-spirit-2014-0>.

<sup>21</sup> *N.B. v. Slovakia* (judgment of 12 June 2012) and *I.G., M.K. and R.H. v. Slovakia* (judgment of 13 November 2012).

<sup>22</sup> *K.H. and others v. Slovakia* (judgment of 28 April 2009) and *V.C v. Slovakia* (judgment of 8 November 2011).

<sup>23</sup> ERRC, “Attacks against Roma in Slovakia: January 2008 - July 2012”, July 2012.

<sup>24</sup> See the Court’s judgment in *Koky and others v. Slovakia* (12 June 2012), concerning the lack of an effective investigation into an attack by private individuals on a Roma settlement in February 2002.

<sup>25</sup> See “[Written comments](#)” by the European Roma Rights Centre (ERRC) and the Centre for Civil and Human Rights concerning Slovakia, for consideration by the Committee on the Rights of the Child at the 72nd Pre-Sessional Working Group (5 - 9 October 2015)”, July 2015.



the current or former police officers prosecuted in the case. The appeal filed by the prosecutor against this judgment is pending. The Commissioner would like to receive more information from the authorities on the progress of this case.

70. In the autumn of 2012, four Roma settlements located in Kežmarok District, Prešov region (Stráne pod Tatrami, Huncovce, Podhorany, and Rakúsy) were raided by the police. Despite the apparent lack of arrest or search warrants, the police entered houses situated in settlements and searched them, allegedly abusing inhabitants, physically and verbally. Human rights defenders have informed the Commissioner that almost three years since the raids took place the case continues to be at the pre-trial stage of investigation. The Commissioner urges the authorities to accelerate the proceedings and requests that they keep him informed on the progress of this case.
71. One of the most prominent recent cases concerns two violent raids in the Roma settlement of Moldava nad Bodvou (Budulovská street), near Košice, on 16 and 19 June 2013. The first raid reportedly involved the taking into custody, for two and a half months, of a person with intellectual disabilities, and the initiation of criminal proceedings against him, contrary to the law. According to a number of reports, the second incident was a large-scale operation involving more than 60 police officers who conducted an unusually violent action resulting in damage to property and injuries to over 30 individuals, including children, as well as the taking into custody of some 12 persons.
72. While the police and the Inspectorate of the Ministry of Interior did not find the police action to be unlawful and qualified it as normal preventive work, in August 2013, the Ombudsperson submitted for debate in parliament an “extraordinary report” in which she concluded that the raid was not a preventive, but a repressive action for which the police had failed to prove justification and was disproportionate.<sup>26</sup>
73. The Commissioner regrets the parliament’s decision not to debate the Ombudsperson’s extraordinary report, despite the fact that it was submitted in accordance with her statutory powers. The Ombudsperson has recommended, *inter alia*, the video monitoring of all police operations where the use of force is anticipated, as well as the use of cameras in all police cells. The Commissioner was informed by the Minister of Interior that 800 police cars are now equipped with cameras in order to record police raids. The authorities are urged to take into consideration all the conclusions and recommendations made by the Ombudsperson and to act upon them, viewing them as an opportunity for improving the operational capacity of law enforcement agents and their compliance with European human rights standards.
74. During his visit, the Commissioner met with human rights defenders and members of the Roma community of Budulovská street, who expressed their disappointment that two years after the incident, no charges have been brought yet against any individual involved in the raids. Moreover, the Commissioner’s interlocutors have deplored that the police has not taken any measures to protect plaintiffs from further encounters with the alleged perpetrators, who continue to carry out routine work in the settlement.
75. On 2 April 2015, a large number of policemen entered the village of Vrbnica in Michalovce District, Košice region, allegedly in search of absconding persons. The house-to-house search reportedly resulted in injuries to at least 19 Roma persons who, according to media accounts, did not resist or obstruct the police. The intervention was not recorded and no police misconduct was acknowledged by the authorities in connection with this incident.
76. In this context, the Commissioner notes that the Ombudsperson and NGOs have repeatedly raised the issue of the lack of an independent police complaints mechanism in Slovakia. NGOs have noted that the Police Inspection rarely initiates *ex officio* prosecution of alleged ill-treatment. Moreover, the vast majority of complaints are rejected during the preliminary investigations, without any charge being brought against the perpetrators.
77. The Commissioner notes the view expressed by the Ministry of Interior that the prosecution represents an independent investigation mechanism in respect of allegations of offences committed by members of the police. However, according to information provided by the ministry, the prosecution usually has only a

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<sup>26</sup> Public Defender of Rights, “Extraordinary report regarding facts indicating serious violations of fundamental rights and freedoms by actions taken by some bodies”, Bratislava, August 2013.

supervisory role in the investigations, which are carried out by members of the police forces. The Commissioner wishes to draw the Slovak authorities' attention to the Court's judgment in the case of *Kummer v. the Czech Republic*,<sup>27</sup> in which the Court found that the prosecutor's merely supervisory role is not sufficient to make the police investigation comply with the requirement of independence. Moreover, in the case of *Ramsahai and Others v. the Netherlands*,<sup>28</sup> the Court underlined that prosecutors "inevitably rely on the police for information and support" and emphasised the importance not only of the hierarchical and institutional independence but also of the practical independence of the investigator.

78. In respect of the efforts made to improve co-operation between the police and Roma communities, the Commissioner welcomes the initiative of the authorities to provide training to law enforcement agents serving primarily in Roma communities. According to official data, as of June 2015 a total of 264 specialised police officers were employed for work in areas with substantial Roma communities. However, the Commissioner regrets that only a very small number of these positions are occupied by ethnic Roma.
79. The Commissioner also witnessed the presence, in the visited Roma communities, of the so-called "Roma civic watch (patrol)", a position with competencies in the maintenance of public order, working in co-operation with the municipal police. The Commissioner was informed that currently 325 civic patrol representatives, all ethnic Roma, operate in various settlements in Slovakia. Civic patrol members encountered by the Commissioner wore distinctive clothing and were armed with batons.
80. While this position is not vested with repressive powers, and the Commissioner was not informed of any abuse committed by representatives of the patrol, he wishes to draw the authorities' attention to the existing jurisprudence of the Court in this matter. In *Seyfettin Acar and Others v. Turkey*,<sup>29</sup> the Court reiterated its concerns as regards the use of civilian volunteers such as village guards in a quasi-police function. In particular, the Court noted that, as the village guards operated outside the normal structure of discipline and training applicable to gendarmes and police officers, it was not apparent what safeguards there were against wilful or unintentional abuses of position carried out by the village guards either on their own initiative or under the instructions of security officers. The Court has therefore established that the state bears responsibility for the actions of the village guards.

### 2.2.3 DISCRIMINATION OF ROMA CHILDREN IN THE EDUCATION SYSTEM

81. The serious, persistent deficiencies in Roma children's access to education are an issue of major concern to the Commissioner. According to the 2010 UNDP household survey,<sup>30</sup> almost one in five Roma persons (18.4%) did not finish primary education, 59.7% finished primary school and only 17% continued into further secondary studies. Surveys conducted in 2011 in 11 EU member states<sup>31</sup> showed that Slovakia had the second lowest participation rates in pre-school and kindergarten education for Roma children (slightly under 30%). While compulsory school attendance was high, with practically all Roma children enrolled in school, completion rates of secondary education were very low, with 39% of Roma women and 28% of Roma men aged 16-24 having stopped school before the age of 16.<sup>32</sup>
82. The Commissioner remains deeply concerned by the long-standing, widespread practice consisting in placing Roma children either in special schools or classes, or in separate classes or schools within the mainstream education system. According to the UNDP 2010 household survey, 43% of Roma children enrolled in mainstream schools were in practice attending ethnically segregated classes.<sup>33</sup> In 2008-2009 the Roma Education Fund estimated the share of Roma pupils at 60% in special schools and at 86% in special classes functioning in mainstream schools.<sup>34</sup> In 2013, based on research carried out in 21 inspected schools,

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<sup>27</sup> Judgment of 25 July 2013.

