

I. Scale of Violence Against Roma in Europe

a. Overview information about violence against Roma in Europe

1. There are approximately 10-12 million Roma across Europe. As the Court already recognised in *D.H and Others v. Czech Republic* (2007) and other case law, the Roma are a particularly disadvantaged¹ minority group in Europe, requiring special protection. Given the scope of violence against Roma, which is set out below, the ERRC believes that this protection must also extend to protection against racist violence.
2. In recent years, anti-Gypsyism – a specific form of racism targeting Roma – has increased in Europe and as a result recorded instances of violence against Roma have risen. A recent report by Amnesty International indicates that violence against Roma in Europe is increasing alarmingly and calls upon authorities effectively to investigate and condemn those who commit hate crimes. The report² concentrates on the Czech Republic, France and Greece and explains in detail the attitude of State authorities and members of the public towards Roma. The report recommends that governments adopt measures in order to combat hate crimes.
3. In 2012, the ERRC released a report³ about violence against Roma in Slovakia, Hungary, the Czech Republic and Bulgaria. The report 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 throwing Molotov cocktails. Out of these 120 hate crimes, 14 concerned police brutality.
4. Based on further monitoring between 2012 and 2013, the ERRC recorded more than 50 cases involving hate crimes directed at Roma in Slovakia and the Czech Republic alone. Fifteen of these cases involved police brutality. The ERRC maintains a map of attacks in those two countries, available at <http://goo.gl/maps/o1GoG>.
5. The EU Fundamental Rights Agency (FRA) carried out its European Union Minorities and Discrimination Survey (EU-MIDIS) in 2008⁴. They asked 23,500 individuals with an ethnic and 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 are the groups most likely to experience in-person crime, and in some places they are four times more likely to be victims of such crime than the majority population.⁵ Roma and other minorities are 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. In Romania, 75% of Roma did not report in-person crimes of which they were victims⁶. According to FRA, there is a link between this underreporting and lack of trust in the police resulting, for example, from excessive police stops of Roma and other minorities and disrespectful treatment of them by the police.⁷

1 *D.H. and Others v the Czech Republic*, application no. 57325/00, final judgment of 13 November 2007, §. 182

2 Amnesty International, “We ask for Justice”, *Europe’s Failure to Protect Roma from Racist Violence*, report of 2014, available at: <http://www.amnesty.org/en/library/asset/EUR01/007/2014/en/7c3cc69e-e84d-43de-a6a9-3732b4702dff/eur010072014en.pdf>.

3 *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>.

4 See <http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey?tab=publications>.

5 See http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf.

6 http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf

7 http://fra.europa.eu/sites/default/files/fra_uploads/1132-EU-MIDIS-police.pdf.

b. Recent cases recorded by the ERRC

6. The ERRC follows up a select number of cases, providing support and/or raising awareness of problems with the authorities' response to violence against Roma. The case summaries below are intended to give the Court an impression of the kinds of violence Roma regularly experience across Europe.

Czech Republic

7. *Death of a Romani man after police intervention.* In 2013 in Trebišov, a former professional soldier of Roma origin died at the hands of police officers. I.K. was allegedly causing a disturbance in a restaurant. After their arrival at the scene, the police started beating I.K. When I.K.'s family arrived at the restaurant, one of the policemen had his knee on I.K.'s neck, which was turning blue because he could not breathe. When paramedics arrived, they declared him dead.
8. *Romani man beaten to death by the police.* On 6 May 2012, L.K., a young Romani man was beaten to death by the police in Kynšperk. According to media reports, the police were called after L.K. unintentionally elbowed a woman. After their arrival, the police handcuffed him and beat him until he lost consciousness. He died in hospital a few hours later.⁸

