

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No.21052/18

Terna

APPLICANT

v

Italy

RESPONDENT STATE

THIRD-PARTY INTERVENTION

1. The European Roma Rights Centre (“the ERRC”) is Roma-led international NGO whose vision is for Roma 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 submit 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, we have prepared the following:

The European Roma Rights Centre (“the ERRC”) urged the Court to use the term “antigypsyism” to describe the specific forms of discrimination Roma face. They said antigypsyism in Italy was rife and gave examples of far-reaching discriminatory policies and hate speech at the highest levels of the State. The ERRC cited a definition for the term “institutional racism” and went on to describe institutional antigypsyism in the system for taking children into care in Italy. This phenomenon stemmed from centuries-old stereotypes about Roma, including the vicious stereotype that Roma are likely to kidnap children. The ERRC cited data showing vastly disproportionate numbers of Romani children in care and being freed for adoption in Italy. This was linked to racial stereotypes harboured by actors in the care system. The problem was not limited to Italy, but showed up in many European countries (such as Hungary, Serbia, and the United Kingdom). Treating a single incident of racial discrimination in the care system as isolated would be a mistake. The ERRC urged the Court to name racial stereotypes clearly when they appear in cases and condemn them as such. The ERRC also urged the Court to rely on the notion of “harassment” as a form of discrimination when dealing with racial stereotypes, and to shift the burden of proof onto Respondent Governments in cases arising under Article 14 taken with Article 8 where stereotyping is present.

**A. The Court should use the term “antigypsyism” to describe the specific forms of discrimination Roma face and recognise that antigypsyism is rife in Italy.**

3. Roma have a word to describe what is happening when they can no longer visit their children or grandchildren because of racially stereotypical assumptions: antigypsyism. It is a word that also describes many other experiences which would be extraordinary in the lives of most Europeans, but are all too common among Roma: police brutality; forced eviction; housing and school segregation; being turned away for healthcare; and many other human rights violations.
4. According to the European Commission Against Racism and Intolerance (“ECRI”), “anti-Gypsyism” (which they spell with a hyphen) is “*a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination*”.<sup>1</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:

*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>2</sup>

5. The ERRC urges the Court to use the word “antigypsyism” to describe the specific forms of discrimination that Roma face. The word is now regularly used by European Union and Council of Europe bodies. For example, in October 2017 the Committee of Ministers of the Council of Europe used

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<sup>1</sup> See General Policy Recommendation No.13, CRI(2011)37.

<sup>2</sup> The Alliance’s paper, published in June 2016 and updated in June 2017, can be downloaded at [www.antigypsyism.eu](http://www.antigypsyism.eu).

the term eight times in its Recommendation to member States on improving access to justice for Roma and Travellers in Europe. CM/Rec(2017)10. On 4 April 2019, the Council of Europe Commissioner for Human Rights used the term 14 times in a “human rights comment”,<sup>3</sup> recommending, for example, “*increasing the training of... members of the judiciary, on anti-Gypsyism and its consequences*”. We respectfully submit that phrases such as “*so-called antigypsyism*” (*Levakovic v Denmark* (2018), § 32) are inappropriate in the Court’s case law. Antigypsyism is real; it is an active force in European society and the term describes what the Court has attempted to capture about the experience of Roma in more cumbersome and less effective language in the past. 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. The ERRC monitors antigypsyism across Europe. It is rife in Italy. There is not enough space here to detail the extent of the problem. More information is available on our website.<sup>4</sup> Here are a few recent examples that show how antigypsyism contaminates public bodies in Italy:

- a. The current Interior Minister (who is also Deputy Prime Minister) has called for a “census” of Roma in Italy, in order to carry out “*a mass cleansing, street by street, piazza by piazza, neighbourhood by neighbourhood*”.<sup>5</sup>
- b. The Mayor of Vicenza has banned “*nomads*” from certain public places and threatened to extend the ban to the entire municipality.<sup>6</sup>

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

<sup>4</sup> See, for example, our submission of 26 March 2019 to the United Nations Human Rights Council as part of its Universal Period Review, available at [http://www.errc.org/uploads/upload\\_en/file/5138\\_file1\\_italy-hrc-submission-26-march-2019.pdf](http://www.errc.org/uploads/upload_en/file/5138_file1_italy-hrc-submission-26-march-2019.pdf). In general, our website ([www.errc.org](http://www.errc.org)) can be searched by country; choosing “Italy” reveals a trove of incidents that paint a picture of antigypsyism in Italy.

