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RULE 9(2) SUBMISSION ON THE EXECUTION OF LINGURAR V ROMANIA  
(application no.48474/14).

1. This case concerns the disproportionate use of force against the applicants during a police raid carried out in December 2011 in a Romani community, an operation which the Court found to **have been racially-motivated** (violations of Article 3 in its substantive limb alone and in conjunction with Article 14). The Court held that the authorities had not convincingly shown that the force employed by law-enforcement officers during the raid was proportionate and that the decisions to organise the police raid and to use force against the applicants had been made on considerations based on their ethnic origin, which the authorities had automatically connected to criminal behaviour.
2. The case further concerns **the lack of an effective investigation into these events**, in particular as **regards the applicants' allegations of ethnic profiling by law-enforcement** (violation of Article 14 in conjunction with Article 3 in its procedural limb). The Court noted the evidence and available material showing that **Romani communities were often confronted with institutionalised racism and were victims of excessive use of force by law-enforcement in Romania**. The investigative authorities and the domestic courts had not only dismissed the applicants' allegations of discrimination without any in-depth analysis and failed to censure what seemed to be a discriminatory use of ethnic profiling, but also fell back on references to unrelated instances in which members of the Romani community had been violent towards law-enforcement officials.
3. **The Court made the unusually strong finding that there was "institutionalised racism" against Roma by Romanian police, who engaged in "ethnic profiling"**.
4. The aims of this submission are the following:

- a. Despite the uniqueness of the Court's judgment in this case, we aim to demonstrate that this case is far from being exceptional. Widespread institutional racism, ethnic profiling, and excessive use of force against Roma are endemic to law-enforcement bodies in Romania. This amounts to institutional antigypsyism.
  - b. We further seek to demonstrate by bringing evidence from previous cases and reports of UN and Council of Europe monitoring bodies that the authorities' failure to investigate allegations of discrimination during police conduct reflects systemic shortcomings.
  - c. Finally, we propose some recommendations in order to inform the first government Action Plan yet to be submitted to the Committee of Ministers by the Romanian government.
5. The exceptional character of the language in the Court's judgment should give the Committee pause when considering this case. In *Stoica v Romania* the Court admitted that "*proving racial motivation will often be extremely difficult in practice*" due to a requirement to produce proof beyond reasonable doubt (§ 119). The Court does not make findings of the kind made in the present case (*Lingurar*) lightly. This judgment comes after years of similar cases and an obvious unwillingness on the part of the Romanian authorities to make changes.
6. **Previous judgments of the Court attest to the fact that *Lingurar v Romania* is not an isolated case, but raises a systemic issue.** Previous judgments of the Court show that Romanian law-enforcement agents repeatedly committed violence against Roma, "*participated in acts of racially motivated violence and destruction, uttered racial verbal abuse, and failed to conduct meaningful investigations into these incidents*" (see, among others, *Stoica v Romania*, no. 42722/02, §§ 80, 81 and 132; *Gergely v Romania*, no. 57885/00, §§ 16 and 25; *Cobzaru v Romania*, no. 48254/99, § 101; and *Moldovan and Others (no. 2)*, no. 1138/98 and 4320/01, § 140, 2 July 2005),<sup>1</sup> that Roma suffered harm at the hands of the authorities (*Boacă and others v Romania*, no. 40355/11, §§ 79 and 80), death, life-threatening injuries, or ill-treatment (*Soare and others v Romania*, no. 24329/02; *Lingurar and Others v Romania*, no. 5886/15), §§ 88-89). Similarly, it is a recurring finding of the Court that the Romanian authorities generally fail in their obligation, imposed by Article 14 taken with Article 3, to take all the necessary measures to investigate whether there had been a racist motive in the organisation of police operations

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<sup>1</sup> Partly Joint Dissenting Opinion of Judges Gyulumyan and Power, *Carabulea v Romania* (no. 45661/99) § 7.

(Ciorcan and Others v Romania, no. 29414/09 and no. 44841/09; Boacă and Others v Romania, no. 40355/11; Lingurar and Others v Romania no. 5886/15; Cobzaru v Romania, no. 48254/99; Stoica v Romania, no. 42722/02).