Slovakia

9. *Police raid in Budulovská.* On 15 June 2013, in Budulovská, Moldava nad Bodvou in a Roma community holding a celebration, police were called and at around 11pm came and asked the people to lower the volume of the music. They complied. The same group of policemen returned then next morning and one of them verbally attacked a minor, L.H., based on an alleged "unsettled matter from the past". Two people, L.H. and E.R. (an adult with an intellectual disability) were arrested and taken to the police station in Košice. On 19 June 2013 at around 5pm, the police (around 50 masked police officers) returned to the Roma community with approximately 20 vehicles but without any court order and started searching the houses. The people from the community did not resist during the police intervention. The police nonetheless injured more than 30 people including an infant only a few weeks old, who fell unconscious and had to be taken to hospital. Many others needed immediate medical treatment, presenting visible marks of physical abuse. Parts of their property were also destroyed. Around 15 people were arrested and taken to the police station in Moldava nad Bodvou, where they were beaten up. Subsequently, the people were released.⁹ E.R. was detained for more than a month.
10. *Police raid in Stráne Pod Tatrami.* In August 2012, in Stráne Pod Tatrami, the police searched the houses of a Roma community without having a court order or providing any explanation. The police beat the Roma and verbally insulted them on the basis of their ethnicity. The official justification of the search was allegedly to find individuals actively avoiding legal imprisonment. By the end, 20 police cars were present at the scene. Two passers-by coming home from the forest where they had collected wood for winter were beaten up, handcuffed and escorted to the police station where they were physically assaulted
11. *Abuse of Romani detainees.* On 21 March 2009, after being arrested by police on suspicion of robbery and causing injuries to an elderly woman in a shopping centre, six Romani men (three of them minors) were brought to a police station in Košice where they were physically abused, ordered to hit and kiss each other, and, finally, to strip naked.

Hungary

12. *Romani driver shot dead by police.* On 25 April 2009, a Romani driver was shot dead by a policeman after refusing to stop his car for a check. The police stated that the man refused to stop at an ordinary check and ran away in his vehicle. After a warning, the policeman fired his gun and the bullet hit the man in his back; he subsequently died.

⁸ *Violent death of a Romani man at the hands of the police*, available at: <http://www.romea.cz/en/news/czech/czech-republic-trial-to-start-in-case-of-violent-death-of-a-romani-man-at-the-hands-of-police>

⁹ *Slovak authorities must investigate the police action in romani settlement Moldava Nad Bodvou*, available at: <http://www.errc.org/article/slovak-authorities-must-investigate-the-police-action-in-romani-settlement-moldava-nad-bodvou/4156>; <https://www.youtube.com/watch?v=XWnNiHSg4HU>

Macedonia

13. *Police raid on a Romani community.* On 5 May 2013, around 50 police officers forcibly entered several Romani houses and local shops in Topana without providing any explanation. They harassed and physically abused the people often in the presence of their children. Roma reported that police officers kicked and punched them with fists and police batons. Around ten Romani individuals were beaten up, including three women.¹⁰

Ukraine

14. *Violent police raid against Roma.* On 11 January 2012, the police burst into the Radvanka settlement in the early morning, according to media reports and testimony from local residents. The law enforcement officials used tear gas and beat residents with rubber batons.

Romania

15. *Young Roma man beaten to death by police.* On 4 March 2014 a young Romani man, Daniel Dumitrache aged 26 was taken into police custody from the city centre of Bucharest where he was working as an informal parking assistant. He died after a few hours later, it appears, as a result of being beaten by police.¹¹
16. *Police raid on a Roma family.* On 29 April 2013, at around 6.00am A.K., from Reghin, Mureş County was in his home with his partner and their minor child. Ten policemen entered the house. Two of them hit him in the back with batons. Then the police pushed him and held him face-down, and when his partner tried to defend him by pulling him towards her, one of the masked agents pushed her and hit her lip and right leg. They then handcuffed A.K. and took him to the yard. While in the courtyard, A.K. was not allowed to speak. He was taken to the police station in Mureş and was released after half an hour.
17. *Roma man shot dead by the police.* On 31 May 2012, a 24-year-old Roma man was shot in the head by police officers whilst being pursued by police. The pursuit took place in the Petricani-Tei area, on the outskirts of Bucharest. The victim died. According to testimony from the victim's relatives and members of the local community, several police teams from the Bucharest police were trying to capture two suspects who had stolen construction materials. The two men jumped into Plumbuita Lake to evade capture. Ten policemen surrounded the lake. The pursuing policemen announced that they would shoot, after which they fired two shots in the air. A policeman then fired in the direction of the two men who were stationary, treading water. The victim R.D., who was in the water about 10-15 metres from shore, was fatally shot in the head. The victim's body was recovered by divers after one hour of searching.¹²
18. *Roma girl beaten by head of police.* On 19 March 2014 a Roma girl was beaten by the head of the local police at Piatra Neamt police station. The incident was caught on video:<http://m.antena3.ro/romania/seful-politiei-din-piatra-neamt-filmat-in-timp-ce-a-batut-o-minora-247577.html>.

