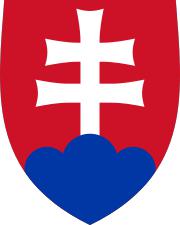
**PUBLIC DEFENDER OF RIGHTS**



**Public Defender of Rights’ report**

Information for the Committee on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to assist in the evaluation of Slovakia’s compliance.

Submitted by:

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1. **Public Defender of Rights**

In the anticipation of its accession to the European Union, Slovakia created its historically first ombudsman institute in 2001. It defined the role of the Public Defender of Rights in Article 151a of the Slovak Constitution.

According to the article 151a (1):

*“The Public Defender of Rights is an independent body which in the scope and in manner laid down by a law protects the fundamental rights and freedoms of natural persons and legal entities in the proceedings, before public administration bodies and other public bodies, if activities, decision making or inactivity of the bodies are inconsistent with legal order. In cases laid down by a law the public defender of rights can participate in calling the persons acting in public bodies to responsibility, if the persons have violated fundamental right or freedom of natural persons and legal entities.”*

The National Council of the Slovak Republic also enacted a separate Act on Public Defender of Rights 546/2001 Coll. of Laws, which deals with the elections of the ombudsman, the scope of their responsibilities and the conditions for fulfilling their mandate.

1. **Introduction**

Since Slovakia’s last report to the Committee there have been some positive developments, but there still persist issues of grave concern. In the following sections, the Public Defender of Rights would like to furnish her report and recommendations to the UN Committee against Torture in advance of its 62nd session (6 November – 6 December 2017), during which Slovakia and its List of Issues prior to reporting will also be considered.

The following recommendations were initially delivered to the Slovak Police President on 3 March 2015. As explained throughout this report, the Police President and the Slovak Minister of Interior have repeatedly failed to adopt measures and recommendations issued by the Public Defender of Rights. These measures are intended to eliminate the possibilities for violation of human rights and fundamental freedoms by police practices, especially by locking up individuals in confined premises that are not official detention cells and handcuffing those persons to the wall at a police officer’s discretion.

1. **Summary of Recommendations**
2. **To expressly stipulate in the Act on the Police Force as follows:**

**- within the premises of a police building, a police officer is prohibited to restrict the liberty of a natural person by placing that person in confined premises other than the police detention cells intended for that purpose;**

**- a police officer is prohibited to handcuff a detained person to the wall and other objects, to tie up or otherwise immobilise that person in the absence of a medical recommendation which clearly shows that such treatment is necessary in order to protect the health of the detained, confined or arrested person;**

**- if, during the detention, confinement or arrest, the mental or physical health of the person detained, confined or arrested by a police officer deteriorates, the police officer is required to present a medical report stating the cause of such deterioration.**

1. I repeatedly note that the Slovak Republic has not created conditions for the fulfilment of the **fundamental human right to an independent and effective investigation** of the conduct taken by the police or other public authorities that have used force against a natural person and, therefore, that person **cannot duly exercise his/her right to an effective remedy and reasonable compensation** if the fault in the conduct applied by the public authority is proven. Since, pursuant to Article 86(e) of the Constitution of the Slovak Republic, the National Council may establish government ministries and other public authorities, **I recommend that the National Council establish an impartial body to investigate** police proceduresand procedures followed by other public authorities against a natural person where a suspicion of an **unauthorised use of force, torture, cruel and inhuman treatment** exists. **The impartiality requirement requires that this body is not subordinated to the government, is not part of the Ministry of the Interior, the police force, prosecutor’s office and other authorities, and that its personnel does not involve police officers, former police officers or members of other forces whose conduct it should examine.**
2. Under Article 86(a) of the Constitution of the Slovak Republic, the National Council is also competent to inspect how the laws are complied with, therefore, I recommend that members of parliament **conduct a parliamentary inquiry** into the use of those police premises that are not police cells but have been established for the purposes of the so-called temporary confinement of individuals.
3. **Current legislative framework (Article 2)**

