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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-sixth session
21 February-11 March 2005

OPINION

Communication No. 31/2003

Submitted by:	Ms. L. R. et al. (represented by the European Roma Rights Center and the League of Human Rights Advocates)
Alleged victim(s):	The petitioners
State party:	Slovak Republic
Date of communication:	5 August 2003
Date of the present decision:	7 March 2005

[ANNEX]

* Made public by decision of the Committee on the Elimination of Racial Discrimination.

Annex

OPINION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION UNDER ARTICLE 14 OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

sixty-sixth session

concerning

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Alleged victim(s):	The petitioners
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Date of communication:	5 August 2003

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 7 March 2005,

Adopts the following:

OPINION

1. The petitioners are Ms. L. R. and 26 other Slovak citizens of Roma ethnicity residing in Dobšiná, Slovak Republic. They claim to be victims of a violation by the Slovak Republic of article 2, paragraph 1, subparagraphs (a), (c) and (d); article 4, paragraph (a); article 5, paragraph (e), subparagraph (iii); and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. They are represented by counsel of the European Roma Rights Center, Budapest, Hungary, and the League of Human Rights Advocates, Bratislava, Slovak Republic.

The facts as presented

2.1 On 20 March 2002, the councillors of the Dobšiná municipality adopted resolution No. 251-20/III-2002-MsZ, whereby they approved what the petitioners describe as a plan to construct low-cost housing for the Roma inhabitants of the town.[1] About 1,800 Roma live in the town in what are described as "appalling" conditions, with most dwellings comprising thatched huts or houses made of cardboard and without drinking water, toilets or drainage or sewage systems. The councillors instructed the local mayor to prepare a project aimed at securing finance from a government fund set up expressly to alleviate Roma housing problems in the State party.

2.2 Thereupon, certain inhabitants of Dobšiná and surrounding villages established a five-member "petition committee", led by the Dobšiná chairman of the Real Slovak National Party. The committee elaborated a petition bearing the following text:

> "I do not agree with the building of low cost houses for people of Gypsy origin on the territory of Dobšiná, as it will lead to an influx of inadaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions."[2]

The petition was signed by some 2,700 inhabitants of Dobšiná and deposited with the municipal council on 30 July 2002. On 5 August 2002, the council considered the petition and unanimously voted, "having considered the factual circumstances", to cancel the earlier resolution by means of a second resolution which included an explicit reference to the petition.[3]

2.3 On 16 September 2002, in the light of the relevant law,[4] the petitioners' counsel requested the Rožňava District Prosecutor to investigate and prosecute the authors of the discriminatory petition, and to reverse the council's second resolution as it was based on a discriminatory petition. On 7 November 2002, the District Prosecutor rejected the request on the basis of purported absence of jurisdiction over the matter. The Prosecutor found that "… the resolution in question was passed by the Dobšiná Town Council exercising its self-governing powers; it does not constitute an administrative act performed by public administration and, as a result, the prosecution office does not have the competence to review the legality of this act or to take prosecutorial supervision measures in non-penal area."

2.4 On 18 September 2002, the petitioners' counsel applied to the Constitutional Court for an order determining that articles 12 and 33 of the Constitution, the Act on the Right of Petition and the Framework Convention for the Protection of National Minorities (Council of Europe) had been violated, cancelling the second resolution of the council and examining the legality of the petition. Further information was provided on two occasions at the request of the Court. On 5 February 2003, the Court, in closed session, held that the petitioners had provided no evidence that any fundamental rights had been violated by the petition or by the council's second decision. It stated that as neither the petition nor the second resolution constituted legal acts, they were permissible under domestic law. It further stated that citizens have a right to petition regardless of its content.

The complaint

3.1 The petitioners argues that the State party has violated article 2, paragraph 1, subparagraph (a), by failing to "ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation" [to engage in no act or practice of racial discrimination]. They argue, with reference to the Committee's jurisprudence that a municipal council is a local public authority,[5] and that the council engaged in an act of racial discrimination by unanimously endorsing the petition and cancelling its resolution to build low-cost but adequate housing for local Roma.

