

**STATE RESPONSES TO HATE CRIME AND VIOLENCE AGAINST ROMA IN  
HUNGARY AND ROMANIA: LESSONS LEARNT FROM THE US EXPERIENCE**

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Human Rights LL.M. Thesis

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## INTRODUCTION

Roma ethnic minority is one of the groups facing major discrimination, abuse and violation of human rights throughout Europe. 25% to 60% of the interviewed Roma, in the 11 countries included in the EU Fundamental Rights Agency survey<sup>1</sup>, declared they have experienced discrimination on ethnic grounds. Roma face discrimination in areas such as education, access to health care services, access to employment, and access to adequate housing<sup>2</sup>. Further, in many European countries they are the target of far right extremist groups, which harass or even attack entire Roma communities and individuals<sup>3</sup>.

35 interethnic conflicts existed in Romania, back at the beginning of the 1990's, according to Romani CRISS organization<sup>4</sup>. These conflicts have caused the loss of human lives, as well as whole Roma settlements to be burnt down. The European Court of Human Rights (ECtHR) has ruled on three of such cases<sup>5</sup>. The ECtHR hasn't ruled on the events as such, as the Convention wasn't ratified by Romania at the moment of the conflicts. However, the Court's decisions reflect relevant aspects with regard to the conflicts and to their impact on the housing conditions and on the relations with the authorities. The implementation of the ECtHR decisions was very difficult, which was an upsetting signal on how seriously the Romanian Government takes the Roma issue.

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<sup>1</sup> EU Fundamental Rights Agency, *The Situation Of Roma In 11 States- Roma At A Glance*, (2012)

<sup>2</sup> Ibid, 5

<sup>3</sup> European Grassroots Against Racism Movement, *The Manifest Of EGAM*, (August 2011), available at: <http://egam-eu.blogspot.Hu/2011/08/manifest-of-rgam.Html>

<sup>4</sup> Romani CRISS, *Interethnic Conflicts: From Collective Violence To Governmental Programs*, (Conference Report, September 2007), 5, available in Romanian at:

<http://www.romanicriss.org/raport%20intalnire%20conflicte%20interetnice%20sep%202007%20draft%201.pdf>

<sup>5</sup> *Moldovan v. Romania (Hadareni Case)*, *Kalanyos V. Romania (Plaiesii de Sus case)*, *Gergely V. Romania (Casinul Nou case)*

In 2007 and 2009, continuous tensions between Roma and non-Roma have given rise to new incidents<sup>6</sup> in Romania. When discussing the case studies, an overview of causes of tensions in the early 1990s and late 2000s, in a comparative perspective, will be included.

The situation of the Roma in Hungary is not positively different from the one in Romania. Following anti-Romani actions in the early 1990s by Albert Szabó and extremists organising around him (the skin head movement), ordinary people who organized against Roma have been joined by very organized extremist groups. Their action led even to serial killings motivated by hate, in 2009<sup>7</sup>. Several Localities - including Verőce and Nagybörzsön in Hungary have been affected by interethnic tensions, and even conflicts, which led to various state actions<sup>8</sup>.

This particular issue of Roma in Europe can be looked at from the perspective and history of the US civil rights movement and its response to the Ku Klux Klan actions. US succeeded to „damage the Klan’s credibility”<sup>9</sup>, through court cases. The state response, in this case, was by engaging courts to effectively investigate the murders. Courts solely, however, cannot cause a significant change. It was the civil rights movement that generated the state’s response. For example, Southern Poverty Law Centre achieved to hold responsible the Ku Klux Klan, relying on the civil law principle of holding accountable organizations for what its members commit.

The thesis is seeking answers to the question of what were the factors that influenced the hate crime and violence victims’ quest for justice. The thesis will focus on these two

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<sup>6</sup> Apata, Sanmartin And Sancraieni.

<sup>7</sup> European Roma Rights Center, *European Roma Rights Centre Calls for Vigorous Investigation and Prosecution of Perpetrators of Hate Crime in Hungary*, (2009), letter available in English, here: <http://www.errc.org/cms/upload/media/03/b1/m000003b1.pdf>

<sup>8</sup> Balogh Lidia, “*Interethnic Conflict And Violence In Contemporary Hungary*”, CEU Nationalism Studies Master Thesis, 2009

<sup>9</sup> Lanham, MD: Rowman & Littlefield, “*Backfire: How The Ku Klux Klan Helped The Civil Rights Movement*” 2003, Reviewed By Joseph J. Wydeven, Bellevue University, African American Review, Vol. 38, No 4, 2004.

countries, Romania and Hungary, as the situations are comparable from various angles, presenting similarities, as well as significant differences. It is useful to see the experiences of the two countries as to seek prevention tools.

The issue of hate crime and violence against Roma is frequent in different countries in Europe, presently. A recent EU Fundamental Rights Agency survey shows that 18% of the Roma respondents have faced “at least one racially motivated crime in the last 12 months”<sup>10</sup>. Although there are extremist groups in Romania as well, their actions have not reached the level of those in Hungary, or Czech Republic, for instance.

The U.S. experience is relevant for the current situation in the two countries, as it can propose answers to the question of how can and should the states react to the challenge of hate crime, particularly from the legal perspective.

States are not the only actors whose responses will be analysed, but also the civil society. Besides the analysis of the states’ actions and reactions, the thesis will have an overview on how the US civil rights movement has reacted to the racial violence incidence and what changes it has produced in the state’s approach. The comparative perspective of the thesis will emphasize what would have worked and what should work for Romania and Hungary cases, bearing in mind the US example.

This is a current issue, while in various places in Europe hate against Roma is determining violence from the side of both ordinary non-Roma communities, as well as from extremist, organized groups. It is the proper time that a country such as Hungary, where already serial killings on ethnic grounds have occurred, to examine what lessons can be learnt from those experiences, as well as from experiences as those in the US. It is also an adequate

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<sup>10</sup> EU Fundamental Rights Agency Press Release, “*Hate Crime Is a Reality in The EU, the two new FRA Reports show*”, (Vienna, 2012)

time that a country such as Romania develops actions to prevent emerging popular violence against Roma, as well as emerging extremist voices which fuel up the public hate against Roma.

The first chapter aims at setting the background for the thesis. The reader will be introduced to the main events in Roma history, particularly in Romanian and Hungarian contexts. This section briefly introduces historical data, referring to Roma in Romania and Hungary, focusing primarily on how historical events have influenced the perception of the majority with regard to Roma. Historical events such as the slavery in Romanian territories, the Holocaust and deportation of Roma, are presented from the perspective of their impact on the society's perception of Roma. The communist regime in the two countries and its role on interethnic relations is also portrayed in this section. As the Roma is, atypically, a stateless nation, it is significantly important to see how they have been received by countries such as Hungary and Romania. It is relevant for the purpose of the thesis to see how the majority populations in both countries have perceived Roma as “newcomers” or “outsiders”, and how that influenced what happened to Roma people throughout history, as well as their current status.

While there is significant literature focusing on the causes of hate crime, anti-Gypsyism and prejudice against Roma, in general, there is no analysis on what the states' responses were or should be, especially from a comparative perspective. A literature review section will be included in the *Background* chapter.

The second chapter focuses on defining, according to existent literature, key concepts which will be used throughout the thesis: hate crime, inter-ethnic violence, inter-ethnic conflict or inter-ethnic tension, legal redress or remedies.



The second chapter further addresses the legal provisions on hate crime in each country and their effectiveness (Romania, Hungary and U.S). This chapter will analyse at whether the legal provisions are appropriate in order to respond adequately to hate crimes.

The third chapter will start building answers to the research question, by looking on how hate-crime legislation is being implemented, how effective it is and especially why it works the way it does in each compared state. The international pressure on the states to address hate crime and violence targeting Roma will also be analysed, particularly from the perspective of its effect on the existent legislation.

The third chapter further brings to discussion the interethnic relations in Hungary and Romania, in a comparative perspective. The *de facto* situation in each country will be presented, by briefly mentioning well-known incidents (either hate crime incidents or inter-ethnic conflicts). This chapter will look at how the legal system has worked particularly, for victims of hate crime and violence of the two case studies analysed. It will assess the effectiveness of the juridical approaches of the states, by looking at the police, prosecution and courts responses.

