

A.P.

APPLICANT

v

Slovakia

RESPONDENT STATE

THIRD-PARTY INTERVENTION OF THE EUROPEAN ROMA RIGHTS CENTRE

I. Introduction

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 European Roma Rights Centre (“the ERRC”) urged the Court to acknowledge the existence of institutional antigypsyism among police forces around Europe generally and in Slovakia in particular. Relying on widely accepted definitions of the terms “antigypsyism” and “institutional racism”, the ERRC set out the evidence of widespread institutional antigypsyism among police in Europe, citing data and incidents from the Czech Republic, Hungary, Macedonia, Romania, Serbia, and Ukraine. The ERRC then provided detailed information about the significant number of incidents of police brutality targeting Roma in Slovakia in recent years, a problem which has been condemned by UN and Council of Europe bodies. The ERRC noted the widespread use of a particular police action code in Romani communities with violent consequences, which the Slovak Ombudsperson had investigated. The ERRC also noted how institutional antigypsyism among police in Slovakia has been supported by explicitly stereotypical statements about Roma and crime by the Prime Minister and Interior Minister, as well as by Interior Ministry policies targeting Romani communities and which appear designed solely to stigmatise Roma. The ERRC then argued that institutional antigypsyism demands a particular response from the Court in the context of police brutality complaints claiming violations of Article 14 taken with Article 3. The Court should not conduct a separate, four-part analysis under the substantive and procedural limbs of Article 3, taken on its own and then with Article 14. Instead, it should make a global finding of a violation of Article 14 taken with Article 3, recognising the existence of institutional racism, how it manifested itself in the case at hand, and how it prevented the victims in that case from securing justice, making it necessary for them to take their complaints to Strasbourg.

II. The phenomenon of antigypsyism as underlying the problem of racist violence against and harassment of Roma in Europe

3. The European Commission against Racism and Intolerance (“ECRI”) defines “anti-Gypsyism” (which they spell with a hyphen) as “*a specific form of racism, an ideology founded on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination*”.¹
4. Recently, a coalition of NGOs, including the ERRC, has introduced its own definition of antigypsyism (spelled without a hyphen) in “*Antigypsyism – a reference paper*” (June 2017):²

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. Last month, the European Parliament adopted a resolution³ on antigypsyism condemning

Member States’ failure to secure Roma people’s equal access to justice and their equality before the law taking shape

- *in the failure or the unacceptably slow procedures of ensuring justice for the victims of hate crimes, especially those perpetrated by police officers,*
 - *in the disproportionate criminalisation of Roma,*
 - *in over-policing (ethnic profiling, excessive stop-and-search procedures, uncalled-for raids on Roma settlements, arbitrary seizure and destruction of property, excessive use of force during arrests, assaults, threats, humiliating treatment, physical abuse, and the denial of rights during police interrogation and custody),*
 - *and in under-policing of crimes committed against Roma, providing little or no assistance, protection (such as in cases of trafficking and for victims of domestic violence) or investigation in cases of crimes reported by Roma;*
6. As the Court will note from § 3 above, the definition of antigypsyism given by ECRI includes the term “institutional racism”. The latter 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 their colour, culture, or ethnic origin*”.⁴ Institutional racism does not necessarily imply that individual members of affected institutions espouse a racist ideology.

¹ See General Policy Recommendation No.13, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n13/e-RPG%2013%20-%20A4.pdf. Emphasis added.

² The ERRC encourages the Court to consider the alliance’s full paper on antigypsyism, which can be downloaded from www.antigypsyism.eu.

³ European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI)), § 28, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0413>.

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>.

Institutional racism may, for example, be the unconscious by-product of a society where antigypsyism is allowed to flourish or lie in the procedures and policies of institutions.

