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Index
2024, No. 2

EDITORIAL

Jasmina Dimitrieva

The Silence of the Migrant Children Falling Prey to Violence, Abuse and Exploitation 6

ESSAYS

Iliana Cenevska

How Do “National Identity” Considerations Factor into the Way the EU Employs Its Values-Based Conditionality? Exploring a Complex Interplay 17

Marieta Safta

The Concept of Family in Romanian Legislation. Constitutional Perspective and Influences on the Criminal Procedure 41

Roze Surlovska

Analysis of Mob Violence and Skinhead Attacks on Roma Through the Prism of Racism 55

FOCUS ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

Fulvio Baldi

Rete giudiziaria europea penale, magistrati di collegamento ed esperti giuridici presso le ambasciate: una molteplicità di figure per una cooperazione più efficace 70

Alessandro Di Vico

La cooperazione tra Romania e Italia: il caso Italat-Paestum 75

CONFERENCE SPEECHES

Francesca Iervolino

Principio di effettività della tutela nella procedura per il riconoscimento della protezione internazionale 82

Luigi Palmieri

L'ufficio del Pubblico ministero europeo tra esigenze investigative e garanzie difensive 93

AFTERWORD

Teresa Russo

Jean Monnet Chair “Promoting Public Awareness on Enlargement, EU Values and the Western Balkans’ Accession” (EUVALWEB): Balance Sheet of the Second Year of Activity 101

ANALYSIS OF MOB VIOLENCE AND SKINHEAD ATTACKS ON ROMA THROUGH THE PRISM OF RACISM

By Roze Surlavska Ristevska*

SUMMARY: 1. Introduction. – 2. Defining Racial Discrimination through the Prism of Human Rights. – 3. Antigypsyism as a Special Form of Racism. – 3.1. Stereotypes and Prejudices of Roma Throughout History. – 4. Victimological Aspects. – 5. Analysis of Cases before the European Court of Human Rights Initiated by Roma Regarding Mob Violence and Skinhead Attacks. – 5.1. *Moldovan and others v. Romania* (Applications Nos. 41138/98 and 64320/01). – 5.2. *Angelova and Iliev v. Bulgaria* (Application No. 55523/00). – 5.3. *Koki and others v. Slovakia* (Application No. 13624/03). – 6. Conclusion. – 7. Bibliography

Ending racism and all related forms of discrimination is vital. And it will help build a better world for all of us. - Michelle Bachelet, UN High commissioner for human rights, 2021 (United Nation)

1. Introduction

There are different definitions of what constitutes a “ground for discrimination”. One of the most frequently cited definitions is that of the European Court of Human Rights (ECtHR), according to which it is “a personal characteristic (status) by which persons or groups of persons differ from each other”¹. According to another definition, a ground for discrimination is a characteristic of an individual that should not be considered relevant in terms of different treatment or in the enjoyment of certain benefits².

Discrimination represents³:

- Violation of basic human rights and freedoms;
- Distinguishing between people when there is no significant difference between them;
- Different treatment in the same or similar situation, unless such treatment is legally justified.

DOUBLE BLIND PEER REVIEWED ARTICLE

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¹ ECtHR, judgement of 7 December 1976, Application No. 5095/71, 5920/71 and 5929/72, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, para. 56. In *Wagner and J.M.W.L. v. Luxembourg*, the ECtHR clarified that unequal treatment does not have to be linked to a basis that encourages prejudice and stereotyping and enjoys a high degree of protection, but also to any arbitrary treatment that has resulted in unequal treatment. ECtHR, judgement of 28 June 2007, Application No. 76240/01, *Wagner and J.M.W.L. v Luxembourg*. R. O’CONNELL, *Cinderella comes to the Ball: Art 14 and the right to non-discrimination in the ECHR*, in *29 Legal Studies*, No. 2, 2009, pp 2-29.

² European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Non-discrimination Law*, Luxembourg, 2010, p. 97.

³ For the definition, see COUNCIL OF EUROPE, *Prohibition of discrimination*, available at: <https://www.coe.int/en/web/echr-toolkit/linterdiction-de-la-discrimination>.

In 2011, the European Commission against Racism and Intolerance (ECRI) at the Council of Europe adopted a General Recommendation to combat antigypsyism and defined antigypsyism as follows:

*“Antigypsyism is a specific form of racism, an ideology based on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among other things, by violence, hate speech, exploitation, stigmatization and the most blatant types of discrimination”*⁴.

On 17 May 1998, Czech fascists claimed their 30th Romani victim: Milan Lacko was attacked by skinheads in Orlová, as he protected his daughter Denisa and her boyfriend Mirek from the Nazi gang who threw glasses and shouted *“Niggers! Fags!”* at the three Roma. Milan faced the gang to give the young couple time to flee. The skinheads kicked Milan senseless and left him in the middle of the road, where a car ran over him. He did not survive⁵.

Victims of crime are people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws. A person may be considered a victim, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm⁶. It’s inevitable to point to the position of the Roma people as victims in the cases mentioned in this essay; their lives were never the same after the days of the violence attacks⁷.

2. Defining Racial Discrimination through the Prism of Human Rights

Today, the ills from centuries of harms from slavery, genocide, colonialism, apartheid, and racism are coming to light as new voices replace old histories. Critical race theory, Third World Approaches to International Law (TWAAIL), and other schools of thought have shown how race, racism, and racial ideology have played critical juris generative roles in the development of human rights and of international law more broadly⁸.

