

WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE

Written comments by the European Roma Rights Centre, to the 'European Union Annual Rule of Law Report – stakeholder consultation'

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CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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ERRC COMMENTS SUBMITTED TO THE 'EUROPEAN UNION ANNUAL RULE OF LAW REPORT – STAKEHOLDER CONSULTATION'

As an international public interest law organisation that combats anti-Roma racism and human rights abuse of Roma, the European Roma Rights Centre (ERRC) has confined its comments and observations to address general trends and specific issues in those EU Member States with the largest Roma populations, and as they pertain to the experience of those communities. The comments cover the efficacy or otherwise of the Race Equality Directive and equality bodies; lack of access to justice and weak enforcement of judgments; discriminatory behavior by law enforcement and the political cultivation of hostile environments for civil rights defenders.

The following observations and recommendations are drawn from ERRC's extensive work in monitoring, research and litigation on Roma rights, and from valuable information garnered through its collaboration with the Roma Civil Monitor (RCM).

INDEPENDENCE, CAPACITY AND POWERS OF NATIONAL HUMAN RIGHTS INSTITUTIONS, OMBUDSMAN INSTITUTIONS AND EQUALITY BODIES

A recurring point common to many of the [Roma Civil Monitor \(RCM\)](#) country reports was that full transposition of the Race Equality Directive (RED) into domestic law has not translated into effective action against anti-Roma discrimination. The opinion of the RCM researchers is that, despite EU legislation “there are no effective mechanisms to protect victims of police violence, little reliable information or data to give a precise account of the scale of the problem, and a low success rate in cases investigated.”

The existing evidence of widespread discrimination against Roma strongly suggests that the Racial Equality Directive is not effective. At the ERRC, we concur with the [Fundamental Rights Agency opinion](#), that critical assessment by both the EU and the Member States is needed to ascertain why this is the case, and to determine what measures are required to remedy the existing situation.

Whatever the outcome of ongoing deliberations on what is to be done with RED, as far as it concerns access to justice for Roma, and with respect to the Roadmap for a post-2020 EU Roma equality and inclusion policy, we strongly urge that priority be given to [UN Sustainable Development Goal 16](#): “to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

The official bodies responsible for combating discrimination in those countries with significant Roma populations are circumscribed in terms of independence, resources and mandate. There remains a dearth of ethnically disaggregated data, a low level of rights-awareness among many marginalised Roma communities, compounded by a widespread and well-founded scepticism concerning enforcement of judgements, the very possibility of justice, and effective remedy to combat discrimination.

A European Commission report [Equality Bodies Making a Difference](#) identified core issues of inadequate resources, effectiveness and independence; and significant levels of political indifference in many countries. In five EU Member States, this veers into political hostility, “in the form of interference in appointments and removals from office.” The challenge facing equality bodies was defined as how to “re-engage national politics with the potential and importance of equality bodies and to secure political support for their effective and independent functioning.” These obstacles have a deleterious effect on the workings of equality bodies when it comes to having any substantive impact on anti-Roma discrimination, and upholding the rule of law as it pertains to Roma.

The [synthesis report](#) from the RCM found that in countries with significant Roma populations, the bodies responsible for tackling discrimination were “ineffective when it came to anti-Roma discrimination.” In **Bulgaria**, the equality body was described as “proficient in dealing with minor cases, but avoids dealing with more serious cases and cases involving public authorities and shies away from challenging structural discrimination against Roma.” In other countries, equality bodies were widely criticised for their limited capacities, low efficacy, inadequate resources, “being generally inactive on anti-Roma discrimination, and lacking autonomy from government.”

In the **Czech Republic**, the Office of the Public Defender of Rights (Czech Ombudsperson) can provide independent methodological assistance to victims, conduct research and publish independent reports and make recommendations. However, her mandate is limited and she is not entitled to represent victims of discrimination in court proceedings. The law allows for legal entities established or active in the field of protection against discrimination to provide legal assistance to victims, but this is far from sufficient. The Czech Anti-discrimination Act does not regulate *actio popularis* (public actions) that would make it possible to file a legal action in discrimination cases with higher numbers and unknown identities of victims (e.g. in cases of discrimination in advertising, systemic discrimination, etc.). Free legal aid is granted only to people with proven limited financial resources.

