

Magyar Jeti Zrt.

APPLICANT

v

Hungary

RESPONDENT STATE

THIRD-PARTY INTERVENTION**I. Introduction**

1. The European Roma Rights Centre (“the ERRC”) submits these written comments in accordance with the permission to intervene granted by the President of the Chamber.
2. In order to assist the Court in summarising the intervention for inclusion in the judgment, the ERRC has prepared the following summary:

The ERRC made two points. The first was that when minorities targeted by hate crimes or hate speech associate those acts with the views of particular politicians or political parties, they are engaging in expression for which Article 10 provides a high level of protection. The ERRC asked the Court to consider the situation of Roma, Europe’s largest minority which, as the Court has frequently recognised, requires special protection under the Convention. In addition to living poorer, shorter lives with fewer opportunities, Roma are exposed to high rates of hate crimes and hate speech as well as to comments by politicians and political parties blaming them for a wide range of social problems. The ERRC asserted that it was natural for many Roma to express a link between violent or otherwise extreme manifestations of anti-Gypsyism on the one hand and politicians and political parties that cast their political arguments in racialised terms on the other. The ERRC relied on UN and Council of Europe sources that likewise noted the important role politicians play in creating an environment in which racial hatred – including hate crimes – can flourish. Restricting Roma from expressing such a link was, in itself, whether conscious or not, a manifestation of anti-Gypsyism; it silences Roma and so perpetuates historical patterns of exclusion. The ERRC’s second point was that exposing online publishers to liability for the content of linked material will unduly burden civil society’s and racial minorities’ efforts to combat racism. The ERRC highlighted its own “rapid response” work in providing a rights-based commentary, through blogs, press releases, Facebook posts, and Twitter, on unfolding events concerning violations of Roma rights. That work was the ERRC’s contribution to the online fight against anti-Gypsyism. The ERRC relied extensively on the use of electronic links to materials published online by others. If the ERRC had to carry out its online work under the threat of a lawsuit concerning those links, its rapid-response operation would have to change significantly, with a considerable chilling effect. The ERRC highlighted that although it operated across Europe, it was a registered foundation in Hungary.

**II. When minorities targeted by hate crimes or hate speech associate those acts with politicians or political parties, they are engaging in expression for which Article 10 provides a high level of protection**

3. The Court is already aware of the vulnerable position of Roma, who, under the Convention, require special protection. See, e.g., *Aksu others v Turkey* (Grand Chamber, 2012), § 44. The ERRC asks the Court to imagine what it is like to be Roma 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>1</sup> Your level of education will 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 ghetto 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>2</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>3</sup>

4. 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. They want to hurt you, physically and or psychologically. There is a one-in-five chance you were a victim of a racially-motivated in-person crime in the past year (e.g. a threat or an assault).<sup>4</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, accompanied with a chuckle about how worthless you are, or threatened to hurt you if you dared to step into a shop, a school, or a neighbourhood that is not meant for you.
5. You have almost certainly heard yourself being talked about by politicians. If you are living in France, you might have heard that the mayor of one town said in the summer of 2013 that Hitler "didn't kill enough" of you.<sup>5</sup> A few months later France's Interior Minister added that Roma "are destined to return to Romania and Bulgaria".<sup>6</sup> He is now the Prime Minister. If you are living in the Czech Republic, now you may have heard your Deputy Prime Minister call Roma "parasites" two weeks ago when visiting the site of a death camp where Roma were killed during World War II; he was visiting to make amends for having questioned the Roma Holocaust.<sup>7</sup> If you are Hungarian, you are certainly aware of one of the country's most popular political parties, Jobbik, which includes plans in its political programme to address "Gypsy criminality".<sup>8</sup> You are probably also aware that members of Jobbik have been involved with extreme-right wing groups in organising marches of the kind that featured in the Court's recent judgment in *R.B. v Hungary* (2016) (see § 7 in particular).<sup>9</sup>
6. At least one study (dealing with Romani and LGBT victims of hate crimes in Latvia) also suggests that you will associate extreme racist words and acts with the government and the political scene in your country.<sup>10</sup> This is a natural link: terms such as "race-baiting" and "dog-whistle politics" were coined to

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<sup>1</sup> European Union Agency for Fundamental Rights, "The situation of Roma in 11 EU Member States: survey results at a glance" (2012), page 3: "*Roma – Europe's largest minority of 10-12 million people – are victims of racism, discrimination and social exclusion. Of those 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>2</sup> Ruth Wilson Gilmore, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA*, University of California Press (2008), page 28.

<sup>3</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: "*the cumulative effect of susceptibility to a variety of conditions leads to the outcome that Roma die 16 years younger and live less healthy lives overall*".

<sup>4</sup> European Union Agency for Fundamental Rights, "Data in Focus Report: Minorities as Victims of Crime" (2012), available at [http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6\\_0.pdf](http://fra.europa.eu/sites/default/files/fra-2012-eu-midis-dif6_0.pdf), 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>5</sup> See Blandine Le Cain, "Propos anti-Roms : l'élú Gilles Bourdouleix condamné en appel", *LE FIGARO* (12 August 2014).