<sup>5</sup> Tom Embury-Dennis, “Italy’s deputy PM Salvini called for ‘mass cleansing, street by street, quarter by quarter’, newly resurfaced footage reveals”, THE INDEPENDENT, 21 June 2018, available at <https://www.independent.co.uk/news/world/europe/italy-matteo-salvini-video-immigration-mass-cleansing-roma-travellers-far-right-league-party-a8409506.html>.

<sup>6</sup> “Vicenza, Rucco estende divieto a roulotte nomadi”, Vvox, 30 June 2018, available at <https://www.vvox.it/2018/06/30/vicenza-rucco-estende-divieto-a-roulotte-nomadi/>.

- c. The state of emergency concerning “nomads”<sup>7</sup> declared in 2008 was found unconstitutional,<sup>8</sup> but only after it led to a variety of unlawful actions by public authorities, including the creation of segregated, Roma-only “formal camps”, often inaccessible by public transport and surrounded by barbed wire.<sup>9</sup>
- d. The state of emergency and other policies targeting Roma have led to the eviction of thousands of Romani people from their homes, leaving them street homeless and otherwise violating the standards the Court set out in *Winterstein v France* (2013), §§ 148, 159.<sup>10</sup>

**B. The system for taking children into care in Italy, and in other European countries, is contaminated by institutional antigypsyism.**

- 7. The definition of antigypsyism given by ECRI (see above, § 4) includes the phrase “institutional racism”. This phrase was defined, notably, in the United Kingdom as: “*the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin*”.<sup>11</sup>
- 8. The ERRC has already submitted third-party interventions to the Court about how antigypsyism manifests itself in police misconduct and school segregation.<sup>12</sup> Here, we focus on systems for taking children into care.

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<sup>7</sup> Decreto del Presidente del Consiglio dei Ministri 21 maggio 2008. Dichiarazione dello stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio delle regioni Campania, Lazio e Lombardia. (GU n. 122 del 26-5-2008), available at: <http://www.regioni.it/news/2008/05/27/decreto-21-maggio-2008-dichiarazione-dello-stato-di-emergenza-in-relazione-agli-insedia-menti-di-comunita-nomadi-nel-territorio-delle-regioni-campania-lazio-e-lombardia-gu-n-122-del-26-5-2008-14395/>.

<sup>8</sup> Consiglio di Stato, sez.IV, 16 novembre 2011, n.6050, available at: <http://www.leggioggi.it/allegati/consiglio-di-stato-sez-iv-16-novembre-2011-n-6050/>.

<sup>9</sup> One such camp was declared unlawful and discriminatory by the Civil Court of Rome in 2015. ERRC, “Municipality of Rome condemned for La Barbuta Camp: for the first time in Europe an official Roma-only settlement ruled discriminatory”, 10 June 2015, available at <http://www.errc.org/press-releases/municipality-of-rome-condemned-for-la-barbuta-camp-for-the-first-time-in-europe-an-official-roma-only-settlement-ruled-discriminatory>.

<sup>10</sup> See our submission to the United Nations, cited above at note 4.

<sup>11</sup> The Stephen Lawrence Inquiry, Report of an inquiry by Sir William MacPherson of Cluny (The MacPherson Report): Chapter 6. February 1999. Available at <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>.

<sup>12</sup> See, for example, our submission to the Court in *Kósa v Hungary* (decision, 2017) on school segregation and our submission to the Court in *M.B. v Slovakia* (pending, application number 45322/17) concerning police brutality.

