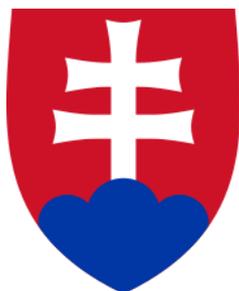


**PUBLIC DEFENDER OF RIGHTS**



**The Public Defender of Rights's Extraordinary Report  
regarding facts indicating serious violation of fundamental rights and  
freedoms by actions taken by some bodies**

Submitted to the National Council of the Slovak Republic by:

JUDr. Jana Dubovcová, the Public Defender of Rights

Bratislava, August 2013

## **SUBMISSION**

**Exerting my right established in Act No. 564/2001 Coll., regarding the Public Defender of Rights, as amended (hereinafter only referred to as the "Act on Public Defender of Rights"), I, hereby,**

**submit**

**to the National Council of the Slovak Republic, in accordance with Section 24 of the Act on Public Defender of Rights, the "Extraordinary Report of Facts Indicating Serious Violation of Fundamental Rights and Freedoms by Actions Taken by Some Bodies" along with a proposal for discussing the report at the next meeting of the National Council.**

Section 24 of the Act on Public Defender of Rights states: "If the Public Defender of Rights finds facts indicating that a violation of a fundamental right or freedom is of a serious nature or relates to a higher number of people, then the Public Defender of Rights can submit an extraordinary report to the National Council of the Slovak Republic."

I have found facts indicating that the actions of some bodies have caused and have been causing not only a serious violation of fundamental rights and freedoms, but that the violation applies to a higher number of people, including a high number of minors, especially those affiliated to the Roma ethnic minority, which motivated me to prepare this extraordinary report for the National Council and proceed as stipulated in the act quoted above.

**JUDr. Jana Dubovcová**

**Public Defender of Rights**

**Extraordinary Report**  
**of Facts Indicating Serious Violation of Fundamental Rights and Freedoms by Actions**  
**Taken by Some Bodies accompanied by a proposal for discussing the report at the next**  
**meeting of the National Council.**

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## **Proposal for Discussing the Extraordinary Report at the Next Meeting of the National Council**

in accordance with Section 24 of the Act on the Public Defender of Rights, I, hereby , submit

### **the proposal**

that the National Council of the Slovak Republic discuss, at its next meeting, the extraordinary report, a part of which includes this proposal.

Section 24 of the Act on the Public Defender of Rights states: "If the Public Defender of Rights finds facts indicating that violation of a fundamental right or freedom is of a serious nature or relates to a higher number of people, then the Public Defender of Rights can submit an extraordinary report to the National Council of the Slovak Republic." The extraordinary report can also contain a proposal for its discussion at the next meeting of the National Council."

The reason for my proposal that the National Council discuss the extraordinary report at its next meeting is that I have found facts indicating that the violation of a fundamental right or freedom is both of a serious nature and applies to a higher number of people. The violation also applies to a higher number of Roma minors, whose fundamental right to education is being violated on a long-term and a continual basis.

I deem it necessary for the report to be discussed at the next meeting of the National Council, both in terms of the seriousness of the findings and for making it possible to take, without unnecessary delay, measures that will improve access to education for children entering school for the first time in September 2014, i.e. in the 2014/2015 school year. An objectively limited time of pre-schooling preparation, which is the requirement for these children, is starting just now. Based on my findings, the quality of the pre-schooling preparation of children is just one of the decisive factors influencing whether a child is capable of gaining access to all levels of school education.

Bratislava, August 16, 2013

JUDr. Jana Dubovcová

Public Defender of Rights

## **Statement Regarding the Submission of the Extraordinary Report**

**The Public Defender of Rights**, being an independent body, participates in the protection of fundamental rights and freedoms of natural persons and legal entities with regard to acting, decision-making or inactivity of public administration bodies, if the acting, decision-making or inactivity thereof is contradictory to the legal rule of law or principles of a democratic and law-abiding state. **Therefore, at its examinations, the Public Defender of Rights focuses not only on examining whether the actions taken by the bodies are correct from the formal legal point of view, but it also examines the actions from the view of material law, i.e if they are in accordance with the principles of a democratic and law-abiding state and if they can (could) interfere with a fundamental right and the freedom of a person.**

Exercising my competences of the Public Defender of Rights during the year 2013, I examined, incidentally and mutually independently, through the Office of the Public Defender of Rights, the actions taken by different bodies. The bodies act in different areas and their activities, which I examined, are not directly interconnected with each other. Albeit the bodies acted in different areas and their activities were not directly interconnected with each other, the examination showed that they had single common point consisting in the fact that their actions in the matters examined mainly applied to Roma people.

