
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.

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 police target Romani communities for violence. 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 for 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*”. CRI(2011)37. The Alliance Against Antigypsyism, an NGO coalition of which we are a part 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.*¹

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

4. EU and Council of Europe bodies regularly use the word. For example, in October 2017 the Committee of Ministers 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 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 an active force in European society. The term captures what the Court has attempted to describe 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*”).
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 a few Romani people.

B. Antigypsyism is rife in Slovakia, particularly among police

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 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. 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

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>.

⁴ EU Agency for Fundamental Rights (FRA), “The situation of Roma in 11 EU Member States: survey results at a glance”, 2012, page 3.

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 FRA, “Data in Focus Report: Minorities as Victims of Crime”, 2012, page 11.

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

9. Antigypsyism is especially acute in Slovakia and is well documented among police there. 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, the two committees asked the Slovak Government to ensure the effective investigation of all such allegations, to punish the perpetrators, and to compensate the victims.⁸ ECRI and the Commissioner for Human Rights expressed similar concerns after visits to Slovakia.⁹
10. The Court is already familiar with one notorious case, when, on 16 June 2012, an off-duty municipal police officer shot at a Romani family, killing three and injuring two. The Court found that the failure of the authorities to treat the matter as a hate crime violated Article 14 taken with Article 2: *Lakatošova and Lakatoš v Slovakia* (2019). The Court is also dealing with other cases that bear the hallmarks of institutional antigypsyism in Slovak policing: *A.P. v Slovakia* (pending, application number 10465/17); and *M.B. and Others v Slovakia* (pending, application number 45322/17). What follows are some other examples that provide even more evidence of antigypsyism in policing in Slovakia.
11. In the autumn of 2012, four Romani neighbourhoods located in the Kežmarok District were raided by the police: **Stráne pod Tatrami, Huncovce, Podhorany, and Rakúsy**. No arrest warrants or search warrants were presented. Despite this, the police entered homes and searched them. Some people, including children, were physically and verbally abused. The investigation ended in October 2015 when the Control and Inspection Service Section of the Interior Ministry (hereinafter “the Police Inspectorate”) concluded that the actions of the police did not amount to a criminal offence. The Constitutional Court dismissed a constitutional complaint about the raid in 2016.
12. On 19 June 2013, more than 60 police officers entered a Romani neighbourhood located in **Moldava nad Bodvou** and carried out a violent police raid resulting in property damage and injuries to over 30 people (including children), none of whom resisted or obstructed the police. The Police Inspectorate did not find the police action to be unlawful. With the involvement of prosecutors, criminal proceedings were eventually initiated against the police officers. However, in November 2015 and March 2016, the

⁸ See CCPR/C/SVK/CO/3, 20 April 2011, § 8; and CAT/C/SVK/CO/3, 8 September 2015, § 11.

⁹ See CRI(2014)37, pages 76-80; and CommDH(2015)21, pages 13-15.

Police Inspectorate discontinued the proceedings. Their decisions were rife with stereotypes about Roma. For example, they referred to the notion of “*Roma mentality*” (*mentalita romica*) when assessing the evidence the victims gave, connecting this concept to a lack of self-discipline, aggression, anti-social behaviour, and an inability to comply with social norms.¹⁰ During the official investigation, then Interior Minister Robert Kaliňák commented on the credibility of evidence given by Romani victims against the police officers: “*If you place them on the same level, you are insulting me*”.¹¹ Recently, several victims of the raid were indicted by the investigating authorities for allegedly making false accusations against the police.¹² There are now two cases pending before the Court about this matter: *M.H. and Others v Slovakia* (application number 14099/18); *R.R. and R.D. v Slovakia* (application number 20649/18).

