

ANTIGYPSYISM IN PUBLIC DISCOURSES AND ELECTION CAMPAIGNS

Central Council of German Sinti and Roma
Heidelberg, 2017

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IMPRINT

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EDITORIAL

Jonathan Mack, Anja Reuss,
Christina Pesch, Richard Otterness

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FOREWORD ROMANI ROSE,
CENTRAL COUNCIL OF GERMAN SINTI AND ROMA

A JUDICIARY THAT IS BLIND TO THE LESSONS OF HISTORY

Since the beginning of 2013, Sinti and Roma have been subjected to smear campaigns by the NPD (National Democratic Party of Germany), in both national and state-level election campaigns, which are unprecedented in their severity. Throughout Germany, members of our minority were threatened, excluded and defamed by posters ("Money for Grandma, not for Sinti and Roma") and flyers ("Stop the flood of gypsies!" along with the depiction of weapons such as guns and knives). This was part of a concerted and on-going campaign of hostility towards the minority group that has been living in Germany for centuries and was subjected to state-organised genocide during the reign of the National Socialists. Almost 70 years after the Holocaust, we cannot allow a forum to be provided for this kind of public display of contempt.

The underlying strategy is blatantly obvious: The NPD is playing on the fears of the population with regard to pension security to stir up hatred against our minority in an attempt to reap political benefits.

In the weeks before the election, the Central Council of German Sinti and Roma received hundreds of calls from concerned Sinti and Roma families from all over Germany. They were deeply distressed, mainly about the NPD posters that their children were exposed to on their way to school, which had been put up in large numbers, especially in smaller towns and villages. This once again awakened major fears among the elderly who had survived the Holocaust.

In order to fully understand the extent of the bewilderment and anger with which many Sinti and Roma reacted to this open agitation, we need to take a brief historical retrospective.

Contrary to the widespread National Socialist propaganda against "gypsies", the Sinti and Roma had been integrated into the work environment and social structures in Germany, as neighbours and co-workers, long before Hitler's take-over of power. They had been deeply rooted in this country for generations. Many had served in the German Imperial army in the First World War and been highly decorated. Although they had demonstrated their loyalty to their homeland, after 1933 the Sinti and Roma were racially profiled, disenfranchised, ghettoised and deported into death camps, from the cradle to the grave, in just the same way as the Jews.

The Holocaust was a crime that was meticulously planned and implemented, with the participation of almost the entire official machinery that was in place at that time. The National Socialist Government denied our entire minority group the right of existence, collectively and definitively, just because they had been born as Sinti or Roma, and regardless of their conduct, faith or political beliefs.

The infamous "Nuremberg Race Laws" of 1935 were already applied as much to the Sinti and Roma as to the Jewish people. Frick, the Reich Minister of the Interior, explicitly stated: "As a rule, Jews and Gypsies are the only races of foreign blood in Europe." Thus both minorities were classified as a "foreign race to be excluded from the Aryan ethnic community".

As a consequence, members of our minority were systematically excluded from all areas of public life. They were expelled from jobs and schools, and their daily life was increasingly restricted by discriminatory provisions, which applied only to them. The Sinti and Roma were also excluded from the *Wehrmacht* (the German army in the Third Reich) for "race-policy reasons", as was expressly stated in the order by the Army Forces Command of February 1941. Despite intercession by many superior officers, members of our minority, many of whom had fought on the front lines shortly before, were deported to Auschwitz.

Public administration and the judiciary contributed significantly to this process of disenfranchisement and the subsequent systematic extermination. In his book entitled "*Rassen- und Erbpflege im deutschen Recht*" (Race and Eugenics in German Law), published in 1943, Dr. Werner Feldscher, a senior civil servant at the Reich Ministry of the Interior, meticulously lists the special provisions applying vis-à-vis Sinti and Roma. He concluded: "Gypsies are a foreign race within the meaning of German racial legislation (...). Their political, biological, cultural and professional segregation from the German people has now been effected through the elimination of foreign blood, in the same way as for the Jews."

The organiser of the Holocaust, "Reichsführer SS and Head of the German Police", Heinrich Himmler, had already demanded a "final solution to the Gypsy question" in a decree dated 8 December 1938. According to Himmler, the goal of National Socialist policy was to find "a resolution of the Gypsy question based on the characteristics which are inherent to this race." Immediately after the start of the war, the SS leadership began planning the deportation. The first deportation trains with German Sinti and Roma families left for occupied Poland in May 1940. For most of the abducted men, women and children, it was a journey to their death.

In the so-called "Auschwitz Decree" dated 16 December 1942 that followed, Himmler ordered the deportation of all the Sinti and Roma remaining in the Reich. Their property and assets were seized by the State. Starting at the end of February 1943, more than 23,000 Sinti and Roma from Germany and many other parts of Europe were deported to Section B II e of the Auschwitz-Birkenau extermination camp, referred to by the SS as the "Gypsy Camp". Nearly ninety percent of the detainees died due to the horrors that they experienced and the inhuman living conditions, or were sent to the gas chambers. The last major mass murder of Sinti and Roma in Auschwitz took place during the "liquidation" of the "Gypsy Camp" on 2 August 1944. In a single night, the SS sent the last remaining 2,900 survivors - mostly women, children and elderly - to the gas chambers.

Auschwitz is a symbol of inhuman ideology combined with barbarity, cold bureaucratic logic and murderous efficiency. For us Sinti and Roma, this name is inextricably linked with crimes that are unprecedented in the history of mankind.

After the collapse of the "Third Reich", the Holocaust of the Sinti and Roma was long blinded out from public perception, and even officially denied. Policy-makers and the judiciary alike failed to acknowledge that the surviving Sinti and Roma had been "racially" persecuted at all. Even the courts gave greater credence to the justifications put forward by the former perpetrators from the SS and the police force than to the testimony of the surviving victims. Even officials who had been directly involved in the deportations of the Sinti and Roma on the spot were often appointed to senior positions in the Federal Republic's administrative system. Frequently, survivors of the Holocaust, after returning from the concentration camps, had to apply for compensation payment from the same officials who had had them deported to the concentration camps years before.

This continuity in terms of the officials involved, and the perpetrators' undiminished privilege of interpretation, was a major factor in further reinforcing a feeling of powerlessness and helplessness among the Sinti and Roma against a state that refused to call a spade a spade. As a consequence, many were forced to conceal their minority identity. This was the precondition for social advancement in a society in which racism against our minority was still an everyday occurrence. Because, in contrast to anti-Semitism, which was socially shunned after 1945, the ubiquitous racism vis-à-vis the Sinti and Roma was never questioned by policy-makers, in academia or among the critical media. The opposite was in fact the case.

Even the judiciary still succumbed to racist ideology. In a landmark judgment from 1956 on compensatory payments, the Federal Court of Justice (BGH) cited an NS jurist, insinuated that Sinti and Roma had a "propensity for crime" and that they had "*an uninhibited desire towards usurpation, just like primitive, pre-historic man.*"

Only after organising ourselves politically and establishing a civil rights movement, after many years of struggle for legal and social recognition, we have managed to overcome the ideological legacies of the Third Reich and provide a contrasting view of our own history to oppose the racist views of the perpetrators.

Meanwhile, a rethinking is taking place in many spheres on how to deal with our minority and how the public perceives it. This is also reflected in the national memorial to the Sinti and Roma murdered under National Socialism, which is located in the immediate vicinity of the German Bundestag, and whose inauguration in October 2012 was attended by Chancellor Merkel.

However, as we were tragically reminded by the series of murders perpetrated by extreme right-wing criminals from Zwickau, racism and right-wing extremism continue to be an unabated threat to our society and our freedom-based democratic culture. Nine residents of foreign origin and a Heilbronn policewoman were killed at the hands of these heartless murderers. What is particularly distressing is that, at the start of the investigation, the public prosecutors and the press publicly speculated that the perpetrators could be of a "Sinti and Roma background", even though there was nothing to back this up. This shows how quickly authorities and journalists are willing to fall back on old stereotypes and animosities. Although the Sinti and Roma had, contrary to the rule of law, been placed under general suspicion, the responsible public prosecutor in Heilbronn, Meyer-Manoras, explicitly refused to express his regret during the hearing of the fact-finding committee of the Bundestag. And such an expression is still outstanding from the judicial authorities and the responsible ministries to this day.

The recent NPD campaign reproduces the propagandist patterns and mechanisms of exclusion of the NS state. The "Money for Grandma, not for Sinti and Roma" slogan constitutes a deliberate attempt to raise a barrier between "the German Grandma" and Sinti and Roma, who are to be regarded as "foreigners" who allegedly live "at our expense". My Grandmother was actually a patriotically minded German until the National Socialists took away her German nationality, crammed her into a cattle car and deported her for extermination. Already in the mid-1930s, her husband Anton Rose, was prohibited from continuing his cinema business due to his "race", although the "Reich Association of German Cinemas" had certified that he operated his business properly in every respect. My Grandfather fell victim of genocide in Auschwitz, and twelve other members of my family were also killed during the Nazi dictatorship.

The existential experience of being completely disenfranchised has become deeply ingrained in the collective memory of our minority because virtually every Sinti and Roma family was affected by the Holocaust. This is the reason for the indignation of our people in the face of the NPD smear campaign: they feel that the State which they thought they could trust to protect them is once again leaving them in the lurch after 60 years of democracy.

Many criminal charges have been filed, but only in a few exceptional cases did the authorities take action. Helplessness and uncertainty prevailed in the other cases. Only few mayors were prepared to intervene against the seditious nature of this electioneering and against the poster campaign. In Hesse, Hamburg and other federal states, there were even cases of physical abuse by right-wing extremists against Sinti who protested against the posters. A young member of our minority group was seriously injured. Would the response of the state have been the same if the victims of the defamation had been Jewish?

It was an important signal within society that, at the beginning of the election campaigns, Federal President Dr. Joachim Gauck publicly and unambiguously called for opposition against the abuse of grudges towards Sinti and Roma on the part of right-wing extremists and populists in the election campaigns. In this way he not only offered his protection to the vulnerable minorities. He also pointed out the limits of permissible election campaigning within a democratic state based on the rule of law. It would be an alarming blindness towards history if the judiciary were to even partially concur with the motions filed by the NPD for an injunction against him.

It seems that those responsible in judiciary and administration not only lack all historical sensitivity, but that they are also not aware that the Sinti and Roma minority is granted special protection by international treaties. I cannot help but think that the deeply rooted stereotypes about our minority still influence the attitude and actions of the authorities involved. Due to ignorance and prejudice, the protection due to them under the law is not extended to members of our minority. This ominously reminds many Sinti and Roma of the powerlessness and of the repression by the National Socialists. For this reason, this documentation not only lists the legal bases contained in criminal law (Paragraphs 130 and 185 et seq. of the German Criminal Code [StGB]), but also the anti-discrimination clauses to be observed in administrative law (Article 3 of the Basic Law [GG]), the "International Convention on the Elimination of All Forms of Racial Discrimination"/ICERD, the "Framework Convention for the Protection of National Minorities"), whose violation must lead to a prohibition of discriminatory election campaign practices. As a consequence, the demand for legal steps to be taken to prohibit racial discrimination in election campaign practices is asserted as well as explained.

The documentation below takes a detailed look at, in particular, the legal debate as it relates to the discriminatory campaign practices of the NPD and related groups. A critical analysis and evaluation of the failure of the courts to date is likewise included. It was more than questionable court rulings that justified the right-wing extremist hate propaganda by applying arguments which were not cogent and left the victims with an impression of cynicism. This occurred despite a variety of initiatives that were taken by public authorities, policy-makers and society, and which left our entire minority without leg to stand on.

In view of this scandalous miscarriage of justice, the familiar allegory of Justitia, whose figure can be seen in many public court buildings, leaves a bitter taste: The blindfolded eyes, actually intended to symbolise impartiality, can also be interpreted against this background as a metaphor for a judiciary that is blind to history.

Let me conclude by saying that I remain hopeful that this State will face up to its responsibility, not only towards the minority, but also with regard to the values that underlie our democratic culture, which it is obliged to protect. I expect that it will ensure that no one living in this country, solely because of his or her descent, will ever be defamed or disenfranchised again by a party that has been approved by the election official.

ARNOLD ROSSBERG,
CENTRAL COUNCIL OF GERMAN SINTI AND ROMA

LEGAL PROHIBITION OF DISCRIMINATORY ELECTION CAMPAIGNING PRACTICES

1. INTRODUCTION¹

Above all, the documentation below aims to analyse and set forth in detail the legal and political debate about the sustained, discriminatory smear campaign of the NPD. It also seeks to evaluate the previous failures of the courts, which justified the right-wing extremist campaign, applying absurd arguments, despite a variety of initiatives from public authorities, policy-makers and society, thus leaving the affected minority defenceless.

A position is also taken with regard to the extent to which the provisions of criminal law and the anti-discrimination clauses in administrative law, as well as the International Convention on the Elimination of All Forms of Racial Discrimination, have been observed that demand intervention against discriminatory practices. The demand for legal steps to clarify the ban of racial discriminatory election practices is explained.

In spite of the many criminal reports that were filed, only a few public authorities intervened against the inflammatory posters. Mostly, there was uncertainty and helplessness regarding the legal options available to prohibit the public display of the discriminatory posters or effect their removal. In Hesse, Hamburg and other federal states, there were cases of physical abuse by right-wing extremists against Sinti who protested against the posters.

2. LEGAL ASSESSMENT

a) Incitement to hatred against the minority

In May 2013, the Central Council filed a criminal report with the Duisburg Public Prosecutor's Office, initially against the leaflet with the message "Stop the flood of gypsies! ..." on its cover. One of the reasons we declared, was that the leaflet was likely to incite hatred and violence against Sinti and Roma. In August 2013, the suit was extended to include the poster "Money for Grandma, not for Sinti and Roma". This

¹ This article was first published in: Zentralrat Deutscher Sinti und Roma: Verbot rassistisch diskriminierender Wahlkämpfe. Eine Bestandsaufnahme zur Auseinandersetzung über die NPD-Wahlplakate gegen Sinti und Roma 2013, Schriftenreihe Band 8.

smear campaign was said to menacingly disturb the public peace. Its design was said to appeal to base aggressive instincts and to be aimed to universally discriminate against our entire minority in a propagandistic way. Such a form of agitation was overstepping the de facto boundaries of the strict expressions of opinion that are permissible in an election campaign. Given the Nazi genocide that was committed against the Sinti and Roma, such emotional, public incitement was said to deny members of the minority the right to equal co-existence with others living in our country.

Such hostile practices which are inimical towards a state under the rule of law should no longer be permissible in Germany. Such a resurgence of history is not acceptable. Just like the Jews after the Holocaust, our minority has a special claim to be protected by the present-day state of the Federal Republic of Germany against such an intense propaganda of hatred.

The extremely discriminatory nature of the posters and flyers follows from the deliberate degradation and marginalisation of the Sinti and Roma minority ("Gypsies"). The rhyming slogan alleges and suggests to the reader/public that the minority is as a whole unworthy to receive "monetary" payments, regardless of the nature of the payments and the de facto and legal grounds for the payments. This generalisation aims specifically to instil a diffuse and vague but nonetheless fundamental defensiveness that extends to all areas of social and political life.

At the same time, the poster specifically avoids making a connection with any political or factual claims. The campaign aims at a general degradation and marginalisation of the minority, based only on the criterion of descent. It is not about offensive terms or phrases. The racially discriminatory nature arises from the disparaging objective and purpose of the campaign as well as the impact on the general level of respect towards and recognition of the minority as being people enjoying equal rights within society.

The deliberate generalisation used in the slogan does not allow for subsequent interpretation. This was, however, the defence adopted by the right-wing extremists in court when they claimed that it referred to the recent immigration debate. Besides, even then such an interpretation would be of a racially discriminatory nature, because

- a.) "Sinti" are not immigrants, but an autochthonous minority which has been living in Germany and the neighbouring German-speaking countries for over 600 years, and
- b.) the characteristics universally ascribed to the Roma within the immigration debate are equally incorrect and discriminatory. We will take a closer look at these issues in the documentation below.

An election poster emblazoned with the words "*Money for Grandma, not for Jews*" would not be tolerated in public areas for weeks on end, and rightly so, given its discriminatory message. The "Sinti and Roma" poster has a sustained adverse effect on the standing of the minority in society. That these are tolerated cannot be explained, in particular to children who have to walk past them every day. One of the foreseeable consequences is a problem with discrimination at schools.

The fact that the survivors of the Nazi genocide and the descendants of the German Sinti and Roma families lost, among other things, their families and also their grandparents in the death camps of Treblinka, Auschwitz, Buchenwald and Bergen-Belsen, to mention but a few, shows just how perfidious the allusion to the "Grandma" in the NPD slogan is.

b) The involvement of the German Federal Ministry of Justice

After the nationwide billposting campaign using posters emblazoned with: "Money for Grandma, not for Sinti and Roma" at the end of August 2013, the Central Council turned to Federal Minister of Justice Sabine Leutheusser-Schnarrenberger asking her and the Federal Government to take prompt action to ban

such discriminatory election propaganda. The Central Council called for legal clarification, if necessary, in the form of legal regulations by the federal and state governments. This was to ensure that election advertising material such as posters and leaflets, which deliberately target minorities and discriminate against them on the basis of their descent, must in the future be immediately removed from circulation at the expense of the operator. We particularly stressed, in view of the freedom of expression that we value so highly, unambiguous steps must be taken if – as in the case at hand – the boundaries of democratic tolerance and factual debate are overstepped, especially in election campaigns. After the Holocaust, it should no longer be permitted to marginalize members of a minority on the basis of their biological origin - as it was done before 1945.

In a first meeting with the State Secretary at the Federal Ministry of Justice, Dr Birgit Grundmann, on 17 September 2013, we agreed among other things to review the situation after the Bundestag elections and meet with the relevant ministers to discuss possible and necessary measures for preventing repeat occurrences.

3. COMMITMENT TO MINORITIES IN THE POLITICAL ARENA AND IN SOCIETY

a) The Mayor of Bad Hersfeld, and other cities

Mayors in various towns in Hesse, North Rhine-Westphalia and other federal states stood up for the minority and had the posters taken down on their own initiative. In some cases they also pressed criminal charges for incitement and slander.

After a violent attack against a young Sinto in Bad Hersfeld, the local mayor Thomas Fehling also ordered the removal of the posters, which he regarded as constituting unlawful agitation. When Kassel Administrative Court (VG) subsequently forced him to put the posters back up again, the Central Council of German Sinti and Roma urgently requested him to appeal against the decision of Kassel Administrative Court Kassel of 9 September 2013. The order will be the subject of closer study below. The letter of the Central Council to the Mayor of Fehling states, among other things:

"The FRANKFURTER ALLGEMEINE ZEITUNG reported today about the catastrophic order of Kassel Administrative Court on the NPD smear campaign posters. Mr Mayor, we would like to thank you sincerely for your exemplary handling of the situation. I would like to ask you to appeal against the ruling of Kassel Administrative Court under all circumstances because it is completely unjustifiable. Re-hanging these posters promoting the racial exclusion of an entire minority would also constitute a provocation with unforeseeable consequences for those concerned."

On 10 September 2013, the Central Council also turned to the Federal Ministry of Justice again after it had become known that the legal department of the Bad Hersfeld city administration had advised against appealing. The Central Council asked the Minister *"to imperatively find a way to intervene in this matter now."* The Council stated that, following the NSU scandal, the State could not fail once more, stand back and watch right-wing extremist practices against victims of the Holocaust repeating themselves.

The Minister replied on the same day with a letter to the Central Council that is documented in the annex, stating that she *"fully understood that the Sinti and Roma were not only offended by the NPD posters, which showed unsurpassed cynicism and lack of taste, but were also scared."* She went on to state that the Mayor of Bad Hersfeld and other mayors had acted decisively when he had the posters removed. *"I would completely understand if the City of Bad Hersfeld decided to exhaust the legal channels in this matter and submit a complaint"*, according to the letter from Federal Minister of Justice.

b) The Mayor of the City of Giessen

On 13 September 2013, the Mayor of the City of Giessen, Ms Dietlind Grabe-Bolz, informed the Central Council of the following:

"As you have surely noticed, I had the heinous NPD posters removed at the beginning of this week. Unfortunately, Giessen Administrative Court informed us yesterday that we must hang them back up without delay. The particular reason for this is that, from the point of view of the court, the posters did not fulfil the criteria for the offence of incitement to hatred. I do not share this assessment, which is why I have filed a criminal complaint against the state chairman of the NPD. At the same time, on my initiative, an inter-party alliance was formed, which has quickly launched a joint poster campaign. We responded to the NPD posters by hanging up 15 posters of our own in the municipality with the message: "My Grandma likes Sinti and Roma too". "

c) The local Jewish community in Thuringia

On 11 September 2013, the chairman of the Jewish community in Thuringia, Prof. Dr. Ing. Habil. Reinhard Schramm, lodged a formal complaint against an NPD election campaign commercial on the Mitteldeutscher Rundfunk (MDR). He wrote as follows with regard to the question on how the election poster should be interpreted:

"In the current election period, the NPD is publicly displaying seditious slogans everywhere, also in Thuringia, like "Money for Grandma, not for Sinti and Roma". Not only are they attempting to direct the dissatisfaction of older people towards a long-suffering minority which they are using as a scapegoat. They are also trying to expand the pogrom-like atmosphere to Germany that is prevalent throughout the EU, and which has already led to numerous murders of Roma. Was it not enough that hundreds of thousands of Sinti and Roma were murdered under National Socialism? Today, Germany is called on to show solidarity with the Sinti and Roma."

d) The International Sachsenhausen Committee

The managing board of the "International Sachsenhausen Committee", the organisation of the former prisoners of Sachsenhausen Nazi concentration camp from 18 European countries including Israel, which is headquartered in Luxembourg, wrote to the Central Council of German Sinti and Roma on 13 September 2013:

"The International Sachsenhausen Committee supports the demand of the Central Council of German Sinti and Roma for a ban of discriminatory election advertising by the NPD.

Even from abroad, the International Sachsenhausen Committee was horrified to learn about the discriminatory election posters which the NPD is campaigning in Germany.

It is especially the defamatory posters directed against Sinti and Roma with the slogan "Money for Grandma, not for Sinti and Roma" which have unquestionably overstepped the boundaries of democratic and factual debate.

It is outrageous that in Germany, where 70 years ago a population group was discriminated against because of their origin, and put into concentration camps, where approximately 500,000 people perished, there is once again a German party, the NPD, that is stirring up hatred against the Sinti and Roma.

How can the German State, 60 years after the Holocaust, again allow members of a minority to be marginalised from society solely because of their descent.

This kind of election propaganda on the part of the NPD is also unnerving for survivors abroad. We wonder whether the world has learnt nothing from past mistakes.

The International Sachsenhausen Committee therefore endorses the demand of the Central Council of German Sinti and Roma that the German Federal Government take legal action to ban discriminatory election advertising."

e) Mittelbau-Dora Memorial, State Secretary Dr. Grundmann, Federal Ministry of Justice

On 15 September 2013 it became known that the NPD had also hung up large numbers of posters with the inscription "Money for Grandma..." on the approach road to the memorial at the former Nazi concentration camp of Mittelbau-Dora.

The Central Council addressed this monstrous occurrence at a face-to-face meeting on 17 September 2013 with the State Secretary at the Federal Ministry of Justice, Dr. Birgit Grundmann, and requested that the Federal Ministry of Justice should contact the Thuringian Ministry of the Interior and Justice to arrange for the immediate removal of the posters. According to a press report, the authorities in Nordhausen, where the memorial is located, were uncertain whether they were allowed to remove the posters, following the administrative court rulings that had been handed down elsewhere. State Secretary Dr. Grundmann promptly took action, and wrote to the Central Council on 19 September 2013, stating:

"I wish to refer to our conversation on 17 September 2013 about the current NPD election posters, which cynically and distastefully seek to sow grudges against the Sinti and Roma living in Germany. You reported that the NPD had also hung up these posters in the immediate vicinity of the Mittelbau-Dora Concentration Camp Memorial in Thuringia. I unreservedly share your particular indignation on this matter.

My Thuringian counterpart, whom I immediately contacted, in turn kindly contacted his colleague at the Thuringian Ministry of the Interior without delay. I have enclosed his letter for your information. I was informed that the Nordhausen town administration had already removed all the NPD election posters referring to Sinti and Roma from the road leading to the concentration camp memorial on the day before."

In his letter, the State Secretary at the Ministry of Justice notified his counterpart at the Thuringian Ministry of the Interior as follows:

"The Chief Senior Public Prosecutor in Mühlhausen has informed me that NPD election posters with the inscription "Money for Grandma, not for Sinti and Roma" had been hanging along the "Street of the victims of fascism" in Nordhausen, i.e. the approach road leading to the Mittelbau-Dora Concentration Camp Memorial, during the last few days. For this reason, the director of the Mittelbau-Dora Memorial, Dr. Jens-Christian Wagner, filed a criminal complaint against those responsible on 6 September 2013. Mühlhausen Public Prosecutor's Office thereupon initiated investigation proceedings against those responsible in the NPD executive committee for suspected disturbance of the peace of the dead within the meaning of Paragraph 168 II of the German Criminal Code [StGB].

In accordance with Paragraph 168 II of the German Criminal Code [StGB], anyone who commits defamatory mischief at a public memorial for the dead, i.e. according to the relevant legal commentaries, acts in a grossly inappropriate manner by demonstrating crude behaviour. This does not necessarily need to be directed against the place itself, but expresses disrespect for its designated purpose and character, and therefore is guilty of a criminal offence. In the view of Mühlhausen Public Prosecutor's Office – and my own - this definition may render punishable the conduct of those responsible in accordance with Paragraph 168 II of the German Criminal Code [StGB].

In addition, I consider that this conduct may also be punishable due to the defamation of the memory of the deceased in accordance with Paragraph 189 of the German Criminal Code [StGB], and due to incitement of the people in accordance with Paragraph 130 I of the German Criminal Code [StGB]

(cf. also the Order of the Federal Constitutional Court (Bundesverfassungsgericht) of 12 March 2004 - ref. 1 BvE 6/04).

I think we agree that the said posters alone constitute an intolerable degree of impiety. But having the posters in the immediate vicinity of the Mittelbau-Dora Concentration Camp Memorial constitutes an unacceptable display of scorn for the victims of the so-called "Gypsy persecution" at the Mittelbau-Dora concentration camp. For this reason, I believe it is imperative for the regulatory authorities to take action to promptly have the posters removed from the vicinity of the Mittelbau-Dora Memorial, if necessary by the municipal supervisory authorities - in addition to the potential consequences under criminal law for those responsible. The commission of the abovementioned criminal offences is likely to constitute a violation of public safety and order in accordance with Paragraph 5 of the Thuringian Regulatory Authorities Act (Ordnungsbehördengesetz – ThürOBG).

f) Associations and parties in Schleswig-Holstein

On 11 September 2013, the State Association of the German Sinti and Roma in Schleswig-Holstein sent the Central Council a compilation of the expressions of solidarity received from organisations as well as political and social figures in Schleswig-Holstein. They criticised the posters and flyers as being racist and hatred inciting, and demanded that the judiciary take steps.