<sup>28</sup> Judgment of 15 May 2007.

<sup>29</sup> Judgment of 6 October 2009.

<sup>30</sup> UNDP, Report on the living conditions of Roma households in Slovakia 2010, Bratislava, 2012.

<sup>31</sup> FRA/UNDP/EC, [The situation of Roma in 11 EU Member States](#), 2012.

<sup>32</sup> FRA, [Analysis of FRA Roma survey results by gender](#), 2013.

<sup>33</sup> See also FRA, [Education: the situation of Roma in 11 EU member States](#), 2014 (survey carried out in 2011).

<sup>34</sup> Roma Education Fund, "School as a ghetto. Systemic overrepresentation of Roma in special education in Slovakia", 2009.

the Ombudsperson found that Roma children represented 88% of children enrolled in special primary schools and classes.<sup>35</sup>

83. In this context, the Commissioner notes the view expressed by the National Lifelong Learning Institute of Slovakia that the Slovak education system is “one of the most unfair systems in Europe”, the most discriminated children being those who are affected by social marginalisation, poverty, or a language barrier.<sup>36</sup>
84. The concentration of Roma in certain residential areas, combined with Roma parents’ tendency to enrol children in schools near their homes also contributes to the very high proportion of Roma children in some schools. In addition, non-Roma parents often withdraw their children from schools attended by Roma children. NGOs who met the Commissioner at the community centre in Vel’ká Ida have stressed that in such circumstances Roma and non-Roma children have practically no possibilities to interact with, and learn from each other. Concerning enrolment in special classes and schools, the Commissioner’s interlocutors have stressed that while this is based on parental consent, in many cases parents are not adequately informed about the serious consequences of their choice for the future of their children.
85. The Commissioner witnessed the complexity of the situation of Roma children in the education system during his visit to the elementary school of Kecerovce, near Košice. The school is in fact mono-ethnic, with only Roma children being enrolled, while non-Roma children of the village attend other schools in nearby localities. At the time of the Commissioner’s visit, the school had 811 pupils and was struggling with overcrowding. At the request of the school management and of the local authorities, a new building made of containers was annexed to the school at the beginning of the year, which hosted the younger children of the school. Although the new building provided adequate material conditions, it did not solve the issue of overcrowding, with 14 classes still attending school in the afternoon.<sup>37</sup>
86. As a consequence, the school was not able to organise after-school activities, which according to the Commissioner’s interlocutors were a standard feature in other schools and were essential for the improvement of children’s achievement. In addition, the Commissioner’s interlocutors considered kindergarten as an essential step before school, helping children start at the same level of basic knowledge. In fact, some 60% of the children coming to the school were enrolled first in pre-school “zero” classes designed to help children who did not attend kindergarten. The school used seven teaching assistants to help children and staff members overcome the language barrier.
87. However, the Commissioner notes that not all children who had attended “zero” classes were then included in mainstream courses in elementary school. Although the specialist staff of the school expressed their view that it was “definitely possible” to bring children to the adequate level for starting mainstream education, the Commissioner found with surprise that 44 of the school’s pupils were enrolled in five special classes. Moreover, the specialist staff admitted that once a child was included in a special class, this decision was not going to be changed later to integrate the child into mainstream education.
88. The Commissioner’s interlocutors also stressed that the extremely poor living conditions of the Roma children and the lack of formal education of their parents, who were unable to help children in the learning process, were important factors influencing their progress in school. The Commissioner learned with concern that only 15 to 20 pupils out of some 100 pupils enrolled each year were finishing grade 9 and continuing their studies in higher secondary school.
89. The Commissioner regrets that despite these evident problems, the Slovak authorities have on several occasions denied or justified the segregation of Roma children, on various grounds. The authorities have not changed their attitude despite the landmark ruling of a district court in 2011, which condemned as

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<sup>35</sup> Public Defender of Rights, *ibid.*

<sup>36</sup> Mid-term review on education for democratic citizenship and human rights education in accordance with the provisions of the Council of Europe Charter, reply to questionnaire, 6 February 2015.

<sup>37</sup> As of 2013, the government provided financial support for the building of a number of so-called “container” schools, with the purpose of addressing overcrowding in existing schools, in particular in Roma communities. A number of civil society actors have criticised the government for adopting this measure, which they considered as reinforcing school segregation, instead of redistributing Roma children to other existing schools.

discriminatory the segregation of Roma children in separate classes and buildings of an elementary school in the village of Šarišské Michaľany, in eastern Slovakia.

90. Last April, the European Commission announced the launching of an infringement procedure against Slovakia for the segregation of Roma children in the education system along ethnic lines. In a particularly regrettable instance, the Slovak authorities justified this segregation on the basis that high levels of incest in Roma communities were causing psychosocial disabilities amongst children belonging to those communities.<sup>38</sup>
91. As positive developments, the Commissioner notes the implementation of the projects “Early childhood investment – Support of social innovation and integration of Roma”, implemented in 2013-2014 the Ministry of Education and “Inclusive model for pre-primary education” launched in 2013 by the Plenipotentiary for Roma communities. In addition, in May 2014 the Ministry of Education, in co-operation with the Plenipotentiary for Roma communities, launched the pilot project “PRINED”, funded by 16 million euros allocated from EU structural funds, aiming to include children diagnosed with a “mild mental disability” in mainstream primary schools. The pilot project is to be implemented in 60 locations and aims to translate its results into changes in domestic legislation.
92. The Commissioner is also pleased that the annex to the NHRS on the “Rights of persons belonging to national minorities and ethnic groups” includes as a priority the adoption of measures “to prevent the unjustified placement of Roma children in separate schools and classes”.
93. Finally, the Commissioner notes that on 30 June 2015 the authorities introduced amendments to the School Act comprising a number of measures aimed at promoting desegregation. The measures include, *inter alia*, the explicit prohibition of placing children in special classes on the basis of their social backgrounds; the explicit obligation for schools to educate children from disadvantaged backgrounds in mainstream education; financial incentives for schools educating children from disadvantaged environments in mainstream classes; and stricter standards concerning the carrying out of school inspections.
94. While these developments are welcome, the Commissioner notes the views expressed by some NGOs that they do not remove the system of special education and do not tackle issues which are crucial for combating the segregation of Roma children, such as ethnically and culturally biased diagnostics; the existence of *de facto* segregation in Roma-only schools or classes; or the insufficient methodological guidance and financial support for schools enabling them to educate children inclusively. Moreover, a further amendment concerning the possibility of placing socially disadvantaged children in “catch-up” classes, for a period of one year, appears to be contrary to the right to inclusive education.