Pursuant to Article 2(2) of the Constitution of the Slovak Republic, **the** **state authorities may** **only act in compliance with the constitution, within its limits and scope, and in a manner laid down by the law.**

**Pursuant to Article 17(2) of the Constitution of the Slovak Republic, no one can be prosecuted or deprived of liberty for other reasons and in a different manner than as laid down by the law.**

**This implies that the fundamental right to personal liberty is protected by the constitution and may only be restricted based on the law, in a manner, and for reasons laid down by the law.**

The police may restrict personal liberty be detaining a person solely on grounds governed by the provision of §19 of Act No. 171/1991 Coll. on the police force as amended. The provisions of §42 et seq. of said act govern the possibility to confine a detained person in a police detention cell, including the conditions for such confinement and requirements concerning the furnishing of the detention cell. **The law does not permit any other manner of placing individuals in any other confined area. Any such conduct taken by police officers must inevitably be considered overstepping their powers defined by the Constitution of the Slovak Republic, hence an arbitrary conduct.**

The failure to adopt any measures to remove the identified deficiencies and their **whitewashing by the ministry** thus **make it possible to carry on with the unlawful practices that result in a severe violation of human rights and fundamental freedoms**.

On 26 January 2015, the police president issued the “Order for the implementation of tasks to comply with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”. **Paradoxically, this internal regulation, aimed at ensuring a higher level of compliance with the human rights and fundamental freedoms in police practice, is the only standard that governs the use of illegal reserved areas.** Point 1(c) of the Order commits the head of the National Criminal Agency, the head of the Border and Alien Police Authority and regional police chiefs to ensure, following an individual assessment of a particular case, that persons whose liberty has been restricted are placed in so-called “designated areas of the police department intended for the placement of persons whose liberty has been restricted” and handcuffed to suitable objects only for the absolutely necessary period of time, with every such event, including its duration, being duly recorded in a respective administrative file and form.

It means that the current legal framework governing the containment of persons in illegal reserved areas by the police officers is laid down in an **order of the police president which has no legislative nature and force and cannot serve as a legal standard governing the manner in which personal liberty may be restricted as contemplated under Article 17(2) of the Constitution of the Slovak Republic.** Having issued this internal regulation, the police president has created conditions for the police officers to act arbitrarily.

1. **Outcomes of the investigation conducted by the Public Defender of Rights (Article 2 and Article 4)**

Having conducted an investigation concerning the protection of and respect for the fundamental rights and freedoms of persons placed in police detention cells in 2015, I have established that the police have premises created in their buildings that they use for restricting the liberty of detained persons. **These premises are not considered police detention cells and are not governed by legal arrangements prescribed for such cells under the law.** They are mostly sections of a room or corridor separated by bars, usually furnished with a single chair or bench; some of them contain wall-mounted rings or handles to which detained persons are handcuffed.

The police officers commonly use these areas to lock up and handcuff individuals, and consider them a customary part of the police work. They call them “reserved areas”, “rooms for arrested persons” or “holding rooms”. According to the police officers, they are **“detention premises designed for a temporary confinement of persons whose liberty has been restricted"**.

The investigation resulted in serious findings:

