

TOOLKIT FOR POLICE OFFICERS

Council of Europe standards on racially
motivated crimes and non-discrimination
with a focus on Roma and Travellers



2022



Roma and Travellers

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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BRIEF NOTES

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A map of Europe with labels indicating the distribution of various Kale groups. The labels are: Finnish Kale (in Scandinavia), Romanichal (in Central Europe), Roma (in Eastern Europe), Romanichal Welsh Kale (in the British Isles), Sinti (in Central Europe), Manush (in Central Europe), Iberian Kale (in the Iberian Peninsula), and Sinti (in Central Europe).

The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the organisation’s work in this field: **Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari, Balkan Egyptians (Egyptians and Ashkali), Eastern groups (Dom, Lom and Abdal); and, groups such as Travellers, Yenish, the populations under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies.**

“Roma” has been the generic term used internationally since the first World Congress in London in 1971, when representatives of these communities also adopted 8 April as International Roma Day, an anthem (Gelem, Gelem) and a flag that represents a people, not a State with defined borders.



The Romani flag: the colour blue symbolises the sky, freedom, spirituality, what is eternal; green symbolises nature, the earth, and the tangible aspects of life. The red 16-spoke wheel not only symbolises the horse-drawn caravan, travelling, growth and progress, but also refers to the Indian origin of the Roma, their “motherland” from where they migrated as early as the 9th century, since the wheel is inspired by the chakra, found on the Indian flag, which has 24 spokes just like the number of hours in a day. [source: Council of Europe factsheets on the Roma]

“Gypsy” is considered by international Roma associations to be an alien term, linked with negative, paternalistic stereotypes, felt to be pejorative and insulting by most of the people concerned (although it is true that this may depend significantly on the context in which is used). In some countries the term “Gypsies” or its national equivalent has no negative connotations or is accepted by the people concerned.

The Council of Europe **“DOSTA” Toolkit against antigypsyism** underlines that the word “Gypsy” in itself is testimony to a negative identification of the Roma. **“Gypsy” is not a scientific term used to designate the ethnic status of Roma, but rather a social denomination derived from a history of social marginalisation and institutional racism.**

ROMA AND TRAVELLERS IN EUROPE

“Rom” means “man of the Roma ethnic group” or “husband”, depending on the variant of Romani or the author. The feminine of “Rom” in the Romani language is “Romni”.

The Roma themselves are divided into sub-groups, some derived from traditional occupations (Kelderash, Lovari, Gurbeti, Churari, Ursari, etc.). They speak variants of Romani (“romani čhib”).

ROMA HISTORY FACTSHEETS

Romani Group Names derived from traditional occupation

Ajdžides

‘bear trainers’
Turkish ayı ‘bear’

Colari

‘carpet-dealers’
Romanian țoală ‘rag’

Kelderari

‘caldron makers’ Roma- nian
căldare ‘caldron’

Mečkara

‘bear trainers’
Bulgarian мечка ‘bear’

Čurari

‘sieve makers’
Romanian ciur ‘sieve’

Keserišťa

‘Grinders’ Hungarian köszörűs
‘grinder’

Ursari

‘bear trainers’
Romanian urs ‘bear’

Fandari

‘soldiers’
Greek φαντάρος ‘soldier’

Kovači

‘blacksmiths’
Slavic kovač ‘blacksmith’

Aurari

‘gold diggers’
Romanian aur ‘gold’

Kanaloš

‘spoon makers’
Hungarian kanál ‘spoon’

Lovari

‘horse-dealers’
Hungarian ló ‘horse’

Rudari

‘miners’
Slavic rudar ‘miner’

Sepetdži

‘Basket makers’ Turkish
sepetçi ‘basket maker’

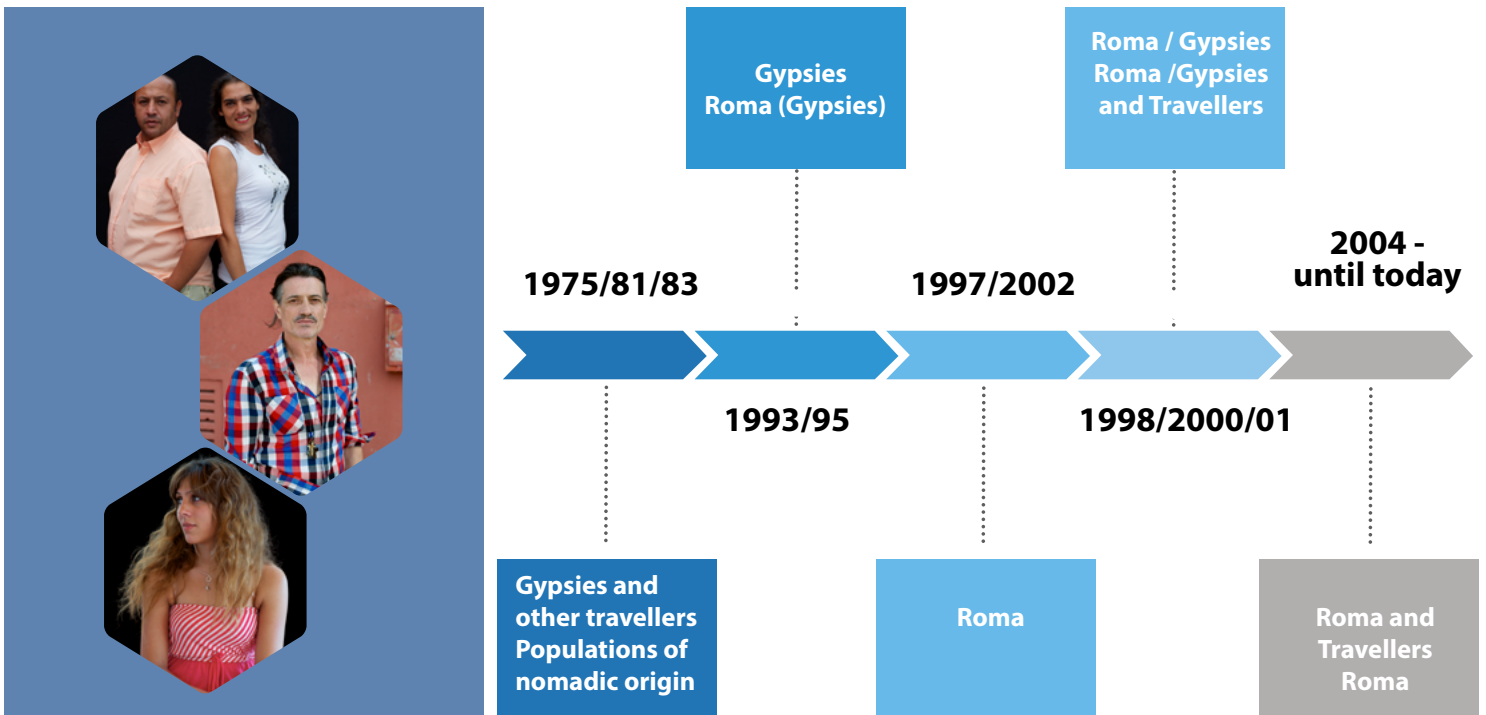
“Sinto” comes from the word “Sind” (an ancient Indian name). The Sinti are to be found primarily in German-speaking regions (Germany, Switzerland, Austria). In France, they are also called *Manush* (Manouches) from the Romani word Manus, meaning “to be human/a man”.

“Kale”, meaning black in Romani, more commonly called “Gitanos” or “Spanish Gypsies”, live in the Iberian Peninsula and in southern France. There is a “Kaalé” group in Finland, and there are Kale in Wales.

“Romanichals” is derived from the Romani “romani čel”, which means Roma people. The Romanichals live in the United Kingdom, mainly in England or south Wales.

“Travellers” are found in Ireland and Great Britain and are ethnically distinct from the Roma, Sinti, Kale. Like the Irish Travellers, the Yenish are an indigenous non-Roma community, mainly living in Switzerland and some neighbouring countries, who originally had an itinerant lifestyle.

TERMINOLOGY USED BY THE COUNCIL OF EUROPE OVER TIME



ESTIMATED NUMBER OF THE ROMA AND TRAVELLER POPULATION IN EUROPE



The average estimate for the number of Roma and Travellers throughout Europe, the geographical area covered by the Council of Europe, is approximately 11 million, with 6 million of these living in the 27 European Union member States. Estimates for the whole of Europe range from 8 to 15 million, so “10 to 12 million” seems to us to be the most appropriate estimation for the Council of Europe area.

COUNCIL OF EUROPE EDUCATION AND INFORMATION FACTSHEETS ON ROMA



The Council of Europe developed a series of brief Factsheets on Roma History, Culture, Language and Literature. These factsheets are available in the languages of various Council of Europe member States. For example, the factsheets on Roma history describe the arrival in Europe of Roma from India, various waves of migration, forced assimilation, deportations, the Holocaust, the concentration camps and State policies under Communism.

1.2 Challenges and problems faced by Roma and Travellers and institutional response at European level during the COVID-19 pandemic

COUNCIL OF EUROPE SECRETARY GENERAL AND EUROPEAN UNION COMMISSIONER FOR EQUALITY, APRIL 2020



"Some European countries have adopted measures that could result in further compromising the human rights of Roma and hampering their equitable access to the provision of basic public services [...]. Online hate speech and fake stories against Roma people are again on the rise. Many Roma in Europe continue to face anti-Gypsyism, discrimination and socio-economic exclusion in their daily lives – despite EU and national rules against discrimination. Negative stereotypes and prejudices are still very much present in our society." Joint Statement by Marija Pejčinović Burić, Council of Europe Secretary General, and Helena Dalli, European Commissioner for Equality



Marija Pejčinović Burić
Secretary General of the Council of Europe

COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS, APRIL 2020



"Roma people living in substandard housing and in segregated settlements across Europe are among the groups most vulnerable to the current COVID-19 pandemic. [...] Roma have been scapegoated and targeted by hate speech in different places in the context of the COVID-19 pandemic. In the current context, there should be no place for hate speech and discriminatory measures. They only exacerbate fears and divisions in societies." Statement by the Council of Europe Commissioner for Human Rights

EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI), MAY 2020



"ECRI's Bureau is alarmed by reports about ongoing difficulties experienced by [...] Roma and migrants, [...] as well as about increased exposure of these groups to hate speech and violence in these times of crisis. [...] the exclusion of the most vulnerable people will further intensify if governments do not take action to [...] counter anti-Roma and anti-migrant hate speech and violence as a matter of urgency."

COUNCIL OF EUROPE ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION FOR PROTECTION OF NATIONAL MINORITIES (FCPNM), MAY 2020



"The COVID-19 pandemic has exacerbated the vulnerability of certain national minorities in many countries and has deepened the already existing inequalities in many Council of Europe member States. Persons belonging to national minorities have often faced discrimination, hate speech and stigma, as well as a lack of relevant information in minority languages. [...] Roma and Traveller communities have been disproportionately hit by the COVID-19 pandemic, many being confronted with limited access to sanitary necessities and services such as clean water and sewage, and significant losses of income for the most vulnerable groups."

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA), AUGUST 2020



"Roma living in marginalised conditions face particular challenges. [...] For example, in employment, lockdowns left those Roma engaged in precarious work unemployed. In education, many Roma and Traveller children, especially those living in informal settlements and encampments ... cannot benefit from online distance-learning measures. In housing, a persisting lack of basic infrastructure, ..., increases the risk of COVID-19 infection. [...] There is evidence of an increase in anti-Roma rhetoric across the media and social networks since the first cases of COVID-19 [...] The media reported on Roma scapegoating when fears of a second wave of COVID-19 infection emerged, but also when concerns arose about if the chronically underfunded national health systems could withstand the continued burden of COVID-19 patients. [...] A number of violent incidents have also been reported."

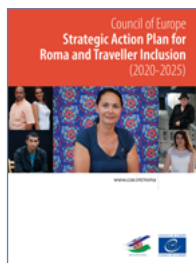
ISSUES OF CONCERN RELATING TO POLICE AND PROFILING OF MINORITIES, INCLUDING ROMA



"ECRI has heard many accounts of racist police abuse, including racial profiling and acts of violence, towards minority groups or migrants. ... Racial profiling constitutes a specific form of racial discrimination. It generates a feeling of humiliation and injustice among those groups that are subjected to it, results in their stigmatisation, negative stereotyping, and alienation, and hinders good community relations. Furthermore, as concluded by the European Court of Human Rights, the perception by police officers of persons belonging to a particular community as "criminals" and the ensuing practice of racial profiling can result in "institutionalised racism". ECRI's statement on racist police abuse, including racial profiling, and systemic racism (July 2020)

COUNCIL OF EUROPE STRATEGIC ACTION PLAN FOR ROMA AND TRAVELLER INCLUSION 2020-2025

The Committee of Ministers of the Council of Europe adopted the Strategic Action Plan for Roma and Traveller Inclusion on 22 January 2020. The Action plan covers the period 2020-2025.



The Action Plan takes note that despite many efforts and some progress made there is still ample evidence showing that Roma and Travellers in Europe continue to suffer from widespread and persistent antigypsyism, which is recognised as a specific form of racism fuelled by prejudice and stereotypes. Roma and Travellers remain victims of various forms of discrimination, including hate speech and hate-motivated violence in many member States. This is borne out by judgments of the European Court of Human Rights, results of the monitoring activities of the Council of Europe and surveys conducted by the European Union Agency for Fundamental Rights (FRA).

The objectives of the Action Plan are to promote and protect the human rights of Roma and Travellers, to combat antigypsyism and discrimination, and to foster inclusion in society. The Strategic Action Plan focuses on the following areas:

COMBAT ANTIGYPSYISM



Combating antigypsyism and discrimination in its diverse forms by raising awareness of the Organisation's standards and instruments, fostering their application and implementation and supporting access to justice

PARTICIPATION



Ensuring the effective participation of Roma and Travellers in decision-making processes

IMPLEMENTATION



Improving implementation of national and local level Roma inclusion strategies in the areas of inclusive education and local policies (including effective public services).

Implementation of the Strategic Action Plan will be overseen by a Council of Europe steering committee ensuring co-operation with member States. The Committee of Ministers will be regularly informed about progress made on the implementation of the Action Plan. A midterm review will be carried out in 2022, with a final evaluation planned for 2025.

MEASURES IN THE STRATEGIC ACTION PLAN TO COMBAT ANTIGYPSYISM

In combating anti-Roma and anti-Traveller prejudice, discrimination and hate crimes the Council of Europe Action Plan requires a combination of the following measures:

- ▶ legal responses and standard-setting work (on combating hate speech and hate-motivated violence).
- ▶ training of the legal professionals, public authorities and law enforcement in Council of Europe standards and relevant case-law of the European Court of Human Rights.
- ▶ capacity building of national, regional and local level authorities and civil society.
- ▶ specific empowerment for particular groups, such as Roma women and youth.
- ▶ awareness-raising actions for the general public.

EUROPEAN UNION ROMA STRATEGIC FRAMEWORK FOR EQUALITY, INCLUSION AND PARTICIPATION FOR 2020 - 2030



In October 2020, the European Commission launched its new Strategic Framework relating to Roma in the European Union. The European Commission underlined that discrimination on the grounds of racial or ethnic origin persists in the EU. This is particularly true for Roma, who often remain marginalised. Many of the continent's estimated 10-12 million Roma continue to face discrimination, anti-Gypsyism and socioeconomic exclusion in their daily lives.

Therefore, the European Commission considered that strengthened commitment is necessary to tackle persistent discrimination, including antigypsyism, and to improve inclusion of Roma people in education, employment, health and housing. The Commission has proposed minimum targets for 2030 that include:



Fighting and preventing antigypsyism and discrimination

- Halve the number of Roma who experience discrimination
- Decrease by at least a third the proportion of the general population who feel uncomfortable having Roma neighbours



Reducing poverty and exclusion



Education



Housing



Employment



Healthcare

IMPLEMENTATION AND FOLLOW UP OF THE EU STRATEGIC FRAMEWORK

EU Member States will submit national strategies by September 2021 and report on their implementation every two years. National strategies should set out measures in line with the EU framework and include, for example, measures to tackle antigypsyism and discrimination, segregation in education and housing, and anti-Roma prejudices and stereotypes (including on line).

The Commission will monitor progress towards the 2030 targets. There will also be an in-depth mid-term evaluation of the new 10-year plan in its entirety.

1.3 Vulnerable groups and police work

In line with the **European Code of Police Ethics** all police personnel shall act with integrity and respect towards the public and with **particular consideration** for the situation of individuals belonging to **especially vulnerable groups**. Furthermore, police **investigations shall be objective and fair, sensitive and adaptable** to the **special needs** of persons such as children, juveniles, women, minorities, including ethnic minorities, and **vulnerable persons**.

DETERMINANTS OF VULNERABILITY

The criteria used when determining what categories may be considered as vulnerable interlinked with the extent to which groups of people are marginalised, socially excluded, have limited opportunities and income, suffer from any kind of abuse, prejudice and stereotyping or discrimination, suffer from poverty and related risks, etc.

WHO IS VULNERABLE?

Several categories of people often encounter structural discrimination, have difficulties defending themselves and are therefore in need of special protection. Examples of groups or persons that may be seen as vulnerable and more exposed to risk situations are people with disabilities, HIV infected people, the elderly, ethnic minorities, asylum seekers, refugees, IDPs, homeless people, children, single mothers, orphans, etc.

