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04071 м. Київ
УКРАЇНА – UKRAINE

FIFTH SECTION

ECHR-LE14.9bR
MS/vt

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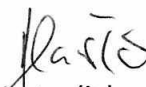
Application no. 54476/14
Pastrama v. Ukraine

Dear Madam,

Further to my letter of 18 October 2016, I now enclose a copy of the third-party submissions of the European Roma Rights Centre.

The President of the Section has decided that the parties shall have until **16 December 2016** to file any written observations which they may wish to make in reply (Rule 44 § 6 of the Rules of Court). Any comments which the applicant may wish to make in reply should be incorporated in her written observations on the admissibility and merits of the case.

Yours faithfully,


C. Westerdiek
Section Registrar

Enc.

Pastrama

APPLICANT

v

Ukraine

RESPONDENT STATE

THIRD-PARTY INTERVENTION

I. Introduction

1. The European Roma Rights Centre ("the ERRC") submits these written comments in accordance with the permission to intervene granted by the President of the Chamber.
2. In order to assist the Court in summarising the intervention for inclusion in the judgment, the ERRC has prepared the following summary:

The ERRC urged the Court to recognise the widespread mistrust and fear that Roma have of police in Europe and to describe it as an aspect of the larger problem of anti-Gypsyism. The ERRC referred to two definitions of anti-Gypsyism, one from the European Commission against Racism and Intolerance ("ECRI"), and the other from a coalition of NGOs, of which the ERRC is a member, known as the Alliance Against Antigypsyism. The ERRC also highlighted that ECRI's definition of anti-Gypsyism includes the notion of "institutional racism". The ERRC then set out wide-ranging evidence, notably from the European Union and the Organization for Security and Cooperation in Europe ("the OSCE"), that Roma are both at a higher risk of violent crime and are not likely to report that crime because they do not trust the police. Evidence from the OSCE in particular showed that law-enforcement officials were aware of the problem. The ERRC saw this evidence, taken as a whole, as pointing to a problem of institutional anti-Gypsyism in police forces around Europe. The ERRC moved on to survey the evidence that the harassment of Roma by police in Ukraine had reached extreme levels, and that anti-Gypsyism had contaminated police forces in the country. UN bodies and ECRI had concluded that Roma in Ukraine were unlikely to trust the police, a problem exacerbated by harassment Roma face from police there. A 2012 study showed the scale of that harassment. More than half of Roma surveyed in Ukraine had been visited by police at least once at their home, often for reasons that apparently had nothing to do with any alleged offence. Police in Ukraine had acknowledged that they were disproportionately targeting Roma for home inspections and stops in the street, based on racially stereotypical ideas they held about Roma and crime. Even more disturbingly, 45% of Roma surveyed in the 2012 study had been taken to the police station or other police premises at least once. Once at the station, most had their personal data (such as fingerprints) taken without any explanation or link to any alleged offence. Likewise, most Roma taken to the station reported that they were subjected to psychological pressure and/or violence. The ERRC concluded that this was clear evidence of institutional anti-Gypsyism among police in Ukraine. The ERRC then made

comments on the appropriate response to complaints of violations of Article 14 taken with Article 3, and violations of Protocol no.12, resulting from police brutality that occurs in a climate of institutional anti-Gypsyism. The ERRC explained the evidentiary problem facing Roma who come to the Court with claims of racially motivated police brutality: they are particularly unlikely to be able to meet the “beyond reasonable doubt” standard the Court applies to their discrimination claims, especially when they are also victims of a failure on the part of the authorities to investigate what happened. The Court’s case law, however, had gone further in the area of police responses to gender-based violence: in *Opuz v Turkey* (2009) and *Halime Kılıç v Turkey* (2016), the Court had addressed the institutional sexism among police in Turkey which had created a favourable climate for domestic violence. The ERRC urged the Court to make the equivalent finding when individual cases of police brutality against Roma took place in a climate of anti-Gypsyism among police. In such cases, the Court should find a violation of Article 14 taken with 3, and/or a violation of Protocol no.12, on the basis of the existence of institutional anti-Gypsyism. Where there was evidence of institutional racism, Roma were asking for – and, the ERRC submitted, were entitled to – a ruling going beyond the mere finding of a failure to unmask racist motives in the investigation. A broader finding, similar to the findings in *Opuz* and *Halime Kılıç*, was more likely to ensure that the Court’s judgments would lead to systemic changes at domestic level.

