

# Pyrrhic Legal Victories: ERRC Litigation Outcomes in 2007

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**T**WO thousand and seven could well be described as the year of vindication for the ERRC. During the past year, the European Court of Human Rights (“the Court”) issued a number of very important judgments on applications brought forward by the ERRC exclusively or together with other NGOs. Among them, the Grand Chamber’s judgment (overturning the Chamber’s judgment) in the application *D.H. and others v. The Czech Republic* can only be considered one of the most far-reaching judgments ever handed down by the Court, on a number of issues ranging from segregated education to the notion of “informed consent” as well as the role of NGO/INGO reports in proceedings before the Court.<sup>2</sup> The latter point is one dear to the ERRC as ever since its inception it focused on both strategic litigation and research/report publication, with one strand of its activities feeding into the other. Although initially confronted with a negative approach by the Court (which persistently rejected references to NGO/INGO and United States’ State Department country reports in the context of applications brought forward by the ERRC), the ERRC persisted and the Court nowadays has radically

changed its stance on this issue, even going so far as to what undoubtedly amounts to (truly well-deserved) praise to Amnesty International and Human Rights Watch by assigning probative value on their reports regarding Tunisia.<sup>3</sup>

The purpose of this article is to provide an overview of the most important judgments issued by the Court in 2007 in two fields of great importance to Roma, namely police abuse and housing.

## Police Abuse

In the case of *Šečić v. Croatia*,<sup>4</sup> the Court seized the opportunity to consolidate its previous jurisprudence on the issue of positive obligations of Member States when their authorities are confronted with what appear to constitute hate crimes.

The applicant in this case, a Romani man, was brutally beaten by a group of unidentified skinheads on 29 April 1999 while collecting scrap iron in a neighbourhood of Zagreb. The attack was one of a spate of similar incidents in and around Zagreb. As a result of the attack, the applicant

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<sup>2</sup> In other pages of the present issue, ERRC Senior Staff Attorney Andi Dobrushki, one of the stalwarts of the ERRC and intricately involved in the case for the almost ten years it spanned from the first involvement of the ERRC to the Grand Chamber Court’s judgment, highlights key aspects of this judgment.

<sup>3</sup> See *Saadi v. Italy*, Appl. No. 37201/06, Grand Chamber judgment delivered on 28 February 2008. According to the Court (at paragraph 143), “In the present case the Court has had regard, firstly, to the reports of Amnesty International and Human Rights Watch on Tunisia (see paragraphs 65-79 above), which describe a disturbing situation [...]. Bearing in mind the authority and reputation of the authors of these reports, the seriousness of the investigations by means of which they were compiled, the fact that on the points in question their conclusions are consistent with each other and that those conclusions are corroborated in substance by numerous other sources (see paragraph 94 above), the Court does not doubt their reliability.”

<sup>4</sup> Appl. No. 40116/2002, judgment of 31 May 2007. For a more detailed analysis of the judgment and its importance, see article by former ERRC Staff Attorney Constantin Cojocariu entitled, “Positive Duties to Combat Violent Hate Crime After *Šečić v. Croatia*”, Available online at: <http://www.errc.org/cikk.php?cikk=2802&archiv=1>.

was hospitalised with multiple rib fractures and had to undertake long-term psychological treatment. The official investigation into the incident, formally opened by the police in the wake of the attacks, was characterised by a large number of serious shortcomings and ultimately failed to identify the perpetrators while it is still pending more than eight years later. The above led the Court to hold that the investigation was in breach of the procedural limb of Article 3 (freedom from ill-treatment) of the European Convention on Human Rights. In so doing, the Court addressed (albeit summarily) an issue that might potentially arise in the future. In many cases, extremist groups seek publicity for their action in order *inter alia* to “advertise” their “exploits” and recruit more supporters for their “cause”. In the instant case, a local skinhead had given an interview to a journalist of the Croatian Radio Television during which, according to the applicant’s lawyer, he had alluded to the assault on her client. The Croatian police interviewed the journalist but when the latter refused to disclose the identity of the interviewee, it did not take any measures obliging her to do so. Anticipating that in the future journalists might claim that such a request would be contrary to their right to freedom of expression under Article 10 (freedom of expression), the Court held that “such an action by the police or the competent State Attorney’s Office would not *a priori* be incompatible with the freedom of the media guaranteed under Article 10 of the Convention, since, in any event, it would be for the competent court to weigh all the interests involved and to decide whether or not it was necessary in the particular circumstances of the case to reveal the interviewed person’s identity.”<sup>5</sup>

