

**NGO Information to the United Nations Committee against Torture  
For consideration when compiling the List of Issues Prior to Reporting (LOIPR)  
in respect of Slovakia**

Submitted by:

Human Rights League (HRL)  
Forum for Human Rights (FORUM)

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## Introduction

This written submission provides an outline of issues of concern with regard to the Slovak Republic's compliance with the provisions of the UN Convention Against Torture (hereinafter "the CAT"), with particular focus on rights of migrants.

The submission has been written jointly by two non-governmental organisations, the Human Rights League (HRL)<sup>1</sup> and the Forum for Human Rights (FORUM)<sup>2</sup>, and is aimed to assist the Committee with its consideration of List of issues prior to reporting in respect Slovakia's Fourth Periodic Report about compliance with the CAT.

## Concrete Comments

### 1. Ratification of OP-CAT

One of the key concerns is the fact that Slovakia has failed to ratify the OP-CAT. In practice, there is a systemic lack of monitoring of places of detentions, including immigration detention. **Therefore, we kindly ask the Committee to raise this issue in LOIPR.**

### 2. Immigration detention

#### 2.1. *Immigration detention of families with children*

Slovak authorities **routinely** detain migrant families with minor children in the immigration detention centres which are not accommodated to their needs. In 2015 and 2016 there were 451 children who arrived to Slovakia, especially from Afghanistan, Iraq, Syria and Kosovo.<sup>3</sup> In in the first three months of 2017 another 27 children were placed in detention, coming from Afghanistan, Iran, Iraq and Syria. There were 12 children of 0-6 years of age, 12 children 7 – 15 years of age and 3 children were 16 or 17 years of age. Average duration of their stay in detention had been 19 days.<sup>4</sup> Other data on reasons and the length of their detention are unavailable.

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<sup>1</sup> HRL is a civic association established in 2005 by lawyers and attorneys dedicated to providing legal assistance to foreigners and refugees in Slovakia with aspiration to support building of transparent and responsible immigration, asylum and integration policies respecting human rights and dignity. The HRL combines provision of direct services - quality and free-of-charge legal aid to migrants and refugees in Slovakia with advocacy and strategic litigation in relation to establishment, development and implementation of immigration, asylum and integration policies in Slovakia. The HRL also strives to contribute to education of new generation of young lawyers knowledgeable and skilled in the area of asylum and immigration law. Human Rights League cooperates with Trnava University Law Faculty facilitating its Asylum Law Clinics. For more information, please visit [www.hrl.sk](http://www.hrl.sk).

<sup>2</sup> FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM authored and co-authored number of reports and information with the UN and Council of Europe bodies on situation in the Central European region, especially Slovakia and the Czech Republic. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).

<sup>3</sup> Data gathered by the Foreign Police Directorate.

<sup>4</sup> Ibid.

There are two immigration detention centres in Slovakia, *Sečovce*<sup>5</sup> and *Medvedov*<sup>6</sup>. None of the detention centres is suitable for accommodation of families with children. Both centres are operated and guarded by the foreign police and have strict **prison-like regime**. The centres are surrounded by barbed wire and all windows are wired. The detained persons can move freely only within the designated sector and movement in fresh air is possible only twice a day for one hour for adults and three times a day for minors under supervision of uniformed police guards.<sup>7</sup>

Further, children with parents are escorted for having a meal twice or three times a day. There is a minimum of civil personal in these centres. The families with children are constantly guarded by uniformed police, even during visit of physician or during one hour walks in the open air. Even the playgrounds in *Sečovce* detention centre are surrounded by wire. Only very recently, the legislative amendment introduced a right of minors detained in immigration detention to education (previously they had right to education only after three months of detention) and to leisure activities.<sup>8</sup> However, there are persisting concerns as regards access to education as it remains unclear when exactly children are allowed to enter the school during school year and how their education is being provided in practice. Also very recently, the legislator introduced a right of families with children to psychological and social services and crises intervention<sup>9</sup>, however, it is not yet clear how this right will be fulfilled in practice.