In **Romania**, the national equality body, National Council for Combating Discrimination, has according to the **RCM report**, dedicated little effort and zero resources to counter the multiple forms of discrimination faced by Roma, with very few complaints seeing the light of day, and even in those few cases where discrimination is established, “the fines are so low that they do not qualify as a truly dissuasive measure.”

The rule of law seems to carry little weight, and equality bodies appear powerless when it comes to the issue of forced evictions of Roma in Romania. Professor Philip Alston, UN Special Rapporteur on extreme poverty and human rights, made a number of recommendations in his 2018 **End of Mission Statement**. As the **RCM report on Romania** states, Professor Alston’s recommendations merit citing yet again, for the simple reason that since then there has been no progress and no sign that the authorities intend to follow up on them:

“The national Housing Law (114/1996) should be brought into conformity with international human rights law on forced evictions, including General Comment no. 7 of the UN Committee on Economic, Social and Cultural Rights (1997) [...] Eviction should be a matter of last resort. The Government should give clear instructions to local authorities to prioritise the regularization of informal settlements over eviction [...] The Civil Code should be amended to apply to evictions from informal settlements, to allow for a full review of eviction decisions by the courts, and for temporary or permanent stays of execution to be granted. [...] The Civil Code should be amended to apply to evictions from informal settlements, to allow for a full review of eviction decisions by the courts, and for temporary or permanent stays of execution to be granted. [...] Prefects are required to review the legality of all administrative acts by municipalities, including eviction orders. In reviewing the legality of eviction orders, they should take account of international human rights standards. The Ministry of the Interior should issue guidelines for Prefects when undertaking such legality reviews”

LENGTH OF PROCEEDINGS AND ENFORCEMENT OF JUDGEMENTS

SCHOOL SEGREGATION

The emblematic case of justice delayed and judgments not enforced, is racial segregation of Romani pupils in schools in Central and Eastern Europe. Despite ongoing infringement proceedings against three Member States, dozens of rulings in regional and national courts, and a clutch of ECtHR judgments dating back to 2005 – which have not only ruled school segregation to be discriminatory and illegal, but affirmed that states have a positive obligation to make amends for a history of segregation – the situation vis-à-vis school segregation has actually worsened since the 2011 launch of the EU Roma Framework.

From **Hungary**, notwithstanding the ECtHR *Horváth and Kiss v. Hungary* ruling in 2013, **Romani children continue to be channelled to special schools**. The Hungarian government has failed to date to implement the Court’s judgment. The extent of local litigation challenging segregation practices, the constant appeals against court judgments and the foot-dragging by the authorities clearly demonstrate the depths of resistance from the government to meet its ‘positive obligation to undo a history of segregation’ as stipulated in *Horváth and Kiss*. It is ERRC’s contention that the weight of evidence, research, and court judgments show that there is nothing incidental or accidental about the practices that perpetuate segregation and inequality. Denying Hungarian Romani children equal access to integrated quality education is deliberate, knowing and systemic.

The most recent and most serious attempt to undermine the rule of law, and obstruct the implementation of a recent court judgement on school segregation, was made by **Prime Minister Viktor Orbán** in January 2020. Orbán’s intervention came four months after a court ruling by the **Debrecen Court of Appeal** in favour of Romani families in the town of Gyöngyöspata, and concluded that the Hungarian state should pay 80 million HUF in compensation to Roma children who had been segregated for a decade from their peers in school.

In a succession of provocative broadcasts to the nation through state-controlled media, the Prime Minister declared that the court's decision "violated the people's sense of justice", stigmatized the local Roma as workshy, their children as violent, unruly and un-educatable, and asserted that what went on in Gyöngyös-pata was not segregation but "catching up". Orbán dismissed "the whole thing as a provocation", fomented by Soros organizations, and stated that "there is a boundary that a Hungarian will never cross, or believes cannot be crossed. That boundary is giving people money for nothing."

The government announced a new 'national consultation' on the Gyöngyös-pata case, and declared "we take the side of the 80 percent who are decent, working Hungarians who demand a suitable education for their child." Over the last ten years, Orbán has characterized the widely criticized national consultations, as "demonstrating the power of national consensus". As to the outcome, the government stated that it already has clear answers to questions that have provoked social debates, "however, it needs a robust social mandate in order to represent them in the international arena as well as within Hungary." For an in-depth analysis of these developments see *The EU, Segregation and Rule of Law Resilience in Hungary* by Lilla Farkas.

