

IN THE EUROPEAN COURT OF HUMAN RIGHTS

APPLICATIONS NOS. 38741/19 AND 60342/19

ASEN MARTINOV ASENOV

BUDINOVA AND ISAEV

THE APPLICANT

THE APPLICANTS

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BULGARIA

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THE RESPONDENT STATE

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EUROPEAN ROMA RIGHTS CENTRE – THIRD-PARTY INTERVENTION

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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.<sup>1</sup>*

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”<sup>2</sup>, recommending, for example, *“increasing the training of... members of the judiciary, on anti-Gypsyism”*.

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<sup>1</sup> Alliance Against Antigypsyism, “Antigypsyism: A Reference Paper”, June 2017, available at [http://antigypsyism.eu/?page\\_id=17](http://antigypsyism.eu/?page_id=17)

<sup>2</sup> Available at <https://www.coe.int/en/web/commissioner/-/european-states-must-demonstrate-resolve-for-lasting-and-concrete-change-for-roma-people>. <sup>3</sup> 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>.

5. More recently, the Advisory Committee on the Framework Convention for the Protection of National Minorities used the term 13 times in its 2020 Fourth Opinion on Bulgaria: "*Roma ... are still exposed to high levels of discrimination, hostility and anti-Gypsyism*".<sup>3</sup> And the European Commission against Racism and Intolerance (ECRI) has used it consistently since its 2011 ECRI General Policy Recommendation No. 13 revised on combating antigypsyism and discrimination against Roma (CRI(2011)37rev).

6. 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.

7. One of the most enduring features of antigypsyism in Europe is collective punishment<sup>4</sup> – 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. 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**

8. 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.<sup>5</sup> 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*"<sup>6</sup> rings particularly true: if you are from Romania, for example, you will, on average, die 16 years younger than non-Roma in your country.<sup>7</sup>

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<sup>3</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Bulgaria, ACFC/OP/IV(2020)001.

<sup>4</sup> 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>.

<sup>5</sup> 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".

<sup>6</sup> Ruth Wilson Gilmore, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA*, University of California Press, 2008, page 28.

<sup>7</sup> 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.

9. 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.<sup>8</sup> 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 have threatened to hurt you if you dared to step into a shop, a school, or a neighbourhood where you do not “belong”.

10. 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.<sup>9</sup> A few months later France’s Interior Minister added that Roma “*are destined to return to Romania and Bulgaria*”.<sup>10</sup> 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.<sup>11</sup>

11. 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.

12. 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).<sup>12</sup> Such appalling housing situation remained the same in 2019 depriving Roma of registration, access to healthcare, identity documents and voting rights as noted by the Commissioner for Human Rights of the Council of Europe during her visit to Bulgaria.<sup>13</sup> This situation is no accident. It is the product of accumulated generations of exclusion. And many officials, including high level politicians, take advantage of it, spreading vicious stereotypes common to antigypsyism with calls for Roma to be evicted from their homes.

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<sup>8</sup>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”.

<sup>9</sup> See Blandine Le Cain, “Propos anti-Roms : l’élú Gilles Bourdouleix condamné en appel”, LE FIGARO, 12 August 2014.

<sup>10</sup> “Pour Valls, ‘les Roms ont vocation à rentrer en Roumanie ou en Bulgarie’”, LIBERATION, 24 September 2013.

<sup>11</sup> “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-callsroma-parasites-during-his-visit-to-roma-holocaust-site>.

<sup>12</sup> 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>.

<sup>13</sup> Commissioner for Human Rights of the Council of Europe, Report following her visit to Bulgaria from 25 to 29 November 2019, CommDH(2020)8, § 18).

13. In January 2019, in his capacity as the acting Deputy Prime Minister Karakachanov declared: *"Gypsies in Bulgaria have become exceptionally insolent. Several days ago, they beat policemen. Two days ago, they beat a soldier. This cannot continue. The tolerance of Bulgarian society has run out. [...] The truth is that we need to undertake a complete program for a solution to the Gypsy problem."* This provocative call came against a backdrop widespread civil unrest, with mass attempts to storm Roma neighbourhoods by racist mobs and was directly followed by demolitions and destruction of homes owned by Roma.<sup>14</sup>

14. In February 2019, Karakachanov introduced his 'Concept for the Integration of the Unsocialised Gypsy (Roma) Ethnicity', which argued against continued tolerance towards "unlawful actions by individuals from the gypsy (Roma) population". Karakachanov alleged that this 'tolerance', combined with inaction by the state and local authorities, has created "a sense of impunity within a significant part of the gypsy (Roma) population". VMRO's plans called for halting welfare payments if Roma refuse to work or send their children to school, or if they "demonstrate an expensive lifestyle incongruous with their socially disadvantaged status." Among the proposals were demolitions of all homes without proper documentation, the elimination of 'lone mother' status for Romani women, and genocide-adjacent measures such as "limiting births" of Romani mothers, including free abortions to Romani mothers with more than three children.<sup>15</sup> The Concept also proposed a crackdown on so-called 'Roma crime' in ghettos, with a specific focus on "ring leaders, phone scammers, prostitutes and beggars".<sup>16</sup> Ultimately, Karakachanov's concept did not get through the legislature, and his VMRO party fell from power after dismal performances in the series of elections in 2021, failing even to cross the threshold to enter parliament.