3.2 The petitioners argue that there has been a violation of article 2, paragraph 1, subparagraph (c), on the basis that the State party failed to "nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination". Neither the District Prosecutor nor the Constitutional Court took measures to cancel the council's second resolution, which was

itself based on a discriminatory petition. They also argue that there has been a violation of subparagraph (d) of paragraph 1, as well as article 4, paragraph (a), on the basis that the State party failed "to prohibit and bring to an end … racial discrimination by any persons, group or organization" by not effectively investigating and prosecuting the petition's authors. They argue that the petition's wording can be regarded as "incitement to racial discrimination", and refer to the Committee's decision in *L. K. v. The Netherlands*,[6] where the State party was found to have insufficiently investigated a petition and verbal threats designed to stop an immigrant from moving into a subsidized home.

3.3 The petitioners contend that article 5, paragraph (e), subparagraph (iii), was violated as the State party failed to safeguard the petitioners' right to adequate housing. The local conditions, described above, are, in the petitioners' view, well below an adequate level for housing and living conditions in the State party, and would have been resolved by the original council decision proceeding rather than being cancelled, without remedy, on the basis of a discriminatory petition.

3.4 Finally, the petitioners argue a violation of article 6 in that the State party failed to provide them with an effective remedy against acts of racial discrimination inflicted both by the authors of the petition and the council's second resolution, which was motivated by and based on such discrimination. They contend that no measures have been taken (i) to cancel the second resolution, (ii) to punish the petitions' authors or (iii) to ensure that such discrimination does not recur.

3.5 As to the admissibility of the complaint, the petitioners state that no further appeal lies against the Constitutional Court's judgement and that no other international procedure of investigation or settlement has been invoked.

The State party's submissions on the admissibility of the petition

4.1 By submission of 26 November 2003, the State party disputed the admissibility of the petition on the basis of the petitioners' failure to exhaust domestic remedies. Firstly, it argues that the petitioners did not avail themselves of the possibility of challenging the District Prosecutor's decision, as provided for in section 34 of the Act on Prosecution.[7]

4.2 Secondly, with respect to the constitutional application, the State party argues that despite being urged to do so by the Constitutional Court, the petitioners did not "specify [with respect to the council's second decision] any fundamental right or freedom that was allegedly violated in conflict with the Constitution, other laws or other international instruments which are binding on the Slovak Republic". As a result, the Court held:

> "The provisions of article 12, paragraphs 1 and 4, article 13, paragraphs 1 and 4, and article 35 of the Constitution exclude, in general terms, the discrimination against natural or legal persons; however, they cannot be invoked without explicitly specifying the impact of a discriminatory procedure applied by a State authority or a State administration body on a fundamental right or freedom of a natural or legal person. Analogical approach may be applied to article 33 of the Constitution which has the aim of preventing any harm (discrimination or persecution) as a direct consequence of belonging to a national minority or ethnic group … None of the rights of the citizens,

who belong to a minority and enjoy constitutional protection, entails a corresponding obligation on the part of the municipality to adopt certain decisions, i.e. the decisions on specific matters, such as construction of low-cost housing."

4.3 In the State party's view, the Court, in dismissing the complaint "as manifestly unsubstantiated on procedural grounds", did not decide on the merits, as a result of the petitioners' procedural mistake. It is thus open for the petitioners to pursue a new "substantive" complaint with the Constitutional Court. Finally, the State party argues that the petitioners did not argue a breach of the Convention before the Court, although international instruments are directly applicable and the Court can grant a remedy for breach thereof.

The petitioners' comments

5.1 By submission of 12 January 2004, the petitioners responded to the State party's observations. On the alleged failure to file a petition for review of the District Prosecutor's decision, they argue that this authority was the only one able to bring a criminal prosecution. The Prosecutor's decision contained no indication of a possibility of further appeal. Moreover, there is no indication that a higher prosecutor would have taken any different view from that of the Prosecutor, namely that a town or municipal council is not a "public administration body" whose decisions are reviewable for legality. This view was taken despite the rejection, by the Committee, of such an argument in the decision on the *Koptova* case. In the absence of any change to the "firmly settled" domestic jurisprudence on this issue and in the absence of any new facts, the petitioners argue that the State party has not shown that a higher prosecutor would take any different view if the complaint was re-presented. The same conclusion on the issue of exhaustion of the proposed remedy was also shared by the Committee in the Koptova case and *Lacko v. Slovakia*.[8]

5.2 As to the argument that a new application should be lodged with the Constitutional Court, the petitioners point out that the judgement describes itself as final and that in *Koptova*, the Committee rejected such an argument. Accordingly, as there is no prospect that repeated petitions to either body offer any chance of success, the petitioners claim to have exhausted all effective domestic remedies. They add that the State party's arguments should be viewed against the absence of a comprehensive anti-discrimination law; the only currently proscribed conduct is hate speech, racially-motivated violence and discrimination in employment.

