

M.B. and Others

APPLICANTS

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 leave 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, we have prepared the following summary:

The European Roma Rights Centre (“the ERRC”) urged the Court to use the word “antigypsyism” to describe the specific, persistent forms of discrimination Roma face. The ERRC noted that the term was now widely used by Council of Europe and EU bodies and gave specific examples. The ERRC then set out evidence that police services in Slovakia are contaminated by institutional antigypsyism. They relied on observations from various United Nations human rights treaty bodies, from the European Commission Against Racism and Intolerance, and from the Council of Europe Commissioner for Human Rights, as well as on the ERRC’s own research. The ERRC noted that institutional antigypsyism in policing in Slovakia had become so clear that in 2017, the ERRC, acting as the plaintiff, filed an *actio popularis* (public interest) claim against the Slovak Ministry of Interior before the domestic civil courts, challenging harassment of Roma by police as a form of race discrimination. The ERRC then set out details about several disturbing incidents where police had engaged in violent raids in Romani neighbourhoods in Slovakia between 2009 and 2017. Many of these raids were carried out under so-called “Action Code 100”. The Ombudsperson of the Slovak Republic had investigated the use of Action Code 100 and found that these raids were disproportionately carried out in Romani neighbourhoods. The ERRC also cited several statements by officials at the highest level of the State pushing for even heavier policing in Romani neighbourhoods. The ERRC also cited concrete plans in Slovakia for heavier policing in “problematic areas”, an expression everyone would understand as referring to Romani neighbourhoods. The ERRC submitted that all of this evidence pointed to the existence of institutional antigypsyism in policing in Slovakia. The ERRC proposed that where there is evidence of institutional antigypsyism, the Court should not apply a “beyond reasonable doubt” standard to allegations of discriminatory police brutality in an individual case. Instead, applying the notion of “harassment” as a form of discrimination and applying the shift of the burden of proof, the Court should require the Respondent Government to show that a *prima facie* case of racially motivated police violence did not amount to discrimination. Lastly, the ERRC explained why the Police Inspectorate in Slovakia did not provide an independent or effective mechanism for dealing with complaints of racially-motivated or other police misconduct.

A. The Court should use the word “antigypsyism” to describe the specific, persistent forms of discrimination that Roma face

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. In June 2017, a coalition of NGOs, including ours, introduced their own definition of antigypsyism (spelled without a hyphen) in “*Antigypsyism – a reference paper*”: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. The term is now regularly used by Council of Europe and European Union bodies. In October 2017, for example, the European Parliament adopted a resolution³ on fighting antigypsyism, condemning

[EU] 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. In the same month, the Committee of Ministers of the Council of Europe approved a recommendation⁴ to member States on improving access to justice for Roma and Travellers in Europe. The recommendation uses the term “anti-Gypsyism” eleven times. For example, the recommendation notes that “*Roma and Travellers continue to face widespread and enduring anti-Gypsyism, which entails, inter alia, widespread discrimination and other violations of their rights, while at the same time creating barriers which prevent them from accessing justice*”.

¹ General Policy Recommendation No.13, CRI(2011)37 (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> (emphasis added).

⁴ CM/REC(2017)10.

7. Antigypsyism is the word Roma use to characterise the many situations we commonly face but which would be considered exceptional in the lives of most Europeans: police brutality; forced evictions; refused healthcare or employment; 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 Court is currently dealing with numerous cases in which Roma are complaining about police brutality and other forms of police misconduct.⁵ These cases are not isolated: they are part of a pattern across Europe of police misconduct towards Europe's largest ethnic minority. As the UN Special Rapporteur on Minority Issues put it, "*While ... the reasons for the marginalization of Roma are complex..., an overreaching factor is the deeply embedded social and structural discrimination Roma face worldwide, including anti-Gypsyism*".⁶
8. We urge the Court to acknowledge the existence of antigypsyism in Europe and to use the word antigypsyism to describe the specific nature of the discrimination Roma face. The word antigypsyism should not be preceded by the qualifier "so-called". *Levakovic v Denmark* (2018), § 32. Antigypsyism is a recognised phenomenon. The term provides the most effective way of capturing what the Court has tried to express, much less succinctly and comprehensively, in previous judgments. See, e.g., *Horváth and Kiss v Hungary* (2013), § 102 ("*as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection*").
9. The definition of antigypsyism ECRI uses (see above, § 3) 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*".⁷ Institutional racism does not necessarily imply that individual members of affected institutions espouse a racist ideology. It is imperative for the Court to be sensitive to and to name institutional antigypsyism when it is connected to the facts of cases pending before the Court.

