

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No.35898/16

J.I.

APPLICANT

v

Croatia

RESPONDENT STATE

THIRD-PARTY INTERVENTION

I. Introduction

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

The European Roma Rights Centre (“the ERRC”) set out data showing that Romani girls and women in Europe fare worse on a number of measures than Romani men (who, in turn, fare worse than society as a whole). Romani girls and women are also more likely than non-Roma girls and women to be victims of human trafficking, domestic violence, forced marriage, or childhood marriage. The ERRC asked “why?”, noting that it is a common trope of antigypsyism to ascribe abuse against girls and women to “Roma culture” or “Roma tradition”. The ERRC identified this as a dangerous stereotype that must be named and whose harms must be exposed. Discrimination by police and other police failures meant that Roma in general were often unlikely to report crimes against them; because of dangerous stereotypes about Roma culture, the situation was even worse for Romani girls and women who were victims of gender-based violence. In this environment, Romani girls and women facing gender-based violence experienced a specific kind of “intersectional” harm. The ERRC provided an overview of intersectionality theory in anti-discrimination law. They urged the Court to describe the harm that Romani girls and women face as intersectional when, for example, police refuse to protect them from gender-based violence and that refusal is related to race or ethnicity. When Romani girls and women who are victims of gender-based violence receive a poorer response from police and this poor response is related to their race or ethnicity, it is particularly destructive of fundamental rights because it makes the harm those girls and women face invisible, it silences them, and it makes it particularly unlikely that they and others like them will seek protection in the future.

II. Institutional failings by police and prosecutors to provide appropriate responses to violence against Romani girls and women

2. The Court already knows the severe and varied human rights violations Romani people experience in Europe in general. It is even worse for Romani girls and women. Cases of forced sterilisation of Romani women in Central Europe have already made their way to the Court. Romani women also face other rights violations when accessing reproductive healthcare, including racist abuse¹ and racial segregation² in maternity wards.
3. According to the EU's Fundamental Rights Agency, the situation of Romani women in core areas, such as education, employment, and health, is worse compared to that of Romani men.³ In Croatia in particular, according to the European Parliament, Romani women are more likely than Romani men to lack identity documents; as a result, they are more likely to be excluded from access to public services and social support.⁴ Romani women in Croatia live in conditions of greater social exclusion than Romani men, and because of their poorer socio-economic status, lower education, and high unemployment rates they are particularly vulnerable to human trafficking.⁵ Research shows that Romani girls and women in Europe are generally

¹ A case that occurred in Hungary in February 2016 is described at <http://www.errc.org/article/romani-woman-harassed-by-racist-hospital-staff-during-childbirth-wins-case/4543>. The woman was harassed by racist hospital staff during childbirth; they screamed at her, using racial slurs and vicious stereotypes about Romani women.

² We recently lodged a collective complaint with the European Committee of Social Rights against Bulgaria about this phenomenon and about abuse that Romani women face in these segregated maternity wards, based on research conducted by the Bulgarian Helsinki Committee. The complaint can be found at <http://www.errc.org/article/errc-v-bulgaria-collective-complaint-1512017/4612>.

³ EU Fundamental Rights Agency (FRA), "*Roma survey – Data in focus Discrimination against and living conditions of Roma women in 11 EU Member States*", 18 September 2013, available at <http://fra.europa.eu/en/news/2013/situation-roma-women-fra-data-analysis>.

⁴ European Parliament, Directorate General for Internal Policies, "*Country Report on Croatia – Empowerment of Romani Women with the European Framework of National Roma Inclusion Strategies*", 2013, available at [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493020/IPOL-FEMM_ET\(2013\)493020_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493020/IPOL-FEMM_ET(2013)493020_EN.pdf).

⁵ Ibid.

more likely than non-Roma girls and women to be victims of human trafficking, domestic violence, forced marriage, or childhood marriage.⁶

4. Why is this? Ascribing abuse against girls and women to “Roma culture” or “Roma tradition” is common; indeed, it is a familiar trope of antigypsyism. (We note that the term antigypsyism⁷ is now used by various institutions – including most recently by the Committee of Ministers of the Council of Europe⁸ – and we urge the Court to use the term to describe the specific forms of discrimination that Romani people face.) As one report about violence against women in Romani communities put it:

although culture is crucial to understanding and combating violence against women, it is necessary to avoid simplistic analysis of the role of culture in gender violence... Violence is not inherent in any culture but... it is a mechanism of oppression of the patriarchal system; it is a product of it. To understand the role of culture in legitimating VAW [violence against women], it is necessary to look at how patriarchy operates differently in different cultures. The behavior of devalued groups is widely perceived as more culturally determined than that of the dominant culture. This is an ethnocentric point of view that

