

**NGO information to the United Nations Human Rights Committee
on immigration detention of families with minor children and
other harmful detention practices in Slovakia**

**For consideration when compiling the List of Issues on the Fourth
Periodic Report of Slovakia under the International Covenant on Civil
and Political Rights**

Submitted together by the
Human Rights League (HRL) and Forum for Human Rights (FORUM)

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INTRODUCTION

1. This written submission provides information on several issues of great concern with regard to Slovakia's compliance with the provisions of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"). We would like to draw the Committee's attention to the **practices in immigration detention** such as widespread practice to detain families with minor children in immigration detention for prolonged periods in absolutely unsuitable conditions, routine transportation of detained immigrants in handcuffs, unsuitable solitary confinement regime in immigration detention, lack of interpretation and translation in immigration detention and unsuitable health care provided to persons in immigration detention, particularly with regard to psychiatric and psychologist care.
2. The submission has been written jointly by two non-governmental organisations, the Human Rights League and the Forum for Human Rights, and is aimed to assist the Human Rights Committee with its consideration of Slovakia's Fourth Periodic Report in this initial stage of the compilation of the list of issues.
3. Human Rights League (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 organization 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.
4. Forum for Human Rights (FORUM) is an international human rights organisation working in the Central European region. It provides support to local NGOs and leads their domestic and international litigation. FORUM has been supporting a number of cases pending before domestic judicial authorities, inter alia on access to justice, on the protection of vulnerable groups against torture and ill-treatment in different settings. FORUM conducts international advocacy before the UN bodies especially in order to promote rights of vulnerable people, and recently co-authored alternative report to the UN Committee on the Rights of Persons with Disabilities (CRPD) with in respect the Czech Republic and Slovakia and its representatives took part in the last UN CRPDs sessions. FORUM has also recently co-authored alternative report to the European Committee of Social Rights on implementation of Article 17 European Social Charter by the Czech Republic and number of reports to various UN Committees with in respect to the Czech Republic and Slovakia.

I. STATE'S PRACTICE TO DETAIN MIGRANT FAMILIES WITH CHILDREN

5. **Slovak authorities routinely detain migrant families with minor children in the immigration detention centres which are not accommodated to their needs.** Although minor children cannot be formally detained, children of parents who are in an irregular position are detained together with their parents in the detention centre for several months.¹
6. In Slovakia, foreign nationals are detained by the administrative decision of a foreign police.² According to Law on residence of foreign nationals, families with children can be detained only when strictly necessary for the shortest possible time.³ The law provides that detention should be the measure of last resort and that the police should always consider application of less restrictive measures (alternatives to detention).⁴ Families with children can be detained for up to six months.⁵ In practice, the foreign police routinely detain families with children for **prolonged periods of several months** and not for “the shortest possible time”. The HRL observed cases when the foreign police set the duration of detention for a family with minor children for five or six months from the very beginning.
7. The **alternatives for detention are rarely used in practice.** In Slovakia, two alternatives to detention are provided by law – financial guarantee and report of residence.⁶ However, the law makes it practically impossible for ordinary persons to be provided with alternative for detention in the form of reporting the residence, mainly due to the obligation to have (i) accommodation and at the same time (ii) to have financial coverage for every day of stay in the amount of 56 € per day⁷. It is worth to mention that minimal life subsistence in Slovakia in 2015 was 198.09 € per adult person.⁸ However, an adult immigrant, whose detention decision is determined for say 30 days, would have to prove to have at least 1 680 € in cash in order to be granted alternative to detention in form of residence reporting. This makes this form of alternative for detention practically impossible for families with children, taking into consideration that they would have to (i) find an accommodation and (ii) prove financial means for every family member in the amount stated above. There are no support services or special shelters for migrant families available. Therefore in 2015, migrant families with minor children, who were migrating in irregular situation through Slovakia, were being routinely detained until the capacities of both detention centres reached their maximum in August 2015.

¹ Unlike unaccompanied minors who are placed in the special child home for unaccompanied minors.

² Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 88 et seq.

³ *Ibid*, Section 88(9).

⁴ *Ibid*, Section 89 (3).

⁵ *Ibid*, Section 88(4).