1. **In order to restrict the liberty of natural persons, the police do not always use the police detention cells as prescribed by the law and do not follow the procedures stipulated by the law at all times.** For their own purposes, the police have created special premises in the police buildings that are not official police detention cells. These other areas are customised to allow restricting the liberty of natural persons. The premises **do not only serve for restricting the liberty of natural persons, but also for handcuffing them to wall-mounted fixtures**. The areas are bare, they lack the furnishing with which the police detention cells must be equipped to provide the environment compatible with the respect for human dignity. They lack toilettes, sinks, windows, proper ventilation, tables, beds or emergency callers; on the other hand, they are fitted with wall-mounted metal rings or similar fixtures that serve for handcuffing detained persons to the wall. The police officers call them “reserved areas”, which is not an official legal term; hence it is clear that such premises and their definition are unknown to the law.
2. **The police commonly use these illegal premises customised to restrict the liberty of, and handcuff detained persons to the wall**, which are not official police detention cells. **The police officers, at their own discretion, temporarily confine individuals brought in to a police station for a period of time they alone decide about and for reasons they consider necessary (for example, due to practical reasons, such as completing files).** The liberty of a natural person is restricted in such cases due to a police officer **not placing the person in the police detention cell** specifically established and equipped for this purpose for which administrative records must be completed, containing the duration of, and reasons for such confinement, **but** **by placing that person in a different confined, degrading room that lacks any furnishing and where the person may even be handcuffed to the wall.** It means the personal liberty of natural persons is restricted through their confinement in **the premises that are not governed by the applicable legislation, which can even be done without making official records about such confinement.** When doing so, the police officers follow their own procedure not prescribed by the law.

In order to ensure the protection of fundamental rights and freedoms with respect to this police practice, I consider it necessary to adopt the measures I have proposed to the police president:

**To impose an immediate ban on the restriction of personal liberty** of natural persons **in the form of their confinement in “reserved areas” in police buildings** that are not official detention cells, and in any other confined premises other than official police detention cells, as well as to immediately order the **abolishment of the “reserved areas”** set up in police buildings for the purposes of restricting the liberty of natural persons placed in such areas.

1. **Response from the police and the Minister of Interior (Article 11, Article 12 and Article 16)**

The report on the results of the investigation was delivered to the police president on **3 March 2015**, along with my request for his position on the investigation results and information about adopted measures to be provided within 20 days of the delivery of the report.

On **20 March 2015**, the police president replied that he would have the report examined by expert departments of the police presidium and by regional police directorates. The police president replied within the statutory period by a very polite letter, the content of which, however, implies that he had not follow the procedure specified in §19(2) in conjunction with §22(2) of the Act on the Public Defender of Rights under which a public authority is required to “inform the public defender of rights about its position on the results of investigation and about adopted measures” within the statutory period of 20 days.

On **16 April 2015**, pursuant to §19(2) in conjunction with §22(2) of the Act on the Public Defender of Rights, I notified the Minister of the Interior of the Slovak Republic – as the superior authority of the police force and the superior authority of the police president – that I consider it unsatisfactory that the police president had failed to provide a specific position on the results of the investigation and had not adopted measures recommended by the public defender of rights intended to eliminate the possibilities for violation of human rights and fundamental freedoms by police practices, especially by locking up individuals in confined premises that are not official detention cells and handcuffing those persons to the wall at a police officer’s discretion.

In a letter dated **6 May 2015**, the minister replied he had received the police president’s final position regarding the recommended measures on **28 April 2015**.

The content of the police president’s final position of 28 April 2015 clearly shows that he did not adopt any measures, nor had he ordered any measures to be adopted.

In a notification of **1 June 2015** to the Minister of the Interior of the Slovak Republic, I stated that I considered the failure to adopt measures and the police president’s final position unsatisfactory.

The Minister of the Interior of the Slovak Republic replied by a letter of **17 June 2015** in which he said that he deemed the police president's position sufficient and that no measures would be adopted.

Since the findings that the violation of human rights and fundamental freedoms is a common practice in the procedures followed by the police which are not backed by the law, and since these findings are of exceptional significance and, moreover, given that such practice is accepted by the ministry, I resorted, for the first time in the history of the public defender of rights, to proceeding pursuant to §19(5) of the Act on the Public Defender of Rights, and sent a Notification of the Public Defender of Rights to the National Council of the Slovak Republic on 15 July 2015. The Human Rights and National Minorities Committee of the National Council of the Slovak Republic discussed the notification in November 2015 but, despite being quorate, failed to adopt any resolution on the matter.