⁴ European Commission against Racism and Intolerance, *General Recommendation n°13 revised on combating antigypsyism and discrimination against Roma*, adopted on 24 June 2011 and amended on 1 December 2020.

⁵ B. Rorke, *Fight fascism, racism and antigypsyism*, in *European Roma Rights Centre*, 2018, available at <https://www.errc.org/news/remember-the-victims-of-hate-crime-fight-fascism-racism-and-antigypsyism>.

⁶ United Nation General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 1985, A/RES/40/34.

⁷ It is important to mention that the 22 July marks the anniversary of the Oslo attacks and Utøya massacre that claimed a total of 77 young lives. The attacks were motivated by fascist ideology and racist hatred. Over the last 30 years, Roma have been directly and repeatedly targeted by violent racist and fascists. In February 1998, Helena Birhariova, a 26-year-old mother of four, became the 29th Roma known to have been killed in the Czech Republic in a racist attack since communism collapsed in 1989. She was beaten unconscious by three skinheads and then thrown into a river where she drowned. Cyril Svoboda, the interior minister said racially motivated violence only accounted for 0.4% of all recorded crime. The public, he implied, were overreacting to Mrs Birhariova's murder. See B. RORKE, *Remember the victims of hate crime: Fight fascism, racism and antigypsyism*, 2018, available at: <https://www.errc.org/news/remember-the-victims-of-hate-crime-fight-fascism-racism-and-antigypsyism>.

⁸ *Inter alia*, B. DERRIK, *Race, racism, and American Law*, New York, 1970; B. DERRIK, *Faces at the bottom of the well: The permanence of racism*, New York, 1992; K.W. CRENSHAW, N. GOTANDA, G. PELLER, K. THOMAS, *Critical Race Theory: The Key Writings That Formed the Movement*, New York, 1995; AD. MUTUA, *The Rise, Development and Future of Critical Race Theory and Related Scholarship*, in *Denver University Law Review*, No. 84, pp. 329-392, 2006; F.H. LOPEZ, *“A Nation of Minorities”*: *Racen*,

Racial discrimination is antithetical to the central tenants of international human rights law, which aim to advance the cause of human dignity. The prohibition against racial discrimination is a recognized peremptory norm in international law, expressed in the United Nations Charter, in ICERD, and in customary international law⁹.

Today, English language dictionaries define racism as “*a distinctive doctrine, cause or theory*”, or “*an oppressive and especially discriminatory attitude or belief*”, or a “*prejudice, discrimination or antagonism directed against someone of a different race based on the belief that one's own race is superior*”¹⁰.

Racism ought to be recognized as a violation of human rights on the same grounds that racial discrimination is. The basis for outlawing racial discrimination in international law rests upon the idea that it negates the core human rights of dignity, self-determination, and equality¹¹. The focus is on the discriminatory act that robs a person of her dignity or equality. However, a loss of dignity can also occur due to the racist hatred to which one person subjects another person. Reframing the problem as one of racism focuses not only on the discriminatory act but also on the harm as experienced by the victim. The concept of racism captures the experience of a victim, not just the act of the perpetrator. It encompasses ideology, thought, and feeling, in addition to outward, observable acts of racial discrimination¹².

Naming racism as a violation of international human rights is critical to the project of universal human rights that depends on dignity and equality for all. The problem with laws that only prohibit racial discrimination was pointed out by Derrick Bell in his seminal work, *Faces at the Bottom of the Well*:

“*A preference for whites makes it harder to prove the discrimination outlawed by civil rights laws. This difficulty, when combined with lackluster enforcement, explains why discrimination in employment and in the housing market continues to prevail more than two decades after enactment of the Equal Employment Opportunity Act of 1965 and the Fair Housing Act of 1968*”¹³.

3. Antigypsyism as a Special Form of Racism

The term was originally coined by Roma activists in the Soviet Union during the opening policies towards national minorities in the 1920s, and Martin Hollers believes that

Ethnicity, and Reactionary Colorblindness, in *Stanford Law Review*, No. 59, 2007, pp. 985-1063; A. ONWUACHI-WILLIG, *Celebrating Critical Race Theory at 20*, in *Boston University School of Law Public Law & Legal Theory Paper*, No. 19-40, 2009, pp. 1497-1504; A. HARRIS, *Foreword*, in R. DELGRADO, J. STEFANIC, A. HERRIS (eds.), *Critical Race Theory: An Introduction*, New York, 2017.

⁹ United Nations Charter, 1945; United Nations General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, “*Convinced that the existence of racial barriers is repugnant to the ideals of any human society*”; D. COSTELLOE, *Legal Consequences of Preemptory Norms in International Law*, Cambridge, 2017 (“*The lists of preemptory norms typically include the prohibition of genocide, the prohibition of aggression, the prohibition of slavery, the prohibition of apartheid or racial discrimination, the prohibition of torture and the prohibition of infringing upon a people's right to self-determination.*”); Responsibility of States for Internationally Wrongful Acts, 84-5 (2001) (identifying the prohibition of racial discrimination as a preemptory legal norm along with prohibitions against aggression, genocide, slavery, crimes against humanity, torture, and the right of self-determination).

¹⁰ OXFORD DICTIONARY, p. 2.

