

Brussels, 20 April 2020

Council of Europe
DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
By email only: dgi-execution@coe.int

RULE 9 SUBMISSION: Fedorchenko & Lozenko v Ukraine (application № 387/03, judgment of 20 September 2012)

1. The European Roma Rights Centre ('the ERRC') and the ICO Roma Women Fund Chiricli ('Chiricli') make this submission in accordance with Rule 9.2 of the Rules of Procedure of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.
2. The ERRC is a Roma-led organisation whose vision is for Romani women and men to overcome antigypsyism and its legacy, to achieve dignity, equality, and full respect for their human rights, and to use their experience to contribute to a more just and sustainable world. The ERRC represented the applicants in this case.
3. Chiricli is a Roma-led NGO that has representatives in 15 regions of Ukraine. The main goals of the organization are creating favourable conditions for developing and preserving Roma culture, improving the socio-economic and political position of Roma, combating racial discrimination and intolerance, promoting ideas of brotherhood and tolerance amongst different nations and religious confessions, and protecting the cultural, social, educational, and medical rights of Roma people. During the last three years, the main priorities of fund have been: education; health care and social issues; and human rights.
4. The case concerns the authorities' failure to investigate the deaths of the Romani applicants' relatives which was caused by an arson attack on their home in October 2001. In particular, the investigators failed to investigate the possible racist motivation for this violent act. Consequently, the Court found violations under the procedural limb of Article 2 of the Convention and a violation of Article 2 in conjunction with Article 14 of the Convention.
5. Ukraine is in a transitional period following the 2014 revolution. The ongoing conflict in the East and efforts to approximate its legislation and policies with EU standards have led to a multitude of issues. The repercussions of such transitional processes affect Ukrainian society in different ways, one of which is the rise of anti-Roma sentiment and a growing sense of impunity enjoyed by perpetrators belonging to far-right groups and public figures using anti-Roma rhetoric.

A formal cooperation between Roma NGOs is largely conditioned by a necessity of implementing the Government's commitments under the National Roma Integration Strategy and EU-Ukraine Association Agreement, with regard to greater provision of human rights and minority rights. This submission takes into account the lack of security for Romani communities and the justice system's response to hate incidents (or lack thereof). The consolidation of anti-Roma rhetoric, as well as cases of violence against vulnerable groups in Ukraine committed by far-right groups, significantly obstruct the implementation of Ukraine's aforementioned commitments.

6. The ERRC and Chiricli have closely followed the five attacks that occurred between 21 April 2018 and 23 June 2018 which bore signs of being racially motivated pogroms¹. Based on our experience litigating in Ukraine, our cooperation with Roma NGOs, and ERRC human rights monitoring work in 2018, it is our opinion that the Ukrainian Government has not taken yet all the necessary general measures to comply with this judgment. We would like to provide you with an update regarding the incidents:

- I. **21 April 2018, Lysa Hora:** In this incident fifteen Romani families were drove from their makeshift homes in the Lysa Hora nature reserve in Kyiv. Serhiy Mazur, a C14 member with clearly racist views, posted photos on Facebook boasting that C14 had driven away the Romani people living in the Lysa Hora nature reserve. Carrying weapons, they chased down parents carrying small children and fleeing, threw stones at them, and then set fire to the tents where their victims had been living. Related to this attack on the makeshift homes of Romani families no one was prosecuted. Although evidence clearly showed that members of the far-right group C14² were involved, accusation of Sergey Mazur, leader of C14 were cancelled by the court of appeal due to procedural mistakes. No other development was recorded since 2019 in this case.
- II. **10 May 2018, Rudne, Lviv:** Thirty masked men attacked the makeshift homes where Roma were living near Lviv. People were dragged out and beaten while their homes were set alight. The police treated the incident as hooliganism.³ In the beginning of June 2018 Roma families returned to the place, however the head of the village council complained at the time to the local police office about their arrival and illegal residence. On 7 June 2018 the police visited the Roma families and ordered them to leave the area. They visited again on 8 June 2019 and made the families leave⁴. There is no information about prosecuting anybody related to this incident.
- III. **22 May 2018, Ternopol:** In the case of an arson attack in Ternopol,⁵ an official accusation was brought against a member of the far-right organization 'Right Sector'. The case was later forwarded to the Ternopol court⁶ (case number 607/20878/19). It is not clear from the initial procedural judgments whether the case was treated as a hate crime as the judgment

¹ See the details of the five attacks in our previous joint communication, 1 February, 2019, available at https://static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/5c7518b8ee6eb07a7f48e050/1551178019592/2019_0213_CommunicationERRCandChiricliFund_Fedorchenko.pdf

² C14 is a far-right organisation associated with acts of violence against the LGBT community, ethnic minorities, women's rights activists, trade unionists, and journalists. They are accused of deriving their name from the 14-word neo-Nazi slogan – *We must secure the existence of our people and a future for White children* – a claim which they deny. In February 2018, two men linked with C14 were [charged with the murder of a journalist](#) three years earlier. The group have recently rebranded themselves as the "Society of the Future".

