

IN THE EUROPEAN COURT OF HUMAN RIGHTS

APPLICATION NOS.12567/13 AND 29335/13

BUDINOVA AND CHAPRAZOV

THE APPLICANTS

v

BULGARIA

THE RESPONDENT STATE

BEHAR AND GUTMAN

THE APPLICANTS

v

BULGARIA

THE 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 this intervention:

The European Roma Rights Centre (“the ERRC”) said the time had come for the Court to use the word “antigypsyism” in its case law. Council of Europe and EU bodies were now widely using the word, which was a much more effective way of describing the experience of Roma than saying that “as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority”. The ERRC asked the Court to imagine what it is like to be a Romani person in Europe today. The ERRC argued that antigypsyism is rife in Bulgaria and noted how public figures in Bulgaria target Roma with revolting comments which had serious consequences – promoting forced evictions of Roma from the informal housing in which many are reduced to living. The ERRC argued that the Convention requires domestic courts to protect Roma against stereotypes powerful public figures use to promote antigypsyism. Citing the Rabat Plan of Action, the ERRC noted that barriers to access to justice made it unusual for Roma to be able to challenge hate speech in court. So when cases finally

come to court, Romani people pay careful attention to what happens; Romani people's trust in the judiciary was at stake in the handling of these cases. Finally, the ERRC argued that historical and ongoing antigypsyism in Europe had two consequences for the Court's consideration of such cases: (1) when challenging hate speech spreading antigypsyism, however generalised, individual Romani people must be considered "victims" for the purposes of Article 34 of the Convention; (2) there is a positive obligation under Article 14 taken with Article 8 for domestic courts, when dealing with civil or administrative cases Roma bring challenging hate speech, to identify and name stereotypes common to antigypsyism and to protect Romani people by applying proportionate sanctions to public figures who promote antigypsyism by spreading such stereotypes.

A. The time has come for the Court to use the word "antigypsyism"

2. Romani people have a word to describe what is happening when influential politicians use revolting language such as "Gypsy terror" and "Gypsification" to spread vicious stereotypes about Roma. The word that Roma use for this is antigypsyism. It applies to 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 being demonised by powerful people for political gain.
3. 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, an NGO coalition 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.*¹
4. European Union and Council of Europe bodies regularly use the word. For example, in October 2017 the Committee of Ministers of the Council of Europe used it 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”,² recommending, for example, “*increasing the training of... members of the judiciary, on anti-Gypsyism*”.
 5. We respectfully submit that phrases such as “*so-called antigypsyism*” (*Levakovic v Denmark* (2018), § 32) are inappropriate. 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*”). When faced with hate speech – that is, statements about Roma contaminated with vicious racial stereotypes – it is appropriate for the Court to describe it as a manifestation of antigypsyism.
 6. One of the most enduring features of antigypsyism in Europe is collective punishment³ – the racist impulse to inflict suffering on large numbers of Roma for alleged (perhaps real, but often invented or exaggerated) offences by one or

¹ Alliance Against Antigypsyism, “Antigypsyism: A Reference Paper”, June 2017, available at http://antigypsyism.eu/?page_id=17.

² Available at <https://www.coe.int/en/web/commissioner/-/european-states-must-demonstrate-resolve-for-lasting-and-concrete-change-for-roma-people>.

³ 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>.

a few Romani people. Hate speech by powerful people, who can spread their messages by attracting the attention of the traditional media or by using social media networks, regularly promotes collective punishment of Roma.

B. Antigypsyism is rife in Bulgaria and public figures promote it, with serious consequences

7. We ask the Court to imagine what it is like to be a Romani person in Europe today. As a member of Europe's largest ethnic minority, you are likely to be living in poverty; there is a good chance you have no job nor any prospects for improving your situation.⁴ Your level of education will usually be lower than that of your non-Roma neighbours, if you have any non-Roma neighbours; like many other Roma, you may be living in a segregated neighbourhood where the housing and public services are poor and you feel isolated. One scholar's definition of racism as "*group-differentiated vulnerability to premature death*"⁵ rings particularly true: if you are from Romania, for example, you will, on average, die 16 years younger than non-Roma in your country.⁶
8. You know there are many people – often powerful people – who do not like you because of your ethnic origin or the colour of your skin. If you were a Romani person, you would have had a one-in-five chance of being a victim of a racially-motivated threat or assault in the past year.⁷ Someone may have attacked you with a weapon while screaming a racial slur at you; or may have kicked you as you walked by on the pavement, chuckling about how worthless you are; or may

⁴ European Union Agency for Fundamental Rights, "The situation of Roma in 11 EU Member States: survey results at a glance", 2012, page 3: "*Of those [Roma] surveyed in this report, one in three is unemployed, 20 % are not covered by health insurance, and 90 % are living below the poverty line*".

⁵ Ruth Wilson Gilmore, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA*, University of California Press, 2008, page 28.

⁶ ERRC, "Hidden Health Crisis: Health Inequalities and Disaggregated Data", 2013, available at <http://www.errc.org/cms/upload/file/hidden-health-crisis-31-october-2013.pdf>, page 6.

