

IN THE EUROPEAN COURT OF HUMAN RIGHTS

DIMOVIĆ AND OTHERS

Applicants

v

SERBIA

Respondent State

Application Number 7203/12

Third-Party Intervention of the European Roma Rights Centre

1. The European Roma Rights Centre (“the ERRC”) submits these written comments in accordance with the permission to intervene granted by the President of the Chamber.
2. In order to assist the Court in summarising the intervention for inclusion in the judgment, the ERRC has prepared the following summary:

The ERRC, relying on widely accepted definitions of the terms “antigypsyism” and “institutional racism”, set out evidence that there is institutional antigypsyism in Serbia in various spheres: the education system, the child care system, civil registration offices, and particularly the criminal justice system. Referring to specific, very serious incidents of police brutality against Roma and to findings of Council of Europe and UN bodies about discrimination against Roma and the failure to train judges on discrimination, the ERRC said it was not surprising that Roma in Serbia feared for their safety and their liberty. The ERRC highlighted surveys showing discriminatory attitudes among police in Serbia towards Roma. The surveys showed that a significant number of police officers held stereotypical views about Roma and had a poor understanding of discrimination. The ERRC pointed to another survey of a large number of public officials, including judges. The survey provided evidence of ignorance among the judiciary about discrimination. The survey also provided evidence of widespread discriminatory beliefs about Roma among public officials (including judges) and of the widely held view that courts and prosecutors’ offices in Serbia do not treat people in a non-discriminatory manner. The ERRC proposed that this evidence of institutional antigypsyism had two consequences – flowing from two strands of the Court’s case law – for the Court’s analysis of complaints by Roma in Serbia that they had faced an unfair criminal trial. First, the Court must be particularly attentive to stereotyping and other manifestations of discrimination against Roma in all aspects of the criminal proceedings. Second, in situations where there is evidence of institutional antigypsyism in the criminal justice system and State institutions more generally, the burden is on the Respondent State to show, inter alia, that all actors in the criminal justice system were trained, that non-Roma were convicted on similar evidence, and that attention was paid in the domestic proceedings to ensuring that the investigation and trial were not contaminated by discrimination. The Court could not ignore the specific, vulnerable position of a Romani criminal defendant accused of crimes which correspond to common tropes of antigypsyism.

A. Introduction

3. In May of this year, the ERRC's human rights monitor in Serbia alerted our office about an incident¹ that had taken place in Mladenovac, in the suburbs of Belgrade. A Romani man and his non-Roma wife realised that their car had been stolen. They called the police, just as anyone would. Instead of helping them make a police report, the police accused the couple of lying (presumably as part of a plan to commit insurance fraud). The couple were taken to a police station in central Belgrade. The Romani man was made to kneel in front of a group of officers who physically and psychologically abused him, trying to make him confess. He had a gun pointed at him and a bag put over his head, while his wife listened in a nearby room. The police taunted him with racist slurs. They harassed her with comments about her husband's ethnicity and her religion.²
4. The facts of this case follow a familiar pattern. Roma in Serbia and elsewhere in Europe have a word to describe this kind of treatment: antigypsyism. The purpose of this intervention is to set out the evidence that there is institutional antigypsyism in public institutions in Serbia generally and in the criminal justice system in particular, and to argue that this has consequences for how the Court examines Article 6 complaints made by Roma who are claiming they were victims of an unfair criminal trial.

B. Antigypsyism in Serbia generally and in the criminal justice system in particular

5. The European Commission against Racism and Intolerance ("ECRI") defines "anti-Gypsyism" as "*a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination*".³ The definition of antigypsyism given by ECRI includes the notion of "institutional racism". The term has been defined most precisely in the United Kingdom, as "*the collective failure of an organisation to provide an appropriate and professional service to people because of*

¹ Full details are available at <http://www.errc.org/article/roma-tortured-by-police-in-belgrade-after-reporting-stolen-car/4576>.

² Compare *Škorjanec v Croatia* (2017), § 21.