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19. Throughout Europe benign inconveniences that anyone may experience from time to time, such as being asked to turn the music down at a party or getting caught in an argument in a pub, too often turn into a nightmare of police brutality if one happens to be Roma. The all-too-common failure of the authorities to react to anti-Roma violence, including police brutality, sends a message of impunity for perpetrators.

¹⁰ *Macedonian police target Roma with excessive force*, available at: <http://www.errc.org/article/macedonian-police-target-roma-with-excessive-force/4139>

¹¹ *Report on the death of Daniel Dumitrache*, APADOR-CH, available at: <http://www.apador.org/en/raport-asupra-cazului-gabriel-daniel-dumitrache-decedat-in-incinta-garajelor-sectiei-10-politiei/>.

¹² ERRC and Romani CRISS letter to Ministry of Administration and Interior Affairs, General Department of Bucharest Police, Prosecutor Office of the Bucharest Tribunal available at: <http://www.errc.org/cms/upload/file/romania-letter-violence-6-june-2012-en...>

II. Concerns about the Romanian legislation concerning “administrative conveyance” of persons to police stations

20. Article 31(1)b of Law no. 218/2002 (the law on Romanian police) reads as follows:

(1) While carrying out their duties, according to the law, the police are vested with the exercise of public authority and have the following principal rights and obligations:

...

b) to accompany to the police station those who, through their actions, endanger a person's life, public order or other social values, as well as persons suspected of having carried out illegal acts, whose identity could not be established in accordance with the law; in case of non-compliance with the directions given by the police, these are entitled to use force; verifying the situation of these categories of persons and taking the legal measures, as the case may be, shall be carried out within 24 hours, as an administrative measure.

21. APADOR-CH, a prominent Romanian human rights NGO, has long advocated for the amendment of this provision to include necessary guarantees for those "administratively conveyed" to the police station.¹³ According to APADOR-CH, more than 100,000 people were "administratively conveyed" under this provision each year in 2009 and 2010.¹⁴

22. The Court will be aware that it is currently examining the compatibility of this practice with art. 5.1 b) and c) in *Ioan Pop and others v. Romania* (dec.), no. 52924/09, 12 March 2013.

23. A number of cases documented by APADOR-CH show that during this period of “administrative conveyance” to the police station, people are particularly vulnerable to police brutality. The following table sets out some cases that they have documented:

Name of victim	Place in Romania	Year	Link to APADOR-CH's website	Brief summary
Laurențiu Capbun	Constanța	2004	http://www.apador.org/raport-asupra-cazului-laureniu-capbun/	Following an argument at a restaurant, he was beaten at the police station overnight and died 4 days after his release.
Petre Cosmin Anghelina	Câmpulung-Muscel	2008	http://www.apador.org/show_report_nf.php?id=125	Having asked the police why they wanted to see his ID, he was beaten both in the street and at the police station.
“NATO summit pacifist gathering” victims	Bucharest	2008	http://www.apador.org/raportul-apador-ch-cu-privire-la-incidentele-petrecute-pe-data-de-2-aprilie-2008-la-societatea-flaros-timpuri-noi-din-bucuresti/	A group of pacifists holding a workshop on rented premises were violently taken to 4 police stations after an argument with the owner.
Florian Voda	Bucharest	2008	http://www.apador.org/raport-asupra-cazului-florian-vod-din-bucuresti/	A young man inquiring why the police had stopped some acquaintances was beaten and taken to the police station.
Iulian Rafael Macoveanu	Bucharest	2008	http://www.apador.org/raport-asupra-cazului-iulian-rafael-macoveanu/	He was beaten and taken to the police station for possessing legally prescribed methadone.