The results of the examinations are the reason for submission of this extraordinary report to the National Council. The state has undertaken to provide, through its bodies, the utmost protection to the fundamental rights and freedoms of all people. In terms of the fulfilment of given undertakings made by the state, I deem the facts uncovered serious and alarming and, hence, I decided to inform the National Council about them through this extraordinary report. I believe that it is in the best interests of the citizens of the Slovak Republic that the National Council deals with the findings immediately.

In addition to the stated violation of certain fundamental rights of a bigger, non-specified number of natural persons, especially Roma people originating in a socially unfavourable environment, the findings show the purposeful and wilful attitude of the bodies to the legal order. Such an approach is never in accordance with the principles of a democratic and law-abiding state. Even in the case when it might seem to be efficient and functional in a specific matter. It involves a risk of misuse of power.

The fundamental rights were not granted to or established for a citizen by the state. The fundamental rights are deduced from the natural dignity of human beings and belong to them. They are inalienable, indefeasible and imprescriptible and the state undertook to observe and protect them through its bodies. State power originates from citizens, not vice versa. The citizens exercise the power through their elected representatives, through the National Council, from which the power of other state bodies is deduced. Therefore, I submit this extraordinary report, containing the facts uncovered, resulting conclusions, and suggestions, **to the National Council.**

## **Summary of the facts indicating serious violation of fundamental rights and freedoms by actions taken by some bodies**

### **1. Right to Education**

The examination resulting in the Public Defender of Rights's report of exercise of the right to education by children / pupils of Roma ethnic minority with special educational-upbringing needs confirmed following facts regarding the exercise of the right to education.

- **the specifics of the educational-upbringing structure** of the Slovak Republic involved the acceptance of the special educational-upbringing needs as requirements for the modification of conditions, content, form, methods and approaches in the education of a child or a pupil, which arise from his / her health disability, talent or development in a socially unfavourable environment;
- pursuant to Section 2 of Act no. 245/2008 Coll., on Upbringing and Education (the "School Act") and on Modification of and Amendment to Some Laws, as amended (the "School Act"), **children with special educational-upbringing needs also include children or pupils from a socially unfavourable environment**, where the environment, due to social, family, economic and cultural conditions, insufficiently supports development of their mental, volitional and emotional qualities, doesn't support their socialization and doesn't provide them with a sufficient extent of adequate stimuli for the development of their personalities;
- According to the School Act, **the upbringing and the education of children with special educational-upbringing needs** is executed in special schools or special (specialized) classes or in other schools along with other kids by means of specific methods and forms.

For more than 10 years, the results of certain research undertaken by several domestic and foreign institutions and international organizations has been pointing towards a number of shortcomings in the functioning of this upbringing-educational system, to the suspicion of persistent discrimination, especially of Roma children, and to the fact that the system is set up so that these children, once moved to a special class/school, are actually excluded from a chance of gaining a full-valued education.

**My examination was aimed at verifying** whether the collective number of Roma children on pre-schooling facilities is very low and, on the contrary, if the number in the classes and schools for children or pupils with special upbringing needs is very high. I focused on examining a portion of Roma children in comparison to non-Roma ones in first-year classes and schools for children or pupils with special upbringing-educational needs in the 2012/2013 school year, looking at the real prospects of reclassification of children/pupils to classes or schools intended for children or pupils without special upbringing-educational needs, establishing whether forms of racial discrimination are really persisting in the Slovak school system and, hence, whether or not there happens violation of **Section 12 (2) in combination with Article 42 (1) of the Constitution of the Slovak Republic (hereinafter referred to only as the "Constitution")** and several international treaties, whereby the Slovak Republic

is bound, such as, among others, **the first sentence of Article 2 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms**, which states that no one may be deprived of the right to education. The examination also included ascertaining whether schools are providing the possibility of and have thus created the conditions for education of children in a language which they understand, which means in their mother tongue, since Article 34 (2) of the Constitution of the SR states that, in addition to the right to acquisition of a state language, the citizens belonging to ethnic minorities or ethnic groups are entitled, under conditions stipulated by law, to the right to education in their mother tongue. The use of a Roma language in schools, use of services of teaching assistants, mastering of the Roma language by teachers / assistants, and the existence and accessibility of pre-schooling education (zero classes, kindergarten) were ascertained in order to obtain supportive data on the topic.

