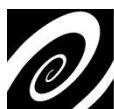


Intervention regarding Ethnic Profiling in Gyöngyöspata

The Court of Eger
Case ref. 12.P.20.065/2013

June 2014



OPEN SOCIETY
JUSTICE INITIATIVE

I. INTRODUCTION

1. The Open Society Justice Initiative respectfully submits written comments in case nr. 12.P.20.065/2013. The Open Society Justice Initiative is an international civil society organization that uses law to protect and empower people around the world. We have worked closely with local partners to address ethnic profiling and advocate for fair and effective policing in Europe since 2005.¹
2. This case raises important issues regarding the right of members of ethnic minorities to non-discrimination and to equal treatment in policing, and addresses in particular issues of evidence and proof.
3. To assist the Court of Eger, this intervention provides an overview of:
 - *Legal standards prohibiting ethnic profiling.* Ethnic profiling is a form of discrimination which is prohibited under a range of treaties to which Hungary is a party. It has been repeatedly condemned by United Nations and European human rights bodies, and by national courts across Europe.
 - *Proof of ethnic profiling.* Once a difference in treatment against a specific ethnic group has been established, the burden of proof shifts to the State authority to demonstrate that the difference is justified. The difference in treatment creating the presumption of discrimination and shifting the burden of proof can be established by a wide range of evidence, including statistics.
 - *State obligation to protect against racist attacks.* The State has an obligation to protect vulnerable communities from racist harassment and violence. Police must not condone racist attacks, and must effectively investigate them, including investigating any racist motives of the attackers.
4. This case was brought by the Hungarian Civil Liberties Union. In the spring of 2011, right-wing extremist, paramilitary, anti-Roma forces descended on the segregated Roma settlement of the Hungarian village of Gyöngyöspata to harass its inhabitants under the guise of conducting “patrolling” activities to curb what they defined as “gypsy crime” over a period of two months. The police systematically failed to intervene to enforce the law and stop the overtly racist activities of the extremists, who usurped the state’s monopoly on the legitimate use of force for an extended period of time. At times, the police appeared to be cooperating with the extremists. Furthermore, the police aggravated the harassment suffered by the local Roma community by disproportionately fining offenders of Roma origin for minor offenses, usually traffic violations.²
5. Two reports by the Parliamentary Commissioner for National and Ethnic Minority rights, as well as the Hungarian Civil Liberties Union’s legal application in this case, allege that the police failed to provide protection for Roma against racial harassment by vigilante groups and that they targeted Roma for law enforcement on the basis of their ethnicity. These are acts that constitute racial harassment and violate fundamental rights. The objective of this intervention is to assist the Court in assessing the allegation that the right to equal treatment has been violated.

II. LEGAL STANDARDS PROHIBITING ETHNIC PROFILING

6. Ethnic profiling – use by law enforcement personnel of ethnicity, race, religion or national origin as an exclusive or decisive basis for the exercise of their investigatory, arrest and

prosecutorial powers – is a form of discrimination.³ It is prohibited under a range of treaties to which Hungary is a party, and has been repeatedly condemned by United Nations and European human rights bodies. Both the European Court of Human Rights and numerous national courts across Europe have recognized that except in rare circumstances not present before this court,⁴ basing law enforcement decisions exclusively or to a decisive extent on ethnicity or race cannot be justified.

A. Prohibition of Racial Discrimination – Legal Standards and their Interpretation

7. The international human right to nondiscrimination is set out in a number of treaties to which Hungary is a party. The International Covenant on Civil and Political Rights (“ICCPR”) provides that all persons “are entitled without discrimination to equal protection of the law” and “prohibit[s] discrimination and guarantee[s] to all persons equal and effective protection against discrimination on any ground” (Article 26).⁵ This free-standing guarantee establishes non-discrimination as an autonomous right by prohibiting discrimination “in any field regulated and protected by public authorities.”⁶
8. The International Covenant on the Elimination of Racial Discrimination (“ICERD”) defines racial discrimination, in particular, as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁷
9. Article 14 of the European Convention on Human Rights (“ECHR”) also bans discrimination, providing that the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This prohibition of discrimination complements the other substantive provisions of the ECHR and has effect in relation to the rights and freedoms safeguarded by those provisions.⁸ Accordingly the European Court of Human Rights has repeatedly that Article 14 is not autonomous but has effect only in relation to other Convention rights. In cases of racial discrimination, racist violence and harassment, the substantive rights affected include the prohibition of inhuman and degrading treatment (Article 3 ECHR), the right to liberty and security (Article 5 ECHR),⁹ as well as the protection of private life, family life and home (Article 8 ECHR).¹⁰
10. The European Court has defined discrimination as differential treatment of persons in relevant, similar situations, without an objective and reasonable justification.¹¹ In relation to discrimination on grounds of race and ethnicity the European Court has applied a particularly high standard of protection, ruling that “[d]iscrimination on account of one’s actual or perceived ethnicity is a form of racial discrimination” and that “racial discrimination is a particularly invidious kind of discrimination and requires from the authorities special vigilance and a vigorous reaction.”¹² As a result, the Court has considered that where the authorities claim that a difference in treatment based on race or ethnic origin is justified, “the notion of objective and reasonable justification must be interpreted as strictly as possible”.¹³ Indeed, as discussed below, differences which are exclusively or decisively based on racial or ethnic origin may not be capable of objective and reasonable justification¹⁴ (see para.15, below).
11. The obligation of states under the ECHR to *secure* the enjoyment of rights without discrimination indicates that they have positive obligations to prevent discrimination, as well as obligations not to discriminate through their official acts. In particular, the European Court has clarified that there is a positive obligation for contracting States to

protect vulnerable groups against discrimination—e.g. gender-based violence or racism and racist violence against Roma.¹⁵ For example, the European Court has held that as a result of their turbulent history and constant uprooting, the Roma are a specific type of disadvantaged and vulnerable minority that require special protection.¹⁶ This means that “special consideration should be given to their needs and their different [Roma] lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.”¹⁷ Turning to the present case, due to their economic and social disadvantage, the fines for minor offenses that were disproportionately targeted at the Roma community would affect them more seriously than other groups, and targeting them for fines would run counter to the special protection status granted to them by the Court as a vulnerable group in Europe.