The European Court for Human Rights (ECtHR) refers to people that are in a vulnerable situation and require State involvement in their protection such as:

- ▶ **Persons held in custody.**
- ▶ **Detainees with intellectual disabilities.**
- ▶ **Detainees with a health condition** including HIV.
- ▶ **Juveniles in detention.**
- ▶ **Children** taken by police questioned.
- ▶ **Victims of domestic violence, victims of sexual offences or victims of human trafficking.**
- ▶ **Asylum seekers.**
- ▶ **Roma.**

VULNERABLE GROUPS SUBJECT TO VIOLENCE

The police are required to take reasonable and effective measures to protect individuals and particularly vulnerable group members from violence based on gender, LGBT status, religion, race or ethnic origin.

The police shall take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in violent incidents. The same duty to investigate is applicable when other bias motivations come into play, such as religious hatred, disability, sexual orientation or gender-based discrimination.



PROTECTING ROMA FROM RACIALLY MOTIVATED VIOLENCE

- Police must take preventive measures when racist manifestations against Roma and Travellers threaten fundamental values of society.
- Steps must be taken to ensure the physical and psychological integrity of Roma in the context of openly racist demonstrations.
- Steps must be taken to unmask any racist motive when a person makes credible assertions of harassment motivated by racism.
- Thorough investigations must be conducted when racially motivated offences are committed against Roma.

EUROPEAN UNION LEGAL FRAMEWORK ON VICTIMS' RIGHTS

The **EU Victims' Rights Directive** establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect. They must also receive proper protection, support and access to justice.

EU countries had to implement the provisions of the Directive into their national laws by November 2015. A **report** on the implementation of the Victims' Rights Directive was published by the European Commission in May 2020.

The first-ever **EU strategy on victims' rights (2020-2025)** was adopted in June 2020. The strategy presents five key priorities: effective communication with victims and a safe environment for victims to report crime; improving support and protection to the most vulnerable victims; facilitating victims' access to compensation; strengthening cooperation among all relevant actors; and strengthening the international dimension of victims' rights.

VULNERABILITY IN THE CONTEXT OF EU VICTIMS' RIGHTS

In line with EU Directive 2012/29/EU victims must have the right to understand and to be understood during contact with an authority, to receive information from the first contact with an authority, to make a formal complaint and receive written acknowledgement, to interpretation and translation, to receive information about the case's progress, and to access victim support services.

Official Journal		L 315
of the European Union		
English edition		Volume 55
Legislation		14 November 2012
Contents	I Legislative acts	page
	DIRECTIVES	
	* Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (1)	1
	* Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	57
	* Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (1)	74
(1) Text with EEA relevance		

The EU Victims' Rights Directive establishes that persons who are particularly vulnerable should be provided with specialist support and legal protection.

Victims who have been identified as vulnerable to victimisation, intimidation and retaliation should be offered appropriate measures to protect them during criminal proceedings.



POLICE TRAINING RELATING TO VULNERABLE VICTIMS

Article 25 of the EU Victims' Rights Directive establishes that EU Member States shall ensure that officials likely to come into contact with victims, such as police officers, receive both general and specialist training, to a level appropriate to their contact with victims, to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

This is very much in line with the Council of Europe Code of Police Ethics, which calls for all police personnel to act with integrity and respect and with particular consideration for the situation of individuals belonging to especially vulnerable groups.

TRAINING FOR POLICE TO ENHANCE PERFORMANCE IN PROTECTING ROMA

Two ECRI General Police Recommendations **No 13 on Combating Antigypsyism and Discrimination against Roma** and **No 11 on Combating racism and racial discrimination in policing** underline the need for Council of Europe member states to raise police awareness of the problems Roma face and train them to deal with those problems, particularly violence and racist crimes, in order to better prevent and combat these phenomena, and also to train the police in human rights and relevant legislation, particularly in order to improve their relations with Roma communities.

The **Strategic Action Plan on the Inclusion of Roma** adopted in 2020 by the Committee of Ministers of the Council of Europe envisages training for law enforcement in Council of Europe standards and relevant case-law of the European Court of Human Rights with the aim to enhance the performance of the institutions protecting the rights of Roma and Travellers.



2. STEREOTYPING, PREJUDICE, ANTIGYPSYISM

2.1 Stereotypes and Roma related issues

FIXED, OVERSIMPLIFIED AND WRONG IDEAS ABOUT SOMEONE

[STEREOTYPE] a widely held but fixed idea that people have about someone, an idea that is oversimplified and wrong; stereo-types may also be linked with the mental pictures or images held about someone belonging to a particular group.

IRRATIONAL ATTITUDE DERIVING FROM PRECONCEIVED OPINIONS

[PREJUDICE] an unfair attitude formed from preconceived or unfounded opinions, unreasonable feelings or opinions.

FACT-CHECK: COUNCIL OF EUROPE CONCERNS ON ROMA STEREOTYPING

The Council of Europe's Commissioner for Human Rights pointed out that in recent years **public leaders, including elected representatives**, religious representatives and even national-level court officials, have publicly used racist or **stigmatising rhetoric** against Roma and Travellers.

Many Europeans volunteer detailed, **stereotypical descriptions** of Roma appearance and behaviour as a result of having absorbed this general cultural understanding.

Media reporting can **perpetuate stereotypes**, for example by unnecessarily referring to the Roma ethnicity of alleged perpetrators of crime, or by only reporting on Roma in the context of articles on social problems such as begging or drug addiction.

Antigypsy stereotypes that are prevalent throughout Europe – such as the idea that Roma are disproportionately reliant on welfare or are the exclusive perpetrators of various kinds of crimes – pose significant obstacles to overcoming negative attitudes towards these persons.



Antigypsyism, a term indicating the specific expression of biases, prejudices and stereotypes that motivate the everyday behaviour of many members of majority groups towards the members of Roma and Traveller communities, is deeply rooted in Europe.

In a case where Romanian Police were criticised for making reference to ethnicity in public information notes only when the alleged perpetrators were of Roma ethnic background, the Romanian equality body held that such practice amounts to ethnic discrimination. The Romanian Police no longer issue such public communications.

EXAMPLES OF GOOD PRACTICE BY POLICE

Following the report of the **European Commission against Racism and Intolerance (ECRI) on Greece** calling upon the Greek authorities to take measures to raise the awareness of civil servants on issues of racism and discrimination, one of the first state authorities to respond was the Greek Police. By means of an internal bulletin (ref. no. 7100/26/5ε, dated 4 August 2004) issued by Greek Police Headquarters, all police services were ordered to first examine if there was a need to refer to the ethnic origin of a member of the Roma community in any document issued or oral statement made by a member of the Greek Police, and second, should such a need arise, then only the internationally accepted term Rom/Roma or tsinganos (a term that generally has no pejorative connotations in Greece) should be used. The use of degrading terms such as athinganos was forbidden.

The European Commission against Racism and Intolerance (ECRI) observed that Czech authorities had taken steps to ban the use of the term “inadaptable” by state employees in the course of their duty. ECRI recommended that the term “inadaptable” in specific reference to Roma not be used in any official capacity. **ECRI report on the Czech Republic, December 2020**



2.3 Stereotypical references to Roma in cases before the European Court of Human Rights

STEREOTYPES AND PREJUDICE MAY GIVE RISE TO SUSPICIONS OF DISCRIMINATION

In the judgment delivered in April 2019 in the case of [Lingurar v Romania](#), the European Court of Human Rights made a direct reference to stereotyping of Roma communities and the impact generated by the use of stereotypes in the work and operations of the police.

In the police intervention plan drafted prior to the police raid the authorities identified the ethnic composition of the targeted community and referred to the alleged anti-social behaviour of ethnic Roma and the allegedly high crime rate among Roma. **The authorities perceived the Roma community as anti-social and criminal and automatically connected ethnicity to criminal behaviour.**

In the case of [Petropoulou-Tsakiris](#) the European Court of Human Rights noted that the Deputy Director of Police made tendentious general remarks in relation to the applicant's Roma origin throughout the administrative investigation. In particular, the Court was struck by the findings stating that: "the complaints are exaggerated ... It is in fact a **common tactic employed by the athinganoi** (a pejorative Greek word for Roma) to resort to the extreme slandering of police officers with the obvious purpose of weakening any form of police control." The Court considered that the general assertion that complaints raised by Roma were exaggerated and formed part of their common tactic disclosed a general discriminatory attitude on the part of the authorities.

In the case of [Stoica v. Romania](#) the European Court of Human Rights considered that "the remarks from the police report describing the villagers' alleged **aggressive behaviour as 'pure Gypsy'** are **clearly stereotypical** and prove that the police officers were not racially neutral, either during the incidents or throughout the investigation". The Court was further "dissatisfied that the military prosecutor did not address in any way the remarks from the police report describing the villagers' alleged aggressive behaviour as 'purely Gypsy', although such remarks are clearly stereotypical".



NEGATIVE STEREOTYPING MAY IMPACT THE SENSE OF IDENTITY AND SELF-WORTH

In cases relating to discriminatory language, verbal abuse or harassment against Roma, the European Court of Human Rights has underlined that any negative stereotyping of a group, when it reaches a certain level, is capable of affecting the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense, it can be seen as affecting the private life of members of the group. (**Aksu v. Turkey, R.B. v. Hungary, Kiraly and Dömötör v. Hungary, Lingurar v. Romania**).

In **Panayotova and Others v. Bulgaria** the European Court referred to a material entitled **"Gypsy criminality – A Danger for the State"** published by Ataka, a political party described in the case as "an extreme nationalist party". It included nineteen pages of purported excerpts from media articles describing a range of offences said to have been carried out by Roma, with titles such as "A Chronology of Gypsy Banditry", "12 Gypsies Beat Three Youngsters to a Pulp", "Gypsies Control Prostitution in the Country", "Gypsies Beat Up and Rape Two Girls for Over an Hour", "Gypsies Beat Up an Old Man Over 5 Levs", "Gypsies Kill Their Only Child After a Drunken Binge", "Gypsies Sell Babies in Greece for 500 Levs Apiece", "Gypsies Dig Up a Grave and Loot It". Nearly all the titles contained the word "Gypsy", and some referred to the people concerned as "monsters", "savage and pitiless Gypsies", "brazen Gypsies" and "Roma scum".

In **Kiraly and Dömötör v. Hungary** the European Court referred to demonstrations, speeches and statements related to Roma criminality. Speeches decried crimes committed by members of the Roma community, called for the reintroduction of the death penalty, called on demonstrators to sweep out the "trash" from the country, to revolt and to chase out the treasonous criminal group, saying that Roma were not "normal", that the **Roma minority was genetically encoded to behave in a criminal way**, and declared that the only way to deal with the Roma was by applying force; if the authorities did not live up to their obligations to protect civilians from Roma criminality, this would be done by the population itself. Following the speeches, demonstrators marched on the neighbourhood inhabited by the Roma community, chanting "Roma crime", "Roma, you will die", "We will burn your house down and you will die inside", "We will come back when the police are gone", and obscene insults. They also called on the police not to protect the Roma residents from the demonstrators, and to let them out from their houses.

In the case of **Vona v. Hungary** the European Court of Human Rights stated that organising a series of rallies allegedly in order to keep “Gypsy criminality” at bay by means of paramilitary parading can be regarded as implementing a policy of racial segregation.

The national courts in the case found that the use of “Gypsy criminality” represented a **generalisation, clearly based on racial and ethnic grounds, that violated the principle of equal human dignity**.

STEREOTYPES RELATING TO OTHER GROUPS IN VIOLENCE CASES

In its case-law the European Court of Human Rights refers not only to stereotypes or stereotypical views about Roma but about other groups or individuals, relating to sex, sexual orientation, religion or belief etc. in the context of violence, and the issue of protection afforded by state authorities, including the police.

Gender stereotypical views and the passivity of state authorities relating to domestic violence against women were discussed in **Opuz v. Turkey** and **Eremia v. Moldova**, among other cases.

Religious stereotypical views and the passivity of state authorities relating to violence against members of certain religious groups has been discussed, for example in the cases of **Begheluri and Others v. Georgia**, **Members (97) of the Gldani Congregation of Jehovah's Witnesses, Milanovic v. Serbia**.

Homophobic stereotypical views and the passivity of state authorities relating to LGBT-based violence was discussed, inter alia, in the cases of **Identoba and Others v. Georgia** and **M.C. and A.C. v. Romania**.

RELEVANT ASPECTS FOR CONSIDERATION BY STATE AUTHORITIES, INCLUDING POLICE



In order to combat anti-Gypsyism and discrimination against Roma, member States need to ensure that **the name used officially for the various Roma communities is the name by which the community in question wishes to be known (ECRI Recommendation no.3 on combatting racism and intolerance against Roma/Gypsies, ECRI recommendation no. 13 on combatting antigypsyism and discrimination against Roma)**.

As underlined by ECRI, the use of **existing stereotypes by the police may result in racial profiling**, whereby certain groups of persons designated on grounds such as race, colour, language, religion, nationality or national or ethnic origin are presumed to be more prone than others to commit offences or certain kinds of offences.



Racial discrimination and **racial profiling reinforce prejudice and stereotypes about certain minority groups** and legitimise racism and racial discrimination against them among the general population. **ECRI Recommendation no. 11 on combatting racism and racial discrimination in policing**.



ETHNIC PROFILING THROUGH POLICE OPERATIONS IN ROMA COMMUNITIES

CASE STUDY

Four members of the Roma applicant's family were badly beaten by police officers who forced their way into the home during a planned police raid. The intervention involved 85 police officers and gendarmes, including members of the Rapid Intervention Squad, members of the criminal investigation department and criminal forensics officers. The police considered the use of force necessary as the Roma individuals were provocative and disrespectful. No action was taken against this alleged abusive behaviour.

The police intervention plan drafted prior to the raid included identification of the ethnic composition of the targeted community referring to the anti-social behaviour of ethnic Roma and the alleged high crime rate among Roma. Investigators made similar assertions, explaining the alleged aggressiveness by ethnic traits or habits "specific to Roma".

European Court of Human Rights judgment

In the case of **Lingurar v. Romania**, the European Court held that a police special forces operation mounted on a Roma settlement was in violation of **Article 3** alone and together with **Article 14** (right to protection from discrimination).

- ▶ It is important to note that the European Court effectively found two violations of Article 14 together with Article 3.
- ▶ First, after examining the police intervention plan that had been drafted regarding the police operation in the Roma settlement, the European Court noted that the main reason adduced for the operation was the **alleged anti-social behaviour** of the Roma inhabitants of the settlement together with their **alleged high criminality**.

- ▶ The police investigators who reviewed the applicants' complaints also noted that violent resistance to the operation was to be expected as aggressiveness was a characteristic **"specific to Roma"**. This led the European Court to conclude that all the Roma inhabitants of the settlement, including the applicants, had been targeted by the police operation because they were perceived as being criminals – in other words, the police considered that **belonging to a particular ethnic group** (in this case the Roma) was, in and of itself, evidence of criminal tendencies. This, according to the European Court, amounted to ethnic profiling and was in violation of **Article 14** together with the substantive aspect of **Article 3**.
- ▶ Second, even though there was strong evidence that the police operation was racially motivated, especially if the **institutionalised racism** (as attested to by numerous reports by United Nations and Council of Europe bodies, such as the Advisory Committee and Commissioner for Human Rights) and numerous incidents of racially motivated police ill-treatment of Roma were taken into account, the domestic authorities did not attempt to shed light on this issue.
- ▶ This failure to investigate whether the police operation was prompted by racial bias constituted a second violation of **Article 14** together with the procedural limb of **Article 3**.

CASE STUDY

A police operation was carried out in a Roma community with the declared purpose of searching for wanted persons and objects originating from criminal activities. The operation involved 63 officers, including 15 from the rapid-reaction force, and 23 vehicles. R.R. and R.D. alleged that they were badly beaten by the police. They argued that the operation was a retaliation for an earlier incident involving the throwing of stones at a police car. A decisive factor was related to institutional racism against Roma in the police.

European Court of Human Rights judgment

The facts of the case **R.R. and R.D. v. Slovakia** are broadly similar to those of Lingurar. The Slovak police mounted a police operation on an area inhabited by Roma, with the objective of arresting wanted persons and seizing stolen objects. R.R. and R.D. declared that they had been ill-treated by the police.

- ▶ The European Court's judgment in R.R. and R.D. v. Slovakia duly illustrates how careful it is in imputing racial motives to police officers. The European Court noted that the police operation was not a spontaneous one; rather, the police had ample time at their disposal to plan it and allocate the necessary police resources.
- ▶ The European Court also paid attention to the fact that the operation was repeatedly described in the operational plan as "a repressive search operation"; nevertheless, such operations had no legal basis under domestic law. It also noted that there was evidence that such operations often take place in Roma areas, a point also made by the Public Defender of Rights (Ombudsman).
- ▶ Nevertheless, this was not enough for the European Court to hold that the police operation was racially motivated. At the same time, however, the European Court found a violation of the procedural limb of **Article 3** together with **Article 14** owing to the failure of the competent authorities to investigate whether the police operation might have been informed by racist considerations.
- ▶ Interestingly enough, and even though the European Court also held that there was a separate violation of the substantive limb of **Article 3** on account of the **disproportionate use of force** by the police against the two applicants, it also held (endorsing the relevant aspect of the domestic investigation) that there was **no evidence** that their ill-treatment by the police was **racially motivated**.
- ▶ The European Court was also **critical** of the rather **exaggerated claims** by the two applicants as to the extent and seriousness of their injuries, noting that **there was no evidence** that they suffered sustained and brutal beating as they alleged.



