COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Koptova v. Slovak Republic

Communication No 13/1998

8 August 2000

CERD/C/57/D/13/1998

VIEWS

Submitted by: Anna Koptova (represented by counsel)

Alleged victim: The author

State party concerned: Slovak Republic

Date of communication: 15 December 1998 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 8 August 2000,

Having concluded its consideration of communication No. 13/1998, submitted to the Committee under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into consideration all written information made available to it by the author and the State party,

Bearing in mind rule 95 of its rules of procedure requiring it to formulate its opinion on the communication before it,

Adopts the following:

Opinion

1. The author of the communication is Anna Koptova, a Slovak citizen of Romany ethnicity. She is the director of the Legal Defence Bureau for Ethnic Minorities of the Good Romany Fairy Kesaj

Foundation in Kosice and claims to be a victim of violations by the Slovak Republic of articles 2, 3, 4, 5 and 6 of the Convention. She is represented by the European Roma Rights Center, a non-governmental organization based in Budapest.

1.2 In conformity with article 14, paragraph 6 (a) of the Convention, the Committee transmitted the communication to the State party on 25 March 1999.

The facts as submitted by the author

2.1 The author reports that in 1981 seven Romany families from the villages of Rovne and Zbudske Dlhe, Slovak Republic, came to work in an agricultural cooperative located in the municipality of Krasny Brod. Shortly after their arrival each of the families sought and received permanent residence under Slovak Law (135/1982 Act) in what are today the municipalities of Nagov and Rokytovce (at the time part of Krasny Brod). When, at the end of 1989, the agricultural cooperative ceased operations the Romany families lost their jobs. Insofar as their living quarters at the cooperative were linked to their employment, they were compelled to leave the cooperative. Upon their departure, the authorities demolished the stables which they had occupied.

2.2 In May 1991 the Romany families returned to the municipalities where they were legally registered, i.e. Rokytovce and Nagov. For various periods over the following six years, they lived in temporary housing provided reluctantly by local authorities in the county of Medzilaborce. On more than one occasion during that period, however, anti-Roma hostility on the part of local officials and/or non-Romany residents forced the Romany families to flee. Thus, between May and December 1991 the Medzilaborce County Department of Social Affairs reserved a trailer for the families to rent. Although the families raised the money no village (Krasny Brod, Cabiny, Sukov, Rokytovce, Nagov or Cabalovce) allowed them to place the trailer on its territory. In 1993, after they had built temporary dwellings in the village of Cabiny, the dwellings were torn down by non-Romany residents. Throughout this period the Romany families were moving frequently from one town to another, in search of a permanent and secure home.

2.3 In spring 1997 the families again established temporary dwellings on agricultural land located in Cabiny. Local authorities from neighbouring villages met to discuss the situation. The mayor of Cabiny characterized as illegal the movement of Roma to Cabiny and warned of a possible negative reaction from the rest of the population. The mayors of Cabalovce and Nagov agreed to accommodate the homeless Roma. On 8 June 1997 the Municipal Council of Rokytovce, whose mayor had not been present at the above-mentioned meeting, enacted a resolution which expressly forbade the Romany families from settling in the village and threatened them with expulsion should they try to settle there. The resolution also declared that they were not native inhabitants of Rokytovce, since after the separation of Rokytovce and Krasny Brod in 1990 they had neither resided in the village nor claimed their permanent residence there. On 16 July 1997 the Municipality of Nagov adopted resolution No. 22 which also forbade Roma citizens to enter the village or to settle in shelters in the village district. The resolution explicitly provided that its effect was of permanent duration.

2.4 On 21 July 1997 the dwellings built and occupied by the Romany families in the municipality

of Cabiny were set on fire. To date no perpetrator has been identified and there is no record of what, if any, steps the prosecution authorities have taken to investigate the facts.

2.5 The Kosice Legal Defence Foundation sent a letter to the General Prosecutor's Office in Bratislava requesting an investigation into the legality of Resolution No. 21 of the Municipal Council of Rokytovce and resolution No. 22 of the Municipal Council of Nagov. The letter asserted that the Resolutions were acts of "public discrimination" against Roma which infringed their rights to freedom of movement and residence and to protection against discrimination. On 19 September 1997 the General Prosecutor's Office informed the Foundation that the investigation had been assigned to the County Prosecutor in Humenné.

