

HATE CRIME AND HATE SPEECH



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HATE CRIME AND HATE SPEECH

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court and in no way bind the Committee of Ministers.

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Hate crime is a criminal act motivated by bias or prejudice towards a person or group of persons while hate speech concerns various forms of expression directed against a person or group of persons on the grounds of the personal characteristics or status of the person or group of persons. When hate speech takes the form of conduct that is in itself a criminal offence – such as conduct that is abusive, harassing or insulting – it may also be referred to as hate crime.¹

The Court has noted that discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3 of the Convention where it attains a level of severity such as to constitute an affront to human dignity. When investigating violent incidents, State authorities have the duty to take all reasonable steps to unmask possible discriminatory motives. The Court has underlined that the authorities must do whatever is reasonable in the circumstances to collect and secure the evidence, and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by intolerance or discrimination. Treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.

The present factsheet provides examples of general and individual measures reported by States in the context of the execution of the European Court's judgments, concerning the combat against racially motivated hate crimes which may emanate from security forces, private individuals or groups targeting Roma² and migrants, hate crime and hate speech targeting LGBTI persons and religiously motivated hate crime and hate speech.

¹ See [ECRI General Policy Recommendation No 15](#) on Combating Hate Speech, para. 21 of Explanatory Memorandum (2015); see also Recommendation [CM/Rec\(2022\)16](#) on combating hate speech.

² The terms "Roma and Travellers" are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies.

1. Combating racially motivated crime

1.1. Hate crime against Roma involving security forces

This case concerns the shooting to death of two Roma by the military police during an attempted arrest. The Court did not find that the shooting was racially motivated. It found, however, that the authorities failed to adequately investigate into possible racist motives.

BGR / Nachova and Others
(43577/98 and 42579/98)

Grand Chamber Judgment
on 06/07/2005

Final Resolution
CM/Res DH (2017)97

As to the measures relating notably to the investigation into racist motives, the Criminal Code was amended in 2011 to introduce aggravating circumstances for murder and bodily harm committed with racist or xenophobic motives. This amendment was considered to enable the authorities to investigate into possible racist motives. In parallel, a legislative reform introducing new Convention-compliant rules on the use of firearms was adopted and regular trainings and awareness-raising measures as to both the use of firearms and identification of racist motives were carried out for the judiciary and prosecution authorities. Moreover, the information provided by the authorities on pretrial investigations and judicial proceedings as to the racially motivated use of force for the period 2011-2016, showed an improvement of the investigating practices related to establishing racist and/or xenophobic motives of crimes (see also *Angelova and Iliev v. Bulgaria* below).

After the Court's judgment, a new investigation into the deaths of the applicants' relatives was carried out. It involved additional questioning of witnesses and of two new eyewitnesses, visits to the scene of the events, with the reconstruction of the events and the examination of the shot trajectory, as well as new forensic and ballistic reports, which confirmed the findings of the previous ones. After the investigation, the prosecution concluded, in a decision of 30/11/2007, that the officer had acted in line with the regulations governing the use of firearms at the relevant time and terminated the criminal proceedings. This decision was also examined *ex officio* by the appellate prosecutor and confirmed by a decision of 23/01/2008. The heirs of the victims did not appeal these decisions.

This case concerns, notably, physical and verbal abuse amounting to ill-treatment of two Roma in police custody. The Court did not find that the treatment inflicted on the applicants was racially motivated. It considered, however, that despite the plausible information available to the authorities on the possible racial motivation of the assaults, the authorities failed to take all possible steps to investigate whether or not discrimination might have played a role in the events at issue.

GRC / Bekos and Koutropoulos (15250/02)

Judgment final on
13/03/2006

Final Resolution
CM/ResDH(2021)190

To prevent recurrence of similar violations, in 2012, the Chief of the Police addressed police authorities with a circular requesting that complaints against racist behaviour be treated with priority. In 2014, a circular by the Chief of the Police reminded the police of their obligation to examine possible racist motives regarding the national origin, religion, sexual orientation, age, disability or other discriminatory behaviour behind the violent treatment. Other measures taken by the Greek authorities in this field are summarised below in the case of *Sakir v. Greece*. Moreover, in December 2018, the Prosecutor of the Court of Cassation issued a circular addressing all prosecutors, reminding them of their obligations under the Convention and the Constitution and urging them to exercise appropriate severity when confronted with acts of racially motivated violence. The circular was also disseminated to the police. Furthermore, two specialised departments for combating racist violence have been established within the Police Directorates of Athens and Thessaloniki to investigate racist crimes and prosecutors specialised

in racist violence have been appointed to the Greek courts. In addition, the authorities have introduced continuous training for prosecutors, judges and police on the protection of human rights and the implementation of legislation on hate offences/crimes, in several cases, drawing from the expertise of the Council of Europe (see also *Sakir v. Greece*).