We are very concerned about the practice of routine detention of families with minor children in immigration detention in Slovakia which constitutes inhuman and degrading treatment in respect of children and may reach that level also in respect of their parents.<sup>10</sup> Many international bodies and experts explicitly recommend abolishing detention of families with children in immigration context.<sup>11</sup>

*Proposed questions:*

What steps have the Government been planning to take in order to abolish detention of migrant families with children in irregular position?

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<sup>5</sup> *Police Detention Centre in Sečovce* is located in eastern Slovakia, 60 km from the Ukrainian border. It has capacity to detain 176 persons with possibility to increase the capacity to 184 persons.

<sup>6</sup> *Police Detention Centre in Medvedov* is located in southwest Slovakia, on the border with Hungary. It has capacity to detain 152 persons, with the possibility to increase the capacity by 40 more places.

<sup>7</sup> Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 96(1).

<sup>8</sup> *Ibid.*, Section 96(2).

<sup>9</sup> *Ibid.*, Section 96(3).

<sup>10</sup> See, among others, *Muskhadzhiyeva and Others v Belgium*, no. 41442/07, ECHR judgment of 19. 1. 2010; *Popov v France*, no. 39472/07 and 39474/07, ECHR judgment of 19. 1. 2012; *A. B. and Others v. France*, no. 11593/12, ECHR judgment of 12. 7. 2016. See also the Human Rights Committee jurisprudence on this topic, in particular 1050/2002, *D. and E. v. Australia*, para. 7.2; 794/1998, *Jalloh v. Netherlands*, paras. 8.2–8.3; 1324/2004, *Shafiq v. Australia*, para. 7.3; 900/1999, *C. v. Australia*, paras. 8.2 and 8.4

<sup>11</sup> See, among others, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 5 March 2015, A/HRC/28/68, § 80; Report of the Special Rapporteur on the human rights of migrants, François Crépeau, Regional study: management of the external borders of the European Union and its impact on the human rights of migrants, 24 April 2013, A/HRC/23/46, § 48; UN Committee on the Rights of the Child, report of 2012 Day of General Discussion of 28 September 2012, “The Rights of All Children in the Context of International Migration”, § 32.

Please provide information on conditions in detention centres for families with minor children and average duration of their detention.

## **2.2. Lack of alternatives to detention**

The detention of migrant families with children in irregular position can be ordered by foreign police authority by a detention order, which is an administrative decision.<sup>12</sup> The immigration detention can be ordered only for the necessary period of time and may last up to six months (this period cannot be prolonged in case of families with minor children).<sup>13</sup>

The law provides for two alternatives to detention - financial guarantee and report of residence.<sup>14</sup> However, in order to use the alternative, a foreigner must show that he/she has: (i) accommodation, and at the same time, (ii) financial means to cover for each day of his/her stay the amount of EUR 56/day.<sup>15</sup> It is worth to mention that minimal monthly life subsistence in Slovakia in 2017 was EUR 198.09 per adult person.<sup>16</sup> Thus, a foreigner whose detention should be determined for say 30 days would have to prove to have at least EUR 1,680 in order to be granted alternative to detention in form of residence reporting. This makes this form of alternative practically inaccessible to families with children, taking into consideration that they would have to (i) find an accommodation in a foreign country and (ii) prove financial means for every family member in the amount stated above. Further, there are no support services or special shelters for migrant families available. Therefore, to our knowledge, the alternatives to detention have been rarely used in practice and they are *de facto* inaccessible to migrant families in irregular position.

### *Proposed question:*

Please, inform the Committee about conditions for applicability of alternatives to immigration detention, including data on use of alternatives.

## **2.3. Conditions in immigration detention centres**

Another issue of concern are conditions of detention centres in general. Upon a placement in detention facility, foreigners have very limited access to outside world. Their mobile phones, laptops and other devices are confiscated and they could use the telephone machines on coins only. The access to internet is not routinely provided, unless in specific cases.

The law provides that health care for detainees is covered by public health insurance provided by the State, but detainees need to pay for certain medical interventions and medication as any other participant in the public health insurance system.<sup>17</sup> **Medical care** is provided by nurse every working day and by doctor who visits the detention centre on

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<sup>12</sup> Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 88 et seq.

<sup>13</sup> Ibid, Section 88(4).

<sup>14</sup> Ibid, Section 89 (3).