15. In April 2019, in the run-up to the European elections, Romani communities again became the target of violent attacks after a video showing a conflict between Roma and "ethnic Bulgarians" went viral online. The video was widely spread through Bulgarian mass media and became the pretext for demonstrations which gathered more than 1500 individuals in Gabrovo (where according to the most recent national census only 343 Roma live). As a result of the week-long protests, several Romani houses were destroyed or damaged by protesters who were heard shouting "Death to the Gypsies!"<sup>17</sup> Some sense of the gravity of the situation can be garnered from the report on the November 2019 country visit by Council of Europe Commissioner for Human Rights, Dunja Mijatović: *"The Commissioner deplores the climate of hostility against Roma, in particular against those who had to leave their homes following rallies targeting their communities in several localities. She calls upon the authorities to urgently address the situation of the*

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<sup>14</sup> ERRC, BULGARIA'S LITANY OF HATE: FIVE THINGS LEADING POLITICIANS SAID ABOUT ROMA, 19 May 2021, available at: [Bulgaria's litany of hate: five things leading politicians said about Roma - European Roma Rights Centre \(errc.org\)](https://www.errc.org/news/bulgaria-s-litany-of-hate-five-things-leading-politicians-said-about-roma).

<sup>15</sup> ERRC Factsheet, Mob Justice: Collective Punishment against Roma in Europe. March 2019. Available at: [http://www.errc.org/uploads/upload\\_en/file/5136\\_file1\\_mob-justice-collective-punishment-against-roma-in-europe-march-2019.pdf](http://www.errc.org/uploads/upload_en/file/5136_file1_mob-justice-collective-punishment-against-roma-in-europe-march-2019.pdf)

<sup>16</sup> BIRN Sofia, 'Bulgarian Nationalists' Roma 'Integration' Plan Dismays Rights Advocates', Balkan Insight, 8 February 2019. Available at: <https://balkaninsight.com/2019/02/08/bulgarian-nationalists-issue-controversial-romaintegration-plan-02-07-2019/>.

<sup>17</sup> ERRC News, Bulgarian Government set for Sweeping Victory In EU Elections after Anti-Roma Violence. 16 April 2019. Available at: <http://www.errc.org/news/bulgarian-government-set-for-sweeping-victory-in-eu-elections-after-anti-roma-violence>.

persons affected and to act swiftly to strengthen the legal safeguards accompanying evictions. Resolute measures should also be taken to improve the general housing situation of Roma, including their access to social housing.<sup>18</sup>

16. Following the COVID-19 outbreak, in March 2020 far-right MEP Angel Dzhambazki called for a shutdown of Romani neighbourhoods: "*Think about whether or not the ghettos will turn out to be the real nests of infection*" because "*Gypsies have a very low health culture*" and "*have no personal hygiene*". On a radio interview, where he condemned organisations defending Roma rights as traitors, he said: "*If you leave the gypsies free to walk up and down and probably spread the infection, it is mild to say ill-advised, mild to say irregular, mild to say beyond any logic. Gypsies are engaged in begging, theft, and prostitution*".<sup>19</sup>

17. In May 2021, the far-right former deputy Prime Minister Karakachanov called for the "unification of patriotic formations" against the "creeping gypsyisation of society". He insisted this was not an ethnic term, but referred to "*a part of society (that) has learned very well that it has rights, but does not want to learn that it has obligations. They – this part of the society – very clearly, highly and eagerly want to use the social funds, but they do not want to pay a penny in with hard work and effort.*"<sup>20</sup>

18. The political party, VMRO-Bulgarian National Movement (VMRO-BND), before being fined this year for hate speech, had published numerous articles on their website asserting that Roma are inherently criminal, provoking hostility between ethnic Bulgarians and Roma, and calling for violence. Typical headlines and quotes published on their website included "*Gypsy domestic crime can and will be broken only with an iron hand*" and "*These animals must be butchered to the bone!*". The texts regularly claim that there is "unpunished Gypsy crime" and "Gypsy terror".<sup>21</sup>