9. The Court cannot ignore the existence of persistent racial stereotypes in Europe about Romani people kidnapping children. These are centuries-old notions, often closely linked to similar anti-Semitic tropes.<sup>13</sup> These vicious, baseless stereotypes have touched off widespread panic in Europe in recent years. For example, authorities in Greece in 2013 found a child living with a Romani family but who did not look like them – because of her blonde hair and fair skin. This triggered a worldwide panic that she and others were victims of Romani kidnappers.<sup>14</sup> This led to Romani children being taken into care in Ireland, for example, because they did not look enough like their parents.<sup>15</sup> The persistence of this stereotype has been on display in recent weeks in France: in March 2019 gangs targeted Romani communities for violence based on rumours of child kidnapping stemming from racist stereotypes.<sup>16</sup>
10. Stereotypes about Romani people kidnapping children and related ideas have a concrete consequence across Europe: institutional antigypsyism in the systems for taking children into care. The ERRC has examined this phenomenon in detail; we have even created a specific website dedicated to our findings.<sup>17</sup> We carried out research in 2011 on discrimination in care systems in Bulgaria, the Czech Republic, Hungary, Italy, Romania, and Slovakia.<sup>18</sup> The results were stark. In Italy for example, where Roma at the time represented 0.23% of the population, Romani children made up 10.4% of the children in care homes. Our research in Italy revealed

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<sup>13</sup> Peter McGuire, “Do Roma ‘Gypsies’ Really Abduct Children?”, THE HUFFINGTON POST, 24 October 2013, available at [https://www.huffingtonpost.co.uk/peter-mcguire/roma-gypsies-children\\_b\\_4152869.html?utm\\_hp\\_ref=uk&guccounter=1](https://www.huffingtonpost.co.uk/peter-mcguire/roma-gypsies-children_b_4152869.html?utm_hp_ref=uk&guccounter=1).

<sup>14</sup> See, e.g., Niki Kitsantonis and Dan Bilefsky, “Greek Abduction Case Highlights Roma Tensions”, THE NEW YORK TIMES, 21 October 2013, available at <https://www.nytimes.com/2013/10/22/world/europe/roma-couple-ordered-jailed-by-greek-authorities.html>.

<sup>15</sup> “Children in Ireland returned to Roma parents after DNA testing”, AL JAZEERA, 23 October 2013, available at <http://america.aljazeera.com/articles/2013/10/23/children-in-irelandreturnedtoromaparentsafterdnatesting.html>.

<sup>16</sup> “False kidnapping rumours spark gang attacks on Roma in France”, FRANCE 24, 27 March 2019, available at <https://www.france24.com/en/20190327-false-kidnapping-rumours-spark-gang-attacks-roma-france>.

<sup>17</sup> [www.errc-risc.com](http://www.errc-risc.com)

<sup>18</sup> LIFE SENTENCE, June 2011, available at [http://www.errc.org/uploads/upload\\_en/file/life-sentence-20-june-2011.pdf](http://www.errc.org/uploads/upload_en/file/life-sentence-20-june-2011.pdf).

discriminatory attitudes those in the system, including assumptions among social workers in Italy responsible for taking children into care that Romani families are not able to raise and educate their children properly.

11. Other research has confirmed that the system in Italy for taking children into care is contaminated by institutional antigypsyism. In October 2013, Associazione 21 Luglio, an NGO, published a report on the adoption of Romani children in the Lazio Region between 2006 and 2012.<sup>19</sup> The study revealed a stunning disparity: during that six-year period, one non-Roma child out of every 1,000 (0.1%) in the region was the subject of legal proceedings to decide whether to free her/him up for adoption; one in 20 Romani children (5%) were subjected to such proceedings in the region during the same period. In total, in the region in that period, one out of every 1,250 non-Roma children (0.08%) was ultimately freed for adoption following a judicial decision; it was one out of every 33 Romani children (3.1%). (Roma made up about 0.35% of the population of the region at the time.) It is difficult to imagine any explanation for this difference that does not involve discrimination. Indeed, the report makes it clear that actors in the care system and in the courts harboured vicious stereotypes about Roma that contributed to the large numbers of Romani children being removed from their families and freed for adoption. The report also cites the poor housing conditions in which Roma live, which is not surprising, given that antigypsyism has left Roma disproportionately poor in Italy and elsewhere in Europe; actors in the care system often relied on these poor conditions when justifying removing children from their families. The Court will of course recall its own case law to the effect that poverty alone cannot justify taking a child into care. *Wallová and Walla v the Czech Republic* (2006), § 73; *Zhou v Italy* (2014), § 59. The report also makes clear that actors in the care system in the Lazio Region viewed these poor living conditions through the lens of racial stereotypes.