¹¹ United Nations, *Universal Declaration of Human Rights*, art. 1 “*All human beings are born free and equal in dignity and rights*”. P. THORNBERRY, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, Oxford, 2017, “*Equality and non-discrimination are intrinsic to the architecture of human rights law*”.

¹² A. SPAIN BRADLEY, *Human Rights Racism*, in *Harvard Human Rights Journal*, No. 32, 2019, pp. 2-58.

¹³ B. DERRIK, *Faces at the bottom of the well: The permanence of racism cit.*, p. 32.

Aleksandr Germano coined the term “antigypsyism”, the equivalent version of antigypsyism in Russian¹⁴.

The abuse and mistreatment of Roma fleeing conflicts is just one more manifestation of antigypsyism. To quote Thomas Hammarberg, what we witness today is a continuation of a brutal and largely unknown history of repression of Roma going back several hundreds of years. After the Holocaust, what is most disturbing is how, without any sense of shame, state institutions and political leaders perpetuate racism against Roma, and how the majority remain indifferent to the plight of their fellow citizens¹⁵.

According to Michael Banton, race is a social construct that refers to the classification of human beings into groups based on perceived physical or biological differences. Ethnicity, on the other hand, is a social construct that refers to the identification of human beings with a particular cultural group based on shared history, language, religion, or other factors. He argues that race and ethnicity are not fixed or natural categories, but dynamic and changing categories that are influenced by social, political, and historical contexts. Banton also suggests that race and ethnicity are often conflated in everyday usage, leading to derogatory or harmful meanings about human diversity and social relations¹⁶.

Antigypsyism is a special form of racism directed against those stigmatized in the social worldview as “Gypsies”, “tsigane”, “țigan”, “Zigeuner”, “tatars”, “zingari” or other related terms, which are essentially based on the assumptions that they belong to an inferior and deviant group, and for those reasons, the domination over them and their oppression is justified. Other key assumptions of antigypsyism are orientalism, nomadism, that they are a rootless and backward group¹⁷.

3.1. Stereotypes and Prejudices of Roma Throughout History

Prejudices and stereotypes about different groups of people are deeply rooted in everyday living. Prejudice is antipathy based on wrong and inflexible generalization, which may be expressed or felt, and which may be aimed at the group of persons with a certain protective characteristic as a whole, or towards the individual with the specified protective feature, just because the fact that they are members of the group. It could be said that precisely the prejudices targeted towards the persons concerned are the fundamental force behind this exclusion of a group of people from economic opportunities and social living in general. This is happening because through these prejudices and stereotypes, individuals are not seen as separate members of society, who should be assessed individually. On the contrary, they see each other as members of a respective social group created precisely through certain beliefs and attitudes of the majority, usually based on such prejudices and stereotypes¹⁸.

Thomas Acton traces the origins of antigypsyism to the fifteenth century, when Roma first arrived in large numbers in Western Europe and faced hostility and persecution from local authorities and populations. He shows how antigypsyism has evolved from scientific

¹⁴ M. HOLLER, *Historical Process of the Term ‘Anti-Gypsyism’*, in J. SELLING, M. END, H. KYUCHUKOV, P. LASKAR, B. TEMPLER, *Antiziganism: What’s in a Word?*, Cambridge, 2015.

¹⁵ B. RORKE, *Antigypsyism after the holocaust*, in *European Roma Rights Centre*, 2022, available at: <https://www.errc.org/news/antigypsyism-after-the-holocaust>.

¹⁶ M. BANTON, *What we Now Know About Race and Ethnicity*, New York, 2015, pp. 1-15, 45-67, 101-120.

¹⁷ I. ROSTAS, *A Task for Sisyphus Why Europe’s Roma Policies Fail*, Bucarest, 2019, pp. 19-20; ROMA INTEGRATION REGIONAL COOPERATION COUNCIL, *Research on combating institutional antigypsyism in the EU enlargement region*, 2021.

¹⁸ Organization for Security and Co-operation in Europe, *Anti-discrimination Law*, 2017, p.18.

racism and popular racism into a discourse influenced by political and economic interests, as well as by the lack of recognition and representation of Roma identity and culture¹⁹. He attributes the origin of these prejudices to early perceptions of Roma by Byzantine occultists and diviners in the eighth century. In addition, he suggests that the misrepresentation of the Roma arose in response to the presence of Muslim opponents. This misrepresentation portrays the Roma as “*inheritors of the wisdom, skills and aesthetics that the Zoroastrians inherited from the ancient Egyptians of the pyramids*”²⁰.

Back in 2000, despite being refugees fleeing war, despite fleeing coordinated pogroms, burnings, rapes and killings, Romani asylum claims were met with scepticism and suspicion by various authorities. They were classed as bogus economic migrants, nomads on the move and on the make. UNMIK saw fit to house displaced Romani women, children and men in toxic, lead-contaminated camps for a decade.

In the years that followed this forced migration of tens of thousands of Roma, EU member states saw fit to initiate forced removals and returns of Roma to Serbia and Kosovo that were as pitiless as they were unsustainable²¹.

4. Victimological Aspects

The Roma are one of the most vulnerable groups in the European society because they have been targeted not just by violent groups and individuals, but also from the law enforcement authorities due to stereotypes and prejudices²². The areas where they have been discriminated, are unfortunately numerous. Besides the institutional and police discrimination, Roma children are racially discriminated in school systems across Eastern Europe, mainly by one of three means: being placed in another schools; classroom segregation in the same school; or residential school segregation, where non-Roma parents do not send their children to school within Roma populated areas²³.