B. Prohibition of Ethnic Profiling as a Form of Racial Discrimination

12. The European Court of Human Rights, national courts and human rights bodies have all recognized that ethnic profiling constitutes a form of unlawful discrimination and is therefore prohibited. In addition to being discriminatory, there is no evidence that ethnic profiling (as opposed to circumstances where ethnicity forms part of the description of a suspect in a specific crime – “criminal profiling”) enhances law enforcement. Tolerating ethnic profiling suggests that discrimination is acceptable and adversely affects police-community relations.¹⁸
13. In the present case, it is alleged that police engaged in a systematic practice of targeting Roma for violations of minor offenses while not enforcing these laws against non-Roma. Such a practice of differential treatment of an entire ethnic group absent an objective and reasonable justification constitutes discrimination under European and international law. This is so even if individual Roma committed minor offenses.

1. Ethnic profiling in European Court of Human Rights jurisprudence

14. The European Court has developed a framework for determining when a distinction or difference of treatment is unlawful discrimination as prohibited under Article 14 ECHR. A difference of treatment must firstly pursue a legitimate aim; and Article 14 will also be violated when there is no proportionality between the means employed and the aim pursued.¹⁹
15. Applying these criteria to the exercise of police powers, in 2005 the European Court held in *Timishev v. Russia*—a case where the police acted on instructions to stop individuals of a specific ethnicity from entering or leaving Chechnya—that no difference in treatment based exclusively or to a decisive extent on a person’s ethnic origin can be objectively justified.²⁰ In 2010, in *Gillan and Quinton v. the United Kingdom*, the European Court warned that the risk of discriminatory use of police powers against ethnic minorities was serious, given that “available statistics” showed minority groups were disproportionately subjected to such powers.²¹
16. Singling out a specific ethnic group for law enforcement constitutes differential treatment based on prejudice, stereotyping and stigmatization and cannot meet the objective justification and proportionality test. This is true even if official crime statistics show that members of certain ethnic groups are overrepresented in particular types of crime, because such statistics may be distorted by law enforcement’s disproportionate targeting/policing a specific ethnic group.

2. Ethnic profiling in domestic jurisprudence in selected European jurisdictions

17. Various European domestic court decisions have established that targeting individuals for law enforcement measures when the only or main reason for doing so is their race or

ethnicity amounts to discrimination and is unlawful. This will be the case even if domestic law provided a lawful basis for the individual acts by the police – such as to fine, stop, or question an individual – in each particular instance.

18. In 2004, in *Regina v. Immigration Officer at Prague Airport and another ex parte European Roma Rights Centre and others*,²² the UK House of Lords found that a “pre-clearance” procedure, where British immigration officers at Prague Airport could refuse entry to those passengers they believed were intending to claim asylum in the UK on arrival, was discriminatory. Statistics showed that almost 90% of Roma passengers were refused entry as opposed to 0.2% of non-Roma passengers, meaning that the Roma were 400 times more likely than their non-Roma peers to be refused entry. The House of Lords found that because the immigration officers treated the Roma less favorably on the basis of their ethnicity, they engaged in stereotyping, which amounted to direct discrimination.²³ The motive for the stereotyping was irrelevant.²⁴ The House of Lords found the practice to be unlawful not only under domestic law, but also under international law, including the Universal Declaration of Human Rights, the ICCPR, the European Convention on Human Rights, and the ICERD.²⁵
19. In 2010, the Cypriot Equality Body determined that police engaged in ethnic profiling against Chinese women and undocumented migrants that led to mass arrests, deportations and detentions. Citing provisions of the ECHR that form part of the Cypriot Constitution, the UN Human Rights Committee’s *Rosalind Williams Lecraft* decision (see para. 23, below), and a statement by the Council of Europe Human Rights Commissioner condemning ethnic profiling, the equality body found the mass checks and the ensuing police activities to be unconstitutional as they were motivated by a presumption of guilt on the basis of race or ethnicity.²⁶
20. In 2012, the Higher Administrative Court of Rhineland-Palatinate in Germany ruled that ethnic profiling by the police violates the principle of equality enshrined in the German Basic Law. The case arose after a black German citizen was asked by officers of the Federal Police to identify himself on a train. After determining that the applicant’s skin color was the decisive criterion for his identity check,²⁷ the court found that such a check was in breach of the prohibition against discrimination under the German Basic Law. The case was finally settled following an apology by the police.²⁸
21. Charges of ethnic profiling against the Hungarian police have previously been considered by the Hungarian authorities. In 2012, the Hungarian Helsinki Committee initiated proceedings against the Country Police Chief of Nógrád before the Hungarian Equal Treatment Authority.²⁹ The case alleged that fines for the lack of mandatory bicycle equipment were almost exclusively levied on Roma, while the same violations were routinely overlooked in the case of non-Roma. Although the case was settled, as part of the settlement the Police Chief publicly acknowledged that the practice of targeting Roma may have violated the right to equal treatment, even if the fines were imposed lawfully in the individual cases, but emphasized that the police were not able to control the overall practice in the absence of data on the ethnicity of those fined.³⁰

3. United Nations and European regional bodies’ stance on ethnic profiling

22. The ICCPR and ICERD also prohibit police practices that are improperly driven by ethnic and racial considerations. The UN Committee on the Elimination of Racial Discrimination (“CERD”) has repeatedly condemned ethnic profiling as a form of racial discrimination. In 2005, CERD adopted a General Recommendation holding that States Parties should take the necessary steps to prevent questioning, arrests, and searches which are based on a person’s membership of a racial or ethnic group, or any profiling which exposes him or her

to greater suspicion.³¹ The CERD has identified racial profiling of Roma as a matter of specific concern in a number of countries,³² including Hungary (see para. 26, below).