2.6 On 24 November 1997 the Kosice Legal Defence Foundation submitted an application to the Constitutional Court of the Slovak Republic requesting annulment of both resolutions. The submission stated that these resolutions violated the human rights and fundamental freedoms not only of Romany citizens with permanent residence in the respective towns but of all Romany citizens, as well as of the Foundation itself, which could not carry out its work on behalf of Roma in the affected towns. It also stated that nine Romany families with permanent residence in the two villages in question had been forced to leave and that the resolutions constituted a general ban against Romany citizens, pursuant to which no citizen of Romany origin was allowed to enter these villages. It requested the annulment of both resolutions on the grounds that they violated the rights of non-discrimination and freedom of movement and residence, as well as the particular rights of ethnic minorities protected by the Slovak Constitution.

2.7 In its decision of 18 December 1997 the Constitutional Court dismissed the submission on the ground that, as a legal person, the Kosice Legal Defence Foundation could not suffer an infringement of the constitutional rights set forth in its application, since those rights were designed to protect only natural persons. On 29 December 1997 the District Prosecutor's Office in Humenné notified the Foundation that, in view of the Constitutional Court's ruling, it had suspended its investigation concerning the challenged resolutions.

2.8 On 5 May 1998 Ms. Koptova, together with Miroslav Lacko (another employee of the Kosice Legal Defence Foundation) and Jan Lacko, one of the Romany citizens whose dwellings were destroyed on 21 July 1997, filed another submission before the Constitutional Court. This submission challenged the Nagov resolution on the grounds that it unlawfully restricted the freedom of movement and residence of a group of people solely because they were Roma. The submission argued that not only Jan Lacko, a permanent resident of Nagov, but all Roma in Slovakia, including Ms. Koptova, suffered infringements of their rights under the Slovak Constitution to freedom of movement and residence, freedom from racial and ethnic discrimination and freedom in the choice of nationality. On the same date Julia Demeterova, a permanent resident of Rokytovce and another of the Romany citizens whose dwellings had been destroyed, filed a submission with the Constitutional Court challenging the Rokytovce resolution on the same grounds.

2.9 On 16 June 1998 the Constitutional Court issued two written opinions dismissing both petitions on similar grounds. In response to Jan Lacko's submission the Court reasoned that, as a permanent resident of Nagov, he had not provided any evidence to show that the Nagov resolution had in fact been applied in a manner which would infringe his rights. As to Miroslav Lacko and Ms. Koptova,

both of whom had permanent residence outside Nagov, the Court found no evidence that either had tried to enter or move into the community of Nagov, or that the community had tried to stop them. Accordingly, the Court found, their rights had not been violated. With respect to Demeterova's submission the Court found that, as a permanent resident of Rokytovce, she had provided no evidence that the resolution had in fact been applied in a manner which infringed her rights.

2.10 Since the adoption of both resolutions at issue Anna Koptova has not gone to Rokytovce or Nagov. She fears that, as a Slovak citizen of Romany ethnicity, she would be subjected to violence if she were to enter either municipality.

The complaint

3.1 The author asserts that a number of rights to which she is entitled under the Convention have been violated, including the following:

> Article 2.1 (a). The institutions which have adopted the resolutions in question are local public authorities and public institutions. By maintaining the resolutions in force the Slovak Republic has engaged in acts of racial discrimination against the author and other Roma and has failed to ensure that all public authorities and public institutions, national and local, refrain from acts or practices of racial discrimination.
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> Article 2.1 (c). By maintaining in force the resolutions at issue the Slovak Republic has failed to take any measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination.
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> Article 3. The Resolutions publicly and formally refer to the author and other persons by their assumed racial/ethnic identity and single them out for special treatment. As such, the Resolutions expressly endorse policies of racial segregation and apartheid. By refusing to withdraw them the Slovak Republic has contravened its obligation to prevent, prohibit and eradicate all practices of segregation and apartheid within its jurisdiction.
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> Article 4 (c). By maintaining in force the resolutions at issue the Slovak Republic has failed to comply with its obligation not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination against the author and other Roma.
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> Article 5 (d) (i). The resolutions at issue expressly forbid the author and other Roma from entering the two municipalities solely because of their status as Roma. By adopting and maintaining in force these resolutions the Slovak Republic has infringed the author's right to freedom of movement and residence.
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> Article 6. The author complained to local law enforcement authorities and filed formal complaints with the Constitutional Court. However, each request for a remedy was rebuffed. The ruling of 16 June 1998 by the Constitutional Court represents the final domestic decision, from which no appeal is permitted. Accordingly, all domestic remedies have been exhausted.