A hate crime is a criminal offence committed with a bias motivation.²⁴ Hate crimes comprise two elements. The first element of a hate crime is that the act committed is a crime. Hate crimes always require a base offence to have occurred; if there is no underlying crime, there is no hate crime. Hate crimes could include murder, acts of intimidation, threats, property damage, physical assaults, arson, robbery or any other criminal offence whose commission requires intent. The second element of a hate crime

¹⁹ T.A. ACTON, *Social and Economic Bases of AntiGypsyism*, in H. KYUCHUKOV (ed.), *New Faces of Antigypsyism in Modern Europe*, Prague, 2012, pp. 31-37.

²⁰ *Ibidem*.

²¹ For further information see AMNESTY INTERNATIONAL, *End Forced Evictions of Roma in Europe*, London, 2013.

²² On the point see Parliamentary Assembly of Council of Europe, Resolution 2523 (2023), *Institutional racism of law-enforcement authorities against Roma and Travellers*, adopted on 28 November 2023.

²³ EUROPEAN ROMA RIGHTS CENTRE, *Stigmata: Segregated Schooling Of Roma in Central and Eastern Europe*, 2004, available at: <https://www.errc.org/reports-and-submissions/stigmata-segregated-schooling-of-roma-in-central-and-eastern-europe>; ECtHR, judgement of 13 March 2023, Applications No. 11811/20 and 13550/20, *Elemazova and Others v. North Macedonia*; European Union’s Fundamental Rights Agency, *Roma in 10 Countries – Main Results*, 2022. The segregation enlightened has also been addressed by the European Commission, notably referring to Roma children’s discrimination in schools in Slovakia. The Commission brought an action before the CJEU, in order to address the issue on 22 December 2023 (C-799/23, *European Commission v. Slovak Republic*). Furthermore, school segregation of Roma children had also been addressed by the ECtHR, in its judgement of 22 December 2009, Applications Nos. 27996/06 and 34836/06, *Sejdić and Finci v. Bosnia and Herzegovina*.

²⁴ Organization for Security and Co-operation in Europe Ministerial Council, *Decision 9/09, “hate crimes are criminal offences committed with a bias motive”*.

is that the perpetrator must commit the criminal act with a particular motive – a bias. This bias motive of the perpetrator distinguishes hate crimes from ordinary crimes²⁵.

Hate crimes are high-impact crimes; their impact on individual victims is more severe than that of ordinary crimes. Hate crimes cause greater psychological distress for their victims because one or more aspects of their identity have been targeted²⁶.

A survey of hate crime victims in the United Kingdom found that 95 percent of victims felt that their quality of life had worsened as a result of the attack. The same project²⁷ reported four main ways in which hate crimes affect victims:

- *Fear of victimization* – Realizing that they have been targeted for characteristics they cannot change, victims conclude that this can happen again, at any time;
- *Emotional and physical impacts* – Victims relay that hate crime victimization made them upset, fearful, anxious, vulnerable, angry or distrustful of other people;
- *Wider impacts* – Some victims note that their relatives were also targeted in the same or other incidents; many testify that the incident caused arguments within their family, while others describe the emotional consequences for their parents and children;
- *Coping strategies* – Victims often use coping mechanisms.

The EU Victims' Rights Directive defines a victim as: "(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death"²⁸.

Finding healthy ways to deal with discrimination is important for physical health and mental well-being. While a key course of action is to report discrimination to the authorities, it is also important to seek support systems on a personal level. One issue regarding discrimination is that people can internalise others' negative beliefs, even when they're false, leading to victims starting to believe they're not good enough. Ensuring having strong support systems can help discriminated people to maintain strong mental health in the face of discrimination.²⁹.

5. Analysis of Cases before the European Court of Human Rights Initiated by Roma Regarding Mob Violence and Skinhead Attacks

In terms of hate crimes³⁰, there are two elements that are particularly difficult to determine. The first is the racist motivation, that is, the prejudice from which the violence arose. If the attack was followed by a verbal insult based on racial or ethnic origin, unless

²⁵ Organization For Security and Co-operation in Europe, *Hate Crime Victims in the Criminal Justice System. A Practical Guide*, 2020, p. 28.

²⁶ P. IGANSKY, A. SWEIRY, *How 'Hate' Hurts Globally*, in J. SCHWEPPE, M.A. WALTERS (eds.) *The Globalization of Hate: Internationalizing Hate Crime?*, Oxford, 2016, pp. 96-108.

²⁷ The Leicester Hate Crime Project 2012 – 2014, available at: <https://le.ac.uk/hate-studies/research/the-leicester-hate-crime-project>.

²⁸ Article 2, Directive 2012/29/EU of the European Parliament and of the Council, *establishing minimum standard on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, of 25 October 2012, in OJ L 315, of 14 November 2012, p. 57.

²⁹ See the considerations of M. RELJIĆ, *The Toll of Discrimination on Mental Health*, 2024, available at: <https://www.errc.org/news/the-toll-of-discrimination-on-mental-health>.