1. **Detention of an applicant in Lučenec (Article 12, Article 14 and Article 16)**

Another finding made by the Public Defender of Rights, concerning the detention of an applicant by the district police authority in Lučenec between 10 and 13 May 2016, is an example of the ongoing violation of fundamental rights and freedoms by the police. I have investigated the actions taken by the police during the applicant’s detention based on a petition. I found out that **the police had placed this person in an illegal reserved area** at 4:50 pm on 10 May 2016 and kept him locked in there until 2:15 pm on 11 May 2016. The applicant **spent nearly 24 hours** (including the whole night) **in a room not furnished with a bed and toilet, being handcuffed the whole time, according to his own words.**

After his release from the Lučenec district police department, **a** **doctor** **ascertained that the applicant had suffered numerous injuries** – extensive hematomas on his right and left hand, on his face, in kidney area and on the back of his thighs, several broken ribs, broken vertebral projections, kidney failure. Moreover, the applicant underwent two medical examinations (including a chest radiograph) on the day of his detention, indicating **that he had no injuries at the time he had been detained**. **The police failed to provide me with convincing evidence that the injuries had not been inflicted at the police department.**

Having examined the petition, I held that the conduct taken by the Lučenec district police had been **in breach of Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of Article 16(2) of the Constitution of the Slovak Republic which prohibits torture or other cruel, inhuman or degrading treatment or punishment**.

However, after the applicant’s case was taken up by the media and the police conduct was openly questioned and criticised by the public, I have received **several petitions alleging a similar conduct by Slovak police officers**. All petitions concerned the police **placing applicants in illegal reserved areas overnight** and in one of the petitions the applicant also claimed mistreatment by the police officers in regards to extracting her testimony. It is also important to note that **two** of the five **applicants were women**.

1. **Conclusions**

I am confident that placing persons whose liberty has been restricted in illegal reserved areas constitutes such degrading treatment, that is, those persons are being treated as objects rather than subjects of law.

**The absence of legislative conditions for placing and keeping individuals in such premises (**advise on rights, a right to legal assistance, provision of information to a close person/relative, a possibility to file a complaint or seek remedy), **as well as the absence of requirements concerning the furnishing of such premises** (no bed, no monitoring, no possibility to call assistance, provision of food and drinking regime) create **room for an arbitrary conduct without the possibility of proper control and without the guarantee that human rights and fundamental freedoms are observed.**

**In a democratic country governed by the rule of law, unlawful conduct by a public authority cannot be justified by** operating,organisational, technical, financial, or any other institutional needs.This unlawful police practice represents a multiple interference in fundamental rights of a natural person, namely pursuant to Article 5 of the Convention (restriction of personal liberty for uncertain time in unlawful premises and unlawful manner), as well as pursuant to Article 3 of the Convention (inadequate conditions in such premises, if the detained person is kept there for several hours).

**In a letter of 28 April 2015, the police president informed me that the definition of the so-called “reserved area” had been submitted for a law-making procedure** in order to incorporate it in an amendment to the Act on the Police Force. **I note that the amendment has not been passed to this date and that the existing arrangements still allow the police to interfere in the human rights and fundamental freedoms when acting according to their customary practice.**

Any police procedure not governed by the law is inadmissible in a democratic country governed by the rule of law. This police conduct, identified and demurred by the public defender of rights, represents a customary police practice the consequence of which is an ongoing violation of human rights and fundamental freedoms of a large number of individuals. It is a clearly arbitrary conduct of a public authority.

**I consider it a serious fault that,** after I had warned of a grave violation of the fundamental human rights resulting from an unlawful police practice, **the competent police officer, instead of imposing an immediate ban on such unlawful practice, issued an order by which he commanded his subordinates to apply that unlawful practice, as also evidenced by the Lučenec case. This unlawful police practice continues violating the fundamental human rights at a system-level, hence affecting a large number of individuals.**