

The Legal Perspective on Anti-Gypsyism



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CHALLENGING DISCRIMINATION PROMOTING EQUALITY

Objective

Promote a conversation about the most suitable legal tools for combating anti-Gypsyism by describing what the European Roma Rights Centre is doing under European law.

ERRC monitoring

- **61 attacks in Hungary
Jan. 2008- July 2012**
- **A total of 9 lives, 2 minors;**
- **Dozens of people with injuries;**
- **At least 12 Molotov cocktail cases;**
- **At least 16 cases shots were fired;**
- **At least 19 cases Romani property vandalised**

IMPERFECT JUSTICE

A REPORT BY THE EUROPEAN ROMA RIGHTS CENTRE



Anti-Roma Violence and Impunity
MARCH 2011

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ERRC monitoring

- **47 attacks in Czech Rep.:**
Jan.2008 - July 2012
- A total of 5 lives; at least 22 people with injuries;
- At least 10 cases firebombs;
- At least 2 cases shots were fired;
- At least 13 cases Romani property was vandalised;
- At least 11 cases Roma were beaten.

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ERRC monitoring

- **16 attacks in Slovakia:**
Jan. 2008 - July 2012
- Took a total of 5 lives; 10 people, including two minors, with injuries;
- In 6 cases, shots were fired;
- At least 10 cases firebombs used;
- In 2 cases an adult attacked a group of minors;
- In 4 cases, groups attacked Romani;
- At least 2 cases, Romani property was vandalised

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ERRC monitoring

- **14 attacks in Bulgaria:**
Sep. 2011 - July 2012
- Took a total of 3 lives; left at least 22 people, including a pregnant woman and two minors, with injuries;
- At least 5 Romani individuals hospitalised
- At least 6 cases Roma stabbed;
- A least 17 cases Roma were beaten, including two minors;
- In one case shots were fired; in one case a bomb was used.

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Definitions and ERRRC's Work

“[A]nti-Gypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination”.

ECRI General Policy Recommendation No. 13









ERRRC's Thematic Priorities:

- State response to violence and hate speech
- Access to education
- Access to housing
- Free movement and migration
- Identity documents
- Women's and children's rights
- Disaggregated data collection

Three Examples

- ERRC response to violent anti-Gypsyism
- ERRC work in France: response to violations of Roma housing and migration rights carried out in a climate of anti-Gypsyism
- ERRC work on hate speech

State of the European Case Law

ERRC Thematic Priority	State of the ECHR Case Law
State response to violence	
Access to education	
Access to housing	
Free movement and migration	
Identity documents	
Women's and children's rights	
Disaggregated data collection	
Hate speech	

Definition of Hate Crime – European level

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Hate crimes are criminal acts committed with a bias motive. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence.



Where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.

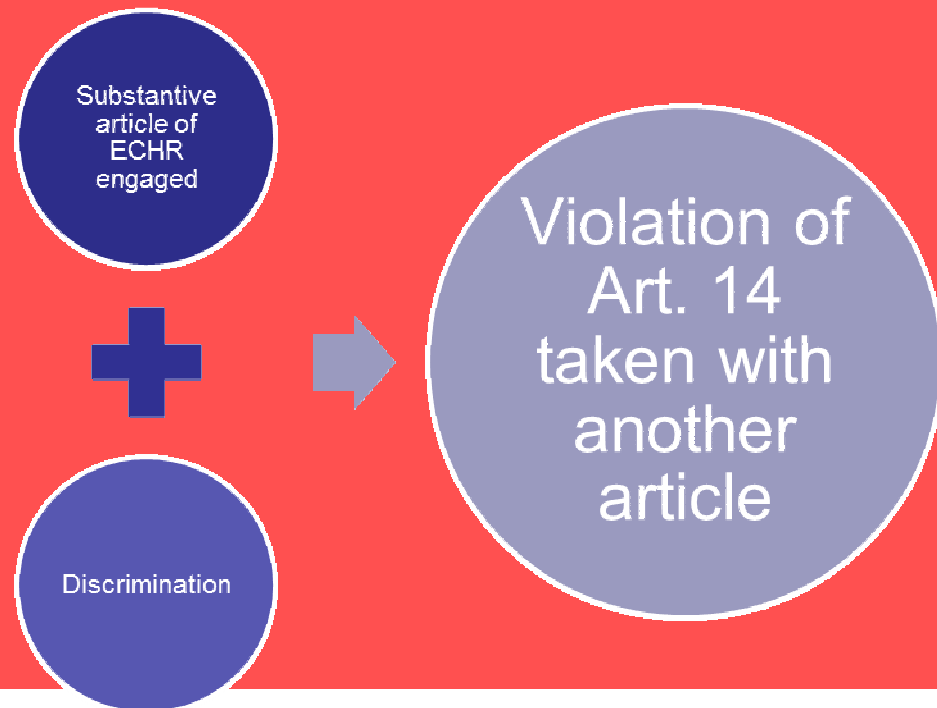


Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.

