



Memorandum on the implementation of the judgments in the group of cases *Barbu Anghelescu* (no. 46430/99) concerning police brutality in Romania

This communication is submitted in accordance with Rule 9.2 of the Committee of Ministers for the supervision of the execution of judgments. It mainly addresses the Action Report submitted by the Romanian Government on 27 April 2016 regarding the general measures in the group of cases *Barbu Anghelescu* (no. 46430/99).

The [European Roma Rights Centre](#), [Romani CRISS](#) and [APADOR-CH](#) call on the Committee of Ministers to continue the supervision of the implementation of key ECtHR judgments¹ concerning police brutality against Roma in Romania and express their dismay at the Romanian government's request for the closure of the *Barbu Anghelescu* (no. 46430/99) group of cases which includes the Roma cases.

A chronic lack of progress is demonstrated by the stream of recent and pending cases before the Court, which were brought by or in which the three organisations intervened.²

The Committee of Ministers is urged to analyse the effectiveness of general measures in addressing institutional racism in the perpetration of and impunity for police brutality in the context of pervasive anti-Gypsyism in Romania.

The European Commission against Racism and Intolerance (ECRI) defines "anti-Gypsyism" 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.*"³ This definition includes institutional racism, defined as "*the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin.*"⁴ In Romania institutional racism remains pervasive and in the wider society anti-Gypsyism is endemic.

The depth of anti-Roma prejudice is evident from the annual surveys carried out by the National Council for Combating Discrimination (NCCD): in 2013, 48% of respondents said that they did not want a Roma work colleague, 41% would not want a Roma neighbour, and 38% would not want any Roma in their municipality. Another official survey carried out in May and June 2015, found that 40% of respondents considered Roma to be a "problem" but not a "threat" for Romania, with 21% going as far as considering Roma a "threat". A full 68% of respondents would not tolerate having Roma colleagues in the workplace or any closer relationship to Roma, such as having Roma as neighbours, friends, or family members.

In its 2014 report on Romania, ECRI noted, "*Stigmatising statements against Roma are common in the political discourse, encounter little criticism and are echoed by the press, the audio-visual media and on the Internet. No effective mechanism is in place to sanction politicians and political parties which promote racism and discrimination.*"

In its 2015 Concluding Observations on Romania, the UN Committee against Torture also expressed its serious concern at "*(a) The persistence of reports of racist hate crimes against Roma; (b) The vulnerability of Roma suspects who are 'administratively conveyed' to police stations, by law enforcement officials, with increased risks of ill-treatment and torture; (c) The reported excessive use of force by law enforcement*

¹ [Stoica v Romania no. 42722/02](#), [Cobzaru v Romania no. 48254/99](#) and [Carabulea v Romania no. 45661/99](#) .

² Pending cases in which the ERRC has intervened: [Lingurar v Romania no. 48474/14](#), [Cioban v Romania no. 58616/13](#), [Fogarasi v Romania no. 67590/10](#) , - Cases brought by Romani CRISS recently decided by the Court: [Ciorcan and others v Romania no. 29414/09](#), [Boaca and others v Romania no. 40355/11](#), [Ion Balasoiu v Romania no. 70555/10](#) .

³ See General Policy Recommendation No.13, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n13/e-RPG%2013%20-%20A4.pdf

⁴ 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> .

officials against Roma; (d) Instances of racist hate speech directed against Roma, and the high incidence of anti-Roma rhetoric and negative stereotypes in public and political discourse, by State and non-State actors”.

The Committee also concluded that the Romanian authorities should “(a) *Provide the Committee with information on the number of cases of violence by law enforcement officials that have been investigated, the number of perpetrators who have been prosecuted for acts of torture and ill-treatment and the penalties applied to those found guilty; [and] (e) Reiterate at the highest political level its commitment to zero tolerance of the use of violence against persons deprived of their liberty, including to elicit confessions”.*

Putting in place safeguards that ensure that societal anti-Gypsyism does not translate into institutional racism within the police and investigative authorities forms the very essence of the general measures that the Romanian government is supposed to adopt, and the Committee of Ministers should demand, in the execution of the ECtHR’s judgments on police brutality against Roma.

The Committee of Ministers in its 2013 examination of the Barbu Anghelescu group of cases concerning ill-treatment inflicted by law enforcement officers, including racially-motivated ill-treatment noted that “*Having regard to the available information on the incidence of ill-treatment by law enforcement services, the awareness raising and training measures taken do not appear to have been capable of completely eradicating acts contrary to Articles 2 and 3. Additional measures, in the context of a policy of “zero-tolerance” of such acts, appear therefore necessary in respect of all law enforcement services.*” The Committee stated that there was still “progress to be made” as regards the effectiveness of criminal investigations, and noted that “*no conviction for acts prohibited by Articles 2 and 3 was reported during the reference period (2003 – 2012).*” The Committee of Ministers was also awaiting the authorities’ assessment of the practical impact of measures adopted to prevent and repress racist incidents.

The Romanian government’s request to close the *Barbu Anghelescu* group of cases is especially alarming because of the absence of effective procedural safeguards against ill-treatment; the lack of any detailed assessment of the impact of measures taken or monitoring mechanism; the absence of any independent body to investigate alleged abuses; and the lack of ethnically disaggregated data on police brutality.

