

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No.17808/19

Paketova and others

APPLICANTS

v

Bulgaria

RESPONDENT STATE

EUROPEAN ROMA RIGHTS CENTRE – THIRD-PARTY INTERVENTION

1. The European Roma Rights Centre (“the ERRC”) is a Roma-led NGO whose vision is for Romani women, men, and children 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. We have prepared the following summary of our intervention:

The European Roma Rights Centre (“the ERRC”) made three points. First, they said the time had come for the Court to use the term “antigypsyism” in its case law. European Union and Council of Europe bodies were regularly using the word. It was the word that Roma use to describe situations such as collective punishment in the form of a mass forced eviction following accusations that someone in their neighbourhood has committed a crime. Second, the ERRC argued that antigypsyism is rife in Bulgaria and is closely linked to residential segregation, degraded living conditions, and forced evictions. The ERRC pointed to examples of hate speech by political figures who called for Romani neighbourhoods to be destroyed. Finally, the ERRC argued, in the light of the Court’s case law and a recommendation of the Committee of Ministers of the Council of Europe on access to justice for Roma and Travellers, that Romani people’s complaints about discriminatory no-notice or short-notice evictions are admissible regardless of whether those people took domestic proceedings, because such evictions leave Roma with no effective remedies to exhaust.

I. The time has come for the Court to use the term “antigypsyism” in its case law.

2. Roma have a word to describe what is happening when they face mass eviction from their neighbourhoods following accusations that someone in the community has committed a crime: antigypsyism. It is a word that describes many experiences which would be extraordinary in the lives of most Europeans, but are all too common among Roma: police brutality; forced evictions; housing and school segregation; being turned away for healthcare; and many other human rights violations.
3. When the Court is faced with a situation involving the collective punishment of Roma, the Court should use the term “antigypsyism” to describe that situation.
4. According to the European Commission Against Racism and Intolerance (“ECRI”), “anti-Gypsyism” (which they spell with a hyphen) is “*a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination*”. The Alliance Against Antigypsyism, of which the ERRC is a member and which spells the term without a hyphen, defines the concept as follows:

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 word is now regularly used by European Union and Council of Europe bodies. For example, in October 2017 the Committee of Ministers of the Council of Europe used the term eight times in its Recommendation to member States on improving access to justice for Roma and Travellers in

Europe. CM/Rec(2017)10. On 4 April 2019, the Council of Europe Commissioner for Human Rights used the term 14 times in a “human rights comment”,¹ recommending, for example, “*increasing the training of... members of the judiciary, on anti-Gypsyism and its consequences*”.

6. We respectfully submit that phrases such as “*so-called antigypsyism*” (*Levakovic v Denmark* (2018), § 32) are inappropriate in the Court’s case law. Antigypsyism is real; it is an active force in European society and the term describes what the Court has attempted to capture about the experience of Roma in more cumbersome and less effective language. See, e.g., *Horváth and Kiss v Hungary* (2013), § 101 (“*as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority*”).
7. One of the most enduring features of antigypsyism in Europe is **collective punishment**² – the racist impulse to inflict suffering on large numbers of Roma for alleged (often invented or exaggerated) offences by one or a few Romani people. The Court knows all too well what this looks like. See, e.g., *Burlya and others v Ukraine* (2018).

II. Antigypsyism is rife in Bulgaria and is closely linked to residential segregation, degraded living conditions, and forced evictions of Roma.

8. The long history of antigypsyism in Bulgaria has left Roma there disproportionately living in deep poverty. According to the Bulgarian State’s own estimates, almost 40% of Roma live in houses without any water supply, 60% live in homes that are not connected to the central sewer system, and 80% do not have a bathroom inside their homes; on average, Roma have half the dwelling space of non-Roma (10.6 square metres per person,

¹ Available at <https://www.coe.int/en/web/commissioner/-/european-states-must-demonstrate-resolve-for-lasting-and-concrete-change-for-roma-people>.

² ERRC, “ERRC Condemns Collective Punishment of Roma in Europe”, 19 March 2019, available at <http://www.errc.org/press-releases/errc-condemns-collective-punishment-of-roma-in-europe>.

compared with 23.2 square metres per person).³ In 2010, NGOs estimated that 50% to 70% of Roma in Bulgaria live in informal homes or in shelters (i.e. built without the necessary legal permission).⁴

9. This situation is no accident. It is the product of accumulated generations of exclusion promoted or, at best, ignored and left to fester by officials.
10. If you were a Romani person in Bulgaria, you would be used to hearing local and national political figures and others say nasty things about you – racist stereotypes that perpetuate the vicious lie that you are responsible for the situation in which you find yourself. ECRI has described Roma as one of “*the main targets of racist hate speech*” in Bulgaria. CRI(2014)36, page 15.
11. We could include reams of examples, but a few will suffice.
 - a. In 2017, Prime Minister Boyko Borissov appointed Valeri Simeonov, of the Patriotic Front (an openly racist far-right party in the national governing coalition) as the head of Bulgaria’s Council on Ethnic Integration. Given Simeonov’s past statements, this appointment is shocking. Simeonov’s previous comments include describing Roma as “*brazen, feral, human-like creatures that demand pay without work, and collect sickness benefits without being sick. They receive child benefits for children that play with pigs on the street, and for women that have the instincts of stray dogs*”. The Patriotic Front has called for the demolition of “*Gypsy ghettos*” and proposed placing Roma in closed “*reservations*” that could generate income as tourist attractions.⁵

³ National Strategy of the Republic of Bulgaria on Roma Integration 2012–2020, pages 5-6, available at:

https://ec.europa.eu/info/sites/info/files/roma_bulgaria_strategy_en.pdf.