3.2 The author states that she is a victim of the above violations for the purposes of article 14, paragraph 1, of the Convention. Both resolutions may be reasonably understood by the author, (as, indeed, by all Roma in Slovakia) to apply to her. The author would like to be free to visit Nagov and Rokytovce, for instance in order to further the work of her organization. However, she has not entered either municipality since the resolutions were adopted, in part because she fears that they could be enforced against her. The author believes that, by publicly and formally using the term "Roma" to refer to certain unspecified persons and by singling out such persons for special and invidious treatment, the resolutions subject her, as a person of Romany ethnicity, to degrading treatment. 1/

3.3 The author further argues that, in assessing her "victim" status, the Committee should also take into consideration jurisprudence of the European Court of Human Rights which entitles individuals to contend that a law violates their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it.

3.4 Even though the author does not now and did not previously reside in the affected municipalities, she is among the class of persons defined by the challenged resolutions who are adversely affected by them. Both the text of the resolutions and the background of anti-Roma hostility which underlies their adoption make it reasonable to believe that the risk of additional adverse effect - i.e. that, if violated, the Resolutions might be enforced through, inter alia, physical force - is high.

3.5 Finally, the author asserts that the matter is not being examined under any other procedure of international investigation or settlement, although she notes that a separate case concerning the events giving rise to the present communication had been filed on behalf of other persons with the European Court of Human Rights.

State party's observations on admissibility

4.1 By submission of 23 June 1999 the State party challenges the admissibility of the communication. It informs the Committee that on 8 April 1999 the Municipal Council of Nagov and the Municipal Council of Rokytovce held extraordinary meetings, also attended by the District Prosecutor of Humenné, and decided to revoke resolution No. 22 of 16 June 1997 and resolution No. 21 of 8 June 1997 respectively. The State party therefore concludes that the communication has lost its relevance.

4.2 The State party further argues that a case concerning alleged racial discrimination against Roma caused by the adoption of the above-mentioned resolutions has been filed with the European Court of Human Rights. Although the applicants are not identical in the two cases, the subject matter is exactly the same.

4.3 According to the State party, the Roma inhabitants of Rokytovce were summoned by the District Prosecutor of Humenné by registered letters dated 20 November 1997. However, they failed to appear in the Prosecutor's Office, which means that they did not cooperate in establishing the facts of the case.

4.4 The State party also submits that the author has failed to exhaust domestic remedies. First of all,

the Constitutional Court rejected the petition filed by the Legal Defence Bureau for Ethnic Minorities on the grounds that, as a legal entity, the Bureau could not challenge a violation of fundamental rights belonging to natural persons. The court, however, also noted that its decision was without prejudice to the right of natural persons to claim the violation of their fundamental rights as a result of decisions made by State or local administrative organs. On the basis of the court's decision the District Prosecutor of Humenné informed the author that her case would be discontinued. The author did not appeal the decision of the District Prosecutor, although it was possible to appeal in accordance with Act 314/1996 on the Prosecution Authority.

4.5 As for the decision of the Constitutional Court dated 16 June 1998 to reject the author's petition of 5 May 1998, the State party submits that nothing prevented the author from filing a new petition with the Constitutional Court submitting evidence of violation of her constitutional rights or a causal link between the violation of her rights and the decision of the municipal council.

4.6 Secondly, the State party submits that the author could have availed herself of the remedy provided for under section 13 of the Civil Code, according to which everyone is entitled to seek the protection of the State against violations of his/her integrity and to be given appropriate satisfaction; in the case of insufficient satisfaction, mainly because the dignity or respect that the person enjoyed in society was significantly harmed, the victim is entitled to compensation, to be determined by a court as appropriate.

4.7 The State party further submits that the resolutions of the Nagov and Rokytovce municipal councils were never implemented. During the time they remained in force no act of violence against persons belonging to the Roma minority took place and the Roma moved within the boundaries of the two municipalities without restrictions. The Roma registered as permanent residents in those municipalities when the resolutions were adopted continue to enjoy that status.