⁶ *Ibid*, Section 89 (3).

⁷ 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.

⁸ <http://zivotneminimum.sk/>

8. There are two immigration detention centres in Slovakia, in Sečovce⁹ and Medved'ov¹⁰. **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, including children, can move freely only within the designated sector and have allowed **access to open air only twice a day for one hour** under supervision of uniformed police guards.¹¹ 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 only playground in Sečovce detention centre is surrounded by wire.
9. Upon a placement in detention facility, the detained persons have confiscated their mobile phones and they can use the telephone machines on coins only. The access to internet is not provided. The law provides that when released, detained persons have to pay to cover the costs of their detention, particularly the food that has been provided.¹²
10. The services in the detention centres are provided based on currently implemented NGO projects, financed from EU funds. Therefore, the services such as social work, regular visits of psychologist, etc. have been provided only when such projects have been implemented. Since July 2015 until November 2015 no such projects were implemented and were not replaced by any other State-funded schemes. At the same time, in relation to refugee crisis, the numbers of detainees have risen extraordinary, but **no social services**, crisis interventions, psychologists, cultural mediators and regular access to interpretation have been secured.
11. The law provides that detainees are covered by public health insurance provided by the State, but detainees need to pay for certain medical interventions and medication.¹³ The **medical care** is provided by presence of nurse every working day and regular visits by doctor. However, communication problems were reported frequently as the medical personnel does not speak English and interpreters and/or cultural mediators are rarely called by the centres to interpret during medical check-ups. Several families complained about insufficient medical treatment. Moreover, there is **no psychologist** or any other relief services in neither of the detention centres unless provided by NGOs through projects. There is only one social worker in the Sečovce detention centre and one in Medved'ov detention centre who shall secure communication with all the detained persons. The HRL observed serious deterioration of psychological state of parents as well as children resulting from their detention.

⁹ **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.

¹⁰ **Police Detention Centre in Medved'ov** 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.

¹¹ Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 96(1).

¹² Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 91(3).

¹³ Law no. 499/2011 Coll. on health insurance as amended, Section 3(3)(f)

12. One of four sectors in Sečovce detention centre used to be partially adjusted to needs of families with children. This sector was separated from other three sectors and included an open air area, playground, playing rooms and common rooms for families to spend free time. However, already in late 2014 the capacity of one sector proved to be insufficient and the authorities designated three of four sectors in Sečovce detention centre for detention of families with children. Initially, these sectors had at least common rooms to spend free time but with increasing number of refugees arriving to Slovakia during summer 2015, these common rooms were changed into accommodation rooms. When capacities of detention centre Sečovce reached its full capacities, there were **no playing rooms** or rooms to spend free time in the Sečovce detention centre. According to the HRL observations, at the time of reaching full capacity, several families were accommodated in the same room which not only caused struggles between families but **violated privacy of children and their right to be accommodated separately from other adults**.
13. During summer of 2015, families with children were detained also in Medved'ov detention centre which has absolutely **no adjustments to accommodate families with children**. The management of the centre with assistance of NGO gradually designated one sector for families with children and created some room for playing and spending free time for kids. However, the open air area in the Medved'ov detention centre is, among many under things, absolutely unsuitable for children.
14. The children detained less than three months have **no access to education**.¹⁴ That means that during the first three months of their detention, children are not educated at all. At the time when capacities in detention centre Secovce reached their peak in summer 2015, the leisure activities were secured only on voluntary and *ad hoc* basis by non-governmental organisations. Provision of leisure and free time activities for children is not regular and children detained with their parents have **no meaningful activities to spend their time** in detention. The organisation of free time and leisure activities has become better after the new funding scheme from EU funds has been secured in November 2015.
15. During summer months of 2015 the HRL also observed a **lack of material needs** for families with children, in particular clothing and footwear, diapers and baby food. Ministry of Interior was not unable to provide for covering these material needs in timely manner, some of these material needs were only partially covered by the non-governmental organisations on voluntary basis.
16. The statistics on number of detained families with children, on reason and length of their detention **are not publicly available**. They are gathered by the Foreign Police Directorate.