³ CRI(2011)37, preamble, emphasis added. See also *Vona v Hungary* (2013), Concurring Opinion of Judge Pinto de Albuquerque.

their colour, culture, or ethnic origin".⁴ Institutional racism does not necessarily imply that individual members of affected institutions espouse a racist ideology.

6. The Alliance Against Antigypsyism, of which the ERRC is a member, defines the concept as follows:

Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma 'gypsy' or other related terms, and incorporates:

- 1. a homogenizing and essentializing perception and description of these groups;*
- 2. the attribution of specific characteristics to them;*
- 3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages.*⁵

7. The ERRC urges the Court to acknowledge the existence of antigypsyism in Europe and to use that term to describe the specific nature of the discrimination Roma face.

8. For Roma in Serbia, antigypsyism is not an abstract notion. The ERRC has colleagues based in Novi Sad and Belgrade and with their help and the help of several NGO partners, we are carefully monitoring the situation in the country. The focus of these observations is on institutional antigypsyism in the Serbian criminal justice system, but institutional antigypsyism is not limited to that sphere. As the UN Human Rights Committee ("the HRC") put it just a few months ago, "*despite [Serbia]'s efforts, members of the Roma community continue to suffer from widespread discrimination and exclusion, unemployment, forced eviction and de facto housing and educational segregation*".⁶ Here are just a few of the spheres where there is evidence of institutional antigypsyism:

- a. **Education.** Despite legislative reforms introduced in 2009, ERRC research published in 2014 showed that Roma were still alarmingly overrepresented in "special schools" for children with intellectual disabilities.⁷ The ERRC is aware of various forms of school segregation in the country, including segregated catchment areas, toleration of "white flight", and placing Romani pupils in separate classrooms in schools. In March of this year, the UN Committee on the Rights of the Child ("the UNCRC") found that "*The participation of Roma children, particularly girls, in*

⁴ The Stephen Lawrence Inquiry, Report of an inquiry by Sir William MacPherson of Cluny (The MacPherson Report): Chapter 6, February 1999. Available at <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>.

⁵ The Alliance's paper on antigypsyism can be downloaded from www.antigypsyism.eu. The current version was published on 16 June 2017.

⁶ CCPR/C/SRB/CO/3, § 14.

⁷ The 2014 report can be downloaded at <http://www.errc.org/cms/upload/file/serbia-education-report-a-long-way-to-go-serbian-13-march-2014.pdf>.

*preschool, primary, secondary and vocational education remains low, with many Roma children continuing to face segregation in the school system”.*⁸

- b. **The Child Care System.** The UNCRC found earlier this year that *“The number of children, including children under 3 years of age, placed in formal care is still significant, with the risk of family separation and institutionalization remaining high for children from the most disadvantaged groups, including Roma children and children with disabilities”.*⁹ The ERRC has carried out research – which will be published in the coming months – showing that Romani children are disproportionately overrepresented among children in care, particularly in Belgrade.
- c. **Civil Registration Offices.** Despite Serbia’s human rights obligation¹⁰ to register the birth of all children and ensure they have a name and identity, Romani parents are frequently turned away from register offices when attempting to register the births of their children because, following armed conflict and their forced displacement, these parents lack identity documents themselves. The HRC concluded earlier this year that *“While noting that the State party has made progress on the issue of registration, [the HRC] is concerned about the continued difficulties faced by internally displaced Roma in terms of... registering births and their place of residence and acquiring identification documents”.*¹¹ The UNCRC was even more specific: *“despite the amendments there are currently approximately 8,500 persons who were not registered at birth, with the vast majority declaring themselves as Roma. The Committee is concerned that those people have limited access to the enjoyment of basic rights, including to health care, education and social protection”.*¹²
9. The experience of Roma in the criminal justice system in Serbia is a particularly disturbing manifestation of antigypsyism, leaving Roma in the country in fear for their physical safety and their liberty. There is clear evidence of institutional antigypsyism among police. According to research carried out in five regions in 2014 among Serbian police departments responsible for investigating crime (*kriminalistička policija*),¹³ police

⁸ CRC/C/SRB/CO/2-3, § 54(e).