#### 2.2.4 RIGHT TO ADEQUATE HOUSING AND THE ISSUE OF SPATIAL SEGREGATION OF ROMA

95. According to the aforementioned Atlas of Roma communities, in 2013, 46% of Roma in Slovakia lived integrated within the majority population, while 17% lived in segregated settlements. In 153 municipalities Roma lived in segregated settlements only. According to the NRIS, at present about 16% of all Roma families live in “non-standard” housing, including shacks and containers.
96. In recent years some local authorities reportedly blocked Roma from obtaining construction permits or purchasing land. Last May the parliament adopted a new Construction Act which aims, *inter alia*, to allow Roma living in informal dwellings (representing some 30% of all Roma living in Slovakia) to regularise them by 2022. However, the Commissioner’s interlocutors have highlighted that not all informal dwellings will be eligible for legalisation and that a lack of procedural guarantees related to the legalisation procedure may pose a risk for Roma who do not own the land on which they have built their dwellings to become homeless.
97. The Commissioner notes that partly as a result of lack of tenure, many Roma in Slovakia face the threat of forced eviction. Following a process of land privatisation, as well as of decentralisation, in the past two

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<sup>38</sup> <http://en.rsi.rtvs.sk/articles/topical-issue/82335/interior-minister-kalinak-we-cant-close-our-eyes-before-roma-incest>.

decades, lands previously owned by the state have been transferred to private persons or municipalities, who often initiate demolition and eviction procedures against Roma.

98. In her “extraordinary report” of 2013 the Ombudsperson strongly criticised the eviction of more than 150 Roma and the demolition of their houses in Nižné Kapustníky, Košice, on 30 October 2012, on the grounds of a municipal council decision on communal waste removal. In the same month about 200 Roma were evicted from 30 flats when a building, reportedly at risk of collapse, was demolished in the Roma neighbourhood Luník IX of Košice. Only a few families were offered adequate alternative accommodation. The Košice municipality evicted another Roma settlement in the city district of Ťahanovce in April 2013. In their discussions with the Commissioner the local authorities of Košice have stressed their view that the evictions were necessary either for public health or safety reasons.
99. In 2011, the Commissioner’s predecessor noted with concern the developing tendency to build walls in several localities, separating Roma settlements from non-Roma communities. In 2012 further walls were built in Partizánske, Zlaté Moravce and Sereď. One of the most publicised recent cases was the building of a concrete wall in the Luník VIII district of Košice in 2013. Currently, some 14 walls exist in Slovakia, mostly in the eastern part of the country. The Commissioner is pleased to note that the SNCHR has repeatedly condemned this practice and recommended that local authorities take integration measures instead.
100. Concerning access to social housing, the Commissioner was informed that although there are several state mechanisms allowing for the construction of flats for marginalised communities, it appears that housing interventions are limited. In addition, municipalities are often reluctant to use the existing tools for promoting inclusion.
101. In 2011, the government approved its “Proposal for an implementation mechanism for a pilot approach to using EU structural funds for housing infrastructure”, which specifically mentions the objective of desegregation and inclusive housing policies targeting Roma. In 2013 the Plenipotentiary for Roma communities launched a pilot programme to develop a methodology for the building and allocation of rental housing. The project was criticised by NGOs who considered that some of the criteria for the allocation of these houses, such as the reviewing of the school attendance by the applicants’ children and assessments by social workers of the applicants’ ability to cope with moving into a new environment, were excessive.

## 2.2.5 CONCLUSIONS AND RECOMMENDATIONS

### 2.2.5.1 GENERAL

102. The Slovak authorities and political leaders at all levels are urged to abstain from using stigmatising rhetoric against Roma, and to condemn firmly and unequivocally all instances of hate speech, in line with the Council of Europe Committee of Ministers Recommendation [No. R \(97\) 20](#) on “hate speech”, as well as all forms of hate crime. This would send a strong signal to Slovak society that hate speech and hate crime have no place in a democratic society.
103. In line with the aforementioned Recommendation, the authorities need to be much more vigilant and proactive and use all available means to end impunity and to combat all kinds of hate crimes and hate speech, especially when they take on the extreme forms that destabilise social cohesion and erode the fundamental human rights principles which Slovakia, as a member state of the Council of Europe, has committed to uphold.
104. The Commissioner calls on Slovakia to develop further and implement initiatives aimed at combating racism and extremism in all sections of society. Priority should be given to actions which aim to raise awareness of the dangers of intolerance and racism, promote tolerance and enhance human rights education in schools. The authorities are invited to draw on the guidelines contained in ECRI’s [General Policy Recommendation No. 10](#) on combating racism and racial discrimination in and through school education. In this context, Commissioner Muižnieks commends the on-going translation by the Education Ministry into Slovak of the Council of Europe [Factsheets on Roma History](#) and calls on the authorities to disseminate and systematically teach them in all schools.

#### 2.2.5.2 POLICE VIOLENCE AGAINST ROMA

105. The Commissioner is concerned that the Slovak authorities appear to underestimate the incidence of racist hate crime, including racially motivated police violence, affecting Roma. The authorities need to pay particular attention to the recording of hate speech and hate crimes and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction crimes committed with a racist motive.
106. The lack of an adequate response by the authorities to long-standing serious concerns raised by police ill-treatment of Roma persons needs to be urgently addressed. The Commissioner stresses that public confidence in law enforcement authorities is closely related to their attitude and behaviour towards the public, and in particular their respect for human dignity and human rights and fundamental freedoms, as enshrined in the European Convention on Human Rights. It is essential for the authorities to ensure that all instances of abuse of trust or ill-treatment by law enforcement officials are firmly condemned, adequately investigated and sanctioned, in order to prevent recurrence and to enhance the key role played by law enforcement authorities in safeguarding the rule of law.
107. The Commissioner wishes to draw the authorities' attention to the [Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations](#) (2011). He stresses the need to elaborate policies and practice to prevent and combat any institutional culture within law enforcement authorities that promotes impunity. Measures in this context should include a policy of zero-tolerance towards serious human rights violations and the establishment or reinforcement of appropriate training and control mechanisms. The Slovak authorities are urged to take all necessary measures to ensure that all allegations of ill-treatment by law enforcement officers are promptly and effectively investigated, and that those who commit these violations are brought to justice.
108. The Commissioner finds it crucial that the authorities establish as a priority a fully independent and well-functioning complaints mechanism covering all law enforcement officials. Such a body should be set up taking into account the five principles of effective complaints investigation: (a) independence: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) adequacy: the investigation should be capable of gathering evidence to determine whether the behaviour of the law enforcement body complained of was unlawful and to identify and punish those responsible; (c) promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.<sup>39</sup>
109. Concerning the Roma civic patrol, the Commissioner stresses that the authorities are directly responsible for the action of private bodies involved in any exercise of public policing functions. Any such private bodies are under the same obligations to respect human rights as are ordinary police officers, and even more so when they participate in, or perform any kind of policing function together with the police. Endowing civilians with police-like functions entails not only the risk of abuse, but is all the more dangerous as it distorts perceptions about the police as a neutral institution established to uphold the rule of law.
110. The Commissioner recalls the Council of Europe Committee of Ministers [Recommendation Rec \(2001\) 10](#) on the European Code of Police Ethics and stresses that all police forces and relevant service providers should be accountable to the state, the citizens and their representatives, and subject to efficient external control. In addition, there should be in place effective and impartial procedures for complaints against the police forces and relevant service providers, as well as continuous and systematic training based on the fundamental values of democracy, the rule of law and the protection of human rights.

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<sup>39</sup> See the Commissioner's [Opinion concerning independent and effective determination of complaints against the police](#), 2009.