As to the applicants, the reopening of criminal proceedings was not possible due to prescription rules in force. Also, the reopening of administrative/disciplinary investigations/proceedings was not possible due to the fact that the offences had been time-barred.

The Court found a violation of the Convention due to the ill-treatment of the Roma applicant during an interrogation by the police and the authorities' failure to provide a plausible explanation for his injury (a traumatic perforation of the left tympanic membrane, most probably caused by a slap on the face) or to satisfactorily establish that these had been caused otherwise than by treatment in police custody. Given the insufficient evidence in the case file, the applicant's allegation of being discriminated against on the basis of his ethnic origin was not examined by the Court.

To prevent recurrence of similar situations in the future, following the CPT's visit in 1999 to Hungary, the National Police Headquarters issued internal instructions to the police commanders on, *inter alia*, the prohibition of torture, forcible interrogation and cruel, inhuman or degrading treatment. Moreover, since 2002, "Roma population and policing" training sessions for police officers have been organised by the Policing Management Training and Research Institute, which also fights negative stereotypes and promotes lawful action without prejudice and negative discrimination. Also, special trainings on human and minority rights are organised by the Institute of Policing and Crime Prevention.

In these cases, the Court found that the authorities failed to effectively investigate into possible racial motives behind the ill-treatment of Roma by law enforcement agents³ in their official capacity or off-duty, or into racially motivated abuse against Roma, notably, in the context of openly racist anti-Roma demonstrations organised by right-wing groups.

To prevent the recurrence of similar violations, Section 216 of the new Criminal Code criminalised not only the "use of force", but also "any provocative behaviour" against a person for actual or presumed affiliation with a national, ethnic, racial, or religious group. Moreover, the scope of the crime of "incitement against a group" (Section 332 of the new Criminal Code) was extended to criminalise the use of a threatening language that may lead to a violent act, as well as language that instigates hatred.

Furthermore, in 2019, the National Police Headquarters (ORFK) issued an Instruction on Police tasks relating to the handling of hate crimes (Instruction 30/2019), including a list of bias indicators/evidence and enumerating objective facts and circumstances for the identification of offences fully or partially motivated by bias. Based on Instruction 30/2019, new positions have been created, including "mentors" (i.e. hate crime advisors) appointed at each police station, but also "Area Specialist Officers" (i.e. specialist hate crime officers) at county, regional and national levels with specific missions and responsibilities as regards the identification, collecting evidence, monitoring and reporting on hate-crimes/incidents. Another Instruction

HUN / Balogh (47940/99)

Judgment final on
20/10/2004

Final Resolution
CM/ResDH(2011)294

HUN / Balázs group
(15529/12)

Judgment final on
14/03/2016

Execution Status: pending

DH-DD(2019)1121 and
DH-DD(2022)822

³ The issue of inhuman and degrading treatment by law enforcement agents is examined by the Committee of Ministers within the context of the *Gubacsi v. Hungary* group of cases (Application No [44686/07](#)).

was issued by the Chief Public Prosecutor's Office, also in 2019, on the evidence-related aspects of hate crimes, defining the notion of hate crime, the characteristics of groups and communities sought to be protected by the law, theoretical issues raised by jurisprudence and crystallised opinions formed in response and specifying the bias indicators which help to establish the existence of bias motives.

In addition, the authorities reported the organisation, as from 2010, of various and regular training activities and courses in connection with hate crimes/incidents for police and prosecution authorities.

As regards individual measures in the *Balázs* case, the police officer who abused the applicant was convicted of disorderly conduct and placed on a one-year probation. In *Király and Dömötör*, during police investigations, one perpetrator was identified and was questioned as a suspect. For the continuation of criminal proceedings, the identification of further persons was necessary, but their identity could not be established. Thus, in September 2013, the investigation was suspended and then terminated in September 2021 due to the statute of limitations. In the case of *M.F.*, disciplinary proceedings were initiated against six of the police officers. In the case of *R.B.*, given the absence of an adequate legislative framework at the time of the events, the penalisation of acts against the applicant was not possible, nor were further individual measures able to be taken.

This case concerns the authorities' failure to investigate racist motives in a shooting spree by an off-duty police officer at the home of a Roma family, which led to two serious injuries and three deaths. When questioned by the police, the officer stated that he had been thinking about "a radical solution" for "dealing with" Roma people. Also, the domestic courts did not react to the limited scope of the investigation and prosecution.