These included in particular:

- Günter and Ute Grass, for the Executive Committee of the Foundation in favour of the Roma people
- Henning Möbius, Chairman of the Round Table for Tolerance and Democracy in Neumünster
- Wolfgang Seibert, Chairman of the Jewish Community of Pinneberg
- Margret Steffens
- Renate Schnack, DialogForumNord
- Cindy Baginski, Bündnis gegen Rechts (Anti-Right-Wing Alliance), Neumünster
- Klaus Schlie, President of the regional Parliament of Schleswig-Holstein
- The Bündnis 90/Die Grünen party, State Association of Schleswig-Holstein
- Dr. Ralf Stegner and Birte Pauls, SPD State Parliamentary Group of S.-H.
- Lars Harms, Chairman of the SSW (Southern Schleswig Voters' Association) Party
- Astrid Damerow, CDU Parliamentary Group of S.-H.

This coincided with the launch of a poster campaign in Schleswig-Holstein by a non-partisan alliance, with the participation of the State Association of the German Sinti and Roma in Schleswig-Holstein, entitled "Against Racism and Marginalisation".

g) Advisory councils for foreign nationals

Many **advisory councils for foreign nationals** filed criminal reports against the election posters in Baden-Wuerttemberg, Bavaria, Rhineland-Palatinate and other federal states.

h) Trade unions

Several trade unions spoke out against discriminatory election campaigns and condemned the actions of the NPD.

4. THE FAILURE OF THE JUDICIARY IN THE LAST ELECTION CAMPAIGN

a) No protection from the courts and public prosecution officers

After several towns and cities had the posters removed, various administrative courts responded to motions lodged by the NPD by justifying the inflammatory posters in a number of rulings that were handed down. The courts forced mayors as well as town and city municipalities to replace the posters, mouthing the reasoning of the NPD, which is completely unacceptable and ignores the experience provided by history. Not only do the legal evaluations of administrative courts, public prosecutor's offices and chief public prosecution officers manifestly ignore the discriminatory nature of the posters and pamphlets, they also completely disregard the historical context and the posters' grave consequences for the affected minority.

The only exception is Wiesbaden Administrative Court, which rejected the NPD's motion to have the posters replaced, accusing it of formal inadequacies in the approval procedure (non-submission of the liability insurance cover requirements).

b) The decision of Kassel Administrative Court

On 9 September 2013, Kassel Administrative Court handed down the first negative order (ref. 4 L 1117/13 KS), which other courts, public prosecution officers and public authorities used as a reference.

The operative provisions of the ruling read as follows:

"The motion of the plaintiff for a temporary injunction to oblige the defendant to promptly replace the election posters with the inscription "Money for Grandma, not for Sinti and Roma" without delay at the original locations within in A-Town is well founded given that the plaintiff has brought a plausible case for an entitlement to injunctive relief, as well as for grounds for same."

The reasoning for the order starts by listing the underlying legal provisions:

"The entitlement to injunctive relief results from his claim under public law for the rectification of consequences. The removal of said election posters was unlawful."

It is immaterial here whether the removal of the election posters constitutes, in legal terms, direct implementation (Paragraph 8 of the Hesse Act on Public Security and Order [HSOG]) or a right to immediate enforcement (Paragraph 47 II of the Hesse Act on Public Security and Order [HSOG]). This is because the preconditions for (fictitious) underlying order are not satisfied at any rate. In accordance with Paragraph 11 of the above Act, the competent authorities can take the necessary steps to defend against a specific danger to public security or public order. The interests of public security include the integrity of the objective legal order. The abovementioned election posters do not violate the legal order (...)

When interpreting and applying Paragraph 130 of the German Criminal Code [StGB] (author's note: the original pdf document of the court in the annex contains the clerical error "Paragraph 1 of the Legal Code"), in particular the constitutional requirements that are derived from Paragraph 5.1 sentence 1 of the Basic Law [GG] need to be observed in order for the "value-setting importance of the basic communication right on a standard application level" to come into effect. For the interpretation of legal norms, Article 5.1 sentence 1 of the Basic Law [GG] requires, within the framework of the constituent elements of the applicable legislation, that the importance of the freedom of expression is weighed up against the legally protected rights that were restricted. This prevents an interpretation of

the factual circumstances of a criminal provision which exceeds the requirements of the protection of legal rights. The courts must also observe the constitutional requirements with regard to how laws are interpreted. Prerequisite for the subsumption of a statement or conduct under the criteria of Paragraph 130 of the German Criminal Code [StGB] is that the courts understand the precise nature of the controversial statement. In the process, they must also, on the basis of the wording, consider the context and the factual circumstances of the statement in accordance with the case law of the Federal Constitutional Court. The Federal Constitutional Court takes as a basis the principle that freedom of opinion is violated if, in the case of ambiguous statements, a court bases its considerations on an interpretation leading to a conviction, without having previously ruled out with reasonable cause those interpretations which cannot justify the sanction (see Federal Constitutional Court (BVerfG) decision from 06.09.2000 – 1 BvR 1056/95 - juris marg. 35 et seq., with further references). Considerations could, for example, include the circumstances under which the statement was made. Earlier utterances of a political party must also be taken into account provided that a clear reference to them is established (Federal Constitutional Court (BVerfG), not adopted decision from 24.09.2009 - 2 BvR 2179/09 - juris marg. 8, with further references)".

On the basis of these considerations the court then comes to the following conclusions:

"Measured in terms of these standards, it is not possible to determine with the required certainty that the plaintiff's actions pertaining to the display of the mentioned posters in public street areas constitutes incitement, as the content of these posters could also be interpreted in other ways that are not punishable. To elaborate:

The posters with the inscription "Money for Grandma, not for Sinti and Roma", on which, apart from the plaintiff's logo, the likeness of an elderly lady can be seen, could at worst be considered a call for arbitrary measures. Arbitrary measures are illegal, discriminatory measures aimed at causing damage or disadvantage (Fischer, German Criminal Code [StGB], 58. edition 2011, Paragraph 130 (10))."

Then the following core statements of this decision are presented:

"It is possible to interpret the statement on the poster in such a way that it calls for illegal and discriminatory arbitrary measures, in breach of the principle of equality (Article 3 of the Basic Law [GG]), aimed at taking away social benefits that the Sinti and Roma are entitled to and redistributing these funds to the elderly. However, the statement on the poster could also be interpreted as meaning that additional public funding should rather benefit the older generation than the population group of the Sinti and Roma; this demand would not be considered an incitement of hatred. The court has found no conclusive evidence that would allow it to completely rule out this second interpretation."

Several aspects of this line of reasoning are not plausible and are factually inaccurate:

The reasoning or interpretation of the court is absurd and not plausible. Of course it is inciting if "social benefits which the Sinti and Roma are entitled to are taken away arbitrarily". The statement that "additional public funding should rather benefit the older generation than the population group of the Sinti and Roma" is equally racist, inciting and unconstitutional. This statement means that state funds should not be disbursed for factual or political reasons, but should be refused on the basis of ethnicity or mere membership of a minority. The German Sinti and Roma are citizens of equal standing and also have an older generation. Unlawful conduct cannot be justified by another unlawful interpretation.

The court fails to recognise the demands on a possible "interpretation" which underlie German Basic Law judicature. Alternative interpretations are only permissible in so far as they cover the actual content and meaning of the statement. This is precisely what the Federal Constitutional Court meant in the above-mentioned decision from the year 2000 when it said that *"the meaning of the controversial statement must be correctly understood"*, which does not allow for reinterpretation.

The poster inscription ("Money for Grandma, not for Sinti and Roma") is a deliberate generalisation that is not limited to certain benefits, groups of persons, public or private areas (etc) in any way. It is directed against the entire minority, irrespective of whether the members of this minority have traditionally been based in Germany, such as the German Sinti and Roma, whether they are Roma immigrants from Eastern Europe, or whether they are young or old. For this reason, this does not constitute an interpretation, but an impermissible reinterpretation of the deliberate generalisation if the statement is subsequently limited as referring merely to "social benefits" or "additional funding". The conscious or deliberate generalisation and the reference to ethnic origin clearly reveal group-focused enmity. Otherwise, any racist propaganda against entire population groups could ultimately be justified by stating that it was only directed at individual "asylum abusers" or "criminals". Such a reinterpretation does not constitute a valid interpretation within the meaning of German Constitutional Law judicature.

Kassel Administrative Court (4 L111 7/13.Ks) continues its explanation by saying:

"This also applies with regard to the connection established by the defendant to a campaign by the plaintiff using the slogan "Stop the flood of gypsies! Fight crime!" The plaintiff has submitted an affidavit by the deputy leader of the NPD party, credibly assuring the court that it will not be using any posters with the inscription "Stop the flood of gypsies! Fight crime!" in the current campaign for the parliamentary election on 22 September 2013. Only in North Rhine-Westphalia did one of the local associations distribute a postcard-sized flyer with this statement; after intervention by the party's federal executive board, this flyer was withdrawn from circulation long before the start of the election campaign. For this reason, no link could be established between the posters that were removed in A-Town and the campaign that had ended in another federal state. Even though the removed posters tastelessly exploit vulgar resentments and play off different population groups against each other, this does not constitute a punishable offence. A democratic society must also allow for fallacious opinions as long as they are not criminal in nature. It remains the responsibility of the people reading such posters to use their common sense to draw the right conclusions (also see VB B-Town, decision from 07/09/2011 - 1 L 203.11 -)."

It is alarming how blatantly the court trivialises and adopts the justification of the NPD.

The flyer *"Stop the flood of gypsies! Fight crime"* is not less discriminatory than the posters, and has been presented on the Internet over many months, where it can still be seen. The flyer allows for a conclusion on the mind-set of the NPD.

If *"population groups are played off against one another in a tasteless fashion"*, it is simply absurd if the court argues, with regard to the posters "Money for Grandma...", that this is not a punishable offence. This is completely missing the point. "Grandma" and "Sinti and Roma" are certainly not *"different population groups"*. There are also "Grandmas" in Sinti families (the difference being that many of the grandparents of Sinti and Roma were murdered in Auschwitz and other extermination camps on behalf of the German state).

The claim by the administrative court that it is the responsibility of the people reading the posters, *"to use their common sense"* and *"draw the right conclusions"* is equally absurd. If this means that the Sinti and Roma families, the mayors, politicians, parties and civil organisations that are rightly outraged by these posters are not using their common sense, we should question the judges' competence to judge.

c) Notice of the Chief Public Prosecutor's Office in Frankfurt am Main

On 6 September 2013, the Hessian Ministry of the Interior and Sport wrote to the Regional Association of German Sinti and Roma in Hesse:

"Thank you for your email dated 28.08.2013, in which you informed us of the NPD posters that were put up in Bad Hersfeld with the inscription "Money for Grandma, not for Sinti and Roma".

On Wednesday, 21.08.2013, the local supervisory authority of the city of Bad Hersfeld lodged a criminal complaint on suspicion of incitement of hatred against the responsible persons at the NPD for hanging up the NPD election posters. Local police could establish that several such NPD posters had been hung up in the municipality of Bad Hersfeld.

In order to, as quickly as possible, prevent this campaign from continuing and spreading to other areas of Hesse, we presented the facts of the case to the competent public prosecutor in Fulda on 21.08.2013. According to the public prosecutor, the election poster did not constitute a criminal offence. The Chief Public Prosecutor's Office in Frankfurt am Main confirmed this assessment on 22.08.2013. According to the Chief Public Prosecutor's Office in Frankfurt am Main, the same also applied for the flyer "Stop the flood of gypsies! Fight crime!"

Apparently, the contents of the listed NPD election posters are protected by the principle of freedom of expression according to Article 5 of the Basic Law [GG]. Although I take your concerns very seriously, I am bound by the above-mentioned decisions of the Public Prosecutor's Office in Frankfurt am Main."

That same day, the chairman of the Central Council of German Sinti and Roma wrote a personal letter to the chief public prosecutor in Frankfurt and protested against this assessment. The Central Council requested clarification on how it was possible that this assessment was passed down to local authorities in Hesse although this was not in the jurisdiction of the Public Prosecutor's Office in Frankfurt am Main.

The Chief Public Prosecutor's Office in Frankfurt/Main responded on 11 September 2013 with a negative reply, stating among other things:

"As you have correctly assessed, it was our office that investigated whether the mentioned NPD posters constituted a criminal offence.

Although I fully agree that what they portray is the height of bad taste and cynicism, after a comprehensive evaluation of the case law on this matter we have reached the conclusion that the posters do not constitute a criminal offence; in particular, they do not fulfil all criteria for an incitement of hatred in accordance with Paragraph 130 of the German Criminal Code [StGB].

In order to avoid interpretation of this offence from assuming boundless proportions, the supreme courts, in particular the Federal Constitutional Court, has always deemed necessary a restrictive interpretation of this criminal law provision.

Because regardless of their possible slanderous content, the textual and visual statements of the NPD posters are protected under the provisions of freedom of expression according to Article 5 (1) sentence 1 of the Basic Law [GG]. This constitutional standard gives everyone the right to freely express and disseminate his opinions in speech, writing and pictures. In particular in public debate, and especially in the political arena and during elections, everyone has the right to voice critique, even in the form of provocations and polemics. In view of the constant information overload we are confronted with in today's world, the fact that a formulation is strongly worded or exaggerated does not automatically mean it is no longer protected by the provisions of freedom of expression according to Article 5 (1) sentence 1 of the Basic Law [GG]."

It seems almost brazen to tell the affected minority, who were victims of the holocaust, in this a case, which has been more extreme and more sustained than ever before, that “a boundless expansion” of the laws on sedition should be avoided.

It also fundamentally fails to take into account the facts of the case if it rejects any criminal relevance on the grounds that "provocative and polemical critique" and "strongly worded and exaggerated formulations" are acceptable in election campaigning as far as Basic Law is concerned. The subject of the poster inscription is not "provocative critique or exaggerated formulations and definitions". The NPD, which has always used the term "gypsies" in the past, has purposefully avoided this in order to be able to cynically use its rhyming slogan. It is precisely this deliberate formulation that reveals the party's group-focused enmity by suggesting that the entire minority is socially inferior and should be excluded.

It is alarming to see that such an obviously illogical assessment was used to justify the discriminatory behaviour nationwide, leaving the minority defenceless – once again.

d) Giessen Administrative Court and Hesse Administrative Court

After the mayor of the City of Giessen, Ms Dietlind Grabe-Bolz, had the posters removed, Giessen Administrative Court on petition of the NPD ordered her to hang them back up. Subsequently, due to a complaint by the NPD, Hesse Administrative Court (VGH) in Kassel ruled on 18 September 2013 that the mayor was not permitted to comment publicly on the discriminatory process and the behaviour of the NPD. The unworldly decisions of the courts side completely with the right-wing extremist party and completely ignore the protection of the minority.

In the operative part of the decision of Hesse Administrative Court (Ref.: 8 L 1914/13.GI) it is stated:

"In the way of the interim measure, the defendant is prohibited from intervening in the current federal and state election campaign to the detriment of the plaintiff, in particular from publicly calling for a ban of the plaintiff, and literally or in spirit claim, propagate or have others propagate on her behalf, that the current advertising campaign by the plaintiff in the City of Giessen would indicate that the plaintiff is "not adhering to our legislation and is not interested in fair democratic competition."

The mayor had said in a press release on 10 September 2013 that the city was currently preparing a criminal complaint against the state chairman of the NPD for incitement of the people. At the same time she regretted the perpetual legal tug-of-war with the NPD over its propaganda. She fervently hoped that proceedings for a ban of the NPD would finally be initiated. The poster campaign of the NPD was yet another example showing that the NPD was not upholding our laws and had no interest in fair democratic competition.

On 18 September 2013, Hesse Administrative Court ruled as follows in the above-mentioned case:

"With this statement, the mayor of the defendant violated the duty of neutrality imposed on municipalities and their bodies by Federal Basic Law (cf. Federal Administrative Court, judgment dated 18.04.1997 - 8 C 5/96, cited by juris). According to the constitutional principle of freedom of choice (Article 38 (1) Sentence 1, Article 28 (1) sentence 2 of the Basic Law [GG]) the electorate must be permitted to draw its own conclusions in a free and open process of opinion formation without any undue influence from government or non-government side. The principle of freedom of choice prohibits state and municipal bodies from identifying with political parties, or supporting or fighting against them becoming public officials (Federal Constitutional Court [BVerfG], judgment dated 17 September 2013 - 2 BvE 4/13; judgment dated 2 March 1977 - 2 BvE 1/76; Federal Constitutional Court [BVerfG], judgment dated 18.04.1997 - 8 C 5/96 -; cited by juris)."

The decision is untenable, and not only because it prevents any form of criticism by office holders, even when this criticism is directed against discriminatory practices that are contrary to the rule of law. If a party uses misanthropic, discriminatory practices, not only should it be the duty and responsibility of the authorities and office holders to uphold the public peace and ensure the well-being of its population, but they should also be authorised to take a public stance to elaborate on these occurrences. This applies in particular if - as is the case here - public media has reported on these occurrences and is awaiting an explanation on how the authorities are planning to deal with these issues.

The question of the legality and lawfulness of electoral practices is not part of the election campaign, but a question of public order and safety, even if the courts have difficulty distinguishing between unlawful agitation and a permissible democratic battle of opinions. Not allowing the mayor to make a statement to the press on this matter would not only be quixotic, but would also breach the obligation of the public authorities to inform the public.

With regard to the unlawfulness of the poster campaign, Hesse Administrative Court then also reprimands the City of Giessen by continuing:

"The requisite for risk of recurrence arises not only from the statement that has already been made, but also from the fact that the respondent and the mayor in the current proceedings continue to cling on to the opinions they have expressed, as can clearly be seen from the position statement to the senate brought forward today, although Giessen Administrative Court has, in another administrative dispute between the parties, made a decision on 12 September 2013 - 4 L 1892/13.GI - stating that:

"To avoid further legal disputes, the court wishes to point out precautionarily that the notice sent on 9 September 2013 to the plaintiff by the mayor of the City of Giessen is also clearly unlawful. The notice, which neither provides information about legal remedies available nor cites any legal provisions is already unlawful due to the fact that the posters of the plaintiff with the inscription 'MONEY FOR GRANDMA, not for SINTI & ROMA' do not meet the legal criteria for the crime of incitement to hatred, which is why the reason provided for the intervention constituted a disregard for the decision of Kassel Administrative Court on 9 September 2013 (Ref. 4 L 1117/13.KS), which is known to both parties. Furthermore, the department head of the Public Prosecutor's Office in Frankfurt/Main informed the court by telephone on 9 September 2013 in the parallel proceeding 4 L 1841/13.GI that, after having examined the posters of the plaintiff with the inscription 'MONEY FOR GRANDMA, not for SINTI & ROMA', it became clear that this did not constitute an offence of incitement to hatred and that all the public prosecutors in Hesse had been notified of this by email and that consensus had been reached to this effect."

It seems that adopting the ignorant stance of Kassel Administrative Court was not enough. Moreover, the judges of Hesse Administrative Court accentuated that the actions of the City of Giessen were "clearly illegal" and emphasised that *"consensus had been reached"* in all of Hesse. Although it does not really compare, it does remind us of the fervour with which the judiciary embraced the racist ideas against the Sinti and Roma in the past (see 5 (c): "The judiciary, and coming to terms with history").

e) Duisburg Public Prosecutor's Office

Following our criminal complaint about the NPD flyer *"Stop the flood of gypsies! Fight crime!"*, Duisburg Public Prosecutor's Office sent the Central Council of German Sinti and Roma a nolle prosequi on 16 July 2013, declaring that they were not willing to continue with the preliminary proceedings. It is stated in the explanation, among other things:

"The facts of the case do not meet the requirements for incitement to hatred (Paragraph 130 of the German Criminal Code [StGB]) or for public incitement to crime (Paragraph 111 of the German Criminal Code [StGB]) or for slander (Paragraph 185 of the German Criminal Code [StGB]). All of these offences first require a clarification of the relevant statement contents. This requires both an individual assessment of the formulations as well as a general review and the context from the point of view of an objective 'recipient'. Moreover, it must be noted that if several interpretations are possible, and one does not hold any criminal relevance, this interpretation must, according to the supreme court, be given precedence.

Pertaining to this case, it follows from above that:

although the term "gypsy" is charged with negative connotations, not least due to its defamatory use under the Nazi regime, nevertheless the use in itself is not considered relevant to criminal law. The fact that the term is used as a deliberate provocation by certain persons, namely those on the extreme right of the political spectrum, does not impact this assessment.

Even if used in conjunction with the word "stop", "flood of gypsies" is not of criminal relevance because this in itself does not constitute an act of degradation. It could also be interpreted as calling for an intensified political debate on the large number of immigrants in Germany and, from the point of view of the originator of the flyer, the associated problems in the area of crime".

The reasoning of the public prosecutor relating to the term "gypsy" – which stems either from sheer ignorance or cynicism – has absolutely nothing to do with the question at hand and is, therefore, not appropriate. The pamphlet would be just as discriminatory and inhuman if it was referring to "Sinti and Roma" instead.

The reasoning that the content *"could also be interpreted as calling for an intensified political debate on the large number of immigrants in Germany and, from the point of view of the originator of the flyer, the associated problems in the area of crime"* is completely unacceptable. This interpretation is just as discriminatory and inciting as all the other possible interpretations of the flyer text. In the context of the immigration debate, speaking of a "flood of gypsies" which brings *"associated problems in the area of crime"* represents a blatant violation of the existing principles of the rule of law, where only the individual is responsible for his possible misconduct, not his entire ethnic group, family or other community to which he belongs. "Clan liability", as under National Socialism, is no longer permitted in our constitutional state.

Furthermore, such a biased attribution of criminality as the court attempts to make, is a direct violation of the protective provisions of the "Framework Convention for the Protection of National Minorities" (Article 3), which prohibits such an attribution. In 2010, the Conference of the Ministers of the Interior also produced a report and decision to this effect. It is incomprehensible that these basic facts are not known or are deliberately ignored.

The following conclusion drawn by Duisburg Public Prosecutor's Office in Duisburg is equally scandalous:

"Even the portrayal of weapons cannot be seen as an explicit invitation to violence against Sinti and Roma. It is just as likely and plausible that this could be calling for political measures against criminal immigrants, who themselves carry and use weapons. Irrespective of the question whether the first interpretation may already be a sufficiently concrete fact, a second interpretation is thus presented that does not constitute a criminal offence."

In his apparent endeavour to justify the flyer, the public prosecutor decides to reinterpret its message. If the NPD had actually wanted to refer to "criminal immigrants carrying weapons", this is what would have been stated. The wording "Stop the flood of gypsies! Fight crime!" does not permit the previous stated interpretation without the meaning of the statement being reinterpreted in an inadmissible way. Again, allowing a flyer that would have the inscription "Stop the flood of Jews! Fight crime" would be unthinkable.

f) Düsseldorf Chief Public Prosecutor's Office

In response to the complaint by the Central Council, Düsseldorf Chief Public Prosecutor's Office informed us on 10 September 2013 that our complaint had been rejected. The letter states:

"That the accused - probably not for the first time - project their prejudices onto the population group of the Sinti and Roma, who as we all know suffered unspeakably under the National Socialist dictatorship of the "Third Reich", is barely tolerable, also in my point of view. Nevertheless, bound as I am by the legal provisions of the Basic Law with regard to freedom of expression, which the disputed flyer falls under, I was not able to find sufficient evidence of any criminal offence."

The wording ("*(...) barely tolerable, also in my point of view (...)*") seems almost cynical towards those affected when it is followed by:

"However, the wording of the flyer could also be understood as calling only for a restriction on immigration within the context of a wider and more general objective, namely the reduction of crime, where the Sinti and Roma are seen as a problem, but not necessarily as an object of hostile feelings and actions or as contemptible."

If Düsseldorf Chief Public Prosecutor's Office finds the claim admissible that "*the Sinti and Roma are seen as a problem*" "*within the context of (...) the reduction of crime*", it thereby justifies unlawful assertions that are in violation of the rule of law. According to the system of values protected by our constitution, it is not permissible to make an attribution of criminality based on descent (or the colour of the skin, for instance). The existing awareness gaps in this regard in the judiciary need to be addressed urgently. It is also necessary to finally learn the lessons of recent history as it pertains to the Sinti and Roma.

g) The Regional Court in Bremerhaven

At the beginning of September 2013, the Association of German Sinti and Roma in Bremerhaven brought a civil action before the regional court, seeking to prevent the posters from being hung up. The defendant was the local NPD. On the urgent recommendation of the competent judge, in whose assessment the lawsuit had no real prospect of success, the association withdrew the complaint, also in view of the high cost risk involved. In a public statement, the association, represented by its chairman Roberto Larze, pointed out that this decision was taken with a heavy heart. Larze explained that, nonetheless, it was still the responsibility of the public authorities to intervene against this massive and sustained public stigmatisation, and take all the necessary legal steps to quash the discrimination.

5. MINORITIES ARE PARTICULARLY AFFECTED – HISTORICAL BACKGROUND

a) The Nazi genocide - as yet unresolved

The smear campaign against the Sinti and Roma by a party like the NPD cannot be fully understood without taking into account the historical background of the Nazi genocide. The special responsibility of the Federal Republic of Germany resulting from history must also play an important role in the balancing of interests when applying Article 5 of the Basic Law [GG]. The survivors of the Holocaust are once again reminded of the incitement to hatred under National Socialism against anyone not considered part of the so-called "national community". So far, this has been completely ignored in all judicial decisions on this matter.

In this context, it is important to bring up some basic facts about the Nazi genocide of the Sinti and Roma. This is intended to counter prejudices and misconceptions that continue to live on in large parts of the community as a consequence of the Nazi propaganda. Even if judicial authorities want to interpret the election propaganda as only a "provocative debate on the large number of immigrants", it evokes an inaccurate and biased perception of the German Sinti and Roma minority.

On 16 March 1997, the German Federal President Roman Herzog said in his landmark speech on the occasion of the inauguration of the Documentation and Cultural Centre of German Sinti and Roma in Heidelberg:

"The genocide of the Sinti and Roma was carried out for the same racially fanatical reasons, with the same intent and with the same desire for a systematic and complete annihilation as the genocide of the Jews. In the entire Nazi sphere of influence, they were systematically murdered in family groups, even the children and elderly."

The German Sinti and Roma were and are a long-established national minority in Germany and have been citizens of the state for more than 600 years. In contrast to the propagandist clichés of the National Socialists, the Sinti and Roma were German citizens who were as much part of society as the Jews until the so-called "seizure of power". They had and have, for generations, practised the same occupations in their home towns as everyone else, as workers, employees, business people, artists etc., and had and still have a firm place in society. They served as soldiers in the German Imperial Army, and later on also in the German armed forces, and were often highly decorated. Documents show that the commander of Auschwitz, Rudolf Höss, complained to Himmler in Berlin that some of the Sinti and Roma had been deported to the concentration camp in their uniforms, bearing all their medals and insignia.