³⁰ Organization for Security and Co-operation in Europe, *Relevant judgements of the European Court of Human Rights with comments: Hate speech and hate crimes*, 2017. Furthermore, on the point see, *ex multis*, Organization for Security and Co-operation in Europe, *Anti-Roma Hate Crime* and also Organization for Security and Co-operation in Europe, *Understanding Anti-Roma Hate Crimes and Addressing the Security Needs of Roma and Sinti Communities – A practical Guide*, Poland, 2023, p. 10 and ff.

it was expressed in front of a larger group of people, it is difficult to prove based on the statement of one person alone. However, it is therefore an allegation, which must be investigated by the competent authorities. The second element is the identification of the perpetrators. It is no coincidence that the ECtHR requires determination from states to detect and punish the perpetrators of crimes motivated by racial hatred. The consequences of such acts are felt not only by the victims but also by the group to which they belong, as well as by the entire fragmented society.

5.1. Moldovan and others v. Romania (Applications Nos. 41138/98 and 64320/01 European Court of Human Rights)

Moldovan and others v. Romania is an example of a verdict for violent criminal acts committed due to racial hatred. The appellants' only fault for the ordeal they endured was their race and being in the wrong place at the wrong time. But the consequences for them were severe. Losing their home to arson by a police-involved mob, during which suspected Roma were lynched or burned alive, was only the beginning of their calvary.

The petitioners of appeals number 41138/98 and 64320/01 are 25 persons of Roma origin, 18 of whom settled with the Government. They filed their appeals on April 14, 1997.

On September 20, 1993, there was a quarrel between three Roma and a person of another ethnic origin, during which his son was killed. The three Roma sought shelter in a nearby house. After the tragic news spread, a crowd gathered in front of the house, including the police chief and other officers. The house was set on fire, and the three Roma who participated in the tragic event lost their lives. The crowd continued to set fire to barns, cars and houses belonging to Roma, burning 13 Roma houses.

The three murdered Roma were relatives of one of the petitioners, and the houses of the other petitioners were burned and destroyed. After a criminal report was filed against the people who lived in the Roma settlement, a preliminary investigation was conducted during which three people were identified and detained, they were suspected of serious crimes of murder and arson. But a few hours later they were released. The villagers, who were from a different ethnic origin, had a meeting with the competent Public Prosecutor's Office, who threatened them not to say anything, otherwise they would face consequences. Although the further preliminary investigation established the participation of policemen in the burning of the houses, the killing of the Roma and the threats to the villagers, after the transfer of territorial jurisdiction, the authorities did not find sufficient evidence for this and did not initiate a criminal investigation.

The charges against the police officers were dismissed, and criminal proceedings were initiated against 11 civilians. Some testified that the police promised them that their involvement in the crime would be hidden. During the trial, the appellants understood that the violence was instigated by the police chief and two other officers.

On 17 July 1998, a judgment was passed where it was determined that the purpose of the violence was to eliminate all Roma from the settlement, although there was no prior intent to do so. The police cooperated with the perpetrators of serious crimes and influenced the witnesses. The preliminary police investigation was not adequate³¹. The Public Prosecutor's Office did not agree to extend the indictment to other persons, nor to continue the investigation. The court found five civilians guilty of aggravated murder and 12 other civilians for destruction of property, inappropriate behavior and disturbance of

³¹ Para. 52, ECtHR, judgement of 12 July 2005, Applications No. 41138/98 and 64320/01, *Moldovan and others v. Romania*.

public order and peace. The sentences were measured between one and seven years, with the law halving sentences of up to five years. The court stated that not only these persons, who were accused, should bear all the responsibility, but also those for whom no criminal proceedings were initiated. Following the appeal of the public prosecutor, the sentences of the convicted persons were modified by the higher courts, and two persons convicted of aggravated murder were pardoned by the president of the state. The Public Prosecutor's Office –in charge of criminal prosecution of the police officers – refused to initiate proceedings, even though evidence appeared during the trial that directly pointed to the guilt of the police officers. Only a few houses were rebuilt, but inadequately³², and no one received financial assistance³³. Some of the people who lost their houses became homeless, which negatively affected their health. In a civil procedure, compensation was awarded to the petitioners whose houses were not built, as well as support for the children who were left without a father. The court rejected all claims for damages for pain and suffering suffered. The verdict was overturned by the higher court, which then adjudicated the litigation itself and awarded some petitioners compensation for non-material damage suffered. The maintenance awarded to the minor children was halved, because the murdered person caused his own fate. The court declared that the Roma did not appreciate the same values as the rest of the population, that they were mostly unemployed, stole or engaged in illegal activities. The appeal of the verdict was rejected by the higher instance.

The petitioners complained of a violation of Articles 3, 8 and 14 of the ECHR.

Regarding Article 8, the European Court of Human Rights recalled that the general principles refer to the protection of the individual against arbitrary interference by the state. In addition to the negative obligation, there is also a positive obligation for the state to effectively protect the privacy, family life and home of all who are on its territory. The state may be responsible when there is consent for the acts of individuals by persons with state powers or when they have acted contrary to instructions or outside their powers.

In terms of Article 3, states have an obligation to ensure the protection of individuals even against inhumane treatment committed by third parties. Article 3 as a fundamental right requires that a minimum level of severity (cruelty) be reached in order to enjoy the protection of Article 3. The assessment is subjective and depends on the duration of the procedure, the physical and mental effects and in some cases the sex, age and health of the victim. Degrading treatment is one which aims to humiliate and devalue a person, and the consequences adversely affect the person in a way that is incompatible with Article 3. The absence of such a purpose, however, does not preclude a violation of Article 3 of the ECHR.