<sup>6</sup> "Pour Valls, 'les Roms ont vocation à rentrer en Roumanie ou en Bulgarie'", *LIBERATION* (24 September 2013).

<sup>7</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-calls-roma-parasites-during-his-visit-to-roma-holocaust-site>.

<sup>8</sup> On their website, Jobbik explain (in English) why they use the phrase "Gypsy crime": [http://jobbik.com/frequently\\_refuted\\_lies\\_2](http://jobbik.com/frequently_refuted_lies_2) (last accessed on 19 September 2016).

<sup>9</sup> The Court's own case law records that the Hungarian Guard Association was founded by ten members of Jobbik. *Vona v Hungary* (2013). The Hungarian courts dissolved the Hungarian Guard Association for "*its programme on discrimination between people and expressed... by way of marches in several cases; this amounted to a demonstration of power and to threatening others through the appearance [of the participants in the marches]*". *Vona*, § 13. The *R.B.* case shows that these kinds of marches continue.

<sup>10</sup> Inta Dzelme, "Psychological Effects of Hate Crime", *Latvian Centre for Human Rights* (2008), available at [http://cilvektiesibas.org.lv/site/attachments/30/01/2012/Naida\\_noziegums\\_ENG\\_cietusajiem\\_Internetam.pdf](http://cilvektiesibas.org.lv/site/attachments/30/01/2012/Naida_noziegums_ENG_cietusajiem_Internetam.pdf) pages 28-29. The study was based on surveys of victims of hate crimes, some of whom believe state officials

describe situations where politicians or political parties make racially suggestive comments or proposals that activate more overt racist sentiments in society and embolden those who hold them. If you make that connection – between the comments politicians in ruling or popular opposition parties make about Roma and violent or otherwise deeply offensive hate crimes or racial insults – you are not alone.

- a. Earlier this year, the European Commission Against Racism and Intolerance (“ECRI”) published its general recommendation no.15 on combating hate speech.<sup>11</sup> There, ECRI recognised *“that politicians, religious and community leaders and others in public life have a particularly important responsibility in this regard because of their capacity to exercise influence over a wide audience”*.<sup>12</sup> ECRI went on to note that *“the employment of a rude tone in many parliaments and by state officials has been found to contribute to a public discourse that is increasingly offensive and intolerant. Such discourse has been exacerbated by some high-level politicians not being inhibited from using hate speech in their pronouncements”*.<sup>13</sup>
  - b. The Council of Europe Commissioner for Human Rights, last year, made a direct link between comments politicians make about Roma and acts of 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, such as the lynching of a migrant Roma teenager in France in 2014 or violent attacks against Roma camps in Italy”*.<sup>14</sup>
  - c. 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”*.<sup>15</sup>
7. It is a severe interference with the rights of an oppressed minority – such as Roma – to be prohibited from expressing the link between racist speech, acts, or racially-motivated crimes against property or people committed by a private individual or a group of private individuals, and the politicians or political parties they perceive as promoting an environment in which such acts take place.
8. The ERRC imagines that the Court will have no difficulty condemning States that penalise Roma who express this link between politics and hate crimes. The ERRC nonetheless urges the Court to go further, and consider such cases through the lens of the lived experience of Roma in Europe. European institutions and Roma themselves have a word to describe the sort of environment sketched out above. According to ECRI, “anti-Gypsyism” 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”*.<sup>16</sup> The Alliance Against Antigypsyism, of which the ERRC is a member and which spells the term without a hyphen, defines the concept as follows:

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gave a “green light” to “these aggressive youth” who carry out attacks on minorities such as Roma and LGBTIQ people.

<sup>11</sup> Document number CRI(2016)15.

<sup>12</sup> Preamble.

<sup>13</sup> Explanatory memorandum, § 24.

<sup>14</sup> Human Rights Comment, “Time to debunk myths and prejudices about Roma migrants in Europe” (16 July 2015), available at <http://www.coe.int/en/web/commissioner/-/time-to-debunk-myths-and-prejudices-about-roma-migrants-in-europe?inheritRedirect=true>.

<sup>15</sup> CERD/C/GC/35. General Recommendation no.35 on combating racist hate speech.

<sup>16</sup> See General Policy Recommendation No.13, CRI(2011)37.

*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>17</sup>*

9. When Roma make the link between the stated views of politicians and political parties on the one hand, and overt, criminal acts of hate speech or hate crimes on the other, they are articulating the structures and practices that continue to oppress Roma. They are describing the perpetuation of what the Court has consistently described as the “turbulent history” of Roma. Using defamation laws to prevent them from doing so is preventing them from using their Article 10 rights to contribute to their own emancipation from those structures. Seeing such cases as a neutral application of those principles ignores the history that has brought Roma to their current disadvantaged position in European society.
10. It is particularly important for the Court to exercise its European supervision in cases where domestic courts interfere with the freedom of expression of Roma, ostensibly to protect powerful politicians or political parties which, elsewhere, cast their own political arguments in racialised terms. To allow domestic courts to punish Roma and protect such politicians and political parties will undermine “*that tolerance and respect for the equal dignity of all human beings [which] constitute the foundations of a democratic, pluralistic society*”. *Gündüz v Turkey* (2004), § 40. Just as it is necessary “*to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance*” (*Gündüz*, § 40), it is also necessary to prevent the targets of such hatred from being silenced by powerful political actors for expressing their intuitions about the continuum between race-baiting politics, hate speech, and violent hate crimes. Otherwise, Convention rights will be misconstrued to undermine the very values of tolerance, social peace, and non-discrimination that the Convention is meant to protect. *Mark Anthony Norwood v United Kingdom* (decision, 2004).