13. On the morning of 2 April 2015, a large number of policemen 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.¹³ Those injured included women, men, and children.¹⁴ The ERRC supported several of the victims of the incident to bring a civil case against the Interior Ministry challenging discriminatory practices by police, in which the ERRC has also intervened as a third party. That case has been pending before the District Court of Bratislava since 2017 with little progress. We will now support the plaintiffs to make a complaint for undue length of proceedings.
14. 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. Police 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.¹⁵ In February 2018, the

¹⁰ Týždeň, The case of Moldava: Raid and “*mentalita romica*”, available at <https://www.tyzden.sk/reportaze/40301/razia-a-mentalita-romica/>.

¹¹ Available at <https://tv.sme.sk/v/28963/kalinak-policajtov-a-romov-z-moldavy-nedavajte-na-jednu-uroven-uraza-ma-to.html>.

¹² Dennik N, “Victims of the Moldava raid stood before the court as defendants”, available at <https://dennikn.sk/1295913/obete-razie-v-moldave-postavili-pred-sud-ako-obzalovani/>.

¹³ GypsyTV, Roma injured after the police action, available at: <https://www.youtube.com/watch?v=goEDlyRylrg#t=37>.

¹⁴ 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>.

¹⁵ 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>.

Police Inspectorate discontinued the investigation as the investigating officer did not consider the actions of the intervening police officers to amount to criminal offences. In October 2018, the Constitutional Court dismissed the constitutional complaint we helped several people lodge. Some of the victims recently lodged an application with the Court (application number 31975/19).

15. The most recent similar incident we are aware of took place in the village of Milhost' (near Košice). On 23 July 2019, two Romani men aged 19 were arrested and severely beaten by police officers after they were detained at a local pub. Three Romani women, including the mother and aunt of one of the men, were also physically assaulted after officers entered their home and attacked the family. We are supporting the victims and have helped them lodge a complaint with the Police Inspectorate. The investigation is pending.¹⁶
16. Most of the police actions mentioned above (including the one in Vrbnica) were apparently 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 the cases mentioned had similar patterns: 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 Vrbnica incident and focused, inter alia, on the use of Action Code 100. According to the Ombudsperson,¹⁷ every single police action under Action Code 100 in Michalovce District (where Vrbnica is situated) was carried out in a Romani neighbourhood: 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".¹⁸ In comparison, in the Bratislava region, where there are far fewer disadvantaged Romani communities, no Action Code 100 raids were carried out.
17. In December 2016, at the party conference of the largest political party in the government at the time, 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*

¹⁶ ERRC, ERRC will ensure Roma tortured by Slovak police receive justice, available at <http://www.errc.org/press-releases/errc-will-ensure-roma-tortured-by-slovak-police-receive-justice>.

¹⁷ Ombudsperson, Press conference on the action in Vrbnica, available at <http://www.vop.gov.sk/tlacova-konferencia-k-zasahu-vo-vrbnici>.

¹⁸ The Atlas of Roma Communities was published by the UNDP in 2014 and is available at http://www.unipo.sk/public/media/18210/Atlas_romkom_web.pdf.

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 conference, then Interior Minister 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 neighbourhoods that are considered "problematic".¹⁹

18. In January 2017, the Interior Ministry published its priorities for 2017 on its website, including "*Strengthening police in problematic areas*". According to the website, "*The Interior Ministry 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*".²⁰ In Slovakia, everyone understands these terms – "problematic areas" and "social excluded groups" – as referring to Romani neighbourhoods and Roma.
19. In January 2017, the Interior Ministry 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 "problematic areas" are located in the Košice, Prešov, and Banská Bystrica regions, which are known to have the highest number of Romani neighbourhoods.²¹ 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, these mayors claim that there has been a recent decline in criminal activity, even without the increased activity of the police. The Interior Ministry nonetheless reiterated the need to gather data on "Roma criminality", i.e. the criminal offences and misdemeanours perpetrated by Roma.²²
20. We view the violent police raids described above as clear evidence of institutional racism in Slovak police services, bolstered by public statements from influential politicians contaminated with antigypsyism (see, mutatis mutandis, *Bączkowski and others v Poland* (2007), § 100) and further institutionalised by policies that blatantly target Romani communities with no apparent justification other than to stigmatise Roma. We urge the Court to acknowledge the existence of institutional antigypsyism in Slovak

¹⁹ 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/>.