SVK / *Lakatošová and Lakatoš* (655/16)

Judgment final on
11/03/2019

Final Resolution
CM/ResDH(2021)218

After the facts of the case, in 2017, the Criminal Code was amended to include hate crimes committed out of "specific motives", against a person or a group of persons due to their skin colour, nationality or ethnic affiliation, gender, sexual orientation, political convictions or religious beliefs. Also, racist motivation for any crime has become an aggravating circumstance, entailing heavier sanctions. The 2018 Act on Victims of Crimes identified the particularly vulnerable victims which require particular protection, notably victims of crimes committed on the grounds of sexual orientation, nationality, racial or ethnical affiliation, etc. Other general measures taken by the authorities in this field are currently assessed in *R.R. and R.D. v. Slovakia* (No 20649/18).

As for the individual measures, the General Prosecution Office assessed that if the racist motive of crime is confirmed, the legal classification of the offender's conduct would not be substantially changed, and the perpetrator would be punished within the same penalty rate due to his diminished lucidity. The civil proceedings, which could assess all the consequences of the criminal offence for the applicant's private and family life, were discontinued, as the applicants withdrew their action.

This case concerns the authorities' failure to protect the life of a twenty-year old Roma man who died in a hospital after having been interrogated in police custody. The Court also pointed out serious shortcomings in the investigation into the applicant husband's alleged ill-treatment and death.

SVK / *Mizigarova* (74832/01)

Judgment final on
14/03/2011

Final Resolution
CM/ResDH(2016)17

To avoid recurrence of similar violations, as of August 2013, any investigation related to extremism must be conducted by a police investigator and no longer by an ordinary police officer. Also, one prosecutor in each judicial district, a special police department within the office of the head of police and in each police district will be assigned to deal with extremism as well as 231 police officers specialised in minorities/Roma issues to operate at the level of regional police departments. The police undergo periodic training on combating new forms of extremist criminal acts and preventing the excessive use of police force against Roma. An increase in the number of police officers of Roma origin was envisaged. Moreover, a Committee for Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and Other forms of Intolerance was established and acts as an advisory body under the Ministry of Interior. Moreover, a database of extremist symbols for consultation by judges, prosecutors and police was created within the framework of the Strategy for combating extremism 2011-2014 under the umbrella of the Ministry of Interior. The judgment was widely disseminated, notably to the police, prosecution and domestic courts, and presented by the Government Agent during seminars and meetings with judges and prosecutors which took place in November 2011.

As to the investigation into the applicant's husband's death, the suicide of the police officer concerned made the reopening of the investigation impossible.

The *Boacă and Others* and *Cobzaru* cases concern the ill-treatment of Roma applicants in police custody. Given the lack of any apparent investigation into the complaint of discrimination, the Court found that the authorities did not comply with the obligation to investigate possible racist motives. In the case of *Stoica*, the Court found that the ill-treatment of a 14-year-old Roma minor by a police officer was racially motivated, as was the decision not to prosecute the police officer who had beaten him.

To prevent the recurrence of similar violations, Law No. 278/2006, amending the Criminal Code, introduced ethnic/racial motivation as an aggravating factor obliging the prosecuting authorities to verify, on their own motion, its impact in a given case. In addition, according to the same law, as amended in 2022, incitement to violence is now also criminalised and the incitement to hatred, discrimination and violence now apply also when the speech is directed against an individual belonging to a protected category. Moreover, the Institute for Public Order Studies, the Police Academy and other, regional, training institutions and services within the Ministry of the Interior put in place, between 2010-2015, in-service training programmes for police and gendarmerie officers, concentrating notably on the protection of human rights, the relation between the police and people belonging to vulnerable groups, including Roma, as well as on the prevention of torture and ill-treatment, with a component on prevention and fighting against discrimination and ethnic/racial motivation of ill-treatment. Further measures in this area are still under the Committee of Minister's supervision in the context of the *Lingurar* case (No. 48474/14).

As for the applicants, given that the criminal liability for the abusive behaviour and the possible racial motives of such treatment had become time-barred, the reopening of the impugned proceedings was no longer possible.

ROM / Boacă and Others
(40355/11)

Judgment of 12/01/2016,
final on 12/04/2016

ROM / Cobzaru (48254/99)

Judgment of 26/07/2007,
final on 26/10/2007

ROM/ Stoica (42722/02)⁴

Judgment of 04/03/2008,
final on 04/06/2008

Final Resolution
CM/ResDH(2016)150

⁴ These cases are part of part of *Barbu Anghelescu* No 1 group of cases (No 46430/99). For information on additional measures taken in the *Barbu Anghelescu* group of cases, see the Thematic Factsheet on [Effective Investigations](#) .