23. The UN Human Rights Committee (“HRC”) has similarly expressed concern about racial profiling targeting members of ethnic minorities or foreigners.³³ It addressed the issue of ethnic profiling in an individual communication brought against Spain by Rosalind Williams Lecraft. The HRC held it impermissible for identity checks to be “carried out so that only people with certain physical characteristics or ethnic backgrounds are targeted. This would not only adversely affect the dignity of those affected, but also contribute to the spread of xenophobic attitudes among the general population; it would also be inconsistent with an effective policy to combat racial discrimination.”³⁴
24. The UN Independent Expert on minority issues and a number of UN Special Rapporteurs, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on freedom of religion, have also emphasized that ethnic profiling practices contravene the right to equality and non-discrimination.³⁵ They have called for a range of measures to be adopted to prevent and address it, including recommending that ethnic profiling be prohibited in law,³⁶ that such misconduct by law enforcement be investigated and that those responsible be held to account,³⁷ and highlighting the importance of oversight, including judicial scrutiny, in preventing ethnic profiling.³⁸
25. The Council of Europe Commissioner for Human Rights, the European Parliament and the European Union Fundamental Rights Agency have all condemned ethnic profiling.³⁹ In addition, the Council of Europe’s European Commission against Racism and Intolerance (“ECRI”) has examined the challenges of ethnic profiling in detail in its General Policy Recommendation no. 11 on combating racism and racial discrimination in policing, adopted in 2007. In that Recommendation, ECRI underscored that racial profiling is not an acceptable or valid response to the challenges posed by the everyday reality of combating crime. It based this conclusion on the fact that racial profiling, as a form of racial discrimination, violates human rights, reinforces stereotypes, and lacks effectiveness, and that as a result it leads to less human security.⁴⁰ ECRI thus called upon States to monitor police activities in order to identify racial profiling practices, including by collecting data.⁴¹

4. United Nations and European regional bodies’ views on ethnic profiling in Hungary

26. With respect to Hungary, since 1996 the CERD has continually noted “apparent harassment”⁴² and “allegations of ill-treatment and discrimination against the Roma and non-citizens by law enforcement officials, especially the police.”⁴³
27. The HRC has voiced concern at persistent racial profiling of Roma by the Hungarian police.⁴⁴ So too has the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.⁴⁵ Furthermore, the Independent Expert on minority issues at the Office of the United Nations High Commissioner for Human Rights has concluded that the over-representation of Roma in prisons in Hungary may partly be attributed to discriminatory practices, notably in police stop and search activities.⁴⁶
28. In addition, in all of its Hungary-specific country reports since 1997, ECRI has highlighted mistreatment and misbehavior towards the Roma by the police. According to ECRI, anti-Roma prejudice is pervasive among police officers,⁴⁷ and discrimination and ill-treatment perpetrated by police include harassment, excessive force, abuse,⁴⁸ racial violence or

threats,⁴⁹ arbitrary arrests,⁵⁰ and disproportionate stop and search operations.⁵¹ ECRI has recommended that Hungarian authorities prevent police misbehavior and mistreatment towards Roma and other minority groups.⁵²

5. Ethnic profiling is not effective and is counter-productive

29. The assumption that an ethnic or national identity, or a religion, directly correlates with criminality grossly stigmatizes entire groups of people as “suspect communities.” Such stigmatization has concrete impacts on minority communities, on their relations with police and on public safety broadly. Ethnic profiling contributes to the overrepresentation of ethnic minorities in the criminal justice system; disproportionate rates of criminal supervision and incarceration reduce work opportunities, and breaks down family and community bonds. Law enforcement’s stigmatization of entire communities as more likely to commit crimes justifies broader stereotypes about ethnic minority groups, signaling to the broader society that all members of that group constitute a threat.
30. Ethnic profiling also delegitimizes the criminal justice system in the eyes of those affected, reduces trust in police, and cooperation with law enforcement, thus hampering law enforcement efforts to combat crime.⁵³ Levels of hostility toward police increase, leading to a greater likelihood of escalating tension and conflict during routine encounters between police and members of targeted groups; this creates safety concerns for officers and community members alike.⁵⁴ Unchecked and widespread profiling has also contributed directly to civil unrest, as has been the case in the UK,⁵⁵ France,⁵⁶ Denmark, and Sweden⁵⁷ in recent years.

6. Evidence and lessons on profiling from a study of Hungarian police practice

31. The ineffective and counter-productive nature of ethnic profiling is evidenced by studies conducted by the Open Society Justice Initiative, including in Hungary. Between September 2007 and March 2008, Hungary was one of the three countries where the Open Society Justice Initiative cooperated with police forces and civil society to monitor the use of police stops and ID checks in the framework of “Strategies for Effective Police Stop and Search project (STEPSS),” a project supported by the European Commission.
32. The data collected on stops in Hungary (in Kaposvár, Szeged and the 6th District in Budapest), as well as interviews with both police officers and members of the Roma community,⁵⁸ indicated that the police engaged in ethnic profiling and disproportionately targeted Roma.⁵⁹ Members of the Roma community were three times more likely to be stopped than their non-Roma peers.⁶⁰ The disproportionality was particularly acute for stops where police officers had wide discretion and could be influenced by negative stereotypes, such as suspicion of petty offenses or supposed prevention of an act jeopardizing public order.⁶¹ Yet rates of offending – arrests, short-term arrests and petty offense proceedings – were the same for both Roma and non-Roma.⁶²
33. The STEPSS study also yielded some positive results, showing that profiling is not necessary or effective, and that policing becomes more fair and effective with proper oversight⁶³ (e.g. through the use of stop forms and civilian monitoring).⁶⁴ In both Budapest and Szeged, there was a sharp drop in the number of stops during the project period as compared to the same period a year earlier, and the decrease in the number of stops was accompanied by a growth in the overall effectiveness of stops: the percentage of stops that produced results increased.⁶⁵ One of the Roma participants of the STEPSS project later joined the police force, suggesting that reducing ethnic profiling enhances minority communities’ trust of the police.⁶⁶

III. PROOF OF ETHNIC PROFILING

34. International case-law recognizes how difficult it may be to prove discrimination, especially where discrimination results from practices of public authorities such as police who deny that their actions are influenced by race, ethnicity, religion, or national origin, or by visible membership of the individual in such categories. Courts have responded to this difficulty by accepting a broad range of proof, including statistics, to demonstrate a difference in treatment, and by placing the obligation on the State authorities to explain why a difference in treatment is not discriminatory once *prima facie* evidence of such difference in treatment has been presented.