According to research by Fundamental Rights Agency, Romania appears to be the only EU Member State which does not keep any records on hate crimes. ECRI also notes that “*No information has been provided as concerns the application of racist motivation as an aggravating factor, nor about the application of each criminal law provision against racism, broken down by the number of: opened investigations, cases referred to court, discontinued pre-trial investigations and convictions or acquittals per reference year. The authorities have acknowledged that there is no single institution mandated with the systematic collection of data on the breach of criminal law provisions against racism and that the information is therefore fragmented.*”

In the action report under consideration, the Romanian government admitted that there were no cases where the aggravating factor regarding ethnic/racial motivation was retained by the prosecutor’s office and by the domestic courts.

Our organisations concur with ECRI’s recommendation that “*The authorities should devise a comprehensive data-collection system on the application of criminal law provisions against racism and racial discrimination*”; and we reassert that the Romanian authorities’ failure to compile data on racially motivated crimes is a further symptom of institutional racism. The lack of such data precludes any serious assessment of the general measures outlined in the government’s action report.

As indicated by the Court, such data is also of paramount importance for an effective investigation into police brutality against ethnic minorities such as Roma. In particular, there should be a focus on the individual record of the police officers involved and whether or not there have been previous complaints against them for discriminatory treatment (see *Nachova v Bulgaria* and *Cobzaru v Romania* (2007)). Such steps, of course, require more than the diligence of the investigators in any particular case; they call for institutional arrangements, in particular for collecting, storing, and analysing complaints about the racist conduct of police officers. The absence of such institutional arrangements, in an environment where anti-Gypsyism is prevalent in general and anti-Roma police brutality appears common, amounts to a failure to provide an adequate service to Roma (i.e. institutional anti-Gypsyism). As discussed above, Romania is an outlier among EU Member States in its failure to collect data on racially motivated crime in general and discriminatory police misconduct in particular.

No demonstrable commitment to zero tolerance for police violence in general and towards Roma in particular can seriously be claimed by the government. According to data obtained by APADOR-CH through freedom of information requests addressed to prosecutors’ offices and county police inspectorates, between 2012 and 2014 some 3,304 complaints for abusive conduct were filed against police officers. Out of these, only 14 cases resulted in an indictment and four in a conviction, while two cases were still pending.

The consequences of racist police brutality were highlighted by the death in police custody of a young Romani informal parking assistant in March 2014. The circumstances are described in the latest Committee for the Prevention of Torture report on Romania. The prosecution did not result, as could have been expected, in a conviction for torture, with the aggravating circumstances of racial bias motivation and the victim's death. One officer was merely convicted of aggravated assault.

Turning to the specifics of the government's action report, we are particularly concerned about two issues: (1) prompt, initial medical examinations of persons taken into custody and (2) access to a forensic medical examination when a detained person makes allegations of ill-treatment.

Initial medical examinations upon admission to prison or pre-trial detention do not include persons under "administrative detention" in a police station. The historic shortcomings in guaranteeing access to a physician, either at the time of placement in detention or throughout its duration, are tragically illustrated by the case of Nelu Bălăşoiu (included in the group under consideration) an 18-year old Romani man who died in prison in 2002. In a judgement secured by Romani Criss in February 2015, the ECtHR found that the authorities' failure to present Mr Bălăşoiu to a timely medical examination considerably diminished the chances of an effective investigation into the circumstances of his detention and ill-treatment. The Court concluded that the Romanian authorities' failure to investigate alleged ill-treatment against Mr Bălăşoiu constituted a violation of the procedural aspect of article 3 of the ECHR.

Persistent delays and/or refusals in securing access to a forensic medical examination are routine, as noted by numerous CPT reports. Requests for forensic medical examination both in prison and in detention appear to be understood as falling mostly within the competence of the prosecutor to whom a complaint of ill-treatment is addressed, rather than a separate right to be secured by the detaining authorities. The persistence of such failures is illustrated in the March 2015 ECtHR judgment in the case of [Veres v Romania no. 47615/11](#) (included in this group of cases). Mr Veres's repeated requests for a forensic medical examination were ignored both by the police and the prosecutor to whom the applicant had complained. Particularly in the case of police detention centres, it should be possible for detainees to address the request for a forensic medical examination to an authority independent of the detention centre where ill-treatment is allegedly occurring. This issue has not been addressed in the government's report.

Our organisations are further concerned that the lack of safeguards for administrative detention further facilitates police brutality. As documented by APADOR-CH, there are extreme variations between police stations in practices on recording who, when and for how long has been administratively detained. The conservation of and access to CCTV footage was highlighted as a key shortcoming by Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty.⁵ The government's response to this cluster of concerns is to consider handing detainees a leaflet-type document where all their rights would be mentioned. The effectiveness of a measure under consideration can hardly be assessed.

We are encouraged by the government's initiative to assign police brutality cases to higher-ranking prosecutors attached to the Courts of Appeal. This does not compensate for the lack of an independent complaints mechanism as recommended by both ECRI and the Commissioner for Human Rights. Furthermore this system has only been introduced in October 2015. The committee should request data from the government concerning its efficacy before coming to a conclusion.

Considering all of the above, it is our opinion that the Romanian government's request for a closure on this group of cases is premature at best. Closure would send a signal to the Romanian authorities that institutional racism need not be addressed in any substantive or systematic way; and could work to reinforce the fear and mistrust of the police harboured by many Roma.

APADOR-CH

European Roma Rights Centre

Romani CRISS

Maria-Nicoleta Andreescu
Executive Director

Đorđe Jovanovic
President

Marian Mandache
Executive Director

⁵Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania (April 2016) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/54/PDF/G1607254.pdf?OpenElement>