⁷ European Union Agency for Fundamental Rights, "Data in Focus Report: Minorities as Victims of Crime", 2012, page 11: "*Nearly every fifth Roma and every fifth Sub-Saharan African interviewed considered that they had been a victim of 'racially motivated' in-person crime of assault or threat, and serious harassment at least once in the last 12 months*".

have threatened to hurt you if you dared to step into a shop, a school, or a neighbourhood where you do not “belong”.

9. You have almost certainly heard yourself being talked about by public figures. If you were a Romani person living in France, you might have heard the mayor of one town say in the summer of 2013 that Hitler “*didn’t kill enough*” of you.⁸ A few months later France’s Interior Minister added that Roma “*are destined to return to Romania and Bulgaria*”.⁹ He was soon promoted to Prime Minister. If you were a Romani person in the Czech Republic, you would have heard your Deputy Prime Minister call Roma “*parasites*” when visiting the site of a death camp where Roma were killed during World War II; the ostensible purpose of his visit was to make amends for having questioned the Roma Holocaust.¹⁰
10. If you were a Romani person in Bulgaria, you would hear the same or worse. ECRI has described Roma as one of “*the main targets of racist hate speech*” in Bulgaria. CRI(2014)36, page 15. The Court hardly needs a list of examples. But we insist on emphasising how hate speech by public figures in Bulgaria has consequences. This is because the long history of antigypsyism in Bulgaria has left Roma there disproportionately living in deep poverty and in informal housing.
11. In 2010, NGOs estimated that 50% to 70% of Roma in Bulgaria live in informal homes or shelters (i.e. built without the necessary legal permission).¹¹ This situation is no accident. It is the product of accumulated generations of exclusion. And many officials take advantage of it, spreading vicious stereotypes common to antigypsyism with calls for Roma to be evicted from their homes.
12. For example, in 2017, Prime Minister Boyko Borissov appointed Valeri Simeonov, of the Patriotic Front (an openly racist far-right party in the national

⁸ See Blandine Le Cain, “Propos anti-Roms : l’élú Gilles Bourdouleix condamné en appel”, LE FIGARO, 12 August 2014.

⁹ “Pour Valls, ‘les Roms ont vocation à rentrer en Roumanie ou en Bulgarie’”, LIBERATION, 24 September 2013.

¹⁰ “Czech Vice PM calls Roma ‘parasites’ during his visit to Roma Holocaust site”, Romea.cz, 8 September 2016, available at <http://www.romea.cz/en/news/czech/czech-vice-pm-calls-roma-parasites-during-his-visit-to-roma-holocaust-site>.

¹¹ 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>.

governing coalition) as the head of Bulgaria's Council on Ethnic Integration. Given Simeonov's past statements, this appointment was 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.¹²

13. The Court already knows that these are not idle threats; these kinds of comments are directly linked to forced evictions of poor Romani people living in informal housing. See, e.g., *Paketova and Others v Bulgaria* (pending, application no.17808/19). The Council of Europe Commissioner for Human Rights pointed out the problem when he wrote to Bulgaria's 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.*¹³

14. Later that year, the Commissioner made a direct link between comments politicians make about Roma and racist violence: "*Politicians in several*

¹² 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>.

¹³ A link to the letter can be found on this page: <https://www.coe.int/en/web/commissioner/-/european-countries-must-stop-forced-evictions-of-roma>.

*countries have used aggressive and racist rhetoric regarding Roma migrants, turning them into scapegoats for a wide range of problems. The media in these countries have also disseminated stereotypes amounting at times to hate speech. This has in turn led to cases of mob violence against Roma”.*¹⁴

C. The Convention requires domestic courts to protect Roma against stereotypes political figures use to promote antigypsyism

15. As the Committee of Ministers recognised in October 2017 (see above, § 4), antigypsyism poses serious obstacles to access to justice for Roma. This explains in large part why it is so unusual to see Roma take public figures to court for spreading antigypsyism through hate speech. This is not only a problem for Roma, of course. As the Rabat Plan of Action¹⁵ (hereinafter “the RPA”) notes:

There is often very low recourse to judicial and quasi-judicial mechanisms in alleged cases of incitement to hatred. In many instances, victims are from disadvantaged or vulnerable groups and case law on the prohibition of incitement to hatred is not readily available. This is due to the absence or inadequacy of legislation or lack of judicial assistance for minorities and other vulnerable groups who constitute the majority of victims of incitement to hatred. The weak jurisprudence can also be explained by the absence of accessible archives, but also lack of recourse to courts owing to limited awareness among the general public as well as lack of trust in the judiciary. (§ 28, our emphasis)

The psychic impact on Romani people is tremendous when public figures engage in hate speech that spreads antigypsyism. So when cases finally come to court (be it the Court or domestic courts), Romani people pay careful

¹⁴ Human Rights Comment, “Time to debunk myths and prejudices about Roma migrants in Europe”, 6 July 2015, available at <http://www.coe.int/en/web/commissioner/-/time-to-debunk-myths-and-prejudices-about-roma-migrants-in-europe?inheritRedirect=true>.