In the specific case, the ECHR was not competent, *ratione temporis*, for the tragic event itself, which happened before the ECHR entered into force in relation to Romania. However, it was responsible for the consequences that resulted from that event, in which police officers also participated. Considering the living conditions of the petitioners, the ECtHR established a positive obligation of the state to protect private and family life.

According to the established facts, the state took steps, for example, criminal prosecution, conviction, financial assistance, but at the same time no criminal prosecution was undertaken against the policemen, no compensation was awarded for the destroyed furniture and household goods, the compensation for the destroyed houses was prolonged for ten years, in one from the judgments there were discriminatory remarks about the Roma. The first-instance court rejected the requests for non-material damage suffered, the maintenance of the children was halved, due to the fact that the deceased allegedly

³² Para. 107 lett. g), *ibidem*.

³³ Para. 61, *ibidem*.

provoked the event himself, all the houses were not built, and no one lived in the built houses, and most of the appellants request they did not return to the village. It follows from the above that there was a general attitude of the state authorities that continuously contributed to the fear and feeling of insecurity of the petitioners, thus violating Article 8. The ECtHR unanimously found a continuous serious violation of the right to privacy and family life.

With regard to Article 3, the ECtHR found that some of the applicants had been homeless for ten years and that this had affected their health. The state's behaviour could have led to psychological suffering and a sense of humiliation, as well as the authorities' discriminatory remarks about the Roma way of life³⁴. The living conditions and the racial discrimination they were publicly subjected to due to the way their complaints were processed by the domestic state authorities negatively affected the human dignity of the petitioners. The ECtHR unanimously found a violation of Article 3 due to humiliating treatment.

With regard to allegations of discrimination, the European Court of Human Rights recalled that Article 14 is applicable only if placed in connection with allegations of a violation of an essential article of the European Convention on Human Rights. Acting in a different way is discriminatory if there is no reasonable and objective explanation, that is, if there is no legitimate purpose or there is no reasonable relationship of proportionality between the means used and the purpose to be realized. The ECtHR determined a violation of Article 14 in connection with Article 8, but also with Article 6 due to the length of the procedure, which was related to their ethnicity. The ECtHR awarded damages between 95,000 and 11,000 euros to the petitioners in the name of material and non-material damage suffered.

5.2. *Angelova and Iliev v. Bulgaria (Appeal No. 55523/00 European Court of Human Rights)*

The petitioners of appeal number 55523/00, Mrs. Angelova and Mr. Iliev are citizens of Bulgaria. They filed the complaint against Bulgaria on February 7, 2000, for violation of Articles 2, 3, 6, 13 and 14 of the ECHR.

The petitioners are Roma by ethnicity. On April 18, 1996, their son and brother, Mr. Iliev, was attacked by 7 teenagers who beat him, and one of them stabbed him several times with a knife. He died of his injuries the next day. An autopsy report showed he was stabbed three times in the upper thigh and twice in the abdomen. He also had injuries on his face and the back of his head. The conclusion was that he died from damage to a major blood vessel in his thigh. One of the attackers informed the police that the attack was racially motivated. The investigation was slow, resulting in the statute of limitations against several of the attackers in 2005. For the others, the proceedings were still ongoing when the ECtHR handed down its verdict.

Regarding Article 2, the ECtHR reminded that allegations of its violation must be subjected to the most careful scrutiny. The case did not concern the killing by civil servants, nor did it concern the positive obligation to protect an individual's life. The ECtHR, however, emphasized that in the circumstances of the case there must be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries under suspicious circumstances. The investigation must be able to determine the causes of the injuries and identify those responsible with

³⁴ Para. 111, *ibidem*.

the intention of punishing them. When a death has occurred, as in the present case, the investigation has even greater significance, considering that the primary purpose of the investigation is to ensure the effective implementation of domestic laws that protect the right to life.

When there are allegations that an attack was racially motivated, the investigation must be conducted vigorously and impartially. The ECtHR focused on the course of the investigation into the tragic event and the periods of inactivity, as well as whether there was an outcome. No one has been charged for 11 years, and the investigation has become obsolete regarding some suspects.

The ECtHR did not consider that the lack of a special legal provision affected the delay in the investigation of racially motivated crimes. The Court found a violation of the positive obligation under Article 2 to conduct an immediate, expeditious and vigorous investigation into the death of Mr. Iliev, which would take into account the racist motives of the attack and the need to protect the confidence of minority groups that they will be protected from racist violence.

Regarding Article 14, the ECtHR indicated that Article 14 in conjunction with Article 2 requires that all reasonable steps be investigated and taken to uncover racist motives and to determine whether there was underlying ethnic hatred or prejudice. When a case is not considered from this aspect and a crime motivated by hatred and prejudice is treated on the same level as a crime without racist elements, it means turning a blind eye to the specific nature of acts that are particularly destructive to fundamental rights. Although racist motives may be difficult to prove, states must make best efforts and do whatever is reasonable under the circumstances³⁵.

The ECtHR unanimously found a violation of Articles 14 and 2 of the ECHR. The ECHR awarded 15,000 euros for non-material damage suffered by the petitioners and 3,500 euros in court costs.

This is a case in which a violation of Article 14 in conjunction with Article 2 was established. The failure of the competent authorities to unmask the racist motives that were presented as the reason for the attack, the ECtHR appreciated as a violation of the positive obligation of the state to implement an effective and adequate investigation, expeditiously prosecute the perpetrators and adequately punish them.