7. Antigypsyism is the word Roma use to characterise the many situations they commonly face but which would be considered exceptional in the lives of most Europeans: police brutality; forced evictions; refused healthcare; housing and school segregation; and many other human rights violations. These situations have one thing in common: Roma are targeted and profiled by public officials across Europe and subjected to inferior treatment based on stereotypes and prejudice. The ERRC has already submitted several third-party interventions to the Court elaborating on how antigypsyism manifests itself in police misconduct, and we are representing applicants directly in some cases where this is happening.⁵ We set out below the evidence concerning the extent of hate crimes and police brutality against Roma in Europe in recent years. The purpose of this detail is to describe to the Court the state of relations between Roma and the police in Europe and to urge the Court to view and describe this widespread phenomenon as a manifestation of antigypsyism.
8. The EU Fundamental Rights Agency (“FRA”) carried out its European Union Minorities and Discrimination Survey (EU-MIDIS) in 2008.⁶ They asked 23,500 individuals with an ethnic-minority background about their experiences of discrimination and criminal victimisation in everyday life. According to the survey, 18% of all Roma respondents (like 18% of all sub-Saharan African respondents) reported being victims of at least one “in-person crime” (assault, threat or serious harassment) in the previous year which they thought was racially motivated in some way. Roma and sub-Saharan Africans were the groups most likely to experience in-person crime, and in some places they were four times more likely to be victims of such crime than the majority population. Roma and other minorities were also likely not to report in-person crimes: 69% of minorities did not report assaults or threats they had experienced and 84% did not report serious harassment. According to FRA, this underreporting is due to the lack of trust Roma have in the police, resulting, for example, from excessive police stops of Roma and other minorities and from disrespectful treatment. According to 72% of the respondents, their reason for not reporting in-person crimes was not being “*confident the police would be able to do anything*”.⁷ The lack of trust in the police was also emphasised in FRA’s 2010 report on “Police Stops and Minorities”:⁸ “*Every second minority victim of assault, threat or serious harassment said they did not report these incidents to the police because they were not confident the police would do anything about them.*” The ERRC sees these data as evidence of the continued impact of antigypsyism on Romani communities throughout Europe and as evidence of problems of institutional antigypsyism that need to be addressed at European level.

⁵ See, e.g., *X and Y v the former Yugoslav Republic of Macedonia* (application no.173/17), *Dimović and Others v Serbia* (application no.7203/12), *L.F. v Hungary* (application no.621/14), *Pastrama v Ukraine* (application no.54476/14).

⁶ The report is available at <http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey?tab=publications>. There has been a follow-up survey of Roma in nine European Union Member States, including Slovakia (“EU-MIDIS II”). The full data are meant to be published this year. Summary data about Roma were published in November 2016 and are available at <http://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>. The selected findings do not contain information about interactions with police.

⁷ See page 9 of the report, which is available at http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf, page 9.

⁸ The report is available at <http://fra.europa.eu/en/publication/2010/police-stops-and-minorities-understanding-and-preventing-discriminatory-ethnic>.

9. The Organization for Security and Cooperation in Europe (“the OSCE”), in a 2010 report entitled *“Police and Roma and Sinti: Good Practices in Building Trust and Understanding”*, underlined the increase of anti-Roma feeling in the OSCE area.⁹ According to the report, *“Challenges faced by Roma and Sinti in their relations with the police range from ethnic profiling, disproportionate or excessive use of force by police against Roma to failure by the police to respond effectively to Roma victims of crime and racist violence”*. The report also emphasised the lack of trust in police and the need for police to invest more in building up relations with Roma. The report concluded that the police needed to improve their relationship with Roma and more effectively secure their rights.
10. A 2014 report¹⁰ by Amnesty International indicated that violence against Roma is increasing alarmingly and called upon authorities to investigate and condemn those who commit hate crimes. The report concentrated on the Czech Republic, France, and Greece, and described in detail the attitude of officials and members of the public towards Roma. The report recommended that governments adopt measures to combat hate crimes.
11. Research from 2016 shows that the impact of institutional racism is already overwhelmingly recognised by those called upon to tackle it. The survey of professionals, mostly police officers, prosecutors and judges, carried out by FRA, showed that three-quarters of those surveyed believe that victims of hate crime

*are discouraged from reporting because they do not believe that the police would treat them in a sympathetic and non-discriminatory manner. Accordingly, four out of five interviewed professionals believe that it is necessary to enhance victims’ trust in the police; and three fourths of interviewees view as necessary measures that tackle discriminatory attitudes within the police. [...] About two thirds of all interviewees believe that the police and judiciary need to take hate crime more seriously. This finding per se raises concerns. Interviewees indicated that two factors underlie this assessment: first, a lack of profound understanding of the legal concepts and categories that define the phenomenon of hate crime; and, second, a lack of commitment to identify, prosecute and impose sentences for hate crime.*¹¹