7. **The argument that Lingurar v Romania reflects widespread, systemic problems of policing is further corroborated by the reports of European and international monitoring bodies.** Such bodies have raised concerns about discrimination against Roma in Romania, and more specifically about Romanian authorities' failure to investigate anti-Roma violence and allegations of discrimination by law enforcement authorities. The Commissioner for Human Rights of the Council of Europe underlined in a report in 2014 that institutionalised racism against Roma is often combined with excessive use of force by law-enforcement authorities, which, although not frequently reported, often result in death or serious injury.<sup>2</sup> The Opinion of the Advisory Committee on the Framework Convention as of 2018 highlighted that there had been no convictions in 48 documented cases of police brutality against Roma from 1996 until 2015; those incidents involved seven deaths and 186 cases of injury, and racism had never been investigated as a motive.<sup>3</sup> The UN Human Rights Committee in 2017 also expressed its concerns "*about the high number of reports of abuse and ill-treatment of persons deprived of their liberty, allegations of police brutality, especially against Roma, and the reported lack of investigation of those allegations (art. 7)*".<sup>4</sup> The most recent ECRI report on Romania from April 2019 noted that Roma continue to be targets of racially-motivated violence, and also expressed concern about the ethnic profiling of Roma by the police. Concerns related to police abuse against Roma were raised also by the 2015 Concluding Observations on Romania, published by the UN Committee against Torture, which further highlighted the "*targeted practice of 'administratively conveying' Roma to police stations*". The Commissioner for Human Rights similarly stressed in 2016 that measures need to be taken to eliminate institutional racism against Roma.<sup>5</sup>

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<sup>2</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, Strasbourg, 8 July 2014, CommDH(2014)14, Original version, <https://rm.coe.int/16806db83b>. §196.

<sup>3</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Romania - adopted on 22 June 2017 Published on 16 February 2018, ACFC/OP/IV(2017)005, §71.

<sup>4</sup> Human Rights Committee, 121st session, Summary record of the 3428th meeting held at the Palais Wilson, Geneva, on Wednesday, 25 October 2017, at 3 p.m. §28.

<sup>5</sup> ECRI Report Romania, (fifth monitoring cycle) Adopted on 3 April 2019, Published on 5 June 2019, p.21.

8. As observed by the Special Rapporteur on extreme poverty and human rights in 2016, openly expressed negative stereotypes about Roma feed general public denial of discrimination against Roma by senior officials.<sup>6</sup> The Special Rapporteur upon his mission to Romania was “*deeply concerned by allegations of police abuse, especially against Roma.*” As he pointed out in his report, “*several civil society organizations indicated that this is a widespread practice, although official figures are lacking.*” He referred to the case of Gabriel-Daniel Dumitrache, who died in March 2014 in Bucharest after allegedly having been beaten up severely at Police Section 10 at Strada Stelea Spatarul 15. He argued that this case was emblematic. As he explained, the victim “*was one of many ‘parking assistants’, who ‘assist’ drivers in parking their cars, an activity that is prohibited by law. Such informal work is common among Roma men in Bucharest, who are more likely to take up such irregular work due to very high levels of unemployment among Roma. The Special Rapporteur spoke to several Roma men in Bucharest who worked as parking assistants and they described being regularly apprehended by the police, and sometimes subjected to physical abuse. On various occasions, after showing their identity cards, they were nevertheless taken to a police station, detained for significant periods of time and sometimes subjected to physical violence in isolated parts of the building. It was suggested that the police are under political pressure to “cleanse” the city of such informal workers, thus turning a social issue requiring economic and social solutions into a police matter.*”<sup>7</sup>
9. The Special Rapporteur highlighted how systemic issues in the police aggravate the discriminatory treatment of Roma by police. “*The combination of persistent and credible allegations, a lack of the most basic procedures to deter abuse and an ineffectual complaints system underscores the urgent need to introduce stricter rules, provide vastly more transparent figures, undertake regular reporting and establish a meaningful complaints procedure. **What is peculiar about the Romanian situation is that the rules that currently apply could be seen as a charter for harassment. The system includes characteristics that make abuse easy and ensure that accountability will be the rare exception rather than the norm.***”<sup>8</sup>

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<sup>6</sup> United Nations General Assembly, Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania, Human Rights Council, Thirty-second session, Agenda item 38 April 2016. §14.

<sup>7</sup> Ibid, §24-25.

<sup>8</sup> Ibid, §29.

10. Following the adoption of the new Criminal Code in 2014, information on hate crimes began to be reported by Romania. However, as the Advisory Committee on the Framework Convention for the Protection of National Minorities noted, the data provided for 2014 (25 hate crimes) and 2015 (15 hate crimes) seem to be quite low, and do not reflect media and NGO reports.<sup>9</sup> Moreover, according to ECRI, coherent and systematic data collection on hate speech and hate-motivated violence continues to be missing. The Romanian Government claimed that data on racist offenses began to be collected by the General Prosecutor's Office in 2018.<sup>10</sup> By contrast, according to the EU's Fundamental Rights Agency "*although Romania collects all criminal offences in a designated data base where the police officers have to highlight the aggravating circumstance, there are no designated procedures for recording hate crimes. Consequently, criminal offences committed with a bias motivation cannot be identified through the system. Moreover, the police directorate responsible for producing offenses statistics do not segregate hate crimes*".<sup>11</sup>
11. The provisions on racist motivation as an aggravating circumstance are rarely applied, and criminal action is almost never taken as a follow-up in such cases. Similarly, police misconduct and ethnic profiling remain common, but largely unreported, while the lack of prosecutions in such cases mean that an effective deterrent against such crimes is missing. The ECRI report from 2019 also mentions "the insufficient level of knowledge and expertise among the law enforcement bodies and the judiciary in recognising hate crime" which prevents proper persecution of such crimes.<sup>12</sup>