¹⁴ Law no. 404/2011 Coll. on residence of foreign nationals, as amended, Section 96(2)(a).

II. INTERNATIONAL STANDARDS

17. We understand that detention of children with their families who are in irregular position raises very serious human rights issues under several provisions of the ICCPR. By detaining migrants families with minor children under conditions as we have described above, the Slovak Republic does not meet obligations as are provided especially under **Article 7 of the ICCPR** (prohibition of torture or cruel, inhuman or degrading treatment or punishment), **Article 9** (right to liberty); as well as **Article 10 of the ICCPR** (right to human and dignified treatment of persons deprived of liberty), **Article 17 of the ICCPR** (right to family life and privacy), **Article 23 of the ICCPR** (protection of families) and **Article 24 of the ICCPR** (protection of children).
18. In the **General Comment no. 35** on Article 9 ICCPR (Liberty and security of person) the Human Rights Committee stated that “children should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors.”¹⁵ The Committee further held that “any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons” and “decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health.”¹⁶ The Human Rights Committee also pointed out to Article 3 para. 1 (best interest of the child) and Article 37(b) (right to liberty) of the UN Convention on the Rights of Child.
19. We would like to draw the attention of the Committee to the fact that the **UN Committee on the Rights of the Child** (hereinafter “the CRC Committee”) went a step further with regard to its approach to the immigration detention of families with children when it noted that “immigration detention and it being a **clear violation of the Convention** was a subject that was repeatedly discussed and underscored.”¹⁷ It was emphasised that “regardless of the situation, detention of children on the sole basis of their migration status or that of their parents is a violation of children rights, **is never in their best interests and is not justifiable**”.¹⁸
20. Very recently, also the **UN Committee on Elimination of Racial Discrimination** expressed its concern that “asylum-seekers, including unaccompanied minors and families with children, are detained upon their arrival in the State party for an extensive period of time under poor living conditions and that the alternative arrangements to detention are not applied, despite being provided in legislation”, and explicitly recommended the State

¹⁵ CCPR/C/GC/35 of 16 December 2014, para. 18. 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.

¹⁶ *Ibid.*

¹⁷ 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.

¹⁸ *Ibid.*, § 32.

party concerned to “**avoid detention** of asylum-seekers under 18 years of age”.¹⁹

21. The detention of migrant children with parents in irregular position was recently fiercely criticised by Mr. Juan Mendez, the **UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**. In his latest report of 5 March 2015, he noted that “within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents’ migration status is **never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children**”.²⁰ He further explained “that the principle of *ultima ratio* that applies to juvenile criminal justice is not applicable to immigration proceedings. The deprivation of liberty of children based exclusively on immigration-related reasons exceeds the requirement of necessity because the measure is not absolutely essential to ensure the appearance of children at immigration proceedings or to implement a deportation order. Deprivation of liberty in this context can never be construed as a measure that complies with the child’s best interests.”²¹
22. The **UN Special Rapporteur on the human rights of migrants** in his 2013 regional study on detention practices in EU noted that “in fact, the Return Directive stipulates that detention should be a measure of last resort. Yet, in practice, few viable alternatives to detention appear to be explored by the European Union institutionally and by European Union Member States individually. In the countries visited the Special Rapporteur witnessed an almost complete absence of readily implementable wide-scale alternatives to detention, including for children.”²² He recommended to “promote viable alternatives to detention and not insist on further entrenching detention as a migration control mechanism through support for expanded networks of detention centres. Detention should always be a measure of last resort, and **children should never be detained**.”²³
23. The view that immigration detention of families with children may constitute an inhuman and degrading treatment was also repeatedly adjudicated by the **European Court of Human Rights**. The European Court found a violation of Article 3 of the European Convention on Human Rights (prohibition of torture, inhuman and degrading treatment) with respect of children in number of cases, including *Muskhadzhiyeva and Others v Belgium* (detention of a mother with four children in age of 7 months, 3, 5 and 7 years for one month), *Kanagaratnam and Others v Belgium* (detention of a mother with three children in age of 8, 11

¹⁹ CERD/C/CZE/CO/10-11 of 29 August 2015, para. 26.

²⁰ 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.