12. The ERRC’s 2012 report¹² about violence against Roma in the **Czech Republic, Hungary, and Slovakia** also showed a worrying pattern of anti-Roma attacks across the region. The ERRC recorded more than 120 attacks against Romani people and their property between 2008 and July 2012, including shootings, stabbings, and Molotov cocktails. Many attacks were perpetrated by police. In most cases, the investigation of such attacks does not fulfil the requirements of the Court’s case law.

⁹ The report can be found at <http://www.osce.org/odihr/67843?download=true>; see, especially, pages 15 and 20.

¹⁰ Amnesty International, *“We ask for Justice”, Europe’s Failure to Protect Roma from Racist Violence*, 2014, available at <http://www.amnesty.org/en/library/asset/EUR01/007/2014/en/7c3cc69e-e84d-43de-a6a93732b4702dff/eur010072014en.pdf>.

¹¹ EU Fundamental Rights Agency, *Ensuring justice for hate crime victims: professional perspectives* (April 2016), available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>.

¹² ERRC, *“Attacks against Roma in Hungary, the Czech Republic and the Slovak Republic 2008-2012”*, available at <http://www.errc.org/article/attacks-against-roma-in-hungary-the-czech-republic-and-the-slovak-republic/3042>.

13. In 2017, the Kharkiv Institute of Social Researches in cooperation with the ERRC published a report¹³ focusing on the experience of Romani people with police in **Ukraine**. As explained in the report, 17.3% of the Romani respondents indicated they had been at the police station at least once during the past 12 months. Among the most common reasons for being taken to the station were to serve as a witness, to be photographed, and to identify others. More than one in five Romani people taken to a police station were not informed about their rights. More than a third of respondents received no information about free legal aid. A full 39% of Roma said they had not been able to tell their relatives about their location. More than a quarter of respondents noted that they had encountered unlawful violence from police officers; this included physical harm and psychological pressure and intimidation.
14. In **Serbia**, the experience of Roma in the criminal justice system is a particularly disturbing manifestation of antigypsyism resulting in lack of trust among Roma in police and courts. According to research¹⁴ carried out in five regions in 2014 among Serbian police departments responsible for investigating crime, police 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. In 2014, IPSOS, the United Nations Development Programme, and Serbia's Commissioner for Protection Against Discrimination published research¹⁵ 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.¹⁶
15. Among the many forms of police misconduct Roma experience in **Macedonia**, they have faced a particular form of discrimination by one sector of the police: border guards, who have regularly engaged in racial profiling to stop Roma from leaving the country. Between 2011 and May 2015, the ERRC documented the cases of 176 Romani individuals who were prevented from exiting the country, and became aware of another 63 such cases. In the same period, the ERRC documented 75 cases in which Macedonian border officials revoked the passports of Romani individuals who had been deported from EU countries as failed asylum seekers, and became aware of another 155 such cases.¹⁷
16. In last few decades, many acts of violence targeting Roma took place in **Romania**, many of which were perpetrated by police officers and/or with their assistance. The Court has

¹³S. Shcherban, A. Chernousov, State of rights observance of the Roma population in interaction with the police of Ukraine — 2016, published in 2017, available at <http://khisr.kharkov.ua/en/index.php?id=1509984838>.

¹⁴Zekavica, R., "Odnospolicijepremadiskriminaciji 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>.

¹⁵The 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.

¹⁶For more information, see our third-party intervention in *Dimović and others v Serbia* (application no.7203/12).