II. The phenomenon of anti-Gypsyism as underlying the problem of racist violence against and harassment of Roma in Europe

3. The European Commission against Racism and Intolerance (“ECRI”) defines anti-Gypsyism as “a specific form of racism, an ideology founded on racial superiority, a form of dehumanization and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination” (emphasis added).¹
4. Recently, a coalition of NGOs supporting the rights of Roma introduced its own definition of antigypsyism (spelled without a hyphen) in “*Antigypsyism – a reference paper*” (June 2016²):

Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma ‘gypsy’ or other related terms, and incorporates:

1. a homogenizing and essentializing perception and description of these groups;
2. the attribution of specific characteristics to them;
3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages.

5. As the Court will note, the definition of anti-Gypsyism given by ECRI includes “institutional racism”. The term has been defined in the United Kingdom as “the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin”.³

¹ See General Policy Recommendation No.13, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n13/e-RPG%2013%20-%20A4.pdf.

² The ERRC encourages the Court to consider the Alliance’s full paper on anti-Gypsyism, which can be downloaded from www.antigypsyism.eu.

³ The Stephen Lawrence Inquiry, Report of an inquiry by Sir William MacPherson of Cluny (The MacPherson Report): Chapter 6. February 1999. Available at <https://www.gov.uk/government/publications/the-stephen-lawrence-inquiry>.

6. The ERRC sets out below the evidence concerning the extent of hate crimes and police brutality against Roma in Europe in recent years. The purpose of this overview is to describe the state of relations between Roma and the police in Europe and to urge the Court to view and describe those problematic relations as an aspect of anti-Gypsyism.
7. The EU Fundamental Rights Agency ("FRA") carried out its European Union Minorities and Discrimination Survey (EU-MIDIS) in 2008.⁴ They asked 23,500 individuals with an ethnic-minority background about their experiences of discrimination and criminal victimisation in everyday life. According to the survey, 18% of all Roma respondents (like 18% of all sub-Saharan African respondents) reported being victims of at least one "in-person crime" (assault, threat, or serious harassment) in the previous year which they thought was racially motivated in some way. Roma and sub-Saharan Africans were the groups most likely to experience in-person crime, and in some places they were four times more likely to be victims of such crime than the majority population. Roma and other minorities were also likely not to report in-person crimes: 69% of minorities did not report assaults or threats they had experienced and 84% did not report serious harassment. According to FRA, the lack of trust Roma have in the police, resulting, inter alia, from excessive police stops of Roma and other minorities and from disrespectful treatment, is responsible for this underreporting. According to 72% of the Romani respondents who had not reported in-person crimes to the police, the reason was that they were not "*confident the police would be able to do anything*".⁵ FRA also emphasised this lack of trust in the police in a 2010 report on "Police Stops and Minorities"⁶: "*Every second minority victim of assault, threat or serious harassment said they did not report these incidents to the police because they were not confident the police would do anything about them.*" The ERRC sees these data as evidence of the continued impact of anti-Gypsyism on Roma communities throughout Europe and as evidence of problems of institutional anti-Gypsyism that need to be addressed at European level. By the time the Court considers the present case, the results of the follow-up EU-MIDIS II survey, carried out by FRA in 2015, should be available.⁷
8. The Organization for Security and Cooperation in Europe ("the OSCE"), in a 2010 report entitled "*Police and Roma and Sinti: Good Practices in Building Trust and Understanding*", underlined the increase of anti-Roma feeling in the OSCE area.⁸ According to the report, "*Challenges faced by Roma and Sinti in their relations with the police range from ethnic profiling, disproportionate or excessive use of force by police against Roma to failure by the police to respond effectively to Roma victims of crime and racist violence*". The report also emphasised the lack of trust in police and the need for police to invest more in building good relationships with Roma. The report concluded that the police needed to improve their relationships with Roma and more effectively secure the rights of Roma.
9. The ERRC's 2012 report⁹ about violence against Roma in the Czech Republic, Hungary, and Slovakia also showed a worrying pattern of anti-Roma attacks across the region. The ERRC recorded more than 120 attacks against Romani people and their property between 2008 and 2012, including shootings, stabbings,