²¹ *Ibidem*.

²² 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.

²³ *Ibid*, § 92.

and 13 years for almost four months) and *Popov v France* (detention of children in the age of 5 months and 3 years together with parents for 15 days).²⁴

24. The **Inter-American Court of Human Rights** discussed this issue quite recently in its 2014 advisory opinion. The Court recalled standards established especially by the UN Committee on the Rights of the Child and UN Special Rapporteur on the human rights of migrants and stated that in immigration context, the Court emphasised that “States **may not resort to the deprivation of liberty of children who are with their parents**, or those who are unaccompanied or separated from their parents, **as a precautionary measure in immigration proceedings**; nor may States base this measure on failure to comply with the requirements to enter and to remain in a country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally and as a priority.”²⁵
25. To sum it up, the international standards with regard to the immigration detention of families with children is moving from its initial *ultima ratio* approach towards an absolute ban of immigration detention of children as this is never in the best interest of a child and constitutes inhuman and degrading treatment. We therefore kindly ask the UN Human Rights Committee to vigorously review practice of the Slovak Republic with regard to migrant families with minor children.

III. FURTHER ISSUES OF CONCERN

26. We would like to highlight several other serious issues of concern with regard to immigration detention in Slovakia, in particular a lack of access to psychologist and psychiatrist care, police violence and use of special police forces in immigration detention centres, routine handcuffing and use of other coercive measures and inadequate conditions in solitary confinement.
27. HRL has observed that the care provided by psychologists and/or psychiatrist is almost non-existent. Worryingly, this also applies to cases of persons with **severe psychosocial disability**. In July 2015, HRL identified young Syrian refugee, who was placed alone in a medical inspection room and was visibly behaving strangely. Based on our investigation we found out that the person has not been communicating for long time, did not hold eye contact and was unable to care for himself. He was detained on 26 April 2015. He had been kept in medical inspection room and given Lexaurin (sedative) for several weeks. He was brought to psychiatrist once (14 May 2015), but without proper interpreter, so the psychiatrist asked for new examination with proper interpreter. However it did not happen and the Syrian refugee had been placed into medical inspection room and medicated. Because this placement is not officially recognised as a

²⁴ *Muskhadzhiyeva and Others v Belgium*, application no. 41442/07, judgment of 19. 1. 2010; *Kanagaratnam and Others v Belgium*, application no. 15297/09, judgment of 13. 12. 2011; *Popov v France*, applications no. 39472/07 and 39474/07, judgment of 19. 1. 2012.

²⁵ IACHR, Advisory opinion no. OC-21/14 of August 19, 2014 requested by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection

solitary confinement, the detention authority did not report his placement to prosecutor under the rules of solitary confinement. The proper medical examination by psychiatrist with interpreter took place after several interventions by HRL only in 11 August 2015 and it took 2 more weeks to place him into psychiatric care (31 August 2015), although such recommendation had been issued by the psychiatrist during the examination. We must highlight that it has been established and known to authorities that this person is Syrian refugee who was granted subsidiary protection in Germany where his mother and brother live and that he suffers amnesia, mental illness and tried to commit suicide. These circumstances how he travelled from Germany to Slovakia remain unknown and it is presumed that he has been lost due to his illness. Although the law provides that people who are ill shall be considered as vulnerable and their detention is *ultima ratio* and can last only the shortest possible time, authorities failed to apply this requirement in this case and this person had been kept in detention without proper care for several months before his release (April-August 2015). Also, upon his placement in psychiatric hospital, the detention centre officially released the person from detention thus effectively excluding him from public health insurance.²⁶ In the past, we have observed several other cases of mental illness of detained persons, which were not treated properly. This leads to the conclusion that there are systemic deficiencies with respect to specific care and treatment of those detainees who have psychosocial disability and thus it also very raises issue under Article 7 ICCPR.