4.8 As for the author's claim that several provisions of the Convention, including article 2, paragraph 1 (a), have been violated, the State party indicates that, according to section 1, paragraphs 1 and 2, of the Act of the Slovak National Council No. 369/1990 Coll. on the Municipal System, a municipality is an independent self-governing territorial unit of the Slovak Republic and any interventions as to its powers and/or impositions of responsibilities are possible only by law. The two resolutions adopted by the municipal councils of Nagov and Rokytovce did not concern the performance of State administrative tasks transferred to the municipal level in the field of general public administration, neither did they concern security and public order affairs transferred to municipalities, in which case the control and supervision of a municipality could be applied pursuant to article 71, paragraph 2, of the Constitution.

4.9 The author never tried to move into either municipality, to acquire or rent a house or to work there. She showed no interest in visiting the municipalities in order to know the reasons for the issuing of the resolutions. She provided no evidence, to the Committee or the authorities involved in the case at the national level, that she had tried to enter the municipalities or that she had been prevented from doing so.

Counsel's comments

5.1 In a submission dated 2 August 1999 counsel contends that even if the challenged resolutions were withdrawn the communication is still admissible.

5.2 First of all, the author remains a "victim" within the meaning of article 14 of the Convention. The Committee could follow in this respect jurisprudence from the European Court of Human Rights according to which an applicant remains a "victim" unless the following conditions obtain: (i) there has been an acknowledgment by the domestic courts of a violation of the substance of the European Convention rights at issue; (ii) the applicant has received satisfaction with regard to the past damage suffered by reason of the violating provisions; and (iii) the applicant has received satisfaction with regard to a complaint that the violating provisions should not have been promulgated in the first place.

5.3 In the instant case none of those conditions has been satisfied: (i) at no time has the author received an acknowledgment by the domestic courts that the existence of the resolutions amounted to a violation of domestic law, of the Slovak Constitution, of the Convention or of any other treaty or international legal instrument protecting human rights; (ii) at no time has the author received satisfaction with regard to the past damage suffered by her by reason of the authorities' initial promulgation and subsequent maintenance in force of the resolutions for almost two years; (iii) at no time has the applicant received satisfaction with regard to her complaint that the resolutions should not have been issued in the first place. Accordingly, counsel concludes that the author is a "victim" within the meaning of article 14 and that the matter of the abolition of the resolutions is relevant only for the purpose of any suggestions and recommendations that the Committee might address to the State party at the conclusion of the case.

5.4 Further or alternative to the arguments made above, counsel submits that the Committee should in any event consider the author's claim for reasons of "general interest". The Committee ought to have jurisdiction to consider claims relevant to the general or public interest, even in exceptional cases where the victim requirement has not been satisfied. A case involving the promulgation and maintenance in force of resolutions banning an entire ethnic minority from residing or entering an entire municipality is precisely the kind of case that should satisfy a "general interest" rule.

5.5 Regarding the State party's argument that an application on the same matter has also been submitted to the European Court of Human Rights, counsel contends that the author had already informed the Committee about that. However, the application filed with the European Court by three other persons and alleging violations of the European Convention should in no way preclude the author from filing a separate communication before the Committee complaining that the resolutions violate the Convention. Counsel cites jurisprudence of the Human Rights Committee adopting that approach.

5.6 Furthermore, even if the author had filed a separate application with the European Court of Human Rights concerning the same matter, there is no provision in the Convention expressly barring the Committee from examining a case that is already being examined by another international body.

5.7 The substantive features and intent behind this Convention and the European Convention are totally different. The application before the European Court alleges breaches of European Convention provisions, including the prohibition of inhuman and degrading treatment and the right

to freedom of movement and choice of residence. It seeks, inter alia, a declaration that certain provisions of the European Convention have been violated and an award of just compensation. By contrast, the present communication alleges separate and different violations of the Convention on the Elimination of All Forms of Racial Discrimination (which is more concerned than the European Convention with the positive duties and obligations of States parties not to discriminate on the basis of race, colour or national origin) and seeks suggestions and recommendations concerning the Government's obligation to remedy the alleged violations. The simultaneous filings of claims involving similar matters with the Committee and the European Court are founded on different legal bases and seek different legal remedies. They are not, therefore, duplicitous claims.