With regard to the applicant’s Article 14 (prohibition against discrimination) claim, the Court reiterated the principle first expounded

in *Nachova v. Bulgaria* that States have an obligation to investigate possible racist overtones to a violent act, and extended it for the first time to cover ill treatment committed by private individuals. The Court noted that, in the case at hand, the applicant’s attackers belonged to a skinhead group, “which is by its nature governed by extremist and racist ideology”<sup>6</sup> which in turn was indicative of the fact that the incident was most probably motivated by racial hatred. The Croatian authorities ignored, however, the nature of the attack and allowed the investigation to last for more than eight years without undertaking any serious steps with a view to identifying or prosecuting the perpetrators. The Court deemed this to be “unacceptable” and proceeded to find a violation of Article 14 in conjunction with the procedural limb of Article 3.

In rapid succession, the Court delivered on the same day (27 July 2007) two judgments on, for all intents and purposes, identical cases.

Thus, in the *Cobzaru v. Romania*<sup>7</sup> judgment, the Court not only found a violation of both the substantive and procedural limbs of Article 3 as well as a violation of Article 13 (right to effective remedy), it also went on to find a violation of Article 14 in conjunction with the procedural aspect of Article 3 and Article 13. The case happened as follows: On 4 July 1997 after a domestic incident involving his partner and her relatives, the applicant went to the local police station asking for help. However, instead of offering help, two police officers brutally ill-treated him, and eventually released him after two hours. As a result of the beating, the applicant suffered from craniocerebral trauma and numerous bruises and haematoma all over his body.

At the outset, the Court held that there was no evidence that the beating was motivated

<sup>5</sup> *Ibid.*, §57. It should be reminded that there is a clear line of authority in the Court’s jurisprudence that hate speech or incitement to violence are not protected under Article 10 and that they indeed might legitimately incur prison sentences. See, for example, § 39 of *Katrami c. Grèce*, Appl. No. 19331/05, judgment of 6 December 2007.

<sup>6</sup> *Ibid.*, §68.

<sup>7</sup> Appl. No. 48254/99, judgment of 27 July 2007. The applicant was represented by Ms Monica Macovei, a Bucharest-based lawyer, the Romanian Helsinki Committee, and the European Roma Rights Centre.

by racial hatred, and therefore did not find a violation of Article 14 taken together with the substantive limb of Article 3. As noted by the Court, the applicant had not adduced any evidence attesting, even *prima facie*, that his ill-treatment was related to his ethnic origin; he merely relied on a number of NGO / INGO as well as governmental reports regarding police abuse of Roma in Romania which clearly could not have any bearing on the bare facts of his application. Turning however to the procedural aspect of Articles 3 and 14, the Court noted that even in the absence of *prima facie* plausible information to prove that the assault on the applicant was racially-motivated, the authorities were under an obligation to investigate a possible racist motive to the attack given the number and notoriety of such incidents in post communist Romania, and the general policies adopted by the Romanian government to combat discrimination against Roma. According to the Court, “Undoubtedly, such incidents, as well as the policies adopted by the highest Romanian authorities in order to fight discrimination against Roma were known to the investigating authorities in the present case, or should have been known, and therefore special care should have been taken in investigating possible racist motives behind the violence.”<sup>8</sup> Thirdly, the Court held that during the official investigation, a number of derogatory remarks were made in relation to the applicant’s Romani origin, which disclosed the general discriminatory attitudes of the authorities, which in itself constituted discrimination contrary to Article 14.