Finally, the fourth chapter looks at what the role of the civil society was and is in ensuring victims access adequate remedies. It firstly looks at what was the impact of regional and international pressure on how the civil society articulated their reactions. Actions of Roma self-organizing and non-Roma organizations will be analysed. Secondly, it looks on the legal approaches of the civil society, in all three jurisdictions. Thirdly, it reviews the civil rights movement's role in addressing mass racial violence in U.S. The comparative focus of this chapter is the lack of mass movements of Roma, unlike the U.S. African-American experience in order to highlight whether such Roma mass movement would make a difference in responding to hate crime and violence.

With regard to methodological aspects, existent literature is reviewed with respect to each sub-topic of the thesis. The details on the hate crime and violence incidents have been analysed from NGOs public reports on their legal and advocacy work<sup>11</sup>. The NGOs submissions to international human rights bodies have also been analysed. Data protection of the victims was ensured – personal data of the victims, witnesses and parties which was included in the consulted sources, has not been included in any of the thesis' chapters.

Finally, as a clarification on the terminology used, the present thesis uses only the term “*Roma*” to denominate the ethnic minority it refers to, and only occasionally the term “*Gypsy*”, when citing the work of other authors. “*Gypsy*” will also be used when referring to the phenomenon “*anti-gypsyism*”, as some experts, and even European organizations and institutions use it<sup>12</sup> use it. However, when making own observations and comments, which are not attributed to other authors, the term “*anti-Roma*” is used. The reason for this choice of terms is, first of all, that the term “*Gypsy*” was created out of a mistaken belief on the origin of the Roma, who were thought to be Egyptians<sup>13</sup>. Second of all, using “*Gypsy*”, as well as equivalents in other languages, has gained a historically pejorative meaning, being used in negative contexts. “*Tigan*”, in Romanian, for instance, comes from the Greek “*athinganoi*”, which means “*untouchable*”. “*Tigan*” was, for centuries, synonym of “slave”. Further, numerous Romanian expressions use “*tigan*” to describe human flaws, or bad habits. Not only because of political correctness, but also for respecting the human dignity of Roma, the term “*Roma*” will be used in this thesis.

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<sup>11</sup> Romani CRISS, for Romania and European Roma Rights Centre, for Hungary

<sup>12</sup> European Commission against Racism And Intolerance uses the Term of “Anti-Gypsyism”

<sup>13</sup> Further explanations are developed in the section “Historical And Social Context Of Roma In Romania And Hungary”.

## CHAPTER ONE: BACKGROUND

### SECTION 1: HISTORICAL CONTEXT OF ROMA IN ROMANIA AND HUNGARY

#### 1.1.1. Origin of the Roma

Having a look on the origin of Roma in Europe, and particularly in Romania and Hungary, is relevant for the discussion of interethnic relations. It helps develop an understanding on how “the others” have shown up. Further, it helps to see whether the origin of the Roma has an impact on the contemporary beliefs and perceptions towards them.

Ever since Roma arrived in Europe (14<sup>th</sup> – 15<sup>th</sup> centuries) and up until the 18<sup>th</sup> century, they were thought to originate from Egypt. They were named, consequently, “*Egyptians*”, which led to the later “*Gypsy*”. There was a sect in Greece, which was believed to practice magic, and was called “*Atsinganos*”, which means “untouchable”. This was the name used for the Roma as well<sup>14</sup>, which further led to “*tsigan*”, “*ciganos*”, “*Zigeuner*”, etc.

The theories related to the history of the Roma population are based on linguistic arguments. The first to trace a connection between the Romani language and Indian, or more exactly, Sanskrit, was a Hungarian, Istvan Valyi. He went to study in the Netherlands and met students from India, from whom he had learnt a thousand Indian words. Istvan Valyi noticed, back home, in Hungary, that Roma people in his city understood these words<sup>15</sup>.

Based on this finding, further theories have been elaborated, taking into account also the occupations of the Roma in Europe. A theory was that Roma descend from the Indian

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<sup>14</sup> Jean-Pierre Liegeois, Nicolae Gheorghe, *Roma/Gypsies, A European Minority*, (Minority Rights Group, 1995), page 7

<sup>15</sup> Lev Tcherenkov, Stephane Laederich, *The Roma, Volume 1: History, Language and Groups*, (Schwabe Verlag Basel, 2004), page 11

Shudra caste, as in Europe they were mostly servants or entertainers and were also poor<sup>16</sup>. A further point related to the Roma origin was the one of Augustus Pott., in 1840, when the resemblance between the word *Rom* and the Indian word *Dom* was emphasized<sup>17</sup>. *Dom* was used to describe those who did menial jobs.

Further, the *Dom* population, who also spoke a type of Indian language, was found to be leaving in the Middle East. Similarly, the *Lom* population living in Armenia was speaking a language resembling Indian as well. It was concluded by John Sampson that all these three groups have started their migration from India, the *Dom* have stopped in the Near East, the *Lom* headed towards Armenia, while the *Rom* continued their migration towards Europe<sup>18</sup>.

The migration map is continued, by the claim that the Roma have spent time on their way in Persia (Iran) as well, as the language influences indicate<sup>19</sup>. On the same rationale, it is believed they have spent time in Armenia as well<sup>20</sup>. Further, from the 9<sup>th</sup> century, until the 15<sup>th</sup> century Roma from Armenia spread in different directions: Middle East, North of the Black Sea and finally, Byzantine Empire and Europe<sup>21</sup>. By the 15<sup>th</sup> century, Roma would have reached all over Europe. As a result of the colonization process, started by France, England, Portugal and Spain, Roma were also expelled and deported, and reached different parts of the world, including North and South America<sup>22</sup>.

The first proof of the existence of Roma on Romanian territory is from 1385 and is related to slavery, a subject which will be discussed in the following pages. A Romanian ruler, Dan I, confirms that he offers 40 families of Roma - “*atigani*” to Tismana monastery.

<sup>16</sup> Ian Hancock, *We Are the Romani People*, (University Of Hertfordshire Press, 2002), page 4

<sup>17</sup> Ibid, 5

<sup>18</sup> Ibid, 5

<sup>19</sup> Tcherenkov, Laederic, (2004), 15

<sup>20</sup> Ibid, 21

<sup>21</sup> Viorel Achim, *The Roma in Romanian History*, (Central European University Press, 2004), page 12

<sup>22</sup> Ibid, 13

These 40 families used to belong to Vodita monastery, and were offered by Vladislav, another Romanian ruler, 20 years before<sup>23</sup>.

The first proof of the existence of Roma on Hungarian territory is from 1416. A document indicates a donation of food was offered to Mr. Emmaus, an Egyptian<sup>24</sup>. There are also opinions that Roma were present in Transylvania even before 1416, as a document from the time of a Romanian ruler, Mircea the Old, indicates. The document shows that a boyar owned, among others, also “seventeen tent-dwelling Gypsies”<sup>25</sup>. Some authors have argued, in support of the presence of Roma on Hungarian territory around this time, names of people and places which resemble the term “*cigány*”<sup>26</sup>.

With regard to how did the Roma arrive on Romanian territory, two theories have been discussed, as Viorel Achim shows<sup>27</sup>. One of them is that they were brought by Tatars, as slaves, during the Tatar invasion (1241-1242), theory which is unsupported by evidence. The second one is that they arrived from South of Danube, which is undisputed, unlike the first theory. From Wallachia, Roma got to Transylvania and Moldova as well.

The presence of the Roma population on Romanian and Hungarian territories can be traced approximately back to the same period (end of 14<sup>th</sup> century, beginning of the 15<sup>th</sup> century). Taking into account that Roma appeared around the two regions at the same time, it is interesting to observe how the interethnic relations in the two countries developed.