5.8 Counsel further objects to the State party's argument that the author did not exhaust domestic remedies. He states that, according to international human rights jurisprudence, the local remedies rule requires the exhaustion of remedies that are available, effective and sufficient. A remedy is considered available if it can be pursued by the petitioner without impediment, it is deemed effective if it offers some prospect of success and it is found sufficient if it is capable of redressing the complaint. If a remedy is not available, effective or sufficient the individual is not required to pursue it.

5.9 First of all, there is no effective remedy available in the State party for any cases of racial discrimination. In its concluding observations on the Slovak Republic, dated 4 August 1997, the Human Rights Committee noted that independent complaint mechanisms for victims of all forms of discrimination did not exist. The European Commission against Racism and Intolerance (ECRI) has also noted the absence of effective legal remedies for racial discrimination in the State party.

5.10 Secondly, the author did exhaust all remedies available. As explained in the initial submission, the Kosice Legal Defence Foundation reported the matter to the Office of the General Prosecutor, requesting an investigation into the legality of the resolutions. Upon request, the Foundation provided the County Prosecutor in Humenné with the names of five persons from Nagov and four persons from Rokytovce who felt they had been discriminated against by the two resolutions. Soon afterwards the Foundation submitted an application to the Constitutional Court requesting annulment of both the resolutions at issue. The Court dismissed the submission on the ground that, as a legal person, the Foundation could not suffer an infringement of constitutional rights designed to protect only natural persons. As a result of that ruling the District Prosecutor's Office decided to suspend its investigation, as it was not competent to examine decisions of the Constitutional Court. Subsequent to that, the present communication was filed with the Committee.

5.11 On 30 March 1999 the Departmental Secretary General of the Office of the Government of the Slovak Republic informed counsel that the Office of the General Prosecutor was reviewing the resolutions and that, if they were found illegal, a suggestion for withdrawal would be filed at the Constitutional Court, as the only organ with legal authority to withdraw resolutions of local government councils in order to guarantee their compliance with domestic and international law. On 31 May 1999 counsel was informed by the Chairman of the Committee on Human Rights and National Minorities of the Slovak Republic that the resolutions had been cancelled.

5.12 As for the State party's contention that the applicant did not cooperate with the investigation, counsel contends that whether or not the applicant failed to attend an interview at the Office of the

General Prosecutor, which is not admitted, the Prosecutor was still under a domestic and international legal duty to investigate the complaint. The only circumstance in which the Prosecutor is not under such a duty is where the applicant's failure to attend the appointment would hinder the investigation. In other words, the applicant must be someone whose evidence is necessary in order to investigate the case. This exception clearly does not apply in the instant case, because the applicant's alleged failure to attend for an interview is not a hindrance to continuing investigation by the Prosecutor as to the compliance of the resolutions with domestic or international human rights norms. Indeed, despite the alleged failure of the applicant to appear for an interview, the authorities proceeded with their investigation until the decision of the Constitutional Court was promulgated.

5.13 The State party has failed to identify any basis for believing that the Office of the Prosecutor, having once rejected the complaint, would reach a different result if faced with a second, identical complaint, given the absence of new facts or law. Furthermore, on the basis of jurisprudence of the Constitutional Court, it is questionable whether the prosecutor possesses the legal power to remedy the violations of the Convention alleged in the instant case. In fact, in the letter sent to counsel on 30 March 1999, referred to above, the Government itself states that the only effective and available remedy in this case is an application to the Constitutional Court. Thus the Government has conceded that a complaint to the General Prosecutor is not an effective and available remedy because the Prosecutor's Office is not a judicial body.

5.14 Counsel also argues against the State party's contention that a civil action pursuant to article 11 of the Civil Code would be an effective remedy. The applicable provisions of the Civil Code regulate private relations, whereas the resolutions at issue are not matters of private individual rights. The municipalities that issued the resolutions are not private entities, therefore the Civil Code is inapplicable.

5.15 A civil remedy, even if available and effective, would be insufficient, insofar as a civil court in the Slovak Republic would not have legal authority to grant sufficient redress for the violations of the Convention that the applicant has suffered. Thus the civil court lacks the power to: (i) prosecute, sanction or otherwise punish the responsible municipal officials for racial discrimination; (ii) declare that the existence of the resolutions amounted to a practice of racial discrimination and that such a practice is unacceptable and illegal; (iii) declare that the existence of the resolutions amounted to a violation of human rights laid down in international human rights instruments by which the Republic of Slovakia is bound; (iv) award satisfaction with regard to a complaint that the violating provisions should not have been made in the first place; (v) order cancellation of the resolutions. Furthermore, the author should only exhaust those remedies which are reasonably likely to prove effective.