19. 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*

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<sup>18</sup> Council of Europe Commissioner for Human Rights, Dunja Mijatović, Report on the visit to Bulgaria 25-29 November 2019. Available at: <https://rm.coe.int/report-on-the-visit-to-bulgaria-from-25-to-29-november-2019-by-dunja-m/16809cde16>

<sup>19</sup> *Ibid.*

<sup>20</sup> ERRC News, Bulgaria's litany of hate: five things leading politicians said about Roma, 19 May 2021, available at: <http://www.errc.org/news/bulgarias-litany-of-hate-five-things-leading-politicians-said-about-roma>

<sup>21</sup> ERRC, Bulgaria: Extremist VMRO-BND Party Fined For 'Gypsy Issue' Online Hate, 10 July 2023, available at: [Bulgaria: Extremist VMRO-BND party fined for 'Gypsy issue' online hate - European Roma Rights Centre \(errc.org\)](https://www.errc.org/news/bulgaria-extremist-vmro-bnd-party-fined-for-gypsy-issue-online-hate-european-roma-rights-centre).



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.<sup>22</sup>

20. Later that year, the Commissioner made a direct link between comments politicians make about Roma and racist violence: “Politicians in several 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”.<sup>23</sup>

21. More recently, in her 2020 report, the Commissioner for Human Rights of the Council of Europe reported violent and deadly racist attacks against Roma. The Commissioner, along with ECRI, confirmed that most racist attacks in the country were committed against Roma and that hostility was increasing. They referred to specific harrowing events from 2019 involving mob action and extremist groups destroying home and driving Roma out of their communities while being spurred in part by anti-Roma statements of the then Defence Minister.<sup>24</sup>

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

22. 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 Action<sup>25</sup> (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*

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<sup>22</sup> 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>.

<sup>23</sup> 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-debunkmyths-and-prejudices-about-roma-migrants-in-europe?inheritRedirect=true>.

<sup>24</sup> The Commissioner for Human Rights of the Council of Europe, Country Report, CommDH(2020)8, 31 March 2020, §§11-18. See also ECRI Report on Bulgaria (sixth monitoring cycle), Council of Europe, 4 October 2022, §§ 44-46.

<sup>25</sup> 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.

*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 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.

23. 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?

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

25. 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.

26. 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.<sup>26</sup> 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.

27. The more recent Court’s case-law on the matter, namely the case *Budinova and Charpazov v. Bulgaria* (application no. 12567/13), delivers a promising, yet not sufficient, development. On 16 February 2021, the Court issued a judgment in *Budinova and Charpazov* finding that Bulgaria violated the applicants’ rights to have their private life respected under Article 8 of the Convention read in conjunction with Article 14 prohibition of discrimination. The Court concluded that negative stereotyping impacts individual members of an ethnic or social group to the point of triggering Article 8 if the

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<sup>26</sup> 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.

stereotyping reaches “a certain level” or “threshold of severity”. This threshold is based on all the circumstances of a case, including the characteristics of the group, the content of the negative statements, the form and context in which the statements were made, the reach and status of the author, and the extent to which a "core aspect of the group's identity and dignity" is affected (*Budinova and Chaprazov*, § 63). In other words, whether the statement was directed or made specifically about the applicant or whether specific tangible consequences were felt by the applicant, are not necessarily relevant. In *Budinova and Chaprazov*, the Court pointed out that Roma in Bulgaria have long held a “disadvantaged and vulnerable position” (*Budinova and Chaprazov*, § 64). The statements made about them were deliberately and extremely inflammatory, specifically meant to incite prejudice toward the groups. Since they were made by a well-known politician in a variety of media, the statements reached a wide audience. All these factors together, though none alone decisive, led to the conclusion that the statements reached the “certain level” or “threshold of severity” to say that they infringed on the applicants’ private life. Even though the politician's statements could not be attributed to the Bulgarian Government, the Court analysed Bulgaria's failure of its responsibilities to provide redress for those statements. While the States have a duty to strike a balance between the Article 8 rights of the victims and the Article 10 right to freedom of expression, they must do so in conformity with the relevant law. The *Budinova and Chaprazov* judgment settled that “expression that promotes or justifies violence, hatred, xenophobia or another form of intolerance cannot normally claim protection”, thus there is no civil liberty issue at stake in circumstances of inciting speech, even if it touches on a matter of "public concern" (*Budinova and Chaprazov*, § 90). It is against the obligations of the Convention for State authorities to ignore or downplay the capacity of anti-Gypsy hate speech to "stigmatise Roma ... as a group and arouse hatred and prejudice against them" (*Budinova and Chaprazov*, § 93).

The European Roma Rights Centre

27 November 2023