### **Access to education**

The right to education also includes the right to access education.

In the 2013/2014 school year, 614 pupils including 486 pupils of Roma origin entered the 1st class in 21 examined schools. 73 of the 486 pupils of Roma origin underwent pre-schooling preparation in a kindergarten. The portion of pupils of Roma origin in the zero classes and preparatory classes of elementary schools is very high. Of the total number of 486 pupils of Roma origin, 319 pupils passed through a zero class or preparatory class.

30 special classes were established in 17 schools. After diagnostic examination for finding special upbringing-educational needs and based on the approval of parents, 230 pupils, of which 204 were of Roma origin, were classified for the special classes. **The head teacher of the school in Šarišské Michal'any village suggested that only first-year pupils of Roma origin undergo the diagnostic examination (38 pupils of 50).**

Our school system makes it practically impossible for a pupil educated in a special elementary school or a special class to complete a full vocational secondary education or a full general/technical secondary education (completed with the certificate of apprenticeship or high school leaving certificate), which is a necessary condition for continuance in further education.

The Slovak laws do not deal with the frequency of re-diagnosing examinations of children and pupils. The Ministry of Education, Science, Research and Sport of the Slovak Republic (hereinafter referred to only as the "Ministry of Education") in its pedagogical-organizational guidances for the 2010/2011 school year noted, that in accordance with **the Convention on the Rights of the Child**, schools and school facilities are obliged to monitor the behaviour of children and **changes in the behaviour** on a regular basis. Based on our findings, re-diagnosing examinations are performed at schools at variable time intervals - as needed or at regular intervals of one, two or three years.

**In none of the 21 schools did we find the situation where the re-classification of a pupil and his/her consequential inclusion into the class for children without special**

**upbringing-educational needs occurred, although head teachers mentioned that such cases had occurred sporadically in the past.**

### **Conclusion**

Within the upbringing-educational system of the Slovak Republic, the classification of a pupil into the category of pupils with special upbringing-educational needs (also for his or her social origin – socially unfavourable environment) practically means that the pupil is permanently involved with the education provided solely in a special school/class. **The system provides only a minimum chance of continuance in education at higher levels for the pupils who are educated in a special class/school.**

A considerable portion of pupils originated from the socially unfavourable environment is thus, due to their social origin, excluded from the possibility of continuance in their education at higher educational levels. **The number of such excluded children who are of Roma origin (in addition to their origin in the socially unfavorable environment) is many times higher than the number of non-Roma children.**

**The given fact later significantly affects the chances of Roma people also in asserting themselves on the labour market and getting out of poverty.**

As I have already mentioned, the results of the examination basically confirmed the facts that were already published in several research papers conducted by domestic and foreign NGOs.

### **Access to education in mother tongue**

**Article 34 (2) of the Constitution of the SR states that in addition to the right to master the state language, citizens belonging to national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed right to education in their own language.**

**Pursuant to Section 4 (b) of the School Act, the aim of upbringing and education is to enable a child or a pupil to acquire qualifications, especially in the field of communicational, verbal and writing skills, use of information-communication technologies, communication in the state language and mother tongue.**

Pursuant to Section 12 (2) of the School Act, the state language is an educational language in schools and upbringing language in school facilities, unless otherwise stipulated by the Act. Subsection 3 of the above quoted section states, that in addition to the right to master the state language, children and pupils belonging to national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed right to education and upbringing in their own language.

Based on the representations given by head teachers of elementary schools including those with a 100% portion of Roma pupils, the pupils are only provided with education in the state language.

Our examination found that there are only two schools using the Roma language in a supportive manner; **one of the schools uses its own bilingual textbook** and the other has

introduced a compulsory **subject "Conversation in the Roma language"** that **is taught in the 1st class**.

Of the 21 schools examined there are only 9 schools employing, in total, 21 teachers who have a partial understanding of the Roma language (fundamentals of the Roma language).