### **1.1.2. Early image of the Roma population**

What unified Roma, as a group, when they started their migration, was their language and culture. They have scattered, in small groups, as a result of various reasons, which are

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<sup>23</sup> Achim, (2004), page 13

<sup>24</sup> István Kemény, *Roma of Hungary*, (Columbia University Press, New York, 2005), page 1

<sup>25</sup> Achim, (2004), page 14

<sup>26</sup> Kemény, (2005), page 2

<sup>27</sup> Achim, (2004), page 15-17

often unproven theories. They were perceived as foreigners, intruders, different, ever since their early arrival on different territories. Their early origin and their mistaken identities indicate how they were associated with Islam and Asian invaders, which led to a sense of rejection, suspicion and fear<sup>28</sup>.

What Donald Kenrick highlights is that the image of the Roma in the 1400-1450, as a group “who pretended to be refugees while indulging in pickpocketing and shoplifting” was kept until present, as a result of “largely misreported behaviour of a small minority”, which “outweighs the generally unreported un-newsworthy lives of the majority – at that time thousands of Romanies working as craftspeople and fieldworkers in Central and Eastern Europe”<sup>29</sup>. Kenrick argues that the image of the Roma in this period was created by historical chronicles and city council records, and that this image has “survived to the present day”<sup>30</sup>.

Further, the Diet of the Holy Roman Empire started accusing Roma of being spies of the Turks. Therefore, the Parliament has ordered the expulsion of Roma out of the German territory. Those who were not expelled and found, could be killed at will<sup>31</sup>.

As noted by Ian Hancock, the view on Roma as spies was not common only in the 15<sup>th</sup> century, but also more recently<sup>32</sup>. The Nazi also accused Roma for being spies for the enemies, while during the war in Kosovo both sides were suspicious of Roma spying for Albanians or Serbs.

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<sup>28</sup> Hancock, (2002), 54

<sup>29</sup> Donald Kenrick, *The Origins of Anti-Gypsyism: The Outsiders' View of Romanies in Western Europe in The Fifteenth Century*, in *The Role of the Romanies- Images And Counter-Images Of Gypsies/Romanies In European Culture*, Edited By Nicholas Saul And Susan Tebbutt (Liverpool University Press, 2004), 79

<sup>30</sup> Kenrick, (2004), 79

<sup>31</sup> Ibid, 83

<sup>32</sup> Hancock, (2002), 55

The policy of expulsion of Roma was not practiced only on the German territory, during the 15<sup>th</sup> century, but also in Spain and other parts of Europe, with the exception of Hungary, Transylvania and Russia<sup>33</sup>.

The physical appearance of Roma, particularly their dark skin], was also a factor for their negative perception among the non-Roma. Heinrich Grellman described them as “black horrid men ... the dark brown or olive coloured skin of the Gipsyes with their white teeth appearing between their red lips, may be a disgusting sight to a European, unaccustomed to such objects”<sup>34</sup>. It is also emphasized by Hancock that the Church was also viewing negatively the Roma newcomers, with their dark skin, as the Christian doctrine was portraying black as evil and white as purity. Even today, the public space is filled with anti-Roma speech which makes reference to the skin colour. For instance, the Czech Deputy Prime Minister, Jiří Čunek, was speaking, in 2007, about state benefits, and mentioned: „you would have to get sunburned” [in order to receive benefits].

Roma have preserved the Indian tradition of „pure” and „impure”. This implies also keeping a distance from non-Roma, which consequently leads to barrier in communication. This is not the only cultural factor which was misinterpreted and contributed to a negative image and perception of Roma. Hancock gives two interesting examples of how language used by Roma people has led to the perception of them being cannibals or Satanists<sup>35</sup>. A Roma man used the word „*Devla*”, in a hospital, which resembles the English „*devil*”. Therefore, the nurse believed him to be a Satanist. Grellman made accusations of cannibalism, because of the use of the expression “*I eat your heart*”, for saying “*please*”.

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<sup>33</sup> Kemény, (2005), 3

<sup>34</sup> Hancock, (2002), 56

<sup>35</sup> Hancock, (2002), 61

### **1.1.3. Slavery in Romania**

There are different theories explaining how the Roma slavery appeared. One of the theories is that Roma were brought on the Romanian territories (Wallachia and Moldova) as slaves, and this was the status they kept for centuries after<sup>36</sup>. There is also the theory that there was a need for handcraft work, as a result of the Ottoman occupation, and that this was the factor which determined Roma to be turned into slaves<sup>37</sup>. Sam Beck explains Roma slavery by being introduced through turning war prisoners in slaves<sup>38</sup>. Beck's assumption is based on historical events which depict rulers from Moldova and Wallachia bringing large numbers of war prisoners, which looked like Roma, after victories.

The Roma slaves who were owned by rulers, were regarded as “princes’ Gypsies”, “Gypsies of the Crown”, or “state Gypsies”. Those Roma slaves who were owned by the Orthodox Church were regarded as “monastery slaves”, while the ones owned by boyars were the landlord slaves<sup>39</sup>.

It is worth mentioning that Romanians were not slaves, in the Romanian history. However, there were Romanian serfs, who were tied to the status of the land, unlike Roma slaves, who were tied to their owner, not having the status of persons<sup>40</sup>.

Achim mentions that enslavement of Roma was also practiced in Transylvania, in the regions which were ruled by princes from Moldavia or Wallachia<sup>41</sup>.

The Penal Code, in Wallachia, included provisions that mentioned that Roma were born slaves. Filiation by mother determined the slave status as well. The owners were entitled

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<sup>36</sup> Achim (2004), 27

<sup>37</sup> Ciprian Necula, *The Cost Of Roma Slavery*, Unpublished, Available At: [Http://www.Academia.Edu/2232849/The\\_Cost\\_Of\\_Roma\\_Slavery](http://www.Academia.Edu/2232849/The_Cost_Of_Roma_Slavery)

<sup>38</sup> Sam Beck, *The Origins Of Gypsy Slavery In Romania*, (Dialectical Anthropology, Vol. 14, No. 1, 1989), 56

<sup>39</sup> Achim, (2004), 31

<sup>40</sup> Achim, (2004), 30

<sup>41</sup> Achim, (2004), 43



to “sell or give his slaves as presents”. The Roma slaves did not have the right to marry each other without the consent of their owner. Further, they were not allowed to marry free men<sup>42</sup>. Just as today heritages (including goods) which are not claimed are the state properties, back then slaves without owners used to belong to the state. This shows clearly how Roma were perceived, but also legally treated as objects, not as humans.

The abolition of slavery in Moldavia and Wallachia was started in the 19<sup>th</sup> century. The process of their emancipation lasted two decades<sup>43</sup>. It was not a very smooth process, as the slave owners were reluctant to give up on their “property”, but they received compensation for the lost slaves.

After the abolition of slavery, Roma received freedom and nothing else. Some continued to work for their former owners, as they had no place to go or what to do to earn their living. As Necula notes, the Roma have received the “status of a human being and taxpayer, which, in fact, ironically, created even more unfavourable conditions for the Roma than before”<sup>44</sup>

It was emphasized by many, including by Mihail Kogalniceanu, one of the politicians who favoured the abolition of slavery, the contribution Roma brought to the country’s development, as a result of their work.<sup>45</sup> Ciprian Necula has estimated, roughly, how much the Romanian state owns the Roma, for their unpaid work during centuries of slavery, to the amount of 247,249,700,235 Euro<sup>46</sup>.

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<sup>42</sup> Elena Marushiakova, Vesselin Popov, *Gypsy Slavery In Wallachia And Moldavia*, In Tomasz Kamusella And Krzysztof Jaskulowski, *Nationalism Today*, (Oxford, 2009), 20

<sup>43</sup> Achim, (2004), 103

<sup>44</sup> Necula, 17

<sup>45</sup> Mihail Kogalniceanu, *Esquisse Sur L'histoire, Les Moeurs Et La Langue Des Cigains, Connus En France Sous Le Nom De Bohémians*, 1837, Berlin (*Opere*, Bucuresti: Academiei RSR, 1946)

<sup>46</sup> Necula, 8

Beck argues that Roma slavery in Romania has led to seeing Roma a “universally marginal sub-humans”, and that “they could be treated as objects”. He adds that Roma slavery, “as a ‘system of oppression’ was formative, generating a culture of prejudice”<sup>47</sup>.