³ За фактом пожежі у стихійному поселенні у Львові відкрито кримінальне провадження, available at <https://lv.npu.gov.ua/news/xuliganstva/za-faktom-pozhezhi-u-stixijnomu-poselenni-u-lvovi-vidkrito-kriminalne-provazhennya/>

⁴ Поліція змусила ромів покинути табір поблизу Львова, available at <https://zaxid.net/politsiya-zmusila-romiv-pokinuti-sviy-tabir-poblizu-lvova-n1458634>

⁵ Активіста «Правого сектору» в Тернополі арештували за напад на ромський табір, available at <https://zaxid.net/aktivista-pravogo-sektoru-sudyat-u-ternopoli-cherez-napad-na-romskiy-tabir-n1459955>

⁶ У Тернополі націоналіста судять за напад на ромський табір, available at <https://zik.ua/news/2018/06/25/u-ternopoli-natsionalista-sudyat-za-napad-na-romskyy-tabir-1353431>

indicates that the prosecutor insisted on the charge of 'hooliganism' (art. 296 part 2 of Criminal Code of Ukraine).

- IV. **7 June 2018, Holosiyivskiy Park in Kyiv:** Members of a far-right militia group threatened and then destroyed the makeshift homes of Romani people in Holosiyivskiy Park in Kyiv. This incident was treated also as hooliganism. There is no information about prosecuting anybody related to this incident.
- V. **23 June 2018, Lviv:** In this attack a 24 year-old Romani man was stabbed and killed and several others were injured. Two of the accused persons have confessed to the assault, signed an agreement with the public prosecutor, and further assisted the investigation of the case. The court found them guilty, they were sentenced under the lighter charge of 'hooliganism' on account of most of them being minors⁷. The court imposed a sentence of 4 years 5 months imprisonment, but they were released on probation with the condition that they should prove their good character in the next 1.5 years⁸. The other 12 persons who were involved in attack are still waiting for their judgment from the court. The public prosecutor excluded racial motivation from their charges⁹ due to their opinion that there was a lack of evidence to support this.¹⁰

7. Based on Chiricli's observation, in practice, the classification and investigation of hate crimes in Ukraine frequently neglect racial hatred as a motive. Investigations are usually initiated by the police who – rather than rely on bias indicators such as the crime scene, affiliation of perpetrators with far-right groups, ethnicity of victims, and/or derogatory exclamations¹¹ – instead rely on the personal testimony of the suspect to determine whether or not they were motivated by racial hatred. Whilst motives of racial hatred continue to be routinely overlooked in such attacks, they will continue to occur. Ukraine must provide an effective response to violent racist attacks through its justice system and are also obligated to maintain and publish reliable data on hate crimes in the country.

8. Chiricli and the ERRC are continuing to monitor hate incidents and cases of discrimination against Roma. These incidents can be divided into the following categories: cases of physical violence¹², disruption of public events¹³, and systemic use of hate-speech on internet¹⁴. These three categories of cases are exacerbated by a lack of trust towards authorities amongst Roma, a neglect of bias indicators used in investigating attacks, and a shift of focus at an institutional level from effective investigations and accountability of perpetrators, to a security approach to compact, informal Romani settlements. Chiricli is assisting police forces, within the confines of its competence and

⁷ Jonathan Lee - Advocacy & Communications Manager of ERRC, HOPE not hate, 'Ukrainian Government Minister accompanies C14 neo-Nazis inspecting Kyiv Railway Station for Roma', 2 April, 2020, available at <https://www.hopenothate.org.uk/2020/04/02/ukrainian-government-minister-accompanies-c14-neo-nazis-inspecting-kyiv-railway-station-for-roma/>

⁸ ЖОРСТОКИЙ НАПАД НА ТАБІР РОМІВ У ЛЬВОВІ: ДВОМ НЕПОВНОЛІТНІМ НАПАДНИКАМ ПОМ'ЯКШИЛИ ПОКАРАННЯ. Більше читайте тут, available at <https://tsn.ua/ukrayina/zhorstokiy-napad-na-tabir-romiv-u-lvovi-dvom-nepovnlitnim-napadnikam-pom-yakshili-pokarannya-1400424.html>

⁹ Весна ненависті: як розслідуються минулорічні напади на ромів в Україні?, available at <https://www.radiosvoboda.org/a/jak-rozslidujutsia-napady-na-romiv-2018/29868722.html>

¹⁰ Рік після погромів: як розслідуються напади на ромські поселення в Україні, available at <https://bit.ly/3cAvgz8>

¹¹ Chiricli acquired this information from their cooperation with the police, in particular through police trainings.