The same tenor characterised the Court’s judgment in the application of *Angelova and Iliev v. Bulgaria*.<sup>9</sup> On 18 April 1996, the victim, 20-year-old Mr Angel Dimitrov Iliev, was attacked, beaten severely and stabbed by a group of seven teenagers (all but one of whom were juveniles). The Romani man died from his wounds the following day. The

police immediately tracked down the group of teenagers, who were detained and questioned in relation to the incident. Six of the teenagers were released whereas the seventh (suspected of having stabbed the victim to death) was remanded into custody to face a murder charge. In their statements, the teenagers expressed their hatred of Roma as well as other minority groups and immigrants and testified that on that day they were looking for a Romani individual to attack. The initial official investigation was conducted speedily and concluded that only six of the seven teenagers had taken part in the attack against the victim. Following the completion of the investigation, five of the teenagers were indicted for “hooliganism of exceptional cynicism and impudence”. On 14 June 1996, the local Prosecutor’s Office dismissed the charge of murder against the teenager who was remanded in custody on suspicion of murder and ordered his release. He too was subsequently indicted for “hooliganism of exceptional cynicism and impudence”.

After that time however, the proceedings were effectively stalled. As a result, the case was actually pending before the Bulgarian courts at the time when the Court issued its judgment (11 years after the incident took place) while some of the offences had been time-barred. Before the Court, the Bulgarian government contended that the application should be dismissed since proceedings were pending against two of the perpetrators of the crime. The European Court noted that the investigation into the incident had been unduly protracted and considering that 11 years had passed found it “questionable” whether either of the two remaining defendants would “ever be brought to trial or successfully convicted.”<sup>10</sup>

The Court noted that although under Bulgarian law there were no criminal law provisions explicitly dealing with racially-motivated crimes, this did not mean that the investigative

<sup>8</sup> *Ibid*, § 97.

<sup>9</sup> *Appl. No. 55523/00, judgment of 27 July 2007. The applicants (the mother and wife of the victim respectively) were represented by lawyers acting for the European Roma Rights Centre in cooperation with the Sofia-based organisation Human Rights Project.*

<sup>10</sup> *Ibid*, § 103.

authorities could not and should not make use of readily available provisions in order to attach a particular weight to racially-motivated crimes.<sup>11</sup> In this case, the Court noted that the domestic authorities did recognise the particularly heinous nature of the crime yet ultimately failed to conduct a prompt and effective investigation into the incident. Consequently, the European Court held that Bulgaria was in breach of the procedural aspect of the right to life (Article 2).

Secondly, the Court considered it “completely unacceptable” that, notwithstanding the fact that the domestic authorities were from the initial stages of the investigation aware of the racist motives of the perpetrators, they failed to bring the perpetrators to justice promptly. As a result, the charges against four of them were dropped while the remaining two defendants had not been brought before a court, a full eleven years after the killing. In the eyes of the Court, this inefficiency on the part of the domestic authorities, together with the authorities’ failure to charge the perpetrators of the crime with any racially-motivated offence and the widespread prejudice and violence against Roma, could severely undermine the Romani minority’s trust in the authorities’ willingness to investigate and punish racially-motivated crimes. As a result, the Court held that failing to making a distinction between the particular nature of the offence in question and other non-racially-motivated offences constitutes unjustified treatment, in breach of Article 14 in conjunction with the procedural aspect of Article 2 of the Convention.<sup>12</sup>

## Housing

Although the seminal case in this field is undoubtedly *Moldovan and others v. Romania (No 2)*,<sup>13</sup> the two judgments delivered by the Court on 26 April 2007 in the applications

*Gergely v. Romania* and *Kalanyos and others v. Romania*<sup>14</sup> constitute ample proof that the Court considers the principles laid down in *Moldovan* as firmly entrenched.