Dehumanizing Roma and objectifying them for centuries has clearly influenced how non-Roma perceives Roma, not only in Romania, even until present day. Not only the prejudice against Roma and their image among non-Roma were “fingerprints” of centuries of enslavement, but also the current precarious situation of numerous Roma communities:

*„The way that the slaves’ emancipation took place in the nineteenth century has left an important fingerprint in the social evolution of Roma ever since. The marginal communities established in the mid nineteenth century can still be identified today, with so many of them living in poverty and facing social exclusion”*<sup>48</sup>

A proof that slavery has played an important part on anti-Roma perceptions is the fact that the sole institution which has owned Roma slaves, namely the Romanian Orthodox Church, has not publicly apologized for this piece of history. This is yet another sign of how Roma are being treated and perceived.

#### **1.1.4. Maria Theresa and the assimilation policies in the Austro-Hungarian Empire**

Not only Roma enslavement in Romania was a crucial historical époque which left scars on the present conditions and image of Roma, but also the period of attempt of assimilation, during the 17<sup>th</sup> – 18<sup>th</sup> century. Once the Ottoman Empire was defeated, “real

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<sup>47</sup> Beck, (1989), 54

<sup>48</sup> Necula, 17

repression against Roma” was started<sup>49</sup>. An edict from 1697 was setting Roma outside the law and allowed anyone “to kill, maim, or otherwise harm any male” Roma<sup>50</sup>.

The empress Maria Theresa started by issuing decrees to expulse Roma from the territories she ruled. The measures were targeting nomadic Roma, not the settled ones. Further, she started the strategy of forced assimilation, for example, by prohibiting Roma to own horses or carriages. In order to leave the locality, the Roma had to receive an authorization. She further prohibited Roma to be referred to as “Gypsies” and imposed the name of “new Hungarians”. She imposed mandatory military service for Roma boys, older than 16. Further, she prohibited the use of traditional clothing, the use of Romani language and the work of Roma traditional jobs. In 1773, Maria Theresa issued a decree, asking for all Roma children older than five to be removed from their families and given to non-Roma families to raise them. These measures succeeded, including in Hungary, especially regarding the cultural aspect<sup>51</sup>.

All these measures, although so far in the 18<sup>th</sup> century, seem familiar and very contemporaneous. As it will be described in more detail in further chapters, in 2009 Romanian local authorities have imposed a protocol on the Roma locals, in order to address an interethnic conflict. The protocol included aspects such as prohibition of owning horses, or prohibition of bathing in the public bath<sup>52</sup>. The attempt to impose how an ethnic minority should be called was not characteristic only on Maria Theresa’s decrees. Various attempts, including legislative initiatives, have been taken by Romanian politicians, in order to prohibit the use of the term “Roma”, and impose the use of “Tigan”<sup>53</sup>.

<sup>49</sup> Tcherenkov, Laederic, (2004), 132

<sup>50</sup> Ibid, 132

<sup>51</sup> Ibid, 138

<sup>52</sup> Sanraieni Protocol In 2009, Romani CRISS’ Case Files

<sup>53</sup> Protest letter, dated November 2010, signed by Roma and non-Roma human rights NGOs, with regard to a legislative initiative of a Romanian senator to change the name of Roma, in official documents, in “tigani”, available at:

### **1.1.5. Roma and the Holocaust**

The Holocaust was one of the darkest periods of world's history, including for the fate of the Roma people. The Holocaust was the worst way of expressing stereotypes and prejudices against an ethnic minority. The "Gypsy Question" debate was highly influenced by eugenic opinions in Romania, expressing what a threat Roma people represent, and how they should be sterilised or removed from society<sup>54</sup>. 26 000 Romanian Roma have been deported to Transnistria, to death camps<sup>55</sup>. Nomadic Roma were the primary target of the deportation, but also settled Roma families, including large numbers of children<sup>56</sup>.

In Transnistria, Roma were subject to slave labour, under hard living conditions, lacking food, shelter, suffering from cold, during winter, from diseases, with no access to any form of medication. This led to the death of approximately 10 000 people<sup>57</sup>.

There is evidence Roma from Hungary have also been subject to deportation, in the summer of 1941. In a letter from the Minister Miklós Kozma, to the Prime Minister, László Bárdossy, it was stated: 'At the beginning of next week, I will push all the non-Hungarian Galicians who escaped here, the uncovered Ukrainian agitators and Gypsies across the border'<sup>58</sup>. Raz Segal notices that it is „common knowledge” that Roma in Hungary have been deported, but there are no evidence as to indicate how many victims were<sup>59</sup>. Segal is citing a commander of the gendarmerie unit at Csap to exemplify how Roma were perceived in Hungary: „the home of dirt and infectious disease”<sup>60</sup>. The Roma problem was, as Segal puts it, not only getting rid of the wandering Roma, but also of those who did not have a sufficient

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[http://www.romanicroiss.org/scrisoaretigantvs%20rom\\_24%20oct%20fin\\_off.pdf](http://www.romanicroiss.org/scrisoaretigantvs%20rom_24%20oct%20fin_off.pdf)

<sup>54</sup> Benjamin Thorne, "Assimilation, Invisibility, And The Eugenic Turn In The "Gypsy Question" In Romanian Society, 1938–1942"(Romani Studies 5, Vol. 21, No. 2, 2011, Page 177–206)

<sup>55</sup> Thorne, (2001), Page 178

<sup>56</sup> Michelle Kelso 'And Roma Were Victims, Too.' *The Romani Genocide And Holocaust Education In Romania*, (Intercultural Education, 2013, 61-78)

<sup>57</sup> Ibid, 63

<sup>58</sup> Raz Segal, „Beyond Holocaust Studies: Rethinking The Holocaust In Hungary", *Journal Of Genocide Research*, (2014, Pag. 1-23)

<sup>59</sup> Ibid, 9

<sup>60</sup> Ibid, 10

income, although they were settled. Therefore, the motivation for persecution was „the urge to remove a group perceived as foreign, unreliable and inherently diseased and dirty”.

The anti-Roma policies in Hungary, during World War II, included „raids, enforced curfew, internment and withholding of food ration coupons”<sup>61</sup>. It got to the situation that food ration coupons were given only to Roma musicians, or who were employed in „field, wood or mud work”, while the others were forbidden to leave their homes between sunset and sunrise<sup>62</sup>.

Other measures taken against Roma in Hungary during Holocaust were imprisoning them in ghettos, similarly to the situation of Jewish people<sup>63</sup>. They were subject to forced labour in the ghettos (Hajdú, Szabolcs-Szatmár) as well as in military camps (Gyergyótölgyes, Ojtoz, Rahó)<sup>64</sup>.

In Komárom, a concentration camp in Hungary, between 700-1000 Roma, adults and children, were killed by the harsh conditions: lack of food, clean water, hygiene, medical treatment<sup>65</sup>. One Holocaust survivor recalls, during an interview by Katalin Katz:

*“Many adults died in the camp. The children fell down. They died like flies. Mother said that if we had stayed there another week, we might have all died. There was some sort of structure there from plaster where they collected the corps. Every day they took them in a cart...We lay down there many times next to the corpses.”<sup>66</sup>*

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<sup>61</sup> Ibid, 11

<sup>62</sup> Ibid, 11

<sup>63</sup> János Bársony, Ágnes Daróczi, „Pharrajimos The Fate Of the Roma During The Holocaust”, (IDEBATE Press, 2008), Page 32.

<sup>64</sup> Bársony, Daróczi, 2008, Page 32-33

<sup>65</sup> Ibid, Page 40

<sup>66</sup> Katalin Katzm „Story History And Memory: A Case Study Of the Roma At The Komarom Camp In Hungary”, In “The Roma Minority In Europe. Historical, Political And Social Perspectives”, Edited By Roni Stauber And Raphael Vago, (Central European University Press, 2007), Page 81.

It was noted by several authors that, given the negative attitudes against Roma and the anti-Roma prejudices of societies can be hardly reconciled with the image of Roma as victims of the Holocaust<sup>67</sup>. On the contrary, those with extremist views against Roma find justifications for the outrageousness of the Holocaust, praising leaders such as Ion Antonescu.