⁴ US Department of State, Civilian Security and Democracy, “2010 Human Rights Report: Bulgaria”, 2011, available at: <https://2009-2017.state.gov/j/drl/rls/hrrpt/2010/eur/154417.htm>.

⁵ Bernard Rorke, “Bulgarian government sticks a middle finger at Europe and appoints a fascist to head integration unit”, 28 June 2017, available at <http://www.romea.cz/en/features-and-commentary/commentary/bulgarian-government-sticks-a-middle-finger-at-europe-and-appoints-a-fascist-to-head-integration-unit-2>.

b. Angel Dzambazki⁶ won a seat representing Bulgarians in the European Parliament in the May 2014 elections. He has used his Facebook page as a forum for spreading hate against Roma. In June 2017 he posted a picture of a group of Romani men who had been involved in a clash with ethnic Bulgarians with the comment “*Euthanasia*”. One month later, he wrote “*Tell me something about integration. About tolerance. About ‘liberalism’. About ‘humanism’ ... And I will tell you how to use a rope*”. He has called Roma “*primates*” and said that Bulgaria society has “*conveniently taught them not to work and leaves them unpunished for paedophilia, prostitution, drugs and whatever other evil doings you can imagine*”. Dzambazki’s party is a coalition partner in the current ruling Government. Dzambazki won re-election to his seat in the European Parliament this May. Two months ago, Dzambazki announced he was running for mayor of Sofia; his campaign pledges include destroying Romani neighbourhoods.⁷

12. As the Court can see from these few examples, there is a close link between hate speech by powerful political actors in Bulgaria and the threat to evict Romani people from informal housing: when politicians want to engage in collective punishment of Roma, they can easily call for demolition of homes in segregated neighbourhoods, knowing that Roma are especially likely to be living in informal housing due to poverty. Bulgaria’s inadequate remedies against the demolition of informal housing (see *Ivanova and Cherkezov v Bulgaria* (2016), §§ 53-62) make this technique even more accessible to politicians who want to engage in or indulge antigypsyism. The Council of Europe Commissioner for Human

⁶ Bernard Rorke, “The Face of Hate in Bulgaria: MEP Angel Dzambazki”, 20 July 2017, available at <http://www.errc.org/news/the-face-of-hate-in-bulgaria-mep-angel-dzambazki>.

⁷ Wikipedia, “Angel Dzambazki”, available at https://en.wikipedia.org/wiki/Angel_Dzambazki.

Rights pointed out the problem several years ago, when he wrote to the Bulgarian Prime Minister on 26 January 2016:

*It is also very disturbing that the recent evictions [of Roma] have taken place in a context of widespread public manifestations of anti-Roma hostility, as evidenced by the numerous anti-Roma demonstrations which took place in 2015 in various places in Bulgaria. There are many concurring reports that anti-Roma rhetoric has been used as a campaigning tool by various politicians during the run-up for the municipal elections, which were held on 25 October and 1st November 2015. All these manifestations of hostility further exacerbate the already high level of anti-Gypsyism in the country and cannot but lead to further violations of human rights of the Roma.*⁸

13. So it was after a fight broke out in Vojvodino on 6 January 2019 between a non-Roma man and two Romani men. Deputy Prime Minister for Public Order and Security, Krasimir Karakachanov, commented in response that “Gypsies in Bulgaria have become exceptionally insolent.... The tolerance of Bulgarian society has run out.... The truth is that we need to undertake a complete programme for a solution to the Gypsy problem”.⁹ He explicitly said he would speak to local and regional officials to deal with the matter, particularly the removal of “illegal homes”. And so, in the days that followed, the authorities demolished Romani people’s homes in the neighbourhood. All this took place alongside demonstrations by non-Roma in the village, which were contaminated with antigypsyism and featured calls for violence against Roma.¹⁰
14. The Court cannot ignore the context of antigypsyism in which Roma in Bulgaria are forcibly evicted from their homes. See, mutatis mutandis, *Bączkowski and others v Poland* (2007), § 100 (“the Court considers that

⁸ See below, note 14.

⁹ Swain Uber, “Calls for Bulgarian Minister Karakachanov to Resign Grow Louder”, 17 January 2019, available at <http://www.errc.org/news/calls-for-bulgarian-minister-karakachanov-to-resign-grow-louder>.