The segregation and disenfranchisement that started at the beginning of the National Socialist reign deprived the members of our minority of their heretofore-normal life as German citizens. The concentration and extermination camps of Auschwitz, Treblinka, Sobibor, Majdanek, Bergen-Belsen and others are a symbol of the state-organised Holocaust against the Sinti and Roma.

b) Continued discrimination after 1945 by former Nazi perpetrators

The affected minority is also experiencing the current smear campaigns against the background of continuing public discrimination and stigmatisation after 1945.

While the Federal Republic of Germany reviewed its past with regard to the Shoah, the Holocaust of the Jews, the National Socialist crimes against our minority were never properly reviewed.

To the contrary: The former perpetrators and organizers of the genocide of the Sinti and Roma were again put into key positions in public service and in the security authorities – including members of the SS from the Reich Main Security Office (RSHA) and members of the Gestapo and police force from the NS central offices that had carried out the deportations of Sinti and Roma families.

None of those in leading positions at the Reich Main Security Office were ever held accountable for their role in the genocide against the Sinti and Roma. Instead, the former members of the SS from the so-called RSHA "Gypsy" Centre in Berlin were almost all integrated into the police force of the new Federal Republic of Germany. Paul Werner, a senior member of the SS and one of the heads of the Reich Security Main Security Office, was, until the 1960s, a ministerial councillor at the Ministry of the Interior in Stuttgart. Prior to 1945, he was temporarily in charge of the RSHA division "Reich Central Office for Combating the Gypsy Nuisance", which had played a central role in organising the genocide against the Sinti and Roma. Although he admitted during his interrogation by the public prosecutor on 19 May 1959 to having worked for the Reich Main Security Office and stated that it had been the intention to "register the entire gypsy population in the Third Reich" and "effect a uniform treatment of all gypsy matters in the territory of the German Reich", he was allowed to continue working for the government, and his case was dismissed "due to a lack of sufficient evidence".

In the so-called "Travelling Community Centre" of the Bavarian Office of Criminal Investigation, the same SS officers that had been responsible for organising the extermination of the Sinti and Roma at the "Reich Central Office for Combating the Gypsy Nuisance" at Himmler's Reich Main Security Office were put in charge of police deployment against the minority – nationwide. They continued with the special registration of the Sinti and Roma using the "race" documents and files they had taken over from the SS Reich Central Office. They continued to spread racist ideology from the Nazi era at police conventions and even created racist legislation, such as the Bavarian "Vagrant's Ordinance", whose only aim it was to criminalise minority members, harass them with police controls and subject them to reprisals.

This permanent harassment made it difficult for many families to re-establish themselves in professions and businesses. Racism against the Sinti and Roma was kept alive and the members of this minority were marginalised.

c) The judiciary and the appraisal of history

During the Nazi era and in the period after the founding of the Federal Republic of Germany, the judiciary also played a disastrous role in the discrimination of the Sinti and Roma. Insofar as well-educated jurists were not accomplices to the mass murders during National Socialism, they failed completely.

Even though the situation is different under the rule of state law that we have today, the judiciary still bears the responsibility of learning from history and guarding against recurrence.

Only recently, a commission was appointed by the German Federal Ministry of Justice (BMJ) to examine the question as to what extent the continued employment of NS jurists at the Federal Ministry of Justice had a negative impact on the newly founded Federal Republic as a state under the rule of law, thus continuing the spread of Nazi ideology. This has become blatantly obvious, especially in the face of how the Sinti and Roma minority has been treated.

Up to 1964, Franz Massfeller worked as head of department at the Federal Ministry of Justice. In the Third Reich, Massfeller had been an authoritative commentator on the "Nuremberg Race Laws" as well as a representative of the Reich Ministry of Justice at the follow-up meetings of the Wannsee Conference on "The final solution to the Jewish Question." He wrote in his commentary on the "Law for the Protection of German Blood":

"It is not only the mixing of German with Jewish blood that puts the purity of German blood at risk. Mixing German blood with blood of other foreign races also has a negative impact on the development of the German race (...). Other carriers of foreign blood would include (...) the negro bastards in the Rhineland and the gypsies resident in Germany." ("Blood Protection and Marriage Health Law" by Gütt, Linden. Massfeller, Munich 1936, p. 225ff).

This instilled an attitude among the population that the subsequent persecutions and the genocide against Jews, Sinti and Roma were based on "applicable law". In this way, the population could watch how minorities were systematically excluded from society and how entire families were deported, while rationalising that all was in order.

The actions of these NS jurists shaped right-wing policy in the Federal Republic of Germany for decades. Thus, on 7 January 1956, the judges of the Federal Supreme Court (BGH) ruled against compensating the Sinti and Roma for their persecution under the Nazi regime. The Federal Supreme Court agreed with the National Socialists that "gypsies" were "foreign to the species" and should be treated as such. The court refers to a comment by Massfeller and explains: *"As experience has shown, they [the gypsies] have a propensity for crime, especially theft and fraud, and often lack the moral impetus of respecting other people's property due an uninhibited desire towards usurpation, just like primitive, prehistoric man."* (Federal Supreme Court (BGH) IV ZR 211/55 p. 8 and 9 in RZW 56; 113, No. 27).

The federal judges, who were under the supervision of and nominated by the Federal Ministry of Justice, had no need to worry about being reprimanded by Massfeller or his superiors.

This continuation of racist "judicial" conceptions formed the basis for further discriminatory prejudices in the population in the following decades and served above all as a justification for repression, oppressive police controls and special registration by the police authorities. This took place under federal instructions by the so-called "Travelling Community Centre" at the Bavarian State Criminal Police Headquarters. This is where the former members of the SS from the Reich Main Security Office worked, who had organised the genocide against the Sinti and Roma.

Until the 1970s, a national decree demanded that any claims for compensation by Sinti and Roma concentration camp survivors had to be submitted to the "Travelling Community Centre" at the Bavarian State Criminal Police Headquarters by the competent state office for compensation. The former SS officers then made entries in the compensation claim files, using the same old Nazi jargon, disputing the applicants' persecutions, while persecution was a legal requirement for compensation. The result was a systematic exclusion of the Holocaust survivors from our minority from the compensation for the suffering in the concentration camps and the massive damages incurred to body, health, property and professional advancement. In the compensation procedures, the survivors were once again confronted with the same perpetrators who had been responsible for their suffered injustice.

Some of those affected are still alive today and had to look at the mentioned NPD posters over several weeks in 2013.

This makes it all the more appalling that – as the court decisions on the NPD poster campaign show – the judicial authorities have not drawn the necessary consequences, but are instead looking to tolerate this smear campaign by making absurd considerations and reinterpretations.

d) Special entitlement of the minority for protection against racism

Due to Germany's history, the Sinti and Roma are entitled to protection against racism and discrimination, which the rule of law and the judiciary must guarantee.

For this reason, the state parliament in Schleswig-Holstein decided in November last year to include the German Sinti and Roma in the article on the protection of minorities in the regional constitution, the "Basic Law" of this state. This amendment to Article 5 is the first time that a state constitution guarantees our minority the "right to protection and promotion", as guaranteed to other national minorities. This constitutional provision is of fundamental significance: it formulates the basic rights and objectives that the state must adhere to. This constitutional provision not only prohibits any form of exclusion and discrimination against members of our minority in legislation and policy, it also guarantees our minority equal participation and equal opportunities in all areas of society as a fundamental right.

In addition, the Sinti and Roma minority is protected by the "International Convention on the Elimination of All Forms of Racial Discrimination" (ICERD) and the "Framework Convention for the Protection of National Minorities" of the European Union (see also paragraph 7 below). Under these agreements, racist practices are not only prohibited in Germany, but in the whole of Europe.

These positive developments for our minority are contrasted with the discrimination, marginalisation and lack of opportunity in many areas, and the threat posed by growing right-wing extremism.

e) An everyday reality characterised by discrimination

The Central Council of German Sinti and Roma has prepared a compilation of case files for the Anti-Discrimination Agency of the Federal Government (ADS) documenting the discrimination against our minority over the past three decades. In the meantime, in some areas racist practices or publications have been revised—at least in part. However, the poisoned atmosphere that was created in society and the virulent bias against our minority still exists. This is partly due to the personnel continuity after 1945, which led to continued racist exclusion in the police and judiciary. Institutionalised discrimination against our minority still exists and has influenced many judicial decisions above and beyond those that have been reported.

Following the special registration of the Sinti and Roma by former SS members after 1950 at the so-called "Travelling Community Centre" of the Bavarian State Criminal Police, we are still subjected to oppressive police controls even today. Furthermore, our minority is stigmatised in documents and press releases from the police and public prosecutors (as can be seen in the recent NSU-case, see below); even racist terminology, such as "gypsy type", "Sinti and Roma clans", "vagrants" and "Euro-nomads", is still used in police man-hunts, despite having been criticized repeatedly.

As far as the judiciary is concerned, German courts have delivered many racist judgements against the Sinti and Roma in the past (e.g. the Federal Supreme Court ruling in the aforementioned judgement from 1956: "*Criminals*" with "*an uninhibited desire to usurpation*", or the Bochum Tenancy Law decision from 1996: "*Sinti and Roma (...) are generally not suited for taking over the lease of an apartment*"; Cologne Public Prosecutor's Office in 2011: "*Roma gangs*"; the District Court of Stuttgart in the 1990s: "*Theft learned in*

the cradle"; in recent proceedings, judges stated that the crimes of individuals would *"harm the reputation of the entire minority"*.

Although much has changed in the meantime, some media still portray discriminatory stereotypes and use biased illustrations. Discriminatory clichés appear again and again in television, documentaries and films ("Tatort", "Eurocops", "Niedrig und Kuhnt – Kommissare ermitteln" etc.).

Church leaders (Cardinal Meissner, Cologne) publicly alleged that the Roma cannot be integrated into society, and similar allegations are made as well.

Surveys have shown that the Sinti and Roma children experience a considerable amount of discrimination at schools and in their neighbourhoods. The same also holds true at the workplace, or when searching for an apartment (mobbing using the derogatory term "gypsy"). Added to this is a massive exploitation of labourers from south-eastern Europe (e.g. in the meat industry).

The Sinti and Roma are subjected to special contractual terms by insurance companies (*"dubious damages from the travelling community"*) and banks (KfW: *"Social particularity"*, CC Bank: *"No ethnic affiliation of the Sinti and Roma"*); lawyers call the Central Council to collect debts from *"your fellow countrymen"*.

Our minority is still mostly excluded from social bodies such as broadcasting councils and state media institutions. There is also discrimination with regard to access to public institutions/places, at camping sites (up to 2013) which are part of the Federal Association of the Camping Industry (BVCD), and previously the German Camping Club (DCC) and the ADAC.

Well-known travel guides have warned against "gypsies" in Mallorca and other travel destinations (TUI, Marco Polo, Fischer, etc.). A cause for concern in the area of sports is the racist "fan" activities and incidents in stadiums and sports halls where violent right-wing extremists chant the slogan: "Zick Zack Zigeunerpack" ("Zigzag gypsy pack").

Discriminatory statements and racism against Sinti and Roma have been found in scientific publications and other literature, including in criminological standard works (Kaiser pp), lexicons (largely revised) and ethnological papers (Dr Arnold and successors).

f) Current stigmatisation of the Sinti and Roma in the so-called NSU proceedings

A particularly serious incident of public discrimination by the police and judiciary was recently experienced by the Sinti and Roma in connection with the so-called NSU proceedings after two police officers had been attacked in Heilbronn, with one of the officers killed, and the other seriously injured.

Prompted by spokespersons of the Public Prosecutor's Office and the police, Sinti and Roma were massively stigmatised immediately after the incident in 2007. The Sinti and Roma - including many older people among them - were, without reason, subjected to massive police controls. The clichés about the allegedly "nomadic minority" and the traditional "gypsy" stereotypes led the authorities to place the minority under general suspicion countrywide for this serious crime. This was due to traces of DNA found at the crime scene from, as the police called it, a "phantom woman". The trail led the police to various parts of Germany, Austria and France. Nationwide, the authorities were speaking in the press and on television about *"investigations in the gypsy milieu"* and *"solid leads"* pointing to suspected *"Sinti clans"* and members of *"mobile social groups such as the Sinti and Roma, who are difficult to trace"*. The competent Ministry of Justice justified the conduct of the Public Prosecutor's Office. The matter caused a great deal of concern among the minority.

In 2009, it came to light that the DNA trail had merely been an investigation slip-up. The actions of the authorities in such a spectacular case were particularly irresponsible because there had been early evidence to suggest that the DNA trail was incorrect.

The Central Council of German Sinti and Roma welcomed the solving of the brutal murder and attempted murder in Heilbronn. In view of the affiliation of the alleged perpetrators with the "Thüringer Heimatschutz", a neo-Nazi organisation that the investigating authorities had known about for many years, we once again pointed out the danger of such organisations.

The Central Council expressed its appreciation for the work done by the NSU inquiry committee of the Bundestag. In a letter to its chairman, Member of Parliament Sebastian Edathy, we stressed that the committee carried out its investigation with all due diligence. However, the facts that came to light are a cause for serious concern. In its investigation, the committee uncovered discriminatory attitudes and practices by public prosecutors and police that we would not have thought possible. How is it possible, in a state under the rule of law, that an anonymous tip-off stating "It was gypsies" (as the committee determined on page 644 ff. in its final report to the German Bundestag) and a "racial" diagnosis by the authorities, speculating that the show people at the fairground had been "Sinti and Roma" or "members of the travelling community", led to the deployment of the entire police force and judiciary, including the BND, against the minority.

The file notes quoted by the inquiry committee remind us of the modus operandi of the former "Travelling Community Centre" of the Bavarian State Criminal Police Office. And, worst of all, the hostilities towards our minority were continued by the authorities even after the inquiry committee had determined that the DNA trail of the so-called "phantom" was incorrect. It turned out to be another showcase of animosity towards the Roma.

The modus operandi of the police and the public prosecutor in Baden-Wuerttemberg, and the associated violations of the Agreement on the Protection of Minorities still need to be reviewed. It will also be necessary to remove the racist statements and accusations against the Sinti and Roma relating to the terrorist murders from the police records and, in particular, destroy the data and DNA samples that were collected in the process.

Such failures of the police and judiciary to respond to the dangers posed by right-wing extremism must be prevented in the future. Within the context of the dispute about the NPD posters, a Sinti family from Minden received an abusive and threatening letter, which begins with: "Long live the NSU".

6. AN APPEAL TO THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY FOR PROTECTION AGAINST DISCRIMINATORY ELECTION CAMPAIGN PRACTICES

a) An appeal in the context of the immigration debate in March 2013

The increasingly aggressive debate that ensued since early 2013 about immigrants from Bulgaria and Romania in particular, which already at this time threatened to become an important election issue, has led to growing concern. For this reason, the Central Council addressed the public on 5 March 2013, and at the same time appealed to the Federal President Joachim Gauck. We appealed to the democratic parties to not turn discussions about crime and economic migrants directed exclusively against Sinti and Roma into an election campaign topic. In previous public debates our minority had been sweepingly declared a "public danger", and thus denounced and massively stigmatised. We asked the President of the Federal Republic of

Germany to speak out against this towards the party leaders. In separate letters, we demanded a discrimination-free election campaign from the party and faction leaders. The Central Council of German Sinti and Roma asked Federal President Gauck and the parties to send a political signal to not use immigration to Germany as a populist campaign topic at the expense of the Sinti and Roma minority. This is also important because it is necessary to stress the fact to the public in general that minorities are protected by the constitution. The democratic parties followed this appeal in an exemplary way.

The new right-wing populism in Germany, driven by politicians and frequently picked up by the media, uses allegations of "benefit abuse", "abuse of freedom", "asylum abuse" and "crime", and is directed only against members of the Roma community. As a consequence of this (German) debate, the Roma are already being used as scapegoats by the politicians and media in their countries of origin and blamed for the delays in the negotiations on the opening of the Schengen Agreement or the accession negotiations. This further aggravates the situation of the Roma by bringing about even more exclusion and discrimination.

This situation is also so worrying because the older people who survived the Holocaust are once again feeling afraid that they might become targets of right-wing violence, especially in the wake of the terrorist attacks by the "NSU".

b) The speech of the Federal President of Germany in Kiel to the Roma and Sinti

In his speech to the state parliament of Schleswig-Holstein on 22 March 2013, the Federal President addressed the topic of minority protection as it relates to the Sinti and Roma. He thanked the parliament, in particular for the amendment to Article 5 of the Basic Law [GG] of Schleswig-Holstein from 14 November 2012, which also protects the culture and language of the German Sinti and Roma in Schleswig-Holstein. He pointed out that the Sinti and Roma have been living in Germany since the 15th century. The amendment to the Basic Law not only represented a legal clarification, but also a political commitment, said the Federal President. The message from Kiel clearly states: the protection of minorities is not an act of kindness; the protection of minorities is an expression of our democracy.

Thereafter, the Federal President stated in his public speech before the state parliament and the press:

"In the light of current European developments, this message is of a special relevance. We are currently witnessing a very emotional debate because the Roma - the biggest losers of the transformation societies - are leaving their homelands behind, often as a result of discrimination or persecution: these are EU citizens from Bulgaria and Romania, who are looking for a better life in Germany and other member states of the EU. If their presence leads to conflict in some places, this must be resolved on a case-by-case basis, and solutions must be found. This requires dialogue. To stigmatise an entire group of people or deny their integration capability will only lead to a continuation of the unholy, century-old tradition of discrimination, exclusion and persecution. This not only goes against the principle of the equality of all citizens, it is also contrary to our positive experience. In fact, thousands of migrant Roma have been living in West Germany since the 1960s and are well integrated. They came to us from Yugoslavia as guest workers.

What we need therefore is prudence, factual debate and vision. We need to commit not only to offering the Roma a dignified life here in Germany, but also, and especially, in their countries of origin, and treat them with due respect and honour their dignity. This demands considerable effort on our part and also on the part of Europe as a whole. This is a European task."

The media reported nationwide on this remarkable speech and made reference to the appeal by the Central Council that had preceded it.

The Central Council thanked Federal President Dr. Joachim Gauck in a letter for his speech to the parliament in Kiel, with which he protectively embraced the Sinti and Roma minority. It was the first time that a federal president had, in a public debate, expressed his concerns about the danger of discrimination against the Sinti and Roma and called for respect, prudence and the respect of human dignity with regard to the minority.

The Central Council emphasized that the appeal of the German Federal President was all the more important because the highly charged debate about economic migrants was still continuing. There have already been aggressive demonstrations by right-wing extremist organisations such as the "Pro NRW" in front of houses in which Roma families live. This was the first time that the methods of the right-wing extremist "Jobbik" party in Hungary were being used in Germany, which led there to considerable tension and violence against the Roma. The democratic parties in particular must have been aware of this.

Racism against Sinti and Roma is just as present and dangerous as anti-Semitism. All democratic parties should be aware that this is not just about minority groups, but that the underlying values of the rule of law and democracy are under attack. In other words, this is about the foundation on which our democratic culture is based.

7. DEMANDS AND LEGAL BASES

a) Statutory regulations

There is a considerable amount of uncertainty among authorities and within society. The unilateral decisions of the judiciary in favour of the NPD are in contradiction to the prevailing view in society and the non-discrimination principle in the value system of our legal order.

It is therefore necessary to establish statutory provisions

- that unequivocally prohibit discriminatory election campaign posters (as part of the legal provisions on security and order in the states, federal and state road law) as well as
- that prohibit discriminatory TV spots and commercials (broadcaster programme guidelines) and other discriminatory advertising;
- that point out Germany's special responsibility after the Holocaust.

As part of the approval procedure for the display of posters, the cities and municipalities must not only ensure that criminal laws are adhered to (Paragraphs 130, 185 ff. of the German Criminal Code [StGB]), but also check for violations against non-discrimination principles. These are not only derived from Article 3 of the Basic Law [GG], but also in particular from Article 2 (1)(a)(b) of the "International Convention on the Elimination of All Forms of Racial Discrimination" (from 7 March 1966, Federal Law Gazette: 1969 II, p. 962), which prohibits such racial discrimination by individuals and organisations. Since its ratification this legal norm must be observed as a legal prohibition.

Furthermore, the posters are also a violation against Article 4. paragraph 1 of the "Framework Convention for the Protection of National Minorities", Federal Law Gazette. 1997 II, p. 1408), which states that "any discrimination based on belonging to a national minority shall be prohibited". This also includes the autochthonous German Sinti and Roma minority, who are being discriminated against by the posters.

The courts and the public prosecution authorities also need to examine violations against criminal laws (with regard to Paragraphs 130, 185 ff of the German Criminal Code [StGB]) and the decisions of the Federal Supreme Court on the use of degrading terminology, e.g. Federal Supreme Court (in its judgement from 15 November 1967, Ref.: 3 StR 4/67), which states that it is considered an incitement to hatred "to

refer to a Jewish candidate as being a "Jew" on an election poster because identifying the candidate as such is calling for the exclusion of Jews from public office". Also to be taken into account are the other criteria that the Federal Constitutional Court mentioned with regard to the punishability of classifying someone as a "Jew" (according to Paragraph 130 of the German Criminal Code [StGB]) in the year 2000. According to the law, criminal liability would ensue "if the person making this statement identifies with Nazi racist ideology" and the affected are branded as "inferior members of the community" (Federal Constitutional Court decision on 6 September 2000, Ref.: 1 BvR 1056/95).

b) A legal assessment by the German Institute for Human Rights (DIMR) about legal bases

At the request of the Central Council of German Sinti and Roma, the German Institute for Human Rights, an independent scientific institute backed by the federal government, offered a legal assessment. In his written statement from 16 September 2013, Dr. Hendrik Cremer explains:

"In the past, the German Institute for Human Rights has repeatedly pointed out that racism and racial discrimination in Germany are not sufficiently identified by the judiciary.

Against this background, the decision of the Constitutional Court in Kassel leaves some obvious questions unanswered:

Is Paragraph 130 of the German Criminal Code [StGB] the only guideline as to whether the content of the election posters in question violate the law?

The question as to whether the substance of the statements represents incitement to hatred in accordance with Paragraph 130 of the German Criminal Code [StGB] is not answered, according to previous legal practice, by determining whether a statement is racist or not. In current legal practice pertaining to Paragraph 130, the question as to whether a statement is racist is not posed.

There is also the question as to why the Constitutional Court in Kassel only takes into consideration a call for arbitrary action (Paragraph 130 sub-paragraph 1 No. 2 of the German Criminal Code [StGB]) and not an assault on human dignity (Paragraph 130 sub-paragraph 1 No. 2 of the German Criminal Code [StGB]).

What is the role of other legal norms, in particular the fundamental norm of Article 3 (3) of the Basic Law [GG], which explicitly protects against racial discrimination and is closely linked to Article 1 (1) of the Basic Law [GG]? According to the Article 1 (1) of the Basic Law [GG], it is the duty of all government authorities to not only respect, but also protect the dignity of a human being.

This question is all the more relevant because the Sinti and Roma in Germany undoubtedly enjoy special protection against racial discrimination according to Article 3 (3) of the Basic Law [GG]. The protection of the Sinti and Roma against racial discrimination is also a consequence of other human rights standards such as the International Convention on the Elimination of All Forms of Racial Discrimination (Federal Law Gazette: 1969 II, p. 962).

The prohibition of election posters with racist content can in particular be backed up by Article 2 subsection 1 (b) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). It requires all contracting states to "neither promote nor protect nor support" racial discrimination by individuals or organisations. As a consequence, the state may not protect election posters with racist content.

In order to avoid international law infringements by the Federal Republic of Germany, jurists must apply Germany's international ICERD obligations. The convention was ratified by Germany, thus the provisions have become part of national law according to Article 59 (2) sentence 1 of the Basic Law [GG], and must be upheld by its judiciary (Article 20 (3) of the Basic Law [GG]).

According to the established case law of the Federal Constitutional Court, Germany must also observe ratified human rights treaties in the interpretation of the fundamental rights laid down in the Basic Law in order to avoid violations of international law. As far as Basic Law is concerned, the guarantees of a human rights convention serve to aid interpretation when determining the content and scope of fundamental rights. The prohibition of racial discrimination according to Article 3 III of the Basic Law [GG] must therefore take into account in its interpretation Article 2.1(b) of the ICERD.

The German Institute for Human Rights has already pointed out that the impact of racism on the affected is all too often underestimated. With a view to the specific effect of racist election posters, a study has just been published in Austria which underpins the negative impact on the affected children and adolescents."

The German Institute for Human Rights also urges the state to protect against racial discrimination if the local authorities - as in this case - are unsure how to act:

"The convention in particular requires the state to act against racial discrimination. According to Article 2.1, Germany as a contracting state is obliged to use, without delay, all appropriate means to eliminate racial discrimination and promote understanding among all races. Article 2(a) obliges each contracting state to ensure that all state and local authorities and public bodies observe this obligation."

c) A legal assessment of the NPD posters by the Federal Anti-Discrimination Agency

On 13 September 2013, the Federal Anti-Discrimination Agency (ADS) provided an unequivocal written assessment on this matter by its director, Dr. Christine Lüders:

"I am highly concerned by the captions and motifs. Personally, I find them to not only be defamatory and dangerous, but also an incitement to hatred. I find this extremely worrying, because I know what anxieties and anger such posters may cause - not only, but especially for the victims of the Porajmos and their offspring. (...)

From my point of view, legal action should be taken against these posters. I would also advise that the International Convention on the Elimination of All Forms of Racial Discrimination is consulted as a possible legal basis. The Convention, which Germany ratified in 1969, has the legal status of a federal law, and clearly defines which actions are classified as racial discrimination. It states that racial discrimination includes, among other things, making distinctions based on nationality or national origin, as well as exclusions or restrictions leading to an impairment of fundamental freedoms in the political, economic or social fields.

From my point of view, the NPD election posters in question clearly aim to stir up resentment against Sinti and Roma in the population and could have a negative social impact on these ethnic groups. (...) In my opinion, the Convention offers local authorities the necessary legal basis for taking action against the NPD election posters."

8. SUMMARY

What can be regarded positively is the fact that the NPD was not able to profit politically from the campaign in the parliamentary elections or in the state elections in Hesse. But what remains is substantial public damage and a negative impact on the reputation of the minority in society. In particular, these events have eroded the trust of the minority members - often of entire families - in this state which is under the rule of law.

We never want to experience anything like this ever again. The Federal Government, the state governments, the local authorities, and possibly the federal legislature, must undertake legal clarification and create an awareness of this matter, also in the judiciary. It is of paramount importance to provide the police and regulatory authorities with clear instructions.

RUHAN KARAKUL,
CENTRAL COUNCIL OF GERMAN SINTI AND ROMA

INSTRUMENTS FOR THE PREVENTION OF RACIST ELECTION PROPAGANDA

The 2013 election campaign of the NPD (National Democratic Party of Germany) was characterised by racist election posters which were particularly targeted against Sinti and Roma. The efforts of civic organisations, activists and local politicians to curb the racist election campaign by political and legal means largely failed. As an increasing number of right-wing extremist and right-wing populist players are using racist statements to promote their inhuman politics, the question must be raised of the extent to which politicians and the judiciary have confronted the issues and taken appropriate steps on the basis of past experience. In particular, serious thought must be given to whether and to what extent it is at all possible to prevent a potentially racist election campaign. This article will start by showing the political developments since 2013 and then give a brief outlook.