### **Conclusion**

Roma children do not have a chance to be educated in their mother tongue, even in a supportive manner, in addition to education in the state language. Conditions for the education in their mother tongue are not created and schools are neither prepared nor making preparations for such a task. There is a language barrier between the children and the school, which necessarily affects the educational results of the children and thus maybe even plays some role at ascertaining the upbringing-educational needs thereof. Such an approach, especially at the beginning of school attendance or in the period of preparation for school attendance, fails to create the conditions for the development of the capabilities of a child, since the child perceives communication as non-understandable until he or she begins to understand the state language.

### **Segregation in school system**

Our observation also raised **suspicion of an artificial formation of school districts so that they include mainly Roma children**. The school district of the Elementary school of Matica Slovenská in Prešov town can be presented as an example. It is a common elementary school whose school district is created so that the school is mostly attended by Roma children (in the Tehelňa area of the town) even if there is another elementary school in the vicinity of Tehelňa.

We took note of the creation of separate classes for pupils originated from a socially unfavorable environment and for those who don't originate from such an environment. The situation, for example, was prevalent in the Kindergarten & Elementary school, Školská 16, Markušovce.

It is in contradiction with intentions of the Ministry of Education which performed several activities aimed at the desegregation in the recent period (see the Pedagogical-Organizational guidances for 2012/2013).

### **Conclusion**

It can't be excluded that in some schools and localities the children are treated unequally based on their origin, not only with regards to their access to education but also in relation to the manner and conditions of their education.

## **2. Right to the Inviolability of the Home**

**The issue of illegally established Roma settlements** and the question of dwelling of inhabitants of (mainly) Roma ethnicity relates to several towns and villages of the Slovak Republic. Based on an incentive received, **I have examined actions taken by two self-governments** at the evacuation of Roma dwellings and concluded that one of the self-governments didn't violate fundamental rights of people by its action, while the other did. In addition, I have examined, based on an incentive, the actions taken by the Police at execution of a police intervention and concluded that the Police violated the right to inviolability of the home of natural persons by its actions. From the point of view of the Public Defender of Rights, serious intervention into the fundamental right of bigger number of people occurred in the cases described and the violation could be only hardly corrected now. I deem it important to inform on improper actions taken by the bodies with an aim of assuring that bodies of the Slovak Republic will not commit such unauthorized interventions into the fundamental right to inviolability of the home of natural persons in the future.

### **Roma settlement Nižné Kapustníky**

Based on information we have received the settlement was established about ten years ago. It was composed of provisional dwellings (shacks), its inhabitants were moving in Košice city from one place to another and didn't permanently settle in the settlement. In the year 2009, within a time period of two weeks, four kids in the settlement were burnt to death and one kid was bitten to death by rats. Košice city removed the settlement and I have examined, based on an incentive, actions taken by the city bodies.

**In its written statement, Košice city stated that it had decided to evacuate inhabitants of the Roma settlement Nižné Kapustníky and remove their dwellings after evaluation of all the risks based on the opinions provided by the Regional Public Health Office seated in Košice, District Directorate of the Fire & Rescue Service in Košice and the District Directorate of the Railways of the Slovak Republic in Košice.**

**On October 9, 2012**, the District Directorate of the Fire & Rescue Service in Košice stated in its opinion that localities of Nižné Kapustníky, Mašličkovo and Sad mládeže house illegal dwellings made mostly of easily flammable materials and that a fire could break out and spread out quickly into entire neighbourhood with consequential threat to health and life of people. Based on local inspections of settlements in localities Pod Metrom, Mašličkovo and Nižné Kapustníky, the Regional Public Health Office seated in Košice stated in its opinion that surroundings of the illegal dwellings are considerably contaminated with municipal waste, which poses a risk of direct and indirect threat to health (accidents, rodents, insects, infections). The Office also **stated that the environment of settlements was not compatible with a healthy development of children of school and pre-school age.** The localities are without power supply and lighting and there are not even basic conditions for handling

municipal waste. The District Directorate of the Railways of the Slovak Republic in Košice notified Košice city by its letter dated 23 October 2012 of the presence of unauthorized persons in Nižné Kapustníky locality, which jeopardizes safe operation of railways. The persons walk on the tracks and there have been created unauthorized passes cross the tracks. Thereby, safety of the persons is threatened too.