*Gergely v. Romania*, the first of the two cases, concerns incidents that took place in 1990 in which a non-Romani mob set on fire or otherwise destroyed several Romani houses in the village of Casinu Nou, Harghita County, and forced the Romani families to leave the village. The second case, *Kalanyos and others v. Romania*, concerned similar incidents that took place in June 1991 in the neighbouring village of Plaiesii de Sus. It involved the brutal beating by a non-Romani mob of two Romani men who died subsequently because of the injuries sustained, and the systematic destruction of 28 Romani houses followed by the banishment of the Romani families from the village. In both cases, local authorities condoned or actively participated in the attacks. The official investigations into the incidents were superficial, failing to assign responsibility to the guilty individuals or provide relief to the victims. None of the victims ever received full compensation for the losses incurred.

In a rarely used procedure, the European Court of Human Rights struck the two cases out of its list of cases on the basis of unilateral statements made by the Romanian Government that contain a series of admissions and undertakings. Thus, the Romanian Government admitted that its agents were responsible for breaches of Article 3 (prohibition of torture), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention. The Government stated that it “regret [ted] the failure of the criminal investigation to clarify fully the circumstances which led to the destruction of the applicants’ home and possessions, which left them living in improper conditions, rendered difficult their possibility of filing a civil

<sup>11</sup> *Ibid*, § 104.

<sup>12</sup> *Ibid*, § 116-117.

<sup>13</sup> *Appl. Nos. 41138/98 and 64320/00, judgment of 12 July 2005.*

<sup>14</sup> *Appl. Nos. 57884/00 and 57885/00, respectively. The cases were brought forward by the European Roma Rights Centre and Liga Pro Europa, which assisted the applicants during domestic and international proceedings.*



action for damages, as well as the exercise of their right to respect for home, private and family life. Furthermore, the Government expressed regret for the fact “that remedies for the enforcement of rights in the Convention generally lacked at the time when the applicants was seeking justice in domestic courts, and that certain remarks were made by some authorities as to the applicant’s Roma origin.”

It is interesting to note that the ERRC objected to the striking out of the applications noting, *inter alia*, that the Romanian Government had failed to implement the measures it undertook following the *Moldovan* judgments. The Court took note of these objections yet held that “the Court notes that although the violations complained about are of a very serious and sensitive nature (see paragraph 3 above), they have already been exhaustively addressed by the Court in the case of *Moldovan*, which raised issues similar to the present case.”<sup>15</sup> It is interesting, therefore, to reiterate two of the main principles enunciated in the *Moldovan* judgment. The first relates to the engagement of the state’s responsibility: the Court noted that police officials were involved in the pogrom and tried to cover-up the incident. This, according to the Court, entailed the engagement of state authorities’ responsibility. The Court then noted that after the destruction of their property, the applicants had been “hounded”<sup>16</sup> from their village and had to live in insalubrious and inhuman conditions. The above, together with the discriminatory remarks made by state officials during the various proceedings before the domestic courts, amounted to “degrading treatment” and hence were in violation of Article 3 of the Convention. At the same time, the above elements, together with the repeated failure of the Romani authorities to provide the applicants with redress, heightened the applicants’ feelings of insecurity and amounted to a “serious violation” of their rights under Article 8 (right to family life), a violation which was “of a continuing nature”.<sup>17</sup>

The above encouraged the ERRC to make an attempt to transpose these principles in a