¹⁰ The Court can see video of the demonstrations at the following link: <https://www.youtube.com/watch?v=hfiselOlstM&feature=youtu.be>.

in the assessment of the case it cannot disregard the strong personal opinions publicly expressed by the Mayor"); see, also, *E.B. v France* (Grand Chamber, 2008), § 80 (*"the illegitimacy of one of the grounds has the effect of contaminating the entire decision"*). When Roma are forced to leave their homes in a climate of overt antigypsyism, we respectfully submit that the burden of proof is on the Respondent Government to show that there was no discrimination. See, mutatis mutandis, *E.B. v France* (Grand Chamber, 2008), § 74.

15. When ERRC staff and cooperation partners talk to Roma around Europe about what legal problems they face, they almost universally cite the threat of forced eviction or other interferences with their homes. The threat of forced eviction is the most visible of a number of social-control tools that authorities use to intimidate Romani people. Instead of being viewed as the product of a long history of exclusion, Romani people's housing conditions are instead adduced as "evidence" of a culture or lifestyle that is incompatible with the culture of the majority population. Forcibly evicting Roma from their homes taps into deep-rooted, long-standing, vicious racist stereotypes about Roma. The United Nations Office of the High Commissioner on Human Rights, the Organization for Security and Cooperation in Europe, the European Network of Equality Bodies, the European Network of National Human Rights Institutions, the European Union Fundamental Rights Agency, and the Council of Europe issued a joint statement on 29 June 2016 expressing concern about forced evictions of Roma and Travellers and reminding States of their legal obligations in this respect.¹¹ The statement recalls the human rights obligations of national and local authorities, stressing that forced evictions are only permitted in "*the most exceptional circumstances*" and urging

¹¹ The statement can be found at http://www.equineteurope.org/IMG/pdf/opre_joint_statement_on_evictions_of_roma_and_travellers_in_europe_29_06_2016.pdf.

States to find long-term solutions to the accommodation problems that Roma and Travellers face. On the same day that statement was published, the Council of Europe Commissioner for Human Rights published an article entitled “*Roma Evictions: Europe’s Silent Scandal*”.¹² Likewise, on 26 January 2016, the Commissioner wrote individually to ministers in Albania, Bulgaria, France, Hungary, Italy, Serbia, and Sweden expressing concerns about forced evictions of Roma.¹³

III. Romani people’s complaints about discriminatory no-notice or short-notice evictions are admissible regardless of whether there have been domestic proceedings, because such evictions leave Roma with no effective remedies to exhaust.

16. The Court has recognised that “*Since the loss of one’s home is a most extreme form of interference with the right under Article 8 to respect for one’s home, any person at risk of being a victim thereof should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, he has no right of occupation*”. *Winterstein and others v France* (2013), § 148(δ). The Court has also emphasised “*the necessity, in the event of the forced eviction of Roma and travellers, of providing them with alternative housing, except in cases of force majeure*”. *Winterstein*, § 159. Likewise, the Court has recognised that “*dans des circonstances exceptionnelles..., où les requérantes ont été confrontées à un risque soudain de perte de leur domicile, en application d’un acte de l’administration adopté sans aucune forme de contrôle judiciaire préalable et en l’absence d’une*

¹² The article can be found at <https://www.opendemocracy.net/can-europe-make-it/niels-mui-nieks-michael-georg/roma-evictions-europes-silent-scandal>.

¹³ The letters are linked to the following page: <http://www.coe.int/en/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Ffrance>.

alternative de logement, l'absence de caractère suspensif d'un remède interne donné pourrait exempter le requérant de l'obligation d'épuiser les voies de recours internes et s'analyser sur le terrain de l'article 13 de la Convention". Petrache and Tranca v Italy (decision, 2016), § 30.

17. In line with these principles, when Romani people are forced to leave their homes with little or no notice, their complaints about forced eviction and discrimination connected to it are admissible, regardless of whether they have brought a complaint to any domestic bodies before or after the eviction. This is because the Convention requires States to provide a remedy with automatic suspensive effect against forced evictions; forcing Roma to leave their homes before they can access such a remedy (or failing to have such a remedy in place at all) means that there was no effective remedy available.
18. As the Committee of Ministers of the Council of Europe found in October 2017, "*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*". Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe. The Court must take into account these barriers to access to justice that Roma face, especially in the chaotic context of a forced eviction contaminated by antigypsyism. Requiring Roma to pursue domestic remedies before a no-notice or short-notice eviction takes place is unrealistic; requiring them to do so afterwards would ignore the irremediable interference that being forced to leave one's home represents and would invite the regular use of forced eviction as a tool of social control against Roma.
19. Lastly, the ERRC submits that it would be artificial to separate the question of discrimination (Article 14 taken with Article 8) from the question of Article 8 taken on its own when considering whether domestic

remedies have been exhausted. When a no-notice or short-notice forced eviction is contaminated by antigypsyism or other forms of discrimination, expecting the applicants to pursue a separate discrimination claim would be artificial. This is because the discrimination manifests itself in the refusal to ensure that the people concerned enjoy access to an effective remedy. That is what the Committee of Ministers meant when they referred to “*anti-Gypsyism... creating barriers which prevent [Roma and Travellers] from accessing justice*”. The Court took a comparable approach in *Bączkowski and others v Poland* (decision, 2006).

The European Roma Rights Centre

12 November 2019