JUSTICE DELAYED

According to the **Czech RCM**, many Roma respondents did not pursue justice for fear that things might turn out even worse, and their lack of trust was grounded in a perception that judges lacked sensitivity and harboured the same anti-Roma prejudices as the majority population. In addition to wariness concerning the quality and outcome of judicial processes, many Roma respondents were daunted by the length and complexity of legal proceedings, and the time lapse between the initial filing of a complaint and a tangible judicial outcome. Concerning just how long it takes, and how protracted is the process for Roma to get justice, below are two recent illustrative examples of cases that involved the ERRC:

T.K. AND OTHERS V SLOVAKIA (THIRD-PARTY INTERVENTION, PENDING) 6 JANUARY 2020

On 2 April 2015, there was a violent police raid in a Romani community in Vrbnica, in Eastern Slovakia. 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. Those injured included women, men, and children. 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 is still pending**.

A.P. V SLOVAKIA (THIRD-PARTY INTERVENTION) 28 JANUARY 2020

In February 2015, a sixteen-year-old Romani boy (A.P.) was punched in the face by police officers and pressured to confess to a minor offence. The Slovak prosecutor and the constitutional court dismissed his claims of ill treatment. Some five years later, on **28 January 2020**, the **European Court** found that A.P. had been a victim of degrading treatment by police. This amounted to a violation of Article 3, which refers to the prohibition on torture and inhuman or degrading treatment.

DISCRIMINATORY BEHAVIOUR BY POLICE, MISCONDUCT BY PROSECUTORS OR COURTS

COVID-19 EMERGENCY MEASURES

Of particular concern in the context of COVID-19 emergency measures and lockdowns, are recent reports of police brutality against Roma. Reports concerning repressive police action from **Bulgaria**, prompted a statement from Council of Europe, Commissioner for Human Rights, **Dunja Mijatović** in which she stated: "*While action to ensure adherence to confinement rules can be justified in the present circumstances, these cannot be selectively applied to people, neither fully nor partially, on the basis of ethnicity.*"

Other incidents of concern include, the police action in Bolintin Vale, in **Romania**, where video surfaced on social media of Romanian police beating and abusing Roma as they lay face down in the dirt with their hands bound behind their backs. Details of this assault are contained in an open letter to the President of Romania, by **Rights organizations Romani CRISS and the Civic Union of Young Roma in Romania (UCTRR)**. In the letter, the rights organizations described a number of other incidents which included police officers entering homes without warrants, beating women and children and using tear gas indoors.

In **Slovakia**, the **Slovak Government Plenipotentiary for Romani Communities** has filed a crime report concerning an incident where a police officer was reported to have beaten five small Romani children near the quarantined **Romani settlement of Krompachy**. While the incident itself is deplorable, the intervention of the **Slovak President** in this instance is an encouraging signal that police violence may no longer go unchecked.

The ERRC shares the concern expressed by UN experts In a **recent statement**, that emergency declarations must not be used as a basis to target particular groups or minorities, nor function as a cover for repressive action, or be used to silence human rights defenders; and that state responses must be proportionate, necessary and non-discriminatory. When it comes to policing Roma, executive overreach in a state of exception, and the tendency for extraordinary powers to become part of the ordinary, normal legal system, render the protection of rights **“increasingly fraught and difficult.”**

POLICE BRUTALITY AND A CULTURE OF IMPUNITY

In the five CEE Member States with significant Roma populations (BU, CZ, HU, RO, SK) the **RCM research** found that Roma experience ethnic profiling, stop-and-search, and encounters with police officers that do nothing to foster trust in law enforcement:

“A lack of accountability verging on impunity in some countries means that police officers often resort to the deployment of excessive force, and remain cavalier about the human rights and dignity of Roma detainees.”

The ERRC has filed numerous complaints, third party interventions, and supported litigation in national and European courts against racially-motivated police brutality and other forms of discriminatory behavior by law enforcement against Roma. A lack of accountability verging on impunity in some countries means that police officers often resort to the deployment of excessive force and remain cavalier about the human rights and dignity of Roma detainees.