### **III. Exposing online publishers to liability for the content of linked material will unduly burden civil society’s and racial minorities’ work against racism**

11. It is a sad cliché that the Internet has given racists and others whose values are incompatible with democratic society new opportunities to spread their hatred to wide audiences, often anonymously and with impunity. Roma and other minorities, and their civil society allies, are responding in creative ways. The International Network Against Cyberhate,<sup>18</sup> for example, unites organisations that combat discrimination on the Internet, inter alia, by providing information and education on the Internet to counteract hateful statements. The ERRC, like many other NGOs, generates its own content on the Internet, in the form of press releases on our website ([www.errc.org](http://www.errc.org)), posts on our Facebook page (@EuropeanRomaRightsCentre), messages on Twitter (@ERRCtweets), and content on our own blog ([www.errc.org/blog](http://www.errc.org/blog)). The ERRC publishes, on average, one or two Facebook posts and one or two Tweets each day, and one blog per week. These make liberal use of electronic links to allies’ materials, in order to strengthen the networks of those combating anti-Gypsyism and other forms of discrimination.
12. NGOs engaged in this kind of electronic communication enjoy encouragement from the Council of Europe and other international bodies, especially when it comes to combating hate speech online. The Council of Europe’s “No Hate Speech” movement<sup>19</sup> has sought to mobilise European youth to monitor and combat hate speech online. The UN Educational, Scientific and Cultural Organization has compiled a study of the work of organisations to combat hate speech online, noting the importance of

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<sup>17</sup> The Alliance’s paper, published in June 2016, can be downloaded at [www.antigypsyism.eu](http://www.antigypsyism.eu).

<sup>18</sup> Details about the organisation are available at [www.inach.net](http://www.inach.net).

<sup>19</sup> Details about the movement are available at [www.nohatespeechmovement.org](http://www.nohatespeechmovement.org).

civil society organisations in creating platforms for individuals to counter hate speech and putting pressure on companies to act.<sup>20</sup>

13. The ERRC can only speak from its own experience, using social media and its website on a regular basis to promote the ERRC's work, to combat discrimination, and to spread awareness of serious Roma rights violations. To take a few examples, in the past month the ERRC published:
  - a. a blog<sup>21</sup> about fire-bomb attacks in a slum in Marseille where Roma were living, accompanied by references to recent racist comments by politicians;
  - b. a press release<sup>22</sup> about segregation of Romani children in a kindergarten in Serbia;
  - c. a Facebook post about shots fired at a children's camp in the Czech Republic by a man screaming racist threats about Roma; and
  - d. a blog<sup>23</sup> about a recent pogrom in Ukraine, in which Roma were forcibly expelled from their homes.
14. We refer to this work in the organisation as "rapid response" work. The ERRC is determined to provide a timely rights-based commentary on developing violations of the rights of Roma, to spread awareness of what is happening, and to provoke the authorities into responding appropriately. For this rapid-response work we are dependent on information provided by other Internet sources, which we rely on, and liberally include links to, in our own content.
15. Making those who generate content on the Internet as part of an online battle against racism liable for the content of material to which they link will have a chilling effect on their important work. The Court has noted that timing is frequently of the essence when it comes to the exercise of Article 10 rights. See, e.g., *Bączkowski v Poland* (2007), § 82. Providing a quick response to unfolding events that concern violations or potential violations of the rights of Roma is a critical part of fulfilling our mission. In order to do so, we may link to the publicly available source of information on which we are basing the content we are publishing online. If we have to carry out this work under the threat of a lawsuit concerning those links, our rapid-response operation will have to change significantly. We will have to seek legal advice before we react, distracting from our long-term strategic legal work, or simply not react at all, undermining our mission.
16. The ERRC notes in this respect that we are a registered foundation in Hungary; although rules on jurisdiction mean that we could be taken to court anywhere in Europe (or potentially beyond), developments in Hungarian law are particularly important to our work.

The European Roma Rights Centre  
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<sup>20</sup> UNESCO, "Countering Hate Speech Online" (2015), available at <http://unesdoc.unesco.org/images/0023/002332/233231e.pdf>.

<sup>21</sup> Available at <http://www.errc.org/blog/anti-gypsyism-in-france-the-shame-of-the-republic/126>.

<sup>22</sup> Available at <http://www.errc.org/article/romani-children-segregated-in-serbian-kindergarten/4516>.

<sup>23</sup> Available at <http://www.errc.org/blog/mob-rules-against-ukrainian-roma-in-21st-century-pogrom/125>.