⁶ ERRC, “*Breaking the Silence: Trafficking in Romani Communities*”, 2011, available at <http://www.errc.org/article/breaking-the-silence-trafficking-in-romani-communities/3846>; European Women’s Lobby, “*Position Paper: Tackling multiple discrimination of Romani and Traveller women*”, December 2012, pages 9-10, available at https://www.womenlobby.org/IMG/pdf/ewl_position_paper_on_romani_and_traveller_women_en.pdf.

⁷ The term was defined by the European Commission against Racism and Intolerance in their General Policy Recommendation no.13 (CRI(2011)37) as “*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 alliance of NGOs (including the ERRC), defines the term as follows in a position paper revised in June 2017 and available at www.antigypsyism.eu: “*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*”.

⁸ Recommendation CM/Rec(2017)10 of the Committee of Ministers to member States on improving access to justice for Roma and Travellers in Europe, 17 October 2017. The recommendation uses the term “antigypsyism” eight times.

reinforces stereotypes and hides the existence of culturally prescribed and equally horrible acts of VAW in the majority society.⁹

It is of course possible to encounter Romani communities where stereotypical views about women and violence against women are pervasive – just as they are in many non-Roma communities. This is why the Istanbul Convention¹⁰ and other Council of Europe and international human rights instruments protecting women from gender-based violence are so important. However, the idea that gender-based violence is inherent to Roma culture or tradition is not a neutral observation, but a dangerous stereotype. As Judge Motoc has said, *“There can be a fine line between perpetuating a harmful stereotype and using that stereotype to abolish de facto inequality by identifying gender stereotypes and exposing their harm”*. *Carvalho Pinto de Sousa Morais v Portugal* (2017), Concurring Opinion § 15. When it comes to domestic violence against Romani women, the Court must name the stereotype: police and prosecutors view gender-based violence as “natural” in Romani communities and so fail to provide the same response they would if the victim were not Romani. Attributing misogyny and abuse of girls and women to Roma in particular is a stereotype that the Court should be sensitive to and, when it appears in the facts of a case or the written pleadings of a Respondent State, name and contest. Romani women – like women across Europe – have been fighting for equality by contesting social structures that oppress them. Stereotypical views about “culture” or “tradition” ignore these efforts and draw attention away from State responsibility under the Convention to protect Romani girls and women against violence, including gender-based violence.

⁹ Fondació SURT, *Empow-Air European Comparative Report On Violence Against Women Within Romani Communities*, June 2012, page 31 (citing Sokoloff and Dupont, *“Domestic Violence at the Intersection of Race, Class, and Gender: challenges and contributions to understanding violence against women in diverse communities”* in *VIOLENCE AGAINST WOMEN*, Vol. 11 No.1, pages 38-63).

¹⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011.

5. We already know from the European Union's Fundamental Rights Agency ("FRA") that police forces in Europe have a bad relationship with Romani communities.¹¹ According to one report, in 2008 18% of all Roma (like 18% of all sub-Saharan African respondents) reported being victims in the previous year of "in-person crime" (assault, threat, or serious harassment) which they thought was racially motivated in some way. Roma and sub-Saharan Africans were the groups most likely to experience in-person crime, and in some places they were four times more likely to be victims of such crime than the majority population. Roma and other minorities were also likely not to report in-person crimes: 69% of minorities did not report assaults or threats they had experienced and 84% did not report serious harassment. According to FRA, the lack of trust Roma have in the police, resulting, inter alia, from excessive police stops of Roma and other minorities and from disrespectful treatment, is responsible for this underreporting. According to 72% of the Romani respondents who had not reported in-person crimes to the police, the reason was that they were not "*confident the police would be able to do anything*". There is ample evidence that this environment continues, for example, in Hungary,¹² Romania,¹³ and Slovakia.¹⁴ In 2012, the Canadian authorities compiled a report detailing systemic incitement to racial hatred and violence against Roma in Croatia, mostly concerning comments made by public officials as well as slow and inefficient responses by authorities to discrimination, intimidation, and violence.¹⁵ In Serbia, a detailed survey of social attitudes revealed that 35% of public officials believe their colleagues agree with the statement "*I have nothing against the Roma, but they do like to steal*".

¹¹ The statistics that follow are taken from FRA's EU-MIDIS ("*European Union Minorities and Discrimination Survey*") report, published in 2009 and available at http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf.