1.2. Hate crime against Roma involving private individuals or groups

The *Angelova and Iliev* case concerns the racist killing of a Roma by a group of teenagers and the authorities' failure to investigate into and charge the attackers with a racially motivated offence. The *Abdu* case concerns the authorities' failure to investigate a possible racist motive for the attack suffered by the Sudanese applicant in the hands of Bulgarian youths. In the case of *Yotova*, the Court found that the authorities had failed to investigate both into the Roma applicant's attempted murder, allegedly committed by Bulgarian youths, and to establish whether or not the crime was racially motivated.

BGR / *Angelova and Iliev* group (55523/00)

Judgment of 26/07/2007,
final on 26/10/2007

BGR / *Abdu* (26827/08)

Judgment of 11/03/2014,
final on 11/06/2014

To prevent similar violations, aggravated qualifications for murder and bodily harm committed with racist or xenophobic motives were introduced into the amended 2011 Criminal Code. See also more relevant measures cited above in *Nachova and Others v. Bulgaria*.

BGR / *Yotova* (43606/04)

Judgment of 23/10/2012,
final on 23/01/2013

As for the applicants in *Angelova and Iliev*, the punishment of one of the persons brought to trial for the death of the applicants' relative, was increased by the court of appeal to three years suspended sentence after the referral from the Supreme Court. Also, the applicants' compensation for non-pecuniary damages had been increased by the appellate court. The second-instance court's judgment was not appealed against by the parties. With regard to the applicant in *Abdu*, given the expiry of statutory limitation for prosecution against the perpetrators and the preceding failures in the investigation, it was not possible to envisage other measures in this respect. In *Yotova*, the criminal proceedings against the assailants were terminated in 2014 due to the expiry of the statutory limitation for the prosecution.

Final Resolution
CM/ResDH(2017)383

Šečić concerns the ineffective investigation into the Roma applicants' injuries suffered following an attack although the authorities knew that the attackers were suspected of belonging to a group of skinheads, governed by extremist and racist ideology. In the case of *Škorjanec*, the applicant and her partner, who was of Roma origin, were assaulted by two individuals who uttered anti-Roma insults. The Court criticised the fact that the prosecuting authorities concentrated the investigation and assessment on the hate-crime element related to the violent attack only against the applicant's partner and failed to identify whether she was perceived by the attackers as being of Roma origin.

CRO / *Šečić* group (40116/02)

Judgment of 31/05/2007
final on 31/08/2007

CRO / *Škorjanec* (25536/14)

Judgment of 28/03/2017
final on 28/06/2017

After the facts of these cases, the Anti-Discrimination Act 2008 was adopted to expressly prohibit direct and indirect discrimination, notably on the grounds of race or ethnic origin. Pursuant to the Anti-Discrimination Act, the Ombudsperson became the central authority for the elimination of discrimination to supervise the compliance of the domestic authorities with the law. Furthermore, the Criminal Code, in force since 2013, defined hate crime as an aggravating form of other criminal offences. As regards regulatory measures, a new Protocol streamlining procedures on hate crimes entered into force in April 2021. It broadened possible hate crime indicators that the police should examine when carrying out an investigation, such as the victim's affiliation with a particular group, the perpetrator's affiliation with a group promoting extremism, the victim's or witness' perception of the possible hate motive behind the attack, the use of publicly available materials promoting hatred towards a particular group, the on-line promotion of hate-speech, etc.

Final Resolution
CM/ResDH(2022)81

Also in 2013, the government adopted the *National Strategy for Roma Inclusion 2013-2020*, intended for law enforcement officers and prosecutors, aimed at raising awareness and correctly labelling hate crimes, especially those concerning Roma. In 2017, the Government Office for Human Rights of National Minorities (OHRNM) launched the project “*Collecting and monitoring data for effective implementation of National Roma Inclusion Strategy*”. A revised Action Plan was adopted for the implementation of the Strategy 2018-2019. Moreover, among others, the government’s *Action Plan for the implementation of the National Plan to Combat Discrimination for the 2017-2019* included targeted training activities on non-discrimination, notably for prosecutors, police and public officers.

Regarding the applicant in the *Šečić* case, a new investigation was not possible as the prosecution became time barred. In the case of *Škorjanec*, the applicant’s criminal complaint and the racist motive behind the attack – allegedly because of her association with her Roma partner – after an *ex officio* examination by the Zagreb Municipal State Attorney’s Office, were rejected in 2017.

This case concerns an ineffective investigation into physical and verbal attacks against the applicant, a Muslim Roma, by his neighbours.

MON / Alković (66895/10)

*Judgment of 05/12/2017,
final on 05/03/2018*

*Final Resolution
CM/ResDH(2018)384*

In response to the European Court’s judgment, the Prosecutor’s Office provided examples of new practices regarding the investigation of criminal complaints concerning the encouragement of violence or hatred on the basis of race, skin colour, religion, origin, or nationality as well as relevant case law of the Podgorica High-Court. Moreover, a series of targeted awareness-raising activities for the judicial and prosecution authorities took place, including a regional Conference on the prohibition of discrimination, organised by the Constitutional Court in 2017. The judgment was also used in training activities of the Centre for Training of the Judiciary and Public Prosecution.