⁴ The report is available at <http://fra.europa.eu/en/project/2011/eu-midis-european-union-minorities-and-discrimination-survey?tab=publications>.

⁵ See page 9 of the report, which is available at http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf, page 9.

⁶ The report is available at <http://fra.europa.eu/en/publication/2010/police-stops-and-minorities-understanding-and-preventing-discriminatory-ethnic>.

⁷ Information about this study is available at <http://fra.europa.eu/en/project/2015/eu-midis-ii-european-union-minorities-and-discrimination-survey>.

⁸ The report can be found at <http://www.osce.org/odihr/67843?download=true>; see, especially, pages 15 and 20.

⁹ ERRC, "Attacks against Roma in Hungary, the Czech Republic and the Slovak Republic 2008-2012", available at: <http://www.errc.org/article/attacks-against-roma-in-hungary-the-czech-republic-and-the-slovak-republic/3042>.

and Molotov cocktails. In more recent years, the ERRC has also documented¹⁰ a number of violent police raids in Roma settlements (notably in Macedonia, Moldova, and Slovakia). These raids appear to be motivated by stereotypical views about Roma and crime and are visibly disproportionate given the circumstances.

10. A 2014 report¹¹ by Amnesty International indicated that violence against Roma is increasing alarmingly and called upon authorities to investigate and condemn those who commit hate crimes. The report concentrated on the Czech Republic, France, and Greece and explained in detail the attitude of officials and members of the public towards Roma. The report recommended that governments adopt measures in order to combat hate crimes.
11. Very recent research shows that the impact of institutional racism is already overwhelmingly recognised by those called upon to tackle it. According to a recent survey of professionals, mostly police officers, prosecutors, and judges, carried out by FRA, three quarters believe that victims of hate crime

*are discouraged from reporting because they do not believe that the police would treat them in a sympathetic and non-discriminatory manner. Accordingly, four out of five interviewed professionals believe that it is necessary to enhance victims' trust in the police; and three fourths of interviewees view as necessary measures that tackle discriminatory attitudes within the police. [...] About two thirds of all interviewees believe that the police and judiciary need to take hate crime more seriously. This finding per se raises concerns. Interviewees indicated that two factors underlie this assessment: first, a lack of profound understanding of the legal concepts and categories that define the phenomenon of hate crime; and, second, a lack of commitment to identify, prosecute and impose sentences for hate crime.*¹²

III. The evidence of police harassment against Roma in Ukraine

12. The Court already has some familiarity with the way police in Ukraine treat Roma. See *Fedorchenko and Lozenko v Ukraine* (2012), and *Burlya and others v Ukraine* (application no.3289/10, pending). The purpose of this section is to show the Court that the harassment of Roma by police in Ukraine has reached extreme levels and that anti-Gypsyism appears to have contaminated policing in the country.
13. According to 2001 census data, there are some 47,587 Roma living in Ukraine, out of a population of approximately 48.5 million people.¹³ Other sources estimate that there are between 120,000 and 400,000 Roma in Ukraine.¹⁴

¹⁰ Descriptions of some of these cases can be found at <http://www.errc.org/article/domestic-cases-state-response-to-violence-and-hate-speech/4405>. See, in particular, the descriptions of cases in Topana (Macedonia) and Moldava-nad-Bodvou (Slovakia).

¹¹ Amnesty International, "We ask for Justice", *Europe's Failure to Protect Roma from Racist Violence*, 2014, available at <http://www.amnesty.org/en/library/asset/EUR01/007/2014/en/7c3cc69e-e84d-43de-a6a93732b4702dff/eur010072014en.pdf>.