SYMPOSIUM “BOUNDARIES IN THE POLITICAL DEBATE”

The public relations work of the Central Council and the numerous discussions which were held during the election campaign by representatives of the Central Council on all political levels with regard to the prevention of racist electioneering sparked a wide-ranging debate amongst politicians and the general public. On 16th December 2014, there was a symposium with the title “Boundaries in the Political Debate”, which was hosted by the Federal Ministries of the Interior and of Justice and Consumer Protection, as well as the Federal Agency for Civic Education (BpB). As well as the federal ministers Heiko Maas and Dr Thomas de Maizière, the President of the BpB Thomas Krüger and the former judge of the German Constitutional Court Prof. Udo Di Fabio took part.

FEDERAL MINISTRY OF JUSTICE AND CONSUMER PROTECTION AND CONFERENCE OF THE STATE JUSTICE MINISTERS

At the 86th Conference of the State Justice Ministers, there was a discussion of how to deal with a racist and discriminatory election campaign in item II.18 of the agenda. In a resolution, the justice ministers condemned the fact that resentment against minorities is repeatedly stirred up in a cynical and irresponsible manner and exploited for a party’s own election campaign purposes. In view of this, the Federal Ministry of Justice commissioned a report which examined the question of the extent to which the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of the United Nations can be used for proceeding against racist election advertising. The report was prepared by Prof. Stefanie Schmahl, Chair for German and Foreign Public Law, Public International Law and European Law at the Julius-Maximilians-Universität Würzburg and put online on the website of the Federal Ministry of Justice. The academic report obtained was discussed in the agenda item at the 87th Conference of the State Justice

Ministers. The justice ministers noted that the report lists arguments for being able to use the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of the United Nations, which applies in Germany with the status of a federal law, in order to take action against racist election campaigns.

LEGAL REPORT ON DEALING WITH THE RACIST ELECTION CAMPAIGN POSTERS OF THE NPD –

A SUMMARY

The legal report¹ can be retrieved on the website of the Ministry of Justice and Consumer Protection. The following description only aims to act as a simplified summary and, therefore, does not meet the criteria of an academic paper. For a well-founded scientific discussion, you are recommended to read the original report.

The posters were taken down in local communities on the basis of the blanket clause in police law. This allows emergency measures to be adopted when there is a concrete risk to public order and security (for example an infringement of legislation). Local politicians who had issued a decree to have the posters taken down, on the basis of the blanket clause in police law, were forced by the court to hang them up again. The administrative courts justified their decision in particular with the argument that the offence of incitement to hatred (Section 130 German Criminal Code (StGB)) had not been committed. Regulations from conventions on human rights which have been ratified by Germany were not taken into account in connection with this.

APPLICABILITY OF INTERNATIONAL REGULATIONS FOR GERMAN LEGAL DISPUTES?

Human rights treaties which Germany has signed are part of the German legal system due to the provisions of the Basic Law. The constitutional law conveys the provisions of international law into the domestic legal system via the “bridge” of Art. 59 (2) Sentence 1 Basic Law (GG). Many provisions of the treaties are formulated sufficiently precisely and definitely to be directly legally applicable. Even with regard to the interpretation and application of police law, international commitments which Germany has entered into must be taken into consideration as part of the legal system.

PROHIBITION OF RACIST PROPAGANDA IN THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS

The prohibition of racial discrimination is a core element of the international protection of human rights. The international human rights treaties consider even damage to the general feeling of peace and security of the injured group of persons to be so significant that it has to be countered with prohibitions. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) are particularly important.

¹ Prof. Stefanie Schmahl: Rechtsgutachten über den Umgang mit rassistischen Wahlkampfplakaten der NPD erstattet am 24. Oktober 2015 im Auftrag des Bundesministeriums der Justiz und für Verbraucherschutz, online

available: http://www.bmjv.de/DE/Themen/Menschenrechte/GutachtenWahlwerbung/GutachtenWahlwerbung_node.html

ICERD and ICCPR

Racist propaganda is a specific variation of the forms of racial discrimination prohibited in accordance with the treaties on human rights. The forms of action prohibited by the ICERD include spreading ideas which are based on the superiority of one race or on racial hatred (Art.4 lit. a ICERD), as well as organised or other propaganda activities which promote or incite racial discrimination (Art. 4 lit. b ICERD). The prohibitions laid down in Art. 4 ICERD are addressed to the signatories of the Convention. Art. 20 (2) ICCPR expressly obliges the signatories to prohibit by law any propagation of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The prohibitions laid down in Art. 20 (2) ICCPR and in Art. 4 in conjunction with Art. 2 (1) lit. b and lit. d ICERD unequivocally call on the signatories to not only refrain from spreading a racist ideology themselves, but also to ensure an end to attacks by private individuals who degrade, stigmatise or ostracise other people because of their ethnic origins. Racist remarks by private individuals trigger an obligation to act on the part of the state, which must aim at eradicating any incitement to discrimination through the dissemination of racist ideas.

ECHR AND EUROPEAN CASE LAW

Neither the primary law of the EU nor the text of the ECHR contain explicit prohibitions of racist propaganda. In accordance with the guidelines laid down by the European Court of Justice in the “Feryn” judgement (judgement of 10th July 2008, Rs. C-54/07), however, the EU member states are obliged to make provision for effective and dissuasive sanctions even for racist remarks which do not relate to a specifically identifiable person. The European Court of Human Rights also regularly applies the abuse clause of Art. 17 ECHR to the freedom of expression of Art. 10 ECHR in cases of xenophobic hate speech and generally gives this a broad interpretation. Accordingly, the Convention does not protect any act “aimed at the destruction of the rights and

freedoms set forth in the Convention or at their limitation to a greater extent than is provided for in the Convention”. Therefore, no one who is calling for the fundamental and human rights of certain groups of people to be curtailed can invoke the freedom of expression.

PROTECTION AGAINST DISCRIMINATION VS. FREEDOM OF EXPRESSION AND POLITICAL PARTIES

The German Constitutional Court assumes that the freedom of expression and the resulting contention between opinions is “an essential part” of a free democratic order. In democratic states, speech that shocks should, in principle, be answered by contradiction or other intellectual means and not by state regulation. The power of free public discussion is the foundation of a democratic society which relies upon the citizens forming and strengthening their critical faculties by engaging with different opinions. In this respect, controversial and objectionable minority views, in particular, which the majority finds unacceptable, even outrageous, must be subject to the protection of the freedom of expression.

However, not all barriers can be dropped. The expression of an opinion which aims at diminishing a person or a group of people because of their ethnic origins or other unchangeable characteristics and to deny them the basic right to human rights is not acceptable. Racial agitation negates the civility of people’s dealings with one another and counteracts the entitlements to equal treatment and equal participation which are guaranteed by human rights. The public expression of this kind of degrading and defamatory slogan is likely to reinforce prejudices and intolerance; it prepares the ground for exclusion of the victims of the attacks from communicative interaction and social integration. There are forms of hate speech which cannot be countered effectively enough with arguments and verbal retaliations. Racial agitation often triggers identity crises and serious mental consequences, such as anxiety, fear, dejection, social insecurity and depression, in its

victims. The painful and intimidating impact of racist statements also grows as they are repeated and systematically spread. Therefore, the prohibition of hate speech aims at effectively countering the so-called “silencing effect”, whereby ethnic minorities are “muzzled” by verbal intimidations and denied the fundamental right to equal freedom and participation in the purpose and functions of society. Understood in this way, a mutual respect for human dignity and the prohibition of racist propaganda are also constitutive elements of a stable liberal democracy.

If hate speech and xenophobic propaganda were permitted without limitation, there would be the risk that democracy and peaceful life would be poisoned from the roots. This is particularly the case because the globalisation and digitalisation of the living environment brings a high risk of racist remarks quickly spreading over state borders (so-called “spill-over effect”) and turning into real agitation. The most important reason for meeting public manifestations of racist discrimination with the coercive powers of the law is based on the relationship between such remarks and the use of physical violence. It is not uncommon for isolated racially discriminating statements to be the first step in a general pattern of behaviour of the incitement to racial hatred against a minority. Every individual incident of “hate speech” contains the inherent risk of growing into racist “mainstream talk” through indoctrination over time.

When racist ideas are spread methodically, this is not merely a matter of the symbolic presentation of convictions and opinions which remain in the intellectual sphere and can be combatted with intellectual means, but of current threats to specific groups of people and to peaceful co-existence. Anyone who systematically uses racist hate slogans in the public sphere is generally not interested in democratic discourse; they do not want any “contradiction”, but are instead aiming to exclude the victims of the verbal attacks from any discourse through intimidation.

Art. 21 (1) GG guarantees the political parties a special status under the constitution, and the Basic Law highlights the importance of the freedom of communication of political parties for the maintenance of the free democratic basic order. However, the parties are not excused from compliance with the applicable law. Instead, they are – like everyone – subject to the objective legal system, which includes the international treaties ratified by Germany which demand effective measures for the prevention of racist propaganda from their signatories.

The NPD will not be barred from election campaigning, as this would mean that a political party would be unlawfully disabled, which would not be compatible with the rules on the banning of parties in Art. 21 (2). It is only racist election propaganda which is carried out extensively and systematically in the public sphere which will be prohibited. The freedom of expression and political self-representation of the NPD remains unaffected in its essence.

CONCLUSION

For the application of the blanket clause in police law, it is irrelevant that the election campaign posters do not commit the offence referred to in Section 130 StGB in the view of the administrative courts. Election campaign posters with the slogan “*Geld für Oma statt für Sinti und Roma*” (“Money for Granny instead of Sinti and Roma”) infringe prohibitions standardised under international law which are part of the German legal system. The systematic, intensive election poster campaign also denies Sinti and Roma participation as citizens with equal rights, and members of the minority group are disparaged. The result is a climate of opinion which is destructive to social cohesion and has a detrimental effect not only on the attacked minority groups, but also on the majority society. This is not compatible with the prevailing ethical and social views as indispensable conditions for an ordered co-existence. Thus, hanging up such posters poses a risk to public safety and order.

“Historical experience teaches us that in every case of serious violations of human rights, the use of violence is preceded by a racist climate of opinion as a conditio sine qua non. It is true that forms of racist attitude cannot be eliminated by a prohibition of hate speech; it is not possible to force moral outlooks and ideas by means of law. The law can and must, however, control external behaviour, i.e. the expression of an attitude, if the dignity or personal rights of the victims and the ethical minimum requirements of a democratic community are at risk. Prohibitions of racist propaganda act, so to speak, as early warning systems for imminent danger situations.”

Quote from Prof. Schmahl’s report

OUTLOOK: POSSIBILITIES FOR ACTION FOR A RACISM-FREE SOCIETY

The findings of Prof. Schmahl’s report provide an important basis for argumentation for action against right-wing extremism. However, the Central Council has discovered time and time again, in political discussions with high-ranking politicians and in committee meetings with other civic organisations which are active in this area that the report is largely unknown. It is important that the judiciary, politicians and the administration are informed about and made aware of the legal possibilities which are available to them, so that there are no more errors of judgement and miscarriages of justice in favour of the right-wing extremists. Even when imposing sanctions under criminal law appears difficult under the present circumstances, decisive counteraction in the form of appropriate measures under police law is imperative, as protection from racial discrimination is a human right.

So that the negative experiences are not repeated, a provisional plan of action for the maximum realisation of protection against discrimination may look as follows:

1. The results of the legal report from Prof. Schmahl should be made better known.
2. Citizens should report election posters with racist content to the police authorities, in conjunction with the request to have them taken down.
3. (Local) politicians should initiate measures to end the racist propaganda after they become aware of it.
4. The awareness of the judges in administrative courts should be raised during further training events focussing on “the international protection of human rights”.
5. Both at university and in their practical training, lawyers should be trained in the area of the international protection of human rights.

MAREK SZILVÁSI

PRISONS FOR MEN, STERILISATION FOR WOMEN, BOARDING SCHOOLS FOR CHILDREN – ANTI-ROMA ELECTION CAMPAIGNS IN SLOVAKIA IN 2010-2014

INTRODUCTION

There are several European countries raising concerns of international monitoring bodies by neglecting to duly address anti-Roma hate speech by politicians. Many international human rights monitoring bodies have expressed concern over efforts during election campaigns to exploit negative stereotypes about Roma for political gain.

Racist and notably anti-Roma discourse, sometimes of a distinctively aggressive nature, is still common among mainstream politicians in Slovakia. Antigypsyism also often surfaces in the broadcasting and print media.¹ Both political parties and individual politicians in Slovakia frequently employ populist appeals to tackle ‘Roma criminality’, to limit reproductive rights of Roma, to bulldoze their settlements, or cut their access to welfare services. Slovakia is among the countries where anti-Roma attitudes became a permanent part of the pre-election struggle of political parties. Instead of developing programmes for the severe problems that Romani communities and individuals face, many Slovak political parties drive on antigypsyist sentiments as leverage for cheap, exploitative and short-sighted political gains. The election campaigns of political subjects in Slovakia have thus frequently contributed to and reinforced the ethnic tensions in the country.

In 2009, the European Commission against Racism and Intolerance (ECRI) asked Slovak authorities to take account of its declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse.² It noted that racist public discourse damages the cohesion of the whole society, and affects the opportunities of minorities to enjoy their basic human rights. It can also lead to racial discrimination and violence. The Commission called on the Slovak authorities to take into account the recommendations of the Charter of European Parties for a Non-Racist Society and its Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse.³ In this declaration, the ECRI points out the negative consequences of racist, anti-Semitic and xenophobic political discourse: 1) ill-considered measures

¹ Romea, *Slovakia TV taken off air, loses her job over racist statement*, available at: <http://www.romea.cz/en/news/slovakia-tv-anchor-taken-off-air-loses-job-over-racist-statement>

² ECRI, *Report on Slovakia*, 2009, available at: <http://hhrf.org/sdoc/ECRI%20Report%20Slovakia%202009.pdf>

³ ECRI, Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse, adopted on 17 March 2005, available at: https://www.coe.int/t/dghl/monitoring/ecri/activities/14-Public_Presentation_Paris_2005/Presentation2005_Paris_Declaration_en.asp

which impact disproportionately on particular groups or affect the latter's effective enjoyment of human rights are being adopted; 2) the long-term cohesion of society is damaged; 3) racial discrimination gains ground, and 4) racist violence is encouraged.

The Council of Europe Human Rights Commissioner Thomas Hammarberg visited Slovakia in September 2011 at the beginning of the 2012 national election campaign when most of the political campaigns, including those with anti-Roma themes, were already proliferated and stated "that measures for the inclusion of Roma cannot be successful without a genuine commitment to putting an end to anti-Gypsyism."⁴

In February 2012, the European Roma Rights Centre (ERRC) and several Slovak civil society organisations - *Rómsky inštitút*, *Eudia proti rasizmu*, *Nadácia Milana Šimečku*, *CVEK*, *Iniciatíva Férové volby 2012*, *PDCS o.z.*, *MEMO 98*, *Združenie Jekhetane – Spolu* - sent a letter to Slovak authorities expressing concern over the use of election materials that negatively target Roma. They called on political parties to refrain from negatively targeting Roma or any minority in their election campaigns, which can create an atmosphere of hate and hostility.⁵ Neither the Slovak authorities nor political parties, however, reacted to the letter by an official statement or adjustments in campaigning.

LAW ON ETHNIC PROFILING, EXTREMISM, AND INCITEMENT TO HATRED

After the fall of the Communist regime Roma were acknowledged as one of Slovakia's national minorities.⁶ Roma have *de jure* all rights and protections guaranteed by the Slovak Constitution; Articles 12, 33 and 34 particularly protect equality, non-discrimination, and minority rights. In 2004 the National Council of the Slovak Republic (Slovak legislative body) passed the Anti-discrimination Act.⁷ The prohibition of discrimination covers the following grounds: sex, religion or belief, race, affiliation with nationality or an ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other opinion, national or social origin, property, gender or other status.⁸

There is no specific hate speech law in Slovakia, but specific provisions are included in the Constitution and Criminal Act. According to Article 140(d) of the Slovak Criminal Code, racial motivation is an aggravating factor for all crimes contained in the Criminal Code. Article 423 of the Criminal Code defines defamation of race, ethnic group, and belief as a crime and Article 424 defines incitement of racial and ethnic hatred as a crime. Articles 421 and Article 422 address support to groups and movements intended to limit fundamental rights and freedoms.

Since 1 September 2009, the Slovak Criminal Code includes the crime of extremism as an offense. As defined, the crime of extremism refers to supporting and promoting groups which aim at suppressing fundamental rights and freedoms in accordance with § 421 and 422, production of extremist materials according to § 422a, the spread of extremist materials according to § 422b, possession of extremist materials according to § 422c, defamation of nation, race, and beliefs under § 423, inciting national, racial, and ethnic hatred under § 424, incitement, defamation, and threats to their persons belonging to any race, nation, nationality, colour, ethnic origin or gender in accordance with § 424a and the offense is committed by a specific design point under § 140. d) and f).

⁴ CoE, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Slovakia, from 26 to 27 September 2011, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1885987>

⁵ ERRC and partners, *ERRC and Slovak civil society calls for end to anti-Roma election materials*, available at: <http://www.errc.org/article/errc-and-slovak-civil-society-call-for-end-to-anti-roma-election-materials-in-slovakia/3967>

⁶ Slovakia, *Uznesenie vlády Slovak Republic č 153/1991, Zásady politiky vlády Slovak Republic k Rómom*.

⁷ Slovakia, *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)*, 20 May 2004. The Act refers to direct discrimination, indirect discrimination, harassment, instruction to discriminate, incitement to discrimination, victimization and discrimination against a legal entity.

⁸ *Ibid.*, Article 2(1)

The principal policy document dealing with cases of racial hatred and extremism is the Concept for Combating Extremism in 2015 – 2019 drafted by the Ministry of Interior which was adopted in March 2015 by the Slovak Parliament.⁹ The Concept is a chronologic follow-up on the previous two documents.

ANTI-ROMA THEMES IN NATIONAL AND LOCAL ELECTION CAMPAIGNS (2010-2014)

Although it was the (populist) social democrats from the SMER party, who won the 2010 national election, it resulted in a government composed of a coalition of four right-wing liberal and conservative parties. The part of the political program of the Coalition, which focused on impoverished Roma in segregated neighbourhoods, was based on conditioning social welfare transfers with public work and activation programs, and other administrative requirements for the poor Roma families. The Coalition collapsed prematurely in 2012 due to the No-vote of a coalition partner (Freedom and Solidarity Party, SaS) to the second Economic Adjustment Programme for Greece (Greek bailout) support. The struggling and embattled right-wing liberal parties successively markedly lost in 2012 election to SMER party, which won a majority of votes and created a one-party government (SMER was in the prior government in the 2006-2010 period together in coalition with the Slovak National Party (SNS)).

Nationalist and Extremist Parties

A short-lived populist party: the Free Speech Party (*Strana Slobodne Slovo*) led by the businesswomen Ms Nora Mojsejová, a fashion clothes retailer and a local economic and blockbuster elite in the Košice region, tried to win votes in the 2012 election by an openly anti-Roma rhetoric including cutting welfare support for Roma and sterilising Romani women.¹⁰ The party received marginal support, Ms Mojsejová was soon after sued for tax manipulations and eventually had to serve a sentence in prison.

The People's Party Our Slovakia (*Ludová Strana Naše Slovensko, LSNS*)¹¹ and the Slovak National Party (*Slovenská Národná Strana, SNS*)¹² are the two most principal far-right parties with an anti-Roma political agenda in Slovakia. The LSNS, in 2012 still fragmented, did not compete in the national election and concentrated mainly on regional and local politics.

The SNS, which formed a coalition government with the SMER party from 2006 to 2010, came public with an intensive billboard campaign before the 2012 election that negatively targeted Roma with a racist undercurrent. The party used campaign billboards and posters which focused on the 'cost' of supporting Roma, and fostered unhelpful prejudices against the Roma minority. The images of Roma and Roma neighbourhoods were accompanied with slogans like: "Let's not feed those who don't want to work", "How long are we going to lose on the gypsies? Let's change it!", and "Don't tolerate parasites".¹³ Moreover, the image of a Romani man sitting shirt-less in a kitchen, which was accompanied with a slogan calling the

⁹ Ministry of Interior, 'The new government concept for combating extremism includes recommendations from European experts', available at: <http://www.minv.sk/?tlacove-spravy&sprava=aktualna-vladna-koncepcia-boja-proti-extremizmu-zohladnuje-aj-odporucania-europskych-expertov>

¹⁰ Topky news, 'The Leader of SSS thinks that Romani women will be sterilised in 2015, online chat room', available at: <http://www.topky.sk/cl/1000091/1298038/Sefka-SSS-Mojsejova-bola-online--Mysli-si--ze-Romky-budu-sterilizovat-uz-v-roku-2015->

¹¹ LSNS, available at: <http://www.naseslovensko.net/>. The party has recently adopted a new campaign slogan: "With bravery against the system".

¹² SNS, available at: <http://www.sns.sk/>. The SNS has been until now systematically blocking the access for internet users from Hungary, so I have to refer to Wikipedia for their description: https://en.wikipedia.org/wiki/Slovak_National_Party

¹³ ERRC, *ERRC and Slovak civil society call for the end to anti-Roma election materials in Slovakia*, available at: <http://www.errc.org/article/errc-and-slovak-civil-society-call-for-end-to-anti-roma-election-materials-in-slovakia/3967>

voters not to support those who do not want to work, was largely fabricated. In addition, the context of the photography gives cause for concern. The man depicted did only agree to take a picture of him under the false pretence that he was potentially being recruited for a role in a movie. The SNS party's PR agency employed a well-known Slovak actor to facilitate this narrative.¹⁴ The picture was secondarily adjusted in an editing program and the tattoos and a massive gold chain over his neck were added. Regardless of what he was told about the purpose, you can sense some discomfort and confusion in his face.



► N°1 - SNS 2012 campaign: "Let's not feed those who do not want to work" [depicting a Roma man with photo-shopped massive golden chain and tattoos], [face blurred by the editor]



► N°2 - SNS 2012 campaign: "Until when we will pay for Gypsies? We will change it!"

¹⁴ SME Daily, *A Roma man from the billboard did not know that he is campaigning for SNS*, 5 May 2010, available at: <http://domov.sme.sk/c/5361501/rom-z-bilboardu-netusil-ze-robi-pre-sns.html>

SLOVÁCI, ZAČNÍME SA SPOLIEHAŤ SAMI NA SEBA !

Netolerujme príživníkov !

PRÍSNY SYSTÉM ČERPANIA SOCIÁLNYCH DÁVOK

Milada Belásová manažérka
Ján Ikrenyi advokát

Ján Slota predseda SNS

www.sns.sk MÁME NOVÉ RIEŠENIA! VOLTE SNS č. 4

► N°3 - SNS 2012 campaign: "Slovaks, start trusting in you, do not tolerate parasites! A strict system of eligibility for social transfers" [depicting shacks in a Romani settlement]

During the election campaign in February 2012 the SNS Leader Mr Ján Slota was invited to an online chat-room of the Aktualne.sk news web to discuss their political program.¹⁵ Facing the question whether their Roma-focused policies are mere a vain pre-election promise or whether the party indeed planned to implement them, Mr Slota responded:

"For the Slovak National Party, this problem is not merely a pre-election campaign, we have been dealing with this question for a long time, since 1995, when we developed certain systemic measures to tackle gypsy questions in our election program. I absolutely agree that it is not the Slovak nation, which keeps racist sentiments against the Gypsy minority, which is growing – there are almost 550.000 of them, hence, if the estimates are correct, Slovakia could become a Gypsy Republic in approximately 50 years. Slovak National Party has been constantly pointing out on this truly huge problem in our society. We have provided with pragmatic solutions for eliminating the negative impact of a huge majority of gypsy ethnicity on our national majority. The fact that the majority pays for the Gypsies, is not a racist proposition, it is the reality which is evident to everybody who can count up to two. Additionally, I emphasize the inadaptability of the majority of this ethnic group – for example, there have been several cases of robberies in the last months done by young Gypsies, who not only robbed old ladies and men but in some cases, they killed them. This is not to speak merely about terrorizing some of our co-citizens on the streets but in some of our villages and towns. In sum, I do agree with you, that we are definitely not racists, but those others have more of a racist behaviour. [...] The most important thing in our program regarding the solution of the problem is to implement that Gypsies do not have only rights but they also have corresponding obligations as the rest of Slovak population. The situation, when in some cases, an ordinary person cuts down a tree in his/her own garden, s/he is threatened by being put in the prison, on the other hand, a Gypsy cuts down half of the forest in a national park without any consequences. [...] A huge amount of money, which is given in the form of social benefits to this ethnic group, is inadequately and not at all transparently given to real beneficiaries; in the most cases to children, and this money is used for something else. I claim that this money should be distributed through villages and towns, in order to be used for what they were originally meant. The public activation work programs are not much used by this ethnic group as well. Mainly, we should focus on the re-education of young

¹⁵ Aktualne.sk, "Ask Jan Slota on the SNS program to win voters", available at: <http://aktualne.atlas.sk/pytajte-sa-jana-slotu-s-cim-chce-sns-presvedcit-volicov/slovensko/politika/>

Gypsies, with the assistance of boarding schools, in order to finally teach this population at least basic hygienic habits and not remaining illiterate. These are some issues, which we emphasize in our program.”



► N°4 - SNS 2012 campaign: "Matovič plans to bring Gypsies to the Parliament! Just for you to know..." [Referring to Mr Matovič, the political leader of the Common People Party. A Roma politician, Peter Polák, was on their campaign list, he became an opposition MP and the Government's Roma Plenipotentiary]

Back in the 2010 national election the SNS won the mandate for 9 MPs in the Slovak Parliament. Among the candidates competing for the mandate was Dr. Martin Piry, a lawyer and a Professor at the Law Department at the University of Matej Bel in Banská Bystrica (UMB).¹⁶ Although he did not win support for entering the Parliament, he was eventually appointed in the Board of the Slovak National Land Stock.¹⁷ Mr Piry's election campaign employed a strong anti-Roma discourse. In his campaign he argued that since there had not been any Slovak politician in the past who would deal seriously with the "gypsy problem", he himself decided to run for a MP position.¹⁸ For this purpose he founded a specific website called "Gypsy problem"¹⁹ and ran a series of anti-Roma billboards and video campaigns.²⁰ In his video messages Mr Piry talked about a need to change the existing reverse system of discrimination, in which the Slovak majority is allegedly discriminated by the double-standard Slovak law favouring Roma:

"Many people in Eastern and Central Slovakia are deprived of the right to private property protection and the right protecting their health and life, because the state continues tolerating petty robberies and other criminality by the inhabitants of gypsy settlements. It is as if the authority of the state is not applied here."²¹

¹⁶ Dr Piry's university profile can be found here: <http://www.prf.umb.sk/martin.piry/> He is also an expert consultant of the legal online porta, which provide legal analysis for practicing lawyers: www.pravnarevue.sk. UMB is also an alma mater of the director of Mr Kotleba's office, Ms Jana Štrangfeldová, who teaches as the Faculty of Economy. Mr Kotleba also attended the Faculty of Natural Science of UMB.