<sup>15</sup> Decree of the Ministry of Interior of the Slovak Republic no. 499/2011 of 15 December 2011 on determining the amount of funds needed to cover the costs of residence of third country to the territory of the Slovak Republic.

<sup>16</sup>Source: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/hmotna-nudza/zivotne-minimum/>

<sup>17</sup> Law no. 499/2011 Coll. on health insurance as amended, Section 3(3)(f)

regular but not daily basis. Communication problems were reported frequently as the medical personnel do not speak foreign languages and interpreters or cultural mediators are rarely called by the centres to interpret during medical check-ups. Several families complained about insufficient medical treatment, lack of direct communication with medical personnel and related insufficient understanding of diagnosis and of provided treatment. Moreover, there is **no psychologist** or any other relief services in neither of the detention centres unless provided by NGOs through project funds. There is only one social worker employed by *Sečovce* detention centre and one by *Medved'ov* detention centre who shall secure communication with all the detained persons.

There is **no specific procedure being in place to identify and treat vulnerable persons**. HRL encountered cases where a person with serious psychiatric condition had been detained in prolonged periods in *Medved'ov* detention centre without any access to psychological care. Also we are concerned about single woman being placed in the *Medved'ov* detention centre without necessary accommodations of their needs.

Further, there is a practice of **systematic handcuffing** of migrants who are detained. HRL observed that almost every migrant who had been detained was subjected to handcuffs and even special belt when transported, including women and parents of minor children. Handcuffs are routinely ordered and not used only exceptionally.

Finally, being subjected to these conditions, the section 91 (3) of the Act on Residence of Foreign Nationals provides that when released, detained persons have to **pay the costs of their detention**, particularly the food that had been provided.

*Proposed questions:*

Please, provide detailed information about conditions in immigration detention centres, including on access to health and psychological care. Describe the procedure of identification of vulnerable persons and accommodations of their needs.

Further, please inform the Committee under which circumstances can persons detained for immigration purposes be handcuffed and provide information about incidence of handcuffing of detained foreign nationals.

#### **2. 4. Police violence and solitary confinement in the Medved'ov detention centre**

We would also like to draw the Committee's attention to Report of the Slovak Defender of Rights who performed investigation of **police intervention** in the *Medved'ov* detention centre of **3 September 2015** against detained foreigners who decided to protest against conditions in the centre, and found a number of violations of detainees' rights, including inappropriate use of force.<sup>18</sup> The incident had been largely medialized and the media reports include a video depicting the incident.<sup>19</sup>

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<sup>18</sup> Slovak Defender of Rights, Notification about results of investigation of police intervention and proposition of measures to be taken, no. 2527/2015/VOP, 25 September 2015.

<sup>19</sup> See among many Monika Tódová, Proti utečencom v Medved'ove zasahovali policajti, ktorí nevedeli po anglicky, 28. 9. 2015, Dennik N, available at: <https://dennikn.sk/253036/put-your-hands-stol-znela-vyzva-policajta-utecencom-medvedove/>

Since several of the protesting foreigners had been placed in the solitary confinement after the incident, the Slovak Defender of Human Rights also monitored the conditions in the cells of **solitary confinement**. She concluded that these cells do not meet the international standards. In particular, the Defender noticed that system of treatment with persons placed in solitary confinement has prison-like character, and that this system is dehumanised and allows for their degradation. In particular, the Defender discovered that the persons placed in solitary confinement are under **constant monitoring**, that their cells have **full and round the clock artificial lightening** (including during the night), that the detainees are under constant **camera recording** of whole cell **including toilet**, that they stay in one small empty cell interrupted by short walk in small empty fenced and guarded yard. The report further continues with other findings.

These reports of the Slovak Defender are not public since they reacted on individual complaints. We believe, however, that the Committee should get acquainted with these reports as they contain very serious information and suggest that the conditions in the solitary confinement in the *Medved'ov* detention centre violate prohibition of inhuman and degrading treatment.

*Proposed questions:*

Please provide information of all incidents of police violence in the immigration detention centres, including the police intervention of 3 September 2015. Please inform the Committee about the results of investigation into this incident.