### 2.2.5.3 DISCRIMINATION OF ROMA CHILDREN IN THE EDUCATION SYSTEM

111. The Commissioner underlines that inclusive education requires a mentality shift at state level, from seeing children as a problem to identifying the existing inadequacies and improving the education systems themselves. Roma children who are excluded from education often find themselves, or risk ending up, in situations of poverty and social exclusion.<sup>40</sup> Drawing upon Article 30 of the [European Social Charter](#), effective measures are required in order to promote these children's access to quality education. These should include positive measures to increase Roma children's presence in all education levels, as well as the recruitment and promotion of education professionals with Roma background. School mediators and/or assistants recruited from Roma communities should be employed to facilitate the relations between these communities and the teachers and schools. They should be provided with adequate training and support and be accepted as far as possible as full members of the schools' professional teams.<sup>41</sup>
112. Slovakia is urged to deal effectively with the issue of the excessively high rate of Roma with no formal education and the high early drop-out rates of Roma children. The Commissioner encourages the Slovak authorities to develop integrated support measures aimed at eradicating and preventing school drop-out and ensuring the full reintegration of Roma children in the education system.
113. The Commissioner welcomes the pilot projects initiated to promote inclusive education and the recent legislative amendments aiming to prevent the placement of Roma children in special schools based on their social background. However, he stresses that broader measures are necessary, focusing on building an inclusive education system. The Commissioner urges the authorities to set up a concrete timetable and a clear budget for the transfer of Roma children from special to ordinary education and for the overall desegregation of the school system. For this purpose they should ensure that up-to-date statistical data are collected at national level, disaggregated by relevant categories, including ethnic origin.
114. The Slovak authorities should adopt specific measures to facilitate the transition process and support Roma children and their parents during this process. The Commissioner wishes to stress the principle underlined by the Court in the *D.H. v. the Czech Republic*<sup>42</sup> case that parental consent to placement in a special education programme does not waive the right of a child not to be discriminated against.
115. The Commissioner underlines the need for the authorities to take steps to ensure the wide and equal access to quality integrated pre-school education for all children, including those from disadvantaged backgrounds, for the purpose of preparing them for schools providing inclusive education.

### 2.2.5.4 RIGHT TO ADEQUATE HOUSING AND THE ISSUE OF SPATIAL SEGREGATION OF ROMA

116. The Commissioner recalls that under the European Social Charter states are bound to promote the provision of an adequate supply of housing for families, take the needs of families into account in housing policies and ensure that existing housing be of an adequate standard and include essential services (such as heating and electricity). Adequate housing refers not only to a dwelling which must not be sub-standard and must have essential amenities, but also to a dwelling of suitable size considering the composition of the family in residence. Furthermore the obligation to promote and provide housing extends to security from unlawful eviction.<sup>43</sup>
117. The Commissioner is concerned about the dire housing situation of Roma in Slovakia and urges the authorities to address this problem as a matter of priority, in line with the Council of Europe Committee of Ministers [Recommendation Rec\(2005\)4](#) on improving the housing conditions of the Roma and Travellers in Europe.

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<sup>40</sup> See the Commissioner's Human Rights Comment "[Inclusive education vital for social cohesion in diverse societies](#)", 5 May 2015.

<sup>41</sup> See Council of Europe Committee of Ministers Recommendation [CM/Rec\(2009\)4](#) on the education of Roma and Travellers in Europe.

<sup>42</sup> Judgment of 13 November 2007.

<sup>43</sup> See European Committee of Social Rights, [Summaries of decisions on the merits concerning Roma and Travellers](#) (1998-2010), p. 18.

118. The authorities should ensure that evictions are a means of last resort. When evictions cannot be avoided, they should take place in full compliance with international standards, including the provision of adequate alternative accommodation, due process and legal remedies, compensation and protection from homelessness.
119. The Commissioner is concerned about the continued trend for building walls separating Roma and non-Roma communities. He stresses the importance of ensuring that local authorities are made accountable for any segregation policies and actions.
120. Lastly, Slovakia is urged to ensure the meaningful consultation with and involvement of Roma in respect of land-use planning concerning their communities. Issues of land ownership arising from decentralisation, as well as rules on the legalisation of homes under the new Building Act should not lead to Roma people becoming homeless.

## 2.3 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

### 2.3.1 GENERAL

121. Slovakia ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the CRPD providing for an individual complaints mechanism in 2010. In 2013, the government designated the Ministry of Labour, Social Affairs and Family as the principal focal point for issues related to the implementation of the CRPD, and secondary focal points were established within the other ministries. The recently established position of Commissioner for Persons with Disabilities, whose appointment is forthcoming, shall fulfil the role of an independent mechanism for the monitoring of the implementation of the CRPD under Article 32 (2) CRPD.
122. Both the SNCHR and the Ombudsperson have competencies in dealing with complaints concerning violations of the human rights of persons with disabilities. However, it appears that the vast majority of instances of discrimination and abuse suffered because of disability remain unreported, with no reports being recorded in the first two years following the entry into force of the CRPD in Slovakia.<sup>44</sup>
123. The government also established a mechanism of co-operation between the authorities and NGOs representing persons with disabilities, in accordance with Article 4(3) CRPD. The Commissioner notes with satisfaction that the Slovak Disability Council, an umbrella organisation of 19 specialist NGOs, is represented in the Committee for Persons with Disabilities of the Human Rights Council.
124. In January 2014 the government adopted the National Programme for the Development of the Living Conditions of Persons with Disabilities in 2014-2020, aiming to secure progress in the protection and promotion of the rights of persons with disabilities in all areas covered by the CRPD.
125. Despite these positive steps, persons with disabilities continue to face obstacles in exercising their human rights in a number of fields. In this section, the Commissioner addresses the persisting institutionalisation of adults with disabilities, the related concerns regarding the right of persons with disabilities to legal capacity, and the access of persons with disabilities to inclusive education.

### 2.3.2 THE RIGHT TO LEGAL CAPACITY

126. Comprehensive statistical data on the total number of people deprived of legal capacity are not available in Slovakia. However, according to the National Deinstitutionalisation Strategy, it appears that between 2001 and 2009 the Slovak courts deprived more than 8 400 persons of their legal capacity. Since 2006 a slight growing trend was noted, with more than 1 000 decisions being issued annually. In the same period, 278 persons were subjected to a restriction of their legal capacity.<sup>45</sup> The Commissioner was informed that as a

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<sup>44</sup> National report to the Committee for the Rights of Persons with Disabilities, submitted by Slovakia under Article 35 of the CRPD, 24 September 2014.

<sup>45</sup> See also the background country information for the FRA report "The right to political participation for persons with disabilities: human rights indicators", 2014.



matter of practice, almost all persons placed in an institution for persons with intellectual and psychosocial disabilities are deprived of their legal capacity. Public opinion, but also the approach of professionals dealing with this matter, including judges, prosecutors, and medical staff, is that persons with disabilities are best protected by placing them under full guardianship. The annex to the NHRS concerning the human rights of persons with disabilities identifies this issue as a particularly serious problem.