¹⁷According to the Statement of Facts on HUDOC, these reports were submitted to the Court by the applicants in *Dželadin v Macedonia* (application no.43440/15) and 2 other applications.

delivered numerous judgments finding that Romania violated rights of Romani applicants under Article 2 and/or 3 of the Convention, taken on their own and/or with Article 14.¹⁸

17. The ERRC urges the Court to acknowledge the existence of institutional antigypsyism in police forces around Europe.

III. The evidence of police harassment against Roma in Slovakia

18. The UN Human Rights Committee (“UNHRC”) and the UN Committee Against Torture (“UNCAT”) have expressed concerns about allegations of racially motivated police brutality in Slovakia. In their last concluding observations, UNHRC and UNCAT asked the Slovak Government to ensure effective investigation of all such allegations, to punish the perpetrators, and to compensate the victims.¹⁹ Similar concerns were expressed by the European Commission against Racism and Intolerance (ECRI) and by the Council of Europe Commissioner for Human Rights after their regular visits to Slovakia.²⁰
19. The ERRC has been monitoring incidents of violence against Roma perpetrated by State and non-State actors in Slovakia for several years. The ERRC has also secured legal representation for Romani victims of several cases of police harassment. In 2017, the ERRC filed an *actio popularis* claim (i.e. litigation in which we are the named plaintiff) against the Interior Ministry, challenging harassment of Roma by police as a form of unlawful discrimination.
20. On 16 June 2012, an off-duty municipal police officer took an illegally purchased gun and drove to the town of **Hurbanovo**, where many Roma live. He stopped in front of one house and, without saying a word, shot at a Romani family who were in the yard. Three of them died and two others were seriously injured. The murderer later admitted to police that when he was preparing his gun, he was thinking about how to deal with Roma from Hurbanovo. The ERRC is representing the survivors in an application pending before the Court.²¹
21. In the autumn of 2012, four Romani neighbourhoods located in the Kežmarok District were raided by the police: **Stráne pod Tatrami, Huncovce, Podhorany, and Rakúsy**. The victims allege that no arrest warrants or search warrants were presented. Despite this, the police entered homes and searched them. Some people were physically and verbally abused, including children. The investigation was terminated in October 2015 as the Control and Inspection Service Section of the Interior Ministry (hereinafter “the Police Inspectorate”) stated that the actions of the police did not amount to a criminal offence. A constitutional complaint was dismissed in 2016.
22. On 19 June 2013, more than 60 police officers entered a Romani neighbourhood located in **Moldava nad Bodvou** and conducted a violent police action resulting property damage and injuries to over 30 people (including children), none of whom resisted or obstructed the police.

¹⁸ *Moldovan and Others (no.2) v Romania* (2005), *Lăcătuș and Others v Romania* (2012), *Ciorcan and Others v Romania* (2015), *Carabulea v Romania* (2010), *Stoica v Romania* (2008), *Boacă and Others v Romania* (2016), *Cobzaru v Romania* (2007), *Fogarasi v Romania* (2017).

¹⁹ See Concluding Observations of the UN Human Rights Committee: Slovakia, CCPR/C/SVK/CO/3, 20 April 2011, § 8; and Concluding Observations of the UN Committee Against Torture: Slovakia, CAT/C/SVK/CO/3, 8 September 2015, § 11.

²⁰ See Report by ECRI on Slovakia, 2014, CRI(2014)37, pages 76-80; and Report by Nils Mužnieks (Commissioner for Human Rights of the Council of Europe) following his visit to the Slovak Republic from 15 to 19 June 2015, CommDH(2015)21, pages 13-15.

²¹ *Žaneta LAKATOŠOVÁ and Kristián LAKATOŠ v Slovakia*, application no.655/16.

The Police Inspectorate did not find the police action to be unlawful. With the involvement of the prosecution, criminal proceedings were eventually initiated. However, in November 2015 and March 2016, the Police Inspectorate discontinued the proceedings. The controversial decisions are contaminated by stereotypes about Roma. For example, they refer to the notion of “*Roma mentality*” (*mentalita romica*) when assessing the evidence the victims gave, connecting this concept to lack of self-discipline, aggression, anti-social behaviour, and an inability to comply with social norms.²² During the official investigation, Interior Minister Robert Kaliňák commented on the credibility of evidence given by Romani victims against police officers: “*If you place them on the same level, you are insulting me*”.²³ In August 2017, the Slovak Constitutional Court dismissed one of the constitutional complaints in the matter. Recently, the victims of the raid were turned into perpetrators by investigating authorities.²⁴ In 2017, the prosecutor initiated an investigation against some of the victims on the basis of input from the Police Inspectorate. The police brought charges against six of the victims of the raid for allegedly making false accusations. The ERRC believes this amounts to victimisation and sends a worrying signal to other Romani victims of police abuse.