Please provide information about the conditions in solitary confinement cells in the *Medved'ov* detention centre, including the number of persons placed in these cells, on what grounds and for how long.

### **3. Access to legal aid**

Apart from above expressed concerns, we would like to inform the Committee about general lack of legal aid available to asylum seekers detained in immigration detention centres. Free legal aid is crucial to effectively secure guarantees of *non-refoulement* to the foreigners deprived of their liberty as well as guarantees against arbitrary detention.

First of all, the detained foreigners have no access to free legal aid in the administrative proceedings before the foreign police (process when a foreigner is at the police station which decides on his/her immigration detention). This is very problematic as from our practice this is the most important stage of the procedure as it is crucial to reveal substantial issues that can change the course of actions of the police, including deciding on alternatives to detention or not to detain the person at all.

Once detained, the foreigners in material need have right to free legal aid in the judicial proceedings to review legality of their detention. Free legal aid shall be provided by the Legal Aid Centre.<sup>20</sup> In practice detained foreigners particularly in the *Medved'ov* detention

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<sup>20</sup> The Centre for Legal Aid was created pursuant to the Act No. 327/2005 Coll. on the Provision of Legal Aid for People in Material Need (hereinafter only „the Act“) as a state budgetary organization under the Ministry of Justice of the Slovak Republic with the aim to provide free legal aid to persons in material need. For further

centre may have problems to reach free legal aid. The *Medved'ov* detention centre is not periodically visited by lawyers from the Legal Aid Centre and in such situation the foreigners can make a request with the police in the detention centre and request visit by the Legal Aid Centre. However, this may take considerable time and the time-limit to initiate judicial review of detention is only 7 days (counted from the moment of detention order).

What is even more worrying is that **asylum seekers in detention have been excluded from free legal aid** in the asylum proceedings in the first instance (i.e. the proceedings before the migration office of the Ministry of Interior).<sup>21</sup> We consider this practice to be discriminatory and contrary to international obligations of Slovakia to secure protection against *non-refoulement*. The first instance asylum proceedings are the only proceedings in which international protection can be granted. The courts which examine appeals cannot grant asylum. Also all evidence has to be submitted in proceedings before the migration office where no legal aid is provided to detained foreigners. Also unlike asylum seekers residing in asylum facilities, asylum seekers detained in detention centres have very limited or no access to information on asylum procedure in Slovakia, their rights and duties and legal assistance being provided in the asylum facilities.

*Proposed questions:*

How does the Government secure access to free legal aid in the detention centres for foreign nationals, including in the asylum proceedings? What is the scope of the legal aid available to asylum seekers in Slovakia in general?

#### **4. Guarantees of *non-refoulement* at the Slovak-Ukrainian border**

Human Rights League have been monitoring the access of foreigners to the territory of the Slovak Republic and to asylum procedures at the Slovak-Ukrainian border since 2007 as implementing partner of UNHCR. We have received complaints that foreign nationals were **pushed back to Ukraine** within hours claiming that their application for asylum had been ignored by the Slovak border police. Similar findings were published by the Human Rights Watch.<sup>22</sup> Having no means to verify their statements, we have advocated for presence of independent monitors during the border procedures ensuring effective information of foreigners and their sufficient access to asylum procedures in Slovakia. Foreigners in the border procedures have no access to free legal aid, since the Legal Aid centre does not have legal competence to provide legal aid in border procedures. Their access to information, UNHCR or non-government organisations during border procedures are very limited. We also find problematic that the police in many cases excluded **suspensive effect** of appeals

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information about the Centre, see: <http://www.centrumpravnejpomoci.sk/wp-content/uploads/2014/03/WEB-AJ042016.pdf>.

<sup>21</sup> Legal regulation guarantees free legal aid for asylum seekers only in the appellate proceedings, but the Ministry of Interior sponsors free legal aid via EU funds also for asylum seekers in the first instance proceedings before the Migration Office. However, these funds cover only persons residing in asylum facilities or serving prison sentence and NOT asylum seekers detained in the immigration detention centres.