13 See: <http://www.apador.org/blog/campanii/scoateti-legea-din-duba/modificari-legi-jandarmerie-politie/>.

14 See: http://www.apador.org/publicatii/proiect/files/wp-content/uploads/2012/pdf/Proceduri-practici-date-statistice-privind-conducerea-administrativa-2009_2010.pdf.

Name of victim	Place in Romania	Year	Link to APADOR-CH's website	Brief summary
Emil Baboi	Bucharest	2009	http://www.apador.org/raport-asupra-cazului-lui-emil-baboi-din-bucuresti/	Having raised his voice at his girlfriend, he was severely beaten at the police station.
Florin Urzică	Bucharest	2012	http://www.apador.org/raport-asupra-vizitei-in-centrul-de-reinere-i-arestare-preventiv-din-incinta-seciei-9-poliie-din-bucuresti-cazul-florin-urzic/	He was attacked by the police on the street and beaten at the police station in order to confess to a number of unsolved burglaries.
Ion Cucăilă	Tirgu Jiu	2013	http://www.apador.org/raport-asupra-cazului-ceteanului-ion-cucil-din-targu-jiu-btut-de-doi-poliiti-de-la-poliia-municipiului-targu-jiu/	He was taken to the police station for not carrying his ID and severely beaten.
Daniel Dumitrache	Bucharest	2014	http://www.apador.org/en/raport-asupra-cazului-gabriel-daniel-dumitrache-decedat-in-incinta-garajelor-sectiei-10-poliitie/	A young Roma informal parking assistant was beaten to death at the police station.

24. As mentioned above, FRA's data shows that Roma in Romania are disproportionately stopped by the police and often report being treated disrespectfully by police. From this, the ERRC infers that "administrative conveyance" to the police station disproportionately affects Roma, who should be seen as particularly vulnerable to police brutality during this period.
25. The ERRC is concerned about Roma who find themselves in (often physical) conflict with police officers and are accused of committing offences against them. These Roma are often "administratively conveyed" to a local police station by those same officers, where they remain under the control of the officers they have allegedly injured before being transferred to a police station competent to address offences against the police. This measure can extend up to 24 hours. The ERRC shares the worries of APADOR-CH that during this period people, including Roma, are effectively detained under this provision and are being subjected to physical violence by police acting with impunity. The ERRC supports APADOR-CH's call for an amendment to the legislation to limit the "administrative conveyance" measure and ensure that suspects are either released or quickly taken into ordinary custody, under the oversight of a prosecutor under Article 209 of the Criminal Procedure Code.

III. Whether Romanian criminal law is sufficient to guarantee compliance with Article 3, taken with Article 14

a. The obligation under the Convention to investigate racist motives behind violence against Roma

26. The Court has long held¹⁵ that “where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society’s condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.”
27. This applies equally under article 2 (see *Menson precit.*, *Nachova and Others v. Bulgaria* [GC], No. 43577/98 and 43579/98, 6 July 2005) and under article 3 of the Convention (see *Bekos and Koutropoulos v Greece*), and also irrespective of whether the violence is carried out by state agents or private parties (*Šecić v Croatia*, No. 40116/02, 31 May 2007).
28. The obligation to investigate the possible hateful motivation of violence has also been recognised beyond cases involving racial bias, to include victimisation on grounds of religious belief in *Milanović v Serbia*, No. 44614/07, 14 December 2010, §§ 96-97, and political opinion in *Virabyan v Armenia*, No. 40094/05, 2 October 2012, § 218.
29. While this obligation was initially framed in *Menson* as an aspect of the States’ procedural obligation to conduct an effective investigation under Article 2, the Grand Chamber later recognised in *Nachova* §161, that it “may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination. Owing to the interplay of the two provisions, issues such as those in the present case may fall to be examined under one of the two provisions only, with no separate issue arising under the other, or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made.”
30. The Court recognises that States have the additional duty to take all reasonable steps to unmask any bias motive and to establish whether or not hatred or prejudice may have played a role in the events. Failing to investigate the underlying bias motive and treating hate-induced violence and brutality “on an equal footing with cases that have no such overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.” (*Nachova*, § 160; *Virabyan*, § 218).
31. Regarding the scope of this procedural obligation under Article 14 the Court has noted that “The respondent State’s obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute [...]. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.” (*Nachova*, § 160). In the same paragraph, the Court itself acknowledges that “Admittedly, proving racial motivation will often be extremely difficult in practice.”
32. The authorities’ obligation under Article 14 is triggered by “plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events at issue”. *Nachova*, § 166.
33. Indeed in numerous cases¹⁶, many involving Roma victims of violence, in which the Court has found a violation of the procedural aspects of Articles 2 or 3 taken alone, it has held that the authorities did not have sufficient information for them to be bound to pursue an investigation into the alleged racist motives of the violence, under Article 14 taken together with either Article 2 or 3 of the Convention.