23. On the morning of 2 April 2015, a large number of policemen entered the village of **Vrbnica** in Eastern Slovakia, allegedly to find people evading arrest warrants. A house-to-house search reportedly resulted in injuries to at least 19 Romani people who – according to the media and the mayor – did not resist or obstruct the police.²⁵ The injured were reported to include women, men, and children.²⁶ So far, the only person against whom charges have been brought is the officer in charge of the action.²⁷
24. On 16 April 2017 an incident took place in a Romani neighbourhood in **Zborov**. The police began indiscriminately beating Roma, including children and elderly people, and three people required medical assistance: a five-year-old boy, a man in his 40s with a heart condition, and an elderly woman with disabilities. The ERRC learned that police blocked an ambulance from entering the neighbourhood. Witnesses who filmed the violence were visited by police officers later that evening and told to delete any footage they had of the events.²⁸ The investigation by the Police Inspectorate has not yet ended.
25. The police actions mentioned above (with the exception of the one in Zborov) were reportedly carried out as part of a coordinated series of police interventions under so-called “Action Code 100” (*Pátracia akcia 100*), which directs police to engage in searches. All of the

²² Týždeň, The case of Moldava: Raid and “*mentalita romica*”, available at <https://www.tyzden.sk/reportaze/40301/razia-a-mentalita-romica/>.

²³ Available at <https://tv.sme.sk/v/28963/kalinak-policajtov-a-romov-z-moldavy-nedavajte-na-jednu-uroven-uraza-ma-to.html>.

²⁴ Dennik N, From victims to perpetrators, the witnesses of police raid in Moldava charged with false accusation, available at <https://dennikn.sk/872764/z-obeti-robia-pachatelov-svedkov-policajnej-razie-v-moldave-obvinili-z-krivej-vypovede/>.

²⁵ GypsyTV, Roma injured after the police action, available at: <https://www.youtube.com/watch?v=goEDlyRylrg#t=37>.

²⁶ ROMEA, Romani mayor and Romani residents say police brutalized them, police deny it, available at: <http://www.romea.cz/en/news/world/slovakia-mayor-and-romani-residents-say-police-brutalized-them-police-deny-it>.

²⁷ Sme, Inspectorate brought charges against the commander of the action against Roma in Vrbnica, available at <https://domov.sme.sk/c/20414101/inspekcia-obvinila-velitela-zasahu-proti-romom-vo-vrbnici.html>.

²⁸ ERRC, Police Attack Roma Community in Slovakia: Children and Elderly Injured, available at <http://www.errc.org/article/police-attack-roma-community-in-slovakia-children-and-elderly-injured/4579>.

cases mentioned had similar patterns: police entered the homes of Roma living in Romani neighbourhoods and used excessive force, claiming that they were searching for persons and objects. The Slovak Ombudsperson carried out an investigation into the use of Code Action 100. According to the Ombudsperson,²⁹ all the police actions under Action Code 100 in Michalovce District (where Vrbnica is situated) were carried out solely in Romani neighbourhoods: Kapušianske Kľačany, Iňačovce, Ruská, and Vrbnica. The data gathered by the Ombudsperson also shows that in 2013, 2014, and the first quarter of 2015, the highest number of Action Code 100 raids (259) were carried out in the Prešov region, which has been identified as the region with the largest percentage of so-called “unintegrated Roma” in the Atlas of Roma Communities.³⁰ In comparison, in the Bratislava region no Action Code 100 raids were carried out at all.