The ECtHR has ruled that when there are indicators of prejudice, as in the case, the state must conduct an investigation that takes into account possible motives of prejudice or hatred. To commit a hate crime is an aggravating circumstance, not only because innocent people suffer, but also because of the enormous damage it does to a democratic society. The positive obligation in such cases is of greater intensity for the state compared to “ordinary” crimes³⁶.

5.3. Koky and others v. Slovakia (*Application No. 13624/03 European Court of Human Rights, 2007*)

Appeal No. 13624/03 was submitted by ten Slovak citizens of Roma ethnic origin on April 17, 2003. They complain of a violation of Articles 3, 8 and 1 of Protocol No. 1 of the ECHR, and Articles 13 and 14 in conjunction with Articles 3 and 8.

On February 28, 2002, a bar waitress refused to serve Mr. MK, who was of Roma origin. An argument ensued, in which the waitress poured a drink on Mr. MK, during

³⁵ Para. 115, ECtHR, judgement of 29 October 2007, *Angelova and Iliev and Bulgaria*.

³⁶ V. SANCIN, *International Environmental Law: Contemporary Concerns and Challenges*, Ljubljana, 2012, p. 291.

which he hit her or tried to hit her, causing the waitress's glasses to fall and break. One of the three sons of the waitress came to replace her at the bar, and she went home after the incident.

That same evening, around 9:45 p.m., approximately 12 persons, some of whom had face masks, armed with baseball bats and iron rods appeared in the Roma neighborhood where the applicants lived. They entered their houses allegedly shouting racist insults, during which they caused material damage and attacked one of the petitioners. When they understood that the police had been called, they ran away, but beat up two more of the petitioners who got in their way, allegedly shouting derogatory racist terms.

The police, who arrived one and a half hours after the incident, inspected the material damage and conducted investigative actions. The police interviewed the petitioners, a witness, the waitress from the bar and her son, according to them, the representative of the petitioners obstructed the process. The applicants complained that the attack was racially motivated. The police opened an investigation into causing bodily harm, causing damage to property and breaching the privacy of the home, which was then expanded to include violence against an individual or group of individuals. There were grounds for suspicion to widen the investigation, as several of the attackers shouted "*Gypsies, get out or we'll kill you!*".

The police called the possible perpetrators and the petitioners for identification. Allegedly, the list of phone calls was reviewed for the waitress, her son and other suspects. The investigation was stopped, because the police could not discover the perpetrators of the crimes. The police believed that it was not a racially motivated act, but revenge, due to the incident with the waitress.

After an appeal, the investigation was reopened with instructions from the senior public prosecutor to find the perpetrators of the crimes and to investigate allegations of racist motives behind the attack. Samples were taken for DNA analysis and the suspects were questioned. The investigation was stopped based on the inability to determine the perpetrators of the crime, but it was determined that the violent incident in the Roma neighborhood followed the incident in the bar. Appeals against the decision to stop the investigation were rejected. The constitutional lawsuit was denied to the petitioners, due to the fact that they did not exhaust all legal remedies.

The petitioners argued that not all suspects were interrogated, nor that they were interrogated again after the investigative actions that were undertaken. They emphasized that in addition to physical injuries, they were subjected to psychological trauma and fear, and children were also present during the attack.

For the specific case, the European Court of Human Rights, firstly, examined whether the procedure to which the applicants were subjected reached the threshold of seriousness/cruelty required to ensure the protection of Article 3. It determined that the two beaten persons received serious injuries and were taken to hospital. In addition to bodily injuries and property damage, the ECtHR took into account the entire context in which the violence took place, the verbal threats, and determined that Article 3 was applicable to the facts of the case.

Regarding the question of whether the investigation met the standards of Article 3, the ECtHR held that although there was a substantial and structured investigation, it was not carried out with sufficient determination to establish the identity of the perpetrators and their motives. For example, DNA analyses were not done for all suspects, nor were adequate steps taken for one of the applicants to identify the perpetrator. The ECtHR unanimously determined a violation of the procedural guarantee of Article 3. It considered that the other complaints, including discrimination, essentially overlapped with the

complaint from Article 3. The applicants who suffered bodily injuries received 10,000 euros each, and the others received 5,000 euros for pain and fear suffered.

The ECtHR did not analyze Article 14 in relation to Article 3, that is, that the applicants were discriminated against and became victims of the attack, only because of their racial origin. States are obliged to find out if there is a racist motive behind the attack and when it was carried out by private individuals and not only by the state³⁷.

6. Conclusion

Jonathan Lee in his paper, *four convicted of violent hate crimes against Roma in Turin lose appeal at Italian supreme court: Small victory for rule of law in Italy*, from 2021, stated: “*The Italian Supreme Court of Cassation has confirmed the sentences of four people who were convicted of perpetrating hate crimes against Roma at an informal camp on Via Continassa, Turin in 2011. The decision came on 19th March 2021, with the Court confirming the first instance judgment as well as the opinion of the sentencing judge, Paola Trovati, that the hate crimes committed were ‘the product of an ancestral and never subsided ethnic hatred towards gypsies’ which led ‘normal citizens’ to carry out ‘acts of inhuman violence’*”. The four perpetrators had been part of a mob of hundreds who descended on the homes of Romani people who were living on an abandoned farm on the outskirts of Turin on 12th December 2011. The attack completely destroyed the camp and drove out all of its inhabitants. The mob was made up of nearby residents who on the day of the violence set fire to Romani homes, caravans, and cars as the 46 people who once lived there fled³⁸.