5.3 In response to arguments that municipal councils are not State organs, the petitioners invoke the Committee's general recommendation XV on article 4 for the contrary proposition. The Slovak Municipality System Act 1990 establishes a "direct relationship" between municipalities and the State, in terms of its subordinate financial, functional and organizational positions. Finally, in its Opinion on the *Koptova* case, the Committee found the council to be a public authority for the purposes of the Convention. Thus, the petitioners submit, the council's resolution should have been reviewed for lawfulness by the District Prosecutor and the State party's international responsibility is engaged.

5.4 The petitioners dispute the State party's argument that they did not specify the fundamental rights and freedoms violated in their petition to the Constitutional Court, arguing that they did so both in the original application and in subsequent pleadings. They claimed (i) violations of the right to equal treatment and dignity regardless of ethnic origin (art. 12),

(ii) violations of the right, as a member of an ethnic group or national minority, not to suffer detriment (art. 33), (iii) violations, on the basis of ethnic origin, of their right to housing and (iv) discrimination against an ethnic group, the Roma. They point out that they continue to live in "appalling, sub-standard" conditions. They argue that articles 12 and 33 of the Constitution are not simply accessory provisions which, standing alone, have no substance; they confer substantive rights. They also point out that, while the domestic Constitution does not protect the right to housing, it does give precedence to international treaties such as, in addition to the Convention, the International Covenant on Economic, Social and Cultural Rights, which protects the right to housing and prohibits discrimination. Furthermore, the petitioners explicitly referred to the Council of Europe Framework Convention in their application. In any event, they argue they have complied with their obligation, under the relevant jurisprudence, to raise the substance of a complaint.

5.5 The petitioners further contend that the racial discrimination suffered by them amounts to degrading treatment proscribed in article 12 of the Constitution. They refer to the case law of the European Commission of Human Rights, which held, in the *East African Asians* case, that immigration admission denied on the basis of colour and race amounted to such a violation of article 3 of the European Convention, and constituted an affront to human dignity.[9] They also argue that, under well-established principles, if a State party decides to confer a particular benefit (that it may not necessarily have had an obligation to confer *ab initio*), that benefit cannot be conferred in a discriminatory fashion.[10] Thus, even if the petitioners had no initial right to housing (which they contest), it cannot be cancelled, on discriminatory grounds, subsequent to its provision.

5.6 Finally, the petitioners object to any inference that they are not "victims" on the basis that the Constitutional Court held that no violation of the Slovak Constitution had been made out. They argue that they were part of a specific group of people granted certain rights and then had them abolished. Thus, once they are, "directly targeted by the resolutions", to use the Committee's language in its Opinion on the *Koptova* case, they can be considered "victims". In addition, as the complaint lodged with the District Prosecutor did not lead to substantive review of the lawfulness of the council decision or to a criminal investigation of charges of incitement, they were victims of an absence of a remedy. The petitioners refer in this respect to the Committee's Concluding Observations on the State party's periodic report concerning discrimination in access to housing.[11]

The Committee's decision on the admissibility of the petition

6.1 At its sixty-fourth session, on 27 February 2004, the Committee examined the admissibility of the petition. As to the State party's contention that the petitioners did not renew their complaint before another prosecutor after it had been dismissed by the District Prosecutor, the Committee noted that the District Prosecutor had dismissed the case for lack of jurisdiction over an act of the municipal council. In the Committee's view, as far as the decision on lack of competence was concerned, the State party had not shown how re-presentation of the complaint would provide an available and effective remedy for the alleged violation of the Convention. Consequently, these avenues need not be pursued for purposes of exhaustion of domestic remedies. In this regard, the Committee recalled its own jurisprudence and that of the Human Rights Committee.[12]

6.2 With reference to the contention that the petitioners should renew their claim before the Constitutional Court, the Committee recalled its jurisprudence that where the Court dismissed a fully argued constitutional petition arguing alleged racial discrimination for failure to disclose the appearance of an infringement of rights, a petitioner could not be expected to re-present a petition to the Court.[13] In the present case, the Committee observed that the current petitioners also invoked several relevant constitutional rights alleged to have been violated, including rights of equality and non-discrimination. In the circumstances, the State party had not shown how renewal of their petition before the Constitutional Court, after it had been dismissed, could give rise to a different result by way of remedy. It followed that the petitioners have exhausted available and effective remedies before the Constitutional Court.