<sup>22</sup> Human Rights Watch, *Buffeted in the Borderland. The Treatment of Asylum Seekers and Migrants in Ukraine*, December 2010, available at: <https://www.hrw.org/report/2010/12/16/buffed-in-borderland/treatment-asylum-seekers-and-migrants-ukraine>.

against expulsions which enabled immediate transfer of these persons to Ukraine without any possibility to have expulsion orders reviewed by subordinate body.<sup>23</sup>

In this context, we would like to draw the Committee's attention to the **two cases pending** before the European Court of Human Rights:

- The case ***Asady and Others v. Slovakia*** (no. 24917/15)<sup>24</sup> relates to the collective expulsion of nineteen asylum seekers within hours from Slovakia to Ukraine in November 2014. The applicants complain that their expulsion had been of collective nature and constituted a violation of Article 4 Protocol 4 ECHR because the authorities did not carry out an individual assessment and examination of their cases and also denied them access to the asylum procedure in Slovakia. In addition, they argued that they had no effective remedy to challenge their expulsion in violation of Article 13 ECHR because the police excluded the otherwise automatic suspensive effect of appeal against expulsion in their cases. Human Rights League represents the applicants before ECtHR.
- *The case M.S. v. Ukraine and Slovakia* (no. 17189/11)<sup>25</sup> also concerns expulsion of minor unaccompanied Afghani national from Slovakia to Ukraine. The applicant complains that the Slovakian authorities returned him to Ukraine despite the risk that he would be subjected to degrading conditions of detention and the threat of indirect *refoulement* to Afghanistan, where, in turn, he faced a real risk of serious harm. He further complains of not having an effective remedy against his removal to Ukraine and in respect of the risk of indirect *refoulement* to Afghanistan, and that he was not informed, in a language he understood, of the reasons for his detention in Slovakia.

*Proposed questions:*

How does the Government secure that the principle of *non-refoulement* is effectively secured at the Slovak-Ukrainian border? Please provide information about the access to legal aid and information on asylum proceedings in Slovakia to migrants in the border proceedings.

Please, provide information about the number of expelled foreigners to Ukraine for the last three years and the number of those admitted to the asylum procedure. Please inform the Committee in how many of those cases had the police excluded suspensive effect of appeal against expulsion under Section 55 (2) of the Administrative Procedure Code.

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<sup>23</sup> Under Section 55(1) of the Administrative Code Procedure (No. 71/1967 Coll.) an appeal against expulsion has automatic suspensive effect. However, under Section 55(2) suspensive effect may be excluded in cases of urgent public interest.

<sup>24</sup> *Asady and Others v. Slovakia*, no. 24917/15, communicated on 26 September 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-167965>.

<sup>25</sup> *M.S. v. Ukraine and Slovakia*, no. 17189/11, communicated on 15 January 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-160668>.

## 5. Extradition

Finally, we would like to draw the attention of the Committee to the case of **Mr Aslan Yandiev**, Russian citizen of Ingushetia origin, who has been held in extradition criminal detention since 2011.<sup>26</sup> Up today, the length of the **extradition custody** of Mr Yandiev has **exceeded 6 years and 6 months**. At the same time, Mr Yandiev is asylum seeker in Slovakia and his asylum claim has been pending without final decision being issued regarding his claim, during the whole time of the extradition procedure.

We would like to highlight that the maximum length of criminal custody in Slovakia is 48 months (4 years). The extradition custody has not upper limited provided by Slovakian law. Taking into account the maximum duration of criminal custody in Slovakia, we are concerned that the extradition custody of Mr. Yandiev is already excessive and has no legitimate reason. Given the fact that he is still asylum seeker in Slovakia, we believe that he could be accommodated in asylum facility run by Ministry of Interior.

## Conclusion

We would like to thank the Committee for taking into account the information contained in this submission. We are ready to provide the Committee with any further information they may need.

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<sup>26</sup> Mr. Yandiev has been placed into pre-trial criminal custody by the decision of Regional Court in Trnava no. 3Ntc 1/2011 dated on 21 January 2011. On 1 March 2011, Mr. Yandiev has been placed into extradition custody by decision of Regional Court in Trnava no. 3Ntc 1/2011 dated on 1 March 2011, which has been upheld by the decision of Supreme Court of Slovakia no. 6 Tost 7/2011 dated on 24 March 2011.