**On 26 October 2012, the city's field social workers, accompanied by the municipal police, called inhabitants of the settlement in Nižné Kapustníky (official findings mention about 156 people, including 63 children) to leave the area of the settlement, since, according to statements given by fire-fighters, health officers and environmental protection officers, the area was incompatible with life. According to a written statement submitted to the Public Defender of Rights, the call for leaving the area was read to present inhabitants by members of the municipal police in the presence of the city's field social workers and officials from the Office of Social and Family Affairs. Inhabitants of the settlement were granted a period of four days for leaving. Despite being asked repeatedly, the city failed to familiarize the Public Defender of Rights with a legal title applied to its above-described official action.** Our investigation disclosed that the city failed to document its official act (its form, manner, content of the call, official purpose of the procedure, its legal title and delivery to addressees) in any manner.

On October 2012, city's employees examined a condition of the settlement and found that only 3 families and 4 homeless people of initial 156 inhabitants remained in the site. **Employees of the Office of Social and Family Affairs and of the city present in the site stated that two of the families had declared that they had a place to go. One family declared it had no place to go.**

The officials provided for a transport to and accommodation in the shelter in Bernátovce for the family that had no place to go and for one severely disabled person. In addition, they arranged for a transport to Rakúsy village for another of the families that had not left the settlement. The settlement was then demolished. No documentation was prepared.

**The city additionally informed the Public Defender of Rights that it had proceeded in accordance with Resolution of the Košice City Council No. 237, adopted on 21 February 2012, laying down the procedure to be taken by the city at waste removal, especially in the case of threatening occurrence of health-epidemiological situation.**

Had the office proceeded correctly, it would have removed the waste at its own expenses and later, after finding the producer of the waste, it would have initiated misdemeanor proceedings before a competent district environmental office. The misdemeanor proceedings were not commenced in any case, although it was known the waste had been produced by inhabitants of the settlement. According to the quoted resolution, if the waste producer is not found, the city shall remove the waste at its own expenses. **The city didn't follow the procedure.** It should be mentioned that the term of waste is defined by law and **a provisional dwelling may not be considered to be waste.**

I would like to point out in brief that Section 12 (1) of the Constitutional Act No. 23/1991 Coll., introducing the Charter of Fundamental Rights and Basic Freedoms, states as follows: **"The home is inviolable." Article 21 (1) of the Constitution** contains identical declaration.

**Based on jurisdiction of the European Court of Human Rights in Strasbourg, dwelling shall be also a dwelling made by an individual in contradiction with national law as well as a dwelling that is only habitable during a certain period of year.**

Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to only as the "Convention") has following wording:

- "1. **Everyone** has the right to respect for his private and family life, his home and his correspondence."
- "2. **There shall be no interference by a public authority with the exercise of this right except** such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

**An unauthorized interference shall mean** such interference that is not supported by **law**, not aimed at a legitimate goal, ignores essence and sense of a restricted fundamental right and freedom or is not a necessary and adequate measure for achievement of the goal.

Entire action taken by the city as well as its arguments that it was the "waste handling" case sounds to me almost cynically. From my point of view, the most cynical manifestation in this case was a stance of Košice city towards **the situation when minor children stayed in the settlement** (the city was aware of the situation based on reports from other institutions).

Although I am aware of the fact that **the right to respect to the home doesn't involve the right for provision of housing**, I believe that bodies of a democratic and law abiding state while performing any actions should take into account specifics of each case in all its aspects. **Pursuant to provisions of Section 27 (3) of the Convention on the Rights of the Child**, the States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**. By its action the city interfered with the right to inviolability of the home of higher number of people who are not longer identifiable.

#### **Moldava nad Bodvou, street Budulovská (called Roma settlement)**

Based on an incentive, I examined the police intervention carried out on 19. 6. 2013 in Moldava nad Bodvou, Budulovská street (called Roma settlement). **From results of the examination, I only mention in this extraordinary report the conclusion that relates to actions taken by the police in relation to the fundamental right to inviolability of the home.**

Pursuant to information provided by the Police, the intervention was **planned and aimed at search for wanted persons**. According to the Police, it was presumed that some wanted persons were present in the settlement. According to information acquired from competent representatives of the Police, policemen failed to obtain the search warrant. When we asked why the policemen who were expected to search for wanted persons within the search action didn't hold the search warrant, a competent police official replied that it would have been difficult to obtain the warrant as owners of dwellings in the settlement are hardly identifiable. Based on information provided by the Police in relation to the intervention, it seems as if they relied at preparation of the intervention that **a wanted person (persons) would, on the call by a policeman, voluntarily leave a home where he or she was hiding**.