3. COUNCIL OF EUROPE STANDARDS AND BODIES RELEVANT FOR THE WORK OF THE POLICE

3.1 Instruments and Principles relevant for policing

STANDARDS APPLICABLE FOR POLICING MINORITIES, INCLUDING ROMA

The European Convention on Human Rights



The European Convention on Human Rights requires the police to respect human rights irrespective of the person's racial or ethnic origin of individuals. Article 14 of the European Convention on Human Rights provides for human rights guarantees as well as for protection against discrimination. Protocol 12 to the Convention has afforded a range of protection which extends to the enjoyment of the rights set forth in domestic law and guarantees that no public authority, including the police, shall discriminate against any individual.

The Framework Convention for the Protection of National Minorities



The Framework Convention for the Protection of National Minorities binds state authorities to protect minorities, including the Roma, against harassment, discrimination, or violence. Under Article 6 of the Convention "The Parties undertake to act appropriately to protect persons who may be subject to threats or acts of discrimination, hostility or violence because of their ethnic, cultural, linguistic or religious identity".


The Convention on Cybercrime



The Convention on Cybercrime provides for the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The Convention is the first international treaty on crimes such as computer-related fraud committed over the internet and other computer networks, calling for their punishment under criminal law. Its additional protocol extends its provisions to racist and xenophobic material on the internet, as well to racially motivated offences (such as threatening or insulting a person on the internet on account of his or her ethnic origin).


The European Code of Police Ethics

The European Code of Police Ethics outlines specific guidelines for police when dealing with ethnic minorities and vulnerable persons. According to the Code:

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- ▶ The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and non-discrimination.
 - ▶ Police personnel shall act with particular consideration for the situation of individuals belonging to especially vulnerable groups.
 - ▶ Police investigations shall be objective, fair, sensitive and adaptable to the special needs of persons, including ethnic minorities and vulnerable persons.
 - ▶ Police shall provide the necessary support, assistance and information to victims of crime, without discrimination.


The European Commission against Racism and Intolerance

European Commission against Racism and Intolerance (ECRI) **General Policy Recommendation No. 11** refers specifically to police and combatting racial discrimination. According to the Recommendation:


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- ▶ Racial and ethnic profiling by police shall be prohibited.
 - ▶ Control, surveillance or investigation must be exercised based on the reasonable suspicion standard, not on ethnic origin.
 - ▶ Racial discrimination or racially motivated misconduct by the police shall be effectively investigated
 - ▶ The police shall fully take into account the racist motivation of ordinary offences .
 - ▶ The police should establish dialogue and cooperation with members of minority groups.

ECRI **General Policy Recommendation No. 13** deals in particular with principles on combatting antigypsyism and discrimination against Roma, including by police. According to the Recommendation:

Antigypsyism is a specific form of racism, an ideology founded on racial superiority, a form of institutional racism nurtured by historical discrimination, which is expressed, among other ways, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination.

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- ▶ The police should conduct thorough investigations of racist crimes and acts of violence against Roma, and into all allegations of police misconduct towards Roma, so that perpetrators are prosecuted and punished.
 - ▶ The police should take measures to promote Roma recruitment to the police force.
 - ▶ Mediators, in particular from the Roma population, should be engaged in order to ensure a liaison between Roma and the police.
 - ▶ The police should receive special training concerning human rights, issues affecting Roma, the legislation on racially motivated crimes and its implementation as concerns Roma victims.

ECRI **General Policy Recommendation No. 15** sets out a series of measures that the police and other criminal justice actors should adopt relating to hate speech.



Hate speech is the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons, and the justification of all the preceding types of expression, on the ground of «race» (ethnicity), colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status.



Police, prosecutors and judges should:

- ▶ Ensure that criminal proceedings against hate speech are not used as a pretext to suppress criticism of official policies, religious belief or public figures.
- ▶ Duly investigate and apply proportionate sanctions in relation to hate speech offences.
- ▶ Refrain from disclosing the ethnic origin of the alleged perpetrator(s) of an offence unless such disclosure is strictly necessary for criminal law purposes, as such disclosure reinforces negative stereotypes and cannot be easily remedied.
- ▶ Adopt protocols or arrangements ensuring their effective co-operation and co-ordination in tackling hate speech, as well as exchanging good practices among them.
- ▶ Ensure effective cooperation with their counterparts from other states in dealing with the transfrontier dissemination of hate speech, be it in electronic or physical format.



Similar standards on policing have been promoted by the European Union. The European Parliament, in its **Resolution on fundamental rights aspects in Roma integration in the EU: fighting antigypsyism**, called upon EU member States to, inter alia, provide mandatory human-rights-oriented and in-service training to police officers, set up anti-hate crime units with knowledge of anti-Gypsyism in their police forces and also to encourage the recruitment of Roma as police officers.



NET-KARD Project noted that in Catalonia, Spain, the Regional Police adopted an initiative whereby Roma elders or other respected persons of a Roma community would act as informal mediators between their communities and the police. Thus, before planning any intervention in a Roma community the police would first seek advice and background information from the mediator with a view to forming an effective plan of action. According to the police, this initiative has enabled them to better understand the context of incidents to which they are called to respond, thus allowing them to adopt a more fit-for-purpose approach and avoid over-policing. This in turn has led to greater acceptance of the police by the Roma.



In Slovenia police are placing a significant emphasis on community policing, which is a topic covered during basic police training as well as in the context of in-service police training activities. Police officers meet with members of the Roma community, learn about their customs and also have the option for a course in basic conversational Romani (Roma language) in the local dialect. According to an evaluation of the training programme (which was still being implemented in 2016), the police officers receive valuable skills for their interaction with Roma communities, leading to fewer offences being committed and an increase in the number of offences reported to the police by Roma. However, perhaps the programme's greatest accomplishment has been the forging of close links between police and Roma participants in this training, with some of the latter volunteering to act as informal mediators between the police and members of the Roma community.



ECRI welcomed the Slovak authorities' plan to recruit **2,000 Roma** as members of civil patrols that will work together with the police in improving security for Roma, and considered that in the future they could be provided with additional training with a view to joining the police. ECRI also considered it highly important that the Košice region chief of police decided to not authorise any further large-scale police operations in Roma areas, and welcomed the decision to provide police officers with body cameras, noting that the cameras would also make it easier for police officers to protect themselves from false allegations of police brutality.

3.2 The Council of Europe Institutions relevant to Human Rights work

The principles of the rule of law and the enjoyment by all persons within the Council of Europe's jurisdiction of human rights and fundamental freedoms are pursued primarily through the following organs and bodies of the Council of Europe:



The Committee of Ministers



The Parliamentary Assembly

The **Committee of Ministers** is the Council of Europe's statutory decision-making body. Its role and functions are broadly defined in Chapter IV of the Statute among which is the supervision of the implementation of the European Court of Human Rights judgments.

The **Parliamentary Assembly** is the deliberative organ of the Council of Europe, debating matters within its competence and presenting its conclusions, in the form of recommendations, to the Committee of Ministers.



The Congress of Local and Regional Authorities

The **Congress of Local and Regional Authorities** is responsible for strengthening local and regional democracy.



The Commissioner for Human Rights

The **Commissioner** is an impartial non-judicial institution to promote awareness of and respect for human rights. The Commissioner's activities include country visits, thematic reporting and awareness-raising activities. ***Commissioner's report on Roma issues or country reports.***

The European Commission against Racism and Intolerance (ECRI)

ECRI is a human rights body composed of independent experts which, in addition to issuing General Policy Recommendations such as the ones referred to above, monitors problems of racism and discrimination, prepares reports and issues recommendations to Member States. ***ECRI's latest country reports***

The Advisory Committee on the Framework Convention for the Protection of National Minorities

The Advisory Committee is the independent expert committee responsible for evaluating the implementation of the Framework Convention. Its findings are set out in detailed country-specific opinions. ***Latest Advisory Committee's opinion per country***

The monitoring bodies' authoritative reports are not only important in their own right but also because the **European Court of Human Rights often takes them into consideration as background evidence**. It is therefore very likely that if a monitoring body has flagged an issue as problematic in a particular country (such as the prosecuting authorities' persistent failure to investigate whether an offence might have been racially motivated), the European Court of Human Rights will reach a similar conclusion in its judgment where that issue is raised.

COUNCIL OF EUROPE BODIES: ISSUES OF CONCERN AND PROMISING PRACTICES ON POLICING MINORITIES, INCLUDING ROMA

A reading of the reports issued by all three bodies in respect of almost all of the Council of Europe member States would reveal that it is not only Eastern and South Eastern European countries that often fail to take adequate measures to ensure that the human rights of Roma and Travellers are respected.

The Commissioner for Human Rights expressed concern over the emergence of virulent hate speech against Roma by politicians in Norway (one of whom stated that "Roma should be cut into little pieces and served to dogs") and racist discourse by public authorities, one of which effectively labelled "gypsies" as trash. ***Commissioner for Human Rights of the Council of Europe, following his visit to Norway 2015***

ECRI considered that the fact that a police force in Sweden set up and maintained a database with the names of 4,700 Roma (including many children below the age of 15), many of whom had not been associated with any illegal activities, amounted to ethnic profiling, and welcomed the Swedish courts' granting of compensation to the Roma affected as a step towards restoring the trust of members of the Roma community in the police. **ECRI Fifth Report on Sweden, 2018**

The Advisory Committee noted that in Germany persons belonging to minorities often do not trust the police because of the continuing practices of ethnic profiling they employ, as well as their failure to properly investigate racially motivated crimes. The Advisory Committee made extensive reference to a notorious case concerning the killing of eight ethnic Turks and one Greek by a far-right German neo-Nazi terrorist group. These killings were originally attributed to a war between rival Turkish mafia groups. It was only when members of the neo-Nazi group killed a German police woman that the police started a more vigorous investigation of these killings. Even then however, the police woman's murder was initially attributed to members of the Roma and Sinti community; when it was subsequently discovered that this was not the case, the police did not retract their original statement. **Advisory Committee, Fourth Opinion on Germany, 2015**

The Advisory Committee was very critical of the Italian authorities' reluctance to sanction anti-Roma hate speech, a reluctance which it said fostered a climate of impunity which in turn emboldened far right extremist groups in staging anti-Roma demonstrations and even carrying out attacks against Roma Advisory Committee. **Fourth Opinion on Italy, 2016**

ECRI was critical of Belgium's failure to put in place a data-collection system for racially motivated crimes that would allow a breakdown of the data by different categories of racial motivation (e.g. anti-Semitic, anti-Roma), and called upon the police and the public prosecutors to adopt common data collection protocols. **ECRI, Sixth Report on Belgium, 2020**

The same bodies, however, often commend Eastern and South Eastern European countries for some of their initiatives and policies on Roma and Traveller integration and their response to racially motivated crimes.

The Advisory Committee noted in respect of Romania that the police had taken steps to build trust between its members and members of minorities and welcomed the efforts made to recruit police officers from different ethnic backgrounds, including Roma. It also approvingly noted that numerous state bodies, from the police to the Superior Council of Magistracy, collected data on racially motivated crimes. **Fourth Opinion on Romania, 2018**

The Advisory Committee made similar remarks regarding North Macedonia, noting that the number of national minorities' members (including Roma) in the police and public administration was increasing, an element that would reinforce the minorities' trust in the police and the state administration in general. **Fourth Opinion on North Macedonia, 2016**

ECRI welcomed the continuous efforts by Croatian authorities to amend their "Hate Crime Protocol", as well as the State Attorney Office's instruction to all state attorneys to ensure that all information regarding racially motivated crimes is diligently collected and maintained. **Fifth Report on Croatia, 2018**

In Bulgaria the Advisory Committee noted that authorities had implemented a range of projects to enhance the effectiveness of law enforcement and prosecutions in the fight against hate crime. They informed the Advisory Committee that the Ministry of the Interior used a manual to train police officers on how to investigate hate crime and that the Police Academy included hate crime in its curriculum. **Fourth Report on Bulgaria, 2020**



3.3 The European Convention on Human Rights and the European Court of Human Rights



The European Convention on Human Rights was the first instrument to crystallise and give binding effect to the rights set out in the Universal Declaration of Human Rights. The Convention is an international treaty that protects and promotes a wide series of human rights. A number of rights have been added to the initial text with the adoption of additional protocols.

By treating it as a **living instrument** with a view to addressing real, everyday problems, the Court has ensured that the Convention is always relevant and up to date. All members of the Council of Europe are parties to the Convention.

THE EUROPEAN CONVENTION'S PROVISIONS RELEVANT TO THE WORK OF THE POLICE

The European Convention on Human Rights and its Protocols set out a series of rights, such as the right to life, the right to privacy and the right to marriage. For the purposes of the toolkit, the rights set out in the Convention can be divided in two categories:

Absolute rights: the enjoyment of these rights (such as the right to protection from torture or the right to protection from slavery or forced labour) cannot be limited in any way. Thus, a practice that is considered to constitute torture would be unlawful under the European Convention and cannot be justified under any circumstances. Moreover, absolute rights cannot be waived – so, for example, a prisoner cannot “agree” to be tortured.

Qualified rights: the enjoyment of these rights (such as the right to life or the right to freedom of expression) can, under certain conditions, be restricted. Thus, the right to life is not absolute because under certain circumstances (such as acting in self-defence) killing someone might not be contrary to the European Convention.

The main articles of the European Convention that are of most relevance to police are the following:



Article 2
Right to life

Article 2, the right to life is a qualified right: any taking of a human life will be unlawful unless it falls under one of the three exceptions set out in the article (defence against unlawful violence, effecting/preventing an arrest, quelling a riot/violent uprising) and provided the use of lethal force is lawful and proportionate, that is, “no more than is absolutely necessary”.



Article 3
Right to protection from torture

Article 3, the right to protection from torture and inhuman or degrading treatment or punishment. An absolute right, it allows for no restrictions. Thus, a practice will either not constitute torture (and therefore Article 3 will not be engaged) or it will, in which case Article 3 will be violated.



Article 8
Right to private and family life,
home and correspondence

Article 8, the right to respect for one's private and family life, home and correspondence. A qualified right, it will not be violated if the interference with that right (e.g. carrying out a house search) is lawful, pursues a legitimate objective and is proportionate to that objective.



Article 11
Freedom of assembly and
association

Article 11 is also a qualified right, it will not be violated if the interference with that right (e.g. dispersing a violent demonstration) is provided for under domestic law, pursues a legitimate objective and is proportionate to that objective.



Article 14
Prohibition of discrimination

Article 14 and Article 1 of Protocol 12 safeguard the right to be treated equally/not to be discriminated against in the enjoyment of one's rights protected under the European Convention and its Protocols and under domestic law, respectively. A difference in treatment is discriminatory if it has no objective and reasonable justification.



A short **video on the European Convention** is available in all the official languages of the Council of Europe.



THE EUROPEAN COURT OF HUMAN RIGHTS

Not to be confused with the Court of Justice of the European Union (CJEU). The **European Court of Justice** is located in Luxembourg City, the capital of Luxembourg and its role is to ensure compliance with European Union laws and rules on the interpretation and application of the treaties establishing the European Union.

The main role of the European Court of Human Rights

The European Court of Human Rights is located in Strasbourg (France). Its main task is to supervise the observance of the European Convention on Human Rights, primarily by examining complaints brought by individuals against states that have signed up to the Convention, or more rarely by states against states.

The roles and powers of the European Court of Human Rights

Laypersons (and others!) often form wrong ideas and opinions about the European Court of Human Rights:

The Court can:

- ▶ Hold, following the examination of a complaint brought before it, that a State has violated its obligations under the European Convention. It can find for example, that a country's law on the use of firearms does not comply with the Convention.
- ▶ Order the payment of equitable compensation that is usually symbolic in nature.
- ▶ Indicate to a State to take measures to ensure that no similar violations take place in the future.
- ▶ Give applicants the opportunity to request the reopening of their case before the domestic courts.

The Court cannot:

- ▶ Overturn judgments or decisions issued by domestic courts.
- ▶ Disregard the assessment of facts as carried out by the domestic courts without very good reason.
- ▶ Pronounce a person guilty or not guilty; the Court does NOT assess personal criminal responsibility. It cannot find a police officer guilty of an offence.
- ▶ It cannot fine a State for violating the European Convention, but it can grant compensation to the applicant.



A short Guide with questions and answers regarding the European Court of Human Rights and its role is available in all the official languages of the Council of Europe.



A short official **video on the European Court of Human Rights** is available in all the official languages of the Council of Europe.



FILING AN APPLICATION WITH THE EUROPEAN COURT OF HUMAN RIGHTS

Anyone who thinks that they are personally and directly the victims of a violation of one or more of their European Convention rights can **file a complaint** with the European Court of Human Rights.