²⁰ Ministry of Interior, "Priorities for 2017", available at <https://minv.sk/?tlacove-spravy&sprava=priority-ministerstva-vnutra-v-roku-2017>.

²¹ 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>.

²² See <https://spravy.pravda.sk/domace/clanok/446097-kalinak-avizuje-statistiku-romskej-kriminality/>.

policing. The Court has already made such a finding in relation to Romania. *Lingurar v Romania* (2019), § 80 (“in the respondent State, the Roma communities are often confronted with institutionalised racism and are prone to excessive use of force by the law-enforcement authorities”). The same is true of Slovakia.

C. Situations of institutional antigypsyism should change the Court’s approach

21. Romani victims of police brutality have 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 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 leaves them unable to establish a violation of Article 14 taken with the substantive limb of Article 3. See, e.g., *Nachova*, § 147. While it is of course possible for the Court to conclude that police violence was discriminatory, the existence of sufficient evidence 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 written police report).
22. The result is that the Court’s case law rarely 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 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 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).

23. 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* (2016), § 120 ("*En fermant régulièrement les yeux sur la répétition 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. The ERRC notes, 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.
24. When faced with institutional antigypsyism of the kind described above in policing in Slovakia, the ERRC urges the Court to make the equivalent finding in individual cases of police brutality against Roma: institutional antigypsyism among police is responsible for a violation of Article 14 taken with (as appropriate) Articles 2 or 3.
25. The question is not whether there is enough evidence to meet the "beyond reasonable doubt", or whether there has been a failure properly to investigate racist motives; it is whether the incident took place in a context where the authorities, aware of problems of police targeting Roma for violence, allow police forces contaminated with institutional antigypsyism to act with impunity (i.e. whether "*les autorités internes ont créé un climat propice à cette violence*").
26. Asking this more comprehensive question addresses the reasons Roma come to the Court with complaints such as these. Where there is evidence of institutional antigypsyism among police services, Roma are asking for – and, 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 substantive and procedural violations 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 pattern which must be recognised as such if States are to fulfil their obligations under Articles 1 and 46 § 1 of the Convention.

27. 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 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 the case at hand, 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 to bring similar complaints to Strasbourg in the future.

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.

D. The Police Inspectorate as set up under domestic law in Slovakia does not provide an effective remedy for police misconduct

30. Complaints of police misconduct in Slovakia were, at the time of interest to the Court, investigated by the Control and Inspection Service Section of the Interior Ministry,

which was one of the departments of the Ministry of Interior. Recently, this body has been renamed as the Office of Inspection Service.²³ We continue to refer to it here as “the Police Inspectorate”, as this was no more than a rebranding exercise. We have serious concerns about the independence and impartiality of this body because the Police Inspectorate forms part of the police forces whom they investigate. Both fall within the same branch of government and under the same Ministry. The flaws in the investigations in most of the above-mentioned cases 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 has been accorded much less weight than that of the police officers accused of racist violence.

31. According to publicly available information (a report on criminal activity by police officers²⁴), in 2016 the Police Inspectorate brought charges 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.
32. The Police Inspectorate’s lack of independence has been criticised by various UN Treaty Bodies (see the concluding observations referred to above at § 9). The former 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. CommDH(2015)21, §§ 76-77. The issue was raised several times by the former and the current Ombudsperson.²⁵ However, no concrete steps have been taken to remedy the situation. The mere change of the institution’s name is hardly sufficient.
33. Even in theory, prosecutors 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
20 December 2019

²³ Its website can be found at <http://www.minv.sk/?urad-inspekcknej-sluzby>.

²⁴ Statistics available at <https://www.minv.sk/?ministerstvo-vnutra>.

²⁵ See, e.g. Dennik N, “Zo sťažností na policajtov uspeje len každá dvadsiata, trestajú výčitkou”, available at <http://www.vop.gov.sk/files/poln.doc>.