127. At present, in essence, the Slovak guardianship system can be described as a regime of substituted decision-making. A court may deprive a person of their legal capacity, or may restrict it, if the concerned person is deemed as totally or partly unable to perform legal acts as a result of a non-temporary mental disorder. The court shall amend or cancel the deprivation or limitation of capacity if the grounds that gave rise to it change or cease to exist.
128. A number of the Commissioner's interlocutors expressed concerns that the procedures leading to deprivation or restriction of legal capacity rely heavily on medical experts' (psychiatrist) opinions, although they most often have no intimate knowledge of the concerned persons' capacities for daily social interaction and have no opportunity to assess these persons' autonomy. Thus, the decision to deprive a person of their legal capacity, or to restrict it, is usually taken without a comprehensive assessment of the concerned person's situation.<sup>46</sup> Moreover, it appears that the legal profession has not been trained to extend their investigations in such cases to include such a comprehensive assessment.
129. The Commissioner visited the social care institution for persons with disabilities in Šemša, near Košice. The institution is one of the largest in the country, having a capacity of 180 persons and hosting at the time of the Commissioner's visit 177 men and women with disabilities. The Commissioner was informed that most of the persons living there were fully stripped of their legal capacity. At the beginning of 2015, the institution hosted 180 persons, of whom 149 had been fully deprived of legal capacity, while two persons had their legal capacity restricted. In line with usual practice, the institution had been appointed as guardian for 133 of these 149 persons, while for the remaining ones, the courts have appointed family members as guardians.
130. The Commissioner noted with satisfaction the institution's efforts to obtain the reinstatement of the legal capacity of some of its residents. In three cases, residents' capacity had been partly restored by the courts. While the representatives of the institution considered that many residents were dependent on help, they did not agree with the large extent to which persons with disabilities were deprived of their legal capacity, both in the Šemša institution and elsewhere. The Commissioner met also with other experts and directors of residential institutions engaged in similar efforts. However, regrettably, these have remained mostly unsuccessful.
131. As a positive development, the parliament recently adopted a new Code on Non-contentious Proceedings, according to which courts can no longer deprive a person of legal capacity, being allowed only to restrict it. The law is scheduled to come into force on 1 July 2016. At the same time, an amendment to the Civil Code is underway, which aims to abolish substantive rules allowing for deprivation of capacity and to introduce provisions for supported decision-making.
132. Concerning voting rights, although the Constitution guarantees the universal, equal and direct right to vote and the right to be elected under equal conditions, the law still prohibits persons fully deprived of legal capacity from voting and being elected into office. This provision was maintained under a law adopted last year (Act No. 180/2014), which regulates comprehensively the exercise of the right to vote in Slovakia.

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<sup>46</sup> In a decision delivered on 28 November 2012 (No. I. ÚS 313/2012-52), the Slovak Constitutional Court found that the proceedings by which the applicant, E.T., was deprived of legal capacity had violated his rights because the court that made the decision to deprive E.T. of his legal capacity had done so only on the basis of expert evidence that E.T. suffered from a mental disability that was permanent without considering other factors such as his family and social situation.

### 2.3.3 PERSISTING INSTITUTIONALISATION OF PERSONS WITH DISABILITIES

133. In December 2013, in Slovakia there were 381 social care homes and 70 specialised (medical) institutions hosting 18 196 and 1 886 adults with disabilities, respectively. At the same time, 478 children with disabilities were registered in 66 children's homes hosting in total 4 379 children.<sup>47</sup>
134. Between 2007 and 2011, the state reportedly invested almost 200 million euros to renovate or build large and isolated residential institutions. In practice, EU structural funds largely reinforced institutionalisation in the period 2007-2013.<sup>48</sup>
135. In November 2011 the government adopted a deinstitutionalisation strategy for the period 2012-2020<sup>49</sup>, which provides for a two-phased deinstitutionalisation process. The first phase, detailed in the deinstitutionalisation action plan adopted for the years 2012-2015,<sup>50</sup> was initially designed to implement five to eight pilot projects and to support the creation of legislative, financial and organisational mechanisms for the second, more generalised phase to be carried out in 2016-2020. The strategy and the action plan provide for the deinstitutionalisation of social services for adults and of the social protection of children.
136. The Commissioner's interlocutors have stressed that the deinstitutionalisation process for adults with disabilities has started only recently, and that progress in this field is very slow. Currently only 10 institutions participate in the pilot phase of the deinstitutionalisation process (three in the Bratislava region and seven in other regions).<sup>51</sup> The regional authorities of Košice informed the Commissioner that only one institution of the existing 13 in the region was participating in the deinstitutionalisation pilot project, and included only six persons out of some 1 900 living in residential institutions in the region.
137. However, the Commissioner was informed that even these attempts at deinstitutionalisation, in the framework of the pilot projects, have not led until now to any persons leaving the institutions. While the institutions have benefited from training and education provided by the Implementing Agency of the Ministry of Labour, Social Affairs and Family, no investments have been made to ensure the development of social services in the community. Financial support for these investments is expected to become available in the new programming period (2014-2020), as of 2016.
138. Several of the Commissioner's interlocutors have expressed the view that deinstitutionalisation requires a change of mentality from the side of the institutions, the authorities, and the public at large. They highlighted in particular the reluctance of the self-governing regions, which are the most important funders of institutional services in Slovakia, to implement the national deinstitutionalisation policies. Strong vested interests to maintain institutions also exist at the level of municipalities, as well as within the medical and other relevant professions.
139. The Commissioner notes that in 2013 the Social Services Act was amended to introduce a number of changes to the deinstitutionalisation process, including the prohibition of setting up new "traditional type" institutions; the limitation of the capacity of institutions (allowing, however, the building of small supported living homes or the transformation of big institutions into smaller housing units); the prohibition of the placement of children in all-year residential institutions; and the possibility of setting up new services, such as support for independent living in the concerned person's own accommodation.
140. In addition, the amendments introduced precisely defined quality standards and criteria concerning human rights and procedural, personal and technical conditions, focusing on the active preservation of the quality

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<sup>47</sup> Slovak Disability Council, Slovak Association for Help to People with Intellectual Disabilities, and Mental Disability Advocacy Center, "[Implementation of the United Nations Convention on the Rights of Persons with Disabilities in Slovakia](#)", July 2015.

<sup>48</sup> Institute of Economic and Social Studies (INESS), "[Monitoring of absorption of structural funds in social sphere for the period 2007-2011](#)". Costly increasing of the numbers of beds and facilities, isolation of clients from community remains", 2013.

<sup>49</sup> Strategy for the Deinstitutionalisation of the System of Social Services and Alternative Care in the Slovak Republic, approved by government regulation no. 761/2011 of 30 November 2011.

<sup>50</sup> National action plan for the transition from institutional to community-based care in the social services system 2012-2015.