The search action involved 63 members of the Police, who arrived at the location of the action in 23 cars. The action took thirty minutes and the policemen brought in to the police station 15 people from the settlement, for whom no search had been launched, and didn't find any person, for whom a search had been launched. After completion of the search action, the Police evaluated it as a successful action that met its aim. The Control and Inspection Service of the Ministry of Interior of the Slovak Republic evaluates it as the action conducted in accordance with law.

According to my findings, 8 persons were searched for within the whole district in the time of the search action, of which one person had some relation to the locality in question. The search for all the wanted persons was not declared in a short time period before the search action, but in the time period spreading from the year 2010 to this year. According to applicable law, the fact that a search is known for a longer period of time should be taken into the account at evaluation of necessity and urgency of an intervention and choice of means that are to be used. The Police didn't present any documents justifying the presumption they had before the action and at its planning, i.e. that all or some of the wanted persons will be present in the settlement during the scheduled time of execution of the search action, which was the declared to be the main reason for execution of such an extraordinary search for wanted persons. Surely, the action must also have been costly.

**The Police mentioned that during execution of the police intervention they had not entered homes of the settlement inhabitants** because the inhabitants were not inside, but stood out of the homes and were so aggressive that the policemen had to use coercive means and cover their faces with balaclava helmets. They also mentioned that they had been ascertaining identities of inhabitants and had not been successful in some cases; therefore they brought in to the police station the persons who failed to prove their identity to a police member or refused to follow instructions given by police members.

On contrary, **Roma people asserted** that policemen entered or intruded into their homes without their consent, ordered men to leave the homes and then beat them. Policemen were not ascertaining identities, failed to familiarise anyone with his/her rights, even didn't tell why they came. A policeman from Moldava was showing to other policemen the men whom they should have roused. The settlement inhabitants are of the opinion that he was choosing the men whom he suspected of involvement in the conflict with policemen that happened three days before the police intervention.

**The search action lasted half an hour. 700 people were present in the settlement in the time of the police intervention, of which 15 people were brought in to the police station. None of the wanted persons was found.**

### **Conclusion**

The identity proving procedure is laid down by law. Had the Police followed the procedure, it could have never managed to check an identity of about 250–300 people during a search action in the length of thirty minutes. It can be logically concluded that the policemen proceeded otherwise. It is illogical and contradictory to the purpose for which the police search action was intended that the policemen executed the search for persons and things in front of homes and not inside (unless it was not the search action actually).

**The policemen needed to search for the wanted (hidden) persons also inside the homes.** If they did so, then they entered the homes without consent of a person dwelling in such a home and, since they didn't hold the search warrant, their action interfered, in an unauthorized manner, with the fundamental right of the person to inviolability of the home.

The fact the the Police prepared the planned search action for wanted persons without obtaining needed search warrants, because they considered the obtaining to be difficult, represents a serious fault to which the Public Defender of Rights has to point out.

**The disclosed procedure chosen by the Police at planning the police search action actually means that the Police issued an order for execution of the action, although they knew they would not have the search warrants needed and, thus, they would have to interfere with fundamental rights of people at the search. And that's the thing that raises concerns. The Police may not ignore fundamental rights of people, if it deems it suitable for some reasons. Such a finding represents a serious signal for re-considering a control mechanism in relation to the activities of the Police.**

**The members of the National Council might be even more concerned by the fact that the Control and Inspection Service approved actions taken by the police.**

### 3. Suggestions

#### REGARDING THE RIGHT TO EDUCATION

Regardless of causes of the current condition, I deem the situation critical and submit following suggestions to the National Council of the Slovak Republic.

If there is still the majority will to keep the school system without introduction of higher degree of inclusiveness for children and pupils with special upbringing-educational needs, I consider it necessary that the National Council of the Slovak Republic adopt laws covering a ban on spatial, organisational, physical and symbolic exclusion or separation of Roma pupils from other pupils in consequence of affiliation of the former to an ethnic group (often in combination with a social disadvantage).