¹⁷ Webnoviny.sk, Piry: *Shacks in Plavecký Štvrtok will not be legalised*, available at: <http://www.webnoviny.sk/volby-2010/piry-chatrce-v-plaveckom-stvrtku-nez/153038-clanok.html>. As a Slovak Land Stock board member he blocked any attempt to legalise informal Roma settlements build on the state land.

¹⁸ Extraplus.sk, Gypsy Odyssey, available at: <http://archiv.extraplus.sk/1038/ciganska-odysea>

¹⁹ The website was hosted here: <http://f3.sk/ciganskyproblem.sk>, but was de-activated soon after the election

²⁰ Mr Piry's video campaign, available at: https://www.youtube.com/watch?v=32NP_B0ccw; <https://www.youtube.com/watch?v=HQkSj3pvD3g>

²¹ Extraplus.sk, Gypsy Odyssey

Roma, according to Mr Piry, are educated to violate the law since birth as it is commonly shared among them that the law does not apply to them equally as to the majority. The authorities do not apply laws against Roma because they fear being charged with racism. There are various articles referring to Roma criminality and their asocial behaviour in the background of Mr Piry's videos. Furthermore, his billboard campaign promised the demolition of Roma settlements, or making them pay for their electricity arrears and cleaning waste in their settlements.



► N°5 - SNS 2010 campaign: a billboard of Dr Martin Piry stating: "Illegal Gypsy settlements? I have a good, strong and reliable solution" [depicting a bulldozer]



► N°6 - SNS 2010 campaign: a billboard of Dr Martin Piry stating: "Why should you pay for their electricity, they should pay themselves."



► N°7 - SNS 2010 campaign: a billboard of Dr Martin Píry stating: "They should clean their waste and on their own expenses" [depicting the notorious Roma neighbourhood of Lunik IX in Kosice]

Mainstream Political Parties

The Slovak right-wing liberal and conservative political parties, which have focused in their political agenda mainly on the values of individual liberties, responsibilities, and entrepreneurship, equally did not shy away from employing anti-Roma themes in their campaigns. Targeting Roma's alleged workshy attitudes and social parasitism, these parties made promises to the majority that they would cut off all the 'undeserving people' from the access to welfare transfers. The label of 'workshy people misusing the generous welfare system' served to the right-wing parties as a mere proxy for Roma. Hence, instead of providing Slovak citizens with political solutions for tackling economic stagnation, corruption scandals, and ineffective performance of public institutions, the parties simplistically focused on exploiting existing racial hatred and ethnic prejudices against Roma in the Slovak society.

The Freedom and Solidarity (*Sloboda a Solidarita, SaS*)²² and the Slovak Democratic and Christian Union – Democratic Party (*Slovenská demokratická a kresťanská únia - Demokratická strana, SDKU-DS*)²³, two of the most noticeable Slovak right-liberal parties, addressed alleged dependency problems of Roma on social benefits in their 2012 election campaigns as well. These parties' solutions for Roma exclusion and segregation were based solely on the labour market integration and means-tested limited distribution of social transfers, which would elevate them from the dependency trap.²⁴

One of the SDKU-DS campaign materials focused on the issues of welfare malfeasants, teenage mothers, and child criminality. Although it does not directly name Roma it employs the familiar images of shacks in

²² SaS, available at: <http://www.strana-sas.sk/>

²³ SDKU-DS, available at: <http://www.sdku-ds.sk/>

²⁴ SME daily, *Politicians offer jobs also for Roma, so far only in the campaigns*, available at: <http://volby.sme.sk/c/6272699/politici-ponukaju-pracu-aj-romom-zatial-v-kampani.html>

Roma settlements and darker-skinned Romani children. The poster states that unemployed people can earn 100 EUR more than a person working for minimal wage. The second claim made is that “very young girls from settlements continue giving birth” [in Slovak the term “osada” commonly and exclusively refers to a Roma neighbourhood]. The image accompanying the theme of child criminality depicts a policeman without a clear context. The poster puts a question to potential voters whether they find it just that the state supports “a person who has never worked” with more money than what workers earn, and whether they should pay for teenagers having children. Finally, the poster states that small robbery perpetrators hardly face any serious consequences (implicitly evoking that the police has a different approach to Romani robbers).



► N°8 - SDKU-DS 2012 campaign on welfare state malfeasants, teenage mothers and child criminality supported with images of Roma and Romani settlements

As a part of the election campaign, the SDKU-DS leader Pavol Frešo together with another party member Ľudovít Kaník (former Minister of Labour in 2002-2005) also organised a press conference on their new law draft enabling accelerated procedure for the demolition of illegal constructions in a Roma settlement.²⁵

The calls for paternalistic interventions in the reproductive rights of Romani women were not raised solely by the populist parties like the Magnificent Seven and Free Speech parties, but appear on the political radar of mainstream parties as well. In August 2011, the Slovak Parliament discussed a legislative plan (one step before the draft law) on free-of-charge sterilisation for women and men living in socially excluded localities. The measure was proposed by a state-secretary at the Ministry of Labour, Social Affairs and Family from a liberal party ‘*Sloboda a Solidarita*’ (Freedom and Solidarity, SaS).²⁶ The Slovak parliament eventually voted against this legislative plan. The same MP nominated by the SaS party, meanwhile a part of the opposition

²⁵ SME daily, Frešo’s press conference in Roma settlement divided the party, available at: <http://www.sme.sk/c/6463680/fresova-tlacovka-v-romskej-osade-rozdelila-sdku.html>

²⁶ TVnoviny.sk, Will sterilization be for free in Slovakia?, available at: <http://tvnoviny.sk/sekcia/spravy/domace/bude-sterilizacia-na-slovensku-zadarmo.html>, last accessed in Feb 23, 2013.

in the Slovak Parliament, repeatedly attempted to launch a parliamentary discussion on the same proposal in August 2012.²⁷ Eventually, the Slovak Parliament did not extend the proposal.

Finally, one of the SMER party political objectives during the election campaign was an idea of placing Romani children (officially children from marginalised communities) into boarding schools. This proposal was for the first time formulated in 2009 when SMER was a dominant party in the Slovak government (2006-2010). However, no particular measure was taken by that government (despite that the coalition partner SNS also had boarding schools for Romani children in its political programme). A similar proposal resurfaced after the SMER party won the elections in 2012. The policy introducing boarding schools was included in the Program Declaration of the Slovak Government for 2012-2016²⁸ and in February 2013 Prime Minister Fico (SMER) stated that the best hope for Romani children was to separate them from their families and place them in boarding schools: “Someone should show these children they can live in a different way,” he said during a discussion with students.²⁹ Nevertheless, the SMER-only government did not introduce any particular measure and no resources were allocated in the national budget for the boarding school policies.

Local and Regional Elections – Banská Bystrica and Košice regions

For the People’s Party Our Slovakia (LSNS) the anti-Roma agenda represents one of the official pillars of its political programme. The party established a specific section in its website dedicated to “the Gypsy extremism”³⁰, where it regularly informs its supporters on Roma-related activities.

In October 2010, the People’s Party Our Slovakia party leader Mr. Kotleba stood as a candidate in the 2010 regional election in the Banská Bystrica region. In his campaign launched in autumn 2009 he focused on employing strong anti-Roma rhetoric targeting the ‘Gypsies’ as ‘social parasites’. Mr Kotleba and his party promised to take decisive action and “eliminate unjust advantages of gypsy and other parasites”.³¹ This objective was also officially listed in the programme document designed by his LSNS Party for regional elections.³²

The Slovak courts, one instance after another, rejected the claim that he had been consciously and deliberately spreading anti-Roma hatred. The district court decided to lift the charges because it could not be proven that Mr Kotleba personally authored and distributed the leaflets and posters. The prosecutor appealed the decision and the regional court annulled the previous court decision, but issued its own decision; according to the regional court, production of these posters did not violate any Slovak law as it was not aimed at any specific ethnic group. The court further decided that encouraging public vexation with ‘social parasites’ in order with the Slovak law.

²⁷ Webnoviny.sk, ‘Lucia Nicholsonova proposes free sterilization’, available at: <http://www.webnoviny.sk/ekonomika/lucia-nicholsonova-navrhuje-bezplatne/535631-clanok.html>

²⁸ Government of the Slovak Republic, *The Program Declaration for the period of 2012-2016*, available at: <http://www.vlada.gov.sk/znalostna-spolocnost-vzdelavanie-a-kultura/>

²⁹ Romea, *Slovak PM wants Romani children to attend boarding schools*, available at: <http://www.romea.cz/en/news/world/slovak-pm-wants-romani-children-to-attend-boarding-schools>

³⁰ More on the LSNS agenda on “Gypsy Extremism” can be found here: <http://www.naseslovensko.net/kategoria/nase-nazory/cigansky-extremizmus/>

³¹ SME daily, *The Court does not object Gypsy parasites from the Kotleba’s leaflet*, available at: <http://www.sme.sk/c/6799608/ciganski-paraziti-z-kotlebovho-letaku-sudu-neprekazaju.html>

³² LSNS official website, available at: http://www.naseslovensko.net/dokumenty/desatoro_lsns_2012.pdf



► N°9 - One of the Mr Kotleba's campaign materials for the 2010 regional election in Banská Bystrica stating: "They are laughing happily for using our taxes. Do you want to change it? Come to vote! Mr Kotleba" [faces blurred by editor]

In March 2013 the Supreme Court of the Slovak Republic eventually closed the case which was previously ruled out by lower courts in Banská Bystrica in 2010-2011. The court rejected an extraordinary appeal of the former Minister of Justice Lucia Žitňánská and lifted the criminal conviction of Mr Kotleba, charged for reasons of the defamation of nation and race. The court argued that the slogans referred to “gypsy and other” (sic!) parasites, which made his claim broader than targeting only the Roma ethnic minority. Moreover, the court also argued that the subjective intention of Mr Kotleba to defamation was not adequately proven, it was only assumed, as he never admitted the intention to defamation. The Roma Plenipotentiary Office, Slovak Helsinki Committee, and other civil society organisations criticized the Supreme Court's decision.³³ Mr Kotleba did not win sufficient votes in the 2010 election, but in the next election round in 2014 he was eventually elected the Head of the Banská Bystrica region.

As the head of the region, Mr Kotleba has continued approving or directly organising and taking part in various anti-Roma gatherings. These gatherings are mainly organised around the alleged incidents of Roma criminality, where Mr Kotleba and his supporters gather in order to support alleged victims of the criminality committed by Roma. There have been several of these anti-Roma rallies organised by the LSNS Party.

³³ For more information, see: <http://www.webnoviny.sk/slovensko/najvyssi-sud-nerozhodol-pri-dovolani/668167-clanok.html>; <http://www.sme.sk/c/6799608/ciganski-paraziti-z-kotlebovho-letaku-sudu-neprekazaju.html>; <http://www.topky.sk/cl/100535/1348522/Pollak-nesuhlasi-s-rozhodnutim-sudu--Vyroky-Kotlebu-o-Romoch-su-nekorektne>



► N°10 - LSNS leaflet organising its followers to show their discontent with the "brutal spree of Gypsy extremists" and join "the large national march for decent and safe life" in the town of Smolník, February 22, 2014.

The Slovak civil society acknowledged Mr Kotleba's election victory in the Banská Bystrica region with concern. Mr Kotleba has built his campaign mainly on the legal margins of xenophobic nationalism and hate speech against Roma. One had to notice with unease that such monothematic and negative political campaigning won the majority electorate in the second regional round of election/ ballot in the region of Banská Bystrica (on his side). His campaign has been openly targeting Roma through the discourse of their alleged social inadaptability, welfare state parasitism and work-shy attitudes. The Roma in Slovakia have indeed experienced long-term social exclusion and discrimination in all areas of everyday life. They face many barriers in access to education, health, housing and employment due to the widespread antigypsyism. In this context it is even more important that political parties and their leaders do not encourage harmful prejudices towards them.

However, I would refrain from considering Mr Kotleba's regional election victory a specific momentum in the Slovak politics. The monitoring of the Slovak political parties shows that Mr Kotleba's agenda targeting Roma as the 'work-shy misusers of state support', which finds no evidence in the governmental statistics nor in the relevant social policy research, merely made explicit the long-lasting political discourse implicitly shared in agendas of other political subjects in Slovakia.

Soon after assuming his position Mr Kotleba appointed his close supporters for regional administrative positions, including Dr Vladimír Gürtler, a lawyer by profession, who has been a leader of another regional political party called the '7 *Statočných*' (The Magnificent Seven).³⁴ The party competed for votes in the elections to the European Parliament in May 2014 and in the local elections in Košice in November 2014

³⁴ The Magnificent Seven regional party, available at: <http://www.7statocnych.sk/#&panel2-7>

with anti-Roma campaigning. The party promised radical solutions³⁵ as sterilisation for Romani women with a 10.000 EUR bonus for women agreeing voluntarily,³⁶ or evictions and free-of-charge one-way-flight tickets to Brussels for Roma.³⁷ The party planned to use the EU Structural Funds to finance these policies.³⁸



► N°11/12 - The ‘Magnificent Seven’ Regional Party campaign promising 10.000 EUR for voluntary sterilisation of Romani women (the words “voluntary” and 10.000 are with much smaller font and in white, which makes the slogan seen as simple as “sterilisation of Romani women”), November 2014.

► N°13 - The Magnificent Seven Regional Party campaign promising free-of-charge one-way-flight tickets to Brussels for Roma.

³⁵ The Magnificent Seven, campaign video, “Our solutions to Gypsy problem will be radical”, 11 November 2014, available at: https://www.youtube.com/watch?v=GmmbG_gDrKY

³⁶ The Magnificent Seven, campaign videos: “Sterilisation of Gypsy Women for 10.000 EUR – Gypsy women agree”, 3 October 2014, available at: <https://www.youtube.com/watch?v=sirBt7BhrvA>, or “Gypsy men want to fuck, Gypsy Women to be sterilized”, 19 May 2014.

³⁷ The Magnificent Seven, campaign video: “Evictions of Roma and Free-of-charge flight tickets”, 9 October 2014, or SME daily, “The police investigates an anti-Roma hate campaign”, 21 November 2014, available at: <http://romovia.sme.sk/c/7451618/navistnu-kampan-proti-romom-v-košiciach-stiha-policia.html>. See also The Magnificent Seven Party video on alleged assault against Mr Görtler, 14 October 2014, available at: https://www.youtube.com/watch?v=bgER6I-XR_8

³⁸ The Magnificent Seven, Political Program for the election to European Parliament, available at” <http://www.7statocnych.sk/program/program-do-europskeho-parlamentu/>, or Slovak TV, Political campaign for EP elections, available at: https://www.youtube.com/watch?time_continue=263&v=sv46BBIDesM

Stylised into a cowboy character from the well-known western movie the party leader Mr Gürtler decided to compete for votes in the District of Luník IX, a notorious Roma neighbourhood in Košice. The party's deputy-leader and a candidate for mayor of the District Kosice-West, Darina Kolesárova (dressed as a combination of a cow-girl and a communist youth pioneer), in September 2014 published a campaign video in which she approved a segregation wall erected to complicate the access to the Roma neighbourhood of Lunik IX and stated that she filed a criminal complaint against an unknown person who damaged "this protective wall, which protects decent and brave citizens against as(s)ocials". She also expressed her wish to build more segregation walls in Roma neighbourhoods.³⁹

CONCLUSION

As new national election campaigns have been launched in November 2015, so has been the anti-Roma political rhetoric. The Minister of Labour and a highly-ranked member of the SMER party welcomed an audience at the SMER party supporters meeting in the town of Nové Zámky by an allegory of a state-supported small entrepreneurship program failure because a Roma, who purchased a horse with the state support, ate it instead of utilising it for work.⁴⁰

Exploiting anti-Roma sentiments may provide some electoral votes for political parties today; however, in the long run the whole society will pay a heavy bill for this simple and dangerous political manoeuvre. For the sake of the Slovak society as a whole it is crucial that the government and political parties introduce measures improving the situation of Roma and help them equally participate in all spheres of social life, but also design and implement policies explicitly tackling the antigypsyism of Slovak majority population. The Slovak political discourse is caught in the paradox of depicting those most excluded from the public institutions and the least educated people simultaneously as the most cunning welfare malfasants outsmarting the system.

The Slovak authorities should take measures against these phenomena rooted in antigypsyism, including the promotion of self-regulation within political parties and the media. Further measures include a thorough implementation of the relevant criminal provisions and the ratification of the Additional Protocol to the Convention on Cybercrime by Slovakia, concerning the criminalisation of acts of a racist or xenophobic nature committed through internet.

Political parties have a responsibility to consider the Slovak National Constitution, which assures basic rights for all citizens: "Basic rights and liberties on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, creed and religion, political or other beliefs, national or social origin, affiliation to a nation or ethnic group, property, descent, or another status. No one must be harmed, preferred, or discriminated against on these grounds."⁴¹

³⁹ The Magnificent Seven, campaign video "The wall protecting from the associats from Luník IX serves its purpose", September 2014, available at: <https://www.youtube.com/watch?v=YMz9Hlf4sOI>

⁴⁰ Dennikn.sk, SMER Party political meeting, Minister Richter told a story on Roma who ate his horse, available at: <https://dennikn.sk/290616/miting-smeru-richter-porozpraval-rom-zjedol-kona?ref=tit>

⁴¹ Slovak National Constitution, Article 12, http://www.servat.unibe.ch/icl/lo00000_.html

The Slovak political parties should:

- take into account the recommendations of the Charter of European Parties for a Non-Racist Society and its Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse.
- not fuel negative attitudes towards any particular group in society with their election materials;
- refrain from mentioning national minorities in a context that has the potential to create tension and cause a hostile attitude; and
- conduct their elections campaigns in a manner that does not expose any national minority to an unwarranted and prejudiced attention from the majority.

Marek Szilvasi, PhD. works as Program Officer with the Open Society Foundations' Public Health Program (PHP), where he is responsible for the Roma health portfolio. He has taught at the Institute of Politics and International Studies of the ELTE University in Budapest, Hungary. Marek Szilvasi obtained his PhD in Sociology from the University of Aberdeen, the United Kingdom. He previously worked as Head of research and human rights education of the European Roma Rights Centre (ERRC) and at the Secretariat of the European Sociological Association (ESA).

ISMAEL CORTÉS

ANTI-ROMA INCITEMENT IN THE CONTEXT OF ELECTIONS - A CASE STUDY: BADALONA 2010/11 (CATALONIA, SPAIN)

INTRODUCTION

This paper offers a critical analysis of the election campaign led by the People's Party (Partido Popular) in Badalona, 2010/11 (Catalonia, Spain). This campaign started with a very controversial racist case at the beginning of April 2010, when Xavier García Albiol (leader of the local party) distributed around 15,000 leaflets associating Roma immigrants with criminality. The leaflets were distributed in neighborhoods such as Lleftà, La Salut and Sant Roc, where a significant number of Roma immigrants live. The leaflets contained keywords such as 'insecurity', 'crime' and 'vandalism' accompanied by the question 'is your neighborhood safe?' together with the slogan 'we do not want Romanians'. In the next months, the same anti-Roma message was spread by the People's Party in several political meetings. In May 2011, the People's Party ended the campaign by launching a video-spot that claimed "firm punishment for those who do not adapt".

To analyze the electoral campaign I have reviewed different sources: leaflets, posters, video-spots and media coverage including radio, newspapers and TV programs. On the other hand, to analyze the reactions to the campaign, I have reviewed different reports from Roma organizations and I have conducted six semi-structured interviews with key Catalan activists from Kali Zor, FAGIC (Federation of Roma Associations in Catalonia), Union Romani, Fundació Secretariado Gitano, SOS Racisme and Romane Sikovne.

The paper is organized in six parts: The first section gives an overview on racism against Roma immigrants in Western Europe between 2008/11. The second part presents the case of anti-Roma incitement led by the People's Party in Badalona during the election campaign 2010/11. The third section offers an analysis of this campaign and its results. The fourth section provides an assessment of the social, judiciary and political reactions to the campaign of the People's Party. In the last two sections, the paper draws some conclusions and sets out specific recommendations for combating racist incitement against Roma, especially when such practice is embedded in political discourses.

1. ANTI-ROMA POLICIES IN WESTERN EUROPE

Since 2004, with the enlargement process of the European Union¹, Roma immigrants from Eastern Europe have been regarded as a threat for the social peace and public safety by Western European societies. Such a perception of the Roma as a threat has been strategically created², not only by far-right parties, but also by moderate right-wing and left-wing parties³. In addition, the media re-created the old myth around the Roma being ‘nomads’, fostering the collective perception of the Roma as a people incapable to adapt to a ‘civic sedentary’ life style. Between 2008 and 2011, countries such as France and Italy deployed special anti-Roma measures including police surveillance and forced evictions.⁴ In this regard, prestigious non-governmental organizations such as Amnesty International⁵ and the European Roma Rights Center⁶ have denounced repressive policies of persecution and expulsion of Roma in these two countries.

On 31 May 2008, under the government of *Il Popolo della Libertà*, the Italian Prime Minister Silvio Berlusconi declared the state of emergency enabling an operation called ‘emergenza Rom’. Thus, he enabled the commissioners of Rome, Milan and Naples to elaborate an ethnic census in order to expel the Roma out of Italy. In addition, the Minister of Interior Roberto Maroni implemented a special census for Roma immigrants, in order to register all those older than 14 years, including the submission of fingerprint data. This practice was immediately condemned by a European Parliament resolution on 10 July 2008:

“[...] collecting fingerprints of Roma would clearly constitute an act of direct discrimination based on race and ethnic origin, prohibited by Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.”⁷

On 19 August 2010, under the government of *Union pour un Mouvement Populaire* and the presidency of Nicolas Sarkozy, France started an aggressive case of anti-Roma harassment. The Prime Minister Brice Hortefeux ordered the deportation of 700 Romanian and Bulgarian Roma. In response to such a massive deportation of people from the same ethnic background, on 13 September 2010, the European Commissioner for Justice and Fundamental Rights, Viviane Reding, made a public statement against Sarkozy’s government for its violation of fundamental rights such as the freedom of movement and the freedom of residence.

On 19 September 2013, under François Hollande's presidency, the new French Prime Minister, Manuel Valls, declared to Radio France Internationale: “deportation is the only solution... We are not here to welcome these people. It is not our task to solve the misery of the world”.⁸ In the same interview, Valls argued that integration of Roma immigrants is not feasible as “this population has a lifestyle extremely different from ours”.⁹ As a response to this statement, Amnesty International published a report on 25 September

¹ On 1 May 2004, eight Central and Eastern European countries (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia), plus two Mediterranean countries (Malta and Cyprus) were able to join the European Union. Romania and Bulgaria, although were deemed initially as not fully ready by the Commission to join in 2004, acceded nevertheless on 1 January 2007.

² To deepen the analysis of mediatization of Roma migration I recommend the following article: Milena Doytcheva (2014) Roma migrants in the public arena: between media coverage and politicization. *HAL, Laboratory of Excellence TEPSIS*.

³ On this topic I recommend, Picker, Giovanni (2010): Left-Wing Progress? Neo-nationalism and the case of Romany migrants in Italy, in Michael Stewart, *The Gypsy “menace”. Populism and the new anti-gypsy politics*. Budapest: CEU Press. 81-94.

⁴ On the meaning of ‘Romaphobia’ in this context I recommend, Van Baar, Hub (2011): Europe’s Romaphobia: Problematization, Securitization, Nomadization, *Environment and Planning D: Society and Space* (29): 203-212.

⁵ Amnistía Internacional (2012): *Human Rights here, Roma Rights now. A wake-up call to the European Union*.

⁶ European Roma Rights Centre (2013): France: New Census Shows Forced Evictions of Roma on the Rise.

⁷ The European Parliament resolution can be accessed at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008%200361+0+DOC+XML+V0//EN>

⁸ *FranceInter*, 23/09/2013.

⁹ *FranceInter*, 23/09/2013.

according to which, only in Paris, in less than a year Roma people suffered more than 10,000 forced evictions.¹⁰ In response to this report, the European Commission's spokesman, Olivier Bailly, stated that these facts reveal a lack of respect for the rights of free movement and residence within the EU.

These cases show the limits of the European Union as a community of values based on the respect for fundamental rights and human dignity. These cases also show that anti-Roma policies are not a matter of right-wing or left-wing parties, anti-Roma policies have been in fact a structural practice all across the political spectrum. The anti-Roma policies described above highlight a core contradiction between a formal and a real citizenship: *de facto*, the Roma migrants were denied their fundamental rights on the basis of ethnic discrimination.

2. ELECTORAL CAMPAIGN IN BADALONA 2010/11

On 22 May 2011, the People's Party won the local elections in Badalona being the most voted party in 28 districts out of 34.¹¹ This victory was mainly driven by an aggressive anti-Roma campaign. In comparison, four years earlier the People's Party lost the local elections, being the most voted party only in two districts. In the following section I will explain how the anti-Roma campaign was built and deployed in different stages.

In April 2010, at the beginning of the election campaign, Roma immigrants living in Badalona faced an intense case of incitement: 15,000 leaflets were distributed particularly in districts with high population of Romanian Roma such as Llefia, La Salut and Sant Roc. On the front page of the leaflet, pictures of Roma immigrants were composed with slogans such as 'insecurity', 'crime', 'dirtiness' and 'vandalism', accompanied by the question: 'is your neighborhood safe?' One of the images shows also a wall painting that states: 'We do not want Romanians'. On the back of the leaflets appeared slogans such as 'Against insecurity', 'For dignity', '+ security' accompanied by a portrait of Xavier García Albiol, the leader of the local People's Party, saying:

"I am only two town councilors away from winning the mayoral election. If I am the mayor in 2011, I promise that you will be able to walk around this quarter without being harassed or docketed. Those who want to live in Badalona have to adapt to our laws and customs. We can and we will do it."



► N°1 – Leaflet of Xavier García Albiol, People's Party: "Is your neighbourhood safe?"

¹⁰ Amnesty International, 09/25/2013.

¹¹ Badalona is the third most populous city of Catalonia, with 222,074 inhabitants according to the last census.