¹² Mass fingerprinting of Roma in Chernihiv region without due process in January-February 2019, according to Roma mediators from Chernihiv region; 3 cases of violent murders of Roma women in Transcarpathia region in Uzhgorod city from 1 July 2019 to 5 April 2020 (All three murders were committed with particular cruelty, resorting to rape, knife cuts, beatings and resulted in violent deaths. Please note that investigations into these murders were not carried out effectively, as there is evidence that investigators demanded money from the relatives of the victims.).

¹³ 'A year after a series of violent attacks on Roma camps in Ukraine, local human rights activists met on May 27 to discuss the lack of proper investigations into the violence, only to be disrupted by an armed man and his supporters.', Kyiv Post, 28 May 2019, available at https://www.kyivpost.com/ukraine-politics/armed-man-nationalists-disrupt-discussion-about-roma-peoples-rights-in-kyiv.html?fbclid=IwAR246VOJ_rCiT3BnQNdxCsuGCnmIf2KH5Aw1D-belwXRCMeAqsW8i_CJQ.

¹⁴ See point 12.

expertise, in complying with Ukraine's commitments on ensuring security and protection of Roma communities.

9. Regarding institutional level cooperation, Chiricli notes that Ukrainian authorities have taken some steps to prevent further attacks after the violent anti-Roma pogroms of 2018. In particular, these steps mostly concern cooperation with Roma NGOs through common educational activities such as trainings for local police officers across Ukraine, as well as some thematic conferences and round-table discussions. Whilst the lion's share of these activities are initiated by Roma NGOs, it is nevertheless beneficial for the overall situation for relations between Roma and police officers on building trust and understanding.

10. The establishment of the permanent working group under the Ministry of Internal Affairs in 2018 as a response to the anti-Roma pogroms is welcome. However, Chiricli (a member of this group) notes that dialogue between the Roma NGOs and State authorities on the issues concerning the protection of Roma communities and prevention of potential attacks across Ukraine cannot be characterized as particularly "effective" or "viable".

11. In respect to the Government's assertions expressed in the communication¹⁵ with regard to the work of the permanent working group, it should be noted that the primary focus of the group was how to protect the informal Roma settlements rather than how to ensure effective investigations, correct and trustworthy qualifications, and accountability for hate incidents. Furthermore, the last time the group was convened was on 26th March 2019. The next meeting had been planned for the beginning of September, which was later postponed and eventually did not take place at all. In light of the fact that the National Roma Strategy is expiring in 2020, it is of the utmost importance that the group is convened, discussion restarted, and continued without delay or pause.

12. Chiricli together with the Coalition of Roma NGOs have been pro-active in providing social and legal support to the victims of hate incidents. The organisations have also repeatedly appealed to State authorities to take immediate actions to protect the human rights of Roma, and strengthen state policy against xenophobia, racism, and intolerance. Recently the systematic use of hate speech against Roma by members of the "Municipal Guard"¹⁶ paramilitary (Kyiv Municipal Civic Formation for the Protection of Public Order and State Border) drew the attention of human rights defenders and Roma organizations.¹⁷ The "Municipal Guard" has delegated powers from the Kyiv City State Administration, who coordinate the activities of this organization and entrust it with powers of maintaining public order. There are a significant number of members from the far-right C14 movement who are also members of the "Municipal Guards", demonstrating that far-right groups are well infiltrated into the public office and security realm.

13. The ERRC and Chiricli also express their deep concern at the cooperation between the Minister for Infrastructure and the above mentioned C14 far-right group. The Ukrainian Minister for Infrastructure, Vladislav Kriklij, was pictured earlier this month with members of C14 and the "Municipal Guards" paramilitary group at Kiev Central Railway Station. The head of C14, Yevgen

¹⁵ Communication from the authorities (03/04/2020) in the cases of Burlya and Others, Fedorchenko and Lozenko and Grigoryan and Sergeyeva v. Ukraine (Applications No. 3289/10, 387/03, 63409/11)

¹⁶ The far-right Municipal Guards is led by C14 member Sergiy Bondar, who signed a memorandum of understanding with authorities in Kiev in December 2017 for the group to provide security services in the capital. C14 and the Municipal Guards were responsible for the pogrom of Roma living in temporary dwellings on the [Lysa Hora nature reserve in Kiev in April 2018](#)

¹⁷ Statement on Effective Measures to Minimize Criminality at Ukrainian Railways and Prevent Discrimination Against Ethnic Groups, as of 12.03.2020, <https://zmina.ua/statements/zvernennya-shhodo-efektyvnyh-zahodiv-dlya-minimizaciyi-zlochynnosti-na-zaliznychnyh-vokzalah-ukrayiny-ta-zapobigannya-dyskryminaciyi-etnichnyh-grup/?fbclid=IwAR2GialkiZp0oZb1YJv6KE8YFy-68fitocxmMQW4VoMOeva1Ufedw3aL0>

Karas, uploaded a video¹⁸ to social media showing the Minister cooperating with the far-right groups in an 'inspection' of the area, claiming to be investigating the problems associated with so-called "gypsy gangs". The same station was the site of a C14 raid on Roma in 2018¹⁹; a self-described "cleansing operation" conducted alongside the National Police²⁰.