Article 14 ECHR

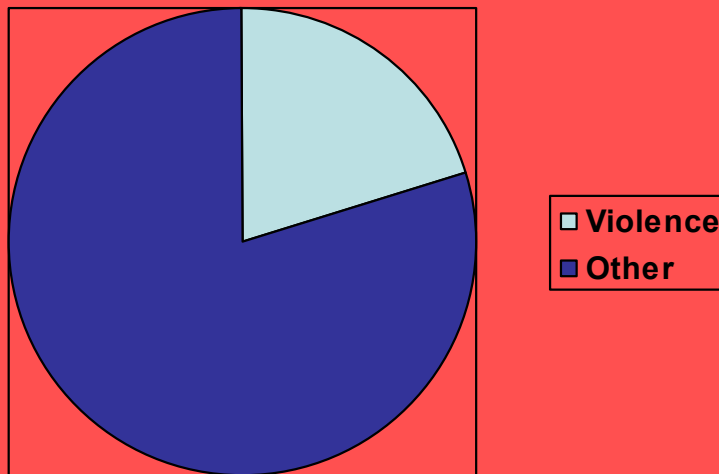
- The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

Example:
Šečić v Croatia (2007)



ERRRC Work on State Response to Violence

ERRRC Current Case Load



Example: G case. Death in custody following what appears to be racially motivated police brutality. Currently pursuing: (a) private prosecution for torture and unlawful killing; (b) ECHR complaint for failure to prosecute; (c) compensation claim for family



France



Context: *'These (Roma) populations have a way of life that is extremely different to ours, and they are obviously in confrontation with local populations.... The Roma are destined to return to Romania and Bulgaria'*.
Manuel Valls, French Interior Minister.

Two problems:

- Mass evictions of Roma (over 21,000 in 2013) from settlements.
- Mass distribution of (often unenforced) orders to leave France.

Tools:

- ECHR case law on evictions (notably *Winterstein v France* (2013)).
- EU law (including Directive 2004/38, Charter of Fundamental Rights and possibility of taking a case to the Court of Justice of the EU).

Outcomes ERRC is seeking: change in behaviour of the French authorities and judges, requiring them to take a proportionate approach.

Tackling Hate Speech Related to Other Acts

Two key judgments:

- *Baczkowski v Poland* (2007)
- Case C-81/12 ACCEPT



Key principle: speech acts can be the basis of a finding of discrimination if related to a concrete disadvantage.

Hate Speech

Mixed case law of the European Court of Human Rights, broad application of margin of appreciation (compare *Aksu v Turkey* with *Vejdeland and others v Sweden*).

The ERRC's unusual step in *Vona v Hungary*: an NGO submitting a third-party intervention suggesting the Court should not find a violation of the Convention.

Hate Speech and the Internet

Delfi AS v Estonia (2013): web portals that allow users to leave comments on their websites can be sued under national law.

ERRC
example:



Maintaining such a page on your website leaves you vulnerable to legal action under English law. Section 19(1)(b) of the Public Order Act 1986, “A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if... having regard to all the circumstances racial hatred is likely to be stirred up thereby”. Section 18 covers, in similar terms, “display” of such material. The defence that exists in sections 18(2) and 19(2) of the Public Order Act 1986 only applies if you are unaware of the material; you are now fully aware of that material.

We ask you to remove this material from your website immediately and issue a public apology straight away for having displayed it. The ERRC may consider taking legal action against you under the provisions mentioned above as well as other relevant provisions of English law (including, for example, the Defamation Act 2013) if you do not do so. The European Court of Human Rights recently found that Article 10 ECHR does not protect the operators of websites from legal action against them for threatening statements posted by third parties on their websites using the kind of facility you make available to the public. *Delfi AS v Estonia*, judgment of 10 October 2013.

Case Study

You receive a complaint from someone that a group has been created on a popular social media site that the complainants believe is an example of anti-Gypsyism. Without using any racial slurs, the members of the group nonetheless state their belief that Roma are members of an inferior race and do not belong in your country. The group advocates for segregation in schools and communities and for paying Roma to leave the country. You have contacted the social media company and they have replied saying that they apply the “harm principle” when deciding whether they should take down material of this kind, and they do not think that there is any harm to any individual or group of individuals. They think the group is essentially engaging in free speech. Please answer the following questions:

- Would the laws of your country allow you to bring criminal or civil claims against the people who started the group or the website?
- If so, would you take legal action?
- Would Articles 10 or 11 ECHR prevent you from taking action?