5.16 Regarding the second constitutional action, filed by the author in her personal capacity, the State party contends that the author failed to present evidence of an actual attempt to enter the territories and that the author should have filed a new petition. According to counsel, these contentions lack merit. Insofar as the Constitutional Court had already dismissed several separate applications concerning the same resolutions, the suggestion that the author should be required to submit yet another petition, to the very same forum which had squarely rejected her claim, lacks logical or legal foundation.

5.17 As for the failure to present evidence, counsel reiterates its arguments concerning the "victim status" of the author and suggests that in assessing such status the Committee should be guided by the jurisprudence of the European Court, which entitles individuals to contend that a law violates their rights by itself, in the absence of an individual measure of implementation, if they run the risk of being directly affected by it. It is not necessary for the author to demonstrate that she was actually placed in an unfavourable position. The author has been personally affected by the resolutions in the following ways:

> Inhuman and degrading treatment. The author has personally suffered degrading treatment, direct emotional harm, loss of human dignity and humiliation owing to the existence of the two resolutions, a fact not altered by their subsequent cancellation. It is therefore not unreasonable that the applicant, as any other Romany person in Slovakia, feels that she has been personally offended and publicly shamed in a way different from the moral outrage which may be felt by even the most sympathetic of non-Roma.
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> Subjection to undue restrictions on her personal freedoms. The author was affected by the threat of a potential use of violence; prevented from entering or settling in the vicinity of Nagov and Rokytovce, thereby violating her rights to freedom of movement and freedom to choose a residence; and prevented from having personal contact with persons in the vicinity of Nagov and Rokytovce, thereby violating her right to private life.
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> The author has also been directly affected by the existence of the resolutions because she is affected by the atmosphere of racial discrimination around her.

5.18 The State party asserts that the municipalities that issued the resolutions are not "public authorities" or "public institutions" and that a municipality is "an independent self-governing territorial unit of the Slovak Republic". Counsel disagrees with that view, at least with respect to governmental responsibility for ensuring compliance with the Convention. Several provisions of the Constitution and the Municipality System Act No. 369/1990 suggest that there is a direct relationship between the State and the municipality, a relationship which makes it clear that the municipalities are "public authorities" or "public institutions". The Committee itself has stated, in its General Recommendation XV on article 4 of the Convention, that the obligations of a "public authority" under the Convention include the obligations of a municipality. Although municipalities may be "independent self-governing territorial units", they are still State organs and part of the State administration and, therefore, public institutions within the meaning of article 2 (1) (a) of the Convention.

5.19 As for the fact that the resolutions were cancelled, the government measures of cancellation were not "effective measures" in the sense of article 2 (1) (c), because the cancellations were unreasonably delayed. Prior to cancellation the resolutions did violate the above-mentioned provision.

5.20 That the resolutions may not have been implemented through the particular means of criminal prosecution and conviction does not mean they did not breach the Convention. Part of the point and clearly the effect of the resolutions was to deter any Roma who might otherwise consider coming to the affected municipalities. The fact that no Roma dared to defy the resolutions would indicate

that the mere passage and maintenance in force of the resolutions for almost two years succeeded in intimidating Roma and thus interfering with their rights under the Convention.

5.21 Finally, counsel provides observations by monitoring organizations documenting official and racially-motivated violence and discrimination against Roma in the State party.

Admissibility considerations

6.1 At its fifty-fifth session the Committee examined the admissibility of the communication. It duly considered the State party's claims that the communication should be considered inadmissible on several grounds.

6.2 First of all, the State party argued that the resolutions of the municipal councils in question were revoked and, therefore, the communication had lost its relevance. The Committee noted, however, that notwithstanding their abrogation the resolutions had remained in force from July 1997 to April 1999. Accordingly, the Committee had to examine whether during that time violations of the Convention had taken place as a result of their enactment.

6.3 Secondly, the State party contended that a similar case had been filed with the European Court of Human Rights. The Committee noted in that respect that the author of the present communication was not the petitioner before the European Court and that, even if she was, neither the Convention nor the rules of procedure prevented the Committee from examining a case that was also being considered by another international body.