6.3 The Committee further recalled its jurisprudence that the acts of municipal councils, including the adoption of public resolutions of legal character such as in the present case, amounted to acts of public authorities within the meaning of the provisions of the Convention.[14] It followed that the petitioners, being directly and personally affected by the adoption of the resolution, as well as its subsequent cancellation after presentation of the petition, may claim to be "victims" for purposes of submitting their complaint before the Committee.[15]

6.4 The Committee also considered that the claims advanced by the petitioner's were sufficiently substantiated, for purposes of admissibility. In the absence of any other obstacles to admissibility, the complaint was therefore declared admissible.

The State party's request for reconsideration of admissibility and submissions on the merits

7.1 By submission of 4 June 2004, the State party submitted a request for reconsideration of admissibility and its submissions on the merits of the petition. It argued that the petitioners have failed to exhaust domestic remedies, as they could have availed themselves of an effective remedy in the form of a petition pursuant to article 27 of the Constitution and the Right to Petition Act, challenging the second municipal council resolution and/or the petition lodged against the initial resolution. Presentation of such a petition would have obliged the municipality to accept the petition for review and to examine the factual situation. This remedy is not subject to time-limits and is still available to the petitioners.

7.2 The State party argues that the failure of the petitioners to obtain the result that they sought from the prosecuting authorities and the courts cannot, of itself amount to a denial of an effective remedy. It refers to the decision of the European Court of Human Rights in *Lacko et al. v. Slovak Republic*[16] to the effect that a remedy, within the meaning of article 13 of the European Convention on Human Rights, "does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint". It is the petitioners who should be held responsible for the failure of their claim before the Constitutional Court, on the basis that they failed to specify the fundamental right allegedly infringed by the council resolution in addition to simply invoking the general equality provision of article 12 of the Constitution.

7.3 The State party rejects the Committee's view that it was sufficient for the petitioners to plead certain relevant constitutional articles, without also pleading specific concrete injury, as both generally required by the Constitutional Court's jurisprudence and specifically requested of

the petitioners by the Court in the instant case. The State party regards such a requirement of particularized injury, i.e. a pleading of a violation of a general equality/non-discrimination guarantee in combination with a concrete right, to be wholly consistent with the spirit of the Convention.

7.4 On the remedies actually instituted by the petitioners, the State party argues that their application of 16 September 2002 to the Rožňava District Prosecutor contended only that the petition to the council amounted to an abuse of the right to petition under the Right to Petition Act, under which a petition must not incite violations of the Constitution or amount to a denial or restriction of personal, political or other rights of persons on the grounds of their nationality, sex, race, origin, political or other conviction, religious faith or social status, and must not incite to hatred and intolerance on the above grounds, or to violence or gross indecency. The petitioners neither argued how the factual circumstances amounted to such an abuse of the right to petition, nor mentioned the issue of racial discrimination, Roma ethnicity or other circumstances implicating the Convention.

7.5 In their application to the Constitutional Court, the petitioners requested a ruling that the council resolution infringed "the fundamental right of the petitioners to equal fundamental rights and freedoms irrespective of sex, race, colour, language, national origin, nationality or ethnic origin guaranteed under article 12 of the Constitution" and "the fundamental right of the petitioner to not suffer any detriment on account of belonging to a national minority or ethnic group guaranteed under article 33 of the Constitution". The State party observes that the Constitutional Court requested the petitioners inter alia to complete their complaint with information on "which of their fundamental rights or freedoms were infringed, which actions and/or decisions gave rise to the infringement, [and] which decisions of the Municipal Council they consider to be ethnically or racially motivated". The petitioners however completed their submission without specifying the rights allegedly violated, with the result that the Court dismissed the complaint as unfounded. In light of the above, the State party requests reconsideration of the admissibility of the petition.