14. This shows that the relationship between the state and far-right civil organisations remains firm in Ukraine. The development of this relationship, from security contracts with local municipalities (as in the case of the "Municipal Guards") to tacit support from cabinet members of the Ukrainian Government (such as Vladislav Kriklij) , is deeply concerning. C14 and the far-right retain strong links with the political administration in Ukraine in civil affairs, and still regard Roma as an easy target for state endorsed racism and violence. Despite the short-lived international outrage at the violence against Roma carried out by C14 and others, their influence has only grown in the two years since²¹.

15. We believe that there is a climate of increasing hostility towards, not only Roma but, other vulnerable groups such as LGBT+ and migrant communities. Radicalization has unfortunately become a widespread phenomenon that is confined not only to Ukraine, but is a Europe-wide issue. For this reason, a significantly stronger level of cooperation between Roma activists, NGOs and the state is needed at all levels.

16. In conclusion, we submit that Ukraine has not taken the general measures necessary to implement the judgment in Fedorchenko and Lozenko. On the contrary, things appear to be worsening in light of the above-mentioned issues.

17. In view of this situation, Chiricli and ERRC therefore invites the Committee of Ministers to ask Ukrainian authorities to:

1) Institutionally respond to hate speech, manifestations of racism and intolerance, threats and racially motivated violence, often perpetrated with the involvement of extreme right-wing groups.

2) Take measures to effectively investigate hate crimes under article 161 of the Criminal Code, especially in the attacks on Roma settlements in Kyiv, Ternopol and Lviv in 2018 - concerning Art. 161 of the Criminal Code. In our opinion, there is no need to strengthen the sanctions for the crime provided for, but it is necessary to ensure the steadfast application of these sanctions to the perpetrators as we deem impunity is a driving force for further repetitive occurrence of hate crimes against Roma as a special form of racism termed antigypsyism.²² Violent antigypsyism in Ukraine is perpetuated by the absence of sanctions by public actors, leading to normalization and acceptance of the oppression of Roma, which results in the further disenfranchisement of Roma.

¹⁸ The video available at <https://www.youtube.com/watch?v=xmJptWGcGA0&feature=youtu.be>

¹⁹ Ukraine's far-right C14 conducts anti-Roma cleansing operation at Kyiv train station, available at <https://112.international/ukraine-top-news/ukraines-far-right-c14-conducts-anti-roma-cleansing-operation-at-kyiv-train-station-33481.html>

²⁰ Jonathan Lee - Advocacy & Communications Manager of ERRC, HOPE not hate, 'Ukrainian Government Minister accompanies C14 neo-Nazis inspecting Kyiv Railway Station for Roma', 2 April, 2020, available at <https://www.hopenothate.org.uk/2020/04/02/ukrainian-government-minister-accompanies-c14-neo-nazis-inspecting-kyiv-railway-station-for-roma/>

²¹ Ibid.

²² Iulius Rostas, A Task for Sisyphus: Why Europe's Roma Policies Fail (CEU Press, 2019)

- 3) Require Ukrainian authorities to report to the Committee of Ministers regularly on progress with the prosecutions in the attacks mentioned above, in particular, whether aggravated circumstances are being investigated, which provisions of the criminal code are being used when it comes to prosecution, how many people are being prosecuted, how many people found guilty, and the sentences which are being given.
- 4) Request Ukrainian authorities to report similar data on any further such incidents.
- 5) Ask for a report on what actions the Ukrainian authorities undertook to ensure adequate control over the investigations into attacks on Roma from 2018.
- 6) Ensure that the post-2020 Roma Integration policy has specific references to tackling hate crimes and building trust and understanding between police and Romani communities
- 7) Adapt and make use of the available relevant manual prepared by the OSCE ODIHR on “Categorizing and Investigating Hate Crimes in Ukraine: a Practical Guide”²³
- 8) Take measures to prevent the activities of extreme right-wing organizations and groups in Ukraine, and where necessary in cases they pose a threat to public safety: take legal measures to have them disbanded.
- 9) Investigate and terminate any formal and informal cooperation between the state and far-right civil organisations.



ICO Roma Women Fund Chiricli
European Roma Rights Centre

20 April 2020

²³ БДІПЛ ОБСЄ, Категоризація та розслідування злочинів на ґрунті ненависті в Україні: Практичний посібник, available at <https://www.osce.org/uk/odihr/420296>