26. In December 2016, at the party conference of the SMER-SD, the largest political party in the current government, Prime Minister Robert Fico said: *“We have to start making order in the Romani settlements! ... Personally, I will stand behind police forces, I’ll fight with Mrs Dubovcová [the former Ombudsperson] and international organisations, but we have to make order in Romani settlements ... There is a new generation that does not want to work”*. At the same conference, Interior Minister Robert Kaliňák added that his department and the police will implement a special programme to improve security in municipalities with socially excluded communities and Romani settlements that are considered “problematic”.³¹
27. In January 2017, the Interior Ministry published its priorities for 2017 on its website, including *“Strengthening police in problematic areas”*. According to the website, *“The Interior Ministry will further focus on places and areas where troublesome socially excluded groups live and where there are frequent violations of the law such as thefts from houses and cottages”*.³² In Slovakia, these terms – “problematic areas” and “social excluded groups” – are understood clearly as referring to Romani neighbourhoods and Roma.
28. In January 2017, the Interior Ministry published a list of “problematic municipalities” where police presence should be strengthened. The Ministry did not comment on the methodology used for drawing up the list. Most of these *“problematic areas”* are located in the Košice, Prešov, and Banská Bystrica regions, which are known to have the highest number of Romani neighbourhoods.³³ Later another list was drawn up but was not published. The mayors of several municipalities that appear on the list do not share the view that they are “problematic”. On the contrary, they claim that there has been a recent decline in criminal activities, even without the increased activity of the police. The Interior Ministry nonetheless reiterated the need to gather data on “Roma criminality”, i.e. the criminal offences and misdemeanours perpetrated by Roma.³⁴

²⁹ Ombudsperson, Press conference on the action in Vrbnica, available at <http://www.vop.gov.sk/tlacova-konferencia-k-zasahu-vo-vrbnici>.

³⁰ The Atlas was published by UNDP in 2014 and is available at http://www.unipo.sk/public/media/18210/Atlas_romkom_web.pdf.

³¹ Aktuality.sk, Roma are terrified how they are condemned by the Prime Minister, available at <https://www.aktuality.sk/clanok/399906/romovia-su-zhrozeni-ako-ich-odsudzuje-premier/>.

³² Ministry of Interior, Priorities for 2017, available at <https://minv.sk/?tlacove-spravy&sprava=priority-ministerstva-vnutra-v-roku-2017>.

³³ SME, Kaliňák showed municipalities in which he wants to fight criminal activities, available at <https://domov.sme.sk/c/20429071/kalinak-ukazal-obce-v-ktorych-chce-bojovat-s-romskou-kriminalitou.html>.

³⁴ See <https://spravy.pravda.sk/domace/clanok/446097-kalinak-avizuje-statistiku-romskej-kriminality/>.

29. The ERRC views the violent police raids described in the first part of this section as clear evidence of institutional racism in Slovak police services, bolstered by public statements from influential politicians contaminated with antigypsyism (see, mutatis mutandis, *Bączkowski and others v Poland* (2007), § 100) and further institutionalised by policies that blatantly target Roma with no apparent justification other than to stigmatise Roma. The ERRC urges the Court to acknowledge the existence of institutional antigypsyism in Slovakia among police. See, mutatis mutandis, *Carvalho Pinto de Sousa Morais v Portugal* (2017), §§ 54.

IV. The consequences of institutional antigypsyism and the appropriate response to allegations of violations of Article 14 taken in conjunction with Articles 3

30. Romani victims of police brutality have had difficulty, when they were victims of a violation of Article 14 taken with the procedural limb of Article 3, of convincing the Court that they were also victims of a violation of Article 14 taken with the substantive limb of Article 3. This is because the Court requires an applicant alleging discrimination to demonstrate it “beyond reasonable doubt”. *Nachova and others v Bulgaria* (Grand Chamber, 2005), § 147. However, vulnerable victims alleging racially-motivated police violence are particularly unlikely to discharge this burden of proof when they are also victims of a failure on the part of the authorities to investigate what happened to them. The Court will appreciate the particular frustration for Romani victims of police brutality: the failure of the authorities to investigate the crime properly leaves them unable to establish a violation of Article 14 taken with the substantive limb of Article 3. See, e.g., *Nachova*, § 147. While it is of course possible for the Court to conclude that police violence was discriminatory, the existence of sufficient evidence in any particular case is completely out of the hands of the Romani applicants who come to the Court seeking justice. See, e.g., *Stoica* (2008), § 122 (finding a violation of Article 14 based, in large part, on racist statements contained in a police report).