#### **1.1.6. Roma under the communist regime**

Roma continued to be perceived as „deviant”, but this time the state policies were not aiming at getting rid of them, but to correct them and transform them, as to fit the communist society properly<sup>68</sup>.

As Roma were not sharing a common territory and no knowledge of a common history was spread, they did not receive a “national minority” status, unlike, for example, Germans in Romania<sup>69</sup>. However, Hungary got to the conclusion, in 1961, that although Roma did not respect the criteria as to represent a national minority, they needed to receive the same “‘developmental and constitutional privileges’ as national minorities owing to their substantial numbers”<sup>70</sup>.

Romania’s initial approach was focusing, as part of the assimilation policy, on sedentarizing nomadic Roma. It was the first state which has done that by confiscating horses and wagons and dispersed compact communities (1946-1951)<sup>71</sup>. The state’s policies continued with prohibiting traditional meetings, as well as with confiscating the gold Roma owned<sup>72</sup>.

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<sup>67</sup> Kelso, 2013, Page 72

<sup>68</sup> Ibid, 421

<sup>69</sup> Ibid, 421

<sup>70</sup> Ibid, 423

<sup>71</sup> Ibid, 426

<sup>72</sup> Ibid, 426

The purpose and achievement of the communist regimes in Eastern Europe was Roma assimilation. The costs for this approach were, firstly, inter-ethnic tensions and secondly, the loss of Roma culture and traditions<sup>73</sup>.

#### **1.1.7. Conclusion**

The existence of Roma people on Hungarian and Romanian territories is firstly noted in documents related to slavery. The early interethnic interactions among Romanians and Roma, as well as among Hungarians and Roma, were governed by power relations, where Roma were owned, as objects, by non-Roma. The power relations have not changed much in the present day. Although we cannot speak of slavery since long ago, the image of Roma as inferior is present nowadays and is causing phenomena such as hate crime and violence against Roma. Further, the image of Roma as inferior is translated into practices such as school segregation, which occur in both Romania and Hungary, due to teachers or parents' beliefs that Roma children are inferior to others. The very current image of Roma as inferior is translated into the low rates of employment of Roma people, whose only chance for survival left are social benefits. Social benefits are secured by tax payers, who are people with jobs, namely mostly non-Roma. Employment and education are only two examples which support the argument that the power relation is mostly the same as in the 15<sup>th</sup> century. This status quo, of human beings perceiving other human beings as inferior, leads to interethnic tension and ultimately to hate crime and violence.

Further, the early image of Roma was kept until today. The image of the newcomers was that they were "black and ugly, with long hair, thick beards and earrings"<sup>74</sup>. Centuries and centuries after, "they aroused mistrust, fear and rejection"<sup>75</sup>. Today they are still rejected

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<sup>73</sup> Zoltan Barany, "*Politics And The Roma In State-Socialist Eastern Europe*", *Communist And Post-Communist Studies* 33 (2000, Pag. 421)

<sup>74</sup> Ibid, 80

<sup>75</sup> Jean-Pierre Liégeois, „*Gypsies An Illustrated History*”, (Al Saqi Books, 1986), Page 87

by the majority populations throughout Europe due to their perceived anti-social behaviour; they are seen as beggars, thieves, incapable of integrating in a civilized society.

The current anti-Roma attitudes of ordinary citizens are a sign of how the image of Roma has remained the same ever since their arrival. Moreover, the policies adopted by authorities currently are yet another sign of how the history, unfortunately, repeats itself. The public policies to tackle what we nowadays call “the Roma issue” were historically either aiming at assimilating Roma, either at getting rid of them. For example, the practice of expulsion was adopted during the 15<sup>th</sup> century, in countries such as Spain or Germany, but also recently, in France. Assimilation practiced, for example, during the rule of Maria Theresa, or more recently, during communism, seems to be a solution that very high level politicians would consider suitable nowadays. For example, a very recent remark of Viviane Reding, the European Commissioner for Justice and Fundamental Rights, was that the Roma have to „be willing to integrate and to be willing to have a normal life”<sup>76</sup>.

The major events in the Roma history are proofs that they have never been welcomed. It was not enough for them to live for centuries in the same country (either being Romania, Hungary, or other), so that everyone accepts those are their homes. Even after centuries, they are still seen as „passing by”, temporary co-habitants, who will have to go someplace else, after all. The major events in the Roma history are, on one hand, a cause for the way Roma are still perceived nowadays, as well as a cause for their present social condition. On the other hand, the past history is also a mirror of present events, unfortunately. Nothing has been learned from the past, apart from, at best, politically correctness.

## **SECTION 2: DEFINING KEY CONCEPTS: HATE-CRIME, INTER-ETHNIC CONFLICT, INTER-ETHNIC TENSION OR VIOLENCE**

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<sup>76</sup> Interview 16 January 2014, Available at <https://www.youtube.com/watch?v=xazha1ttofuf> [Last Accessed On 19 April 2014].



### **1.2.1. Hate crime**

Academic definitions are various, mainly because of different elements which need to be taken into consideration giving a definition to hate crime. Jacobs and Potter<sup>77</sup> emphasize the hardship of defining hate crimes, as it depends on:

- How prejudice is defined
- Of the vast number of possible prejudices, which of these should be taken into account as to qualify an offense as a hate crime
- How strong the causal link between the perpetrator's prejudice and the perpetrator's criminal behaviour must be.

Gordon Allport provides an essential definition to hate:

*“an enduring organization of aggressive impulses toward a person or toward a class of persons. Since it is composed of habitual feeling and accusatory thought, it constitutes a stubborn structure in the mental-emotional life of the individual. By its very nature hatred is extropunitive, which means the hater is sure that the fault lies in the object of his hate. So long as he believes this he will not feel guilty for his uncharitable state of mind”<sup>78</sup>*

For the purpose of this thesis, the definition provided by the OSCE will be used, as OSCE is the inter-governmental body which dedicated an important work to hate crime occurring in the participating states and to methods of combating it. Both Hungary and Romania are OSCE participating states. According to OSCE<sup>79</sup>, a hate crime is a criminal offense committed with a bias motive. The element which distinguishes hate crime from any

<sup>77</sup> James B. Jacobs, Kimberly Potter, *Hate Crimes – Criminal Law And Identity Politics*, (Oxford University Press, 1998, Page 11)

<sup>78</sup> Gordon Allport, *“The Nature Of Prejudice”*, (New York, Addison-Wesley, 1954, Page 21)

<sup>79</sup> OSCE Office For Democratic Institutions And Human Rights, *“Hate Crime Laws: A Practical Guide”* (Warsaw, Poland, 2009, Page 16)

other type of offenses is the motive. Hate crime does not include specifically a type of offense, but it can vary from threat, to property damage and murder. Firstly, a hate crime needs to be an offense under the state's criminal law. Secondly, the offense must be committed with a particular motive. The perpetrator chooses the victim because of his or her particular characteristic, which generates the "hate". Concretely, the perpetrator would kill a Roma person because his/her ethnic appurtenance. The target can be either a person or a property associated with the person who has the "protected characteristic": race, language, religion, ethnicity, sexual orientation, etc.<sup>80</sup>

OSCE clarifies that although murders can have as motive hatred, it is not a hate crime if the target was not chosen as a result of a protected characteristic he/she had<sup>81</sup>.

Jacobs and Potter disagree with the defining hate crime in terms of "protected groups", and emphasize that all victims are a protected group and that some should not be protected more than others<sup>82</sup>. Indeed, victims of hate crimes are all protected. But in order to be a victim of a hate crime, the perpetrator must have selected that particular target because of hate, motivated by a certain characteristic the target has.