B. Police services in Slovakia are contaminated by institutional antigypsyism

10. In April 2018, the EU Fundamental Rights Agency published a report called "*A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*".⁸ The report states at page 10 that: "*data indicate that the most heinous forms of anti-Gypsyism, hate-motivated crime and harassment, continue to hamper Roma inclusion.*" According to the report, more than one-third (37%) of Romani respondents in Slovakia experienced harassment due to their ethnicity in the past 12 months (page 21).
11. The UN Committee on Elimination of All Forms of Racial Discrimination, the UN Human Rights Committee, and the UN Committee Against Torture have expressed concerns about allegations of racially motivated police brutality in Slovakia. In their last concluding observations, these UN committees asked the Slovak Government to ensure prompt, impartial, thorough, and effective

⁵ See, e.g., *X and Y v the Macedonia* (application no.173/17); *L.F. v Hungary* (application no.621/14); *Pastrama v Ukraine* (application no.54476/14).

⁶ UN General Assembly, A/HRC/29/24, "Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism", 11 May 2015.

⁷ 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>.

⁸ Available at <https://fra.europa.eu/en/publication/2018/roma-inclusion>.

investigations into all such allegations, to punish the perpetrators, and to compensate the victims.⁹ Similar concerns were expressed by ECRI and by the Council of Europe Commissioner for Human Rights after their regular visits to Slovakia.¹⁰

12. The Court is of course aware of these concerns, given recent judgments against Slovakia (*Lakatošová and Lakatoš v Slovakia* (2018), *Adam v Slovakia* (2016)), and pending cases (*M.H. and others v Slovakia* (application no.14099/18), *R.R. and R.D. v Slovakia* (application no. 20649/18), *A.P. v Slovakia* (application no.10465/17)) which, on their face, present evidence that Slovak police regularly target Roma for violence and are able to do so with impunity.
13. We have been monitoring incidents of violence against Roma perpetrated by State and non-State actors in Slovakia for several years. Precise data is impossible to collect as many hate crimes go unreported, there are no data about hate crimes disaggregated by ethnicity, and in certain cases racial motives are not taken into account. But the evidence that we have collected is alarming.
14. In 2012, we published a report¹¹ about violence against Roma in Central Europe, including Slovakia. Our report showed a worrying pattern of anti-Roma attacks across the region in the time period of interest to the Court for the purposes of the present case. We 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 into those attacks manifestly did not fulfil the requirements of the Court's case law.
15. The following incidents are symptomatic of the way police target Roma in Slovakia:
 - a. In March 2009, six Romani children aged between 10 and 16 were brought to Košice-South police station. They were suspected of robbing an elderly woman. The police attempted to intimidate them with a police dog, which bit three of them. Subsequently, the minors were forced to slap and then kiss each other. The ill-treatment continued as the suspects were ordered to strip naked in ten seconds, while police officers recorded a video.¹² The video was not admitted as evidence in the criminal case against the officers that followed. The first instance court acquitted the police officers twice, and the appellate court has quashed both decisions.¹³
 - b. In May 2010, in the town of Tornaľa, State police patrol used pepper spray against a Romani man. He was in the station at the time, where police were trying to get him to confess to an offence. An ambulance was called only after he signed a confession. According to the doctors, he was poisoned by the pepper spray; he died after eight days in hospital. An autopsy revealed heavy brain and lung swelling and symptoms of suffocation.¹⁴

⁹ See CERD/C/SVK/CO/11-12, 12 January 2018, § 16; CCPR/C/SVK/CO/4, 22 November 2016, § 9; and CAT/C/SVK/CO/3, 8 September 2015, § 11.