► N°2 – ‘+Security’ Leaflet of Xavier García Albiol, People’s Party

A few days after the distribution of leaflets, Albiol stated in the radio:

“The Romanian-Roma came here to commit crimes and this community is creating many problems in the most populous quarters of the city... the Romanian-Roma community does not want to be integrated into majority society, so integration policies do not succeed with them. What we have to do is to implement a firm police persecution, in order to put them in jail or to make them return to where they came from.”¹²

At that time France was facing the opposition of the European Union due to the mass deportations of Roma. Building upon this momentum, Albiol gave a speech in Trafalgar Square, Badalona, on 19 September 2010:

“Here we have no Roma camps like in France, here the situation is even worse, the Roma are scattered throughout our neighborhoods annoying and frightening the neighbors.”¹³

Distancing himself from the extreme-right ideology, Albiol refused any accusation of being xenophobic:

“I do not pursue anyone for belonging to any particular religion, ethnicity or nationality, but I do not want immigrants who came to my city to steal, commit crimes and make life miserable to others.”¹⁴

During the first-half of the campaign, Albiol was very careful of addressing people's ethnic affiliation but behavior. However, when elections were approaching he increasingly turned to a radical rhetoric very close to extreme-right positions. In this regard, in January 2011, the People’s Party launched a slogan that was exactly as the one used by the extreme-right party *Plataforma per Catalunya*. As we can see below, the two slogans contain the same message: “People from home are first” (“*Primer els de casa*”).

¹² *Libertad Digital*, 04.25.2010.

¹³ *Parainmigrantes.info*, 09.22.2010.

¹⁴ *Badalona TV*, 07/05/2010.



► N°3-4 – Leaflet of Xavier García Albiol, People’s Party, and of the extreme-right party Plataforma per Catalunya with the same slogan “People from home are first”

In the last month of the campaign, Albiol promised “to increase police persecution of those who either commit crimes or perform anti-social behavior”.¹⁵ To reinforce this message, he launched a video clip¹⁶ claiming for “firm policies and control of those who do not adapt; firm punishment of those who commit fraud on social benefits; firm punishment of those who commit crimes. Many think of it. I say it loud: straight-talking”.

► N°5 – Video Clip of Xavier García Albiol: “Many think of it. I say it loud: straight-talking”

**MUCHOS
LO PIENSAN.
YO LO DIGO.**
➔ ALBIOL ALCALDE



During the whole campaign, the People's Party portrayed Roma migrants as uncivilized persons incapable of adapting to basic rules of civic coexistence. The campaign systematically used rhetoric techniques of cultural othering. Roma migrants were represented as the ‘radical other’: a cultural group driven by principles that work against the values and lifestyle of the local majority. Thus, the whole campaign characterized the Roma as inherently deviant people: dirty, lazy, noisy and thieves by culture.

¹⁵ *El País*, 04/05/2011.

¹⁶ Here I linked the video: Xavier García Albiol PP Badalona Elecciones 2011
<https://www.youtube.com/watch?v=vkZbwilbJvM>

3. ANALYSIS

In the first years of the EU economic crisis (2008 to 2011), anti-Roma policies became a powerful tool to gain votes in Western European countries. In this context, a study¹⁷ realized by FAES¹⁸ analyzed the political gains of adopting neo-nationalist stances in times of crisis.

Based on examinations of the campaigns of *Lega Nord* and *Il Popolo della Libertà* (in Italy) or *Front Nationale* and *Union pour un Mouvement Populaire* (in France), this study highlighted the electoral potential of neo-nationalist rhetoric in times of crisis. Titled *Where are the voters? (¿Dónde están los votantes?)*, the study aimed to explain how the emergent social discontent at the beginning of the EU economic crisis should be addressed in electoral campaigns. This study showed that in times of economic prosperity immigration is not perceived as a social problem by the vast majority of society. Nevertheless, the study concluded that in times of economic crisis a critical mass tend to associate immigration with national unemployment and the weakening of the welfare state. Therefore, it is strategic to channel political discontent and hunger towards immigrants in times of elections, in order to make a political gain and distract the attention from other structural problems.

The FAES report sustains that in times of economic crisis left-wing voters are the most discontent electorate: “an electorate showing their distrust towards leftist political elites, who are regarded as very distant and detached from their problems in moments of difficulty.”¹⁹ Based on this diagnosis, the study explains the success of the use of neo-nationalist discourse and policies in countries such as France and Italy. The underlying logic is that in times of economic crisis, the national labour market and the welfare state are under pressure, and national citizens claim for their priority to access public jobs and public benefits over foreigner. In this context, some political parties portray foreigners as a national threat, not merely economically, but also ethically and morally. Thus, immigrants are represented like pathogenic elements working against the safety of the country.

During the election campaign in Badalona 2010/11, the People’s Party carefully deployed all the principles described by the FAES report. As a result, the party won the elections being the most voted party in 28 out of 34 districts.

► Table: Election results 2011 and 2007

PARTIES		VOTERS		COUNCILORS		COUNCILORS		VOTERS		PARTIES	
	P.P.	26.890	33,42%	11		7		16.203	21,86%		PP 
	PSC-PM	21.778	27,06%	9		9		21.352	28,81%		PSC-PM 
	CiU	10.091	12,54%	4		5		12.199	16,46%		CIU 
	ICV	7.184	8,93%	3		5		10.954	14,78%		ICV 
2011						2007					

¹⁷ Informe FAES 2009: *¿Dónde están los votantes?* [Ana Capilla y Jorge Sainz],

http://www.fundacionfaes.org/file_upload/publication/pdf/20130423211548donde-estan-los-votantes.pdf

¹⁸ FAES is the Foundation for Social Studies and Analysis linked to the People’s Party. It is a private non-profit organisation that works in the sphere of ideas and political proposals.

¹⁹ FAES, op.cit. pag.13.

4. SOCIAL, POLITICAL AND JUDICIARY REACTIONS

On 26 April 2010, the International Romani Union (based in Barcelona) published a manifesto accusing Albiol of violating article 510 of the Spanish Penal code that prohibits discrimination, hatred or violence against groups or associations based on their ethnic, race or national affiliation. The IRU manifesto claimed that:

“Mr. García Albiol has done nothing new by spreading incitement against Romanian Roma immigrants... his message is underpinned by the same racist and xenophobic logic used by Jean-Marie Le Pen. By spreading a racist discourse, the French Front National has taken over Marseille, where socialists and communists have always won, but in times of economic recession and rising unemployment, the extreme right has found a fantastic opportunity in it.”²⁰

Two days later, on 28 April 2010, the Spanish Council for the Elimination of Racial or Ethnic Discrimination²¹ published a letter stating the following:

“We want to express our rejection to Xavier Albiol’s behavior... This sort of discourse leads to activate prejudices, social rejection and discrimination towards the Romanian Roma. Such statements are inadmissible especially when they come from a person who hold or aspire to hold any public office... We encourage public and private institutions to take legal actions, in order to repair the damage and to discourage this kind of behavior in the future.”²²

Despite such public statements, both organizations did not take any legal action, neither against Albiol nor against the People’s Party. But by the end of April, SOS Racisme and the Catalonian Federation of Gitanos Associations (FAGIC) denounced Albiol for incitement and hatred. In October 2010, the special prosecutor of hate crimes and discrimination accepted the case. The whole process took more than three years.

On 20 June 2012, FAGIC announced that they would no longer continue as part of the complainants due to the fatigue caused by the long process and the increasing tensions with the People’s Party. Nevertheless, SOS Racisme decided to continue as the only complainant on its own. On 20 November 2013, Albiol was interrogated in the trial. Eventually, on 11 December 2013, the Criminal Court 18 of Barcelona acquitted him. During the whole trial the People’s Party never considered the expulsion of Albiol. On the contrary, he was promoted as party candidate for the next Catalonian elections, on 27 September 2015.

²⁰ *Nevipens Romani*, 26.05.2010.

²¹ This is an official advisory body linked to the Spanish Ministry of Health, Social Services and Equality, in charge of providing assistance to victims of discrimination, conduct studies and reports on this subject and promote measures to promote equal treatment. This is the institutional webpage:
<http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/consejo.htm>

²² *Nevipens Romani*, 03.05.2010

5. CONCLUSIONS

In general, this paper has aimed to demonstrate how anti-Roma racism has been politically instrumentalized in Western Europe against the legal and moral foundations of the European Union. In particular, regarding the analysis of the campaign of anti-Roma incitement led by the People's Party in Badalona in 2010/11, I want to remark how anti-Roma racism is not only politically instrumentalized, but is also deeply rooted in society. This has been shown in the paper through the analysis of three types of reactions to the People's Party campaign:

1. Social reaction: after the racist campaign against Roma migrants, the population of Badalona did not sanction the People's Party, but voted for it in most of the constituencies of the city, being the most voted party in 28 out of 34 districts.
2. Judiciary reaction: Mr. Ignasi de Ramon, the Magistrate Judge of the criminal court number 18 of Barcelona, acquitted Albiol from the violation of articles 510.1 and 510.2 of the Spanish penal code: discrimination, hatred or violence against groups or associations based on ethnic, racial or national origin.
3. Political reaction: the People's Party never considered sanctions against Albiol. Instead, he was promoted to candidate for the presidency of Catalonia in the next regional elections.

These reactions show the prevalent antigypsyism²³ and the lack of empathy towards the Roma people, as a result of a political strategy that consists of othering the Roma. According to the Council of Europe's description of Roma related issues, this sort of populist propaganda often incites acts of violence.²⁴ Indeed, it is scientifically proved that populist discourses that target specific minorities, in many cases lead to pogroms and other forms of violence whose victims are mainly women and children.²⁵ Therefore, in such cases where the safety of a person or a community is in risk, I think that the right to peoples' safety should have priority over the right of freedom of expression.

²³ This article uses the following definition of 'antigypsyism': antigypsyism is 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 other things, by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination. Antigypsyism is a specific nature of racism directed towards Roma, on a par with anti-Semitism: *a*) it is persistent both historically and geographically (permanent and not decreasing); *b*) it is systematic (accepted by virtually all the community); *c*) it is often accompanied by acts of violence. Definition offered by the Council of Europe (2012): *Describing glossary of terms related to Roma issues*, page 12. On the meaning of 'antigypsyism', I recommend the reference paper by the Alliance against Antigypsyism (2016): *Antigypsyism – a reference paper*. http://antigypsyism.eu/?page_id=17

²⁴ Council of Europe (2012): *Describing glossary of terms related to Roma issues*.

²⁵ European Humanist Federation (2013): *The European Union and the Challenge of populism and extremism*.

6. RECOMMENDATIONS

This paper has demonstrated how Roma migrants became the target group of a hate speech strategy during the election campaign led by the People's Party in Badalona, 2010/11; with no consequences for those responsible of it, neither at the political level nor at the judiciary level. Next I will outline three recommendations to combat and prevent such a case at three levels:

- **Social level:** In order to engage civil society to fight anti-Roma incitement a strong, long-term cultural and awareness-raising strategy is needed. Beyond the implementation of punishment measures for those who commit racist actions against Roma, it urges to bridge the gap of knowledge and distrust between majority society and the Roma people, which is often filled with prejudices and stereotypes. The different cases of anti-Roma policies and discourses presented in this paper are not isolated; indeed, they are connected through a politically designed, systemic ideology. The violation of Roma rights is widely acceptable and legitimated by a deeply rooted antigypsyism embedded in state institutions. To fight against antigypsyism, the EU member states need to deploy a coordinated cultural strategy by using different power tools and infrastructures such as: schools, media, universities, research institutes, museums and festivals.
- **Judicial level:** It is necessary to generate a strong judicial commitment with zero tolerance towards racist incitements that link ethnicity, race or nationality to criminality. Crimes are not committed by cultures, nationalities, races or ethnicities but by individuals. For this purpose, any reference to the link between nationality, ethnicity and criminality in the public debate must be penalized. The punishment must have a bigger penalty when political leaders use hate speech, as their words have bigger impact on society than the words of ordinary citizens.
- **Political level:** The stance of political parties is highly important; their ethical code of conduct should include a clear reference to zero tolerance with racism. Political parties have full responsibility to eradicate any kind of racist discourses from within, and to sanction those members who spread out racist comments. Furthermore, the electorate should take a strong stand against racist policies or discourses.

These three levels are interrelated, thus, the actions taken in one level will affect the others. In this regard, it should be highlighted that antigypsyism, as a specific type of racism, is deeply rooted in European societies and deployed in a systemic manner. Therefore, only a strong awareness-raising and educational plan devoted to deconstruct the myth of the Roma as the 'eternal others', would allow us to reconstruct empathy and solidarity between the Roma minority and majority society.

Ismael Cortés works as a policy analyst at the Open Society European Policy Institute. He holds a PhD on Conflicts and Development Studies by the UNESCO Chair of Philosophy - Interuniversity Institute for Social Development. He has numerous academic publications on contemporary identity politics, and is a columnist of Huffington Post.

DR. HENRIETT EVA DINOK

ROMA AS AN INSTRUMENT OF POLITICS: THE CASE OF MISKOLC (HUNGARY)

INTRODUCTION

Elaborating on a specific Hungarian case-study, the “Miskolc-case” contributes to the debate about racism, hate speech, and incitement against Roma and Sinti in election campaigns in the frame of the OSCE-ODIHR Human Dimension Implementation Meeting (HDIM) side event.¹ Roma are frequently key targets of racism, hate speech, and incitement, in particular during election campaigns.² Politicians and political parties often draw upon prejudices against Roma in order to win votes through populist strategies and the scapegoating of minorities.³ However this kind of behavior is not unique, it is standard in a frightening manner and damages the social cohesion of our societies.

In the following I would like to illustrate a short analysis of a specific Hungarian case in which the public discourse about Roma was fueled during the Hungarian local governmental elections (in Miskolc). Thereupon, Roma were scapegoats and became second-class citizens whose fundamental rights were ignored and violated.⁴ I will explore the way the antigypsyism appeared in the campaign, disguised as the housing issue of Roma people in Miskolc.⁵

The case of Miskolc is a good example to demonstrate the variety of negative conditions that may occur in this field. Miskolc, which is in the northeastern part of Hungary drew attention owing to the practices by the Miskolc Real Estate Management. By means of unlawful measures the local authorities evicted Roma from one of the slums – the so-called Numbered Streets.⁶ They conducted joint inspections which were

¹ The current paper is based on the author’s speech given in the frame of the OSCE-ODIHR Human Dimension Implementation Meeting 2015, “Combating Hate Speech, Racism and Incitement against Roma and Sinti in Election Campaigns” side event, 30 September 2015.

² No Hate Speech Movement: European Parliamentary Election – No Hate Speech. 2014. <http://www.nohatespeechmovement.org/hate-speech-watch/focus/european-parliamentary-elections---no-hate-speech> (September 13, 2015). The manuscript was closed on 9 January 2016.

³ See e.g. Jobbik campaign film 2010. The Hungarian Television and Radio refused to air this film (see decision of the Supreme Court (Decision No. Kvk.III.37.993/2010/4.).

⁴ Following the speech the author conducted a short discourse analysis with her two colleagues (Saulé Agata and Noemi Olah) at the Central European University, Department of Political Science (one-year Political Science Ma), in the frame of Scope and Methods class, about the Miskolc case.

⁵ For antigypsyism see Antigypsyism.eu, <http://antigypsyism.eu>.

⁶ See more about the eviction, and especially about the illegal practice of joint inspections: Hungarian Civil Liberties Union: A Hungarian City Its Openly Against Roma 2015. <http://tasz.hu/en/romaprogram/hungarian-city-openly-against-its-roma> (13 September 2015), OSCE: Authorities need to promote sustainable, non-discriminatory housing solutions for Roma, ODIHR Director Link says during visit to Hungary. 2015. <http://www.osce.org/odihr/167966> (13 September 2015) and OSCE: The

accompanied and coordinated by the Miskolc Municipality Police.⁷ The current situation of Roma in this region to some extent is related to the racist election campaign in 2014.⁸

BACKGROUND OF THE CASE, NATIONAL ELECTION IN 2014

Miskolc is located in one of the most disadvantaged regions in the country.⁹ Miskolc has approximately 170,000 inhabitants. Based on the census data of 2011 and further estimations, around 13,500 people live in one of the 13 segregated slums within the municipality of Miskolc. 80 to 90 per cent of them are Roma. The long-term unemployment rate among the slums' inhabitants is extremely high.¹⁰ The abbreviated explanation by politicians to the poor economic and social situation is often racist and leads to ethnic conflicts. But blaming Roma for the disadvantageous situation is nothing new. Referring to a so-called "Roma issue" is ever since part of the political agenda.¹¹ With the collapse of the Eastern bloc in the late 1980s the local authorities decided to renew the historic center of the town – which was by then the home of many Roma families. Following their restructuring plans the local council was eager to "relocate" the Roma population to the outskirts and force them into a newly edified and isolated slum. But the plan failed due to the joint protest and resistance of activists, local residents, sociologists, and civilians.¹² Once again the Roma people of Miskolc became unintentionally part of the political 'game' during the elections in 2014.

First of all, it is quite revealing that the right-wing camp of Jobbik took their national campaign launch event to Miskolc in 2014. The Hungarian right-wing party chose – not by chance – this municipality for their launch event. They knew there they would find a like-minded audience for their political agenda on – among others – security and 'gypsy criminality'.¹³ However, the illegal evictions and the harassment of the 'Numbered Streets' inhabitants were mainly grounded after the national elections, during the preparation for local elections. It is not surprising that Jobbik used the anti-Roma rhetoric during the national election, but also other parties – even left-wing – embarked on this path during their local election campaigns.

Housing Rights of Roma in Miskolc, Hungary. Report on the ODIHR Field Assessment Visit to Hungary, 29 June – 1 July 2015, <http://www.osce.org/odihr/262026> (1 September 2016).

⁷ Because of the practice of inspections the Hungarian Civil Liberties Union and the Legal Defense Bureau for National and Ethnic Minorities filed a joint complaint to the Ombudsman for Fundamental Rights in March 2014. The inspections which focus on the segregated neighborhoods, involved checking compliance with the obligation of registering a home address; with animal-keeping regulations; existence of waste disposal agreements, renting agreements, and documents proving ownership. The periodical and continuous inspections were conducted by large teams sometimes. Based on the reports, residents of the effected neighborhoods feel threatened and harassed by the repeated, coordinated, raid-like joint inspections by official personnel. See more about the inspection: Joint Report of the Commissioner for Fundamental Rights and Deputy-Commissioner Responsible for the Rights of National Minorities: *Comprehensive investigation: the practice of joint inspections coordinated by Miskolc Municipality Police, the local housing decree, other Miskolc Municipality measures affecting housing, and decree amendments by other municipalities in the Miskolc metropolitan area* (Hungarian), No. AJB-1474/2014, 2015.

⁸ "Ombudsman's report on housing discrimination in Miskolc and neighboring towns", European Network of Legal Experts in Gender Equality and Non-discrimination, 5 June 2015, http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.viewdoc&cid=2893&Itemid=295

⁹ Statement by the Delegation of Hungary at the OSCE Human Dimension Implementation Meeting Warsaw, 30 September 2014. 2. <http://www.osce.org/odihr/124599?download=true> (September 13, 2015)

¹⁰ Hungarian Civil Liberties Union 2015.

¹¹ "Presumably, people have prejudice because it serves a certain purpose. Most theorists who have considered this issue have concluded that prejudice essentially serves to justify economic and social privileges. [...] If prejudice serves to justify economic inequality, then placing individuals in a relatively privileged or gratified position ought to increase their level of prejudice (in order to justify such privileged position relative to others)." Dan Landis-Rosita D. Albert (ed.): *Handbook of Ethnic Conflicts*. International Perspectives. An International Academy for Intercultural Research Book. New York – Dordrecht – Heidelberg – London: Springer, 2012. p. 492–493.

¹² Janos Ladanyi: *A miskolci gettóügy* (Hungarian) (*The Miskolc ghetto case*), 1991. http://www.tankonyvtar.hu/hu/tartalom/tamop425/0010_2A_05_Ladanyi_Sandor_Tarsadalom_es_terszerkezeti_atalakulasok/ar26.html (15 September 2015).

¹³ Origo: Kasztrálást és csendrőséget ígért a Jobbik (Jobbik promised castration and gendarmerie), <http://www.origo.hu/itthon/20140215-kasztralast-es-csendorseget-igert-a-jobbik.html>.

During the local elections not only Jobbik and Fidesz supported an openly racist candidate, but so did MSZP and DK, two left-wing political parties.¹⁴ None of them seemed to be hesitant to use anti-Roma (antigypsyist) prejudices for vote winning. Their joint mayoral candidate in Miskolc was a former police chief, who is well-known for his anti-Roma statements.¹⁵ It is disturbing and a severe problem that antigypsyist and racist statements have become a standardized practice in Hungary. Even the European Commission against Racism and Intolerance (ECRI) pointed out that the right-wing extremist party Jobbik openly engages in anti-Roma hate speech. However, antigypsyism and hate speech is not limited to right-wing extremist parties and groups but emerges across the political spectrum.¹⁶ The public and political discourse has been radicalized and the number of far right supporters has rapidly increased from the mid-2000s.¹⁷ This phenomenon is also to be seen in Miskolc, in particular within the local election campaign. It paved the way for ongoing human rights violations as well as racist and unlawful actions against Roma in Miskolc.

AMENDMENT OF THE HOUSING REGULATION FROM THE HUMAN RIGHTS PERSPECTIVES

The “Roma issue” as a part of the public security policy appeared on the right-wing parties’ agendas. After the national elections in May 2014 the local government amended the municipal decree on the rental of local public housing. As the report of the municipal meeting report outlines, the amendment was accepted within the framework of the “Proposal regarding the public coexistence, the public order and enhancement of public order”.¹⁸ Basically, the idea of evictions started as a public security issue.

The amendment sets out that when rental agreements are terminated, tenants of low comfort social housing can be granted a compensation for vacating accommodation. However, a condition has been added; the tenants must agree to use the compensation to purchase property outside the municipality and to not return to Miskolc within five years. Based on this amendment and further ongoing evictions, the Miskolc case appeared in front of the Supreme Court, the Commissioner for Fundamental Rights, and the Equal Treatment Authority.

The Supreme Court has nullified the provision of the municipal decree on the grounds of infringing the prohibition of discrimination in access to housing. But the verdict addressed only one aspect of the eviction, the provision that persons concerned are banned from the city for five years. It did not challenge the legality and constitutionality of the municipality’s decision in general, and the local authorities continued with evictions based on a different “legal” ground.¹⁹

After the Supreme Court’s decision the Ombudsman’s report stated that the evictions mainly affected the Roma population. Furthermore, it criticized the municipality’s failure to comply with its obligations for social security and housing, which led to massive homelessness.²⁰ Based on the report, the local authorities collected 35,000 signatures in support of the amendment, and sold it to the public as the will of the citizens

¹⁴ Searching for the list of candidates: http://valasztas.hu/hu/onkval2014/883/883_0_index.html

¹⁵ Boon.hu: *Miskolci rendőrkapitány: "Az utcai támadásokat általában cigányok követik el"* (Hungarian) (Miskolc Police Chief: “Street offences are usually committed by Roma”), January 31, 2009, <http://www.boon.hu/miskolci-rendorkapitany-az-utcai-tamadasokat-altalaban-ciganyok-k246vetik-el/news-20090130-01204365> (15 September 2015).

¹⁶ ECRI: Report on Hungary (fifth monitoring cycle), CRI(2015)19. p. 9. <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf> (September 13, 2015)9. <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Hungary/HUN-CbC-V-2015-19-ENG.pdf>.

¹⁷ TARKI Social Research Institute: *The Roots of Radicalism and Anti-Roma Attitudes on the Far Right*. 2012. http://www.tarki.hu/hu/news/2012/kitekint/20121122_bernart_kreko_prezentacio.pdf

¹⁸ Report of the municipal meeting, Miskolc Megyei Jogú Város Közgyűlése, Jegyzőkönyv, IV-80.254-7/2014. p. 9. (Hungarian)

¹⁹ Decision of the Supreme Court, No. Köf/5.003./2015.4. (Hungarian).

²⁰ Joint Report of the Commissioner for Fundamental Rights and Deputy-Commissioner Responsible for the Rights of National Minorities. 2015.

to get rid of the city's slums.²¹ The Roma affected by the provision were left out of the discourse and were only informed about the outcome. It shows how Roma are discriminated and treated as second-class citizens. At no stage of the discussion about housing regulation and urban development planning Roma representatives have been involved.

Eventually, the Equal Treatment Authority expressed its deep concerns that through the eviction practice the municipality exposes the inhabitants of the 'Numbered Streets' continuously - due to their social situation and ethnic affiliation - to the risk of homelessness.²² The evictions of Miskolc violated the principles of non-discrimination.²³ The Equal Treatment Authority imposed a fine to the municipality and obliged the municipality to terminate the infringement and to set out specific measures. But the municipality failed to comply with the order. The Másság Foundation/Legal Defense Bureau for National and Ethnic Minorities – which submitted the complaint to the Equal Treatment Authority – noted that the municipality further decreased the population of the 'Numbered Streets'. Many residents left on their own initiative and moved to another even bigger and poorer segregated area, others went abroad or moved to other parts of Hungary, as they could not bear the uncertainty about their future.²⁴

Besides the Hungarian institutions²⁵, also ECRI²⁶ and the OSCE-ODIHR²⁷ deem the provisions to be indirect and concealed discrimination against Roma as the vast majority of low comfort housing is rented by Roma.

Besides the racist argument of “public security” the municipality also uses the construction of a stadium as a reasoning for the destruction of the 'Numbered Streets' district. According to Miskolc's mayor, Akos Kriza, this project is of high importance for the city's urban development. The mayor explained in an interview that “[b]oth for reasons of public safety and health the existence of slums cannot be tolerated any more”.²⁸

DISCOURSE ON ROMA IN THE CONTEXT OF THE LOCAL ELECTION CAMPAIGN – INCITEMENT TO HOSTILITY AND HATRED

Without going into the details of the housing regulation or the provisions for the stadium's construction, it is obvious that the housing question served political objectives. The municipality's policy laid the foundation for the key issue of the national election campaigns: the elimination of the run-down and neglected neighborhoods. The campaigns were built on anti-Roma sentiments, in which even the mainstream political parties engaged. Notably the social security and housing policy haven been linked to Roma and became quickly the core topics of Jobbik's and Fidesz' agendas. Roma people were pictured in the election campaign posters of both parties as enemies and outsiders. There are two posters, one from Fidesz and one from Jobbik that illustrate this quite good:

²¹ In connection to the inspections of local authorities the report stated that the Roma residents' right to privacy, right to equal treatment and right to a fair proceeding were also infringed.

²² For the Equal Treatment Authority see <http://www.egyenlobanasmod.hu/eng>.

²³ Equal Treatment Authority, No. EBH/67/22/2015. (Hungarian)

²⁴ ERGO Network: Hearing on Fighting Racial Discrimination in Housing: Forced Evictions against Roma. Factsheets. 14 October 2015. 6-7. http://www.ergonetwerk.org/media/userfiles/media/Factsheet_combined.pdf (10 November 2015).

²⁵ The Supreme Court, the Equal Treatment Authority and the Commissioner for Fundamental Rights and Deputy-Commissioner Responsible for the Rights of National Minorities.

²⁶ ECRI Fifth Report p. 27. para. 91.

²⁷ <http://www.osce.org/odihr/167966>.

²⁸ The Budapest Times: Your number is up, unless you're a football fan. 2014. <http://budapesttimes.hu/2014/10/19/your-number-is-up-unless-youre-a-football-fan/>

FIDESZ-KDNP followed their housing, public safety policy:

“Do you support the elimination of the slums in Miskolc? Miskolc and the people of Miskolc deserve a quiet and peaceful life. There must not be slums in the 21st century in a European city. The slums must be eliminated once and for all!”