Authors have emphasized several reasons for which hate crimes are different from ordinary laws. These arguments are important to be looked at, for the purpose of highlighting the necessity of specific legislation on hate crime. Firstly, with regard to hate crimes' disproportionately impact on the individuals, it is emphasized that such crimes may cause victims to suffer more psychological trauma. This argument was supported in U.S. Supreme Court case, *Wisconsin v. Mitchell (1993)*, by American Civil Liberties Union, as well as by the NAACP Legal Defense and Educational Fund:

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<sup>80</sup> Ibid, Page 16

<sup>81</sup> OSCE Office For Democratic Institutions And Human Rights, 2009, Page 17

<sup>82</sup> Jacobs & Potter, 1998, Page 28

“[...] It is an assault on the victim’s essential human worth. A person who has been singled out for victimization based on some group characteristic [...] has, by that very act, been deprived of the right to participate in the life of the community on an equal footing for reasons that have nothing to do with what the victim did, but everything to do with who the victim is.”<sup>83</sup>

It is further argued that victims of hate crime may suffer more physical trauma. Although there is no empirical data indicating this conclusion, the literature has continued to use this argument. Jack Levin and Jack McDevitt claim that “hate crimes tend to be excessively brutal”<sup>84</sup>.

Moreover, the literature argues that hate crimes have an impact on innocent third parties as well<sup>85</sup>. It is indicated that several authors find hate crimes to generate retaliation and further conflict<sup>86</sup>. This was also supported by amici curiae in *Wisconsin v. Mitchell*, and used by Justice Rehnquist, in the opinion he wrote. OSCE agrees to this argument, by emphasizing the challenge to security that hate crimes pose, as they have “the potential to cause social division and civil unrest.”<sup>87</sup> Indeed, this was the case for the interethnic conflicts between Roma and non-Roma in Romania, as particular crimes had an escalating phase, and as a result of already sensitive interethnic relations, the outcomes were extremely serious.

Hate crimes are different than other criminal offenses because they are also symbolic crimes. Perpetrators want to send a message, challenging a group, or even an idea (e.g. immigration)<sup>88</sup>.

<sup>83</sup> U.S. Supreme Court Case, *Wisconsin V. Mitchell* (1993), Brief Amicus Curiae Of the American Civil Liberties Union In Support Of Petitioner

<sup>84</sup> Jack Levin And Jack Mcdevitt, *Hate Crimes: The Rising Tide Of Bigotry And Bloodshed* (New York, Plenum Press, 1993, Page 11)

<sup>85</sup> Jacobs & Potter, 1998, Page 86

<sup>86</sup> Phyllis B. Gerstenfeld, *Hate Crimes – Causes, Controls And Controversies* (Sage Publications, 2011, Page 22)

<sup>87</sup> OSCE Office For Democratic Institutions And Human Rights, 2009, Page 20

<sup>88</sup> Ibid, Page 19

Hate crime is different from discriminatory acts, which are regulated in various states. Discrimination is a less favourable treatment applied to a person as a result of their gender, sexual orientation, ethnicity, nationality, sex, age, etc. In most jurisdictions, discrimination is regulated by civil law rules. However, the first element which characterises hate crimes is lacking, namely that it is not a criminal offense<sup>89</sup>.

### **1.2.2. Inter-ethnic violence, Inter-ethnic conflict or Inter-ethnic tension**

For the purpose of this thesis, several incidents in Romania labelled as “inter-ethnic conflicts” will be analysed. At the beginning of 1990s, several conflicts between Roma and non-Roma groups took place, in various places in Romania.

The motivation of the conflict was to forcibly remove Roma from the locality (in Kalanyos<sup>90</sup> and Gergely<sup>91</sup> cases), while for Moldovan it can also be added the revenge of the death of a person, who died in the middle of an altercation.

Usually, the development of such cases is similar: it all starts with a fight between a few people (Roma and non-Roma), which leads to the escalation of the conflict. Angry non-Roma crowds head towards the Roma community, burning down houses and other goods belonging to Roma families, attack and kill Roma people. The conflicts in Moldovan and Kalanyos cases ended with injured and killed people, besides goods and houses destroyed or burned<sup>92</sup>.

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<sup>89</sup> Ibid, Page 25

<sup>90</sup> Case of Kalanyos and others v. Romania, (Application No. 57884/00), Judgment of 26.07.2007

<sup>91</sup> Case of Gergely v. Romania, (Application No 57885/00), Judgment of 26.04.2007

<sup>92</sup> Romani CRISS, Report Of the Conference “*Interethnic Conflicts: From Collective Violence To Governmental Programs*”, 2007, Unpublished

### **1.2.3. Remedies for the injustice suffered by the victims**

Remedies have a dual meaning<sup>93</sup>: first of all, victims should have access to justice in order to be able to claim that certain rights have been violated. Secondly, there should be a substantive redress available.

For the purpose of this thesis, after analysing which is the existent legislation on hate crime in each compared state, it will be analysed, by looking at the case-studies, whether the Roma victims of hate crime and violence had access to justice and whether they have accessed substantive redress for the injustice suffered.

It will be analysed whether the victims have received a declaratory judgement, compensation, pecuniary damages or any form of non-monetary damages.

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<sup>93</sup> Dinah Shelton, *“Remedies In International Human Rights Law”*, Second Edition (Oxford University Press, 2005, Page 7

## CHAPTER TWO: LEGAL PROVISIONS ON HATE CRIME IN HUNGARY, ROMANIA AND THE UNITED STATES

### 2.1. Existent legal provisions

The Hungarian Penal Code, Act no C/2012, includes the following relevant offenses: genocide (section 142), apartheid (section 144), violence against a member of the community (section 216), incitement against a community (section 332), open denial of Nazi crimes and communist crimes (section 333), and the use of symbols of totalitarianism (section 335).

Violence against a member of the community provides the following:

*(1) Any person who displays an apparently anti-social behavior against others for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, of aiming to cause panic or to frighten others, is guilty of a felony punishable by imprisonment not exceeding three years.*

*(2) Any person who assaults another person for being part, whether in fact or under presumption, of a national, ethnic, racial or religious group, or of a certain societal group, in particular on the grounds of disability, gender identity or sexual orientation, or compels him by force or by threat of force to do, not to do, or to endure something, is punishable by imprisonment between one to five years.*

*(3) The penalty shall be imprisonment between two to eight years if violence against a member of the community is committed:*

- a) by displaying a deadly weapon;*
  - b) by carrying a deadly weapon;*
  - c) by causing a significant injury of interest;*
  - d) by tormenting the aggrieved party;*
  - e) in a gang; or*
  - f) in criminal association with accomplices.*
- (4) Any person who engages in the preparation for the use of force against any member of the community is guilty of a misdemeanor punishable by imprisonment not exceeding two years.*

Initially, before the entering into force of Act no C/2012, this crime was included in Art. 174/B, and was entitled “violence against a member of a national, ethnic, racial or religious group”. In 2009, when the former Hungarian Criminal Code was modified, it was changed to „violence against a member of a community”, as its application was extended to cover any group<sup>94</sup>. An NGO coalition, the Working Group against Hate Crimes (GYEM), has powerfully lobbied for this new hate crime provision to be codified<sup>95</sup>. The group, initially formed of Amnesty International Hungary, Hatter Society, Hungarian Helsinki Committee, NEKI and the Hungarian Civil Liberties Union, has succeeded in including among the explicitly listed protected groups sexual orientation, gender identity and disability.

Further, the Hungarian Criminal Code establishes base motive as an aggravating circumstance, for crimes such as manslaughter or battery. According to case-law, racist motive is a base motive.

<sup>94</sup> OSCE-ODIHR, „*Field Assessment Of Violent Incidents Against Roma In Hungary: Key Developments, Findings And Recommendations*”, (Warsaw, 2010), Page 39

<sup>95</sup> Information about GYEM here: <http://gyuloletellen.hu/about-us>

As the Human Rights First 2008 Hate Crime Survey indicates<sup>96</sup>, Hungary is among the countries which do not have a criminal law provision to define bias as a general aggravating circumstance, when committing a violent crime against a person. As seen already, it does have a provision that makes hate motivated violence a specific offense.

Romania, on the other hand, has a criminal law provision which makes bias an express general aggravating factor, lacking a provision that makes hate motivated violence a specific offense.

The Romanian Criminal Code, which is a primary source of law, includes the bias motivation to commit a crime an express general aggravating factor, as follows:

*Article 77 The following circumstances constitute aggravating factors:*

...