15 *Menson and Others v UK* (dec.), No. 47916/99, 6 May 2003.

16 *Ognyanova and Choban v Bulgaria*, No. 46317/99, 23 February 2006, §§146-147; *Beganović v Croatia*, No. 46423/06, 25 June 2009, §§ 95-98; *Vasil Sashov Petrov v Bulgaria*, No. 63106/00, 10 June 2010, § 73; *Seidova and Others v Bulgaria*, No. 310/04, 18 November 2010, § 74; *Mižigárová v Slovakia*, No. 74832/01, 14 December 2010, § 122; *Soare and Others v Romania*, No. 24329/02, 22 February 2011, § 208.

b. The relationship between the relevant domestic legislation in Romania and the Court's case law

34. Whether or not in a given case the authorities have information on a possible racist motivation of the impugned violence is not an independent variable, but determined to a large extent by the legal and policy framework applicable to the authorities' response to racist violence.
35. The ERRC recalls the investigative actions that the Court expected from the authorities in *Nachova*, § 167 : "No attempt was made to verify Major G.'s record and to ascertain, for example, whether he had previously been involved in similar incidents or whether he had ever been accused in the past of displaying anti-Roma sentiment." These efforts would have to be predicated on the existence of a policy to collect, maintain and refer to such records.
36. In the same vein, in finding a violation of Article 14 taken together with Article 3, the Court recently noted in *Abdu v Bulgaria*, no. 26827/08, 11 March 2014, § 52 "les constats effectués par différentes instances nationales et internationales concernant l'absence de mise en œuvre efficace des dispositions réprimant les cas de violences racistes par les autorités bulgares."
37. Two distinct obligations emerge from the Court's case law on Article 14 and hate crimes:
 - a. to punish racist crime, which the Court in *Angelova v Bulgaria* No.55523/00, 26 July 2007, said may be reasonably achieved through various means, not necessarily crime enhancements;
 - b. to unmask racial motivation behind alleged crimes, an issue which has indirectly addressed in cases such as *Abdu* and remains to be further elaborated in the Court's case law.
38. As the EU Fundamental Rights Agency has pointed out, in applying the relevant EU legislation, EU Member States have adopted "one of two methods" at their disposal:

The first is to create qualifications – enhanced penalties – either for all crimes or for those perceived to be most relevant or serious, such as murder, injury, insult or vandalism. A small group of EU Member States – Belgium, Bulgaria, Czech Republic, Lithuania, Portugal, Slovakia and the United Kingdom – have opted for this approach.

A much larger group – Austria, Croatia, the Czech Republic, Denmark, Finland, France, Greece, Italy, Latvia, Lithuania, Malta, the Netherlands, Romania, Spain and Sweden – opted instead to make racist and xenophobic motivation an aggravating circumstance, sometimes in addition to qualified criminal law definitions.

When it comes to visibility, this second technique bears clear risks. Even if judges take the bias motivations of offenders into account, these motives are still unlikely to later be visible in any official statistics, which often refer only to the crime type and penalty applied. Further, when bias motivation is reduced to a mere aggravating circumstance among many others, court proceedings or police reports are less likely to consider this element in its own right, which adds to the risk that the proceedings do not take into account the bias motivation of an offender.