Rule 39 Application concerning the massive eviction of more than 100 Romani families (the majority of whom were Albanian nationals legally residing in Greece) from a settlement in downtown Athens. The affected Roma had been living on a plot of land belonging to the National Bank of Greece which shortly before their eviction ceded it to the Municipality of Athens. On 2 June 2007, the Roma were evicted from the settlement, some of them by force, some of them after being offered a “remuneration” of 1,000 EUR, in blatant violation of relevant Greek legal provisions as well as Greek Ombudsman recommendations. Some of the evicted Roma settled in an abandoned warehouse, only to be evicted (again illegally) by the police, to settle in a nearby plot of land. The Greek Helsinki Monitor (GHM) came into contact with the owners of the plot of land who graciously agreed not to launch immediately proceedings to evict the Roma concerned. As time passed, however, and state authorities appeared unwilling to relocate the affected Roma, the owners informed the GHM that they would file for an eviction order. The GHM, together with the ERRC, decided to file a Rule 39 request with the Court on 30 October 2007, essentially asking for the provision of alternative accommodation (consisting of a site where the Roma concerned could relocate without fear of eviction and equipped with the minimum infrastructure) to be provided before or immediately after the almost certain granting of an eviction order by the Greek court.<sup>18</sup> It should be noted that the Court has been extremely parsimonious in granting such requests in cases other than deportation ones where the person to be deported is facing threat to life or limb in the country where he / she is to be deported. Mindful of this, the ERRC/GHM stressed the alleged violations of Article 3, premising their arguments to a large extent in the *Moldovan* judgment while also providing extensive documentation of their allegations. Much to their surprise, the Court did not outright reject the request but proceeded to ask the Greek Government to inform it as to the

<sup>15</sup> *Kalanyos v. Romania*, *op.cit.*, § 27.

<sup>16</sup> *Moldovan v. Romania (No 2)*, *op. cit.*, § 103.

<sup>17</sup> *Ibid*, § 108.

<sup>18</sup> *Ibishi and others v. Greece*, *Appl. No. 47236/07*.

progress of the relocation of the affected Roma. Following two rounds of exchange between the ERRC/GHM and the Greek Government and the issuing of an eviction order by the Greek court, the Court informed the ERRC/GHM that it decided not to accede to their request. The ERRC/GHM are currently working on a full-scale application in relation to the above facts.

While clearly not what one would consider a positive development, it should be noted that, to this author's knowledge, this was the first time that the Court examined a Rule 39 request relating to the issue of housing / forced evictions of Roma instead of immediately turning it down. This clearly means that there is scope for Roma rights defenders for making use of this procedure.

### Whither Now?

One would be excused for thinking that the ERRC staff would be rejoicing at the end of 2007 over the above developments. This was, however, far from being the case. Reports concerning police brutality against and evictions of Roma from all over Europe

continued pouring in, without the ERRC being able to respond to them, for a number of reasons.

Until now, the ERRC has been focusing on what is called "strategic" or "public interest" litigation. Despite its successes so far, however, it would appear that these legal victories have not been translated into anything concrete for Roma. Even assuming that Roma will far and wide be informed and comprehend the importance of the above decisions and that they / their advocates make use of them, what will ultimately count is whether police and judicial authorities take a firm stand against police officers abusing Roma. This in turn will require further litigation, if only in order to keep "reminding" states of their obligations and gradually reach a critical mass of cases which the states will not be able to ignore anymore. Until that happens, even assuming that Roma point out to their arresting police officers that, according to the European Court of Human Rights, they may not for example use any more force than strictly necessary, the police officers might well, paraphrasing Pompey, answer to them thusly: "What! Will you never cease prating of laws to us that have truncheons by our sides?"<sup>19</sup>

<sup>19</sup> See Plutarch. 75 BC. *Life of Pompey*. Translation by John Dryden. *The Internet Classics Archives*, available at: <http://classics.mit.edu/Plutarch/pompey.html>. According to Plutarch, when Pompey arrived in Sicily and took it over, the Mamertines in Messina protested and held that they should not be treated as vassals as their independence had been recognised by the Romans in the past, only to receive the answer, "What! Will you never cease prating of laws to us that have swords by our sides?"