⁹ Ibid., § 39(a).

¹⁰ International Covenant on Civil and Political Rights, Article 24 § 2; UN Convention on the Rights of the Child, Article 7 § 1. Serbia is a State Party to both instruments.

¹¹ CCPR/C/SRB/CO/3, § 14.

¹² CRC/C/SRB/CO/2-3, § 30.

¹³ Zekavica, R., “Odnos policije prema diskriminaciji u Srbiji” (*“Perception of Police on Discrimination in Serbia”*), TEMIDA – Časopis o viktimizaciji, ljudskim pravima i rodu, June 2014, Vol. 17, Issue 2, pages 65-93, available at <http://vds.rs/File/Temida1402.pdf>.

have a significantly lower understanding of the concept of discrimination and of the vulnerability of certain social groups than the Serbian public in general. Almost 50% of police officers do not know what discrimination is. Compared to the general public as a whole, police experience a higher degree of “social distance” with all social and ethnic minority groups; this difference is the most visible between police and LGBT people and between police and Roma. Although the police recognise the unfavourable social status of Roma in Serbia, Roma nevertheless remain one of the groups towards which the police show the highest level of discrimination (alongside Albanians, LGBT people, and HIV-positive people). For example, only 41% of respondents in the survey recognised the phrase “*Roma stink*” as a form of hate speech. Criminal-investigation police in Subotica (Vojvodina) showed higher levels of discrimination towards Roma than police from other regions. A full 48% of police do not know which institutions are responsible for combating discrimination. Police officers do not believe that the police bear any responsibility for discrimination or have any influence over decreasing the level of discrimination in society. Subsequent research was carried out in 2015¹⁴ targeting public-order police and traffic police from seven regions in Serbia. The findings correspond to those gathered during the survey of criminal-investigation police in 2014, meaning that the three police services in most frequent contact with citizens show worrying levels of discrimination towards Roma. Almost one out of every two police officers in Serbia does not understand what discrimination is, many police believe that it is acceptable to break the law to solve a problem, and, according to the 2014 and 2015 surveys, 29% to 41% of police officers appear to believe that Roma “*usually steal*”.

10. The actions and inactions of police officers in Serbia show what the reality of institutional antigypsyism looks like. ECRI described one telling incident in its 2011 report on Serbia:

One serious incident of racially-motivated violence occurred in Jabuka, near Pančevo in the Autonomous Province of Vojvodina in June 2010 when a Roma youth was suspected of the murder of another youth of Serb ethnicity; the suspect was arrested. The Roma neighbourhood was attacked consequently by non-Roma and held under siege for several days, with Roma houses stoned and the inhabitants unable to leave their homes. The non-Roma attackers chanted racist slogans and reports indicated that one house was burnt to the ground. ECRI notes with concern that the authorities initially did not react, but reacted

¹⁴ Zekavica, R., “Odnos policije prema diskriminaciji u Srbiji – rezultati istraživanja stavova pripadnika policije opšte nadležnosti i saobraćajne policije RS” (“*Perception of Police on Discrimination in Serbia – Results of the Survey on the Attitudes of Public Order and Traffic Police Officers*”), TEMIDA – Časopis o viktimizaciji, ljudskim pravima i rodu, March 2016, Vol. 19, Issue 1, pages 135-160, available at <http://vds.rs/File/Temida1601.pdf>.

*only after a few days by offering protection to the Roma with, among others, increased police patrols. The Serbian authorities have indicated that charges were brought against seven persons as regards this incident.*¹⁵

11. The ERRC is supporting Romani families in Belgrade who, on 1 July 2014, were racially harassed and brutalised by police because they were playing loud music on their grandson's birthday. We are also supporting Roma who have been victims of ongoing violent racial harassment by police in Bački Petrovac (Vojvodina).