A simplified glimpse of an application's lifecycle would look like this:

- ▶ The potential applicant needs to identify an act or omission, imputable to the State, that they think has violated their rights under the Convention. This action or omission may have been committed either by a state agent or by a third party.
- ▶ The potential applicant needs to have brought their case before the domestic courts and exhausted ALL remedies (appeals, constitutional complaints) that are available, accessible and effective.
- ▶ If they are not satisfied with the final domestic court decision, they can then lodge an application with the Court.
- ▶ If the Court finds that the application is admissible, it will then rule on the case.
- ▶ If, when ruling on the case, the Court agrees with the applicant's claim and finds there was a violation, it may grant compensation to the applicant.
- ▶ In some cases, the Court can also indicate what measures the Government should take in order to provide full redress to the applicant (individual measures), or general measures that aim at ensuring that similar violations do not happen to anyone in the future. These measures can range from the adoption of new legislation to the provision of better training to police officers. The Court will then transmit the judgment to the Council of Europe's Committee of Ministers
- ▶ The Committee of Ministers will supervise the execution of the judgment. It will monitor whether the compensation has been paid to the applicant and if the necessary individual and general measures have been taken.
- ▶ The Committee can request the taking of general measures even if they have not been indicated by the European Court. Only when it is satisfied that the State has taken all the necessary measures to comply with the judgment will the Committee close its examination of the execution of the judgment.

MEASURES ADOPTED FOLLOWING EUROPEAN COURT JUDGMENTS OF RELEVANCE TO THE POLICE

For example, following judgments condemning police inaction **reforms** to address domestic violence have been implemented in **Italy** and **Romania**. Following judgments condemning the use of firearms by police, changes in the rules on the authorities' use of firearms have been put in place in **Bulgaria**. Following judgments condemning the failure to properly investigate alleged police brutality or racist attacks by third parties, **reforms** have been implemented in **North Macedonia**, **Estonia**, **Poland**, Cyprus, **Slovakia**, Hungary, Croatia and **Romania**.

Following a series of judgments concerning the use of wanton and disproportionate force by police while dispersing demonstrations, the Court indicated to Turkey that it should provide police officers with relevant training (**İzci v. Turkey**). The Turkish authorities held a **series of training activities** for more than 400 senior police officers on crowd control techniques and for 12,652 police officers on the use of tear gas and related equipment.

Following the Court's judgment in the case of **Antayev and Others v. Russia**, which concerned the racially motivated treatment of ethnic Chechens by the police, the Russian authorities took a **series of measures** and developed a system for monitoring potentially racially and religiously motivated crimes. Furthermore, the Prosecutor's Office took steps to enhance cooperation between state agencies and NGOs.

POLICE OFFICERS' HUMAN RIGHTS AND THE EUROPEAN COURT OF HUMAN RIGHTS



The European Code of Police Ethics does not just lay down the responsibilities and obligations of police officers but also sets out their rights. Thus, under the Code:

- ▶ **Police staff shall as a rule enjoy the same civil and political rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law, and in conformity with the European Convention on Human Rights.**
- ▶ **Police staff shall enjoy social and economic rights, as public servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work.**
- ▶ **Disciplinary measures brought against police staff shall be subject to review by an independent body or a court.**
- ▶ **Public authorities shall support police personnel who are subjected to ill-founded accusations concerning their duties.**

In the context of the European Convention on Human Rights and European law, police officers shall have the right to be protected in dangerous situations, and have the necessary equipment, training and adequate resources. If a police officer must stand trial in criminal proceedings for acts performed as an official, all fair trial standards apply. A reasonable expectation of privacy in the workplace for police officers should be ensured, as well as protection against discrimination in relation to recruitment, working conditions, promotions, equal pay, dismissal or harassment. Reasonable working hours and rest periods, adequate remuneration and health regulations should be put in place, sick-leave and invalidity insurance with respect to on-duty accidents, and other social security measures shall be ensured (parental leave, childcare responsibilities, etc.). Many police officers have won cases before the European Court of Human Rights (mostly related to salary issues and other labour disputes).



For example, in the case of *Milojević and Others v. Serbia* the European Court held that the failure to reinstate two of the applicants, police officers who had been dismissed, following their acquittal in criminal proceedings, was in violation of the European Convention. The Serbian Government subsequently adopted a series of measures with a view to ensuring that similar violations of their colleagues' labour rights did not happen again. It should be noted that following the delivery of the European Court's judgment and on its strength, the applicants had the opportunity to request that they be reinstated.



The applicant in the case of *Grace Gatt v. Malta* was a police officer who was found guilty of disciplinary and criminal offences. Ms Gatt was subsequently discharged from the police force and her appeal to the Constitutional Court, in which she alleged that the disciplinary proceedings against her were not fair, was rejected. The European Court held that Ms Gatt's right under Article 6 (right to a fair trial) was violated since the members of the disciplinary board were acting police officers, had no legal training and had been appointed by their superior officer, under whose command they served. Similarly, the police body which ultimately took the decision to recommend that she be discharged could not be considered impartial. In 2019 Malta amended the relevant legislation in order to ensure the independence of police officers sitting as members of disciplinary boards.

THE EUROPEAN COURT OF HUMAN RIGHTS IS AWARE OF THE CHALLENGES FACED BY THE POLICE

The European Court of Human Rights is fully aware of the difficulties (and dangers) the police face every day and takes them into account when reviewing allegations of improper police conduct.



In the case of *P. F. and E. F. v. the United Kingdom* the second applicant, a pupil at a Catholic school in Belfast, had to cross a street inhabited by members of an opposing religious group, who staged protests and often resorted to acts of violence. The police decided against taking direct action to disperse the protesters as they were afraid of more violent reactions. In order to protect the second applicant and other pupils who were facing the same danger, the police suggested that they enrol at a different school. The first applicant, mother of the second applicant, refused. As a result, on every school day the police planned and carried out a large-scale operation, whereby police officers would place themselves between the parents walking their children to school and the violent protesters in order to protect them. These police operations lasted for about two months. When faced with the applicants' allegations that the police had failed to protect them, the European Court held that the police had taken all reasonable steps both to protect the applicants and to ensure that violence would not flare up. The European Court fully shared the risk assessment that was made by the police to the effect that a more forcible form of intervention (i.e. dispersing the violent protesters) would only have led to an escalation of violence all over the city. The European Court also stressed that the adopted course of action was not without cost or risk to the police: during these two months considerable police resources had been expended to ensure that the pupils could walk to the school of their choice, and forty-one officers had been injured. By contrast, no pupil sustained any physical injury during that period.



Loyalists attack
Catholic children in Holy
Cross dispute (2001)





In the case of *McCann and Others v. the United Kingdom*, the Court also highlighted that police officers often have to make split-second decisions on the basis of information that might subsequently turn out to be inaccurate. Thus when special forces soldiers killed, on sight and without warning, suspected terrorists who they reasonably believed at the time to be ready to detonate a bomb that would cause numerous casualties (information that was later found to be wrong), the European Court absolved them of any wrongdoing noting that “To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others”.



In a similar subsequent case, *Armani da Silva v. the United Kingdom*, no criminal proceedings were launched against police special forces officers who, on the basis of operational information that turned out to be wrong, killed a person suspected of preparing to detonate a suicide vest. The incident took place after four unexploded bombs had been found, with the police fearing that another bomb attack would soon take place. The European Court did not find a violation of Article 2, noting that following an administrative inquiry conducted by an independent body, it was established that the special forces soldiers in question had reasonably formed the belief that the suspect was a suicide bomber who could detonate a bomb at any second and that shooting him was the only way of preventing him from doing so.

The European Court is also aware that during investigation into allegations of violation of Articles 2 and 3 police officers can face disciplinary or criminal proceedings. In this case the police officers should enjoy the full panoply of the rights available to defendants in such **proceedings**.



In the case of *Manoli v. the Republic of Moldova* the applicant was a police officer who, along with one of his colleagues, was accused of ill-treating a suspect during his arrest. The first-instance court considered that since the suspects had put up resistance, the use of force by Mr Manoli and his colleague was lawful, and therefore acquitted them. Following an appeal by the Prosecutor's Office, the appeals court quashed the decision and found Mr Manoli guilty and sentenced him to a three-year suspended prison sentence, without however questioning the witnesses or the victims again. The European Court found that the criminal proceedings against Mr Manoli were unfair and in violation of Article 6 of the European Convention (right to a fair trial), since it was of crucial importance for the appeals court to re-examine the witnesses and the victims in order to assess their trustworthiness and not to rely on their depositions. Following the European Court's judgment, the Supreme Court of the Republic of Moldova quashed Mr Manoli's conviction and ordered the reopening of the criminal proceedings against him.

STATE RESPONSIBILITY ENGAGED UNDER THE CONVENTION

State responsibility under the European Convention in relation with Articles 2, 3, 8 alone or in conjunction with Article 14, for acts perpetrated or omissions by state officials, can be engaged in three stages:

A. Before the commission of an act or an omission that falls within the scope of one of these articles (e.g. lack of an adequate legislative framework regarding the use of force, flawed planning of a police operation). This would be called a **substantive violation** of the relevant Article of the European Convention.

B. At the moment when state officials either commit an act in violation of these articles or knowingly allow or fail to prevent third parties from carrying out such an act (e.g. torture committed by a police officer, failure to take operational measures to protect persons from threats posed by private individuals). Also a **substantive violation** of the relevant Article of the European Convention.

C. After the commission of an act prohibited under these articles, by failing to mount an effective investigation to elucidate the circumstances of the act and punish the perpetrator(s), regardless of whether the perpetrator(s) were private persons or state officials. This would constitute a **procedural violation** of the relevant Article of the European Convention.

Examples:

- ▶ A police officer ill-treats a person – violation of Article 3 (substantive violation).
- ▶ A police officer ill-treats a person belonging to a minority while uttering racial abuse against them because they are a member of that minority – violation of Article 3 together with Article 14.
- ▶ A police officer fails to secure crucial evidence at the scene of a crime – violation of Article 3 (procedural violation).
- ▶ A police officer fails to investigate whether a crime was racially motivated - violation of Article 3 together with Article 14.

The European Court has adopted a similar pragmatic approach regarding the extent of the obligations incumbent on the authorities when investigating alleged violations of **Article 2** and **Article 3**, alone or in conjunction with Article 14. The major elements of the effectiveness of investigations, established in the Court's case-law, include independence, adequacy, promptness, investigating special motives of crime, independent oversight, and victim participation.

For an investigation to be considered as compliant with the procedural requirements under these articles, the authorities should take all those measures that are in principle capable of leading to the clarification of the facts of the case, as well as to the identification and punishment of those responsible. This, as the European Court has stressed, is an obligation of means and not of results. In other words, the authorities (namely the police, the prosecutor's office and the courts) have no obligation under the European Convention to always identify the perpetrators of an offence, as this would be impossible. They are rather required to take every reasonable investigative measure that could assist them in identifying the perpetrators.

The European Court of Human Rights has developed five principles for the effective investigation of complaints, including those against the police.

Independence: there should not be institutional or hierarchical connections between the investigators and the police officers under investigation

Adequacy: the investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible

Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law

Public scrutiny: procedures and decision making should be open and transparent in order to ensure accountability

Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests

See **Council of Europe's Commissioner for Human Rights Opinion** on effective determination of complaints against the Police

See Department for the Execution of the European of Human Rights' judgments, **factsheet** on Effective investigation standards into death or ill-treatment caused by security forces



4. COUNCIL OF EUROPE STANDARDS ON NON-DISCRIMINATION RELEVANT FOR THE WORK OF THE POLICE

4.1 Principles and Instruments

The **European Code of Police Ethics** outlines key standards relevant for police work. The principle of non-discrimination is of utmost importance in the police, as both an organisation and a provider of a service for the public.

The Police organisation

- ▶ The police organisation shall ensure the integrity and proper performance of police staff, in particular to guarantee **respect for individuals' fundamental rights**.
- ▶ Recruitment procedures shall be based on objective and **non-discriminatory grounds**.
- ▶ Police staff shall enjoy social and economic rights, **as public servants**, to the fullest extent possible
- ▶ Police staff shall as a rule enjoy the same civil and political rights **as other citizens**.
- ▶ **Police training** shall take full account of the need to challenge and combat racism and xenophobia.

Police as a rights promoter and defender

- ▶ The police shall carry out their tasks in a fair manner, guided, in particular, by the principles of impartiality and **non-discrimination**.
- ▶ The police, in carrying out their activities, shall always bear in mind **everyone's fundamental rights**.
- ▶ Police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially **vulnerable groups**.
- ▶ Police investigations shall be objective and fair, sensitive and adaptable to the **special needs** of children, juveniles, women, minorities, including ethnic minorities, and vulnerable persons.
- ▶ Police shall provide the necessary support, assistance and information to victims of crime, without **discrimination**.

ECRI Revised Recommendation no. 7 outlines the standards applicable for national legislation to combat racism and racial discrimination. Civil and administrative law should provide that the prohibition of discrimination applies to all public authorities, including the activities of the police and other law enforcement officials.



- ▶ The law should clearly define and prohibit direct and indirect racial discrimination, discrimination by association, announced intention to discriminate, instructing another to discriminate, inciting another to discriminate, aiding another to discriminate, and harassment.
- ▶ The law should place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions.

Criminal law should penalise racial discrimination in the exercise of public office or occupation. Criminal law should penalise:

- ▶ Public incitement to violence, hatred or discrimination, public insults and defamation or threats against a person or a group of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.
- ▶ The public expression, with a racist aim, of an ideology which claims superiority over, or which depreciates or denigrates, a group of persons on the grounds of their race, colour, language, religion, nationality or national or ethnic origin.
- ▶ The creation or leadership of a group which promotes racism, support for such a group and participation in its activities.
- ▶ The law should provide for one or more independent bodies entrusted with the investigation of alleged acts of discrimination committed by members of the police.

NON-DISCRIMINATION: FUNDAMENTAL PRINCIPLE OF INTERNATIONAL AND EUROPEAN LAW

Non-discrimination is one of the central themes of **international human rights law**. It is included in the Charter of the United Nations, the **Universal Declaration of Human Rights** and all successive major human rights instruments and human rights treaties.

Non-discrimination is a fundamental principle of the Council of Europe framework, including the **European Convention on Human Rights** and related Council of Europe legal instruments.

The non-discrimination principle is one of the fundamental values of the European Union. The **Treaty on EU**, the **EU Charter of Fundamental Rights** and **various Directives** prohibit discrimination on any grounds.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND DISCRIMINATION

The **European Convention on Human Rights** guarantees protection against discrimination, including by police.

Article 14 of the Convention prohibits discrimination in the enjoyment of the “rights and freedoms set forth in the Convention”. Article 14 specifically prohibits discrimination based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Article 1 of Protocol No. 12 extends the scope of protection against discrimination to “any right set forth by law”. It thus introduces a general prohibition of discrimination and a “free-standing right” not to be discriminated against.

From its establishment until October 2020 the **ECtHR delivered 300 judgments** finding discrimination on different grounds.

The notion of discrimination has been interpreted consistently by the European Court of Human Rights in its **case-law concerning Article 14** of the Convention. The Court established that discrimination means treating people in relevantly similar situations differently without any objective or reasonable justification.

For example, discrimination occurs when the police, for no objective reason, treat a person differently than others in similar situations on the basis of a particular characteristic, or fail to treat people differently when they are in significantly different situations, or apply neutral policies in a way that has a disproportionate negative impact on individuals or groups.



4.2 Forms of discrimination in European law relevant for Police

FORMS OF DISCRIMINATION: COUNCIL OF EUROPE PRACTICE AND EUROPEAN UNION LAW

Direct discrimination

Article 14 does not provide a definition of what constitutes direct discrimination. However, in the case-law of the European Court of Human Rights **direct discrimination** describes a “difference in treatment of persons in analogous or relevantly similar situations” and “based on an identifiable characteristic” or “status” protected by Article 14.

The **EU Racial Equality Directive** states that direct discrimination is taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.



In *Antayev and others v. Russia* the European Court noted that internal police instructions referred to treating suspects of a certain ethnic origin in a particular manner. The European Court found it established that in the applicants’ case ethnic origin was the sole, or at least the decisive reason for the involvement of special police services in the searches at their homes and could not accept that such a difference in treatment between suspects could be based on actual or perceived ethnicity. The applicants showed that they had been subjected to discrimination and racist verbal abuse from the police. When they complained about this the investigator had refused to record certain statements, especially ones relating to the ethnically motivated nature of the attacks against them and the ethnic insults uttered by the police. The European Court noted that while no thorough examination of possible racial motives had taken place and no explanation for this failure was offered, it was apparent that the investigation had ignored possible racial motives.

Discrimination by association

The European Court of Human Rights has confirmed that Article 14 also covers **discrimination by association**, that is, situations where the protected ground in question relates to another person somehow connected to the applicant.

The European Court of Justice held that **discrimination by association** in the context of employment is contrary to the prohibition of discrimination and that direct discrimination is not limited only to people who themselves present a protected characteristic.



In *Škorjanec v. Croatia* the applicant and her partner of Roma origin were assaulted by two individuals who uttered anti-Roma insults. The European Court stressed that the obligation on the police to seek a possible link between racist attitudes and a given act of violence, which was part of the responsibility incumbent on states under Article 3 taken in conjunction with Article 14, also concerned acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possessed a particular status or protected characteristic.



In *Coleman v. Attridge Law* and *Steve Law* the European Court of Justice held that where an employer treats an employee who is not himself disabled less favourably than another employee in a comparable situation, and it is established that the less favourable treatment of that employee is based on the disability of his child, whose care is provided primarily by that employee, such treatment is contrary to the prohibition of direct discrimination.