¹² EU Fundamental Rights Agency, *Ensuring justice for hate crime victims: professional perspectives* (April 2016), available at <http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>.

¹³ State Statistics Committee of Ukraine, Census 2001, available at www.2001.ukrcensus.gov.ua/eng.

¹⁴ As estimated by the World Romani Union and local Roma NGOs. See Council of Europe Roma and Travellers Division, "Estimates on Roma population in European countries", available at www.coe.int/t/dg3/romatravellers/default_en.asp. The main explanations for the disparity between official and unofficial figures are: the fact that Roma in some regions do not have identity documents and so are not registered; the reluctance of some Roma to declare their ethnicity for fear that they will be victims of discrimination; and the inaccurate recording by the authorities of "Roma" as "Romanians".

14. If you are Roma in Ukraine, you are probably afraid of violence and harassment from the police and do not trust them. UN bodies have made this abundantly clear. The UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations on Ukraine in 2007, expressed concerns “*about allegations of police abuse of Roma, including arbitrary arrests and searches and pretrial abuse based on racially motivated presumptions of guilt*”.¹⁵ The UN Committee on Economic, Social, and Cultural Rights, in its 2008 Concluding Observations on Ukraine, noted reports of failures to provide effective protection against discrimination and violence against Roma and stressed “*the reluctance of the police to investigate properly such incidents, and the tendency to prosecute and sentence perpetrators of such acts under lenient criminal law provisions on ‘hooliganism’*”.¹⁶
15. ECRI’s 2011 report on Ukraine exposed the problem in more detail.¹⁷ The harassment Roma face from police in Ukraine takes various forms including: illegal checks and house searches; stops in public places; violent and arbitrary detention; systematic fingerprinting and taking of photographs; extortion; and threats.¹⁸ The report also noted that there was a high level of distrust among the Romani population towards the Ukrainian police: “*unless an attack resulted in serious wounding or death, Roma victims of racist attacks tend not to approach the police to report the offence, either because they lack confidence in the effectiveness of the police and the judiciary, or for fear of being harassed by the police themselves*”.¹⁹ In some cases victims of violence reported receiving no assistance from the police, although police officers were within sight of the attack.²⁰ The ECRI report recommended, inter alia, that an independent police complaints authority should be established which would effectively deal with incidents of police misconduct.²¹ In 2015, when reviewing the compliance with its recommendations, ECRI found that the steps taken by Ukraine were insufficient.²² Racial profiling also occurs. Roma are targeted for identity checks in public places such as markets and railway stations, notably on the basis of their skin colour or their “non-Slavic” appearance.²³ Additionally, there were reports that Roma had been detained incommunicado without a court order and/or on trumped-up charges, that they had been threatened or badly beaten to extort a confession, and that they had been detained on administrative charges, such as insulting police officers, if they failed to succumb to the pressure brought to bear on them.²⁴
16. The ERRC has also recorded instances of what appear to be targeted harassment of or assaults on Romani communities by Ukrainian police. For instance, in January 2011, police violently raided a Roma settlement in Uzhgorod, using tear gas and beating the residents – including people with disabilities and children.²⁵ In September and October 2011, law enforcement officials targeted Roma in Lviv for identity checks, including fingerprinting, photographs, and verification of identity documents, despite the absence of any allegation of involvement in criminal activities.²⁶

¹⁵ CERD/C/UKR/CO/18, February 2007, paragraph 12.

¹⁶ E/C.12/UKR/CO/5, January 2008, second paragraph under heading “D”.

¹⁷ ECRI Report on Ukraine (fourth monitoring cycle), adopted on 8 December 2011, published on 21 February 2012, pages 18-19.

¹⁸ *Ibid.*, pages 9 and 39.

¹⁹ *Ibid.*, page 19.

²⁰ *Ibid.*

²¹ *Ibid.*, page 45.