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<sup>19</sup> “*Mia madre era Rom: Le adozioni dei minori rom in emergenza abitativa nella Regione Lazio (2006 - 2012)*”, available at [https://www.west-info.eu/it/piccoli-rom-strappati-dalle-braccia-di-mamma/rapporto-mia-madre-era-rom\\_associazione-21-luglio1/](https://www.west-info.eu/it/piccoli-rom-strappati-dalle-braccia-di-mamma/rapporto-mia-madre-era-rom_associazione-21-luglio1/).

12. While antigypsyism is particularly problematic in Italy, institutional antigypsyism in care systems is a Europe-wide phenomenon. The ERRC has uncovered disproportionate rates of Romani children being taken into care in recent years in England, Hungary, and Serbia, for example. We did in-depth research in Nógrád County, Hungary, where around 20% of families are Roma, but more than 80% of children in the care system are from Romani families. Our research<sup>20</sup> involved interviews with guardians in the care system and examination of individual cases, revealing forms of prejudice similar to those Associazione 21 Luglio found in their October 2013 report. The ERRC is a plaintiff in litigation pending before the domestic courts in Hungary about this problem. We have also brought litigation in our own name in Serbia based on evidence<sup>21</sup> of institutional antigypsyism in the care system in Belgrade. Likewise, research we carried out in England<sup>22</sup> shows that racial stereotypes contaminate care systems there, particularly in certain local authority areas.
13. When racially stereotypical thinking shows up in decisions about taking individual children into care, that stereotypical thinking cannot be viewed in isolation. It is part of a widespread pattern of institutional antigypsyism in care systems in Italy and across Europe, leading to vastly disproportionate numbers of Romani children being taken into care. Treating a single incident of racial discrimination in the care system as isolated would be a mistake. It would ignore a much larger problem fuelling a spate of discriminatory Convention violations which will only end when States introduce general measures carefully designed to expose and eliminate antigypsyism in these services.

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<sup>20</sup> A brief English-language summary of this research is available at [http://www.errc.org/uploads/upload\\_en/file/romani-children-in-state-care-in-nograd-county-hungary.pdf](http://www.errc.org/uploads/upload_en/file/romani-children-in-state-care-in-nograd-county-hungary.pdf).

<sup>21</sup> A brief English-language summary of this research is available at [http://www.errc.org/uploads/upload\\_en/file/overrepresentation-of-romani-children-in-state-care-in-serbia.pdf](http://www.errc.org/uploads/upload_en/file/overrepresentation-of-romani-children-in-state-care-in-serbia.pdf).

<sup>22</sup> ERRC and University of Salford, "A Preliminary Account of Child Protection Practice with Romani and Traveller Children in England", January 2018, available at [http://www.errc.org/uploads/upload\\_en/file/the-fragility-of-professional-competence-january-2018.pdf](http://www.errc.org/uploads/upload_en/file/the-fragility-of-professional-competence-january-2018.pdf).

**C. The Court must recognise institutional antigypsyism in care systems and condemn it as such.**

14. As Judge Motoc pointed out in her Concurring Opinion in *Carvalho Pinto de Sousa Morais v Portugal* (2017), in cases involving stereotypes, the first step is to name the stereotype, and the second is to contest it: “*what is methodologically important in the contesting phase is that we are not using a comparator*” (§18). Instead, the Court is attacking discriminatory stereotypes which contaminate decision making.
15. When discriminatory stereotypes contaminate decisions that interfere with the right to respect to family life, the Court has found violations of Article 14 taken with Article 8. See, e.g., *E.B. v France* (Grand Chamber, 2008). The Court has also been alert to condemn the use of stereotyped reasoning when used to attempt to justify a difference in treatment. See, e.g., *Konstantin Markin v Russia* (Grand Chamber, 2012), § 143, (“*gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation*”). See, also, *Paraskeva Todorova v Bulgaria* (2010), § 40. The Court has been urged in academic writing to be even clearer in identifying and tackling stereotypes.<sup>23</sup>
16. Just as the Court in *Konstantin Markin* explicitly identified “*the perception of women as primary child-carers and men as primary breadwinners*” as a gender stereotype, so the Court must identify the vicious notion that Roma are more likely than others to kidnap children as a stereotype common to antigypsyism and which has no place in decisions about family life.
17. It is vital for the Court to use the term “antigypsyism” when naming such stereotypes. This is the only way to recognise that such ideas are not isolated or accidental; merely repeating that Roma have suffered a “*turbulent history and constant uprooting*” fails to capture the role public