As for the applicant, after the re-examination of the case, the public prosecutor established that a new investigation was not possible as the criminal proceedings relating to the events at issue had become statute-barred before the European Court’s judgment. In the meantime, the applicant had moved to Belgium.

The case concerns a procedural violation of Article 3 due to lack of an effective investigation into a physical attack and injuries suffered by the Roma applicants, inflicted on them by private individuals.

**SVK / Koky and Others
(13624/03)**

*Judgment final on
12/09/2012*

*Final Resolution
CM/ResDH(2017)86*

In response, in February 2014, extremism was introduced as an offence into the Act on Offence 1990. A new regulation on fighting extremism and fan violence was issued in 2014 by the Ministry of Interior, introducing specialised investigators for crimes of extremism and racially motivated crimes. Amendments to the Code of Criminal Procedure and to the Criminal Code entered into force on 1 January 2017 enhancing the efficiency of investigations of racially motivated crimes, the jurisdiction for such crimes being transferred from the District Courts to the Specialised Criminal Court. Also, awareness-raising activities and training for prosecutors and judges were organised.

As for the applicants, the investigation into the attack, which had been suspended in 2003, was pursued in 2012 but did not lead to the identification of perpetrators. The investigation was

further suspended under Article 228 of the Code of Criminal Procedure, as the established facts did not provide any material basis for pressing charges. This decision was not challenged.

Violations in these cases stem from the racially motivated destruction by private individuals of the Roma applicants' houses, in the Harghita, Giurgiu and Mureş counties. The violations relate, *inter alia*, to improper living conditions, as well as to the general discriminatory attitude of the authorities which failed to put an end to these over a prolonged period of time.

ROM/Moldovan and Others
(No 2) group (41138/98 and
64320/01)

Judgment final on
30/11/2005

In the cases of *Gergely*, *Kalanios and Others*, and *Tănase and Others*, the Romanian authorities submitted unilateral declarations acknowledging that the events in question had resulted in a violation of Articles 3, 6, 8, 13 and 14 of the Convention. In this context, the Romanian authorities undertook to adopt a number of general measures, in addition to the payment of certain sums to the applicants.

ROM / Gergely (57885/00)

Judgment final on
26/07/2007

Key measures underpinning the authorities' action to guarantee non-repetition of similar violations were the Government Ordinance No 137/2000⁵ on preventing and punishing all forms of discrimination and the creation in 2002 of the National Council for Combating Discrimination (CNCD), *inter alia*, to promote national strategies⁶ for the implementation of anti-discrimination measures, including with regard to Roma.

ROM / Kalanyos and Others
(57884/00)

Judgment final on
26/07/2007

Also, in response to the judgments, targeted action plans were adopted and implemented to improve or provide Roma, where necessary, with infrastructure, decent living conditions, for example, through the reconstruction of houses and/or the provision of social housing, or the creation, where needed, of medical centres, the construction of schools, kindergartens, cultural centres, as well as the acquisition of necessary equipment in the counties concerned. Actions have also been taken in the field of education and training of adult Roma, as well as in stimulating their participation in the economic, social, educational, cultural and political life of the local community through the promotion of mutual assistance and community development projects. To prevent discrimination, stereotypes and interethnic conflicts, special education programmes were implemented in schools, as well as information programmes for the public at large and legal training involving people from the Roma community.

ROM / Tănase and Others
(62954/00)

Judgment final on
26/08/2009

Final Resolutions
CM/ResDH(2016)39,
CM/ResDH(2015)214 and
CM/ResDH(2015)238

1.3. Hate crime against migrants involving security forces

The case concerns the ineffective investigation into the applicant's ill-treatment by the police during his arrest and detention in 1996. Given the violence of the attack, the Court notably found that the authorities failed to verify the existence of a possible racist motivation, hatred or prejudice based on the ethnic origin of the applicant behind the events.

BEL / Turan Cakir (44256/06)

Judgment final on
10/06/2009

Final Resolution
CM/ResDH(2015)159

⁵ The Regulation transposed Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

⁶ National Strategy 2007-2013 for the implementation of measures fighting discrimination.