7.6 On the merits, the State party argues that the petitioners failed to show an act of racial discrimination within the meaning of the Convention. Firstly, it argues that the petitioners mischaracterize the facts in important respects. It is not correct that the original resolution adopted by the municipal council approved a plan to construct low-cost housing; rather, the resolution "approv[ed] the concept of the construction of low-cost housing - family houses and/or apartment houses", making no mention of who would be the future dwellers, whether Roma or otherwise. It is also incorrect that the council instructed the local mayor to prepare a project aimed at securing finance from a government fund set up expressly to alleviate Roma housing problems; rather, the resolution only recommended that the mayor, as the State party describes it, "consider preparing project documentation and obtaining the funds for the construction from government subsidies".[17]

7.7 The State party points out that such resolutions, as purely internal organizational rules, are not binding ordinances and confer no objective or subjective rights that can be invoked before the courts or other authorities. As a result, neither Roma nor other inhabitants of Dobšiná can claim a violation of their "right to adequate housing" or discrimination resulting from such resolutions. Similarly, the Constitutional Court held that "none of the rights granted to the citizens who belong to a minority and enjoy constitutional protection entails an obligation by a

municipality to make a certain decision or perform a certain activity, such as the construction of low-cost housing". The municipal resolutions, which are general policy documents on the issue of housing in the municipality, make no mention of Roma and the petitioners infer an incorrect causal link. The tentative nature of the resolution is also shown by the absence of any construction timetable, as any construction necessarily depended on government funding.

7.8 The State party observes that the second resolution, after revoking the first resolution, instructed the council, in the words of the State party, "to prepare a proposal on addressing the existence of inadaptable citizens in the town of Dobšiná and to subsequently open the proposal for a discussion by municipal bodies and at a public meeting of the citizens".[18] This makes clear that the resolution is part of an ongoing effort to find a conceptual solution to the existence of "inadaptable citizens" in the town. As a result, policy measures taken by the municipal council to secure housing for low-income citizens clearly does not fall within the scope of the Convention. Rather, the council's activities can be viewed as a positive attempt to create more favourable conditions for this group of citizens, regardless of ethnicity. The State party observes that these actions of the municipality in the field of housing were against the background of the Slovak Government's resolution No. 335/2001 approving a Programme for the Construction of Municipal Rental Flats for low income housing, and should be interpreted in that context.

7.9 The State party invokes the jurisprudence of the European Court of Human Rights in which the Court declined to entertain claims of discrimination advanced by travelling communities arising from the denial of residence permits on the basis of the public interest, such as environmental protection, municipal development and the like.[19] The State party argues that in this case local residents, committed to upgrading their municipality and properties, had legitimate concerns about certain risks including adverse social impacts arising from a mass influx of persons to low-income housing. It is noted that a number of Roma also signed the petition in question.

7.10 The State party argues that reference to other cases decided by the Committee such as *Lacko*[20] and *Koptova*[21] is inappropriate, as the facts and law of the present case differ. In particular, in *Koptova*, there was no context of an ongoing policy programme of housing development. The State party also observes that on 20 May 2004, Parliament passed a new anti-discrimination law laying down requirements for the implementation of the equal treatment principle and providing legal remedies for cases of infringement. The State party also rejects the reliance placed upon the European Court's judgements in the *East African Asians*[22] and *Belgian Linguistics*[23] cases. They emphasize that the second resolution did not cancel an existing project (and thus deprive existing benefits or entitlements), but rather reformulated the concept of how housing in the municipality would best be addressed.

7.11 On article 6, the State party reiterates its arguments developed in the context of the admissibility of the petition, namely that its courts and other instances provide complete and lawful consideration, in accordance with the requirements of due process, to any claim of racial discrimination. Concerning criminal prosecutions in the context of the petition on the basis of spreading racial hatred, the State party argues that the petitioners have failed to demonstrate that any actions of its public authorities were unlawful, or that the petition or its contents were unlawful. A violation of the right to an effective remedy protected by article 6 has accordingly not been established.

The petitioners' comments on the State party's submissions

8.1 With respect to the State party's argument related to the remedy of a petition, the petitioners argue that the only legal obligation is for it to be received by the relevant authority. The Constitutional Court has held that there is no obligation for the petition to be treated and given effect to; in the Court's words, "[n]either the Constitution nor the Petition Act give concrete guarantees of acceptance or consequences of dismissal of petitions". As a result, such an extraordinary remedy cannot be regarded as an effective remedy that must be exhausted for the purposes of petitioning the Committee.