Harassment and instruction to discriminate

According to the case law of the European Court of Human Rights **harassment and instruction to discriminate** can be seen as particular manifestations of direct discrimination. The Court has found violations of Article 14 in cases of harassment and instruction to discriminate.

Harassment features as a specific type of discrimination under the **EU non-discrimination directives**. **Harassment** shall be deemed to be discrimination when unwanted conduct related to a protected ground takes place with the purpose or effect of violating the dignity of a person and/or creating an intimidating, hostile, degrading, humiliating or offensive environment.

The **EU non-discrimination** directives state that an **instruction to discriminate** is deemed to constitute discrimination, but do not provide a definition of what is meant by the term.



In *Đorđević v. Croatia* the applicants, a mentally and physically disabled man and his mother, complained that the authorities had failed to protect them from harassment and violence perpetrated by children. The European Court noted that the police had been aware of the situation of serious harassment directed against a person with physical and mental disabilities and they were obliged to take reasonable measures to prevent further abuse. The European Court considered that the authorities, including the police, failed to properly address the acts of violence or to put in place any relevant measures to prevent further harassment.



In *Timishev v. Russia* the European Court noted that a senior police officer ordered traffic police officers not to admit "Chechens". As, in the Government's submission, a person's ethnic origin is not listed anywhere in Russian identity documents, the order barred the passage not only of any person who actually was of Chechen ethnicity, but also of those who were merely perceived as belonging to that ethnic group. It was not claimed that representatives of other ethnic groups were subject to similar restrictions. In the European Court's view, this represented a clear inequality of treatment in the enjoyment of the right to liberty of movement on account of one's ethnic origin.

Multiple or Intersectional discrimination

EU law and Article 14 of the Convention do not define multiple or intersectional discrimination. **Multiple discrimination** describes discrimination that takes place on the basis of several grounds operating separately.

Intersectional discrimination describes a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable.



In *B.S. v. Spain* a female sex worker of Nigerian origin and legally resident in Spain alleged that the police abused her physically and verbally on the basis of her race, gender and profession. She claimed that, unlike other sex workers, of European origin, she was subjected to repeated police checks and racist and sexist insults. The European Court considered that the decisions made by the domestic courts failed to take account of the applicant's particular vulnerability inherent in her position as an African woman working as a prostitute and found a violation of Article 14 in conjunction with Article 3. The European Court took a clearly intersectional approach, but without using the term "intersectionality".



In *Alković v. Montenegro* a Roma man and his family were harassed by neighbours for being both Roma and Muslim. They were subjected to racial and religious slurs, death threats, graffiti painted on their door, attacks on their car, and gunfire aimed at their apartment. The European Court focused on two of the most threatening incidents and criticised the police for the manner in which the investigation had been carried out. The European Court found that the applicant had not been provided with the required protection of his right to psychological integrity given the fact that the applicant was Roma as well as Muslim.

Indirect discrimination

According to the case-law of the ECtHR **indirect discrimination** may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, has a particular discriminatory effect on a particular group. Although the policy or measure at stake may not be specifically aimed or directed at a particular group, it might nevertheless discriminate against that group in an indirect way.

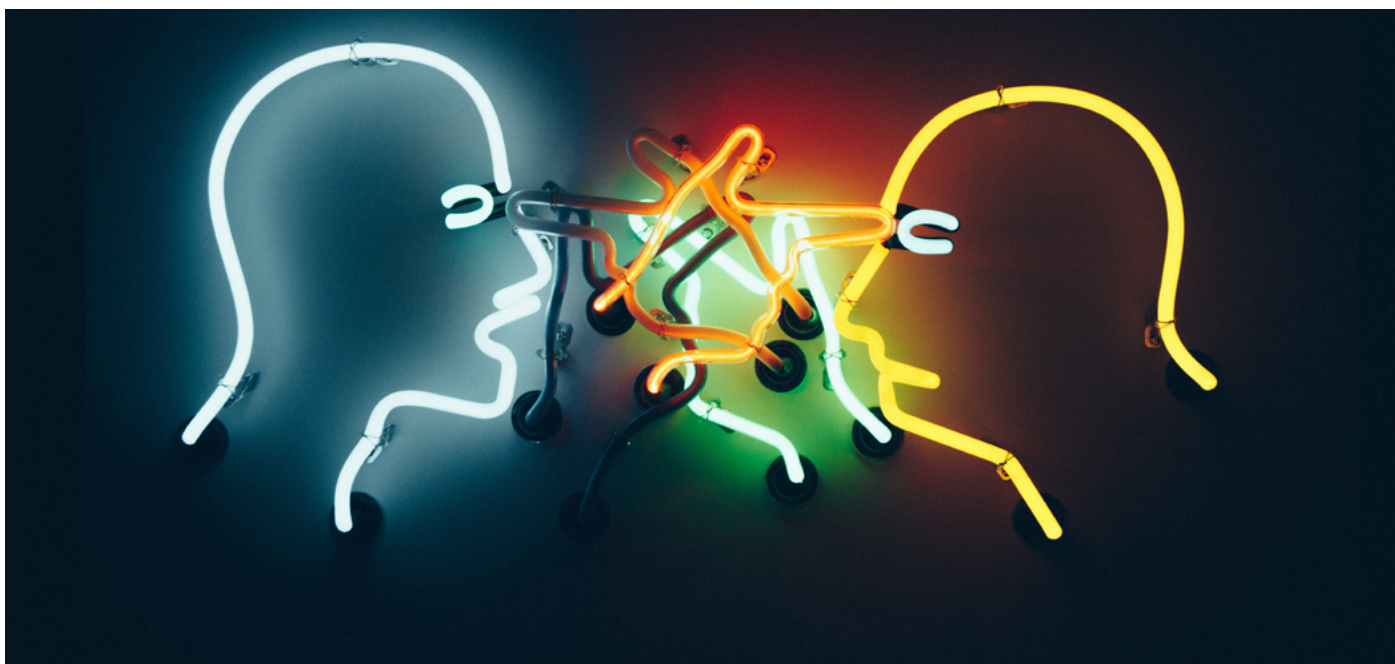
Under EU law, the Racial Equality Directive states that **indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared to other persons.



In *Opuz v. Turkey*, a case involving violence against women, Turkish law in force at the time of the facts did not make explicit distinction between men and women in the enjoyment of rights and freedoms or in access to justice. Thus, the discrimination in that case was not based on the legislation *per se* but rather resulted from the general attitude of the local authorities, such as the manner in which women were treated at police stations when they reported incidents of domestic violence, and judicial passivity in providing effective protection to victims.



In *Ypourgos Esoterikon v. Maria-Eleni Kalliri* the applicant brought a complaint regarding the rejection of her application for police school due to insufficient height (2cm below the threshold). The default height requirement for such applicants under Greek rules was 170 centimetres for both men and women. The European Court of Justice held that a much larger number of women than men are less than 1.70m tall, such that, by the application of that law, women are very clearly at a disadvantage compared with men as regards admission to the competition for entry to the Greek Officers' School and School for Policemen. It follows that the law at issue in the main proceedings constitutes indirect discrimination.



4.3 Violence caused by discriminatory attitudes and relevant obligations for police

Under the **European Convention on Human Rights**, the prohibition of discrimination entails an obligation to combat crimes motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation or gender identity.

The **EU non-discrimination directives** do not oblige member States to use criminal law to address acts of discrimination. However, the **Framework Decision of the European Council on combating certain forms and expressions of racism** obliges all EU member States to provide for criminal sanctions in relation to incitement to violence or hatred based on race, colour, descent, religion or belief, national or ethnic origin, as well as dissemination of racist or xenophobic material and condoning such action.

The **Victims' Rights Directive** establishes minimum standards on the rights, support and protection of victims of crime including victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics.

A **report on the implementation of the Victims' Rights Directive** was published in May 2020 by the European Commission.

The **European Court of Human Rights** has examined cases of **violence caused by discriminatory attitudes** under both the substantive and the procedural limbs of Articles 2, 3, 8 and 14 where violence was based on the victim's:

- ▶ **Gender** e.g. **Opuz v. Turkey**, **Eremia v. the Republic of Moldova**, **Halime Kılıç v. Turkey**, **M.G. v. Turkey**.
- ▶ **Race and ethnic origin** e.g. **Nachova and Others v. Bulgaria**, **Moldovan and Others v. Romania**, **Makuchyan and Minasyan v. Azerbaijan and Hungary**.
- ▶ **Religion** e.g. **Milanović v. Serbia**, **Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia**, **Kornilova v. Ukraine**, **Zagubnya and Tabachkova v. Ukraine**.
- ▶ **Political opinion** e.g. **Virabyan v. Armenia**.
- ▶ **Sexual orientation** e.g. **Identoba and Others v. Georgia**, **M.C. and A.C. v. Romania**, **Sabalić v. Croatia**.
- ▶ **Disability** e.g. **Đorđević v. Croatia**.

The **European Court of Human Rights** held that state authorities, including the police, have a **positive obligation** to protect individuals against violence, specifically when they were informed about the risk of lethal or serious bodily harm.

State authorities, including the police, have a duty to **prevent violence** caused by discriminatory attitudes on the part of private individuals of which the authorities had or ought to have had knowledge, or to intervene in order to protect victims of crime related to the acts of private parties.

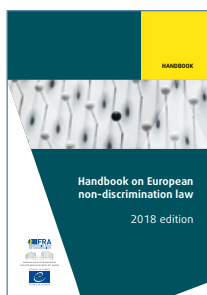
The European Court emphasised that, while the choice of appropriate means of deterrence was in principle within the state's margin of appreciation, effective deterrence against serious acts required **efficient criminal law provisions**.

The European Court ruled that states have an **obligation to investigate** the existence of any possible discriminatory motive behind an act of violence, and that overlooking the bias motivation behind a crime amounted to a violation of Article 14 of the European Convention on Human Rights.

The authorities must **do what is reasonable** in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of discrimination-fuelled violence.

The European Court has said that authorities, including the police, have the **additional duty** to take all reasonable steps to unmask any racist motive and to establish whether or not discriminatory hatred or prejudice may have played a role in the event. This approach extends the protection offered by the European Convention on Human Rights to members of **vulnerable groups** who are victims of hate crime, regardless of whether that abuse is perpetrated by state agents or third parties.

Violence with underlying discriminatory motives constitutes an **aggravated form of human rights infringement**. This should be reflected in the way investigations are conducted, and victims supported and protected.



A comprehensive **guide to European non-discrimination law** has been published jointly by the European Court of Human Rights and the **European Union Agency for Fundamental Rights** and is available in various Council of Europe languages.



A brief paper on member State authorities' duty to effectively investigate the **bias motivation of crimes** has been published by the **European Union Agency for Fundamental Rights**.



The Council of Europe has published a **Toolkit for Police Officers** which focuses on Council of Europe standards on racially motivated crimes and non-discrimination of Roma and Travellers.



5. RACIALLY MOTIVATED CRIMES IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

5.1 Defining and understanding the concepts of Racially Motivated Crime and Racist Incidents

What is a racially motivated crime ?

By racially motivated crime (also known as “hate crime” or “bias motivation crime”) we refer to a criminal offence committed intentionally against a person or his / her property, exclusively or at least partly on account of that person’s or object’s actual or perceived possession of, or association with, a particular characteristic prescribed by law (such as race, religion, disability).

A victim of a racially motivated crime does not have to be a member of a vulnerable social group – in fact, anyone could be a victim of such a crime. What is important in classifying a criminal act as a racially motivated crime is the perpetrator’s belief that his / her victim is a member of a particular group.

Why should the Police treat racially motivated crime with priority ?

The **European Court of Human Rights** has acknowledged the particularly damaging impact of racially motivated crime on victims and has held that the police and prosecuting authorities should give precedence to the investigation and sanctioning of such crimes: “Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 (the right to protection from discrimination) of the Convention.”

OSCE definition of racially motivated crime

The **OSCE** refers to racially motivated crime as “**hate crime**” and defines it as “[...] a crime that is motivated by bias towards a certain group within society”. For a criminal act to qualify as a hate crime, it must meet two criteria: **a) The act must be a crime under the criminal code of the legal jurisdiction in which it is committed and b) The crime must have been committed with a bias motivation.**

FRA definition of racially motivated crime



The European Union and the Fundamental Rights Agency (FRA) use the term “hate crime(s)”, which they define as follows : “[hate crime is] violence and crime[s] motivated by racism, xenophobia, religious intolerance or by a person’s disability, sexual orientation or gender identity”.

FRA adopts a more sociological approach regarding hate crime and is particularly concerned about its impact on the victims and society. It stresses that hate crimes impact on the rights of persons at three levels: individual, group and societal. Thus a hate crime does not only violate the human rights and human dignity of the victim (the individual level), it might also incite other persons to commit such crimes (group level). Last, a hate crime perpetuates distinctions within the members of a society, thus undermining the formation of a pluralistic and tolerant society.

What is a racist incident ?

A concept related to racially motivated crime is that of the racist incident, defined by ECRI in its **General Policy Recommendation No. 11** on combatting racism and racial discrimination in policing (2007) as “any incident which is perceived to be racist by the victim or any other person”.

Adopting such a wide-ranging definition of the term racist incident is important for the following reasons:

- ▶ It conveys the message to victims of hate crime that their voices will be heard and that they can have confidence and trust in the police.
- ▶ It allows the police to form a comprehensive picture of the occurrence and manifestations of racism in society, as well as monitor the criminal justice system’s response to that phenomenon.
- ▶ It ensures that all potentially racially motivated crimes will always be investigated effectively by, for example, ensuring that the police will take all appropriate measures at the scene of the crime with a view to securing the necessary evidence. Conversely, the belated classification of a crime as racially motivated might have deprived the police and the prosecuting authorities of crucial material.
- ▶ It gives the police an insight into the perpetrator’s motives and might explain his/her subsequent criminal behaviour.

An important tool in ensuring that all racist incidents are adequately monitored and registered is the employment of a racist incident form such as the one developed by the OSCE and available in **English** and **Russian**.



5.2 Typology of Racially Motivated Crimes before the European Court of Human Rights

CRIMES COMMITTED BY MEMBERS OF EXTREMIST GROUPS

CASE STUDY

Mr Šečić, a person of Roma origin, was attacked when collecting scrap metal in Zagreb. Two unidentified men beat him with wooden planks and shouted racial abuse at him, while two other men kept watch. Shortly afterwards the police arrived, interviewed people at the scene and made an unsuccessful search for the attackers. Mr Šečić sustained multiple rib fractures and was later diagnosed with post-traumatic stress disorder.

Information subsequently emerged that similar attacks had taken place against other members of the Roma community and a victim of one of the attacks gave a description of his assailant. Moreover, during a TV interview a young skinhead admitted taking part in some of these attacks and seemingly also referred to the attack on Mr Šečić. The police failed to question the person identified by the victim of one of these attacks. Moreover, the police requested from the journalist who took the interview to disclose the young skinhead's identity but when the journalist refused, invoking his right to protect his sources, they did not press the issue further.

European Court of Human Rights

In **Šečić v. Croatia** the European Court found a violation of the procedural limb of **Article 3** alone and together with **Article 14** due to the numerous failures by the police and prosecuting authorities in the criminal investigation that took place.

- ▶ Although the investigating authorities had concluded that skinheads known to have participated in similar incidents had carried out the attack, they did not question anyone belonging to that group or follow up on the information.
- ▶ Moreover, they had failed to question an individual identified by an eyewitness. Nor had the police sought a court order to compel the journalist to reveal the person he had interviewed, who was a member of the skinhead group behind the attack and openly expressed his hatred of Roma.
- ▶ Seeking such an order would not necessarily have been incompatible with the freedom of the media guaranteed under Article 10 of the Convention, since it would have been for the competent court to weigh up all the interests and to decide whether the source's identity should be revealed.
- ▶ The European Court placed particular emphasis on the fact that the applicant's attackers were suspected of belonging to a group of skinheads. It was in the nature of such groups to be governed by extremist and racist ideology.
- ▶ Accordingly, knowing that the attack was probably the result of ethnic hatred, the police should not have allowed the investigation to drag on for more than seven years without taking any serious steps to identify or prosecute those responsible.

Legal developments as a result of the European Court's judgment

Following the European Court's judgment, **Croatian authorities** undertook a series of wide-ranging measures to ensure effective criminal investigations in racially motivated crimes.

Racial motivation was introduced as an aggravating circumstance in the Criminal Code, while the Code of Criminal Procedure was also amended, giving the State Attorney's Office more supervisory power in the context of criminal investigations.

In addition to training courses for police officers, a **specialised police unit on racially motivated crimes** was set up; the unit is operational all over Croatia and consists of police officers who have received dedicated training on racially motivated crimes.

A **data collection system on racially motivated crimes** was set up, while the State Attorney's Office issued a document entitled **Instructions on handling hate crime cases**, setting out the measures that state attorneys need to adopt when investigating a potentially racially motivated crime.

In 2011, the **Protocol for Procedure in Hate Crime Cases** was adopted; the document outlines the measures police and other state officials should take when tackling racially motivated crimes. Under the Protocol, police should also gather information on groups that might commit racially motivated crimes.

Good police practice

Various police and security forces have drafted manuals or guides with information on the different signs and symbols used by extreme right-wing and neo-Nazi groups.

