



Failure to adequately investigate threats and insults made during anti-Roma march in Hungary

In today's **Chamber** judgment¹ in the case of **R.B. v. Hungary** (application no. 64602/12) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights on account of the inadequate investigation into the applicant's allegations of racially motivated abuse.

The case concerned the complaint by a woman of Roma origin that she had been subjected to racist insults and threats by participants in an anti-Roma march and that the authorities had failed to investigate the racist verbal abuse.

The Court considered in particular that, given that the insults and acts in question had taken place during an anti-Roma march and had come from a member of an extremely right-wing vigilante group, the authorities should have conducted the investigation in that specific context. However, they had failed to take all reasonable steps to establish the role of racist motives.

Principal facts

The applicant, Ms R.B., is a Hungarian national who was born in 1988 and lives in the village of Gyöngyöspata (Hungary).

Over a period of several days in March 2011 a civil guard association and two right-wing paramilitary groups organised marches in the Roma neighbourhood of Gyöngyöspata in the context of a demonstration held in the village by a right-wing political party. On the days of the marches there was a considerable police presence in the village. On the day of one of the marches, four men passed by Ms R.B.'s house – while she was outside in her garden with her child and several acquaintances – yelling “Go inside, you damned dirty gypsies!” One of the men threatened her and her acquaintances that he would build a house in the Roma neighbourhood “out of their blood” and stepped towards the fence swinging an axe in her direction.

In April 2011 Ms R.B. lodged a criminal complaint with the police against unknown perpetrators, alleging the offences of violence against a member of an ethnic group, harassment and attempted grievous bodily assault. The police opened an investigation on charges of violent harassment, which was later joined to criminal proceedings on charges of harassment which had been opened following a complaint lodged by the president of the local Roma minority self-governing body. The proceedings were discontinued in July 2011 on the grounds that harassment was punishable only if directed against a clearly identified person and that criminal liability could not be established on the basis of threats uttered in general.

In subsequent minor offence proceedings, which were later stayed, a number of witnesses were heard who identified several persons as having participated in the incident. Ms R.B. identified one man as the person who had threatened her. In October 2011 the prosecutor's office opened a

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

separate investigation into the allegations of harassment on the basis of her complaint. A request by her lawyer to open an investigation into the offence of violence against a member of an ethnic group was refused by the prosecutor, finding that the use of force, an objective element of the alleged crime, could not be established. The investigation into harassment was eventually discontinued, on the grounds that none of the witness statements supported Ms R.B.'s allegation that she had been threatened. The decision was upheld in March 2012.

Subsequent private prosecution proceedings brought by Ms R.B. were eventually discontinued since she withdrew her charges for fear of reprisals.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) read alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention, Ms R.B. complained of the verbal abuse and threats to which she had been subjected and maintained that the authorities had failed to conduct an effective investigation into the incident. She further relied on Article 8 (right to respect for private and family life), complaining: that the authorities had failed to apply relevant, in particular criminal-law, measures against the participants of the marches, so as to protect her from racist harassment; and that the authorities had failed to investigate the racist verbal abuse.

The application was lodged with the European Court of Human Rights on 2 October 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **de Gaetano** (Malta), *President*,
András **Sajó** (Hungary),
Boštjan M. **Zupančič** (Slovenia),
Nona **Tsotsoria** (Georgia),
Paulo **Pinto de Albuquerque** (Portugal),
Krzysztof **Wojtyczek** (Poland),
Gabriele **Kucsko-Stadlmayer** (Austria),

and also Françoise **Elens-Passos**, *Deputy Registrar*.

Decision of the Court

Article 8

As regards the complaint concerning the authorities' failure to carry out an effective investigation, the central issue for the Court was that the alleged abuse which had occurred during the anti-Roma rally had been directed against Ms R.B. for her belonging to an ethnic minority. That conduct had necessarily affected her private life within the meaning of Article 8.

Ms R.B. had lodged her criminal complaint into the verbal abuse and threats less than a month after the incident, in April 2011. The police had joined her case to another criminal complaint concerning the same events and had opened an investigation into the offence of harassment, which was subsequently discontinued. A separate investigation into her allegations had been opened six months later. In the initial criminal complaint Ms R.B. had already submitted that she had been victim of a racially motivated attack, alleging that it had constituted, in particular, violence against a member of a group and harassment. Nonetheless, in the reinitiated investigation the law-enforcement authorities had again concentrated only on harassment.

When subsequently requesting to have the scope of the investigation extended to the offence of violence against a member of an ethnic group, Ms R.B.'s representative had submitted a detailed description of the events and had argued that the anti-Roma motive should have been assessed in

the investigation. However, those submissions had been to no avail, the prosecutor finding that the use of force, an objective element of the alleged crime, could not be established.

Given that the insults and acts in question had taken place during an anti-Roma rally lasting for several days and had come from a member of an extremely right-wing vigilante group, the Court considered that it would have been essential for the authorities to conduct the investigation in that specific context and to take all reasonable steps to establish the role of racist motives. Moreover, the Court noted that the Hungarian criminal law, as in force at the time, namely the provisions on the offences of violence against a member of a group and incitement against a group appeared to provide an appropriate legal basis for launching a criminal investigation into alleged bias motives. However, in Ms R.B.'s case, the law-enforcement authorities had found that an objective element of the crime of violence against a member of a group could not be established and there were no grounds to pursue the investigations into that offence. The Court also observes that the provision of the Criminal Code on harassment, on which the authorities had focused, did not contain any element alluding to racist motives.

In conclusion, the manner in which the criminal law had been applied in the case had been defective, with the result that there had not been an adequate investigation into Ms R.B.'s complaint of racially motivated abuse. There had accordingly been a **violation of Article 8**.

At the same time, the Court **declared inadmissible the complaint under Article 8 concerning the authorities' inaction during the rallies** as being manifestly ill-founded, coming to the conclusion that there had been no appearance of an unreasonable response by the police to the demonstrations.

Article 3 and Article 14

The Court also declared **inadmissible Ms R.B.'s complaint under Article 3 read alone or in conjunction with Article 14** as being manifestly ill-founded. While the right-wing groups had been present in her neighbourhood for several days, they had been continuously monitored by the police. No physical confrontation had taken place between the Roma inhabitants and the demonstrators. The statements and acts by one of the demonstrators, although openly discriminatory and performed in the context of marches with intolerant overtones, had not been so severe as to cause the kind of fear, anguish or feelings of inferiority that were necessary for a complaint to fall within the scope of Article 3.

Just satisfaction (Article 41)

The Court held that Hungary was to pay Ms R.B. 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,717 in respect of costs and expenses.

Separate opinion

Judge Wojtyczek expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.