In response, the authorities have indicated that the Act of 25 February 2003 introduced, via Article 405quater of the Criminal Code, “discriminatory grounds”⁷ as an aggravating factor for various criminal offences, including homicide and bodily harm. Further, the Act of 14 January 2013 amended Article 405quater by increasing the maximum penalties for homicide and intentional assault committed with a discriminatory motive. Between 2007 and 2012, 108 cases were registered as racially motivated assaults and injuries. Although there are no precise figures for convictions for this type of offence, the authorities referred to a number of national courts’ decisions,⁸ finding the racist motivation of the acts to be an aggravating factor. These data confirm that the judiciary now investigate and decide on possible “discriminatory, including racist” motivation of various offences, including when committed by the police. In addition, during their initial training, police officers are taught to intervene and report in situations of violation of anti-discrimination and anti-racism laws. Continuous training is provided on the legal framework and enforcement of these laws. The training of police officers and magistrates has been stepped up since the entry into force of Circular C O L 13/2013 of the Ministers of Justice and Home Affairs and the College of Public Prosecutors, which deals with research and prosecution policy in the area of Holocaust denial, discrimination and hate crimes - in particular those based on nationality, alleged race, colour of skin, descent or the national or ethnic origin of the victim. This Circular also foresees the designation of “reference” police officers and magistrates in these fields. Police officers also receive training in diversity management and intercultural dialogue.

As for the applicant, individual measures, except for the payment of just satisfaction awarded by the Court, appeared no longer possible given that it was impossible to open/reopen criminal and/or disciplinary proceedings against the perpetrators, as the criminal acts were time-barred.

The case concerns an ineffective investigation into possible racist motivation in the alleged ill-treatment by the police of the migrant applicant.

ESP / B.S. (47159/08)

*Judgment of 24/07/2012,
final on 24/10/2012*

Execution Status: pending

*Action Report DH-
DD(2022)661*

In order to prevent similar violations, the Organic Law of 22 June 2010 introduced Article 22.4 into the Criminal Code, making discrimination an aggravating circumstance for criminal responsibility, thus obliging investigative judges to examine whether an alleged criminal act was aggravated by discriminatory motives. Regular training seminars covering, notably, the issue of investigation of hate crimes are held for judges and magistrates, which are informed of the Council of Europe HELP course, which has been translated into Spanish, on the fight against racism, xenophobia, homophobia and transphobia.

The authorities also informed that following the facts of the case, Law 4/2010 on the Disciplinary Regime of the National Police introduced the disciplinary offence of discrimination based on, *inter alia*, racial or ethnic origin, place of birth or residence, or any personal or social condition. Thus, complaints may be filed with the Inspectorate of Personnel and Security Services of the Ministry of the Interior about the functioning of the state security forces and bodies, including incidents involving discrimination. After investigation by the Inspectorate, these complaints are either referred to a disciplinary or judiciary procedure. Moreover, in May

⁷ Such as “hatred, contempt or hostility towards a person on account of his or her alleged race, skin colour, descent, national or ethnic origin, nationality, sex, sexual orientation, civil status, birth, age, property, religious or philosophical conviction, current or future state of health, disability, language, political conviction, physical or genetic characteristic or social origin”.

⁸ Notably, from the correctional courts of Bruges, Brussels, Dinant, Louvain, Malines, and Tongres, as well as from the Hainaut and Anvers Assize Courts, and the Appellate Court of Brussels.

2019, a best practice guide on the citizens' complaints procedure, also covering discrimination offences was issued by the Secretary of State Security. In parallel, Circular 7/2019 of the Prosecutor General's Office provided guidelines for the interpretation of hate crimes under Article 510 of the Criminal Code, emphasising that, when investigating violent incidents, national authorities have an additional obligation to take all reasonable steps to uncover any racist motives and to determine whether ethnic hatred or prejudice was involved in the events.

In addition, a specific section for hate crimes has been created within the Prosecutor General's Office, which is responsible for identifying hate crimes, analysing statistical data on the occurrence of the phenomenon of hate incidents and crimes at national level and in specific areas, as well as identifying the groups or collectives most at risk.

As regards the applicant, the investigation procedure (*Diligencias previas*) into the applicant's complaints was terminated in March 2007, by order of the Provincial Court of Palma de Mallorca. The proceedings for minor offences (*Juicio de faltas*) acquitted the accused police officers by a judgment of 6 April 2009. Prescription precluded the reopening of the investigations.

1.4. Combating hate crime against migrants involving private individuals or groups

The case concerns the ineffective investigation into the migrant applicant's attack and injuries caused by a group of armed individuals. The Court found, notably, that the authorities had failed to take into account the general context of racist violence in Athens, despite the then recurrent pattern of assaults on foreigners, carried out by extremist groups.