Jobbik poster:

*“UNBELIEVABLE: FIDESZ VOTED FOR CREATING GHETTOS IN MISKOLC
FIDESZ’s slum project would give two million Forints to those who ruined the municipal properties, who did not pay their bills, which are unable to follow the basic principles of coexistence, which are ready to leave their shabby houses and let us demolish those houses with all your money.
What will be the consequences? They are not obliged to leave the city and they can buy cheap apartments in, for instance, the Avas quarter (another slum), they will keep preying upon the social welfare system of Miskolc, keep their anti-community lifestyle and they will vote for FIDESZ and MSZP.
We have had enough! We do not negotiate with trouble-makers. We demand that the municipality must immediately terminate their contract without paying anything, must invalidate their certificate of domicile, must make them pay for the damage caused, and those people who destroyed the buildings should demolish those houses.
Jobbik! The choice of the law-abiding majority!”*

None of the posters mentions Roma but reading between the lines it is clear that it refers to Roma. The antigypsyist expressions used e.g. ‘shabby houses’, ‘preying upon the social welfare system’ etc. implicitly indicate that Roma are meant by this. Given the historical background, it is evident that the slum/housing question covers the Roma population.

The Fidesz’ poster also refers to Roma indirectly – without further racist statements – in the context of the slum elimination project. Fidesz accepted the housing amendment and kicked off the discourse on the slum elimination project. On their posters they use the word “slums”, which is in the public discourse often used in relation to Roma. Furthermore, it refers to the ‘Numbered Streets’ district and ‘Avas’, known as Roma neighborhoods. Their campaign for “a quiet and peaceful life” for the citizens of Miskolc, begs the question: Do Roma people prevent non-Roma people from enjoying a quiet and peaceful life? It implies that the inhabitants of these districts are “trouble-makers” and cause problems. Moreover, it excludes Roma from the Miskolc community and treats them as second-class citizens.

The Jobbik poster goes much further down this path. Initially it talks about the Fidesz’ slum elimination project and the two million forints planned as offer for those who were willing to leave their houses. On its posters, Jobbik used typical antigypsyist stereotypes such as the remark that the dwellers “ruined the municipal properties”. It indicates the common right-wing rhetoric that Roma tend to ruin the apartments given within the scope of social housing.²⁹ Another typical antigypsyist stereotype used by Jobbik is that Roma would “not pay their bills”, which conceals the overall poor economic and social situation and a lack of job opportunities of which Roma and non-Roma suffer in the region. The racist statements go on with the allegation that Roma would be “unable to follow the basic principles of coexistence”, which was even said by the mayor of Miskolc.³⁰ In particular in a social deprived region as Miskolc allegations such as Roma would “keep preying upon the social welfare system” and would prefer an “anti-community lifestyle”, fuel the social cohesion and feed public anger.

²⁹ This myth is refuted in the following (Hungarian) article: <http://www.urbanlegends.hu/2006/10/felszedik-es-elegetik-a-par-kettakat/> (November 11 2015).

³⁰ Cecilia Kovai: *The “Gypsy issue” and the Coexistence in Northern Hungary*. 2014. <http://muftah.org/gypsy-issue-coexistence-northern-hungary/#.VkUJHL9-agZ> (November 11 2015).

CONCLUSIONS

The messages of both posters are clear: Roma are not welcome in Miskolc. Roma became the scapegoat for the social and economic misery of Miskolc and its non-Roma population. Therefore both poster campaigns used antigypsyism in order to win votes. Roma did not have a voice in this at all; they only served as a projection screen for everything bad in the municipality. This is only one case but it represents the situation of Roma all over Hungary how they are made second-class citizens. Roma are ‘political pawns’, without a voice, decisions are made about them in order to marginalize and to oppress them.

In the light of what has been said it appears clearly that the political stakeholders grabbed the opportunity and built up their entire campaign on anti-Roma sentiments. Not only right-wing but also the mainstream parties have acted in a profoundly opportunistic way, which led to the current situation of the Roma population; although the most important legal institutions – the Supreme Court, the Equal Treatment Authority and the Ombudsman – declared the municipality’s policies illegal and unconstitutional. Nevertheless, the municipality is implementing its plans and evictions are in process.

This case plainly shows how prejudices and racism can be a strong tool in election campaigns and further fuel the public opinion on Roma people. We should be aware that this is not only a “case study” but the everyday reality of Roma people in Hungary. This is a matter of extreme urgency that requires intervention in order to avoid massive homelessness and to end further violations of human rights. The Hungarian government should recognize and acknowledge that the situation in Miskolc constitutes a structural problem and, therefore, should be treated as such. The case of Miskolc shows the deep-rooted antigypsyism in Hungary, which takes place in all institutions of society and demonstrates how political forces take advantage of antigypsyism.

Dr. Henriett Dinók is a lawyer, political scientist and a human rights activist, currently working as the director of the Romaversitas Foundation in Hungary. She holds a PhD degree in law, and a master in political sciences. Dr. Dinok previously worked for the Institute for Legal Studies at Hungarian Academy of Sciences, for OSCE-ODIHR and the Chance for Children Foundation in Budapest, as well as she was involved in the Working Group Against Hate Crime.

OGNYAN ISAEV

ANTIGYPSYISM IN BULGARIAN ELECTION CAMPAIGNS: A CASE STUDY

The study aims to present examples of hate speech, racism, and incitement against Roma in election campaigns in Bulgaria. Through concrete examples and evident cases of hate speech and antigypsyism, it aims to open up a debate about political and institutional commitments, and the existing available tools such as national and international agreements in order to combat racism, hate speech, and incitement against minorities in Europe, particularly during election campaigns.

INTRODUCTION TO THE POLITICAL CONTEXT IN BULGARIA

In the last decade the election campaigns in Bulgaria have appeared to be a stage for far-right parties to target ethnic minorities, particularly the Roma minority, as an ‘issue’ which they declare to solve once and forever by force and criminal techniques. “The politicians stimulate a negative attitude towards ethnic minorities by using anti-Roma and populist rhetoric to win more votes, and this anti-Roma political rhetoric has consolidated antigypsyism in society.”¹

Antigypsyism as a special form of racism against Roma has a variety of manifestations ranging from racial slurs directed towards Roma to more sophisticated manifestations such as denial of racism, presenting Roma as a people without a culture nor a sense of identity, and the lack of any Roma in various institutions.² However, since Bulgaria became a member of the EU and closed all necessary chapters during the EU accession period the mainstream political parties have begun using a similar rhetoric with neo-liberal attitudes. The first striking statement came from the highest state level. In 2009, the mayor of Sofia Boyko Borisov (nowadays the Prime Minister) branded Roma as “bad human material”³, and he won the elections with crushing results.

Hate speech and hate crimes as expressions of racism have become a modern phenomenon in Bulgarian political life. Despite the fact that they are defined as crimes,⁴ many political parties are not afraid of the manifestation.

¹ Angel Ivanov: Antigypsyism in Bulgaria, in: Kyuchukov, Hristo: New Faces of Antigypsyism in Modern Europe, Prague, 2012.

² Iulius Rostas, <http://www.romea.cz/en/news/world/iulius-rostas-social-change-for-roma-is-not-about-money-but-political-will>

³ <http://www.telegraph.co.uk/news/worldnews/europe/bulgaria/4531391/Mayor-of-Sofia-brands-Roma-Turks-and-retirees-bad-human-material.html>

⁴ Article 162, Penalty Code, http://www.vks.bg/vks_p04_04.htm

According to Amnesty International, “*Victims of hate crimes in Bulgaria are being denied justice by the failure of investigators and prosecutors to take discriminatory motives into account. Hate crimes are typically investigated as offences motivated by ‘hooliganism’ rather than crimes targeting victims on account of their ethnic origin, migrant status or sexual orientation. The full extent of hate crimes in Bulgaria and their impact on victims, therefore, remain largely hidden and unacknowledged, fueling fears within targeted communities, eroding their trust in authorities and delaying the introduction of effective measures to combat these crimes.*”⁵

The Bulgarian Criminal Code punishes someone who “*uses violence against another or damages his property because of his race, nationality, ethnicity, religion or political opinion*” with imprisonment of up to four years and a fine of up to ten thousand leva (€ 5000). Nevertheless, Bulgaria has already been condemned several times by the European Court of Human Rights for refusing to recognize, prosecute, and punish hate crimes.

According to Margarita Ilieva⁶, legal defense program director at the *Bulgarian Helsinki Committee*, “*this is the result of the psychosocial phenomenon of denial: our nation in the face of its legislative authority pretends that hate crimes do not exist. Again, denial is the reason that racist crimes are concealed by institutions as hooliganism, and are far from being taken seriously.*” Ilieva says, “*our society does not act by the legislation, but by the prosecution – it is one that reflects the social attitudes of refusal to recognize the truth that Bulgarians are not ‘tolerant’ and regularly harass and oppress minorities.*”

Prosecutors, according to interviews⁷ of Dnevnik Media, share the view that the reason for the lack of investigations against hate crimes is the lack of case law. Most prosecutors prefer “*to shoot safely, it is important to have no acquittal*”. Another reason for the lack of investigations is that it is complicated and difficult to prove a crime. One must carefully track what provoked concrete actions by the perpetrator and what people have seen regarding how the situation came about. “*Nobody analyzes the motive in any way which is the main sign that can distinguish the crime of hatred from hooligan motives. As a third reason, speaking with a hushed tone, prosecutors have admitted that, in fact, among themselves there are racists. Prosecutors are part of this society and they are human beings.*”

In 2013, the “Analytical department” of the Supreme Cassation Prosecution (SCP) issued methodological guidelines for prosecutors on how to investigate crimes with a discriminatory element.⁸ The impetus for this was the anti-Roma protest in Katunitsa, which spilled over into larger cities. According to the guidelines, the main difference between hooliganism crimes and hates crimes is the discriminatory motive, which is formed by stereotypical biases and prejudices. The guidelines have described the signs, which differ this type of crime. According to the document, discriminatory motives may have outward signs, and the motive can be expressed by a general view against a particular group, including the expression of certain emotionally based reactions or by trying to justify the discriminatory motive with seemingly objective arguments. Even more interesting is that the guidelines stipulate that the main way to prevent these kind of crimes is through greater awareness. “*The traditional insensitivity of the Bulgarian judicial system and law enforcement to discriminatory crime stems from stereotypes instilled in varying degrees of awareness of the culture of the majority, to which most employees belong*”. Anonymously, prosecutors say “*typical errors are associated with the prior assumptions of investigators, their hasty conclusions and lack of checking all the facts*”. “The existence of rules is very good but since there is no control whether they are running or not they become meaningless. I remember the example of my training abroad.

⁵ Amnesty International: Missing the point. Lack of adequate investigation of hate crimes in Bulgaria, London, February 2015.

⁶ http://www.dnevnik.bg/bulgaria/2015/09/13/2608863_kak_prokuraturata_ne_raboti_sreshtu_prestupleniata_or/

⁷ As above.

⁸ ВКС, Методически насоки за работа по преписки и досъдебни производства, образувани по сигнали за извършени престъпления с дискриминационен елемент, Sofia, 2013, 10782/2011г.

Talking about cooing with corruption, the example must come from "above" in the system hierarchy, so the system needs to be organized in a way that anyone with corrupt attitudes feels as an outsider and rejected in the system. The key question is: are role models as well as is the system organized in a way to ensure compliance with the rules", says the prosecutor to Dnevnik.⁹

THE CASE OF GARMEN - HOW LATENT RACISM GETS TRANSFORMED INTO AGGRESSIVE INSTITUTIONAL ANTIGYPSYISM

Institutional racism is distinguished from racial bigotry by the existence of institutional systemic policies, practices as well as economic and political structures which place racial and ethnic minorities at a disadvantage in relation to the racial or ethnic majority.¹⁰

On 23 May 2015, in the Marchevo village in the Garmen municipality Roma people returned from picking mushrooms and went to the spot where local firms buy the mushrooms. They were driving the car to the selling point with loud music. Bulgarians were there playing cards. They asked the Roma to reduce the music at the same time using verbal insults calling them "mango" and "mangali", which is equivalent to nigga or nigger. The Roma refused to turn down the music and started arguing with the Bulgarians because they felt insulted. Afterwards, the Roma were beaten. They went back home and then returned to the selling point with a bigger cohort and started physical conflict with the Bulgarians. It was not a fight between all Bulgarians and all Roma as it was presented in the media. It was a conflict between two groups, which began as a personal argument with racist elements. Within the next days football ultras came to the village to protest against the Roma and the focus of the media and public attention turned to "*Roma criminality*" and "*Roma illegal housing*". The gendarmerie was in the village and blocked the way of the protesters who tried to attack the Roma neighborhood. The police accompanied the local Roma to the village and the municipality in order to use public services. Three days after the protest the police arrested the main organizers.

Some of the organizers were connected to the ultra-right political party VMRO (part of Patriotic front), which actually is in power and supports the current government. The main protestors were mainly from neighboring cities and regions and they were well organized. The Ministry of Interior did not respond to the call "*to fight the gypsy criminality*" even though the local police office registered only few cases of robbery. As a result of the tensions the Ministry on Regional Development and Public Works started procedures for demolishing the houses of Roma without official papers (documents of ownership, a notary deed etc.). The number of the demolished houses reaches about 125 in Kremikovsti quarter, Mirchevo. Roughly 500 people are still at risk of losing their homes. Local Roma were injured, and the police prohibited Roma children from going to school, saying they could not protect them¹¹.

On 10 July 2015, the European Court of Human Rights issued urgent interim measures concerning demolition of houses planned for 13 July 2015 in Garmen, Kremikovtsi quarter. Under Rule 39 of the Rules of the Court, the interim measures urge the Bulgarian government to "*stop the demolitions, until alternative housing is ensured for the vulnerable claimants*".¹² Filing a request for interim measures before the European Court of Human Rights was the only opportunity the affected families had, after the responsible administration refused to reconsider the decision to demolish their homes.

⁹ http://www.dnevnik.bg/bulgaria/2015/09/13/2608863_kak_prokuraturata_ne_raboti_sreshtu_prestupleniata_ot/

¹⁰ Jones, J. M. (1997). *Prejudice and Racism* (2nd ed.). New York: McGraw-Hill.

¹¹ <https://www.opensocietyfoundations.org/voices/opportunistic-politicians-bulgaria-evict-roma-votes>

¹² www.capital.bg/politika_i_ikonomika/obshtestvo/vsichko_za_pravata_ni/2015/07/11/2570717_evropeiski-iat_sud_za_pravata_na_choveka_prizova/

These actions of the Bulgarian administration are aimed against Roma-owned houses only, despite the existence of a large number of unlawful constructions in the country.¹³ This selective, less-favorable treatment amounts to discrimination on ethnic bases and a serious violation of basic human rights, guaranteed within the Bulgarian Constitution and international acts and standards.

The request for interim measures contained descriptions as well as proof for the situation of the Roma families in Garmen. In particular, these measures included the families of the claimants; eight minors, two children with severe disabilities and an eight months pregnant woman among them. These interim measures have been intended to prevent homelessness and diminish the potential for creating victims of a future humanitarian crises.

However, Bulgarian officials continued to mislead the international partners¹⁴ regarding a constructive solution of the Garmen case. On 11 August 2015, the Ministry on Regional Development and Public Works (MRDPW) published a statement about the implementation of orders for the demolition of the homes of only Roma families from Kremikovtsi settlement of Marchevo village, Garmen municipality. According to this statement, the National Agency for Construction Control (NACC) extended the term for the execution of the orders until 31 August 2015 because an alternative accommodation was not secured for the affected persons by the local administration. On 26 August 2015, officers from Garmen municipality visited the Kremikovtsi settlement and proposed that the Roma families sign declarations regarding their need of alternative accommodation. The Garmen municipal council accepted the form of the declaration on 27 July 2015. When questioned by the Roma families about what alternative accommodation would be proposed, the municipal officers answered that they *“still do not have this information and this is to be decided later”*. The Roma informed the municipal officers that they could not possibly respond to a proposal, which was, in fact, not defined. As a result the municipal officers prepared protocols, according to which the Roma refused alternative accommodation. Right after that the mayor of Garmen, Minka Kapitanova, publicly called on the villagers in Garmen municipality to accept the Roma in their houses for free, as the municipality could not secure other alternative accommodation. The villagers from Garmen answered this call by breaking the windows of the city hall and by declaring that they do not want the Roma in the village.¹⁵

The report that the Roma families from Garmen refused alternative accommodation became another public manipulation of the Bulgarian administration. The Garmen municipality did not propose accommodation to the Roma, and apparently had no plan for where they could accommodate them. This misinformation was just an attempt to deceive the Bulgarian society, the media, and the international stakeholders.

On 28 August, the Equal Opportunities Initiative Association renewed the request to the European Court of Human Rights (ECHR) on the basis of the first request for imposing Rule 39 of the Rules of the Court for imposing interim measures against the demolition of the houses which had been postponed on 13 July 2015. The renewed request was sent after the NACC published information on its web page that the new term for executing the orders would be 31 August 2015. On 31 August the MRDPW published a press release on its web page reporting that all demolition orders issued regarding Roma houses in Garmen would be executed. An additional press release stated that a deadline extension would be granted for two houses only, based on the correspondence with the European Court of Human Rights regarding these two houses. According to the press-release, the execution of the rest of the orders was to proceed in line with the schedule defined by NACC, based on information provided by Garmen municipality regarding alternative accommodation proposed to the affected families.

¹³ <http://www.168chasa.bg/Article/748494>

¹⁴ Declaration of National coalition “Intelect”, September, 2015, Bulgaria.

¹⁵ <http://news.bnt.bg/bg/a/594185-izpotroshiha-prozortsite-na-obshtinata-v-garmen>

On 2 September 2015, notices were sent to five families from Kremikovtsi settlement, stating that their houses were scheduled for demolition between 7 – 11 September. The notices were not served straight to the families but put on the front doors of the houses instead. One of these five families legally owns the plot on which the house was built.

On 3 September 2015, in her capacity as legal representative of the five families Daniela Mihaylova sent a letter to the mayor of Garmen demanding information about the so-called proposed alternative accommodation. She as well informed the mayor that the affected persons had never received such notice and never refused alternative accommodation. This letter has yet not been answered.

On 4 September 2015, the European Court of Human Rights sent a letter answering the renewed request for imposing interim measures from 28 August 2015. The Court announced that the responding government sent information according to which the demolition of the houses in question was postponed until 30 September 2015, pending identification of alternative accommodation, and the satisfaction of the court.

On 7 September 2015, the NACC demolished 6 houses in Kremikovtsi settlement. This included the five houses whose owners were notified on 2 September, and one of the two houses for which the demolition had been postponed on 13 July 2015 until 30 September 2015, because an alternative accommodation was not secured. The families who lived in the sixth house were informed about the demolition on the very same morning. This family consists of two parents, two minor boys (one with severe disability) and a new born baby.

The National Coalition Intellect, Roma, and pro-Roma activist as well as NGOs shared their view on a press release:

“We hereby state that we see the actions of the administration for demolition of the only homes of the Roma from Kremikovtsi as unjust and discriminatory. These actions violate Bulgaria’s obligations under the European Convention for Human Rights and Fundamental Freedoms. We believe that these actions are taken with the aim to gain political dividends in the upcoming pre-election campaign in Bulgaria, and to motivate the voting of the nationalists in Bulgaria. Both local and national authorities in Bulgaria failed to fulfill their obligations to consult the local Roma community in Garmen on alternative options and to save them from turning homeless.”¹⁶

The Roma from Kremikovtsi have been subjected to inhuman and degrading treatment. Many Roma, among them children with severe disabilities, were left on the street and made homeless. From 2006 until now, Bulgaria has been found in violation of Roma housing rights by three international bodies- the European Committee on Social Rights, the European Court of Human Right and the UN Human Rights Committee. These institutions found that Bulgarian internal legislation does not fulfill international requirements on human rights. The Bulgarian Government, however, did nothing to improve the internal legislation in compliance with international standards. It also did nothing to take action for long term and civilized solutions of the problem with the unlawful buildings in Garmen, and in all other Bulgarian municipalities where segregated Roma settlements exist.

Local Roma shared that the Blagoevgrad district governor visited them three times. According to people from Kremikovtsi at each visit he asked them about demolishing three to four houses in order to decrease the tension between Bulgarian protesters and Roma families. It was not an official request as it was only verbal.

¹⁶ Declaration of National coalition “Intellect”, September, 2015, Bulgaria

The leader of anti-Roma protest, Ivan Bayrektorov, was a candidate for councilor in the local elections on behalf of the Reformatorski block coalition. Minka Kapitanova was elected for mayor of Garmen municipality during the autumn local elections in 2015.

Despite the violation of international and national legislation, there have been no consequences for Bulgarian officials who tried to respond to hateful feelings of the protesters, leaving Roma families without homes right before winter season. It is important to mention that all current activities of the Bulgarian government and of most local authorities are against the National Strategy for Roma Integration.

In 2011, the European Commission adopted an EU Framework for National Roma Integration Strategies focusing on four key areas: education, employment, healthcare and housing. Unofficially, a representative of DG Justice said that

“[...] the European Commission is aware of the situation regarding the evictions of Roma in France and in Bulgaria and has been following it with concern. In general, any eviction ordered by the relevant authorities of the Member State should take place with respect to the fundamental rights of those affected, as enshrined in EU law, national laws, and international treaties including the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission's role as the guardian of EU law is to monitor the compliance of Member States with EU law, e.g. Directive 2000/43/EC on Racial Equality, which prohibits discrimination on grounds of racial or ethnic origin in a number of specific fields including housing. The Roma, as an ethnic group, fall within the protection of this directive. The Commission constantly monitors the compliance of Member States with this directive but once it is correctly transposed into national law – as is the case in France and in Bulgaria – remedies in individual cases should primarily be sought at national level and under national law. Moreover, within the context of its policy aimed at improving the integration of the Roma population, the Commission strongly encourages Member States to combine any eviction orders with a suggestion of alternative housing for the persons concerned. The Commission is in constant dialogue with Member States' authorities to ensure the respect of EU law and to encourage them to find satisfying solutions to this kind of issues. The Commission will remain firmly committed to promoting the social and economic integration of the Roma in all EU Member States with all instruments within the remit of our competence and in close cooperation with all relevant stakeholders.”

In this way the EC passed the ball to the field of national authorities, with whom the Roma have bad experience. The practice that exists in Bulgaria toward houses that are illegal but owned by Roma is such that the state demolishes them or asks the Roma to demolish it, which is seen as a kind of “good governance” in the eyes of ethnic Bulgarians. That is why many politicians use anti-Roma rhetoric and back it with deeds, in order to increase the number of their voters – mainly ethnic Bulgarians. Meanwhile, this approach does not solve the issue. But surely these actions backfire on the extreme right political parties. Nevertheless, they contribute to win voters as well for mainstream political parties that rule the country.

BULGARIA'S LOCAL AND PRESIDENTIAL ELECTIONS (2011): ANTI-ROMA PROTESTS IN KATUNITSA

Chief Prosecutor Boris Velchev instructed all prosecutors' offices in the country as well as policemen guarding mass gatherings to arrest persons inciting racial and ethnic hatred on the spot, to open immediate proceedings and give such cases priority treatment. This instruction was made on 27 September 2011 after the "Katunitsa" case sparks anti-Roma protests in all major cities of Bulgaria. Moreover, Velchev reminded the prosecutors that the incitement of ethnic and religious hatred, hate speech and exercise of violence against individuals or groups based on characteristics such as race, religion, ethnicity through speeches, publications and media constitute a crime.

A few days after the clashes in the village of Katunitsa the Bulgarian nationalist party Ataka started distributing brochures titled "*Gypsy crime – a threat to the state*" accompanied by leaflets drumming up support for Ataka's leader and presidential candidate Volen Siderov. The 28-page black and white booklet contained publications and speeches of Siderov from 2006 up to the present, in which he dwells on the "*Gypsification*" of Bulgaria and on gypsy crime. It also includes selective excerpts from media reports about grave offences committed by Roma people put together with the purpose of inciting ethnic hatred.

A group of journalists from business weekly Capital apprised the Chief Prosecutor and the administrative head of the Sofia City Prosecutor's Office about the brochures circulating in Sofia subway stations. In addition, on 29 September 2011, a message from citizens and civil society organizations regarding the case was sent to Chief Prosecutor Boris Velchev with a request that Volen Siderov be subject to criminal liability under Art. 162 of the Penalty Code.

Ataka's press office said that the brochure had been inspired by the events in Katunitsa and the clippings used were from the Ataka newspaper and from political speeches of their leader. After a 19-year-old Bulgarian boy, Angel Petrov, was supposedly murdered by a member of a group around the notorious crime boss Kiril Rashkov in the southern village of Katunitsa near Plovdiv, protests ignited in the village and subsequently spread across the country. The protesters rallied not only against Angel Petrov's murder but against all Roma and the so called "*Roma issue*", i.e. what they saw as a "*privileged situation*" of the Roma minority in Bulgaria.

Five months after the message was sent to persecution's office, on 29 February 2012, prosecutor Nikolay Hristov wrote that after "*total familiarization with the materials [I] considered that the brochure does not contain data define an indictable offense. The leader of Ataka Volen Siderov says that he asks ethnic Bulgarians to pay attention on crimes committed by Gypsies, which is his personal position on the crime situation and a political assessment of crime in Bulgaria. [I] cannot conclude, however, that he had intended to preach racial or ethnic hatred or incitement to hatred.*" Based on this statement prosecutor Nikolay Hristov from the Sofia City Prosecutor's Office refused to institute criminal proceedings against the leader of Ataka, Volen Siderov.

In 2005, Ataka was established and entered the Bulgarian parliament for first time as part of a coalition. In 2006, the stepson of Siderov sparked a scandal in the European Parliament after sending e-mails to parliamentarians in Strasbourg, insulting the Hungarian MEP of Roma origin, Livia Jaroka. "*In my country there are tens of thousands of gypsy girls way more beautiful than this honourable one... The best of them are very expensive – up to 5 000 euros a piece. Wow!*", he wrote, protesting against Jaroka's nomination as "Best Parliamentarian 2006."

Later, Bulgaria's parliament unanimously adopted a special declaration condemning racist and sexist remarks made by the Bulgarian observer to the European Parliament against the Hungarian lawmaker of Roma origin, but said it could not recall him. During the regular elections in 2009, Ataka got seated again and supported the government of GERB political party with Prime Minister Boyko Borisov. After the preliminary parliamentary elections in 2013 Ataka was seated again in the Parliament and - thanks to the vote of its leader Volen Siderov - the government was set up with Prime Minister Plamen Oresharski. This chronology documents that during the different periods of time, different mainstream political parties relied on Ataka's support, whose leader is well-known for his racist views. He has rallied against the "gypsification" of Bulgaria, systematically linking Roma with criminality.¹⁷

¹⁷ European Commission against Racism and Intolerance, Fifth report on Bulgaria, adopted on 19 June 2014

BULGARIA'S PRELIMINARY PARLIAMENTARY ELECTIONS (2014): REVIVAL OF THE IDEA OF CONCENTRATION CAMPS FOR FORCED LABOUR AND UP-BRINGING

Due to the unstable political situation in Bulgaria there were again parliamentary elections in 2014. One party running for representation in the new government was the National Front for the Salvation of Bulgaria (NFSB), which promised the ethnic cleansing of the country's Roma by interning them in concentration camps.