These manuals, such as the one prepared by the **Greater Manchester Police Counter Terrorism Branch Prevent Team** or the one prepared by the **Federal Republic of Germany's domestic intelligence service**, allow police officers and other state officials, as well as interested parties such as NGOs, to easily ascertain whether a sign or a symbol they come across in their line of work might indicate an attachment to an extremist ideology.



OFFENCES COMMITTED BY EXTREME RIGHT GROUPS DURING DEMONSTRATIONS

CASE STUDY

Mr Kiraly and Mr Domotor were Hungarian nationals of Roma origin. An anti-Roma demonstration was held in their locality. Speeches were made following which demonstrators marched between houses inhabited by Roma, threatening the inhabitants and engaging in acts of violence.

The two men complained that the authorities had failed in their obligation to either ban the holding of the demonstration or protect them from racist threats uttered in the course of the anti-Roma march, and to conduct an effective investigation into the incident.

European Court of Human Rights

In **Király and Dömötör v. Hungary** the European Court noted that the police had undertaken measures with a view to ensuring that the demonstration would not lead to violence. It did not disagree with the decision taken by the police not to ban the demonstration, but considered that the police had acted professionally and their decision to allow the march to take place was not unreasonable, especially as they had taken measures to ensure that no harm would come to the Roma inhabitants of the locality.

- ▶ The European Court also considered that the **threats uttered against the Roma** in the course of the demonstration did not actually materialise into concrete acts of physical violence against the applicants themselves.
- ▶ Nonetheless, the European Court considered that the fact that certain acts of violence had been carried out by at least some of the demonstrators and that following the speeches the demonstrators had **marched in the Roma neighbourhood** shouting threats would have aroused in the applicants a well-founded fear of violence and humiliation, all the more since they could not react by leaving, and thus constituted a **captive audience**.
- ▶ The threats had been directed against the Roma inhabitants because they **belonged to an ethnic minority**, and had thus necessarily affected the feelings of self-worth and self-confidence of its members, including the applicants.

- ▶ The European Court was very critical of the manner in which the **criminal-law mechanisms** had been implemented, which it held to be in violation of the respondent State's positive obligations under **Article 8** (right to respect for private and family life).
- ▶ The domestic authorities should have paid **particular attention** to the specific context in which the **racist statements** were uttered. In particular, the authorities should have taken into account the fact that the event had been organised at a time when marches involving large groups and targeting the Roma were taking place on a scale that could qualify as large-scale, coordinated **intimidation**.
- ▶ The European Court noted that **racist statements** taken together with the context in which they were expressed could constitute a clear and imminent **risk of violence** and could cause apprehension to their recipients. Even though the police could not be held to be under an obligation to ban the holding of the demonstration, they, together with the prosecuting authorities, should have **reacted more effectively** during and after the end of the demonstration.
- ▶ The European Court stated that despite the size of the demonstration and the number of violent incidents that took place, the police questioned **only five demonstrators**. That course of action had not been capable of leading to the establishment of the facts of the case and did not constitute a sufficient response to the true and complex nature of the situation. On the contrary, such an inefficient reaction risked conveying the message to the public that such racist demonstrations were, if not legitimised by the state, then at least tolerated.

Legal developments as a result of the European Court's judgment

Following the European Court's judgment as well as other similar judgments (**Balázs, M.F., R.B.**), the **Hungarian authorities** undertook a series of wide-ranging measures to ensure effective criminal investigations in racially motivated crimes. In 2019 the Hungarian National Police Headquarters adopted an **Instruction on Police Tasks Related to the Handling of Hate Crime** which contains a wide definition of what constitutes a racially motivated crime. Such a crime can now be held to have taken place when the perpetrator chooses to commit an offence in a venue or against property belonging (or presumed to belong) to a **specific group**. This would therefore apply to demonstrations such as the ones that took place in the **Király and Dömötör case**.

The Instruction also includes a **list of bias indicators** to be used when investigating an alleged racially motivated crime. Additionally, a series of **training courses for police officers** and prosecutors had already taken place and further courses were envisaged, while the Investigation Authority and Prosecution Service database was revised and now allows for the collection of racially-motivated offences, including the type of racial motivation.

Good police practice

ECRI welcomed the **Czech police's decision** to not authorise anti-Roma protests by extremist groups in or near areas where Roma live, as such protests often degenerated into violence against Roma, and noted that representatives of the Roma communities had expressed their satisfaction with this decision.



CRIMES COMMITTED RANDOMLY AGAINST ROMA

CASE STUDY

Ms Yotova was of Roma origin and had decided to throw a party at her house two days after serious altercations had occurred between some youths of Roma origin from the village where she lived and some youths of Bulgarian origin from a nearby village.

At about midnight, some shots were fired from a car towards the front gate of her house and the applicant was hit in the chest, shoulder and arm. Following the attack, she was declared over 75% disabled.

The authorities carried out a series of investigative acts and questioned a number of ethnic Bulgarian youths from the nearby village, but in the light of the random nature of the incident did not pursue a line of inquiry into the potentially racist nature of the incident.

European Court of Human Rights judgment

In **Yotova v. Bulgaria** the European Court found a violation of the procedural limb of **Article 2** alone and together with **Article 14**.

- ▶ The European Court noted that the applicant had alerted the investigating authorities to the possibility that the crime against her was **racially motivated**, but the authorities did not consider her complaint or launch an inquiry into it.
- ▶ The European Court found the investigation was deficient and particularly criticised the failure of the authorities to **question the accused** ethnic Bulgarian youths about their general attitude towards Roma.
- ▶ Furthermore, the investigating authorities failed to ascertain whether one or more of these young men had **taken part in racially motivated** violent incidents in the past or whether they subscribed to an extremist or racist ideology.
- ▶ The suspects were not questioned regarding the existence of any link between the previous altercation between Roma and non-Roma and the event in question (namely the shooting of the applicant).
- ▶ The above shortcomings in the investigation were found by the Court to be in violation of the procedural aspect of **Article 2** (right to life) in conjunction with **Article 14** (right to protection from discrimination).

Legal developments as a result of the European Court's judgment

Following the European Court's judgment and other similar judgments, the **Bulgarian authorities** introduced a series of wide-ranging measures to ensure effective criminal investigations in racially motivated crimes.

It should be noted that **Yotova** was not the first case against Bulgaria regarding deficient and ineffective criminal investigations, including criminal investigations into racially motivated crimes. As a result, some of the measures referred to below were adopted in the context of the execution of other cases raising similar issues to Yotova, such as **Angelova and Iliev v. Bulgaria** and **Abdu v. Bulgaria**.

The Criminal Code was amended and now the commission of an offence on grounds of racial motivation is an aggravating circumstance. Moreover, the Prosecutor's office carried out an in-depth analysis of all the judgments against Bulgaria in which the European Court found the criminal investigation deficient, and published a report setting out a series of measures to improve criminal investigations in general and investigations into racially motivated crimes in particular.

Good police practice

The lack of any apparent motive is one of the racially motivated crime indicators as highlighted in the **OSCE – Using Bias Indicators: A Practical Tool for Police**, available in **English** and **Ukrainian**.

Instructions adopted by police forces, such as the Instruction of the Hungarian National Police referred to above, and by Prosecutor's Offices, such as the **Greek Supreme Court's Prosecutor's Office Circular 5/2018**, often referring to the OSCE list of bias indicators, note that the absence of any apparent motive might well be an indication that a crime was racially motivated.



CRIMES MOTIVATED BY ASSOCIATION WITH ETHNICITY OR MISTAKEN IDENTITY

CASE STUDY

Ms Škorjanec, who was of Croatian ethnic origin, and her partner, who was of Roma origin, got into an altercation with two people who started pushing the applicant, insulting her and threatening her for being in a relationship with a man of Roma origin.

Soon afterwards one of the attackers grabbed Ms Škorjanec by the t-shirt, threw her to the ground, and kicked her in the head.

The attackers then turned to Ms Škorjanec's partner and, while saying that all Roma people should be killed, started kicking him and even tried to stab him with a knife.

The police filed a complaint against both perpetrators but mentioned Ms Škorjanec only as a witness and not as a victim. The perpetrators were ultimately sentenced to one year and six months' imprisonment for the racially motivated attack on Ms Škorjanec's partner.

Ms Škorjanec filed a criminal complaint of her own, arguing that she too was a victim of a racially motivated crime.

Her complaint was rejected, however, since she was not of Roma ethnic origin, so the attack against her could not have been racially motivated.

European Court of Human Rights judgment

In **Škorjanec v. Croatia** the European Court found a violation of the procedural limb of Article 3 together with Article 14 owing to the failures by the police and prosecuting authorities in the criminal investigation relating to the applicants' complaint of a racially motivated attack.

- ▶ The European Court underlined that both the applicant and her partner repeatedly stated in the course of the criminal proceedings that they considered that the attack on both of them was **racially motivated**. This, the European Court held, should be enough to trigger the **police and prosecuting authorities' obligation to investigate** whether racial motivation played a role in the attack.
- ▶ The European also reiterated that the authorities should have regard to the wider context of the crime as well as bear in mind that perpetrators might have **mixed motives**.
- ▶ The European then held that the authorities, upon receiving credible allegations of a racially motivated crime, should try to ascertain whether a **link** exists between a criminal act and **racial prejudice**, not only in relation to crimes against persons on grounds of their **actual or perceived personal status** or characteristic but also in relation to crimes based on the **victim's actual or perceived association** or affiliation with another person who actually or presumably possesses a particular status or **protected characteristic**.
- ▶ The European Court held that no such investigation took place in the present case, primarily because the authorities considered it crucial that the **applicant was not of Roma ethnic origin**. As a result, the authorities did not try to ascertain whether the applicant was assaulted because of her **association with a Roma person** and whether this perception of an association (on the part of the perpetrators) would be enough to render the crime a racially motivated one. The European held that this failure was in violation of the procedural aspect of **Article 3** in conjunction with **Article 14** (right to protection from discrimination).

Legal developments as a result of the European Court's judgment

In addition to the general measures concerning more effective investigation and punishment of racially motivated crimes that were already in force following the case of *Šečić v. Croatia*, the **Croatian authorities** carried out an in-depth analysis of the European Court's findings in the *Škorjanec* judgment. The analysis was then shared with all domestic authorities dealing with racially motivated crimes

The authorities envisage adopting a new Protocol for Procedure in Hate Crime Cases, inter alia to improve collection of statistical data on hate crime and define the obligations of the competent authorities in a more tailored manner.



CRIMES COMMITTED WITH MIXED MOTIVES

CASE STUDY

Mr. Balázs was a Romani man who after leaving a club in the early hours together with his girlfriend, was involved in a verbal altercation with a group of persons who made disparaging comments about his Roma ethnic origin and the appearance of his girlfriend. A passer-by also joined the scene and soon entered into a fight with Mr. Balázs.

Mr. Balázs lodged a criminal complaint in which he gave a detailed account of the incident, highlighting that his assailant had referred to him as a “dirty Gypsy”; he also submitted material he had found on his assailant’s social network account, in which the assailant bragged that the night before he “had kicked in the head a gypsy lying on the ground”. In another post, the assailant had provided a link to a clip from a well-known film with racist overtones in which the character used explicitly racist language to express his hatred of certain categories of people; the assailant noted in his post that one could add to those categories “some other type of rubbish living among us”, presumably inferring the Roma. The Prosecutor opened a criminal investigation against the person who assaulted Mr. Balázs for committing a racially motivated offence but subsequently discontinued the investigation for lack of evidence that the offence was exclusively motivated out of racial hatred. The perpetrator, who claimed that he had made the two posts for no particular reason, was convicted of disorderly conduct and sentenced to an one-year probation.

European Court of Human Rights

Although the person who assaulted the applicant was found guilty, the European Court in *Balázs v Hungary* still found a violation of the procedural aspect of Article 3 (right to protection from torture/ill-treatment) in conjunction with Article 14 (right to protection from discrimination).

- ▶ Taking the view that not only acts based solely on a victim's characteristic can be classified as racially motivated crimes, the Court acknowledged that perpetrators may have **mixed motives**, being influenced by situational factors equally or more strongly than by their biased attitude towards the group the victim belongs to.
- ▶ As a result, it considered that the prosecutor's concern in establishing whether the perpetrator's motive was **(precisely)** due to the applicant's Roma ethnic origin was misplaced.
- ▶ The European Court was critical of the prosecuting authorities' failure to take into consideration the perpetrator's posts on **social media** after the incident, where he specifically mentioned the applicant's Roma origin, as well as another post where he provided a link to a film scene containing a racist and intolerant message and alluding to the Roma as trash.

Legal developments as a result of the European Court's judgment

The general measures taken by the **Hungarian authorities** following the European Court's judgment are set out in the case of *Király and Dömötör*. The Government adopted measures that apply to a group of cases that include *Balázs, M.F., R.B.* and *Király and Dömötör*.

The measures include the adoption of an **Instruction on Police Tasks Related to the Handling of Hate Crime** which contains a wide definition of what constitutes a racially motivated crime and a list of bias indicators to be used when investigating such crimes, **awareness-raising** activities including training for police officers and prosecutors, data collection and **research on hate crimes**.

CASE STUDY

An off-duty municipal police officer took an illegally purchased gun and drove in his private car to a town with a sizeable Roma community. He stopped in front of the applicants' house, entered the property and, without saying a word, started shooting at the persons who happened to be in the yard. Three members of the applicants' family were shot dead and both Ms Lakatosova and Mr Lakatos were seriously injured.

When questioned by the police, the perpetrator responded that he had been thinking for a long time about doing something about the Roma "problem". He was subsequently examined by psychiatrists who concluded that he had a paranoid personality connected to an intense fear of aggressive behaviour of some Roma towards him or people close to him. He developed a "paradoxically altruistic motive of a radical solution of public order issues in the town, in particular towards the part of it which contained the non-adaptable and problematic Roma people".

European Court of Human Rights judgment

- ▶ In *Lakatošová and Lakatoš v. Slovakia* the European Court found a violation of the procedural limb of **Article 2** together with **Article 14**.
- ▶ Even though the European Court did not dispute the domestic court's findings regarding the perpetrator's diminished responsibility for his actions, it noted that there existed **strong circumstantial evidence** (including a psychologist's assessment) to the effect that the perpetrator's acts might have been at least partly racially motivated.
- ▶ Despite this evidence, however, the domestic authorities had **not examined** whether the incident could have been motivated by **racial hatred** against the Roma.

Legal developments as a result of the European Court's judgment

Following the European Court's judgment, the **Slovak authorities** undertook a series of wide-ranging measures to ensure effective criminal investigations into racially motivated crimes.

Amendments to the Criminal Code were adopted in 2017 and the **motivation of crimes** based on race, colour of skin, national origin or ethnic affiliation is a special qualifying term provided for in the General part of the Criminal Code, as defined by Section 140(e).

In 2019 a **practical guideline** was published. It contains fundamental information and best practices in judging crimes committed with a bias motive.

The Act on Victims of Crimes, with effect from 01/01/2018, explicitly refers to **vulnerable victims**, assessment of needs and relevant obligations relating to children, elderly persons, persons with disability, victims of violent crimes or crimes committed under the threat of violence, crimes based on sex, sexual orientation, nationality, **racial or ethnical affiliation**, religion, belief, etc.



HATE SPEECH AS A PARTICULAR FORM OF RACIALLY MOTIVATED CRIME

The Council of Europe **Committee of Ministers Recommendation No. R. (97) 20** on “Hate Speech” defines hate speech as follows: “hate speech [covers] all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, and discrimination and hostility against minorities, migrants and people of immigrant origin”.

According to the Recommendation it is not only expressions that incite to acts of violence/discrimination that qualify as hate speech; furthermore, there is no requirement for a situation of “clear and present danger” to be established.

CASE STUDY

Mr. Féret had been found criminally liable by the Belgian courts over the distribution of leaflets/posters calling for the expulsion of all Muslims and non-European immigrants from Belgium and accusing them collectively of criminality.

In **Féret v. Belgium** the Court held that his criminal sentence was not in violation of Article 10 (right to freedom of expression).

CASE STUDY

Criminal charges had been brought against some young persons in their early to mid-twenties for distributing in an upper secondary school leaflets in which homosexuality was held to be a “deviant sexual proclivity” that had “a morally destructive effect on the substance of society” and was “responsible for the development of HIV and AIDS”.

In **Vejdeland and Others v. Sweden** the European Court held that these statements amounted to hate speech and hence the (proportionate) prison sentences and ancillary sanctions were not in violation of Article 10.

In the **Lilliendahl v. Iceland** case, which concerned remarks highly offensive to the LGBT community posted online in the context of a discussion regarding the provision of counselling to LGBT students in primary and secondary schools, the European Court made a distinction between two categories of hate speech: the **first category** comprised the most extreme cases of hate speech, such as cases of speech inciting violence and hatred or cases of revisionism of well-established historical facts (e.g. denying that the Holocaust took place), which are usually a cover for the promotion of racist ideas or for an apology of crimes against humanity. This kind of hate speech cannot benefit from protection under the European Convention as it constitutes an abuse of a right (here the right to freedom of expression) and is therefore contrary to Article 17 of the European Convention, which provides that no one may use the rights guaranteed under the European Convention in order to prevent other people from enjoying theirs.