12. In 2015, the UN Committee Against Torture condemned Serbia in the following terms:

*The Committee is highly concerned that human rights defenders, journalists, lesbian, gay, bisexual, transgender and intersex persons and members of the Roma community continue to be attacked, threatened and intimidated. It regrets the lack of complete statistics on the number of complaints of and convictions for threats and attacks on these groups and on measures taken to prevent such acts. The Committee is also greatly concerned at reports that law enforcement authorities fail to act with due diligence in investigating and punishing these cases and in applying legal provisions for crimes motivated by hate.*¹⁶

13. As the UN Committee on the Elimination of All Forms of Racial Discrimination noted in 2011, there are virtually no cases of complaints made concerning racial discrimination: *"the Committee recommends that the State party ensure that the absence of any such complaints does not result from a lack of awareness by victims of their rights or lack of confidence in the police and judicial authorities, or lack of attention or sensitivity by the authorities to cases of racial discrimination"*.¹⁷

14. The Committee's instinct was correct: in the ERRC's experience of working with Romani victims of crime and police brutality, we have observed a total, and easily understandable, lack of trust among Roma in police and courts. Roma in Serbia know that these institutions are biased against them. ECRI's first two reports about Serbia (published in 2007 and 2011) expressed concern about judges' lack of knowledge about discrimination. In 2007 ECRI recommended that *"that the Serbian authorities ensure that the entire judiciary receive initial and on-going training in the problems of racism and racial discrimination. It also recommends that they promote greater diversity among the judiciary by taking steps to ensure the recruitment of persons from national or ethnic minority backgrounds"*.¹⁸ When ECRI considered the issue again, it was hardly

¹⁵ CRI(2011)21, § 78.

¹⁶ CAT/C/SRB/CO/2, § 19.

¹⁷ CERD/C/SRB/CO/1, § 20.

¹⁸ CRI(2008)25, § 26.

impressed with Serbia's progress: "*more training appears necessary because... the sentences meted out for racist crimes are low*".¹⁹ And again in 2014:

*It cannot conclude, therefore, that the specific objective of improving sentencing practices for racist offences has been fully met. ECRI also notes that, while these training courses have reached a large number of students of the Judicial Academy (to date, three whole generations since these subjects became a compulsory part of the initial training curriculum), it cannot make the same finding with regard to in-service training of the judiciary as a whole. Lastly, ECRI notes that the OSCE has played an important role in the existing initiatives and wonders whether the Serbian authorities have taken all the necessary steps to turn these individual initiatives into a long-term approach. ECRI therefore concludes that the recommendation has not yet been fully implemented.*²⁰

15. In 2014, IPSOS, the United Nations Development Programme, and Serbia's Commissioner for Protection Against Discrimination published research²¹ about discrimination and public officials in Serbia, including judges and prosecutors. The report was based on a late-2013 survey of 1,324 officials. The results are grim. The general population of Serbia scored 64% on a "discriminatory behaviour identification index", based on the number of correct answers to questions about discrimination. Members of the court system (i.e. judges, judicial assistants and judicial associates) scored barely higher, at 68%, compared to prosecutors, who scored 71%.²² Likewise, almost 25% of the judicial personnel surveyed did not think that statements such as "*Roma should be moved from the town centre to the periphery*" and "*Roma should not be given social apartments because due to cultural differences they cannot adjust to living in apartment buildings*" amounted to hate speech; this was about the same or even worse than how members of the executive and legislative branches performed when asked the same questions.²³ The judiciary seems particularly inept at identifying covert discrimination. Only 57.5% of judges correctly identified a situation of covert discrimination covered in the survey, doing worse than members of the executive branch (61.5%), members of the legislative branch (58.7%), and the general public (72.4%).²⁴ Sadly, over 12% of members of the judiciary surveyed could not identify a

¹⁹ CRI(2011)21, § 73.

²⁰ CRI(2014)24, pages 4-5.