¹⁰ Report by ECRI on Slovakia, CRI(2014)37, pages 76-80; and Report by Nils Muižnieks (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.

¹¹ 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>.

¹² Slovak Spectator, "Court again frees policemen charged with bullying Roma boys", available at <https://spectator.sme.sk/c/20535570/court-again-frees-policemen-charged-with-bullying-roma-boys.html>.

¹³ Poradňa pre občianske a ľudské práva, "Press statement on the decision of the Regional Court in Kosice in a case of violence against Roma boys from Lunik IX", available at <https://www.poradna-prava.sk/en/news/tlacove-vyhlasenie-k-rozhodnutiu-krajskeho-sudu-v-kosiciach-v-pripade-tyrania-romskych-chlapcov-z-lunika-ix/>.

¹⁴ Sme, "Toto sú najznámejšie útoky policajtov na Rómov", available at <https://romovia.sme.sk/c/6844320/toto-su-najznamsie-utoky-policajtov-na-romov.html>.

- c. In the autumn of 2012, four Romani neighbourhoods located in the Kežmarok District were raided by police. 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; the Control and Inspection Service Section of the Ministry of Interior (“the Police Inspectorate”) found that the actions of the police did not amount to a criminal offence. Several constitutional complaints were dismissed by the Constitutional Court.
- d. On the morning of 2 April 2015, a large number of police officers entered the village of Vrbnica in Eastern Slovakia, allegedly to find people evading arrest warrants. A house-to-house search resulted in injuries to at least 19 Romani people who – according to the media and the mayor – did not resist or obstruct the police.¹⁵ Those injured included women, men, and children.¹⁶ So far, the only person against whom charges have been brought is the officer in charge of the action.¹⁷
- e. 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. Some of the police officers 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.¹⁸ In February 2018, the Police Inspectorate discontinued the investigation into what had happened as the investigating officer did not consider the actions of the police officers to amount to any criminal offence. In October 2018, the Constitutional Court dismissed the case.

16. The police actions described directly above, at §15.c, §15.d, and § 15.e were 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 these cases presented a similar pattern: 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 Action Code 100. According to the Ombudsperson’s findings,¹⁹ all 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.²⁰ In comparison, in the Bratislava region there was not a single Action Code 100 intervention carried out during the same period of time.

17. We have secured legal representation for Romani victims of several cases of police misconduct. The problem is so widespread that in 2017, our organisation, acting as the plaintiff, filed an *actio*

¹⁵ GypsyTV, “Roma injured after the police action”, available at <https://www.youtube.com/watch?v=goEDlyRyIrg#t=37>.

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 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>.

¹⁹ Ombudsperson, “Press conference on the action in Vrbnica”, available at <http://www.vop.gov.sk/tlacova-konferencia-k-zasahu-vo-vrbnici>.

²⁰ The Atlas was published by UNDP in 2014 and is available at http://www.unipo.sk/public/media/18210/Atlas_romkom_web.pdf.

popularis (public interest) claim against the Slovak Ministry of Interior, challenging harassment of Roma by police as a form of race discrimination.²¹

18. Hate speech by officials at the highest levels of government exacerbate the problem. In December 2016, then 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 event, then Minister of Interior Robert Kaliňák added that his department and the police would implement a special programme to improve security in municipalities with socially excluded communities and Romani settlements that are considered *"problematic"*.²²
19. The plans mentioned were implemented from January 2017 when the Ministry of Interior published its priorities for 2017 on its website, including *"Strengthening police in problematic areas"*. According to the website, *"The Ministry of Interior 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"*.²³ In Slovakia, these terms – *"problematic areas"* and *"socially excluded groups"* – are understood clearly as referring to Romani neighbourhoods and Roma.
20. In January 2017, the Ministry of Interior 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 areas are located in the Košice, Prešov, and Banská Bystrica regions, which are known to have the highest number of Romani neighbourhoods.²⁴ 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 activity, even without the increased activity of the police.
21. In January 2018, the Ministry of Interior declared the need to gather data on *"Roma criminality"*, i.e. the criminal offences and misdemeanours perpetrated by Roma. Then Minister Kaliňák also announced further measures he planned to adopt against Romani criminals.²⁵ A year later, the new Minister of Interior Denisa Saková declared her intention to increase the presence of police forces near Romani communities.²⁶
22. We submit that what is set out above amounts to clear evidence of institutional racism in Slovak police services and in its supervisory institution – the Ministry of Interior – bolstered by public statements from influential politicians (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 them. The ERRC urges the Court to acknowledge the existence of institutional antigypsyism in Slovakia among police. See, *mutatis mutandis*, *Opuz v*