The European Court of Human Rights stands as a high instance where the citizens can turn to when they feel not heard from their own countries. This is where Roma people reached out with last hope when they felt discriminated against and taken for granted because of the stereotypes and prejudice that are following their race.

In each of these cases there is a key point that the court addresses:

- *Koky and others v. Slovakia* is a leading case where the Court sets the standard for conducting an investigation, that should be determinative to find the perpetrators, which is particularly important when there are allegations of racist motivation. From this aspect, the ECtHR perceives the wider social context, that is, the delicate position of the Roma in Slovakia, as a vulnerable group.

- In the case *Angelova and Iliev v. Bulgaria*, the authorities found out almost immediately that there were racist motives for the attack on Mr. Iliev, from the statement of one of the attackers. Although they were aware of the racist motives, the authorities did not complete the investigation or bring the alleged perpetrators to justice in accordance with the principle of expediency and allowed the investigation to be delayed for 11 years.

- And in the last case, *Moldovan and others v. Romania*, the ECtHR took into account the racist remarks in domestic judgments, which served as a justification for reducing the rights of the petitioners. Although perhaps the protection of the police

³⁷ STRASBOURG OBSERVERS, *Violence Against Roma: Unmasking Racist Motives*, 2012, available at: <https://strasbourgoobservers.com/category/cases/koky-and-others-v-slovakia/>.

³⁸ J. LEE, *Four Convicted of Violent Hate Crimes Against Roma in Turin Lose Appeal at Italian Supreme Court: Small Victory For Rule of Law in Italy*, 2021, available at: <https://www.errc.org/news/four-convicted-of-violent-hate-crimes-against-roma-in-turin-lose-appeal-at-italian-supreme-court-small-victory-for-rule-of-law-in-italy#:~:text=By%20Jonathan%20Lee,Via%20Continassa%2C%20Turin%20in%202011.>

officers by the competent state authorities was not directly related to the racial origin of the applicants, the tragic event itself was undoubtedly motivated by racial prejudice against the Roma.

In this paper, multiple events where the Roma people were racially discriminated repeatedly were mentioned; they have been punished just because of their ethnicism, their beliefs, and their history, injustice that has been lasting for centuries and this is why it is important to raise attention for all of them by analyzing courts judgements information plays a key role in protecting the victims and punishing the perpetrator of such violent crimes.

Although racism against Roma people persists, it is important to consider the attention paid to the issue by international, supranational and national authorities. Infact, it is not a surprise that during the Brussels plenary session held on April 10-11, 2024, the European Parliament addressed the topic, notably discussing the protection of the Roma language and culture. On this occasion, the report by the EU Fundamental Rights Agency, that collected data from 10 European countries, was discussed. The report detected that Roma people are at higher risk of poverty, with 22% of them living in households without running water, while less than half of Roma children attend preschool education. President Roberta Metsola made a statement emphasizing the EU's role in safeguarding the Roma community³⁹.

On the basis of the evidence briefly analysed, it seems that a more structural and incisive action to tackle racism and hate addressed to Roma communities should be a priority of the international community.

ABSTRACT

This paper goes into deep analysis on the subject of racial discrimination, profiling the Roma people as victims of racism and naming some of the most brutal violent mob and skinhead attacks on them.

In this sense, the analysis of the three judgments of the European Court of Human Rights that it is presented in this paper, elaborates the question of one manifestation of antigipsism – Mob violence and skinhead attacks on Roma. The justice system of the European countries invested by the judgments clearly failed to protect basic human rights and the court loudly pointed that to them, reminding them of their obligations. The purpose of the article, indeed, is to emphasise how the work done by international, supranational and national authorities is not effective in tackling this structural problem. Appeals to the European Court of Human Rights are a clear example of this.

KEY WORDS

Roma, Discrimination, Racism, Victimology, Violence.

ANALISI DELLA VIOLENZA MAFIOSA E DEGLI ATTACCHI SKINHEAD AI ROM ATTRAVERSO IL PRISMA DEL RAZZISMO

ABSTRACT

³⁹ European Parliament, Newsletter 10-11 April 2024, available at: https://www.europarl.europa.eu/pdfs/news/expert/2024/4/briefing/20240320BRI19514/20240320BRI19514_en.pdf.

Il presente articolo esamina approfonditamente il tema della discriminazione razziale, delineando il profilo dei Rom come vittime di razzismo e nominando alcuni dei più brutali attacchi violenti di mafia e skinhead contro di loro.

In questo senso, l'analisi delle tre sentenze della Corte europea dei diritti dell'uomo che viene presentata in questo lavoro, elabora la questione circa l'esistenza dell'antigipsism - la violenza mafiosa e gli attacchi skinhead contro i rom. Il sistema giudiziario dei Paesi europei investiti dalle sentenze ha chiaramente fallito nel proteggere i diritti umani fondamentali e la Corte lo ha sottolineato a gran voce, ricordando loro i propri obblighi. Lo scopo dell'articolo, infatti, è quello di sottolineare come il lavoro svolto dalle autorità internazionali, sovranazionali e nazionali non sia efficace nell'affrontare questo problema strutturale. I ricorsi alla Corte europea dei diritti dell'uomo ne sono un chiaro esempio.

KEYWORDS

Rom, Discriminazione, Razzismo, Vittimologia, Violenza.