

L. R. et al. v Slovakia, Communication No. 31/2003, U.N. Doc. CERD/C/66/D/31/2003 (2005)

1) Reference Details

Jurisdiction: UN Committee on the Elimination of Discrimination against Women

Date of decision: 7 March 2005

Link to full case:

<http://www1.umn.edu/humanrts/country/decisions/31-2003.html>

2) The Facts

Ms L. R. and other Roma Slovaks residing in Dobšiná alleged a violation by the Slovak Republic of Article 2(1), Article 4(a), Article 5(e) and Article 6 of the International Convention on the Elimination of All forms of Racial Discrimination (CERD).

In March 2002, the local council approved a plan for low-cost housing. However the local Real Slovak National Party (RSNP) petitioned against the plan on the grounds that they “do not agree with the building of low cost houses for people of Gypsy origin as it will lead to an influx of inadaptible citizens from the surrounding villages, other districts and regions.” The petition was signed by 2,700 inhabitants and deposited with the municipal council in July 2002. In August 2002, the council unanimously cancelled plans for housing explicitly referring to the petition.

In September 2002 the petitioners requested the District Prosecutor to investigate and prosecute the authors of the petition and to reverse the Council's decision. In November 2002, the District Prosecutor rejected the request.

In September 2002, the petitioners 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.

In February 2003, the Court 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.

3. The Law

National Law

- The Constitution of the Slovak Republic
- The Act on the Right of Petition
- The Slovak Municipality System Act 1990 (SMSA)

International Law

- Article 2(1) of the International Convention on the Elimination of all forms of Racial Discrimination (CERD) (States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination)
- Article 4(a) of CERD (States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group)
- Article 5(e) of CERD (States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone)
- Article 6 of CERD (effective protection and remedies)

Other International Law

- Framework Convention for the Protection of National Minorities (Council of Europe)
- International Covenant on Economic, Social and Cultural Rights (ICESC)

4) Legal Arguments

The Petitioners

The petitioners argued that the State had failed to "*ensure that all public authorities shall ... act in conformity with the obligation to engage in no act or practice of racial discrimination*"; "*nullify any laws ... which have the effect of ... racial discrimination*". The further argued that the petition's wording can be regarded as incitement to racial discrimination.

They also argued that the State failed to safeguard the right to adequate housing and the State failed to provide an effective remedy against acts of racial discrimination.

The State

On the merits, the State argued that the petitioners failed to show an act of racial discrimination within the meaning of the Convention. It set out that municipal resolutions are not binding ordinances and confer no objective or subjective rights. Furthermore, Parliament had passed a new law for the implementation of the equal treatment principle and providing legal remedies and the State's courts provide complete and lawful consideration to any claim of racial discrimination. Also the State contended that the Petitioners have failed to demonstrate that actions of public authorities were unlawful, or that the petition was unlawful.

5) Decision

The Committee held that there had been a violation of Article 2(1), Article 4(a), Article 5(e) and Article 6 of the Convention. It opined that racial discrimination had occurred and acts of municipal councils were acts of public authorities so the racial discrimination is attributable to the State. The obligation to engage in no act of racial discrimination and to ensure that all public authorities do likewise had been broken. The obligation to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing had been broken.

Finally the Committee considered that the failure of the State party's courts to provide an effective remedy is a violation of Article 6 of CERD.