In addition, if the bias motivation of a crime means the victim was insulted and his or her dignity violated then it is not sufficient to punish the offender more harshly after the fact. A state must instead provide for criminal law provisions that deter hate crimes and protect an individual's human dignity. A mere aggravating circumstance may not prove to be a sufficient deterrent, as the increase in sentence length is typically left unspecified. It is therefore unclear whether the increase of sentence length is commensurate with the violation of rights suffered by the victim. In contrast, the use of an enhanced penalty makes visible the difference to the basic offence.¹⁷

39. FRA notes that Romania appears to be the only EU Member State which does not keep any records on hate crimes.¹⁸
40. In the absence of records of complaints or allegations of hate crimes which flow from adopting the crime-enhancement („*formă calificată a infracțiunii*") approach, there is a risk that patterns of

¹⁷ *Making Hate Crime Visible in the European Union: Acknowledging Victims' Rights*, available at http://fra.europa.eu/sites/default/files/fra-2012_hate-crime.pdf.

¹⁸ See *Making Hate Crime Visible*, page 8.

racist violence will not be brought to the attention of the prosecutor in a given case. See, mutatis mutandis, *Milanović v Serbia*, § 89, in which the Court held that such an obligation existed and found that the authorities had failed in their obligation to identify a pattern of hateful violence. In the absence of such data, states may be required to produce data about how minorities are affected by certain practices in order to discharge their obligations under Article 14. see *E.B. v France [GC]*, no. 43546/02, 22 January 2008, § 74.

41. There is another risk: if, as is the case in Romanian law, the racial motivation is only construed as an aggravating circumstance, it mainly comes into play at the sentencing stage of proceedings before a judge. As a result, there is an enhanced risk that police and prosecutors will neglect to investigate racist motivation as it is not related to the official classification of an act as an offence and has no bearing on whether the alleged offence will be prosecuted.
42. This is of course not to say that such a system is per se incompatible with the Convention. See, e.g., *Angelova and Iliev v Bulgaria*, § 104:

As to whether the respondent State's legal system provided adequate protection against racially motivated offences, the Court observes that it did not separately criminalise racially motivated murder or serious bodily injury (Articles 115-135 of the Criminal Code), nor did it contain explicit penalty-enhancing provisions relating to such offences if they were motivated by racism (Articles 116 and 131 of the Criminal Code). However, the Court considers that other means may also be employed to attain the desired result of punishing perpetrators who have racist motives. It observes in this respect that the possibility existed in domestic legislation to impose a more severe sentence depending on, inter alia, the motive of the offender (see paragraph 63 above). The Court further observes that the authorities charged the assailants with aggravated offences, which though failing to make a direct reference of the racist motives of the perpetrators provided for more severe sentences than those envisaged in domestic legislation for racial hatred offences (see paragraphs 56-61 above). Thus, it does not consider that domestic legislation and the lack of penalty-enhancing provisions for racist murder or serious bodily injury were responsible in the present case for hampering or constraining the authorities from conducting an effective investigation into the death of the applicants' relative and applying effectively the existing domestic legislation.

43. However, when legislation narrowly focuses the issue of racist motivation on the punishment phase, there is a need for supplementary measures to ensure that the authorities investigate racial motivation, including, for example, the collection of data about hate crimes. The ERRC notes in this respect that the Romanian legislation is even less attuned to detecting and punishing racist motivation. Unlike the Bulgarian system, which criminalises racist violence as a separate offence, the Romanian legislation only applies an aggravating circumstance to ordinary violent offences (article 77(h) of the Criminal Code¹⁹). When faced with such a system, and in the absence of any official data on hate crimes, there is a high risk that the authorities will not discharge their obligations under Article 14 taken with Article 3 when faced with what may be an act of racist violence.
44. The ERRC is of the view that the European supervision that the Court applies to cases arising under systems such as the one that exists in Romania must be enhanced. This is particularly true in countries (see above, Part I) where there is an actual history of systemic failure to respond to violence against Roma and where additional steps are still needed to address these problems. See, mutatis mutandis, *Horváth and Kiss v Hungary*, § 104.

¹⁹ Committing a crime for reasons relating to race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or allegiance, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or any other such circumstances deemed by the perpetrator to be causes of a person's inferiority in relation to others.