31. The result is that the Court’s case law rarely, if ever, addresses institutional antigypsyism in policing overtly. Without naming it as such, though, the Court has frequently dealt with antigypsyism in police and prosecutors’ offices. See, e.g., *Nachova and others v Bulgaria* (Grand Chamber, 2005) and *Šečić and others v Croatia* (2009). In these cases, the Court found violations of Article 14, taken with the procedural limb of Article 2 or Article 3, resulting from the failure to unmask the racist motives that appeared to lay behind violence against Roma. Yet such a finding only considers part of the problem of institutional antigypsyism. For example, in *Nachova and others*, the Court found, firstly, that there had been a failure adequately to investigate the deaths of two Romani men (a violation of the procedural limb of Article 2, taken on its own, §§ 114-119). The Court then separately found a violation of Article 14 taken with the procedural limb of Article 2, because of the failure to investigate the racist motives behind the killings (§§ 162-168). This second finding was a truism: it would be difficult to imagine an investigation into the death or ill-treatment of a Romani person that was ineffective in general (violation of the procedural limb of Article 2 taken on its own) yet effective in unmasking any racist motive. See also *Šečić and others v Croatia* (2009) (finding, first, a violation of the procedural limb of Article 3 and then, separately, a violation of Article 14 taken with the procedural limb of Article 3).

32. The Court’s analysis under Article 14 taken with Article 3 has gone somewhat further in the area of inadequate police responses to gender-based violence. In *Opuz v Turkey* (2009), the Court concluded “that domestic violence is tolerated by the authorities and that the remedies indicated by the Government do not function effectively” (§ 196), also noting that “the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence” (§ 197). See also *Halime Kılıç v Turkey* (2016), § 120 (“*En fermant régulièrement les*

yeux sur la réitération des actes de violences et des menaces de mort dont la fille de la requérante était victime, les autorités internes ont créé un climat propice à cette violence”). The Court, in essence, found institutional sexism in the Turkish institutions responsible for protecting women from gender-based violence, resulting in a violation of Article 14 taken, in those cases, with Article 2. The ERRC notes, in particular, that in those cases (*Opuz* and *Halime Kılıç*), the Court did not find it necessary to consider specifically whether the procedural or the substantive limb of Article 2 was engaged.

33. When faced with institutional antigypsyism of the kind described above, in Europe generally and in Slovakia in particular, the ERRC urges the Court to make the equivalent finding in individual cases of police brutality: institutional antigypsyism among police is responsible for a violation of Article 14 taken with (as appropriate) Articles 2 or 3.
34. The question is not whether there is enough evidence to meet the “beyond reasonable doubt standard” that police violence was due to discrimination, or whether there has been a failure properly to investigate racist motives; it is whether the incident took place in a context where the authorities, aware of problems of racism against Roma, allow police forces contaminated with institutional antigypsyism to act with impunity (i.e. whether “*les autorités internes ont créé un climat propice à cette violence*”).
35. Asking this more comprehensive question addresses the reasons Roma come to the Court with cases such as these. Where there is evidence of institutional antigypsyism among police services, Roma are asking for – and, the ERRC submits, in line with the *Opuz* and *Halime Kılıç* judgments, are entitled to – a finding that there is a more global violation of Article 14 taken with Article 3 (or Article 2); the beyond-reasonable-doubt test and the distinction between substantive and procedural violations do not apply. Institutional racism deprives Roma of access to the evidence with which they could prove that police violence in a specific case was due to discrimination. In a place such as Slovakia, individual cases of police brutality against Roma are part of a larger pattern which must be recognised as such, if State are to fulfil their obligations under Articles 1 and 46 § 1 of the Convention.
36. In cases where police violence against Roma goes uninvestigated and takes place in a well-documented climate of institutional antigypsyism, the Court should not conduct a separate, four-part analysis under the substantive and procedural limbs of Article 3, taken on its own and then with Article 14; nor should the Court apply a beyond-reasonable-doubt standard. Instead, the Court should make a global finding of a violation of Article 14 taken with Article 3, recognising the existence of institutional racism, how it manifested itself in one individual case, and how it prevented the victims in that case from securing justice. Such a finding is more likely to ensure that the Court’s judgments lead to the systemic changes at domestic level that will make it unnecessary to bring similar complaints to Strasbourg in the future.

The European Roma Rights Centre
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