GRC / Sakir (48475/09)

*Judgment of 24/03/2016,
final on 24/06/2016*

**Final Resolution
CM/ResDH(2022)108**

To prevent recurrence of similar violations, following the facts of the case, Law No. 4356/2015 amended the definition of hate crime under Article 81A of the Criminal Code, removing the precondition that the perpetrator had to feel hatred towards the victim because of his/her race, colour, religion, etc. The selection of the victim by the perpetrator on the basis of characteristics such as race, colour, religion, descent, national or ethnic origin, sexual orientation, gender or disability is now sufficient to characterise the crime as hate motivated. In addition, a Circular issued in December 2018 by the Prosecutor of the Court of Cassation to all the prosecutors, reminded them of their obligations under the Convention and the Greek Constitution and urged them to exercise appropriate severity when responding to acts of racially motivated violence. The circular was also disseminated to the police.

Moreover, two specialised departments for combating racist violence have been established within the Police Directorates of Athens and Thessaloniki to investigate racist crimes. A total of 68 offices (including five in Athens and 63 at the regional level) are responsible for the same task. Special prosecutors for racist violence have been appointed in 24 courts in Greece. In addition, the authorities have introduced continuous training for prosecutors, judges and police on the protection of human rights and on the implementation of legislation on hate offences/crimes, in several cases, drawing expertise from the Council of Europe. Also, the National Council against Racism and Intolerance, in its first National Action Plan against Racism and Intolerance for 2020 – 2023, underlined Greece's determination to implement a zero-tolerance policy against racism and intolerance.

As to the applicant, in response to the Court's judgment, in November 2016, the Prosecutor of the Athens First Instance Court ordered a fresh preliminary investigation into the assault on the applicant. However, as the applicant could not be found at his registered address, the case was closed. In response to the 2019 Committee of Ministers' request to provide information on further action by the investigation, the preliminary investigation was reopened, but further efforts deployed to establish other evidence remained however unsuccessful. In October 2020, the prosecution attempted again to search for the applicant, in order to be able to reclassify the attack as an attempted murder, i.e. a non time-barred crime. However, the police were unable to locate him, and the case was closed but may be reopened if new evidence emerges. However, the police were unable to locate him, and the case was closed but may be reopened if new evidence emerges.

2. Combating hate crime and hate speech against LGBTI persons

This case mainly concerns the authorities' discriminatory refusal to launch an investigation into allegations of extreme homophobic online speech, including undisguised calls for violence targeting the applicants.

*LIT / Beizaras and Levickas
(41288/15)*

*Judgment of 14/01/2020,
final on 14/05/2020*

Execution status: pending

*Action plan/report DH-
DD(2021)852*

In response to the Court's judgment, new Methodological Recommendations for prosecutors and police officers on the conduct of pre-trial investigations into hate crimes and hate speech were approved by the Prosecutor General in March 2020 and widely disseminated to the heads of regional prosecutors' offices and the police. Also, to the extent possible, specialised prosecutors are handling the examination of complaints on hate crimes. In addition, referring to the Court's judgment, regional prosecutors are reviewing their previous decisions (from 2016 onwards) in which they refused the pre-trial investigation of alleged hate crimes and hate speech, to determine the existence of bias-motives (including sexual orientation) as an element of criminal acts or as an aggravating circumstance. Moreover, between 2017 and 2021, a series of targeted trainings for law enforcement authorities, with the participation of the Prosecutor's General's Office, the Government Agent and the Office of Equal Opportunities Ombudsperson were organised and a National Human Rights Forum on hate speech was held in December 2021. Since April 2021, a virtual patrol unit of the Lithuanian Police Office monitors social networks and carries out preventive activity in cyberspace, by collecting information, notably, about alleged hate speech, discrimination, and incitement to hate-motivated violence; this information is transferred to the relevant police unit for investigations. The Prosecutor General's Office also envisages electronic registration and data collection of hate crimes and hate speech. In parallel, examples of domestic courts case-law (including district courts and the Constitutional Court) with extensive references to the Court's case-law on hate crimes and stressing the seriousness of discrimination on sexual orientation were provided; these examples show a positive trend over the last years in eliminating impunity for discriminatory and homophobic hate comments on the Internet.

As regards the applicants, the authorities' initial decision to refuse to start a pre-trial investigation was quashed and, in July 2020, a pre-trial investigation for incitement against any national, racial, ethnic, religious, or other group of people (Article 170§2 of the Criminal Code)

was initiated into 31 comments made by 29 persons. As of December 2021, criminal proceedings were terminated in seven cases and were still pending in 22. In five cases, requests for legal assistance were sent to foreign authorities to question the suspects who live abroad. Given the lapse of time since the facts at issue, the identification of thirteen persons has not yet been possible. However, should their identity be established, investigations could be opened against them if criminal prosecution has not been prescribed by that date.

This case concerns the failure of the authorities to carry out an effective investigation into a verbal and physical attack perpetrated by a group of individuals, motivated by homophobia, against the applicants.