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<sup>23</sup> Alexandra Timmer, “Toward an Anti-Stereotyping Approach for the European Court of Human Rights”, *HUMAN RIGHTS LAW REVIEW*, December 2011.



authorities have played and continue to play in violating Romani people's rights. Antigypsyism and the stereotypes it embeds in care systems across Europe have left Romani families disproportionately targeted for having their children taken into care. Across Europe there are social workers and other actors in care systems who harbour the baseless, racist idea that Roma regularly kidnap children and similar racist stereotypes. The Court must be clear that decisions concerning children and families, when contaminated by such reasoning, are particularly destructive of fundamental rights (see, *mutatis mutandis*, *Šečić v Croatia* (2007), § 67) and are incompatible with Article 14 taken with Article 14. When such stereotypes form any part of the reasoning to take a child into care, it is obvious that the best interest of the child have not been a primary consideration, as Article 3 of the UN Convention on the Rights of the Child demands.

18. The research cited above suggests that many decisions concerning Romani children in Italy and elsewhere in Europe are taken on the basis of racial stereotypes. In the absence of clear language from the Court condemning such stereotypes, on the basis of which general measures can be formulated, it is likely that a large number of future cases will reach the Court in which Romani children have been taken into care in violation of Article 8 read with Article 14.
19. We urge the Court to connect this kind of racial stereotyping with "harassment" as a form of discrimination. Harassment is defined in EU anti-discrimination law as follows: "*Harassment shall be deemed to be discrimination... 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*" (EU Directive 2000/43, Article 2(3)). The Directive covers discrimination (including harassment) in relation, *inter alia*, to social protection and social advantages (Article 3 (e) and (f)).
20. Harassment is a key concept for understanding discrimination under Article 14 of the Convention taken with Article 8. Harassment is different from direct discrimination in that the former obviates comparator analysis; when

determining if someone has been racially harassed, it is not necessary to show that another similarly situated person who does not share the characteristic in question has been or would be treated more favourably. (This is closely related to Judge Motoc's comments quoted above at § 14.) It is not necessary in cases of harassment to show discriminatory intent. The core of the legal question is whether the (unwanted) conduct was "*related to racial or ethnic origin*" and to show its purpose or its effect.

21. When Roma experience adverse treatment on the basis of stereotypes that stem from antigypsyism, it creates exactly that sort of effect, regardless of the purpose. It is crucial for the Court to consider the consequences of such stereotypes from the perspective of the victims subjected to them, and whose lives are made worse by public authorities who rely on them.
22. The ERRC urges the Court to name instances of racial harassment as such, using the term "harassment". The ERRC also urges the Court to describe situations that meet the definition of institutional racism using the term "institutional racism" or "institutional discrimination". These concepts, like the concept of "indirect discrimination", are key aspects of anti-discrimination law and practice in Europe and are necessary to describe the situations Roma face in Europe and which, because of institutional failings, come before the Court. See, *mutatis mutandis*, *D.H .and others v the Czech Republic* (Grand Chamber, 2007), §§ 183-184.
23. The ERRC also submits that in cases raising issues of stereotyping engaging Article 14 taken with Article 8, the burden of proof shifts to the Respondent Government once the victim has shown that there was unwanted conduct that had the effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, or offensive environment. It is enough to show that there is some connection to race or ethnicity, regardless of intent. See, *mutatis mutandis*, *E.B. v France* (Grand Chamber (2008), § 74).

The European Roma Rights Centre  
5 April 2019