¹² See our third-party intervention in *Balázs v Hungary* (2015).

¹³ See our third-party intervention in *Lingurar v Romania* (pending, application no.48474/14).

¹⁴ See our third-party intervention in *A.P. v Slovakia* (pending, application no.10465/17).

¹⁵ Immigration and Refugee Board of Canada, "*Croatia: Situation and treatment of Roma; including state protection efforts*", 22 November 2012, § 2.9, available at <http://www.refworld.org/docid/51dd16ee4.html>.

Likewise, 26% of officials would agree with the statement that “*The Roma are so different that they cannot fit into the lifestyle of other citizens of Serbia*”.¹⁶

6. Where data is specifically available about the protection police provide Romani girls and women who experience gender-based violence, the picture is dire. We submitted evidence in 2007 to the UN Committee on the Elimination of Discrimination against Women that violence against Romani women in Serbia was systematic and widespread, and exacerbated by a lack of mutual trust between Romani women and the police, resulting in an extremely low rate of incidents reported by victims.¹⁷ In 2005, the ERRC and two other NGOs submitted a shadow report concerning Macedonia, explaining that “*domestic violence matters among Roma... are seriously exacerbated by the contempt expressed by the public officials charged with providing protection... This contempt precludes an effective remedy for domestic violence, and causes patterns and practices of domestic violence to become ingrained*”; 59% of Romani women victims of domestic violence surveyed said the police subjected them to racial prejudice and degrading treatment.¹⁸ Two weeks ago, we published a press release about sexual abuse of Romani girls in State care in Macedonia. In an institution where two-thirds of the children are Romani, girls would regularly go missing, apparently being sexually exploited. The institution was aware of the incidents (and even helped one 13 year-old girl terminate a pregnancy), but

¹⁶ See our third-party intervention in *Dimović and Others v Serbia* (pending, application no.7203/12), § 15, citing research conducted by the Serbian equality commissioner and IPSOS.

¹⁷ ERRC, Bibija, Eureka, and Women’s Space, “*Written Comments Concerning the Republic of Serbia For Consideration by the United Nations Committee on the Elimination of Discrimination against Women at its 38th Session*”, 10 March 2007, available at <http://www.errc.org/cms/upload/media/02/27/m00000227.pdf>.

¹⁸ ERRC, Roma Centre of Skopje, Network Women’s Program, “*Shadow Report on the Situation of Romani Women in the Republic of Macedonia*”, October-November 2005, pages 16-17, available at https://www.opensocietyfoundations.org/sites/default/files/nwp_20060303.pdf.

failed to report what happened to police.¹⁹ In Hungary various reports show that domestic violence in Romani families is considered to be a “family” issue that is “normal” among Roma, with stereotypes rife among police;²⁰ the authorities do not provide an appropriate response to women who seek help.²¹ A 2010 report noted that shelters do not exist for Romani women in Bulgaria.²² We have seen this problem elsewhere and we are currently conducting research on the issue in Serbia, following reports from various women and NGOs that Romani survivors of domestic violence cannot get access to women’s shelters there. In such an environment, what can Romani girls and women expect when they ask for protection from gender-based violence? Not merely discrimination based on their Roma ethnicity; not only the difficulties that all victims of gender-based violence face; but rather a more complex kind of harm.

III. Intersectionality

7. How should the Court deal with an individual case where a Romani girl or woman threatened with gender-based violence is ignored by police and that failure is related to her ethnicity? In cases where there is widespread evidence of a failure to provide girls and women with appropriate protection, the Court can make a broad finding, as in *Opuz and Others v Turkey* (2009), §§ 192-198. But such evidence will be rare (see, e.g., *A v Croatia* (2010), § 103). Because stereotypes mean gender-based violence against

¹⁹ ERRC, “*Exposing Sexual Abuse of Romani Girls in Macedonian State Care*”, 15 February 2018, available at <http://www.errc.org/article/exposing-sexual-abuse-of-romani-girls-in-macedonian-state-care/4629>.

²⁰ Immigration and Refugee Board of Canada, “*Hungary: Domestic violence, including in Roma communities; implementation of legislation; state protection and support services, including in Miskolc, Debrecen and Budapest (2014-June 2015)*”, 7 July 2015, § 3.2, available at <http://www.refworld.org/docid/55b6046b4.html>.