8.2 On the merits, the petitioners reject the State party's characterization of the council resolutions as being without legal effect, and refer to the Committee's admissibility decision where it was decided that "public resolutions of legal character such as in the present case" amounted to acts of public authorities. The petitioners also contest whether any Roma signed the petition against the first council resolution, stating that this is founded upon an assertion made in a letter dated 28 April 2004 by the mayor of Dobšiná to the Slovak Ministry of Foreign Affairs, without any further substantiation. In any event, the petitioners argue that the ethnicity of the persons signing the petition is irrelevant, as its content, purpose and effect is discriminatory. The petitioners also argue that the repeated use of the term "inadaptable citizens" by the State party reveals institutional prejudices against Roma.

8.3 The petitioners argue that, contrary to the State party's assertions, there is a compelling causal link between the council resolutions, the petition and discrimination in access to housing suffered by the petitioners. They argue that implementation of the social housing project would have resulted in their lives assuming a sense of dignity and alleviated dangers to their health. However, to date, the State party authorities have taken no steps to alleviate the inadequate housing situation of the petitioners. They argue that their situation is part of a wider context of discrimination in access to housing at issue in the State party and submit a number of reports of international monitoring mechanisms in support.[24]

8.4 The petitioners reject the argument that the State party authorities were under no obligation in the first place to provide housing, referring to the obligations under article 11 of the International Covenant on Economic, Social and Cultural Rights (right to "an adequate standard of living … including … housing"). In any event, they argue that the principle developed in the *Belgian Linguistics* case stands not only for the principle that when a State party decides to confer a benefit it must do so without discrimination, but also for the principle that having decided to implement a certain measure - in this case to pursue the housing scheme - a State party cannot later decide not to implement it and base itself on discriminatory considerations.

Issues and proceedings before the Committee

Review of consideration of admissibility

9.1 The State party has requested the Committee on the Elimination of Racial Discrimination, under Rule 94, paragraph 6, of the Committee's Rules of Procedure, to reconsider its decision on admissibility. The Committee must therefore decide whether the petition remains admissible in the light of the further submissions of the parties.

9.2 The Committee notes that the State party's request for reconsideration raises the possible remedy of a petition to the municipal authority, advancing the matters currently before the Committee. The Committee observes, however, that under the State party's law, the municipal authority is solely under an obligation to receive the petition, but not to consider it or to make a determination on the outcome. In addition, the Committee observes that it is fundamental to the effectiveness of a remedy that its independence from the authority being complained against is assured. In the present case however the petition would re-present the grievance to the same body, the municipal council, that had originally decided on it. In such circumstances, the Committee cannot regard the right of petition as a domestic remedy that must be exhausted for the purposes of article 14, paragraph 7 (a), of the Convention.

9.3 As to the State party's remaining arguments, the Committee considered that these generally recast the arguments originally advanced to it in the course of the Committee's initial consideration of the admissibility of the petition. The Committee has already resolved these issues at that point of its consideration of the petition; accordingly, it would be inappropriate for the Committee to review its conclusions at the current stage of its deliberations.

9.4 In conclusion, therefore, the Committee rejects the State party's request for a reconsideration of the admissibility of the petition and proceeds to its consideration of the merits thereof.

Consideration of the merits

10.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

10.2 The Committee observes, at the outset, that it must determine whether an act of racial discrimination, as defined in article 1 of the Convention, that has occurred before it can decide which, if any, substantive obligations in the Convention to prevent, protect against and remedy such acts, have been breached by the State party.

10.3 The Committee recalls that, subject to certain limitations not applicable in the present case, article 1 of the Convention defines racial discrimination as follows: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field".

10.4 The State party argues firstly that the resolutions of the municipal council challenged make no reference to Roma, and must thus be distinguished from the resolutions at issue in, for example, the *Koptova*[25] case that were racially discriminatory on their face. The Committee recalls that the definition of racial discrimination in article 1 expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face

value but are discriminatory in fact and effect, that is, if they amount to indirect discrimination. In assessing such indirect discrimination, the Committee must take full account of the particular context and circumstances of the petition, as by definition indirect discrimination can only be demonstrated circumstantially.

10.5 In the present case, the circumstances surrounding the adoption of the two resolutions by the municipal council of Dobšiná and the intervening petition, presented to the council following the its first resolution make abundantly clear that the petition was advanced by its proponents on the basis of ethnicity and was understood as such by the council as the primary if not exclusive basis for revoking its first resolution. As a result, the Committee considers that the petitioners have established a distinction, exclusion or restriction based on ethnicity, and dismisses this element of the State party's objection.