<sup>51</sup> Slovak Disability Council, Slovak Association for Help to People with Intellectual Disabilities, and Mental Disability Advocacy Center, *ibid.*

of social services and being geared towards community services. While these amendments entered into force in January 2014, the Commissioner was informed that their implementation is still deficient in many areas. For example, no effective mechanism for the monitoring of the quality of social services has been put in place to date and there is no independent and regular monitoring of the situation of persons living in social care homes or psychiatric institutions.<sup>52</sup>

#### 2.3.4 ACCESS OF PERSONS WITH DISABILITIES TO INCLUSIVE EDUCATION

141. In 2012 Slovakia joined the European Agency for Special Needs and Inclusive Education, with a view to improving its educational policy and practice concerning inclusive education, in accordance, *inter alia*, with the requirements of the CRPD. However, a number of serious deficiencies in the implementation of the right of persons with disabilities to inclusive education persist on the ground.
142. Slovakia has a tradition of special schools for children with various disabilities. The majority of children with intellectual and psychosocial disabilities attend special schools, which are segregated from mainstream educational systems and facilities. According to official data, in the 2013-2014 school year more than 34 000 children were enrolled in 41 special kindergartens, 179 special primary schools, 65 special classes in mainstream primary schools, and 110 special secondary schools. Nearly 5 000 teachers worked in the special education system.<sup>53</sup> In September 2014, only 3 537 children with disabilities were integrated in mainstream elementary schools.<sup>54</sup>
143. In respect of statistical data concerning children with disabilities in the special education system, NGOs that met the Commissioner highlighted that these include Roma children enrolled in special education only on the grounds of their disadvantaged social background.
144. Inclusive education for persons with disabilities is not guaranteed under Slovak legislation. According to the Education Act (2008), the education of children with intellectual and psychosocial disabilities can be provided in special schools, in special classes of mainstream schools, and in mainstream classes. In practice, the provision of the Education Act according to which the “enactment of the rights of a pupil with special educational needs cannot limit the rights of other pupils in the education process” is incorrectly interpreted as allowing the segregation of children with disabilities.
145. As from 2008, the self-governing regions are responsible for the funding of special schools, as well as of the specialised counselling centres which administer diagnostic tests for determining children’s special learning needs. In addition, NGOs have pointed out the recent emergence of a tendency of establishing private special schools and counselling centres.
146. The Commissioner’s interlocutors considered that while the integration of children with disabilities in mainstream education is possible under the current domestic legal framework, the historically rooted marginalisation of persons with disabilities, the lack of willingness and preparedness of schools to provide inclusive education to children with disabilities, the lack of an adequate financing system incentivising or supporting mainstream education, and insufficient awareness of the public concerning the right to receive inclusive education contribute to the continuing channelling of children with disabilities into special education.
147. In addition, the Commissioner notes the reports indicating that as a general rule, legislation concerning access to buildings and educational materials for students with disabilities has not been implemented in schools and higher education institutions. Representatives of the SNCHR informed the Commissioner that the SNCHR has dealt in recent years with a small number of cases concerning pupils with disabilities in view of their inclusion in mainstream education in higher education institutions; however, these actions had only a limited success. The Slovak authorities have admitted that improvement was necessary with respect to

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<sup>52</sup> See also FRA, “[Involuntary placement and involuntary treatment of persons with mental health problems](#)”, 2012.

<sup>53</sup> See data published by the Institute of Information and Prognosis of Education, <http://www.uips.sk/>; Roma Education Fund, *Advancing the education of Roma in Slovakia - Country Assessment*, 2014.

<sup>54</sup> Slovak Disability Council, Slovak Association for Help to People with Intellectual Disabilities, and Mental Disability Advocacy Center, *ibid.*

building a barrier-free environment aimed at the inclusive education of “physically disadvantaged children”.<sup>55</sup>

## 2.3.5 CONCLUSIONS AND RECOMMENDATIONS

### 2.3.5.1 THE RIGHT TO LEGAL CAPACITY

148. The Commissioner recalls the case-law of the Court establishing that the non-recognition of a person’s legal capacity severely limits their 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 Convention. The existence of a mental disorder, even a serious one, cannot by itself justify incapacitation.<sup>56</sup>
149. Commissioner Muižnieks welcomes the on-going legislative reform aimed at prohibiting the full incapacitation of persons with psychosocial and intellectual disabilities as of July 2016. He calls on the Slovak authorities to finalise this process as a matter of priority and to develop a flexible system of supported decision-making, based on individual consent. In respect of supported decision-making, safeguards must be put in place to ensure that the support provided respects the preferences of the persons receiving it, is free of conflict of interest and is subject to judicial review.<sup>57</sup>
150. While the guardianship system remains in place, the Slovak authorities are urged to ensure that persons placed under guardianship have effective access to judicial review proceedings to challenge the guardianship or the way in which it is administered. The Commissioner calls on the authorities to take measures to ensure that persons with disabilities are recognised as persons with equal standing in courts and tribunals and can effectively challenge any interference with their right to legal capacity.<sup>58</sup>
151. In order to fully comply with Article 12 CRPD, the authorities should establish a single system recognising the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. The Commissioner invites the authorities to use the guidance provided in General Comment No. 1 of the UN Committee on the Rights of Persons with Disabilities.<sup>59</sup>
152. The Commissioner recalls the Council of Europe Committee of Ministers [Recommendation CM/Rec\(2011\)14 on the participation of persons with disabilities in political and public life](#) and urges the Slovak authorities to take all the necessary measures to ensure that persons with disabilities, including with intellectual or psychosocial disabilities, are not deprived of their right to vote and to be elected 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.

### 2.3.5.2 THE SITUATION OF PERSONS LIVING IN INSTITUTIONS

153. The Commissioner wishes to reiterate that isolating persons with disabilities in institutions perpetuates their stigmatisation and marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 UN CRPD. Under this provision, Slovakia is bound to take measures to ensure that persons with disabilities have effective access to a range of community-based arrangements, including the personal assistance necessary to support independent living and inclusion in the community. Particular attention should be paid to the especially vulnerable situation of children, which requires systematic efforts to prevent and eradicate their institutionalisation in accordance with the Council of Europe Committee of Ministers Recommendation [CM/Rec\(2010\)2](#) on deinstitutionalisation and community living of children with disabilities.

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<sup>55</sup> UN Human Rights Council, Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, Slovakia (paragraph 49).

<sup>56</sup> See *Shtukhaturov v. Russia* (judgment of 27 March 2009); *Salontaji-Drobnjak v. Serbia* (judgment of 13 October 2009); *Berková v. Slovakia* (judgment of 24 March 2009).

<sup>57</sup> For further guidance see the Commissioner’s [Issue Paper](#) “Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities”, 2012.

<sup>58</sup> See *Stanev v. Bulgaria* (judgment of 17 January 2012).

<sup>59</sup> UN Committee on the Rights of Persons with Disabilities, General Comment No 1, Article 12: Equal Recognition before the Law, 11 April 2014.

154. The Slovak authorities are strongly urged to speed up the deinstitutionalisation process, with the active involvement of persons with disabilities and their representative organisations. The first step in this respect should be to immediately stop new placements in institutions.
155. The transformation of traditional residential institutions into smaller housing units reflects a misunderstanding of the concept of living in the community, and results in practice in a transition from larger to smaller institutions. The Slovak authorities should avoid opening new - even if smaller - institutions.<sup>60</sup> The Commissioner refers to the views expressed in 2012 by the UN Office of the High Commissioner for Human Rights, according to which “[s]maller institutions are no less objectionable than larger ones particularly where the structural opportunities for real engagement in community life are absent.”<sup>61</sup>
156. The Commissioner also calls on the Slovak authorities to move resources from institutions to the development of individualised support services. Any measure taken by the government should focus on meeting the preferences and will of persons with disabilities.
157. The authorities should adopt legislation providing clear guarantees for the respect of the right to independent living. They should take measures to offset short-term economic considerations which may create resistance to deinstitutionalisation at the local and regional level and continue to address prejudices against persons with disabilities through education and awareness-raising.