### **Recommendations for the Committee of Ministers:**

12. Therefore, the Romanian Government should indicate that it is adopting procedures to ensure (a) that the police and other law enforcement bodies do not act in a discriminatory way while planning, organising, and carrying

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<sup>9</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, op. cit. §71

<sup>10</sup> Appendix: Government's Viewpoint, ECRI-Country Monitoring, Fifth report on Romania (adopted on 3 April 2019 / published on 5 June 2019) 6-7. <https://rm.coe.int/government-comments-on-the-fifth-report-on-romania/168094c9e4>.

<sup>11</sup> European Union Agency for Fundamental Rights, Hate crime recording and data collection practice across the EU, Romania, p. 78. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-hate-crime-recording\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf).

<sup>12</sup> ECRI Report Romania, op. cit. p.9.

out an operation; (b) that allegations of discrimination are properly followed up by a disciplinary investigation.

13. In line with the recommendations of ECRI as of 2019, we urge the authorities to ***“put in place a system to collect data and produce statistics offering an integrated and consistent view of cases of racist and homo/transphobic hate speech and hate crime brought to the attention of the police and pursued through the courts and public make this data available to the public.”***<sup>13</sup> We maintain that Romania’s failure to compile data on racially motivated crimes is a further symptom of institutional racism. Romania is an outlier among EU Member States in its failure to collect data on racially motivated crime in general and discriminatory police misconduct in particular.
14. Many training activities aimed at the prevention and investigation of criminal offences committed for discriminatory reasons took place between 2014 and 2018 targeting Romanian police, as was reported by Romania to the UN Committee Against Torture. While these training programmes are welcome and represent a move in the right direction, they are not sufficient to eliminate discriminatory attitudes and practices of the police. Self-reporting from the Government mentions about 300-400 police personnel having participated in these training programmes in the mentioned period, which is a tiny share (less than 1%) of the full number of police officers in the country. Furthermore, these reports fail to indicate that special police forces were included in these programs, such as the gendarmes, which took part in the raid against Roma people in the *Lingurar* case. **Therefore, all law enforcement bodies including special forces, the Romanian Intelligence Service and gendarmes, prosecutors and judges should be trained on how to deal with racist and homo-/transphobic acts of violence, including providing them improved procedures for recognizing bias-motivations.**
15. Measures are needed to effectively combat an institutional culture of impunity within the police, including the adoption of a zero-tolerance policy towards serious human rights violations and discriminatory police conduct. As the latest ECRI report noted, ***“the authorities should define and prohibit racial profiling by law and provide for a body which is independent of the police and prosecution authorities entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police.”***<sup>14</sup>

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<sup>13</sup> Ibid.

<sup>14</sup> Ibid.



16. As the UN Special Rapporteur on Extreme Poverty and Human Rights on his mission to Romania noted in 2016, *“victims of police abuse currently have two options to file a complaint: with the superior officer at the police station or with the Office of the Prosecutor. The former option is unrealistic, because a victim of abuse is unlikely to complain at the police station where the abuse occurred. The latter option is unduly burdensome. Romania should set up a separate, fully independent, body to receive complaints. As stated by the Commissioner for Human Rights of the Council of Europe in his report following his 2014 visit to Romania (para. 205), such a body should be able, with the consent of the victim, to file a complaint with the Office of the Prosecutor. And it should publish yearly reports on the number of cases received, the nature of the complaints and the relevant characteristics of the victims (including, but not limited to, age, sex, ethnicity, race, colour, language, nationality and economic status).”*<sup>15</sup>
17. For that reason, **establishing an effective complaint mechanism is crucial. It should be done by setting up a separate body responsible for carrying out such investigations, following the five principles proposed by the Commissioner for Human Rights:** *“(a) independence: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) adequacy: the investigation should be capable of gathering evidence to determine whether the behaviour of the law enforcement body complained of was unlawful and to identify and punish those responsible; (c) promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.”*<sup>16</sup>

The European Roma Rights Centre  
4 March 2020

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<sup>15</sup> Report of the Special Rapporteur on extreme poverty and human rights, op. cit. §61.

<sup>16</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, op. cit. § 205.