6.4 Thirdly, the Committee did not share the State party's view that domestic remedies had not been exhausted and considered that neither a new petition to the Constitutional Court nor a civil action would be effective remedies in the circumstances of the case.

6.5 Fourthly, the Committee was of the view, contrary to the State party, that the author could be considered a "victim" within the meaning of article 14, paragraph 1, of the Convention, since she belonged to a group of the population directly targeted by the resolutions in question.

6.6 Finally, the Committee considered that the municipal councils which had adopted the resolutions were public authorities for the purposes of the implementation of the Convention.

6.7 The Committee found that all other conditions for admissibility established under rule 91 of its rules of procedure had been met. Accordingly, it decided, on 26 August 1999, that the communication was admissible. It also decided that, in order to enable the Committee to examine the case in all its aspects, the State party and the author should provide information about domestic legislation and remedies intended to protect the right of everyone, without distinction as to race, colour, or national or ethnic origin, to freedom of movement and residence within the border of the State, in accordance with article 5 (d) (i) of the Convention.

Further observations by the State party

7.1 The State party admits that the investigation of the complaint carried out by the District

Prosecutor's Office of Humenné was incomplete, since it did not address the substantive aspects. However, the Legal Defence Bureau for Ethnic Minorities did not make use of their legal possibility to have the lawfulness of the resolutions in question reviewed. A complaint pursuant to section 11, paragraph 1 of Act No. 314/1996 Coll. 2/ to the prosecution authority or a motion by the Prosecutor-General with the Constitutional Court for incompatibility of the resolutions in question with the Constitution could have been filed. As the Legal Defence Bureau failed to utilize these possibilities, neither the regional nor the general prosecution authorities knew about the way in which the District Prosecutor's Office of Humenné had handled the complaint. The State party emphasizes that the Slovak legal order has effective, applicable, generally available and sufficient means of legal protection against discrimination.

7.2 The State party acknowledges that the adoption of the resolutions in question in 1997 created an unlawful situation which lasted until their abrogation in 1999. However, during the time they remained in force no violation of human rights took place since they were not applied against anybody. The Constitutional Court found in that respect that the applicants had provided no evidence of the violation of their rights and freedoms. 3/

7.3 The State party further submits that no direct violation of the right to freedom of movement and choice of residence, as guaranteed by article 5 (d) (i) of the Convention, took place in the present case. The legal order of the Slovak Republic guarantees the equality of citizens before the law. 4/ Freedom of movement and residence is also guaranteed to all persons staying in the territory of the State party regardless of their citizenship. 5/ The freedom of residence is understood as the right of citizens to choose without any restrictions their place of residence. This right may only be limited as a result of a penal sanction. A ban on residence can be imposed as a sanction only for intentional crimes, can never be imposed on juveniles and cannot apply to the place where the offender has permanent residence. Restrictions to the freedom of movement and residence can only be based on a parliamentary act and never on decisions of the Government or other bodies of State administration.

Counsel's comments

8.1 Counsel notes the State party's acknowledgement that the resolutions in question were unlawful. As a result, the only relevant issues left for the Committee to decide are, firstly, whether the applicant is a victim for the purposes of a complaint under the Convention and, secondly, whether the subsequent abolition of the resolutions affects the validity of the complaint to the Committee.

8.2 In its admissibility decision the Committee already addressed the first issue when it stated that the author could be considered a "victim" within the meaning of article 14, paragraph 1, of the Convention, since she belonged to a group of the population directly targeted by the resolutions in question. 6/ The Committee also addressed the second issue when it noted that, notwithstanding their abrogation, the resolutions had remained in force from July 1997 to April 1999 and that it had to examine whether during that time violations of the Convention had taken place as a result of their enactment. 7/

8.3 Finally, counsel states that the points raised by the State party in its observations on the merits have already been addressed in his submission of 2 August 1999.

Additional information submitted by the State party

9.1 Upon the Committee's request the State party provided copy of records of the municipal councils of Rokytovce and Nagov containing the texts of resolutions Nos. 21 and 22 respectively.