### 2.3.5.3 ACCESS OF PERSONS WITH DISABILITIES TO INCLUSIVE EDUCATION

158. The Commissioner wishes to underline that the exclusion of children with disabilities from mainstream education further reinforces and legitimises their marginalisation in the later stages of their lives.
159. The Commissioner urges the authorities to adopt inclusive education as a fundamental principle of their educational policies. The authorities must ensure that children with special education needs effectively benefit from individual support and reasonable accommodation in mainstream settings, in accordance with Article 24 CRPD. The authorities are encouraged to take measures making the transition to inclusive education possible, including through provisions establishing an enforceable obligation on mainstream schools to reasonably accommodate children with disabilities.
160. Such measures should be accompanied by a clear and ambitious timetable and an adequate budget. The concrete transfer of children from special to mainstream education should be based on accurate statistical data concerning children with disabilities enrolled in special education. The Commissioner encourages the authorities to give particular attention to the financial arrangements within the education system which may create strong vested interests at regional levels in maintaining a segregated education system, in violation of the requirements of the CPRD.
161. Lastly, the Commissioner wishes to highlight the importance of the Ombudsperson, as well as of the SNCHR, in raising awareness about the right of persons with disabilities to inclusive education and in protecting children with disabilities from any form of discrimination in the education system. He hopes that the new Commissioners for the rights of the child and for the rights of persons with disabilities will play an important role in promoting the right of persons with disabilities to inclusive education.

## 2.4 HUMAN RIGHTS OF LGBTI PERSONS

### 2.4.1 RECENT POLICY AND INSTITUTIONAL DEVELOPMENTS

162. The Commissioner is concerned by the reported increase in homophobic public speech in Slovakia, and the significant levels of discrimination or violence indicated in the EU LGBT Survey which was published by FRA in 2013. This survey showed that 52% of the respondents in Slovakia considered that they had been discriminated on the grounds of their sexual orientation in the 12 months preceding the survey; 19%

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<sup>60</sup> See the [Issue Paper](#) published by the Commissioner’s Office on the right of people with disabilities to live independently and be included in the community, 2012.

<sup>61</sup> See OHCHR Regional Bureau for Europe, *Getting a Life: Living Independently and Being Included in the Community*, April 2012.

considered that they had been discriminated at work or when searching for a job, because of being LGBT persons; and 23% reported having been discriminated against by school or university staff. Concerning violence, 64% of LGBT respondents considered that the violent incidents against them in the 12 months preceding the survey were partly or entirely due to being LGBT persons.<sup>62</sup>

163. Notwithstanding, the Commissioner has noted with satisfaction the progress made in the past few years by Slovakia in strengthening the policy and institutional framework for the promotion and protection of the human rights of lesbian, gay, bisexual, trans and intersex (LGBTI) persons. Concerning the institutional framework, in October 2012 the government set up the Committee for the rights of LGBTI persons, as an advisory body to the Human Rights Council, mandated to contribute to the promotion of the human rights of LGBTI persons. The committee's mandate includes its participation in the preparation of policies which have an impact on the human rights of LGBTI persons.
164. Previously to the NHRS, Slovakia's only strategic document to address discrimination based on sex, sexual orientation and gender identity was the 2009-2011 Action Plan for the prevention of all forms of discrimination, racism, xenophobia, antisemitism and other expressions of intolerance. LGBTI people's human rights were not explicitly included in any sectorial strategic document or action plan such as those concerning education or health. Consequently, as highlighted in the support materials on the human rights of LGBTI persons annexed to the NHRS, there is a wide range of challenges that LGBTI persons continue to face in practice, which have not yet been addressed by the authorities.
165. The aforementioned support materials constitute the basis for the drafting of an action plan that will address the human rights of LGBTI persons comprehensively. The Commissioner is pleased to note that these materials take into account the Committee of Ministers' [Recommendation CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity as well as other recommendations of international monitoring bodies.
166. The Commissioner considers particularly relevant the future priorities of the action plan, which include education, the prevention of discrimination based on sexual orientation and gender identity, the improvement of the legislation concerning trans people (especially legal gender recognition) and the fight against hate crime and hate speech. In this context, the Commissioner is encouraged by the Slovak authorities' interest in working with the Council of Europe on education and awareness-raising concerning the situation of LGBTI persons and in making schools a safe place for LGBTI pupils and students.
167. The Commissioner also notes with interest the focus placed by the support materials on the future strengthening of the institutional protection of the human rights of LGBTI persons, notably through the establishing of a government body responsible for the coordination of measures aimed at improving the protection of LGBTI people's human rights, the reinforcing of the SNCHR's and Ombudsperson's work on LGBTI issues, and supporting the work of NGOs engaged in the advancement of LGBTI people's human rights.
168. Regarding data collection concerning LGBTI persons, the Personal Data Protection Act does not refer specifically to sexual orientation or gender identity; however, they are considered to be covered by the term "sexual life". According to NGOs representing LGBTI persons, it appears that statistical information on LGBTI people is not collected, as this would violate or be considered as violating the Personal data protection act in multiple respects.
169. In the following subsections the Commissioner shall address some issues concerning LGBTI people's family rights, the protection of the human rights of trans and intersex persons, and the negative rhetoric and hate speech targeting LGBTI persons.

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<sup>62</sup> FRA, "[European Union lesbian, gay, bisexual and transgender survey. Results at a glance](#)", 2013. See also ILGA-Europe, [Annual Review on Slovakia](#), 2015.

## 2.4.2 FAMILY RIGHTS OF LGBTI PERSONS

170. The Commissioner notes the recent developments in the regulation of family rights in Slovakia, concerning in particular the definition of marriage and attempts to introduce explicit legislation concerning registered partnerships.
171. The Slovak legal system does not provide for, and does not recognise, rights or obligations of same-sex couples. A bill introduced in 2012 on registered partnerships for same-sex couples was rejected by an overwhelming majority of members of parliament. Furthermore, in June 2014 the Slovak Constitution was amended to introduce a definition of marriage as a unique bond between a man and a woman.<sup>63</sup>
172. Moreover, between March and August 2014, a number of organisations gathered under the “Alliance for Family” umbrella collected 400 000 signatures (over 7% of the population) requesting a national referendum on family and education.
173. The four suggested questions asked voters if they agreed that: only a bond between one man and one woman could be called marriage; same-sex couples or groups should not be allowed to adopt and raise children; any future same-sex registered partnerships should be prohibited; and schools should not require children to participate education pertaining to sexual behaviour or euthanasia if they or their parents do not agree with such education. While the Constitutional Court validated three of the questions, it ruled out the question concerning the prohibition of registered partnerships as unconstitutional. The referendum, which was held on 7 February, was invalidated due to a turnout of only 21.4%.
174. The Commissioner wishes to bring to the attention of the Slovak authorities the recent judgment of the Strasbourg Court in the case of *Oliari and Others v. Italy*,<sup>64</sup> in which the Court reiterated its position that relationships of cohabiting same-sex couples living in stable *de facto* partnerships fall within the notion of “family life” within the meaning of Article 8 ECHR. The Court also acknowledged that same-sex couples are in need of legal recognition and protection of their relationship and that the lack of recognition fails to provide for some basic needs fundamental to the regulation of a stable relationship between a couple, such as mutual material support, maintenance obligations and inheritance rights. There is also a conflict between the social realities of people living openly as couples, and their inability in law to be granted any official recognition of their relationship. The Commissioner also refers to the Court’s finding of a trend among Council of Europe member states towards legal recognition of same-sex couples, with 24 of the 47 member states having already legislated in favour of such recognition.