10.6 The State party argues, in the second instance, that the municipal council's resolution did not confer a direct and/or enforceable right to housing, but rather amounted to but one step in a complex process of policy development in the field of housing. The implication is that the second resolution of the council, even if motivated by ethnic grounds, thus did not amount to a measure "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field", within the meaning of article 1, paragraph 1, *in fine*. The Committee observes that in complex contemporary societies the practical realization of, in particular, many economic, social and cultural rights, including those related to housing, will initially depend on and indeed require a series of administrative and policy-making steps by the State party's competent relevant authorities. In the present case, the council resolution clearly adopted a positive development policy for housing and tasked the mayor with pursuing subsequent measures by way of implementation.

10.7 In the Committee's view, it would be inconsistent with the purpose of the Convention and elevate formalism over substance, to consider that the final step in the actual implementation of a particular human right or fundamental freedom must occur in a non-discriminatory manner, while the necessary preliminary decision-making elements directly connected to that implementation were to be severed and be free from scrutiny. As a result, the Committee considers that the council resolutions in question, taking initially an important policy and practical step towards realization of the right to housing followed by its revocation and replacement with a weaker measure, taken together, do indeed amount to the impairment of the recognition or exercise on an equal basis of the human right to housing, protected by article 5 (c) of the Convention and further in article 11 of the International Covenant on Economic, Social and Cultural Rights. The Committee thus dismisses the State party's objection on this point.

10.8 In light of this finding that an act of racial discrimination has occurred, the Committee recalls its jurisprudence set out in paragraph 6.3, supra, of its consideration of the admissibility of the petition, to the effect that acts of municipal councils, including the adoption of public resolutions of legal character such as in the present case, amounted to acts of public authorities within the meaning of Convention provisions. It follows that the racial discrimination in question is attributable to the State party.

10.9 Accordingly, the Committee finds that the State party is in breach of its obligation under article 2, paragraph 1 (a), of the Convention to engage in no act of racial discrimination and to

ensure that all public authorities act in conformity with this obligation. The Committee also finds that the State party is in breach of its obligation to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing, contrary to article 5, paragraph (d) (iii) of the Convention.

10.10 With respect to the claim under article 6, the Committee observes that, at a minimum, this obligation requires the State party's legal system to afford a remedy in cases where an act of racial discrimination within the meaning of the Convention has been made out, whether before the national courts or in this case the Committee. The Committee having established the existence of an act of racial discrimination, it must follow that the failure of the State party's courts to provide an effective remedy discloses a consequential violation of article 6 of the Convention.

10.11 The Committee considers that the petitioners' remaining claims do not add substantively to the conclusions set out above and accordingly does not consider them further.

11. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of article 2, paragraph 1 (a), article 5, paragraph (d) (iii), and article 6 of the Convention.

12. In accordance with article 6 of the Convention, the State party is under an obligation to provide the petitioners with an effective remedy. In particular, the State party should take measures to ensure that the petitioners are placed in the same position that they were in upon adoption of the first resolution by the municipal council. The State party is also under an obligation to ensure that similar violations do not occur in the future.

13. The Committee wishes to receive, within ninety days, information from the Government of the Slovak Republic about the measures taken to give effect to the Committee's Opinion. The State party is requested also to give wide publicity to the Committee's Opinion.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be translated in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[1] The State party provides, with its submissions on the merits of the petition, the following full text of the resolution:

> "On its 25th extraordinary session held on 20 March 2002 the Town Council of the town of Dobšiná adopted the following resolution from discussed reports and points:
>
> RESOLUTION 251-20/III-2002-MsZ
>
> After discussing the proposal by Lord Mayor Ing. Ján Vozár concerning the building of low cost housing the Town Council of Dobšiná

Approves

the low cost housing - family houses or apartment houses - development policy and

Recommends

the Lord Mayor to deal with the preparation of project documentation and acquisition of funds for this development from state subsidies."

[2] Petitioners' translation, which reflects exactly the text of the petition set out in the translated judgement of the Constitutional Court provided by the State party in annexure to its submissions on the merits. The State party suggests in its submissions on the merits that a more appropriate translation would be: "I do not agree with the construction of flats for the citizens of Gypsy nationality (ethnicity) within the territory of the town of Dobšiná, as there is a danger of influx of citizens of Gypsy nationality from surrounding area [sic] and even from other districts and regions."