After the facts of the case, the discriminatory grounds of an offence, including sexual orientation, became a statutory aggravating circumstance in the Criminal Code in 2006, obliging the authorities to investigate *ex officio* its impact in a given case. As regards hate speech, incitement to hatred or discrimination against a category of individuals also became punishable in the CC 2006. In addition, following the 2022 legislative amendments, incitement to violence is now also criminalised and the incitement to hatred, discrimination and violence now apply also when the speech is directed against an individual belonging to a protected category.

Moreover, a specialised office to investigate hate crimes was to be created in 2021 within the Criminal Investigation Directorate of the General Inspectorate of the Romanian Police (the "IGPR"). Also, a new methodology for the investigation of hate crime, adopted in October 2020, providing guidance and practical instructions for detecting and investigating hate crime, was largely disseminated to prosecutors, the National Institute for Judiciary, for in the initial and in-service training for prosecutors. Efforts were deployed, including in cooperation with Council of Europe relevant units, to increase the awareness of the officials in the justice system to hate crime and hate speech in general and to enhance their capacity to detect and adequately react to homophobic acts. Furthermore, the National Strategy 2021-2023 on preventing and combating antisemitism, xenophobia, radicalisation and hate speech, was launched to assess the need to strengthen the relevant legislation and enhance the capacity of the domestic authorities to combat these phenomena, promote tolerance, civic education and the society's resilience towards them, and improve data collection.

At the Committee of Ministers' HR meeting of December 2021, the authorities were invited to provide further information as regards, *inter alia*, the concrete measures envisaged to improve reporting and registration of hate crime, as well as the measures required to improve data collection on hate crime to allow an integrated and consistent view of the prevalence of hate crime and the criminal justice system's response to it.

As to the applicants, no further individual measures were possible, as the statutory limitation precluded the reopening of the domestic criminal investigation.

ROM / M.C. and A.C.
(12060/12)

*Judgment of 12/04/2016,
final on 12/07/2016*

Execution status: pending

*Action plans/reports DH-
DD(2018)808, DH-
DD(2017)101*

3. Combating religiously motivated hate crime and hate speech

The case concerns the authorities' failure to protect the applicant, a leading member of the Hare Krishna religious community, from threats and attacks including injuries, most likely

SER / Milanović (44614/07)

*Judgment of 14/12/2010,
final on 20/06/2011*

motivated by religious hatred, and to conduct an effective investigation and prevent the applicant's repeated ill-treatment.

Final Resolution
CM/ResDH(2019)365

In response to the Court's judgment, the Criminal Code was amended in 2012 to introduce the "hate crime" offence and "hate motivation" as an aggravating factor. A new Code of Criminal procedure (CPC 2013) transferred to the prosecution authorities the competence of carrying out investigations, while increasing cooperation between the police and prosecution authorities. In December 2015, the Chief Public Prosecutor issued a binding instruction setting up special records of hate offences, including those motivated by religious hatred. In 2017, the Chief Public Prosecutor issued Guidelines on Prosecution of Hate Crimes to raise awareness among public prosecutors of the importance of prosecuting hate crimes, notably those motivated by religious hatred, in line with the Convention requirements. In 2018, the State Public Prosecutor adopted a new binding instruction for the appellate, higher and basic public prosecutor's offices setting the function of "contact persons for hate crimes", in view of increasing effectiveness and uniformity of approaches to hate crime cases by public prosecutors. The "contact persons for hate crimes", have, *inter alia*, the obligation to monitor and keep the records of hate crimes, carry out consultations with the prosecution authorities, maintain contact with victims of hate crimes, but also with the police and NGOs providing support to the victims. To ensure better assistance to the victims, Information Offices for injured parties and witnesses have been established under the higher public prosecutors' offices in Belgrade, Novi Sad, Nis and Kragujevac.

As concerns discrimination in general, the Law on Prohibition of Discrimination of 2009 became a key instrument in ensuring efficient protection against discrimination, including based on religious affiliation, introducing the victim's right to seek protection from discrimination in civil courts. A Commissioner for Equality was established as an independent institution vested with the competence to investigate cases of discrimination and to propose solutions. Appropriate policy and administrative measures were taken in the context of the Anti-Discrimination Strategy (2013-2018); the Strategy for the Social Inclusion of Roma in the Republic of Serbia (2016-2020); and the National Judicial Reform Strategy (2013-2018). Complaints indicating alleged discrimination on grounds of religious and political beliefs decreased significantly in the period between 2015 and 2018. Moreover, the Constitutional Court banned certain extremist far-right organisations.

As for the applicant, after the Court's judgment, the police made efforts to protect him from further attacks, by checking his house and the surrounding area. Investigations in view of identifying the attackers and those who had incited the religious hatred were carried out but did not lead to any findings. In 2013, the investigations became time barred.

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