²¹ IMECE Turkish Speaking Women’s Group, London Training and Employment Network, Regional Social Welfare Resource Centre, “*Empowering Women or Perpetuating Victimhood: Minority Ethnic and Roma Women’s Experiences of Domestic Violence Policy and Service Provision*”, November 2010, pages 62 et seq., available at https://www.womenlobby.org/IMG/pdf/empowering_women_or_perpetuating_victimhood.pdf.

²² See report cited directly above (note 20), page 32.

Romani girls and women is largely ignored, comprehensive data about police failures to protect them will be even harder to produce.

8. So another approach is needed. The Court has already dealt with cases that concern violence against people on more than one protected ground. In *B.S. v Spain* (2012), where a Black woman was targeted because of her race and gender, the Court found that “*the decisions made by the domestic courts failed to take account of the applicant’s particular vulnerability inherent in her position as an African woman working as a prostitute*” (§ 62). In another, more recent case, the Court found that the applicant “*could not have the benefit of the implementation of a legal framework affording effective protection. This applies all the more, given the fact that the applicant is Roma as well as Muslim*”. *Alković v Montenegro* (2017), § 72.
9. These observations – about “particular vulnerability” and the Court’s case law being “all the more” applicable – point to a phenomenon that has been extensively explored in academic literature on discrimination and which, we respectfully submit, would help the Court in describing under the Convention the harm that Romani girls and women face when police fail to protect them from gender-based violence. That phenomenon is intersectionality. The concept has already appeared in judicial writing at the Court. In their dissenting opinion in *Garib v Netherlands* (Grand Chamber, 2017), Judges Pinto de Albuquerque and Vehabović described it as “*a particular form of discrimination that European human rights law must incorporate into its bulwark of legal protection*” (§ 34). It has been best described by Professor Kimberlé Crenshaw:

Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.... I am suggesting that Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women’s experiences;

sometimes they share very similar experiences with Black men. Yet often they experience double-discrimination – the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women.²³

10. For a Romani victim of gender-based violence, the violence she experiences is a form of sex discrimination (and perhaps race discrimination, depending on the circumstances). When the police refuse to protect her, and that refusal is contaminated by considerations of her Roma ethnicity (see, *mutatis mutandis*, *E.B. v France* (Grand Chamber 2008), § 80), that harm is compounded by race discrimination. In that sense, the harm is similar to but different from the harm non-Roma victims of gender-based violence face and similar to but different from the harm that other Romani victims of police failures face. It is intersectional harm that leaves the victim “particularly vulnerable” (*B.S.*, § 62) and means that the Court’s case law on hate crime “applies all the more” (*Alković*, § 72).
11. It is important for the Court to use the term “intersectionality” to describe the particular kind of harm that occurs in these cases because of its especially hidden form and its destructive character for the fundamental rights of the people caught in the metaphorical intersection. It is a concept similar, in that sense, to indirect discrimination (see *D.H. and Others v Czech Republic* (Grand Chamber, 2007), § 184) – a key tool in understanding a situation of unequal treatment that does not lend itself to a simple comparator analysis.
12. Indeed, as Judges Pinto de Albuquerque and Vehabović put it in their dissenting opinion in *Garib*,

It is precisely this consideration of the additional harmful effects produced by the combination of factors of discrimination which has proved indispensable in addressing complex situations of discrimination. It is not always sufficient to add together the multiple factors of discrimination, especially where the intersection between them exacerbates their consequences. Such synergy does not necessarily result in an accumulation of forms of unitary

²³ Kimberlé Crenshaw, “*Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*”, 1989 U. Chi. Legal F. 139, 149 (1989).

discrimination, but in a new form of multidimensional discrimination. In view of the significance of the phenomenon, its consequences in terms of the effectiveness of the guaranteed rights, and the international consensus obtaining at the present time, the Court must today include this aspect in its scrutiny under Article 14 of the Convention. (§ 39)

13. So what should the Court do? When faced with a victim of intersectional harm, describe her situation as such. Make clear that police and other competent authorities are required to provide a response to victims of harm that is appropriate to their situation. It is of paramount importance to name the form of discrimination the victim has suffered and to acknowledge its complex, intersectional nature. When Romani girls and women who are victims of gender-based violence receive a poorer police response in a way that is related to their race or ethnicity, the Court should emphasise that this is particularly destructive of fundamental rights. It makes the harm Romani girls and women face invisible and deprives victims of one form of discrimination of exactly the support the Convention guarantees them because of another form, entrenching the harm they face, silencing them, and making it particularly unlikely that they and others like them will seek protection in the future.

The European Roma Rights Centre

1 March 2018