1. Establishing discrimination and the role of statistics

35. It is often not possible to obtain direct and conclusive proof of discrimination. As a result, the European Court of Human Rights recognizes that it must look at a wide range of evidence, including circumstantial evidence, from which to draw an inference or conclusion that there was a difference in treatment based on race, ethnicity or another protected ground.⁶⁷ The European Court has accepted that such *prima facie* evidence of discrimination may be based on, for example, statements and demonstrable actions that create the presumption of discriminatory attitudes and practices.⁶⁸
36. One way to establish a difference in treatment, and create a *prima facie* presumption of discrimination, is the use of statistics. Although the European Court has not found statistics alone to be sufficient proof that a practice is discriminatory, it has relied extensively on statistics produced by the litigating parties to establish a difference in treatment between two groups in similar situations.⁶⁹ Notably, the Court has relied on statistics even when they might not have been “entirely reliable” but appear to reveal a “dominant trend” of discrimination.⁷⁰ It should be recalled that there is no requirement under Article 14 ECHR to establish intent to discriminate in order for a presumption of discrimination to arise.⁷¹
37. Statistics can, therefore, create a strong presumption of discriminatory practice, leading to a reversal of the burden of proof in establishing whether discrimination in fact exists. The E.U. Network of Independent Experts on Fundamental Rights has recognised the important role of statistics in revealing systemic differences in treatment, such as those arising in cases of ethnic profiling, and has recommended that proper protection from the risk of ethnic profiling requires that national legal systems should permit statistics to be used to demonstrate a practice of ethnic profiling or to highlight discriminatory attitudes.⁷²

2. Reversal of the burden of proof

38. The European Court has established that once a claimant has shown a *prima facie* difference in treatment based on a protected ground—for example, being treated differently by the police based on race—the State authority must show that the difference in treatment is justified.⁷³ In other words, the burden of proof shifts to the Government to put forward convincing and compelling evidence that the practice was not in fact discriminatory. This is particularly true where the events (and/or decisions) at issue lie wholly, or in large part, within the exclusive knowledge of the authorities,⁷⁴ as would be the case regarding their internal policies, instructions and law enforcement guidelines.
39. For some claims of discrimination, the authorities might be able to show that the difference in treatment was objectively and reasonably justified. However, as noted above, given the serious nature of any discrimination based on race, especially in the context of the exercise of coercive police powers, the European Court has ruled that “no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of

pluralism and respect for different cultures.”⁷⁵ As a result, to justify the targeting of Roma for fines in Gyöngyöspata, the State authority would have to demonstrate that the overall difference of treatment of the Roma population was based exclusively upon considerations other than racial or ethnic origin and did not have an adverse impact on them. The question of whether its officers intended to discriminate or whether any specific fine was as such legitimate is irrelevant. Specifically, the State authority would have to:

- a) explain why it has chosen to target a specific geographical area with an exclusively Roma population to enforce certain regulations,
 - b) explain the apparent disproportion in numbers of Roma fined for minor offences,
 - c) explain how it has taken into account the particularly vulnerable situation of the Roma population and the impact the targeted law enforcement and fines have had upon them, and
 - d) demonstrate that the measures have not had an undue adverse effect on the group affected.
40. Clearly, this is an extremely high burden for the State authority to meet and it would not appear possible for it to meet this burden in the present case.

IV. STATE OBLIGATION TO PROTECT AGAINST RACIST ATTACKS

41. The State is obliged to protect vulnerable communities from abuse and attack, as part of its positive obligation to prevent discrimination and to protect the integrity and private and family life of those within its jurisdiction. This requires that State authorities not acquiesce to or connive in racist attacks, actions or harassment; rather, they should intervene promptly to halt such attacks or harassment and investigate the perpetrators. That investigation, in turn, must include investigating any possible racist motives behind attacks or harassment.

1. Obligation to protect against discrimination and harassment

42. The prohibition against discrimination includes a positive obligation to protect from racist harassment and violence. The European Court has held in particular that there are positive obligations on the State inherent in the right to respect for private or family life (Article 8 ECHR), which means that States have a duty to protect the physical and moral integrity of an individual.⁷⁶ There is also, as noted above, a positive obligation on the State to prevent discrimination, in particular against vulnerable groups. Specifically, the Court has established the positive obligation on the authorities to take preventive measures to protect individuals whose lives are at risk from the criminal acts of others.⁷⁷
43. In addition to the positive obligation to protect individuals from discrimination, and from unlawful interference with their integrity and private lives, the State may also in some cases be directly responsible for the acts of private individuals where the authorities have acquiesced to or connived in violations committed by those private individuals. This may be true even where State agents are acting *ultra vires* or contrary to instructions.⁷⁸
44. These principles apply directly to a situation where there are clear and imminent threats or violence towards a minority community by racist vigilantes. The State authorities are obliged to provide effective protection to the affected communities against such actions; failure to do so violates Article 14 ECHR taken together with Articles 3, 5 and 8 ECHR. The European Court has found such a violation in a single incident of religiously-motivated violence, based on “the refusal by the police to intervene promptly at the scene of the

incident in order to protect the applicants, and the children of some of their number, from acts of religiously-motivated violence, and the subsequent indifference shown towards the applicants by the relevant authorities.”⁷⁹

45. Effective protection entails not only a legislative framework to protect individuals and immediate measures to prevent further attacks and threats, but also rigorous investigation of incidents, identification of perpetrators, and holding them to account under applicable national legislation.⁸⁰ Failure by the authorities to intervene to stop racist attacks and to effectively investigate the perpetrators are a particular concern where those failures allow the discriminatory harassment and attacks to continue.⁸¹
46. It is the task of the national courts to provide an effective remedy for racist attacks, since the national authorities must have the first opportunity and bear the primary responsibility to redress any violation of the Convention.⁸² National courts should therefore establish whether there has been a violation of Convention rights where these take place, directing the authorities to the course of action required to comply with the Convention, including by preventing similar future violations, and where necessary, ordering compensation for the victims.⁸³