## 2.4.3 HUMAN RIGHTS ISSUES CONCERNING TRANS AND INTERSEX PERSONS<sup>65</sup>

175. Trans people in Slovakia continue to face a number of difficulties in respect of the recognition of their gender. While the law allows for the gender reassignment of a person and its registration in a birth certificate, as well as for the change of the name, the actual process of transition is not adequately regulated, with the only relevant legislation in force being an outdated ordinance of 1981.
176. In essence, a medical diagnosis of a psychiatric condition as well as irreversible surgical intervention is required in practice for the recognition of gender reassignment, although such surgery is not required by law. In addition, although medical treatment related to the relevant diagnosis is by law fully covered by public health insurance, it is often inaccessible in Slovakia, owing to the lack of medical professionals having the necessary training to provide such treatment. Moreover, insurance providers’ interpretation of healthcare legislation often leads to the treatment not being covered in practice. Finally, also as a matter of practice, married trans persons are required to divorce before their gender reassignment is officially recognised, despite the fact that no such obligation is explicitly provided by law.
177. Trans people also encounter problems related to the modification of their employment documents and in accessing the labour market. The Commissioner’s interlocutors have pointed out that the modification of

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<sup>63</sup> Article 41 paragraph 1 of the Constitution, which entered into force in September 2014.

<sup>64</sup> Judgment of 21 July 2015. See also the Court’s case-law factsheet “[Sexual orientation issues](#)”, July 2015.

<sup>65</sup> For further guidance concerning issues concerning intersex persons, see “Human rights and intersex people”, [Issue Paper](#) published by the Council of Europe Commissioner for Human Rights, April 2015.

diplomas and school records is in particular subject to arbitrary decisions, as there is no clear legal obligation for schools to adapt them following gender change.

178. The Commissioner refers to the recommendations of the Parliamentary Assembly of the Council of Europe<sup>66</sup> and of his predecessor<sup>67</sup> concerning trans persons which include, *inter alia*, the abolition of sterilisation and other compulsory medical treatment as a legal requirement for gender recognition, while ensuring accessibility and coverage by public insurance schemes of gender reassignment procedures. He also stresses that the Committee of Ministers of the Council of Europe recommends that member states guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way.<sup>68</sup>
179. Concerning the situation of intersex persons, NGOs who met with the Commissioner have stressed that the procedure of assigning a sex to a new-born intersex child is not regulated by Slovak law. Thus, although there is no legal requirement for surgery, the law does not explicitly guarantee that children will not be subjected to irreversible medical intervention for the purpose of assigning them a sex without their free and informed consent.<sup>69</sup>

#### 2.4.4 NEGATIVE RHETORIC AND HATE SPEECH TARGETING LGBTI PERSONS

180. According to a FRA LGBT survey carried out in 2012,<sup>70</sup> the prevalence of hate-motivated harassment<sup>71</sup> in the 12 months preceding the survey was 24% in Slovakia, compared to the 19% EU average. However, only 2% of the Slovak respondents reported the last harassment incident to the police. Concerning public discourse and hate speech, 64% of Slovak respondents, compared to the EU average of 44%, said that offensive language about LGBT people by politicians was "fairly" or "very widespread". 85% of the respondents had heard negative comments because a schoolmate was perceived to be LGBT during their schooling before the age of 18.
181. The Commissioner wishes to express his regret at the numerous waves of hostile discourse directed against LGBTI persons in Slovakia in the past few years. In 2012, political leaders have used extremely offensive language against LGBTI persons during debates on the draft bill on registered partnerships. Offensive messages targeting LGBTI persons were also posted on the website of the Slovak National Party (SNS). In 2013, following the publication of the draft NHRS, which contained material on the human rights of LGBTI persons, a virulent hate speech campaign was launched against LGBTI people by a number of organisations, supported also by the Catholic Church.<sup>72</sup> Highly offensive statements were made against LGBTI persons both in print and on the internet, with the campaigners, including the umbrella organisation "Alliance for Family" (AZR), comparing LGBTI persons and their rights to a "culture of death".
182. The Commissioner notes that Slovakia's hate speech legislation, including its media legislation, does not cover sexual orientation or gender identity, and urges the authorities to take action to address this gap. At the same time, the Commissioner shares the concerns expressed by ECRI that none of the public

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<sup>66</sup> [Resolution 2048 \(2015\)](#) on discrimination against transgender people in Europe.

<sup>67</sup> "Human Rights and Gender Identity", [Issue Paper](#) by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, 29 July 2009.

<sup>68</sup> Recommendation [CM/Rec\(2010\)5](#) of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, paragraph 21.

<sup>69</sup> For further guidance on this subject see the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013, and the report of the Office of the United Nations High Commissioner for Human Rights, "Discrimination and violence against individuals based on their sexual orientation and gender identity", 4 May 2015.

<sup>70</sup> FRA, "European Union lesbian, gay, bisexual and transgender survey. Results at a glance", 2013.

<sup>71</sup> The definition of harassment used in the survey included "name calling or ridiculing that did not involve actual violence or the threat of violence".

<sup>72</sup> See ILGA-Europe, [Annual review](#) of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe, 2015.



statements against LGBTI persons or the aforementioned hate campaign carried out in print and online have resulted in any meaningful response by the authorities, including any sanctions.

#### 2.4.5 CONCLUSIONS AND RECOMMENDATIONS

183. The Commissioner commends the progress made in the past few years by Slovakia in strengthening the policy and institutional framework for the promotion and protection of the human rights of LGBTI persons. The on-going work on the adoption of an action plan concerning the human rights of LGBTI persons and the establishment of an advisory committee with competencies in this area are positive developments. The Commissioner looks forward to receiving from the Slovak authorities more information on the outcome of these deliberations.
184. The authorities are encouraged to collect data on LGBTI persons, while ensuring respect for the principle of confidentiality, informed consent and the individual's voluntary self-identification as a member of a particular group.
185. The Commissioner invites the authorities to consider favourably the possibility of providing cohabiting different sex and same-sex couples with legal means to address the practical problems related to the social reality in which they live. In this context, the authorities are encouraged to take into account the Court's case-law regarding the protection of the relationships of cohabiting same-sex couples living in stable *de facto* partnerships.
186. The authorities are called on to improve the protection afforded to trans and intersex persons, including intersex children. Attention should be paid to countering unlawful practices imposing medical interventions and non-marriage requirements for the official recognition of gender reassignment. The Commissioner urges the authorities to set up strong, explicit guarantees protecting intersex children from unnecessary surgical procedures aimed at assigning them a sex without their free and informed consent.
187. The Commissioner is worried at the growing negative rhetoric and hate speech directed against LGBTI persons in recent years and urges the authorities to take measures to extend the provisions of domestic hate speech legislation to cover sexual orientation, gender identity and sex characteristics. The Commissioner calls on the authorities to ensure that law enforcement officials and legal professionals are adequately equipped to recognise and effectively confront such incidents, which have deeply destructive effects not only on the victims, but also on society.
188. Last but not least, the Slovak authorities are urged to take a strong public position against violations of the human rights of LGBTI persons and promote respect on issues related to sexual orientation, gender identity and sex characteristics, for example through systematic human rights education and awareness-raising campaigns. They should also encourage factual, objective and professional reporting by the media on LGBTI persons and issues related to sexual orientation, gender identity and sex characteristics.<sup>73</sup>

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<sup>73</sup> See also the recommendations contained in the Commissioner's report, "[Discrimination on grounds of sexual orientation and gender identity in Europe](#)", 2<sup>nd</sup> edition, 2011, p. 11ff.