²¹ The full report, entitled "Attitude of Public Administration Representatives Towards Discrimination in Serbia", can be downloaded in English at http://www.rs.undp.org/content/serbia/en/home/library/democratic_governance/citizens--attitudes-on-discrimination-in-serbia.html. A summary presentation in English is also available to be downloaded from that page.

²² See slide 16 of the presentation of the report findings.

²³ See page 40 of the main report.

²⁴ See page 31 of the main report. The question was whether the following scenario amounted to discrimination: "*An employer specifies in the job ad that he's looking for a person with a driver's licence, even though the job itself does not require any driving*".

blatantly obvious example as a case of discrimination: “A baker refuses to employ a Roma person because he’s afraid he’d lose customers”.²⁵ More alarmingly, 35% of public officials believe their colleagues agree with the statement “I have nothing against the Roma, but they do like to steal”.²⁶ Likewise, 26% of officials would agree with the statement that “The Roma are so different that they cannot fit into the lifestyle of other citizens of Serbia”.²⁷ Of particular interest is the finding that 29% of the public officials surveyed believed that the courts do not treat all citizens fairly irrespective of characteristics (such as ethnicity) protected by anti-discrimination laws; 30% believed that prosecutors’ offices also did not treat people fairly on these grounds. The courts and the prosecutors’ offices scored the worst of all public institutions on this measure (compared with Parliament, national government, and local government structures).²⁸

16. There is also some evidence of overrepresentation of Roma in prisons. In May 2005, the Helsinki Committee for Human Rights in Serbia published a report entitled “Prisons in Serbia”, covering the period between April 2004 and April 2005.²⁹ The report noted that Romani prisoners in one prison were ordered to clean toilets, while non-Roma were not,³⁰ and that Roma made up a third of the population of a youth offender institution, grossly disproportionate to their representation in the population as a whole.³¹ By 2011, it seems the situation in that youth offender institution had worsened, according to a report by the Belgrade Centre for Human Rights, which found that 40% of the inmates there were Romani.³² In April 2010 the Centre for Human Rights – Niš published a report³³ noting that on a visit to the penitentiary in Niš in October 2009, they found that 11% of the prisoners were Romani.

²⁵ *Ibid.*

²⁶ *Ibid.*, slide 24.

²⁷ *Ibid.* Again, this is according to what public officials think their colleagues would believe. Unlike the surveys of police, this survey does not appear to have asked people directly about their own discriminatory beliefs, presumably on the basis that people would not reveal their own bias.

²⁸ See page 49 of the main report. These figures rise when only the responses of members of the legislative and executive branches are taken into account; 36% of members of the other two branches of government believe that the courts do not treat people fairly regardless of protected characteristics, and 31% think this is the case for prosecutors’ offices. See page 50 of the main report.

²⁹ The report is available at <http://www.helsinki.org.rs/doc/ReportTortures-II.pdf>.

³⁰ *Ibid.*, page 26.

³¹ *Ibid.*, page 132.

³² The report is available at <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2013/12/Prohibition-of-ill-treatment-and-rights-of-persons-deprived-of-their-liberty-in-Serbia.pdf>; see page 86.

³³ The report is available at <http://www.chr-nis.org.rs/wp-content/uploads/2011/05/s-of-minority-groups-in-wider-senesein-which-it-can-potentially-come-to-their-discrimination-on-example-of-pen.-Nis.pdf>; see page 11.

C. The consequences of institutional antigypsyism in the criminal justice system for the Court's consideration complaints by Romani criminal defendants who claim to have suffered an unfair trial