²² ECRI, “Conclusions on the implementation of the recommendations in respect of Ukraine subject to interim follow-up”, published on 9 June 2015, page 7.

²³ ECRI Report on Ukraine (fourth monitoring cycle), adopted on 8 December 2011, published on 21 February 2012, page 40.

²⁴ *Ibid.*

²⁵ ERRC, “Ukrainian Authorities Must Investigate Violent Police Raid Against Roma”, 25 January 2012, available at <http://www.errc.org/article/ukrainian-authorities-must-investigate-violent-police-raid-against-roma/3961>.

²⁶ ERRC, “Ukrainian Police Must Stop Targeting Roma”, 20 October 2011, available at <http://www.errc.org/article/ukrainian-police-must-stop-targeting-roma/3937>.

17. The most damning evidence of institutional anti-Gypsyism among police in Ukraine comes from a 2012 study conducted by the Kharkiv Institute for Social Researches in cooperation with other Ukrainian NGOs.²⁷ More than half of Romani respondents (51%) reported having been visited by police officers at their place of residence. In most cases it was a single visit (69%). According to the study, 25% of people who experienced checks and/or searches of their houses by police said that the police officers gave no reason. In cases where reasons were given, they included: checking documents (41%); verifying information about crime (30%); “making their acquaintance” (24%); and carrying out searches and checking the residence (23%).²⁸ In the vast majority of cases, the Roma concerned did not put up any resistance, as they were afraid of the consequences of doing so.²⁹ Police officers themselves acknowledged that they check Romani families more often than the population in general. As one policeman stated: “*There are a lot of migrants among the gypsies who are different because they like to do something bad, thus we are obliged to go, the more often they are checked, the more obedient they become, regarding the gypsies, it is a necessity, there are a lot of rowdies, former prisoners... or future ones*”.³⁰ The Kharkiv study showed that 66% of Romani respondents were stopped by the police and this usually happened on the street, at markets, at railway or bus stations, or in catering establishments. The most common reason police gave for these stops were identity-document checks. According to Romani respondents, it was common for them to be stopped by police in public places, especially, in small towns and villages. Police officers themselves sometimes stressed the importance of focusing on Roma when checking documents.³¹
18. This is not a general problem of over-policing; it is a problem of over-policing Roma, and goes far beyond stops in the street. According to the same 2012 report (from the Kharkiv Institute for Social Researches), only 0.6% of the Ukrainian population during the previous year had been taken to a police station.³² So the vast majority of Ukrainians will not normally have had the experience of being brought down to the station. Yet 45% of the Roma surveyed had been taken to police stations at some point. Of those Roma taken at least once to a police station, 68% were stopped in public places while the rest were approached by police at their place of residence. More than a half of them were taken to the police station once (53%), another 21% twice, and the remaining 26% had been taken three or more times. The survey showed that in Odessa, Poltava, and Cherkasy oblasts, such incidents of taking Roma to police stations for apparently no reason other than their ethnicity were systematic in nature. In 71% of cases, Roma had their photographs and fingerprints taken at the station despite not being suspected of any offence. According to the respondents, the police officers in the majority of cases did not give any reason for bringing them to the station or merely told them this was necessary for “general data” collection. Only in a few cases were the people concerned told they were suspected of committing an offence. According to the Romani respondents, they thought they were brought to the station as a means of keeping all Roma under control, to terrify them, or to extort money from them. Among Roma brought to the police station, 60% reported that such actions were accompanied by psychological pressure and/or violence. This usually involved psychological pressure (oral threats and intimidation). The most frequent type of psychological pressure was the threat of using false evidence against someone and the threat of imprisonment. Threats of beating and torture, banishment from their place of residence, persecution of their relatives, and sexual assaults were also reported. In 23% of cases the pressure placed on Roma brought to the station involved physical beatings. In some cases, police used handcuffs, rubber batons, and, in one case, tear gas. In the opinion of the Roma responding to the survey, police violence was practically always focused on obtaining evidence or extorting money from them.

²⁷ “Roma Rights Protection in Law-Enforcement activities in Ukraine”, 2013, available at www.khisr.kharkov.ua/files/docs/1389712069.pdf.