*h) Committing the crime for motivations related to race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, un-contagious chronic disease or HIV/AIDS infection, or any other similar circumstances, considered by the perpetrator to be a cause of inferiority of a person, compared to others.*

Other offenses included in the Romanian Criminal Code:

- the act of a public servant who will violate a right or legitimate interest, or cause a damage to a person, as a result of his/her activity, constitutes an offense (Article 297 (2) of the Romanian Criminal Code).

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<sup>96</sup> Human Rights First, *2008 Hate Crime Survey: Framework Of Criminal Law*, available at <http://www.humanrightsfirst.org/our-work/fighting-discrimination/2008-hate-crime-survey/framework-of-criminal-law>



- the same offense is aggravated if the restriction of the right was caused by one of the following grounds: race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political affiliation, wealth, social origin, age, disability, un-contagious chronic disease or HIV/AIDS infection, or any other similar circumstances, considered by the perpetrator to be a cause of inferiority of a person, compared to others.
- genocide
- crime against humanity
- war crimes.

The United States has various laws on hate crime, both federal as well as state legislation. The first step in regulating hate crimes was made in 1990, when the Hate Crimes Statistics Act (HCSA) was passed<sup>97</sup>. The HCSA imposes a hate crime data collection duty on the US Department of Justice, through the Attorney General. Each year the Attorney General needs to collect data on crimes (*“crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property”*<sup>98</sup>) motivated by prejudice based on *“race, gender and gender identity, religion, disability, sexual orientation, or ethnicity”*. An important provision of HCSA is that it expressly mentions that the collected data will be used only for research or statistical purposes, emphasizing personal data protection issues.

This is perhaps what lacks in countries such as Hungary and Romania, where in spite of more or less existent legislation the authorities lack statistics and data on hate crimes, or

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<sup>97</sup> Neil Chakraborti And Jon Garland, *“Hate Crime - Impact, Causes And Responses”* (Sage Publications Ltd, 2009, Page 10)

<sup>98</sup> *The Hate Crime Statistics Act*, available at [http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/resource-pages/hate-crime-statistics-act/hatecrimestatisticsact\\_final](http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2012/resource-pages/hate-crime-statistics-act/hatecrimestatisticsact_final)

have deficient statistics. In order to be aware of the extent of the phenomenon, data must be collected beforehand.

Further, in 1994, the Hate Crimes Sentencing Enactment Act had passed in US, which allowed higher penalties for those federal crimes whose victims, or the object of the crime (in case of property crimes) had been selected based on their group identity<sup>99</sup>. The impact of this law was limited, as federal criminal prosecutions are far less than state prosecutions. An example when the Hate Crimes Sentencing Enactment Act can be applied is a situation of hate-motivated vandalism on a Federal property.

In 1994, another act was passed by US Congress, namely the Violence against Women Act<sup>100</sup>. The prior hate crime legislation did not include the gender ground. It is important that authors classify this Act as falling under the hate crime laws category. Violence against women is a crime committed by offenders who choose the target as a result of a particular characteristic, namely their gender. Statistics show that between 1993 to 2010, the rate of violence against intimate partners decreased, change which is attributed by the White House to VAWA<sup>101</sup>.

It is debatable, however, whether grounds such as gender should be included among protected characteristics or not. A survey conducted in 2013<sup>102</sup>, which included among the respondents also representatives of women's issues and feminist groups, academics, and other diversity groups, indicated how the opinions are opposite. While such an approach would "encourage the issue to be taken seriously", at the same time, respondents expressed concern over the "complex nature of violence against women, versus the simple definition of hate

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<sup>99</sup> Ibid, Page 10

<sup>100</sup> Gerstenfeld, 2011, Page 34

<sup>101</sup> White House, „Factsheet: The Violence Against Women Act“, available at [http://www.whitehouse.gov/sites/default/files/docs/vawa\\_factsheet.pdf](http://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf)

<sup>102</sup> Aisha K. Gill And Hannah Mason-Bish, "Addressing Violence Against Women As A Form Of Hate Crime: Limitations And Possibilities", (Feminist Review, 2013).

crime”. In practice, to treat a case of domestic violence as a hate crime would raise serious evidentiary troubles. It would be extremely difficult to prove hate against women, in general, in such case, and the result would be to “slow down or complicate traumatic trials”<sup>103</sup>.

In 1997, the Church Arson Prevention Act was passed, as a result of many church burnings occurring in that period. Most of these had African-American congregations. Starting with January 1, 1995 to August 18, 1998, 658 attacks were investigated by the Department of Justice, which included bombings and fires against churches. Out of the total of 658 attacks, 220 targeted churches which belong to African-Americans<sup>104</sup>. The Church Arson Prevention Act facilitated a series of measures, varying from higher penalties for the crime of church arson, to ensuring more support for the law enforcement to “investigate, prevent, and respond to potential violations” of the Act. It also established a loan guarantee recovery fund, to assist the organizations affected by arson attacks. It included these crimes under the list of crimes “eligible for compensation” for the victims. Finally, it re-authorized the Hate Crimes Statistics Act, as to restate the importance of hate crime data collection<sup>105</sup>.

In September 2007, the Local Law Enforcement Hate Crimes Prevention Act was issued, which expanded the protected characteristics, by including the ground of sexual orientation, gender, gender identity and disability<sup>106</sup>.

The bill passed by President Barack Obama on October 28, 2009, which includes as protected characteristics actual or perceived race, color, religion, national origin, gender,

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<sup>103</sup> Ibid, 2013, Page 13

<sup>104</sup> The Leadership Conference On Civil And Human Rights, Hate Crime Legislation, available at <http://www.civilrights.org/hatecrimes/lehcpcpa/legislation/>

<sup>105</sup> Title 18, U.S.C., Section 247 Church Arson Prevention Act Of 1996

<sup>106</sup> Ibid, Page 10

sexual orientation, gender identity and disability, had a controversial adoption history, starting from 1998<sup>107</sup>.

Further, the U.S. Code included provision §245, which enabled federal prosecution on of hate crimes only in those situations when the victims had been attacked because of being engaged in one of the 6 “specified federally-protected activity” (e.g. “*enrolling in or attending any public school or public college*”, serving as a juror, and others)<sup>108</sup>. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) has extended protection, on different levels. First of all, it has removed the condition that the hate crime victim was engaged in one of the 6 federally protected activities. Secondly, it has added the following protected characteristics: sexual orientation, gender, gender identity and disability<sup>109</sup>.

The legislation of both Hungary and the United States make hate crimes a specific offence, while the Romanian legislation only includes a general provision, making bias an express general aggravating factor. What is different among the three states’ legislation is the “protected characteristics”. Romania has a very extensive list, which is left somehow open-ended: “*or any other similar circumstances, considered by the perpetrator to be a cause of inferiority of a person, compared to others*”. Hungary included explicitly “*national, ethnic, racial or religious group*”, as well as the ground of “*disability, gender identity*” and “*sexual orientation*”, and also left the list open, by including “*of a certain societal group*”. In the case of the United States it seems to have been a political struggle within the Congress to extend the list as to the current one.

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<sup>107</sup> Ibid, Page 10-11

<sup>108</sup> United States Code, Section §245, Federally Protected Activities, accessed here: <http://www.law.cornell.edu/uscode/text/18/245>

<sup>109</sup> United States Code, Title 18 – Crimes And Criminal Procedure, Part I – Crimes, Chapter 13 – Civil Rights, Section §249, accessed here: <http://www.gpo.gov/fdsys/pkg/uscode-2012-title18/html/uscode-2012-title18-parti-chap13.htm>

The OSCE Hate Crime Laws – Practical Guide highlights what a crucial aspect of the law-making process is to decide on the protected characteristics<sup>110</sup>. The guide enlists some criteria to be taken into consideration when making up the protected characteristics list. It mentions that those characteristics which are most apparent and visible, which can be easily noticed by perpetrators, should be included:

*“The characteristics that ought to be included are those that implicate societal fissure lines – divisions that run deep in the social history of a culture<sup>111</sup>.”*

## **2.2. Comments on the hate crime legal provisions**

First of all, it is to be analysed what protected characteristics are included in the hate crime legal provisions in Hungary and Romania. Out of the enlisted legal provisions, Article 216 of the Hungarian Criminal Code and Article 77 of the Romanian Criminal Code are to be looked at in detail, because only sui generis hate crimes are to be analysed.