17. Sometimes, it is obvious that judges³⁴ or other officials³⁵ are relying on racial or gender stereotypes; this has given rise to one strand of case law in which the Court has condemned States for breaches of Article 14 (taken with other provisions of the Convention). In another strand of case law, the Court has found that States may have positive obligations towards groups protected by Article 14 and Protocol no.12 – particularly Roma – even where stereotyping or other displays of discrimination are not obvious in the particular case. For example, historical patterns of school segregation create a positive obligation to ensure that those patterns stop.³⁶ Likewise, the particular vulnerability of Roma and Travellers means that Roma and Travellers cannot be forcibly evicted unless they are provided with alternative accommodation.³⁷ These cases may or may not involve a finding of a violation of Article 14.
18. Both strands of case law inform the approach the Court should take when faced with Roma complaining of unfair criminal trials in a jurisdiction, such as Serbia, where there is evidence of institutional antigypsyism in the criminal justice system.
- a. In line with judgments such as *Carvalho Pinto de Sousa Morais v Portugal* (2017) and *Konstantin Markin v Russia* (Grand Chamber, 2012), the Court must be particularly attentive to racial stereotyping at all stages of the case, including the police investigation, the prosecution, the sentence and sentencing remarks or other judicial statements, and the Government's observations to the Court. Stereotypes about criminality are a vicious and persistent trope of antigypsyism. If such stereotypes, or similar discriminatory notions, contaminate any aspect of the decision making that led to a criminal conviction, then the entire procedure must be considered unfair.³⁸ The Court has tended to rely on the use of racial slurs to identify this kind of discrimination, but stereotypes can emerge in other forms as well, as the Court has found in relation to gender³⁹ and sexual orientation.⁴⁰

³⁴ *Carvalho Pinto de Sousa Morais v Portugal* (2017), § 53; *Pareska Todorova v Bulgaria* (2010), § 38.

³⁵ *Bączkowski and others v Poland* (2007), § 100; *Konstantin Markin v Russia* (Grand Chamber, 2012), §§ 141-143.

³⁶ *Horváth and Kiss v Hungary* (2013), § 116.

³⁷ *Winterstein and others v France* (2013), § 159. Only in cases of *force majeure* can Roma and Travellers be evicted without alternative accommodation.

³⁸ See, *mutatis mutandis*, *E.B. v France* (Grand Chamber 2008), § 80.

³⁹ *Konstantin Markin v Russia* (Grand Chamber, 2012), §§ 141-143.

⁴⁰ *E.B. v France* (Grand Chamber 2008), § 73.

- b. Even in the absence of overt discrimination, in line with cases such as *Winterstein and others v France* (2013) and *Horváth and Kiss v Hungary* (2013), the Court cannot ignore the specific, vulnerable position of a Romani criminal defendant accused of crimes which correspond to common tropes of antigypsyism. With some 30-40% of police officers holding the belief that Roma “usually steal” (see above, § 11), and violent examples of police accusing Roma of crimes and attempting to force confessions (see above, § 3), there is a positive obligation⁴¹ on the authorities in Serbia to ensure that criminal judges are properly trained about discrimination and that Roma are not convicted of offences on the basis of flimsy evidence implicitly elevated by stereotypes. It is already clear that judges do not have the training they needed on discrimination (see above, §§ 14-15). The ERRC also submits that the burden falls on Respondent States in such cases to show that non-Roma are convicted on similar evidence and that attention was paid in the domestic proceedings to ensure that the investigation and trial were not contaminated by discrimination.⁴²
19. The fact that a case does not engage Article 14 or Protocol no.12 does not mean the particularly vulnerable status of the group to which the applicant belongs is irrelevant. The Court has made this clear in cases involving evictions⁴³ and homelessness.⁴⁴ This also applies to cases involving criminal trials against members of particularly vulnerable groups. Roma have for centuries been victims of racist stereotypes that depict them as criminals and have left them vulnerable to abuse by police. States have a positive obligation to ensure the criminal justice system is not contaminated by such stereotypes and that criminal investigations and trials are fair to Roma.

The European Roma Rights Centre
16 October 2017

⁴¹ See, mutatis mutandis, *Horváth and Kiss v Hungary* (2013), § 116.

⁴² See, mutatis mutandis, *E.B. v France* (Grand Chamber 2008), § 74.

⁴³ See above, note 37.

⁴⁴ *M.S.S. v Belgium and Greece* (Grand Chamber, 2012), § 251.