2. Obligation to investigate racist motive in violent attacks on minority groups

47. The European Court has repeatedly emphasized that in combatting racism and racist violence, the authorities must employ special vigilance and react vigorously, employing all available means.⁸⁴ This includes the obligation to effectively investigate and unmask racist motives in cases of violence towards an ethnic minority group.⁸⁵ The Grand Chamber of the European Court has affirmed that “where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigor 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.”⁸⁶
48. When investigating violent incidents that appear to have racist motives, the authorities must take all reasonable steps to establish whether racism was in fact the cause. The European Court has emphasized that treating cases of violence with racist overtones in the same way as cases which had no racist overtones can constitute differential treatment that cannot be justified under Article 14 ECHR.⁸⁷ In the case of *Bekos and Koutropoulos v. Greece*, the Court confirmed its view that “when investigating violent incidents, State authorities have the additional duty to 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 the events.”⁸⁸
49. The European Court has recognized that proving racial motivation will often be difficult in practice. It nevertheless considers that the obligation to investigate racist motivation of violence requires that authorities “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 a racially induced violence.”⁸⁹
50. The obligation to properly and effectively investigate a racist motive applies to violent incidents between private individuals as well as in cases of police violence. In the case of *Abdu v. Bulgaria*,⁹⁰ concerning a Sudanese man who was attacked by “skinheads” wearing Nazi symbols, the Court underscored that the authorities cannot dispose of their obligations by simply establishing that there is no compelling evidence to prove that the attack was racially motivated. Rather, police must thoroughly investigate and take into consideration all relevant circumstances.⁹¹ Thus, the police must promptly and actively gather and secure

all relevant evidence and obtain where possible objective witness statements as well as scientific evidence which could support the contention of a racist motive of the incident(s).

51. Any indications of connivance or sympathy with the attackers combined with a lack of an effective official investigation would create the presumption of bias against the affected ethnic minority group, and is likely to violate the State's obligation to prevent and protect from discrimination in violation of Article 14 ECHR⁹² in conjunction with the prohibition of inhuman and degrading treatment and the right to respect for private and family life. In sum, failure by the police to take complaints of racist violence, threats and intimidation seriously, and to take steps to investigate and curb them, will violate the right to protection against discrimination under Article 14 ECHR.

3. International concerns over failure to prevent and investigate racist violence in Hungary

52. A number of international, regional and non-governmental organizations have expressed concern that the Hungarian police have repeatedly failed to effectively prevent and investigate incidents of racist violence.
53. Prominent human rights organizations—for example, Amnesty International, Human Rights First, and the European Roma Rights Centre—have warned that in Hungary the police fail at a systemic level to prevent and effectively investigate racially-motivated crimes against ethnic minorities.⁹³ Amnesty International and the European Roma Rights Centre specifically noted the intimidation and harassment of Roma residents of Gyöngyöspata,⁹⁴ and together with Human Rights First publicly condemned these activities in a letter addressed to high-ranking officials during the vigilantes' presence in the village.⁹⁵
54. Similarly, highlighting serious deficiencies in policing in Hungary, ECRI has continuously emphasized the need to ensure that the investigation and prosecution of racist crimes are carried out in a thorough and systematic fashion.⁹⁶ The UN Special Rapporteur on contemporary forms of racism has also noted with concern the low level of prosecution and sanctions in cases concerning Roma victims in Hungary.⁹⁷ The UN CERD has recommended that the efforts to combat ill-treatment of Roma in Hungary should be intensified, “especially through the strict application of relevant legislation and regulations providing for sanctions, adequate training and instructions to be given to law enforcement bodies and the sensitization of the judiciary.”⁹⁸

V. CONCLUSION

55. The Open Society Justice Initiative submits that the international, European, and domestic case law norms on ethnic profiling elaborated above suffice to show that the behavior of the Hungarian police in the incidents that are the subject of this case constitute impermissible discrimination against Roma.

¹ See, *inter alia*, Open Society Justice Initiative, *Addressing Ethnic Profiling by Police* (Report), May 2009, p. 89, available at: <http://www.opensocietyfoundations.org/reports/addressing-ethnic-profiling-police>; Open Society Justice Initiative, *I Can Stop and Search Whoever I Want* (Report), 2007, p. 11, available at: <http://www.opensocietyfoundations.org/reports/i-can-stop-and-search-whoever-i-want-police-stops-ethnic-minorities-bulgaria-hungary-and>; Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (Report), 2009, available at: http://www.opensocietyfoundations.org/sites/default/files/profiling_20090526.pdf

² See http://tasz.hu/files/tasz/imce/gyongyospata-legal_position.pdf and http://tasz.hu/files/tasz/imce/hclu_gyongyospata_shadow_report_summary.pdf

³ See however also other definitions such as “[u]se by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities” ECRI General Policy Recommendation N°11 on Combating racism and racial discrimination in policing, adopted by ECRI on 29 June 2007, 4 October 2007, CRI(2007)39 and also the E.U. Network of Independent Experts on Fundamental Rights, *Ethnic Profiling* (Report), December 2006, p 9, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf

⁴ Not all distinctions or differences in treatment by public authorities, including law-enforcement personnel, constitute discrimination: law enforcement officers may consider race and ethnicity to the extent that there is trustworthy and timely information, relevant to the locality or modus operandi of the crime, that links a person of a particular race or ethnicity to an identified criminal incident, scheme, or organization.

⁵ Ratified by Hungary 17 January 1974; available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

⁶ UN Human Rights Committee (HRC), CCPR General Comment No. 18: Non-discrimination, 10 November 1989, at para. 12, available at: <http://www.refworld.org/docid/453883fa8.html>

⁷ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Article 1, available at: <http://www.refworld.org/docid/3ae6b3940.html>

⁸ Hungary has signed, but not ratified Protocol 12 to the ECHR which provides for a general ban on discrimination of any right secured by law, also domestically.

⁹ *Gillan and Quinton v. the United Kingdom*, ECtHR, Judgment of 12 January 2010, at para. 57: “The Court observes that although the length of time during which each applicant was stopped and search did not in either case exceed 30 minutes, during this period the applicants were entirely deprived of any freedom of movement. They were obliged to remain where they were and submit to the search and if they had refused they would have been liable to arrest, detention at a police station and criminal charges. This element of coercion is indicative of a deprivation of liberty within the meaning of Article 5 § 1”

¹⁰ See e.g. *Vallianatos and Others v. Greece* [GC], ECtHR, Judgment of 7 November 2013 at para. 72: “This provision complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter”

¹¹ *Willis v. the United Kingdom*, ECtHR, Judgment of 11 June 2002, at para. 48; *Okpiz v. Germany*, ECtHR, Judgment of 25 October 2005, at para. 33.

¹² *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at para. 56.

¹³ *D.H. and Others v. the Czech Republic* [GC], ECtHR, at para. 196. See also *Orsus and Others v Croatia*, ECtHR, 10 March 2011, at para. 51 “[t]he Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. However, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of ethnic origin as compatible with the Convention.”