²⁸ *Ibid.*, page 29.

²⁹ *Ibid.*, page 30.

³⁰ *Ibid.*, page 32.

³¹ *Ibid.*, page 33-34.

³² *Ibid.*, page 34 (citing other material).

19. The ERRC sees the 2012 report and the other conclusions described above in this section as clear evidence of institutional anti-Gypsyism among police in Ukraine, in line with the definitions set out in section II above.

IV. The appropriate response to allegations of violations of Article 14 taken in conjunction with Article 3, or violations of Protocol no.12, resulting from police brutality that occurs in a climate of institutional anti-Gypsyism

20. In police brutality cases, Romani applicants have had difficulty, when they were victims of a violation of Article 14 taken with the procedural limb of Article 3, in convincing the Court that they were also victims of a violation of Article 14 taken with the substantive limb of Article 3. This is because the Court requires an applicant alleging discrimination to prove it “beyond reasonable doubt”. *Nachova and others v Bulgaria* (Grand Chamber, 2005), § 147. However, vulnerable victims alleging racially-motivated police brutality are unlikely to be able to discharge this burden of proof, particularly when they are also victims of a failure on the part of the authorities to investigate what happened to them. The Court will appreciate the frustration Romani victims feel in such cases: the failure of the State to investigate the crime properly leaves them unable to establish a violation of Article 14 taken with the substantive limb of Article 3. See, e.g., *Nachova*, § 147. While it is of course possible for the Court to conclude that police violence was discriminatory, the existence of sufficient evidence in any particular case is completely out of the hands of the Romani applicants who come to the Court seeking justice. See, e.g., *Stoica v Romania* (2008), § 122 (finding a violation of Article 14 based, in large part, on racist statements contained in a police report). The result is that the Court’s case law rarely, if ever, addresses institutional anti-Gypsyism directly.
21. The Court’s analysis has gone further in the area of police responses to gender-based violence. In *Opuz v Turkey* (2009), the Court concluded “that domestic violence is tolerated by the authorities and that the remedies indicated by the Government do not function effectively” (§ 196), also noting that “the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence” (§ 197). See also *Halime Kılıç v Turkey* (2016), § 120 (“*En fermant régulièrement les yeux sur la réitération des actes de violences et des menaces de mort dont la fille de la requérante était victime, les autorités internes ont créé un climat propice à cette violence*”). The Court, in essence, found that institutional sexism had contaminated those agencies responsible for protecting women from gender-based violence, resulting in a violation of Article 14 taken, in those cases, with Article 2. The ERRC notes that in those case (*Opuz* and *Halime Kılıç*), the Court did not explicitly limit its finding to a violation of the procedural limb of Article 2 (taken with Article 14).
22. The ERRC urges the Court to make the equivalent finding when individual cases of police brutality emerge from a climate of anti-Gypsyism among police such as that described above.
23. The question is not merely whether there is evidence “beyond reasonable doubt” that the police brutality was discriminatory, or whether there has been a failure properly to investigate racist motives. The question is also whether the incident took place in a context where the authorities allowed and promoted racist violence against Roma by police and others (i.e., as in *Halime Kılıç v Turkey* (2016), whether “*les autorités internes ont créé un climat propice à cette violence*”).
24. The ERRC urges the Court to consider this larger question where there is evidence of institutional anti-Gypsyism, as in Ukraine. This approach to Article 14 taken with Article 3, or to Protocol no.12, will more comprehensively address the complaints Roma bring to the Court in cases of police brutality. In such circumstances, where there is evidence of institutional racism, Roma are asking for – and, the ERRC submits, in line with the *Opuz* and *Halime Kılıç* judgments, they are entitled to – a finding that there is a systemic form of discrimination, contrary to the State’s Convention obligations. Such a finding is more likely

to ensure that the Court's judgments lead to the systemic changes at national level that will make it unnecessary to bring similar cases to Strasbourg in the future.

The European Roma Rights Centre
10 November 2016