In **Bulgaria**, cases of police violence against Roma have not diminished despite ECtHR rulings and regular censure by international bodies. Disciplinary proceedings against police officers rarely involve more than suspended sentences and fines should they be convicted. The opinion of the researchers is that there is no effective mechanism to protect victims of police violence, little reliable information or data to give a precise account of the scale of the problem, and a low success rate in the cases investigated.

In **Romania**, the authorities have repeatedly failed to properly investigate cases of police brutality against Roma and the use of Special Forces against Roma communities. The ECtHR has noted repeatedly that the Romanian authorities have failed to protect Romani citizens against ill treatment committed by private individuals and that cases of police brutality against Roma are also not properly investigated. The ECtHR has also questioned the use of Special Forces against Roma communities.

In **Slovakia**, incidents of police brutality against Roma and police raids against whole Roma settlements are not properly investigated by any independent body. In the latest development in one of the notorious cases of police brutality, the criminal prosecution against one of the victims was halted by a Košice court on 5 March 2020. The prosecutor can still challenge the judge’s decision, and the cases have not been closed yet.

The original incident, a mass raid by 63 police officers in **Moldava nad Bodvou**, which left over 30 unresisting Roma injured, took place on the 19 June 2013. Roma victims who testified as witnesses were subsequently charged with perjury. The investigator relied on an expert report that suggested that the victims’ collective mentality, labelled as their *“mentality Romica”* (sic!) is characterised by “low trustworthiness, a propensity to lie and emotional instability”. The constitutional court upheld this decision, and with domestic remedies exhausted, the case is currently pending in the European Court.

On 12 April 2019, concerning another infamous case, [the Košice II District Court](#), for the third time acquitted the police officers accused of abusing Roma boys at a police station in Košice in March 2009. According to the court, neither the additional evidence proved that the incident took place as alleged by the indictment of the prosecution. This is despite video evidence which was widely circulated on social media, showing the officers forcing the children to strip and slap one another, while threatening the boys with police dogs.

The experience of ethnic profiling, random stop-and-search and “over-policing” is commonplace for Roma across all five countries. In **Hungary**, a number of NGOs reported on police practices of fining Roma for petty offences in numerous settlements, mainly in the Northeast of the country. One study demonstrated that 97% of people fined for bicycle-related offences were Roma. Residents of Roma settlements were fined so frequently that the amount of fines due was more than their income; researchers spoke to several Roma who served prison time because of their inability to pay the fines.

HOSTILE ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS

A [recent FRA report](#) found that within the EU, the main challenges to ensuring a safe space for civil society are acts of intimidation and violence by non-state actors and smear campaigns. In some EU member states, such non-state actors have been actively encouraged by inflammatory rhetoric from prominent politicians, even prime ministers who attempt to frame human rights defenders as ‘mercenaries’, and ‘enemies of the people’. Human rights NGOs have been subjected to verbal attacks, such as online hate speech, threats, damage to their property, and even violent attacks. In addition, the ‘normalisation’ of intimidation is seen as a key issue by civil society experts consulted by FRA. Little has changed since that observation in 2017.

In Bulgaria, similar to the well-documented situation in Hungary, NGOs face threats, false accusations and abuse from government politicians. The hostile rhetoric and distorted, often fabricated reporting which is dutifully amplified in pro-government media, depict civil rights defenders as ‘paid foreign agents’ and enemies of the nation. This is purposefully designed to undermine and delegitimize the work of NGOs by creating a hostile environment.

On September 30, 2019, the Bulgarian National Movement (VMRO), one of the members of Prime Minister Boyko Borissov’s ruling coalition, sent a letter to Prosecutor General Sotir Tsatsarov asking him to deregister the Bulgarian Helsinki Committee. The letter contended that the organization “directly and indirectly exerts pressure on Bulgarian magistrates and engages in unconstitutional, unlawful, immoral and openly anti-Bulgarian activities.”

Government officials have systematically targeted Krassimir Kanev, the Bulgarian Helsinki Committee president, and his organization since the governing coalition came to power in 2018. [Human Rights Watch \(HRW\)](#) warned that public officials in Bulgaria should refrain from interfering with and obstructing the work of the Bulgarian Helsinki Committee and other human rights organizations. HRW called on government to comply with its international obligations to safeguard the work of independent organizations; investigate threats and attacks against members of independent organizations; and stated that EU institutions should publicly condemn attacks on organizations doing legitimate work in Bulgaria.