¹⁴ *D.H. and Others v. the Czech Republic* [GC], ECtHR, Judgment of 13 November 2007, at para. 176.

¹⁵ See *Opuz v. Turkey*, ECtHR, Judgment of 9 June 2009, where the relevant consideration concerned the protection of the right to life against gender-based domestic violence which the Court held to be a form of discrimination.; *D.H. and Others v. the Czech Republic* [GC], ECtHR, Judgment of 13 November 2007, at para. 182, where the Court held that the Roma are “a specific type of disadvantaged and vulnerable minority” in need of “special protection.”

¹⁶ *D.H. and Others v. the Czech Republic* [GC], ECtHR, Judgment of 13 November 2007, at para. 182.

¹⁷ *Ibid*, at paras.181-182.

¹⁸ Open Society Justice Initiative, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory* (Report), 2009, available at:

http://www.opensocietyfoundations.org/sites/default/files/profiling_20090526.pdf

¹⁹ Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium (“Belgian Linguistics Case”), ECtHR, Judgment of 23 July 1968, at para. 10; *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, ECtHR, Judgment of 28 May 1985, at para. 72.

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- ²⁰ *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at para. 58. See also *Finci and Sejdic v Bosnia and Herzegovina*, ECtHR, Judgment 22 December 2009, at para. 44. See also *Aziz v. Cyprus*, ECtHR, Judgment of 22 June 2004, at paras. 34-38.
- ²¹ *Gillan and Quinton v. the United Kingdom*, ECtHR, Judgment of 12 January 2010, at para. 85.
- ²² *Regina v. Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others*, [2004] UKHL 55, United Kingdom: House of Lords (Judicial Committee), 9 December 2004, available at: <http://www.bailii.org/uk/cases/UKHL/2004/55.html>
- ²³ *Ibid*, at para. 74.
- ²⁴ *Ibid*, at paras. 36, 74 and 82.
- ²⁵ *Ibid*, at para. 98. These findings were subsequently reiterated by the House of Lords in another case: *R (on the application of Gillan (FC) and another (FC)) v. Commissioner of Police for the Metropolis and another*, [2006] UKHL 12, United Kingdom: House of Lords (Appellate Committee), 8 March 2006, at paras. 43-45, available at: <http://www.bailii.org/uk/cases/UKHL/2006/12.html>
- ²⁶ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review*, No. 11, pp. 52-53, available at <http://www.non-discrimination.net/content/media/Review%2011%20EN.pdf>; summary available at: <http://www.non-discrimination.net/content/media/CY-45-CY-EB%20decision-police%20operations.pdf>
- ²⁷ Hoff and Lambert, "Racial Profiling in Germany: Is Lecraft vs. Spain applicable?" (Article), *Humanity in Action*, available at: <http://www.humanityinaction.org/knowledgebase/400-racial-profiling-in-germany-is-lecraft-vs-spain-applicable>
- ²⁸ Decision AZ: 7 A 10532/12.OVG, Higher Administrative Court (Oberverwaltungsgericht) of Koblenz, Decision of 6 November 2012, available at: <http://www.mjv.rlp.de/icc/justiz/nav/704/broker.jsp?uMen=7047a075-9880-11d4-a735-0050045687ab&uCon=0998fb32-0ba3-10dc-32ae-477fe9e30b1c&uTem=aaaaaaaa-aaaa-aaaa-000000000042>; referenced at: <http://www.non-discrimination.net/content/media/DE-43-2012%20Flash%20Report%20Racial%20Profiling%20II.pdf>
- ²⁹ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review*, No. 15, p. 64, available at <http://www.non-discrimination.net/content/media/Review%2015%20EN.pdf>
- ³⁰ Summary of the settlement available at the website of the Equal Treatment Authority: <http://www.egyenlobanasmod.hu/jogesetek/hu/190-2012.pdf>
- ³¹ Committee on the Elimination of Racial Discrimination, General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005), at para. 20. The Committee also considered that "the risks of discrimination in the administration and functioning of the criminal justice system have increased in recent years, partly as a result of the rise in immigration and population movements, which have prompted prejudice and feelings of xenophobia or intolerance among certain sections of the population and certain law enforcement officials, and partly as a result of the security policies and anti-terrorism measures adopted by many States, which among other things have encouraged the emergence of anti-Arab or anti-Muslim feelings, or, as a reaction, anti-Semitic feelings, in a number of countries."
- ³² Cf. Concluding Observations of the Committee on the Elimination of Racial Discrimination: Romania, CERD/C/ROU/CO/16-19, 13 September 2010, at para. 15; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Albania, CERD/C/ALB/CO/5-8, 14 September 2011, at para. 15.
- ³³ Concluding Observations of the Human Rights Committee: United Kingdom, CCPR/C/GBR/CO/6, 30 July 2008, at para. 29; Concluding Observations of the Human Rights Committee: Russian Federation, CCPR/C/RUS/CO/6, 24 November 2009, at para. 11.
- ³⁴ *Rosalind Williams Lecraft v. Spain*, UNHRC, Judgment of 27 July 2009, Comm. 1493/2006, at para. 7.2.
- ³⁵ Report of the Special Rapporteur on the rights of migrants: Visit to the United Kingdom, A/HRC/14/30/Add.3, 16 March 2010, at para. 72; Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism: study on Australia, A/HRC/4/26/Add.3, 14 December 2006, paras. 52-53; Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/4/26, 29 January 2007, at para. 40.
- ³⁶ Report of the Special Rapporteur on the rights of migrants: Visit to the United Kingdom, A/HRC/14/30/Add.3, 16 March 2010, at para. 84.
- ³⁷ Report of the Independent Expert on minority issues: Visit to Canada, A/HRC/13/23/Add.2, 8 March

2010, at para. 101.

³⁸ E/CN.4/2004/18, 21 January 2004, at para. 9; Report of the Special Rapporteur on the rights of migrants: Visit to the United Kingdom, A/HRC/14/30/Add.3, 16 March 2010, at para. 72; Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism: study on Australia, A/HRC/4/26/Add.3, 14 December 2006, paras. 52-53; Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, A/HRC/4/26, 29 January 2007, paras. 45-55.

