

CENTRE ON
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**Written Submission of the
Centre on Housing Rights and Evictions (COHRE)
to the Committee on the Elimination of Racial Discrimination and its relevant
Special Rapporteur
at its 76th Session
on the occasion of the consideration of the
6th and 8th Periodic Reports of the Slovak Republic regarding lack of implementation
of the *Dobšiná* decision**

February 2010

1. On 20 March 2002, the Town Council of Dobšiná adopted a resolution approving “the low cost housing – family houses or apartment houses – development policy” and instructed the Mayor to take responsibility for the preparation of project documentation and acquisition of funds for the development of the policy from state subsidies¹ (“the First Resolution”).

2. A number of citizens then circulated a petition the text of which stated:

“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 inadaptible citizens of Gypsy origin from the surrounding villages, even from other districts and regions”.

3. The petition was signed by 2,700 inhabitants of Dobšiná and deposited with the Town Council on 30 July 2002. The Council considered the petition and, on 5 August 2002, passed a resolution stating that:

“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 [the First Resolution]” (“the Second Resolution”).

4. Members of the Roma community and their advisers called on the District Prosecutor to prosecute the Town Council of Dobšiná for its discriminatory act. The District Prosecutor refused to act. Members of the Roma community² therefore started an action against the Slovak Republic before the UN Committee on the Elimination of Racial Discrimination (CERD) for discriminating against them on the grounds of race in the field of housing. On 7 March 2005, CERD held that the First and Second Resolutions taken together amounted to an impairment of the recognition or exercise on an equal basis of the human right to housing protected by Article 5(e)(iii) of the International Convention on the Elimination of Racial Discrimination (ICERD). In addition, the CERD found a violation of Article 6 because the Slovak Government did not provide an effective legal remedy against the act of racial discrimination and therefore the State continues to violate Article 6 by failing to provide an effective remedy. In other words, the Slovak Government is under the

¹Text of the resolutions and petition taken from the 7 March 2005 decision of the Committee on the Elimination of all Forms of Racial Discrimination.

² Ms L R et al (represented by the European Roma Rights Centre and the League of Human Rights Advocates).

obligation to “take measures to ensure that the petitioners (members of the Roma community) are placed in the same position that they were in upon adoption of the first resolution by the municipal council [to build low-cost housing].”³ (emphasis added).

5. We respectfully submit that although nearly four years have elapsed since the CERD decision was issued, the situation on the ground has not changed and the Government and Local Municipal Council of Dobšiná have utterly failed to take any meaningful step towards effective implementation of the decision. Most importantly, the negative consequences resulting from the violation of the rights under the ICERD have not been adequately remedied and there is an urgent need to end the continuous situation for the petitioners who still to date live in dire inhuman conditions.

13. The Government of Slovakia has yet to abide fully with providing an effective remedy for the violations of ICERD. Under international law, the Government of Slovakia is obligated to provide adequate, effective and prompt reparation for the violation of the International Convention on the Elimination of Racial Discrimination (ICERD) as found in the case of *Ms L. R. v. Slovakia* (CERD/C/66/DR/31/2003).

14. According to the universal principle of *pacta sunt servanda*, “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”⁴ The ICERD requires in Article 6 that States Parties “assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his [or her] human rights and fundamental freedoms contrary to [the ICERD].”⁵ The principle of *pacta sunt servanda* consequently obliges the Government of Slovakia to provide an effective remedy for the violations found by the Committee on the Elimination of Racial Discrimination (CERD) in the case of *Ms L R et al.*

³ CERD/C/66/DR/31/2003, Page 15.

⁴ Vienna Convention on the Law of Treaties, Art. 26, 1155 U.N.T.S. 331, *entered into force* 27 January 1980.

⁵ International Convention on the Elimination of Racial Discrimination, Art. 6,

15. Additionally, effective remedy is a key core element of the European human rights legal order. The European Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) enshrines, at Article 13,⁶ a right to an effective remedy in the text of the Convention itself. In an extensive body of jurisprudence, the Court has applied this case law to states failing to provide effective remedy to victims of Convention violations, including violations of the Convention arising as a result of slum housing conditions.⁷ In addition, however, the Court has repeatedly found that effective remedy is a right arising not only from the Article 13 guarantee, but is indeed a component inhering in many if not all of the Convention's substantive articles,⁸ including in cases involving racial discrimination against Roma.⁹

16. In addition, the European Committee of Social Rights, in its case law concerning the European Social Charter and Revised European Social Charter, has consistently held that the Charter requires provision of an effective remedy, particularly for harms arising as a result of discrimination. For example, in its 2002 Conclusions concerning France, the Committee held, "... states undertake to prohibit any discrimination, whether this takes the form of an explicit rule or occurs in practice, and to organise appropriate and effective remedies in the event of allegations of discrimination."¹⁰

17. International law recognizes that the proper effective remedy for violations of human rights should be *restitution in integrum* when possible. The remedy of *restitutio in integrum* requires the victims to be placed in the position they would have been in had the unlawful act not occurred.

⁶ "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

⁷ See *Öneriyildiz v. Turkey*, E.Ct.H.R., (*Application no. 48939/99*), Judgment of 30 November 2004.

⁸ "36. The Court has already considered, in the context of Article 8, whether an adequate means of obtaining a remedy was available to Miss Y. Its finding that there was no such means was one of the factors which led it to conclude that Article 8 had been violated. This being so, the Court does not have to examine the same issue under Article 13." (*X and Y v. Netherlands*, Eur.Ct.H.R., Judgment of 27 February 1985, para. 36).

⁹ See *Bekos and Koutropoulos v. Greece*, Eur.Ct.H.R., (*Application no. 15250/02*), Judgment of 13 December 2005.

¹⁰ European Committee of Social Rights, Conclusions 2002, France, p. 24, cited in European Committee of Social Rights, *Digest of the Case Law*, December 2006, p.176.

18. In *Mehemi v. France* the European Court of Human Rights, for instance, affirmed that the remedy of *restitution in integrum* should be prioritized, holding that “if the nature of the breach allows of *restitution in integrum*, it is for the respondent State to effect it...”¹¹ Likewise, the Inter-American Court of Human Rights has held that reparation of harm brought about by the violation of an international obligation consists of full restitution (*restitution in integrum*), which includes the restoration of the prior situation and the reparation of the consequences of the violation.¹² This principal has also been reaffirmed in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* adopted unanimously by the United Nations General Assembly in 2006. The *Basic Principles and Guidelines* require that “restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law ... occurred.”¹³

19. In order to satisfy the remedy of *restituto in integrum*, the restoration of the prior situation and the consequences of the violation entail not only restoring the First Resolution and rescinding the Second Resolution, but promptly implementing the First Resolution. Only by doing so will the victims be placed in the situation they would otherwise be in had the First Resolution been implemented as planned in 2002. That situation would entail where the community would be placed at the present time had the First Resolution been implemented some six years ago. Consequently, the Government of Slovakia is legally obligated to ensure that the low-cost housing as called for in the First Resolution is constructed and made available promptly to the intended beneficiaries.

20. Consequently, COHRE calls upon CERD to again notify the Slovak Republic of its failure to abide by the its decision in the *Dobšiná* case.

¹¹ *Mehemi v. France*, Eur.Ct.H.R., judgment of 26 September 1997, (1997-VI) 51 Reports of Judgments and Decisions at 1959.

¹² *Velasquez Rodriguez Case (Compensatory Damages)*, 7 Inter-Am.Ct.H.R. (ser.C), at paras. 6, 25026 (1989).

¹³ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Sec. IX, para. 19, UNGA Res. A/RES.60/147, Annex (2006).