[3] The State party provides, with its submissions on the merits of the petition, the following full text of the resolution:

"RESOLUTION 288/5/VIII-2002-MsZ

I. After discussing the petition of 30 July 2002 and after determining the facts, the Town Council of Dobšiná, through the Resolution of the Town Council is in compliance with the law, on the basis of the citizens' petition

Cancels

Resolution 251-20/III-2002-MsZ approving the low cost housing - family houses or apartment houses - development policy.

II. Tasks

the Town Council commissions with elaborating a proposal for solving the existence of inadaptable citizens in the town of Dobšiná and then to discuss it in the bodies of the town and at a public meeting of the citizens.

Deadline: November 2002

Responsible: Chairpersons of commissions"

[4] The petitioners refer to

(i) Article 1 of the Act on the Right of Petition, which provides:

"*A petition cannot call for a violation of the Constitution of the Slovak Republic and its laws, nor deny or restrict individual rights*";

(ii) Article 12 of the Constitution, which provides:

(1) *All human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned; inalienable, imprescriptible and irreversible.*

(2) *Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.*

(3) *Everyone has the right to decide freely which national group he or she is a member of. Any influence and all manners of pressure that may affect or lead to a denial of a person's original nationality shall be prohibited.*

(4) *No injury may be inflicted on anyone, because of exercising his or her fundamental rights and freedoms.*

(iii) Article 33 of the Constitution, which provides:

"Membership in any national minority or ethnic group may not be used to the detriment of any individual"; and

(iv) The Act on the Public Prosecution Office, which provides that the Prosecutor has a duty to oversee compliance by public administration bodies with laws and regulations, and to review the legality of binding regulations issued by public administration bodies.

[5] *Koptova v. Slovak Republic*, Case No 13/1998, Opinion of 8 August 2000.

[6] Case No. 4/1991, Opinion of 16 March 1993.

[7] This section provides that: "The applicant may request a review of the lawfulness of dealing with his motion by filing a repeated motion; this new motion shall be dealt with by a superior prosecutor."

[8] Case No. 11/1998, Opinion of 9 August 2001.

[9] 3 EHRR 76 (1973).

[10] The petitioners refer to the *Belgian Linguistics* case, 1 EHRR 252, 283.

[11] CERD/C/304/Add.110 of 1 May 2001.

[12] See *Lacko*, supra, and, with respect to the Human Rights Committee, *R.T. v. France*, Case No. 262/87, Decision adopted on 30 March 1989, and *Kaaber v. Iceland*, Case No. 674/95, Decision adopted on 11 May 1996.

[13] See *Koptova*, supra, at paras. 2.9 and 6.4.

[14] Ibid., at para. 6.6.

[15] Ibid., at para. 6.5.

[16] Application No. 47237 of 2 July 2002.

[17] See the full text of the resolution set out in note 1, supra.

[18] See the full text of the resolution set out in note 3, supra.

[19] *Chapman v. United Kingdom*, judgement of 18 January 2001, and *Coster v. United Kingdom*, judgement of 18 January 2001.

[20] Op. cit.

[21] Ibid.

[22] Op. cit.

[23] Ibid.

[24] The petitioners cite the Committee's own Concluding Observations, dated 1 June 2001, on the State party (CERD/C/304/Add.110) [Note of the Committee: The Committee's most recent Concluding Observations on the State party are dated 10 December 2004 (CERD/C/65/CO/7)]. The petitioners also cite the Third Report on the State party of the European Commission against Racial Intolerance, dated 27 June 2003, a Report on the Situation of Roma and Sinti in the OSCE area, dated April 2000, by the Organisation for Security and Cooperation in Europe, the 2004 Report on Human Rights in the OSCE region by the International Helsinki Federation, the 2001-2002 World Report of Human Rights Watch, the Concluding Observations, dated 22 August 2003, of the Human Rights Committee on the State party (CCPR/CO/78/SVK), the Concluding Observations, dated 19 December 2002, of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.81), the Opinion on Slovakia, dated 22 September 2000, adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities and the 2003 Country Reports (Slovakia) on Human Rights Practices of the Department of State, United States of America.

[25] Op. cit.

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