³⁹ Open Society Justice Initiative, *International Standards on Ethnic Profiling: Standards and Decisions from the European Systems* (Case digest), 2013, pp. 33, 47-48, available at: <http://www.opensocietyfoundations.org/sites/default/files/case-digests-ethnic%20profiling-european-systems-110813.pdf>

⁴⁰ Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, adopted by ECRI on 29 June 2007, 4 October 2007, CRI(2007)39, at para. 25, available at: <http://www.refworld.org/docid/51bec4fe4.html>

⁴¹ *Ibid*, Recommendation No. 2.

⁴² UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Hungary, 28 March 1996, CERD/C/304/Add.4, at para. 12, available at: <http://www.refworld.org/docid/3ae6af384.html>

⁴³ UN Committee on the Elimination of Racial Discrimination (CERD), Report of the UN Committee on the Elimination of Racial Discrimination, Sixtieth Session (4-22 March 2002) and Sixty-first Session (5-23 August 2002), 1 November 2002, A/57/18, 65, at para. 378, available at: <http://www.refworld.org/docid/3f52f7aa4.html>

⁴⁴ Concluding Observations of the Human Rights Committee. Hungary, CCPR/C/HUN/CO/5, 16 November 2010, at para. 18.

⁴⁵ Report of the Special Rapporteur on racism: visit to Hungary, A/HRC/20/33/Add.1, 23 April 2012, at para. 36, available at: http://www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33.Add.1_en.pdf

⁴⁶ Report of the Independent Expert on minority issues: Visit to Hungary, A/HRC/4/9/Add.2, 4 January 2007, at para. 48.

⁴⁷ Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Hungary (Fourth Monitoring Cycle), adopted on 20 June 2008, 24 February 2009, CRI(2009)3, at para. 175, available at: <http://www.refworld.org/docid/49e8891a2.html>

⁴⁸ Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI's country-by-country approach: Report on Hungary, September 1997, CRI(97)53, at para. 9, available at: http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_01/01_CbC_eng/01-cbc-hungary-eng.pdf

⁴⁹ Council of Europe: European Commission Against Racism and Intolerance (ECRI), Second Report on Hungary, adopted on 18 June 1999, 21 March 2000, CRI(2000)5, at para. 9, available at: http://hudoc.ecri.coe.int/XML/ECRI/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-hungary-eng.pdf

⁵⁰ Council of Europe: European Commission Against Racism and Intolerance (ECRI), Third Report on Hungary, adopted on 5 December 2003, 8 June 2004, CRI(2004)25, at para. 88, available at: <http://www.refworld.org/pdfid/46efa2ef0.pdf>

⁵¹ Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Hungary (Fourth Monitoring Cycle), adopted on 20 June 2008, 24 February 2009, CRI(2009)3, at paras. 175 and 185, available at: <http://www.refworld.org/docid/49e8891a2.html>

⁵² *Ibid*, at para. 176.

⁵³ Harcourt, "Rethinking Racial Profiling: A Critique of the Economics, Civil Liberties, and Constitutional Literature, and of Criminal Profiling More Generally," *The University of Chicago Law Review*, Vol. 71, No. 4, Fall 2004, at 1329-1330.

⁵⁴ Ontario Human Rights Commission, *Inquiry Report, Paying the Price; The Human Cost of Racial Profiling*, Toronto: Ontario Human Rights Commission, undated document; the inquiry started in Feb 2003.

⁵⁵ Delsol, "Riots in England: Inquiry Falls Short on Police Ethnic Profiling," Open Society Foundations, 1 December 2013, available at: <http://www.opensocietyfoundations.org/voices/riots-england-inquiry-falls-short-police-ethnic-profiling>

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- ⁵⁶ Henley, “Striking parallels between UK riots and France 2005 unrest,” *The Guardian*, 14 August 2011, available at: <http://www.theguardian.com/uk/2011/aug/14/uk-riots-france-2005-parallels>
- ⁵⁷ Hollo and Neild, “Policing on Trial: Europe Grapples with Ethnic Profiling,” Open Society Foundations, 5 July 2013, available at: <http://www.opensocietyfoundations.org/voices/policing-trial-europe-grapples-ethnic-profiling>; Rothschild, “What’s behind Sweden’s youth riots?,” *The Christian Science Monitor*, 28 May 2013, available at: <http://www.csmonitor.com/World/Europe/2013/0528/What-s-behind-Sweden-s-youth-riots-video>
- ⁵⁸ Open Society Justice Initiative, *I Can Stop and Search Whoever I Want* (Report), 2007, p. 52, available at: <http://www.opensocietyfoundations.org/reports/i-can-stop-and-search-whoever-i-want-police-stops-ethnic-minorities-bulgaria-hungary-and>
- ⁵⁹ Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search Project* (Report), 2009, p. 50, available at: http://www.opensocietyfoundations.org/sites/default/files/profiling_20090511.pdf
- ⁶⁰ Kádár, Körner, Moldova and Tóth, *Control(led) Group: Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project* (Report), Budapest: Hungarian Helsinki Committee, 2008, pp. 35-36, available at: <http://helsinki.hu/wp-content/uploads/books/en/Controlled-group.pdf>
- ⁶¹ Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search Project* (Report), 2009, p. 51, available at: http://www.opensocietyfoundations.org/sites/default/files/profiling_20090511.pdf
- ⁶² *Ibid*, p. 52.
- ⁶³ *Ibid*, p. 49.
- ⁶⁴ Kádár, Körner, Moldova and Tóth, *Control(led) Group: Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project* (Report), Budapest: Hungarian Helsinki Committee, 2008, pp. 16-17, available at: <http://helsinki.hu/wp-content/uploads/books/en/Controlled-group.pdf>
- ⁶⁵ Open Society Justice Initiative, *Addressing Ethnic Profiling by the Police: A Report on the Strategies for Effective Police Stop and Search Project* (Report), 2009, pp. 12 and 49, available at: http://www.opensocietyfoundations.org/sites/default/files/profiling_20090511.pdf
- ⁶⁶ *Ibid*, p. 13.
- ⁶⁷ *Nachova and Others v. Bulgaria* [GC], ECtHR, Judgment of 6 July 2005, at para. 147; *D.H. and Others v. the Czech Republic* [GC], ECtHR, Judgment of 13 November 2007, at para. 178.
- ⁶⁸ *Nachova and Others v. Bulgaria* [GC], ECtHR, Judgment of 6 July 2005, at para. 147; *D.H. and Others v. the Czech Republic* [GC], Judgment of 13 November 2007, at para. 178.
- ⁶⁹ Paraphrased from *D.H. and Others v. the Czech Republic* [GC], Judgment of 13 November 2007, at para. 180.
- ⁷⁰ *D.H. and Others v. the Czech Republic* [GC], Judgment of 13 November 2007, at para. 191.
- ⁷¹ *Ibid*, at paras. 175 and 184.
- ⁷² E.U. Network of Independent Experts on Fundamental Rights, *Ethnic Profiling* (Report), December 2006, p. 7, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/avis/2006_4_en.pdf
- ⁷³ *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at para. 57; *Chassagnou and Others v. France* [GC], ECtHR, Judgment of 29 April 1999, at paras. 91-92.
- ⁷⁴ *Salman v. Turkey* [GC], ECtHR, Judgment of 27 June 2000, at para. 100; *Anguelova v. Bulgaria*, ECtHR, Judgment of 13 June 2002, at para. 111,
- ⁷⁵ *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at para. 58.
- ⁷⁶ *Moldovan and Others v. Romania No. 2*, ECtHR, Judgment of 12 July 2005, at para. 93.
- ⁷⁷ See *Opuz v. Turkey*, ECtHR, Judgment of 9 June 2008, where the relevant consideration concerned the protection of the right to life against gender-based domestic violence which the Court held to be a form of discrimination.
- ⁷⁸ *Moldovan and Others v. Romania No. 2*, ECtHR, Judgment of 12 July 2005, at para. 94.
- ⁷⁹ *97 members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia*, ECtHR, Judgment of 3 May 2007, at para. 140.
- ⁸⁰ *Moldovan and Others v. Romania No. 2*, ECtHR, Judgment of 12 July 2005, at para. 93;
- ⁸¹ *97 members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia*, ECtHR, Judgment of 3 May 2007, at para. 141.
- ⁸² *Gäfgen v. Germany*, ECtHR, Judgment of 1 June 2010, at para. 115.