I also suggest that the National Council of the Slovak create conditions for

- an access to all educational levels also for pupils with special upbringing-educational needs, who are educated in special schools and special classes,
- arranging for all children of Roma ethnic minority who originate from the socially unfavourable environment to get free pre-schooling preparation in the state language and, if their best interests require so, also in their mother tongue in a sufficient number of facilities staffed with a sufficient number of qualified experts,
- education by qualified experts of all children of Roma ethnic minority who originate from the socially unfavourable environment in the state language and, if their best interests require so, also in their mother tongue during their school attendance at the lower primary school.
- all needed learning and teaching aids under care of a school facility should be available, free of charge, during the education process and at preparation for education for all pupils of Roma ethnic minority who originate from a socially unfavourable environment,
- a sufficient number of teaching assistants should be at hand for teachers in all schools and classes educating pupils with special upbringing-educational needs.

#### REGARDING INVIOLABILITY OF HOME

As the state is obliged to provide all persons with procedural guarantees of their rights I suggest that **special proceedings and decision-taking about proposal of a municipality for removal and liquidation of illegally established dwellings/settlements** in the municipality's territory **be committed by law into the material competence of general courts**. The only entity entitled to file such a petition/bring such an action would be the municipality in the territory of which illegally built dwellings/settlement occur in the time of filing the petition/bringing the action to a court. The necessary precondition without fulfilment of which the court wouldn't be allowed to act in the matter of the petition/action should be that the petitioner/plaintiff submit to the court along with the petition/action legally relevant

documents indicating solution of future accommodation, sheltering, dwelling to be provided to people actually dwelling in the illegal homes, if the homes are demolished.

### **AS REGARD THE POLICE**

I suggest that a body for **independent** external control of police activities in the areas that are not examined by the prosecution should be established by law.

The current system of control exerted by the Control and Inspection Service is actually only a form of internal control in the absence of any external control. The condition not only elicits distrust in the police, but also creates a space for quite easy concealment of cases of police wilfulness even if the police interferes by its action with fundamental rights and freedoms of people. Although the wilfulness may be never fully expelled, it's the task of the state to reduce a space for its occurrence.

#### 4. Conclusion

The Public Defender of Rights has to assist at **improvement of functioning of state bodies** so that while performing their activities they always take account of the fundamental rights and freedoms, and choose and use procedures, whereby they protect the rights and freedoms, but mainly comply with and guarantee compliance with the rights and freedoms. Of all the state bodies the Public Defender of Rights has to be the most sensitive to protection of human rights, as it is the essence of its activity. The Public Defender of Rights is the only constitutional body which has an obligation to use "soft" means for influencing a need for compliance with fundamental human rights that are, are to be and have to be the backbone of a democratic and law-abiding state.

**The above reasons led me to present findings about violation of fundamental rights and freedoms which I, as the Public Defender of Rights, consider to be serious. These findings indicate tendencies existing in the society which we should not underestimate.**

My extraordinary report exposes only a small piece of the issue of quality of relations between majority population and Roma people. Concerns are growing on both sides. I, therefore, consider it important to mention also an example of steps taken by a self-government in evacuation of apartments, which, according to my examination, were correct from both the legal and the human aspects.

**Prešov town is an owner of apartment houses Pod Hrádkom** no. 41, 43 and 45. With respect to a wrong technical condition of the houses and to planned development of a town cemetery, the town decided to demolish the apartment houses one after another. The demolition started with a house in the worst technical condition, namely the house no. 41. The house contained 12 apartments, where 4 tenants had valid rental agreements and 8 apartments were occupied without a legal title. The house was **mainly occupied by Roma families**.

**The town was solving the situation with inhabitants of the apartments individually and based on the principle of voluntariness and agreement.** The result was that 4 families were moved to other apartment house in the same locality and 6 families were moved to other locality. The town was dealing with housing situation of all inhabitants including those who lived in the house without a legal title. Future tenants were enabled to carry out inspection of offered new apartments, which preceded signing of a rental agreement. The town submitted to the Public Defender of Rights 10 rental agreements concluded for a definite period of times. Rental periods agreed in the agreements vary. The town will continue to evacuate the houses intended for demolition according to its housing capacities.