The **second category** of hate speech consisted of cases of speech where there is no explicit incitement to violence or hatred but where the statements aim at insulting, slandering or holding up to ridicule specific groups of the population. In such cases, the person making these statements will be able to claim that the statements are protected under Article 10, right to freedom of expression of the European Convention and it will be up to the domestic courts (and ultimately the European Court) to review whether any limitation of their right to freedom of expression has taken place.



POLICING THE INTERNET: COMBATting ONLINE HATRED

CASE STUDY

Beizaras and Levickas were two young men in a relationship. One of them uploaded a photo of them kissing on his (public) Facebook account, in order to mark the beginning of their relationship. This led to the posting of hundreds of online comments that were disparaging of LGBT people. Some of the posts however were more serious as they contained direct or indirect threats against the two men.

Prosecuting authorities and the courts refused to launch a criminal investigation for incitement to hatred and violence against LGBT persons, arguing that the applicants' behaviour had contributed to the posting of hate comments and that launching criminal proceedings would be a waste of time and resources and would violate the right to free speech of the commenters.

European Court of Human Rights judgment

In the case of **Beizaras and Levickas v. Lithuania** the European Court found a violation of **Article 8** (right to respect for private and family life) and **Article 14** (right to protection from discrimination).

While agreeing in principle with the domestic courts that criminal sanctions should not be resorted to easily, it also recalled its jurisprudence in which it had held that regarding serious offences against a person's physical or mental integrity, or direct verbal assaults and racially motivated physical threats, **only criminal law measures** could ensure adequate protection for the victims as well as serve as a deterrence for future offences.

The European Court disagreed with the domestic court's finding that the applicants' behaviour had been provocative. It considered that even the fact that the applicants had posted the photo on purpose with a view to starting a public debate on the rights of LGBT persons was not enough to render it provocative.

The European Court also noted that the domestic courts had indirectly negatively assessed the applicants' **sexual orientation**, by noting that the photo should have been accessible only to their friends and other persons of the same sexual orientation.

The European Court then examined some of the posts, in which commenters lamented **Hitler's "failure"** to burn homosexuals together with Jews or suggested that homosexuals should be thrown into the gas chamber or burned alive.

The European Court considered that such comments were not simply vulgar and offensive but **clearly amounted to hate speech** that should be subject to criminal sanctions, noting in this respect that the domestic authorities had launched criminal proceedings in relation to "milder" instances of hate speech against other minorities.

Indeed, the European Court held that even **one single hateful post** – particularly if it called for the applicants' death – should have been enough for the domestic authorities to spring into action.

Annex 1

1. VULNERABLE GROUPS, STEREOTYPING, POLICE WORK

1.1 SELECTED CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS RELEVANT FOR POLICE TRAINING

CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA, POLICE RELATED ISSUES AND REFERENCES TO VULNERABILITY OR STEREOTYPING

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2020	Nagy	Hungary	Article 3	Roma. Ill-treatment by the police. Lack of effective investigation
2017	Király and Dömötör	Hungary	Article 8	Roma. Lack of protection from racist manifestations
2017	M.F.	Hungary	Article 3, 14	Roma. Ill-treatment by the police. Failure to investigate whether discrimination may have played a role in the events
2016	R.B.	Hungary	Article 8	Inadequate investigation into the applicant's allegations of racially motivated abuse
2019	Lingurar	Romania	Article 3, 14	Roma. Ill-treatment by the police. Lack of effective investigation
2017	Fogarasi and Others	Romania	Article 3	Roma. Ill-treatment by the police Lack of effective investigation
2010	Carabulea	Romania	Article 2, 3	Roma. Ill-treatment by police. Lack of effective investigations
2020	A.P.	Slovakia	Article 3	Roma. ill-treatment by the police. Lack of effective investigation
2012	Koky	Slovakia	Article 3	Roma. Racially motivated violence. Lack of effective investigation
2012	M. and Others	Italy and Bulgaria	Article 3	Lack of effective investigation in ill-treatment by private individuals
2010	Sashov and others	Bulgaria	Article 3	Roma. Ill-treatment by police. Lack of effective investigations
2002	Anguelova	Bulgaria	Article 2, 3	Roma. Ill-treatment by police. Lack of effective investigations
2018	Burlya and others	Ukraine	Article 3, 8, 14	Roma. Racially motivated violence. Failure to provide protection from racist manifestations
2017	Alkovic	Montenegro	Article 8, 14	Roma. Muslim. Racist incidents. Failure to provide protection
2012	Kleyn and Aleksandrovich	Russia	Article 2	Roma. Ill-treatment by the police. Lack of effective investigation
2011	Durdevic	Croatia	Article 3	Roma. Ill-treatment by police. Lack of effective investigation
2005	Bekos, Koutropoulos	Greece	Article 3 & 14	Roma. Ill-treatment by police. Failure to investigate whether discrimination played a role

**CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA, POLICE CASES
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: OTHER GROUPS, POLICE RELATED
ISSUES AND REFERENCE TO VULNERABILITY, STEREOTYPING OR PREJUDICE**

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2020	Polshina	Russia	Article 3, 14	Gender based violence. Failure to create conditions to enable women to live free from fear of ill-treatment or attacks on their physical integrity
2019	Volodina	Russia	Article 3, 14	Gender based violence. Failure of legal framework to protect women from widespread violence and discrimination
2014	Antayev and others	Russia	Article 3, 14	Ethnic based ill treatment. Failure to investigate possible discriminatory motives
2012	Makhashev	Russia	Article 3, 14	Ethnic based violence. Lack of effective investigation. Failure to investigate possible discriminatory motives
2015	Identoba and others	Georgia	Article 3, 11, 14	LGBT based violence. Failure to provide adequate protection. Lack of effective investigation
2014	Begheluri and others	Georgia	Article 3, 9, 14	Religiously motivated violence. Failure to prevent unlawful acts. Lack of effective investigation
2007	Members (97) of the Gldani Congregation of Jehovah's Witnesses	Georgia	Article 3, 9, 14	Religiously motivated violence. Failure to prevent unlawful acts. Lack of effective investigation
2020	Beizaras and Levickas	Lithuania	Article 8, 13	Failure to investigate hate speech. Sexual orientation
2016	MC and AC	Romania	Article 3, 14	LGBT-based violence. Lack of effective investigation. Failure to take into account possible discriminatory motives
2017	Talpis	Italy	Article 2, 3, 14	Gender based violence. Life. Failure to prevent unlawful acts. Discrimination
2014	TM and CM	Moldova	Article 3, 14	Gender based violence. Failure to provide adequate protection.
2012	B.S.	Spain	Article 3, 14	Race, gender. Failure to take account of particular vulnerability. Failure to investigate possible discriminatory motives
2010	Milanovic	Serbia	Article 3, 14	Religious-based violence. Failure to prevent unlawful acts. Lack of effective investigation
2009	Opuz	Turkey	Article 2, 3, 14	Gender based violence. Failure to prevent unlawful acts. Lack of effective investigation

**CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA ISSUES OUTSIDE
POLICE MATTERS AND REFERENCE TO VULNERABILITY AND STEREOTYPING**

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2020	Hirtu and others	France	Article 8, 13	Forced evictions. Lack of alternative accommodation. Lack of effective remedy
2013	Lavida and Others	Greece	Article 2, 14 Protocol 1	Discrimination in Education
2012	Sampanis and Others	Greece	Article 2, 14 Protocol 1	Discrimination in Education
2008	Sampani and Others	Greece	Article 2, 14 Protocol 1	Discrimination in Education
2012	I.G. and others	Slovakia	Article 3, 8	Forced sterilization Lack of legal safeguards for reproductive rights
2011	V.C.	Slovakia	Article 3, 8	Forced sterilization. Lack of legal safeguards for reproductive rights
2020	Hudorovic and others	Slovenia	No violation Article 3, 8, 14	Failure to provide access to drinking water and sanitation
2016	Bagdonavicius and Others	Russia	Article 8	Forced evictions and lack of alternative accommodation
2014	CLR on behalf of Valentin Câmpeanu	Romania	Article 2	Death in medico-social institution Lack of effective investigation
2013	Horvath and Kiss	Hungary	Article 2, 14 Protocol 1	Discrimination in Education
2012	Yordanova and Others	Bulgaria	Article 8	Forced evictions and lack of alternative accommodation
2010	Orsus and others	Croatia	Article 2, 14 Protocol 1	Discrimination in Education
2009	Muñoz Diaz	Spain	Article 1, 14 Protocol 1	Refusal to recognize Roma marriage for establishing survivor's pension
2007	D.H. and Others	Czech Republic	Article 2, 14 Protocol 1	Discrimination in Education

2. HUMAN RIGHTS ISSUES RELATING TO ROMA AND THE WORK OF THE POLICE

2.1 SELECTED CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS RELEVANT FOR POLICE TRAINING

CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA ISSUES INCLUDING POLICE

ATTACKS FROM PRIVATE INDIVIDUALS AND POLICE RESPONSE

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2017	Škorjanec	Croatia	Article 3, 4	Inadequate investigation of racially motivated violence
2009	Beganović v. Croatia	Croatia	Article 3	Lack of effective investigation and protection from violence
2007	Šečić	Croatia	Article 3, 14	Lack of effective investigation of racially motivated attack
2012	M. and Others	Italy and Bulgaria	Article 3	Lack of effective investigation in ill-treatment by private individuals
2012	Yotova	Bulgaria	Article 3, 14	Inadequate investigation of racially motivated violence
2011	Dimitrova and Others	Bulgaria	Article 2	Lack of effective investigation
2010	Seidova and others	Bulgaria	Article 2	Lack of effective investigation. Lack of access to investigation by victim's relatives
2007	Angelova and Iliev	Bulgaria	Article 2, 14	Lack of effective investigation of racially motivated attack
2018	Lakatošová and Lakatoš	Slovakia	Article 2, 14	Lack of effective investigation of racially motivated attack
2012	Koky and Others	Slovakia	Article 3	Lack of effective investigation into violent incident
2015	Balázs	Hungary	Article 14	Roma. Racially motivated violence. Lack of effective investigation

ATTACKS ON ROMA VILLAGES OR HOUSES AND POLICE RESPONSE

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2012	Lacatus and Others	Romania	Article 3, 6, 8, 14	Racist Attacks. Housing destruction. Fair trial
2009	Tănase and Others	Romania	Article 3, 6, 8, 14	Racist Attacks. Racial prejudice. Fair trial
2007	Gergely	Romania	Article 3, 6, 8, 14	Racist Attacks. Housing destruction. Fair trial
2005	Moldovan (no. 1) and Others	Romania	Article 3, 6, 8, 14	Racist Attacks. Housing destruction. Fair trial. Discrimination
2005	Moldovan (no. 2) and Others	Romania	Article 3, 6, 8, 14	Racist Attacks. Housing destruction. Fair trial. Discrimination
2018	Burlya and Others	Ukraine	Article 3, 8, 14	Racist Attacks. Failure to provide protection. Lack of effective investigation of racial motivation
2007	Kalanyos and others	Romania	Article 3, 6, 8, 14	Racist Attacks. Housing destruction. Fair trial
2012	Fedorchenko and Lozenko	Ukraine	Article 2, 14	Racist Attacks. Lack of effective investigations and of possible racism motives

BULLET WOUNDS DURING POLICE INTERVENTION OR ARREST

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2010	Vasil Sashov Petrov	Bulgaria	Article 2, 13	Use of firearms. Lack of effective investigation
2005	Nachova and others	Bulgaria	Article 2, 14	Use of firearms, lack of effective investigation, lack of investigating if discrimination played a role in events
2020	Andreea-Marusia Dumitru Romania	Romania	Article 2	Use of firearms. Lack of effective investigation
2011	Soare and others	Romania	Article 2	Use of firearms. Lack of effective investigation
2014	Guerdner and others v. France	France	Article 2	Use of firearms

DEATH IN POLICE CUSTODY OR DETENTION

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2010	Velikova	Bulgaria	Article 2	Ill-treatment. Lack of effective investigation
2006	Ognyanova and Choban	Bulgaria	Article 2,3, 5, 13	Ill-treatment, lack of effective investigation
2002	Anguelova	Bulgaria	Article 2,3, 5, 13	Failure to provide medical care, lack of effective investigation
2015	Ion Bălăşoiu	Romania	Article 3	Lack of effective investigation
2012	Kleyn and Aleksandrovich	Russia	Article 2	No reasonable steps to determine cause of death. Lack of effective investigation
2010	Mižigárová	Slovakia	Article 2	Lack of life protection, lack of effective investigation

POLICE ILL-TREATMENT

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2010	Stefanou	Greece	Article 3	Ill-treatment
2007	Petropoulou-Tsakiris	Greece	Article 3, 14	Ill-treatment. Lack of effective investigation. Lack of investigation of possible racial motives
2005	Bekos and Koutropoulos	Greece	Article 3, 14	Ill-treatment. Lack of effective investigation
2011	Durdevic	Croatia	Article 3	Ill-treatment. Lack of effective investigation
2020	X and Y	North Macedonia	Article 3	Ill-treatment. Lack of effective investigation
2008	Dzeladinov and Others	FYR Macedonia	Article 3	Ill-treatment. Lack of effective investigation
2008	Sulejmanov	FYR Macedonia	Article 3	Ill-treatment. Lack of effective investigation
2007	Jašar	FYR Macedonia	Article 3	Lack of effective investigation of ill-treatment
2019	Lingurar v. Romania	Romania	Article 3, 14	Ill-treatment. Lack of investigation into potential racial motivation -police operation

POLICE ILL-TREATMENT

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2016	Gheorghiuță and Alexe	Romania	Article 3	Ill-treatment. Lack of effective investigation
2017	Fogarasi and others	Romania	Article 3	Ill-treatment. Lack of effective investigation
2016	Boacă and Others	Romania	Article 3, 14	Ill-treatment. Lack of effective investigation and of possible racial motives
2015	Ciorcan and Others	Romania	Article 3, 14	Ill-treatment. Lack of effective investigation and of possible racial motives
2010	Carabulea	Romania	Article 2, 3	Ill-treatment. Lack of effective investigations
2008	Stoica v. Romania	Romania	Article 3, 14	Ill-treatment. Lack of effective investigation. Lack of investigation of possible racial motives
2007	Cobzaru	Romania	Article 3, 14	Ill-treatment. Lack of effective investigation. Lack of investigation of possible racial motives
2020	Nagy	Hungary	Article 3	Ill-treatment by the police. Lack of effective investigation
2017	M.F.	Hungary	Article 3, 14	Ill-treatment. Lack of effective investigation. Lack of investigation of possible racial motives
2012	Borbála Kiss	Hungary	Article 3	Ill-treatment by police. Lack of effective investigation
2020	R.R. and R.D	Slovakia	Article 3, 14	Ill-treatment. Lack of effective investigation. Lack of investigation of possible racial motives
2020	A.P. v. Slovakia	Slovakia	Article 3	Ill-treatment. Lack of effective investigation
2016	Adam v. Slovakia	Slovakia	Article 3	Ill-treatment by police. Lack of effective investigation

RACIAL HARRASMENT, VERBAL ABUSE BY PRIVATE PARTIES, POLICE RESPONSE

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2017	Király and Dömötör	Hungary	Article 8	Anti-Roma marches. Lack of protection from racist manifestations
2016	R.B.	Hungary	Article 8	Inadequate investigation into the applicant's allegations of racially motivated abuse
2013	Vona	Hungary	Article 11	Dissolution of association on account of anti-Roma marches and racist ideology

3. DISCRIMINATION, POLICE WORK

3.1 SELECTED CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS RELEVANT FOR POLICE TRAINING

CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA, POLICE RELATED ISSUES AND REFERENCES TO DISCRIMINATION

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2019	Lingurar	Romania	Article 3, 14	Roma. ill-treatment by the police. Lack of effective investigation. Racial profiling
2018	Lingurar and others	Romania	Article 3, 14	Excessive use of force, lack of investigation into allegations of racially motivated abuse
2016	Boacă and Others	Romania	Article 3, 14	Police. Lack of investigation of discrimination claims
2015	Ciorcan and Other	Romania	Article 2, 14	Police. Lack of investigation of discrimination motives
2012	Lacatus and Others	Romania	Article 6, 8, 14	Violence by third party. Biased court decisions, failure of authorities to redress violations
2010	Stoica	Romania	Article 6, 14	Prosecutor and police racially bias investigations. Discriminatory attitudes from the police.
2007	Cobzaru	Romania	Article 3, 13, 14	Prosecutor's racially biased investigation, failure to investigate possible racial motives
2005	Moldovan and Others	Romania	Article 6, 8, 14	Violence by third party. Racially biased court decisions, failure of authorities to redress violations
2017	Király and Dömötör	Hungary	Article 8	Roma. Racially motivated violence
2017	M.F.	Hungary	Article 3, 14	Roma. Ill-treatment by the police. Failure to investigate possible racial motives
2016	R.B.	Hungary	Article 8	Inadequate investigation into the applicant's allegations of racially motivated abuse
2015	Balazs	Hungary	Article 3, 14	Roma. Racially motivated violence. Lack of effective investigation
2008	Sampanis and others	Greece	Art. 14, 1 Protocol 12	Right to education. Racist manifestations

**CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: ROMA, POLICE
RELATED ISSUES AND REFERENCES TO DISCRIMINATION**

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2007	Petropoulou Tsakiris	Greece	Article 3 & 14	Police. Failure to investigate possible racial motives, discriminatory attitudes from police
2005	Bekos, Koutropoulos	Greece	Article 3 & 14	Roma. Ill-treatment by police. Failure to investigate whether discrimination played a role
2012	Yotova	Bulgaria	Article 2, 14	Police. Failure to consider and charge accordingly racially motivated crimes
2007	Angelova and Iliev	Bulgaria	Article 2, 14	Police. Failure to consider and charge accordingly racially motivated crimes
2005	Nachova and Others	Bulgaria	Article 2, 14	Police. Use of firearms. Failure to investigate possible racial motives
2020	R.R. and R.D.	Slovakia	Article 3, 14	Roma. Ill-treatment by the police. Lack of effective investigation
2018	Lakatošová and Lakatos	Slovakia	Article 2, 14	Roma motivated violence. Lack of effective investigation
2018	Burlya and others	Ukraine	Article 3, 8, 14	Roma motivated violence. Failure to provide protection from racist manifestations
2012	Fedorchenko, Lozenko	Ukraine	Article 2, 14	Violence by private individuals. Lack of investigation of possible racist/ethnic motives of crimes
2017	Škorjanec	Croatia	Article 3, 14	Inadequate investigation of racially motivated violence
2007	Šečić	Croatia	Article 3, 14	Violence by private individuals. Failure by police to consider racially motivated crime
2017	Alkovic	Montenegro	Article 8, 14	Roma. Muslim. Racist incidents. Failure to provide protection

**CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: OTHER GROUPS,
POLICE RELATED ISSUES AND REFERENCES TO DISCRIMINATION**

YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2020	Aghdgomelashvili and Japaridze	Georgia	Article 3, 14	LGBT based violence. Police. Discrimination. Lack of effective investigation
2015	Identoba and others	Georgia	Article 3, 11, 14	LGBT based violence. Failure to provide adequate protection. Lack of effective investigations
2014	Begheluri and others	Georgia	Article 3, 9, 14	Religiously motivated violence. Failure to prevent unlawful acts. Lack of effective investigations
2007	Members (97) of the Gldani Congregation of Jehovah's Witnesses	Georgia	Article 3, 9, 14	Religiously motivated violence. Failure to prevent unlawful acts. Lack of effective investigations
2020	Munteanu	Moldova	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2014	TM and CM	Moldova	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2013	Mudric	Moldova	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2013	Eremia	Moldova	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2016	M.G.	Turkey	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2016	Halime Kilic	Turkey	Article 2, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2009	Opuz	Turkey	Article 2, 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitudes
2020	Polshina	Russia	Article 3, 14	Gender based violence. Failure to create conditions to enable women to live free from fear of ill-treatment or attacks on their physical integrity
2019	Volodina	Russia	Article 3, 14	Gender based violence. Failure of legal framework to protect women from widespread violence and discrimination
2014	Antayev and others	Russia	Article 3, 14	Ethnic based ill treatment. Failure to investigate possible discriminatory motives
2012	Makhashev	Russia	Article 3, 14	Ethnic based violence. Lack of effective investigation. Failure to investigate possible discriminatory motives
2020	Kornilova	Ukraine	Article 3, 14	Religiously motivated violence. Failure of duty to unmask any religious motive of incident and to establish if religious prejudice played a role
2020	Zagubnta and Tabachkova	Ukraine	Article 3, 14	Religiously motivated violence. Failure of duty to unmask any religious motive of incident
2017	Grigoryan and Sergeyeva	Ukraine	Article 3, 14	Ethnic prejudice. Police. Ill-treatment. Failure to take steps to reveal possible racial or ethnic motives behind treatment in police station

**CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS: OTHER GROUPS,
POLICE RELATED ISSUES AND REFERENCES TO DISCRIMINATION**

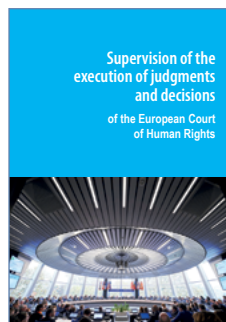
YEAR	CASE	STATE	VIOLATION	ISSUE AT STAKE
2017	Balsan	Romania	Article 3, 14	Gender based violence. Failure to provide adequate protection. Discriminatory attitude
2016	MC and AC	Romania	Article 3, 14	LGBT-based violence. Lack of effective investigation. Failure to take into account possible discriminatory motives
2020	Makuchyan and Minasyan	Azerbaijan Hungary	Article 2, 14	Failure to disprove arguable allegation of discrimination. Perpetrator's impunity causally linked to victims' ethnicity
2020	Beizaras and Levickas	Lithuania	Article 8, 13	Sexual orientation. Failure to investigate hate speech.
2017	Talpis	Italy	Article 2, 3, 14	Gender based violence. Life. Failure to prevent unlawful acts. Discrimination
2017	Grigoryan and Sergeyeva	Ukraine	Article 3, 14	Ethnic prejudice. Police. Ill-treatment. Failure to take steps to reveal possible racial or ethnic motives behind treatment in police station
2014	Abdu	Bulgaria	Article 3, 14	Racial prejudice. Lack of effective investigation. Failure to investigate possible racist motive of violence
2012	Virabyan	Armenia	Article 3, 14	Political motive. Failure to investigate politically motivated ill-treatment by police.
2012	B.S.	Spain	Article 3, 14	Race, gender. Failure to take account of particular vulnerability. Failure to investigate possible discriminatory motives
2010	Milanovic	Serbia	Article 3, 14	Religious-based violence. Failure to prevent unlawful acts. Lack of effective investigation
2009	Turan Cakir	Belgium	Article 3, 14	Racial prejudice. Police ill-treatment. Failure to ascertain whether discriminatory conduct could have played a role

4. SELECTED INSTRUCTIONS OR PROTOCOLS FOR INVESTIGATING RACIALLY MOTIVATED CRIMES AND OTHER HATE CRIMES

4.1 PROTOCOLS, INSTRUCTIONS, GUIDELINES FOR LAW ENFORCEMENT AND/OR JUDICIARY: INVESTIGATING RACIALLY MOTIVATED CRIMES AND OTHER HATE CRIMES

The following table contains information collated from various sources regarding the existence of official documents in various forms (circulars, instructions, guidelines, manuals) that provide guidance to police officers, prosecutors or judges on identifying, prosecuting and sentencing racially motivated crimes. While every effort was made to ensure that the information set out below is complete and updated, this was not always possible as such official documents are often not publicly available. Where possible, links to either the official documents themselves or the source of the information as to their existence is provided. Unless otherwise stated, all links are to the original document in the respective national language.

References are provided mostly from EU Fundamental Rights Agency reports, Council of Europe Department for the Execution of Judgments documents and various Governmental reports:



COUNTRY	POLICE GUIDANCE	PROSECUTOR GUIDANCE	COURT GUIDANCE
AUSTRIA	Police Internal guidance on identifying politically motivated crimes (includes hate crimes), not public		
CYPRUS	Chief of Police Order 3/38 Policy for Handling and Combating Racist Violence, Xenophobia and Discrimination Chief of Police Circular on Investigating Racial Cases, 2009 Chief of Police Circular on Investigation of Criminal Cases concerning Racist Crime and Intolerance , 2015 Chief of Police Circular on Avoidance of Racist Conduct by Members of the Police , 2018		

COUNTRY	POLICE GUIDANCE	PROSECUTOR GUIDANCE	COURT GUIDANCE
CROATIA	Human Rights Office, Government of Croatia, <u>Protocol for Procedure in Cases of Hate Crimes</u> , 2011	2006 State Attorney's Office, Instructions on handling Hate Crimes Cases	
CZECH REPUBLIC	Internal methodological manuals related to hate crimes, drafted by the NGO In Justitia, not public		
DENMARK	Director of Public Prosecutions Instruction 2/2011 <u>On processing cases of violation of Section 266b of the Criminal Code and the Act on prohibition of differential treatment based on race and cases in which Section 81 (1) (vi) of the Criminal Code might apply</u>	Director of Public Prosecutions Instruction 2/2011	
ESTONIA	Ministry of Justice, Instructions defining hate crimes and explaining the types of bias		
FINLAND	National Police Board, Instruction 2020/2011/2098 from 2011		
FRANCE	Police guidance document on the investigation of and the provision of assistance to victims of hate crime, not public		
GERMANY	Police investigation guidelines, instructions and codes of practice on politically motivated crime (include hate crimes), not public		
GREECE	Police Circular no. 7100/25/14-δ', On combating racism, xenophobia and discrimination during policing activities, 2014	Supreme Court Prosecutor's Office, Circular 5/2018 Statistics on racist violence case files	
HUNGARY	Police Headquarters Instruction no. 30/2019, Instruction On the performance of police tasks related to the handling of hate crimes, 2019		
IRELAND	Police, directives on identifying and recording hate crimes, e.g. Police Force Headquarters Directive 04/2007		
LATVIA	State Police Commissioner Order 3487/2017, Guidelines for State Police Officers on the Identification and Investigation of Hate Crimes, 2017		
NETHERLANDS	Police, internal guidelines on identifying and recording hate crimes		
SLOVAKIA	Ministry of Interior regulation no. 115/2014 Conduct in Fight Against Extremism and Fan Violence		Practical Guideline, Fundamental information and best practices in judging crimes committed because of a special motif according to the Section 140(e) of the Criminal Code, 2019

COUNTRY	POLICE GUIDANCE	PROSECUTOR GUIDANCE	COURT GUIDANCE
SWEDEN	Police, guide on identifying and recording hate crimes, not public		
UKRAINE	Police instructions, the obligatory use of recommendations regarding investigation of hate crimes, the determination of officers who would be responsible for the control over pre-trial investigation in criminal proceedings against hate crimes, 2019		
UNITED KINGDOM	<p>Home Office Police Standards Unit/Association of Chief Police Officers, Hate Crime: Delivering a Quality Service – Good Practice and Tactical Guidance, 2005</p> <p>Crown Prosecution Service, Guidance to Police Officers and Crown Prosecutors, 5th ed., 2013</p> <p>College of Policing, Hate Crime Operational Guidance, 2014</p>	Crown Prosecution Service, Guidance to Police Officers and Crown Prosecutors issued by the Director of Public Prosecutions under S37A of the Police and Criminal Evidence Act 1984, 5 th edition, 2013	

5. TRAINING AGENDA

TEMPLATE PROPOSAL FOR A TRAINING

Council of Europe standards on racially motivated violence and non-discrimination with a focus on Roma

ROMA AND TRAVELLERS IN EUROPE: A STARTING POINT FOR FINDING WAYS TO IMPROVE POLICE ROMA RELATIONS

Tools	Overall Description of training session
Timing	Up to 2,5 hours (depending on the level of knowledge, awareness and exposure of participants to Roma issues)
Objective	Understanding common features and structural barriers or challenges faced by Roma communities across Europe
Focus	<p>Roma communities in Europe: relevant aspects for police</p> <ul style="list-style-type: none"> • Diversity of Roma groups and Council of Europe terminology regarding Roma and Travellers • The use of the term Gypsy/Roma and implications for the Police • Historic challenges faced by Roma (e.g. slavery, Holocaust, deportations etc.) • Impact of COVID-19 and institutional responses at European level • Council of Europe and EU measures addressing social inclusion <p>Vulnerable groups, European framework: relevant aspects for police</p> <ul style="list-style-type: none"> • Vulnerable groups before the European Court of Human Rights • The State protection in the case of vulnerable groups • Roma, a vulnerable group before the European Court of Human Rights • Police obligations in relation with Roma as a vulnerable group
Methods	Power point presentation, interactive discussions, video materials
Resources	<p>Toolkit for police officers</p> <p><i>Section 1 Roma and Travellers</i></p>

Council of Europe standards on racially motivated violence and non-discrimination with a focus on Roma

ADDRESSING STEREOTYPING, PREJUDICE AND ANTIGYPSYISM

Tools	Overall Description of training session
Timing	Up to 2,5 hours (depending on the level of knowledge and awareness of concepts relating to stereotypes, prejudice and anti-Gypsyism)
Objective	Understanding stereotypes and prejudice against Roma and how may impact the work of the police when addressing Roma communities
Focus	<p>Stereotyping, prejudice and anti-Gypsyism</p> <ul style="list-style-type: none"> • Discuss the concepts of stereotypes and prejudice • Widely held stereotypes about Roma • Implications on the use of the term “Gypsy” in different context • Examples of good practice by police <p>The European Court of Human Rights case law</p> <ul style="list-style-type: none"> • Stereotyping, relevant cases on police and Roma communities • Implications for the work of the police
Methods	Power point presentation, interactive discussions, video materials
Resources	Toolkit for police officers <i>Section 2 Stereotyping, prejudice, antigypsyism</i>

COUNCIL OF EUROPE STANDARDS AND BODIES RELEVANT FOR THE WORK OF THE POLICE

Tools	Overall Description of training session
Timing	Up to 2,5 hours (depending on the level of awareness of Council of Europe instruments on the subject matter)
Objective	Raising awareness of Council of Europe instruments addressing police and Roma issues including racially motivated violence, and understanding the case law of the European Court of Human Rights on Roma related issues
Focus	<ul style="list-style-type: none"> • Council of Europe instruments and principles relevant for police • Police good practice relating to Roma in different member States • Council of Europe institutions relevant to human rights work • The European Convention of Human Rights relevant to the work of the police • The European Court of Human Rights • Police officers’ human rights and the European Convention on Human Rights • State responsibility engaged under the Convention
Methods	Power point presentation, interactive discussions
Resources	Toolkit for police officers <i>Section 3 Council of Europe standards and bodies relevant for the work of the police</i>

Council of Europe standards on racially motivated violence and non-discrimination with a focus on Roma

COUNCIL OF EUROPE STANDARDS ON NON-DISCRIMINATION RELEVANT FOR THE WORK OF THE POLICE

Tools	Overall Description of training session
Timing	Up to 3,5 hours (depending on the level of knowledge and awareness of discrimination and relevant legal standards)
Objective	Understanding the principle of non-discrimination and applicable legal standards, obligations relevant for the work of the police outlined in the case law of the European Court of Human Rights
Focus	<p>Principles and instruments relevant for the police</p> <ul style="list-style-type: none"> • Council of Europe instruments and standards <p>Forms of discrimination in European law relevant for police</p> <ul style="list-style-type: none"> • The European Court of Human Rights or European Court of Justice case law relevant for the police • Direct discrimination, discrimination by association, harassment and instruction to discriminate, multiple or intersectional discrimination, indirect discrimination • Violence caused by discriminatory attitudes and relevant obligations for police
Methods	Power point presentation, interactive discussions, video materials
Resources	<p>Toolkit for police officers</p> <p><i>Section 4. Council of Europe standards on non-discrimination relevant for the work of the police</i></p>

RACIALLY MOTIVATED CRIMES IN THE CASELAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Tools	Overall Description of training session
Timing	Up to 3,5 hours (depending on the level of knowledge and awareness of standards and practice related to racially motivated crimes)
Objective	Understanding racially motivated crimes and Council of Europe standards relevant for the police and the case law of the European Court of Human Rights
Focus	<p>Racially motivated crimes and racist incidents: concept and manifestations</p> <ul style="list-style-type: none"> • Working definition of what constitutes racially motivated crime <p>Typology of racially motivated crimes before the European Court of Human Rights</p> <ul style="list-style-type: none"> • Crimes committed by members of extremist groups • Offences committed by extreme right groups during demonstrations • Crimes committed randomly against Roma • Crimes motivated by association with ethnicity or mistaken identity • Crimes committed with mixed motives • Ethnic profiling through police operations • Hate speech and online hatred
Methods	Power point presentation, interactive discussions , video materials
Resources	<p>Toolkit for police officers</p> <p><i>Section 5 Racially motivated crimes in the caselaw of the European Court of Human Rights</i></p>

Roma and Travellers communities suffer from widespread and persisting discrimination and antigypsyism – recognised as a specific form of racism fuelled by prejudice and stereotypes – and they are the victims of various other forms of discrimination, including harassment, hate speech and hate crimes in many Council of Europe Member States. Discrimination remains the most widespread form of human rights violation in Europe today and one which disproportionately affects Roma and Traveller communities.

The Roma and Travellers Team of the Council of Europe is committed to combating discrimination and anti-Gypsyism through a consistent and comprehensive approach, which includes legal and policy responses, standard setting, inter-governmental co-operation, support to Member States, training, etc.

Police officers are at the forefront of the justice system, as they are among the first to come in contact with the victims of hate speech, harassment, racially motivated crimes and other forms of human rights violations and therefore are pivotal in ensuring effective access to justice for Roma and Traveller communities.

The Toolkit for Police Officers should primarily be used to inform police officers of the relevant core values and standards required when policing Roma and Traveller communities but it can also be useful to other law enforcement officials and those interested in the topic.

The Toolkit provides information about the situation of Roma and Traveller communities in Europe and how Council of Europe standards can be applied to police and Roma and Travellers. Relevant case-law of the European Court of Human Rights is also included, with the aim of supporting police officers to better understand, investigate and prosecute human rights violations. Finally, the Toolkit can be used as an awareness raising and educational tool as it includes proposals for training events and information sessions with/ for police officers, and other law enforcement officials.

ENG

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



Roma and Travellers



COUNCIL OF EUROPE

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