²¹ ERRC, "ERRC sues Slovak Ministry of Interior over discriminatory policing", available at <http://www.errc.org/press-releases/errc-sues-slovak-ministry-of-interior-over-discriminatory-policing>.

²² 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/>.

²³ Ministry of Interior, Priorities for 2017, available at <https://minv.sk/?tlacove-spravy&sprava=priority-ministerstva-vnutra-v-roku-2017>.

²⁴ 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>.

²⁵ See <https://spravy.pravda.sk/domace/clanok/446097-kalinak-avizuje-statistiku-romskej-kriminality/>.

²⁶ Sme.sk, Saková: V oblasti rómskej problematiky pracujeme na preventívnych opatreniach, available at: <https://domov.sme.sk/c/22021988/sakova-v-oblasti-romskej-problematiky-pracujeme-na-preventivnych-opatreniach.html#ixzz5fQQ7eAhM>.

Turkey (2009), § 198 (“the applicant has been able to show, supported by unchallenged statistical information, the existence of a prima facie indication that the domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence”); *Carvalho Pinto de Sousa Morais v Portugal* (2017), § 54.

C. The Court should take into account the existence of institutional antigypsyism when deciding whether there has been a breach of Article 14 taken with Article 3 in an individual case of police misconduct that appears to have been racially motivated

23. Romani victims of police brutality have often 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 in such circumstances 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. The existence of sufficient evidence of discrimination 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 v Romania* (2008), § 122 (finding a violation of Article 14 based, in large part, on racist statements contained in a police report). Often, incidents of police violence occur in areas or premises which can make it difficult for others to see what is happening, for example, during so-called “rough rides” in police cars on the way to the station following an arrest. During the investigation, conflicting testimony from victims and police officers may be the only evidence available. This is particularly problematic when institutional antigypsyism makes it inevitable that Roma will not be believed. These problems are compounded in Slovakia by the fact that the injured party in criminal proceedings is particularly dependent on the public prosecutor to defend her/his interests. *Lakatošová and Lakatoš v Slovakia* (2018), § 91 (“the role of the public prosecutor is essential”).
24. 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).
25. The Court’s analysis under Article 14 taken with Article 3 has gone 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* (Application no. 63034/11, 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. We note, 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.

26. When there is sufficiently strong evidence of institutional antigypsyism of the kind described above in Slovakia, we urge the Court to make the equivalent finding: that institutional antigypsyism among police is responsible for a violation of Article 14 taken with (as appropriate) Article 2 or Article 3. This broader context is of the utmost importance when the authorities, aware of problems of racism against Roma, allow police forces contaminated with institutional antigypsyism to act with impunity (i.e. where “*les autorités internes ont créé un climat propice à cette violence*”).
27. Where there is evidence of institutional antigypsyism among police services, Roma are asking for – and, we submit, 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 the substantive and procedural limbs of Article 3 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 structural problem which must be recognised as such, if States are to fulfil their obligations under Articles 1 and 46 § 1 of the Convention.
28. We also urge the Court to take into account the notion of harassment as a form of discrimination. Under EU law (Article 2(3) of the 2000/43/EC Directive), harassment occurs “*when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.*” Under EU law and the law of most member States of the Council of Europe, harassment is the third form of discrimination prohibited by law, after direct and indirect discrimination. Like “indirect discrimination”, this is a vital notion of anti-discrimination law that must inform the analysis of whether there has been a violation of Article 14 taken with another provision of the Convention. See, *mutatis mutandis*, *D.H. and others v Czech Republic* (Grand Chamber, 2007), §§ 81-91.
29. When police target Roma for physical and/or psychological abuse as part of a police culture contaminated by institutional antigypsyism, their actions meet the definition of harassment. By their very nature, such actions offend the dignity of the victims and intimidate, degrade, and humiliate them in a way related to their ethnicity. Harassment may provide the most appropriate lens through which to consider such incidents (as opposed to direct or indirect discrimination).
30. Institutional antigypsyism is also crucial to the question of the shift of the burden of proof. In cases of allegations of direct discrimination by police, the Court has placed the burden of proof quite high (see above, § 23). Yet in cases of indirect discrimination and in some other cases, the Court has applied the general principle of anti-discrimination law that once there is a *prima facie* case