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- ⁸³ *Ibid*, at paras. 116 & 118; see also *Alex Menson and Others v. the United Kingdom*, ECtHR, Decision on admissibility of 6 May 2003, p. 13.
- ⁸⁴ *Timishev v. Russia*, ECtHR, Judgment of 13 December 2005, at para. 56; *Nachova and Others v. Bulgaria* [GC], ECtHR, Judgment of 6 July 2005, at para. 145; *Makhashevy v. Russia*, ECtHR, Judgment of 31 July 2012, at para. 153.
- ⁸⁵ *Turan Cakir v. Belgium*, ECtHR, Judgment of 10 March 2009, at para. 77.
- ⁸⁶ *Nachova and Others v. Bulgaria* [GC], ECtHR, Judgment of 6 July 2005, at para. 160; see also *Alex Menson and Others v. the United Kingdom*, p. 13.
- ⁸⁷ *Nachova and Others v. Bulgaria* [GC], ECtHR, Judgment of 6 July 2005, at paras. 160-161; *Bekos and Koutropoulos v. Greece*, ECtHR, Judgment of 13 December 2005, at para. 75.
- ⁸⁸ *Bekos and Koutropoulos v. Greece*, ECtHR, Judgment of 13 December 2005, at para. 69.
- ⁸⁹ *Ibid*, at para. 69.
- ⁹⁰ *Abdu v. Bulgaria*, ECtHR, Judgment of 11 March 2014, at para. 50.
- ⁹¹ For example, clothing, symbols and appearance of the attackers, which group they (are known to) belong to, and words used during the attack.
- ⁹² See e.g. *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, ECtHR, Judgment of 3 May 2007, at paras. 140-141.
- ⁹³ Amnesty International, *Submission to the European Commission on the Implementation of the Equality Directives*, Index: IOR 61/002/2013, January 2013, p. 22, available at: <http://www.amnesty.org/en/news-and-updates/report/submission-european-commission-implementation-equality-directives-2013-04-02>; European Roma Rights Centre, *Written observations on the situation of Roma in Hungary* (For consideration by the Commission on Security and Cooperation in Europe, U.S. Helsinki Commission), 19 March 2013, p. 3, available at: http://www.csce.gov/index.cfm?Fuseaction=Files.Download&FileStore_id=2321; Human Rights First, *Combating Violence against Roma in Hungary* (Report), October 2010, p. 7, available at: <https://www.humanrightsfirst.org/wp-content/uploads/pdf/HungaryBlueprint.pdf>
- ⁹⁴ Amnesty International, *Submission to the European Commission on the Implementation of the Equality Directives*, Index: IOR 61/002/2013, January 2013, footnote 62: "An ad-hoc Parliamentary Committee tasked to investigate the events published its conclusions on 30 March 2012 and failed to acknowledge the failure of authorities to prevent discrimination against the Roma. For further information see Amnesty International, Hungary: Report into vigilante activities in Gyöngyöspata fails to address discrimination (Index: EUR 27/001/2012);" European Roma Rights Centre, *Written observations on the situation of Roma in Hungary* (For consideration by the Commission on Security and Cooperation in Europe, U.S. Helsinki Commission), 19 March 2013, p. 4.
- ⁹⁵ Available at: <https://www.humanrightsfirst.org/wp-content/uploads/pdf/hungary-gyongyospata-letter-march-2011.pdf>
- ⁹⁶ Council of Europe: European Commission Against Racism and Intolerance (ECRI), Third Report on Hungary, adopted on 5 December 2003, 8 June 2004, CRI(2004)25, at paras. 19 and 20, available at: <http://www.refworld.org/pdfid/46efa2ef0.pdf>; Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Hungary (Fourth Monitoring Cycle), adopted on 20 June 2008, 24 February 2009, CRI(2009)3, at paras. 22 and 25, available at: <http://www.refworld.org/docid/49e8891a2.html>
- ⁹⁷ Report of the Special Rapporteur on racism: visit to Hungary, A/HRC/20/33/Add.1, 23 April 2012, at para. 41, available at: http://www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33.Add.1_en.pdf
- ⁹⁸ UN Committee on the Elimination of Racial Discrimination (CERD), Report of the UN Committee on the Elimination of Racial Discrimination, Sixtieth Session (4-22 March 2002) and Sixty-first Session (5-23 August 2002), 1 November 2002, A/57/18, at para. 379, available at: <http://www.refworld.org/docid/3f52f7aa4.html>