¹⁵ The RPA is set out in an Appendix to an annual report of the High Commissioner for Human Rights: A/HRC/22/17/Add.4, 11 January 2013.

attention to what happens. The outcome is vitally important to the future of the Roma rights movement. Romani people's trust in the judiciary is at stake.

16. The UN Committee on the Elimination of Racial discrimination “*consistently draws attention to the role of politicians and other public opinion-formers in contributing to the creation of a negative climate towards groups protected by the Convention, and has encouraged such persons and bodies to adopt positive approaches directed to the promotion of intercultural understanding and harmony. The Committee is aware of the special importance of freedom of speech in political matters and also that its exercise carries with it special duties and responsibilities*”. General Recommendation no.35, CERD/C/GC/35, § 15. How then should domestic courts, in accordance with the Convention, deal with civil or administrative complaints brought by Roma objecting to racist stereotypes public figures spread through hate speech?
17. Since the Court last considered a question similar to this (*Aksu v Turkey* (Grand Chamber, 2012)), there has been a significant development. The RPA, published by the UN High Commissioner for Human Rights in January 2013, is a comprehensive clarification of States' duties to prohibit incitement to hatred whilst protecting freedom of expression. See *Mariya Alekhina and Others v Russia* (2018), § 110. The RPA is the result of a rigorous process to identify international standards. The leading legal scholar on the RPA has described it as “*the ‘state of the art’ interpretation of the obligations flowing from the prohibition of incitement to national, racial, or religious hatred*”; that same scholar notes that “*the RPA is a milestone in the interpretation of international law on incitement to hatred*” and that it has gained traction with a wide range of actors within the United Nations system.¹⁶ The Court's case law in this area has already implicitly followed the RPA. For example, the RPA states that “*Criminal sanctions related to unlawful forms of expression should be seen as last resort measures to be applied only in strictly justifiable*

¹⁶ Sejal Parmer, “The Rabat Plan of Action: A Global Blueprint for Combating ‘Hate Speech’”, 2014, 1 European Human Rights Law Review, pages 21-31.

situations”, a principle which appears to guide the reasoning in *Panayotova and Others v Bulgaria* (decision, 2019).

18. As an alternative to criminal measures, the RPA explicitly proposes that “*Civil sanctions and remedies should... be considered, including pecuniary and non-pecuniary damages, along with the right of correction and the right of reply*” (§ 34). It also insists that “*a clear distinction should be made between three types of expression: expression that constitutes a criminal offence; expression that is not criminally punishable, but may justify a civil suit or administrative sanctions; expression that does not give rise to criminal, civil or administrative sanctions, but still raises concern in terms of tolerance, civility and respect for the rights of others*” (§ 20). For Romani people in Europe, the stakes are very high when domestic courts are making the distinction between the second and third categories.
19. We submit that historical and ongoing antigypsyism in Europe has two consequences under the Convention when Roma bring civil or administrative proceedings challenging hate speech by politicians.
 - a. **When challenging hate speech spreading antigypsyism, however generalised, individual Romani people must be considered “victims” for the purposes of Article 34 of the Convention.** Questioning a Romani person’s victim status in such cases perpetuates antigypsyism by failing to recognise the psychic impact public figures have on all Romani people when using their powerful position to spread hateful stereotypes. As the RPA puts it: “*individuals and groups have suffered various forms of discrimination, hostility or violence by reason of their ethnicity or religion. One particular challenge in this regard is to contain the negative effects of the manipulation of race, ethnic origin and religion and to guard against the adverse use of concepts of national unity or national identity, which are often instrumentalized for, inter alia, political and electoral purposes*” (§ 9). Refusing to recognise Romani people’s standing to challenge these negative effects would create a new, highly visible, and powerful obstacle

to access to justice for Roma that runs counter to the Committee of Ministers' October 2017 recommendation (see above, § 4).

- b. **There is a positive obligation under Article 14 taken with Article 8 for domestic courts, when dealing with such cases, to identify stereotypes common to antigypsyism and to protect Romani people by applying proportionate sanctions to public figures who promote antigypsyism by spreading such stereotypes.** The Court has been urged to take an anti-stereotyping approach in its case law.¹⁷ Such an approach is especially suitable to cases of hate speech and to the crucial task – described in the RPA – of distinguishing between speech that may justify a civil suit or administrative sanctions on the one hand and speech that which merely raises concerns on the other. Stereotypes about Roma and crime are a common trope of antigypsyism. Domestic courts and the Court must identify and name them as such and, when such stereotypes form part of statements vilifying Romani people, courts must impose civil or administrative penalties. If domestic courts are allowed to treat the spreading of such stereotypes by politicians as permissible, the “margin of appreciation” principle will become a licence for allowing politicians to use Romani people as politically convenient scapegoats. The interference with Romani people’s moral and physical integrity, and the consequences for Romani people’s faith in the judiciary, will be severe.

The European Roma Rights Centre
29 November 2019

¹⁷ Alexandra Timmer, “Toward an Anti-Stereotyping Approach for the European Court of Human Rights”, *Human Rights Law Review*, Volume 11, Issue 4, December 2011, pages 707–738.