9.2 The English version of the record referring to resolution No. 21 reads as follows:

> "The extraordinary meeting was convoked based on the minutes [of the meeting] of mayors of settlements of Cabina, Nagov, Cabalovce, Krasny Brod and Rokytovce in connection with Roma citizens that are homeless in the District of Medzilaborce.
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> "Deputies of the Municipal Council after reading and studying the Minutes have adopted the following standpoint on the matter in question:
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> > The deputies have univocally stated and they declare herewith that those Roma are not native citizens of Rokytovce, but they are immigrants from settlements of Rovné and Zbudské. In 1981 one family moved there as employees of the JRD (Unified Agricultural Co-operative) Krásny Brod . . .
> >
> > In 1981 they received permanent residence status from . . . the former Secretary of the Municipal National Committee in Krásny Brod, as the settlement of Rokytovce did not exist as an independent settlement and it was then only a part of the settlement of Krásny Brod. The family was officially registered/reported at a house as tenants . . .
> >
> > In 1989 the Roma moved from the settlement to the settlement of Sukov (?) as there was work for them there.
> >
> > After the settlement of Rokytovce became independent in 1990, the Roma citizens did not live there; neither did they report there for permanent residence. As a result we do not count them among our citizens.
> >
> > Based on findings from the registered entries in the House Book it was ascertained that of five proposed Roma that should return back to the settlement of Rokytovce, only two of them have permanent residence in Rokytovce, those being Júlia Demetrová and Valéria Demetrová.
> >
> > The Municipal Council declared in conclusion that in case the Roma would forcefully move into the settlement, they would be, with the help of all citizens, evicted from the settlement."

9.3 Resolution No. 22 of 16 July 1997, as amended by resolution No. 27/98, indicates the following: "The Municipal Council cannot agree with accommodation of the Roma citizens in the cadastral territory of Nagov, as they do not have any ownership rights, nor origin, nor accommodation, nor jobs (employment) in the settlement of Nagov."

Examination of the merits

10.1 Having received the full texts of resolutions 21 and 22 the Committee finds that, although their wording refers explicitly to Romas previously domiciled in the concerned municipalities, the context in which they were adopted clearly indicates that other Romas would have been equally prohibited from settling, which represented a violation of article 5 (d) (i) of the Convention.

10.2 The Committee notes, however, that the resolutions in question were rescinded in April 1999. It also notes that freedom of movement and residence is guaranteed under article 23 of the Constitution of the Slovak Republic.

10.3 The Committee recommends that the State party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.

Notes

1/ In so doing the author relies upon jurisprudence of the European Commission on Human Rights, in particular its decision in East African Asians v. United Kingdom, in which the Commission found that challenged immigration legislation had publicly subjected the applicants to racial discrimination and constituted an interference with their human dignity, amounting to "degrading treatment" in the sense of article 3 of the European Convention on Human Rights.

2/ Pursuant to section 30, paragraph 1.2 of this Act, the prosecutor shall, upon his own initiative or upon a petition, review the procedure or decisions by public administrative bodies, decisions of a court, prosecutor, investigator or police body for compliance with the law. The person who filed the petition may request a review as to the lawfulness of its processing with a repeated petition which shall be processed by the superior body.

Pursuant to section 11 of the same Act, prosecutors shall file protests against generally binding pieces of legislation, municipal binding regulations, guidelines, amendments, resolutions, other legal acts and decisions by public administrative bodies issued in individual cases which violate the law. If the protest was filed with the body which issued the decision, this body can either repeal the decision being challenged or replace it with a decision complying with the law. If this body does not fully accept the protest, it has the duty to submit it to a superior or monitoring body. The prosecutor may file a new protest against the decision rejecting the protest.

3/ See paragraph 2.9.

4/ Article 12, paragraph 2, of the Constitution stipulates that fundamental rights and freedoms are guaranteed to all regardless of their gender, race, colour, language, faith and religion, political or other views, national or social origin, belonging to a national minority or ethnic group, etc. Article 33 stipulates that membership in any national minority or ethnic group may not be used to the detriment of any individual. Article 34 states that citizens belonging to national minorities or ethnic groups shall be guaranteed their full development, particularly the rights to promote their cultural heritage with other citizens of the same national minority or ethnic group, receive and disseminate

information in their mother tongues, form associations and create and maintain educational and cultural institutions.

5/ Article 23 of the Constitution.

6/ See paragraph 6.5.

7/ See paragraph 6.2.