28. We would also like to draw the Committee's attention to the **incident of police violence** in the Medved'ov detention centre of 3 September 2015, criticized by the Slovak Defender of Rights and non-governmental organisations. The police used special security forces against detained migrants who held non-violent hunger strike to point to their limbo situation. Several migrants allege that they were beaten up by the police and placed in the solitary cell without access to daylight. The video published by media shows that during the intervention, the police used an interpreter who did not speak proper English (or any other language), so the detained persons did not know what they are supposed to do.²⁷ The police held that the intervention was proportionate. We would like to note that based on our information, **special police forces** has been called and used during summer 2015 at least one more time in Sečovce detention centre where mostly families with children were held.

29. Another issue concerns practice of **systematic handcuffing** of migrants who are detained. We observed that almost every migrant who is detained is subjected to handcuffs and even special belt when transported, including women and parents

²⁶ Detainees are covered by public health insurance as long as they are detained (meaning unless they are officially released). The law provides that if the proper medical care cannot be secured in the detention centre, the centre shall secure its provision in the health care institution (Section 95 (2) of the Law no. 404/2011 Coll.). This health care is covered as long as the person is officially detained based on valid detention decision. Once the person is officially released from detention as in this particular case, the person loses the health insurance and is responsible for payment for the care.

²⁷ See media reports including the video here: DennikN.sk, *Proti utečencom v Medved'ove zasahovali policajti, ktorí nevedeli po anglicky*, Monika Todová, 28. 9. 2015, available at: <https://dennikn.sk/253036/put-your-hands-stol-znela-vyzva-policajta-utecencom-medvedove/>.

of minor children. Handcuffs are routinely ordered and not used only exceptionally.

30. We would also like to draw Committee's attention to the report of the Slovak Defender of Human Rights of 29 October 2015 no. 2627/2015/VOP, where she identified that **solitary confinement** in Detention centre Medved'ov does not meet international standards. In particular, the Defender noticed that system of treatment with persons placed in solitary confinement has **prison-like character** (pg.6, first column), and that this **system is dehumanised and allows for their degradation** – constant monitoring, full lightening of the cell whole day including night, constant camera recording of whole cell including toilet, staying in one small empty room interrupted by short walk in small empty fenced and guarded yard (pg. 6, last column). The report further continues with other findings. The Human Rights League has the copy of the whole report in Slovak for disposal.

IV. SUGGESTED QUESTIONS FOR THE SLOVAK GOVERNMENT:

- 1) Please provide information on the number of families with minor children detained during the reporting period, the legal ground and length of their detention, as well as the detention centre where they were held.**
- 2) Were these families detained in accordance with the law stating that detention of families with children shall be strictly necessary and for the shortest possible period of time (Art. 9)?**
- 3) Does the State party use alternatives to detention to ensure that detention of families with children is used only as a measure of last resort? Please, provide statistics.**
- 4) How does the State party ensure that children detained with their parents enjoy their right not to be subjected to inhuman or degrading treatment (Art. 7) and their right to be treated with humanity and dignity (Art. 10)?**
- 5) How does the State party ensure that families with children detained in immigration detention centres enjoy protection under Art. 23 and 24?**
- 6) Please provide information on the reasons of police intervention against the migrants detained in the Medved'ov detention centre of 3 September 2015 and the results of subsequent investigation, if any. How does the State party ensure that persons detained in the immigration detention centres can effectively complain about ill-treatment by the police officers? Is there a system of automatic investigation of any allegations of ill-treatment by police officers in the detention centres?**
- 7) Please provide information on how many transports of detained immigrants have been performed in 2015 and how many of them included use of handcuffs and/or other coercive measures such as belts. Please provide this information adjusted to gender and age. What are the criteria to decide on the use of handcuffs and other coercive measures? Who orders their use?**
- 8) Please provide information on how is the psychology and psychiatric care secured for detained migrants. Is psychiatric care accessible for detainees? Was any detainee placed into the psychiatric hospital after detention has been ordered? How long was he or she detained before being able to access psychiatric treatment? How did the authorities secure informed consent with the treatment? In case of involuntary hospitalisation, was legal procedure for involuntary hospitalisation observed? Is placement in psychiatric care covered by the public health insurance?**
- 9) Please provide information on use of interpreters during medical examination including psychiatric examination and care. Is an interpreter always present during medical examinations? Who covers the costs of interpreters during medical examination?**

Thank you for your attention to these written submissions. If you would like any further information, please contact:

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