of discriminatory treatment, the burden of proof shifts to the defendant to prove the contrary. See, e.g., *D.H. and others v Czech Republic* (Grand Chamber (2007), § 177-179; *E.B. v France* (Grand Chamber, 2008), § 74. See also EU Directive 2000/43/EC, Article 8. In cases where there is evidence of institutional antigypsyism in policing, as in Slovakia, we submit that it is appropriate for the Court to shift the burden of proof much more readily onto the Respondent Government to show that a prima facie case of racially motivated police violence did not amount to discrimination.

31. In brief, 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 that particular 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 for future victims to bring similar complaints to Strasbourg.

D. Slovakia does not provide an effective remedy for complaints of racially-motivated police violence

32. Complaints of police misconduct (including police brutality and unlawful actions of the police) are investigated by the Police Inspectorate, which is one of the departments of the Ministry of Interior.²⁷ We have serious concerns about the independence and impartiality of this body because the Police Inspectorate and the police forces they investigate fall within the same branch of government and under the same Ministry. The flaws in the investigations in most of the above-mentioned cases (see Part B, above) show that we are right to hold doubts about the independence of the Police Inspectorate. Investigations have been significantly delayed, those claiming to be victims have often not been heard, and the evidence given by Roma claiming to be victims of police brutality have been given much less weight than that of the police officers they accused.
33. According to publicly available information (a report on criminal activity by police officers²⁸), in 2016 charges were brought by the Police Inspectorate in only 5.8% of the cases referred to them, leading to indictments brought by prosecutors in only 5% of the total number of cases. In 2015, the same figures were 6.6% and 5.4% respectively. The Police Inspectorate does not publish records of the number and nature of cases where racial motivation appears to be a factor, nor does it publish information about the outcome of the criminal proceedings.
34. The Police Inspectorate's lack of independence has been criticised by various UN Treaty Bodies (see the concluding observations referred to above at § 11). The former Council of Europe Commissioner for Human Rights Nils Muižnieks also noted after his visit to Slovakia that the Police Inspectorate does not fulfil the criteria to be considered independent.²⁹ The issue was raised several times by the former and the current Ombudsperson.³⁰ However, no concrete steps have been taken by the government to remedy the situation.

²⁷ Ministry of Interior, Competences of the Police Inspectorate, available at: <http://www.minv.sk/?posobnost-inspeknej-sluzby-na-useku-inspeknej-sluzby>.

²⁸ Statistics available at: <https://www.minv.sk/?ministerstvo-vnutra>.

²⁹ CommDH(2015)21, §§ 76-77.

³⁰ See, e.g., Dennik N, "Zo sťažností na policajtov uspeje len každá dvadsať, trestajú výčitkou", available at <http://www.vop.gov.sk/files/poln.doc>.

35. Even in theory the prosecutor cannot make up for these failings. See, e.g., *Kummer v the Czech Republic* (2013), § 87. In practice, the Court has seen how prosecutors in Slovakia fail to deal properly with racially motivated police brutality. *Lakatošová and Lakatoš v Slovakia* (2018), §§ 88, 91, 93.

The European Roma Rights Centre
15 February 2019