According to the party, these camps could one day become “*tourist attractions*”.¹⁸ The party was founded after the „*divorce*“ between Ataka's leader Volen Siderov and Valeri Simenov, owner of the racist and antigypsyist television “Skat”, who tried to take over the party, and was not received by Siderov and his family.

NFSB and the Bulgarian National Movement (VMRO), another far-right party, made increasingly hostile and racist statements during the election campaign. They formed a coalition called Patriotic Front. A section of VMRO's program was entitled “*Solving the Gypsy question*” and proposed to address the “*problem*” through mandatory labour for Roma. The program also called for “*voluntary patrols for the protection of the Bulgarian population,*” which, in essence, would be paramilitary groups for vigilantism. The seventh chapter of NFSB's program, entitled “*Treatment of ethnic communities*”, argued that the existence of different ethnicities in Bulgaria threatens the country's national identity. Despite their hateful and discriminatory public speech, the state prosecutors have not interpreted the party's program as being discriminatory or hateful.

“*The programs of NFSB and VMRO do not lead to the conclusion that the coalition incites discrimination, violence or hatred towards the Roma population, but rather calls for their integration and observance of the law,*” said the Appellate Prosecutor's Office – Sofia in its statement. The prosecutor's office stated on the idea of concentration camps: “*Extreme measures in the platform of NFSB such as isolation of the Roma population are provided for persons who refuse to integrate.*” The office refused to start pre-trial investigations in the context of the platforms of the two parties. In April 2013, several organizations sent an open letter to the country's president and other institutions warning of the widespread use of hate speech as a populist tool to attract votes in the parliamentary elections in May 2013. Various Sofia prosecution offices including the regional, district, and appellate offices stated that there was no offense in the positions of the parties, as the specific persons responsible for the texts could not be determined (and criminal liability under Bulgarian law is always personal).

This appears to be a very weak argument. The questioned texts are official party documents and were adopted by the managing authorities of the parties at well-documented meetings. This fact should enable investigators to establish the authors without difficulty.

According to Margarita Ilieva in Dnevnik Media, director of the Legal Defence Programme at the Bulgarian Helsinki Committee, the refusal to conduct an investigation and to hold both the involved parties and their leaders responsible for authoring these texts is providing impunity to both, to the detriment of the law and public interest.

Nowadays, the Patriotic Front as a coalition partner supports the current government. Furthermore, one of its most offensive representatives, Angel Djambazki (deputy chair of VMRO), has been elected as a MEP in the recent elections, who organizes anti-minority rallies.

This happened when VMRO was in a political coalition for “*Bulgaria without censorship*”, which also intended to introduce policy for Roma for involving them in labour forces (following the former communist

¹⁸ Патриотичен фронт – НФСБ и ВМРО, Политическа програма 2014, http://www.nfsb.bg/public/izbori_2014_HC/PF_PROGRAMA_2014_crivi.pdf

policy, where minorities were placed there, to do the heavy work). However, the coalition ended after the elections and the Patriotic Front was formed.

Another offensive speaker of the Patriotic Front is Valeri Simeonov, member of the National Parliament. In December 2014 Valeri Simeonov caused an uproar by having an insulting speech in the Parliament that Roma people had become “*brash, overconfident and ferocious great apes wanting the right to be paid without working*”. He continued by saying, “*Roma people wanted sickness benefits without being ill, child care for children who play with the pigs in the streets and maternal benefits for women with the instinct of street bitches*”.¹⁹

In March 2015 he made similar statement from parliamentary tribune: “*A part of the people from this ethnic group, were also people who used to work and send their children to school 25 years ago. They gave their contribution in creation of overall wellbeing, and now the very same people have turned into arrogant, overly bold and ruthless human-like life forms, ready to murder and to ravage for money.*”²⁰ In 2014, right after Simeonov’s speech the US embassy in Sofia issued a special declaration saying “[...] *today and every day, we call on all members of Bulgarian society to condemn all forms of derogatory speech and to be positive voices in building the type of inclusive society that reflects our shared values and is free of discrimination and intolerance.*”²¹ Later on circa 1000 letters from ordinary citizens were sent to the Chair of the Parliament, which request not to allow such insulting and harmful speeches from the highest tribune of the republic. However, no answer was given and Simenov continues using hate speech and making racist statements toward Roma, despite the existence of parliamentarian rules.

In its Fifth report on Bulgaria, the European Commission against Racism and Intolerance (ECRI) stated:

*“[...] several other smaller ultra-nationalist/fascist political parties and groups operate in Bulgaria, including NFSB (National Front for Salvation of Bulgaria), VMRO-BND (Internal Macedonian Revolutionary Organisation – Bulgarian National Movement) and BNU (Bulgarian National Union). VMRO-BND is notorious for systematically propagating hatred against neighbouring peoples in the Balkans as well as anti-Gypsy propaganda. Yet another extreme nationalist group, the Bulgarian Nationalist Party attempted to register in November 2013 as a political party. Its members have come together from groups such as Blood and Honour, but also from other political parties including Ataka and VMRO-BND. ECRI is deeply concerned about the ease of official recognition of extremist parties as well as the possibility for them to receive State subsidies (see also §§ 25-26). It seems also that there are a growing number of such groups which engage in racist and intolerant hate speech.”*²²

LOCAL REFERENDUM IN KYUSTENDIL – ROMA RESIDENTS’ VOTES “TURNED OFF”

“*I have always said that there is a need of equality in politics and think that my two mandates as mayor are enough as motive to call a local referendum,*” Mayor of Kyustendil Petar Paunov explained on his plan to initiate a local referendum to ask citizens whether he should run for a third mandate in Bulgaria’s local elections in the fall of 2015. An interesting fact with regard to the local referendum is that the citizens of Roma origin were excluded from the public poll.²³ Asked to comment on this issue the mayor claimed: “*All single news on elections days are connected to vote buying. We do not want to discredit the poll.*”

He stated that on the voting day there would be a list of the people who could vote deposited at the polling stations and if the ID card of the voter stated any of the streets in the Iztok residential quarter, which is

¹⁹ <http://www.parliament.bg/bg/plenaryst/ns/51/ID/5328>

²⁰ <http://www.parliament.bg/bg/plenaryst/ns/51/ID/5357>

²¹ http://bulgaria.usembassy.gov/issues_12182014.html

²² <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Bulgaria/BGR-CbC-V-2014-036-ENG.pdf>

²³ <http://www.romea.cz/en/news/bulgaria-mayor-plans-referendum-in-which-roma-cannot-vote>

inhabited by Roma people, they would not be allowed to cast a vote. “*There are criminal activities registered in this residential quarter during elections,*” the mayor remarked, adding that this was not a case of discrimination. In his words, discrimination is depriving someone from the right of education and work. He added that the measure aimed at avoiding elections rigging. Paunov commented further that some 30,000 ballot papers would be printed for the referendum. “*I am the only mayor elected without the votes of the Roma citizens,*” he continued. It is not the first clash of Paunov with Roma. In 2011 he moved the voting sections from the Roma neighborhood to schools which are about 2 km far away from the quarter²⁴ and got the support of Maya Manolova²⁵, at that time Member of Parliament and currently Ombudsman of Bulgaria. In Bulgaria, politicians publicly announce that they are not elected with the votes of Roma or that at least the Roma votes do not play a big role in their election campaigns as a public information strategy. The media promotes the idea that getting Roma votes is not prestigious despite the fact that there is a general problem with purchased votes and election frauds. For instance, during the campaign of preliminary elections in 2014 residents of Bobovdol municipality fought for meat at the shop of their employer whose party was part of the coalition Bulgaria without censorship.²⁶ However, during the election campaigns all political parties fought for Roma votes secretly through illegal tools – vote buying, vote controlling and fear. It is easier to receive votes of politically illiterate and economically disadvantaged people than by targeting and convincing politically educated and wealthier citizens. This is the opinion of the author after Paunov’s statements and public communication; moreover, members of the Commission for protection against discrimination took their own initiative.²⁷ Nonetheless, there is no development in the case yet. Meanwhile, the municipality of Kyustendil is working on school desegregation in the Roma quarter and allocates money for that purpose each fiscal year.²⁸ The referendum result was that Paunov ran for a third mandate. GERB and the Reformatorski block supported him. He won by a large percentage and started his third mandate as mayor of Kyustendil municipality.

The exclusion of Kyustendil’s Roma from the local political referendum was a test reflecting the strong desire of many politicians and political parties to respond to the Bulgarian majority’s fear that Roma votes can be decisive for the final result of any elections in Bulgaria. Therefore, many political parties introduce different ideas for Roma exclusion. The introduction of educational qualification for voters is the most popular proposal for limiting electoral rights. This measure may affect mainly Roma who drop out from school at an early age for a variety of reasons (school segregation, an educational system designed for ethnic Bulgarians, marginalization, poverty etc.). Despite the fact that it contradicts the International Covenant on Civil and Political Rights of the United Nations “[...]to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors” the demand gains a great popularity.²⁹ Nevertheless, mainstream politicians legitimize the topic of Roma voter exclusion by discussing it publicly, too.

Bulgaria has an historical background in this regard. In 1901, the decree 271 of Knyaz Ferdinand entered into force – a “*Law amending the electoral law*”, which took away the voting rights of “*Gypsy non-Christians, and all those Gypsies who are not domiciled*”³⁰. This continued until 1919 when *The Treaty of Neuilly-sur-Seine* automatically lifted this act. Since Bulgaria lost the First World War the country was obliged to observe the principles of the League of Nations – the predecessor of the United Nations.

More precisely, the treaty “*ensured complete equality of all minorities living in Bulgaria. Bulgarian state will not discriminate on religious, language, racial and national basis. Ethnic groups in Bulgaria will be free to perform*

²⁴ http://dariknews.bg/view_article.php?article_id=679782

²⁵ http://dariknews.bg/view_article.php?article_id=680106

²⁶ <http://www.vesti.bg/bulgaria/obshtestvo/v-bobov-dol-voiuvat-za-kilo-meso-ot-magazina-na-kovachki-6013204>

²⁷ <http://www.marginalia.bg/novini/chlen-na-kzd-predlaga-samoseziraneto-zaradi-referenduma-v-kyustendil/>

²⁸ http://kuber-press.com/fullnews.php?id_news=24714

²⁹ International Covenant on Civil and Political Rights, General Assembly of UN, December 16, 1966, Article 25, b

³⁰ <https://www.24chasa.bg/Article/3236391>

their religious obligations and as well as other Bulgarian citizens will not be subjected to discrimination in the enjoyment of their civil and political rights" (The Treaty of Neuilly-sur-Seine). According to historians, The Treaty of Neuilly-sur-Seine has been seen as one the worst treaties for Bulgaria since its liberation from the Ottoman Empire, as it stipulates and concerns the territorial integrity of Bulgaria. However, it has had positive consequences for the minorities in Bulgaria. This case demonstrates the importance of international authorities' reactions on human rights violation, as in the case in Kyustendil.

POSSIBLE FURTHER STEPS

The European Court of Human Rights (ECHR) is consistent on hate crime. Hate speech does not enjoy the protection of freedom of expression guaranteed by Article 10 of the European Convention on Human Rights and sanctions imposed at national level against speakers of hatred are necessary in a democratic society and encouraged by the Court³¹.

"Legal action and public debate, public debate and legal action. And intolerance of the professional community of journalists to its members who allow themselves to make a profit from the populist hostility to Roma and other minorities disliked by offering the media market the 'hate speech'. Too many media selling expensive advertising space on air, attracting audiences with racist speech. So far, however, we do not know the ethical committees of the media have done something about it. We cannot forget that hate crimes are a result of the attitudes of hatred and they are shaped by hate speech. There is no freedom of expression of hatred in Europe. It is beyond free speech",

states Margarita Ilieva³² about how we may overcome racism in an interview for to Dnevnik Media.

It is clear that for political and other reasons victims do not receive the adequate protection they are entitled to according to the Bulgarian laws. They are forced to enforce their rights at the ECHR in Strasbourg, where the countries are convicted. Some of the victims turn to external factors that could affect the decisions of the Bulgarian institutions. However, it does not lead to improvements of the judicial process and outcomes in Bulgaria. To the contrary, the state pays its imposed sanctions, the responsible institutions continue to deal in corrupted ways and do not take into consideration the recommendations of international authorities such as the European Commission and Council of Europe. According to decisions of the prosecution there must be consequent investigations of hate speech, murders, pogroms, and violence.

Since the recent government was formed there is ongoing debate on judicial reform in Bulgaria. However, hate speech and racism have never been addressed as part of the debates for judicial reform, even though Bulgaria receives expert judicial recommendations from ECRI, EHRC, and OSCE etc. for combating hate speech and hate crimes. External and state experts of the judicial reform should be reminded of this through the progress reports in Bulgaria, which assess progress under the Cooperation and Verification Mechanism. The infringement procedure is another strong tool that the European Commission also may use in particular proven and investigated cases. On EU level the European Commission should treat all threats equally. In this regard, the EC should plan adequate measures as it does on relevant identical issues. On 1 December 2015, the First Vice-President Frans Timmermans and Justice Commissioner Věra Jourová appointed a coordinator on combating antisemitism and a coordinator on combating anti-Muslim hatred, as announced in the Commission's First Annual Colloquium on Fundamental Rights held in October.³³

³¹ <http://www.aej-bulgaria.org/bul/p.php?post=4450>

³² <http://www.ejjc.org/46>

³³ http://ec.europa.eu/justice/newsroom/fundamental-rights/news/151201_en.htm

At present there is no objective reason to avoid or postpone the appointment of a coordinator on combating antigypsyism by the EC. To the contrary, there is an urgent need for such measures at the highest political and administrative level.

The prosecutors who work on hate speech and hate crime cases have to be encouraged in their work, just like they are when dealing with and completing hooliganism cases. Raising the awareness on racism, discrimination and hate speech through practical training within the judicial system is crucial for combating hate speech and racism toward minorities in election campaigns but not only in these cases. The denial of prosecutors to investigate racially motivated crimes is based on a weak argumentation, which leads to the fact that these cases are transferred to EHRC and, finally, to the condemnation of the Republic of Bulgaria. Furthermore, the Law faculties also should introduce new subjects on the investigation of racism and hate speech in the political rhetoric.

The responsibilities of the Commission for Protection against Discrimination (CPD) should be expanded. Currently, it is treating the verbal racism toward Roma as a type of discrimination – verbal harassment. However, in many cases it is hard to prove that the appellant was verbally harassed. CPD functions in compliance with the Paris Principles and Recommendation No.2 of ECRI. The Commission has a broad mandate, providing protection on nineteen grounds listed in Article 4 of the Protection against Discrimination Act and has preventive and awareness-raising functions on equality and tolerance issues. CPD issues legally binding decisions and imposes compulsory administrative measures – mandatory instructions for termination and prevention of discrimination or for restoration of the initial situation. CPD also monitors their implementation. The organization is a predominantly quasi-judicial body. There are no concrete criteria for selecting the Commissioners. Five of them are voted by the Parliament and four are nominated directly by the President of Bulgaria. In its current shape CPD is not capable of dealing with racism and hate speech during the upcoming election campaigns. In sum, CPD needs urgent administrative and functional reform.

The European Union Fundamental Rights Agency should to collaborate with the Association of European Journalists on a manual development and organize various periodical trainings for journalists and editors moderating political debates in election campaigns, as well as on avoiding racial statements and prevention of hate speech toward particular groups in the society. To a large extent, media along with politicians reinforce ethnic nationalism as an ideology and practice, and ethnocentrism as a basic attitude. This reconfirms the lower social status of minority ethnic communities, threatening the equality between the majority population and ethnic and religious minorities, in particular, the Roma.³⁴

Lately, various political parties and political leaders use hate speech in their election campaign without any concern for insulting the human dignity of particular minority groups. Even more striking is the fact that afterwards mainstream political parties end in governing coalitions with openly fascist parties. European People's Party (EPP) chief, Joseph Daul, has warned the leader of the Bulgarian sister party, Boyko Borissov (who emerged as winner of the 5 October (2014) preliminary parliamentary election), not to include the nationalist "Patriotic Front" in the future governing coalition.³⁵ However, after EPP's leader Daul left Bulgaria, GERB, and the Patriotic Front agreed on forming a new government.³⁶ Currently, the government still relies on the support of the Patriotic front. The previous government was of BSP, which is a member of the Party of European Socialists (PES) and DPS, member Alliance of Liberals and Democrats for Europe Party (ALDE). However, the government with Prime Minister Plamen Oresharski was formed with the support of the far-right party Ataka and relied on its votes in the recent legislation process.

³⁴ „Асоциация Интегро“, Образът на ромите в шест електронни медии, Разград, 2015, проект „Curbing anti-Gypsyism from local to European levels”

³⁵ <http://www.euractiv.com/sections/elections/epp-warns-bulgarias-borissov-not-include-nationalists-coalition-309660>

³⁶ <http://www.novinite.com/articles/164147/Bulgaria's+GERB,+Patriotic+Front+Agree+on+Forming+New+Government>

These two cases might be qualified as “*feckless pluralism*”.³⁷ Until now there have been no consequences for GERB, BSP, DPS nor for the Reformatorski block coalition. Finger wagging or scolding are not effective ways to prevent similar political deviations in the future. To the contrary, the lack of real countermeasures strengthens such ruling political coalitions as sustainable models of governing.

Ognyan Isaev works for the Roma Education Fund as country facilitator for Bulgaria. He holds a degree in journalism from Shumen University, a master degree in psychology from the University of Veliko Tarnovo, as well as a degree from the Bulgarian School of Politics in Sofia. For several years he has monitored hate speech in the Bulgarian media, and analyzed antigypsyism in society and institutions.

³⁷ Carothers, Thomas. “The End of the Transition Paradigm.” *Journal of Democracy* (2002).

GWENDOLYN ALBERT

ANTIGYPSYISM DURING THE 2016- 2017 ELECTION CAMPAIGNS IN THE CZECH REPUBLIC

The Czech Republic is coming to the end of a marathon sprint of elections. Within the past year, voters have turned out to elect representatives to regional authorities and both houses of the Czech Parliament. Now negotiations are underway to shape the next government, and for the first time a large number of “anti-establishment” parties are slated to take control.

Antigypsyism has been a key theme during all of these elections and will undoubtedly be a theme of the presidential elections in January 2018. For that contest the incumbent, Mr Zeman, has a head start on playing the antigypsyist card, having recently asserted that he does not want to see the pig farm removed from the site of the former WWII-era concentration camp for Romani people, Lety u Písku, because he considers such a move a waste of state resources.

Antigypsyist rhetoric is brandished by all politicians here wishing to establish their nationalist credentials and to demonstrate their lack of “political correctness”. The only party that has refused to engage in such tactics and instead advocated for a discourse of equality, the Green Party, has suffered an unequivocal defeat in every contest undertaken this past year.

In almost every Czech party there is at least one politician who makes sure to hint from time to time that he or she believes sending Romani people to such camps as was done in the “good old days” is a fine idea. The 2017 lower house outcome has been brewing since the 2016 elections to the Senate (although just 15.4 % of the electorate bothered to turn out to seat representatives in the upper house). Below is a party-by-party description of the electoral gains connected to the use of antigypsyist sentiment.

SEVEROČEŠI.CZ PARTY (“NORTHBOHEMIANS.CZ”)

Anti-establishment parties made quite noticeable gains in the Senate last year, with Senator Jaroslav Doubrava’s Severočeši.cz party (“NorthBohemians.cz”) winning re-election with 57.89 % of the vote, and his colleague Alena Dernerová winning with 70.81 % of the vote, an almost unheard-of result. Both politicians are known for deploying generalized, stereotypical assertions about Romani people in order to score political points.

CHRISTIAN DEMOCRATS

In the 2016 regional assembly elections, Jiří Čunek, running for the Christian Democrats, scored a significant success in the Zlín Region, which he now governs. Starting 10 years ago, his political rise from the local to the national level has been entirely based on evicting Romani people and making politically incorrect statements about them. While he does not profile himself as an ultra-right extremist, his continuing membership in the Christian Democrats is a serious problem for that party's moral reputation among those who believe in equal treatment.

FREEDOM AND DIRECT DEMOCRACY

Tomio Okamura's SPD ("Freedom and Direct Democracy") movement is a populist, right-wing party building on hatred of all that is not "Czech". It has just shocked observers by entering the lower house in 2017 for the first time. The party combined hints of antigypsyism, Islamophobia and nationalism in the 2016 regional contest to attract votes away from the right-wing extremist parties that campaigned bluntly, single-mindedly and unsuccessfully against alleged "threats" to society such as immigrants in general or radical Islamists.

ANO

The main victor of the 2016 regional and Senate elections, of course, is the party that is now also the 2017 winner in the lower house, ANO. Last year its chair, Andrej Babiš (who is under investigation for subsidy fraud) made sure to make a colloquial, undignified reference to the way the so-called "Gypsy Camp" at Lety u Písku functioned during WWII. When he was criticized for his remarks, he visited the former concentration camp site (that same one with the pig farm still on it) to pay his respects carrying a bouquet of long-stemmed red roses, and then made sure to reference alleged Romani "parasitism" while he was there, to the delight of the tabloids.

SOCIAL DEMOCRATS

In the Ústecký Region, the Social Democrats' candidate list for the 2016 regional and Senate elections was led by Jaroslav Foldyna, the man who convened one of the first anti-Romani demonstrations in the Šluknov region in 2011 that deteriorated into violence. Foldyna is now the lone politician from his party left standing from his region in the Czech lower house. His response to the Social Democrats (one of the longest-lived pillars of Czech politics) losing the helm of government was to make racist verbal attacks against Romani people, continuing antigypsyist campaign rhetoric in which he accused Romani people of abusing the foster parent system. He also said the Social Democrats should have done more to win over voters who cast ballots for Okamura's party instead. Most remarkably, he also said he was "pissed off" at the news server Romea.cz¹, which reports on human rights and minority-related issues, because it gives "room to Romani people to say vulgar things about the majority...".

CIVIC DEMOCRATIC PARTY

Legislation eventually enacted as a result of such antigypsyist posturing sometimes receives a response of outrage once the Czech public realizes the provisions will apply to them, too, and not just to Romani people, as they anticipated. One year ago an amendment to the law on misdemeanors took effect requiring municipalities to approve ordinances defining in more detail what it means to disrupt nighttime quiet. The high level of the fines and other sanctions to be instituted for committing such an offense, including the option to ban somebody from local residence, sparked a general backlash, with some commentators calling the legislation more draconian than anything that ever applied during totalitarian rule.

¹ <http://www.romea.cz/en/news/czech/czech-mp-embittered-by-his-party-s-loss-curses-news-server-romea-cz-and-roma-in-general>

The law is a result of antigypsyist messaging by the Civic Democratic Party (ODS) dating back to 2011, and their ideas enjoyed widespread support as long as they were discussed as being necessary because of “Gypsies” and “inadaptables”. Now the rest of the public is expressing amazement that they, too, could find themselves targeted by this very legislation.

The ODS party’s recent second-place showing in the lower house elections (which, at 11.32 %, was a full 18 percentage points behind ANO) was preceded by their successful use in last fall’s regional elections of the antigypsyist slogan “*Gadje*, get to work” in the Ústecký Region (the term “*gadje*” in Romanes refers to non-Romani people). That campaign revived a racist slogan from 2008 and used it in a video published on Facebook which opens by asking: “Hey, *gadje*, why do you have time to sit down? Get to work so we’ll have enough money for welfare!” The video then shows a Romani man entering a gambling room and losing all of his money (supposedly from welfare) at the slot machines together with other Roma.

In the town of Obrnice in that same region, which is approximately 40 % Romani, the ODS won with almost 30 % of the vote in the 2016 regional contest. The lower house results have now put the ODS party in second place there at 25.46 % (with ANO coming in at 31.01 %). Drahomíra Miklošová, the Mayor of Obrnice, ran in second place on the ODS regional candidate list last year; in 2013 she was given an award² by the Council of Europe for enacting policies that ostensibly set a good example on Romani integration. Whatever the actual situation in Obrnice, its mayor remains a member of a party that exploits antigypsyist propaganda, and she is also an enthusiastic supporter of municipalities being able to ban individuals from residency if they rack up misdemeanor offenses. The mayor has told the media in no uncertain terms that “I want to decide who we can register here and who not.” Such strong-arm statements are of course a winning proposition in the Czech context, where opinion polls continue to show that 80 % of the population holds views of animosity toward the Roma.

REWARDS OF ANTIGYPSYISM

Czech politicians enjoy both impunity and reward in the court of public opinion for their antigypsyism despite the existence of antidiscrimination norms and laws against defamation, Holocaust denial, and incitement. So many non-Romani people assume that they, too, may yet prove to be above the law when expressing such views. This cavalier attitude to the law may also explain the many voters who seem to be unfazed by the fact that their next Prime Minister is on the verge of prosecution.

While human rights activists, Romani activists, and citizens generally do push back against these kinds of statements, usually on social media, when politicians comment on each other’s antigypsyism, it is usually only ever to reinforce it. There is little evidence that critiquing bigoted behavior on the Czech political scene will ever get one elected.

Gwendolyn Albert is a human rights activist who is an ally of the Romani minority. She has reported to the Council of Europe, the Contact Point for Roma and Sinti at OSCE/ODIHR, the European Commission, and the United Nations on human rights issues affecting this minority in Europe. A graduate of the University of California at Berkeley, she collaborates with the European Roma Grassroots Organizations network, the European Roma Rights Centre, the Open Society Foundations, and the Group of Women Harmed by Forced Sterilization in the Czech Republic.

² <http://www.romea.cz/en/news/czech/czech-town-of-obrnice-receives-award-in-strasbourg-for-romani-integration-projects>

Roma and Sinti in Europe are frequently targeted by racism, hate speech, and incitement, in particular during election campaigns. Politicians and political parties not only from far-right but also from mainstream political parties often draw on resentment and prejudice against Roma and Sinti. They do so in order to win votes through populist strategies and the scapegoating of minorities. The steady repetition of racist public discourse during election campaigns maintains a high level of stigmatization, racism, antigypsyism, antisemitism, islamophobia, and hate speech within politics, media, and society. Therefore, the Central Council of German Sinti and Roma urges politicians and institutions to strengthen their political commitment to sanction any form of hate speech, racism and antigypsyism in the public discourse.

This publication aims to present examples of hate speech, racism, and incitement against Roma and Sinti in public discourses and election campaigns with case studies from Germany, Slovakia, Spain, Hungary, Bulgaria and Czech Republic. The publication intends to encourage debate on the need of political commitment and the use of existing legal and political tools in order to sanction racism and incitement in the European Union and in Member States' election campaigns.