Choosing the protected characteristics has crucial practical implications, as we will see especially from the Hungarian example. The way the legislator chooses what protected characteristics to include when regulating hate crime should take into account, according to OSCE<sup>112</sup>, various factors. First of all, those characteristics which are identified by a marker of a group identity should be included. In the case of Article 216 of the Hungarian Criminal Code this was not taken into consideration, when the list was extended to any group. For the purpose of adequately identifying hate crimes, it should not be disregarded that bias motivated crimes occur against members of groups which see themselves as such and which are identified by others as a unified group.

<sup>110</sup> OSCE Office For Democratic Institutions And Human Rights, 2009, Page 38

<sup>111</sup> Frederick M. Lawrence, “Enforcing Bias-Crime Laws Without Bias: Evaluation The Disproportionate-Enforcement Critique” (Journal Of Law & Contemporary Problems, Volume 66, 2003), Page 49.

<sup>112</sup> OSCE Office For Democratic Institutions And Human Rights, 2009, Page 38.

Second of all, the legislator can choose its protected characteristics by minding the historical background of the country or region. For example, the African-American history in U.S. has led to identifying a legislative need to regulate crimes motivated by hate on the racial ground<sup>113</sup>. Further, social contexts should also be regarded, which is particularly relevant for the case of the Roma. Pogroms and attacks against Roma determined, in Europe, the inclusion of ethnicity as a protected characteristic<sup>114</sup>.

Thirdly, to include a protected characteristic which is not easily identifiable can lead to practical issues of inability to prove the bias motive<sup>115</sup>. Even if ethnicity is not necessarily a characteristic which can be immediately spotted by a potential perpetrator, it does not mean it should not be a common protected characteristic, as ethnicity, jointly with race and national origin, is one of the factors which mostly give rise to prejudice, tensions and conflicts. Also, the national origin, ethnicity, race, as well as religion, are most commonly recognized as protected characteristics, due to past history of oppression and sufferings.

To continue, hate crime legislation is often criticized particularly because its tendency to “discriminate between victim groups”, by establishing “which groups are worthy of legislative protection”, and “singling out specific groups” which are seem to deserve “more protection than others”<sup>116</sup>. Several methods of determining the protected groups have been proposed by scholars. Frederick Lawrence proposes two stages of the process: firstly, determining the characteristics as broadly as possible, by including all those groups that self-

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<sup>113</sup> Ibid, Page 38

<sup>114</sup> Ibid, Page 38

<sup>115</sup> Ibid, 39

<sup>116</sup> Jennifer Schweppe, “*Defining Characteristics And Politicising Victims: A Legal Perspective*”, (Journal Of Hate Studies, Volume 10,) Page 173.

identify as such and secondly, to choose among this list those “characteristics which implicate social fissure lines, divisions that run deep in the social history of a culture”<sup>117</sup>.

Another proposed method is to include among the protected groups only those belonging to minorities: not the numeric minorities, but those minorities in the sense of power relations<sup>118</sup>. Its author, however, admits the method would leave majority groups unprotected, even in clear evidence of hate motives.

There are scholars who believe hate crime legislation should protect only “those who, historically, have been victims of oppression”<sup>119</sup>. Jacobs and Potter consider that this would imply that prejudices against whites are justified, “or less destructive to the body politic than crimes by whites against minorities”<sup>120</sup>.

Lastly, there is also the idea, in the literature, that hate crime should be re-defined, de-politicized and that juries or triers of fact should determine, on a case-by-case basis, whether a hate crime was committed<sup>121</sup>. In other words, legislation should not name the protected groups, but prosecutors, in the case of Hungary and Romania, and juries, in the U.S. case, should establish whether a case was motivated by hate. In practice, this would be problematic from several points of view. There is already the challenge that police or prosecutors do not investigate the bias motivation of a crime, when they deal with victims belonging to protected groups mentioned by legislation. Not having clear mentioning of protected groups in the hate crime legislation, would decrease even more the instances when the police or prosecutors look

<sup>117</sup> Frederick M. Lawrence, *“Punishing Hate: Bias Crimes Under American Law”*, (Harvard University Press, 1999), Page 12.

<sup>118</sup> Neil Chakraborti, *“Crimes Against The ‘Other’: Conceptual, Operational, And Empirical Challenges For Hate Studies”* (Journal Of Hate Studies, Volume 8, No 1, 2010) Page 9.

<sup>119</sup> Schweppe, (Journal Of Hate Studies, Volume 10), Page 181

<sup>120</sup> Jacobs & Potter, 1998, Page 67

<sup>121</sup> Schweppe, (Journal Of Hate Studies, Volume 10), Page 183

into possible bias motivation. The method proposed by Schweppe and other scholars does not address the issue of possible arbitrariness of juries and triers of facts.

Both the Hungarian and the Romanian legal provisions cover Roma. The Romanian legislator has chosen to include the bias motivation as a general aggravating factor, without singling out hate crime as a separate offence. From the way it has formulated its protected characteristic, the Romanian legislation has more positive practical implications, as opposed to the Hungarian one. Article 77 of the Romanian Criminal Code has included an enumerative list of protected characteristics. Even if the list is significantly extensive, it was also left open-ended: “[...] *or any other similar circumstances, considered by the perpetrator to be a cause of inferiority of a person compared to others*”.

For practical reasons, OSCE underlines that the list should not be extremely long or vague, as it “can undermine the concept of hate crime and provide opportunities for abuse or misuse”<sup>122</sup>. Particularly the fact that the list can be left open ended by the legislator determines possible undermining of the concept of hate crime.

This was exactly the case for Article 174/B of the Hungarian Criminal Code. As the Hungarian Helsinki Committee reports<sup>123</sup>, there were instances when this legal provision was used to investigate Roma for hate crime against Hungarian non-Roma, in the context of Roma confrontations with members of right-wing groups.

As noted earlier, initially Article 174/B of the Hungarian Criminal Code included only the privileged groups (national origin, ethnicity, race and religion). A specific incident and context led to the legislative change in 2008, effective from 2009, which extended to list to

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<sup>122</sup> OSCE Office For Democratic Institutions And Human Rights, 2009, Page 45.

<sup>123</sup> Hungarian Helsinki Committee, „*Suggestions For Questions To Be Included In The List Of Issues For Consideration Of the 5th Periodic Report Of Hungary Task Force Of the Human Rights Committee 98th Session, 8-26 March 2010*”, (2010), Page 4



any kind of group. In 2008, participants to the gay pride parade were attacked<sup>124</sup>. At that point, a legislative gap was noticed, namely the lack of sexual orientation as protected characteristic. There used to be a political context of harsh prejudice of the majority population against the LGBT community. For this and other reasons behind the amendment, the legislator chose to not explicitly include sexual orientation as a protected characteristic, but to extend the list generically to all groups<sup>125</sup>. This opened the path to granting protection under Article 174/B to majority groups as well<sup>126</sup>. Bárd emphasizes that the symbolic meaning of criminalizing hate crime is lost, taking into account the 2008 legislative development. As she puts it, a provision which was supposed to protect minorities, actually backfired and further victimised them. She also adds that the application of the provision to the case of majority population could have been restricted, by judicial interpretation, but this did not happen.

Even if the Romanian legislation lacks a provision which singles out hate crimes as a particular criminal offense, the general aggravating factor included in the Criminal Code is formulated as to ensure a wide range of protected characteristic, without, however, leaving the door open for situations such as the Hungarian ones. Explicitly mentioning that the “other circumstances” should be those which are “considered by the perpetrator as a cause of inferiority of a person compared to others” keeps the whole point of criminalizing hate crimes intact. This is what lacks from the Hungarian provision.

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<sup>124</sup> ILGA Europe, Press Release, “*10 Hurt, 45 Detained as Gay Pride March in Hungary Turns Ugly*”, 08 July 2008, available at:

[http://www.ilga-europe.org/home/guide\\_europe/country\\_by\\_country/hungary/10\\_hurt\\_45\\_detained\\_as\\_gay\\_pride\\_march\\_in\\_hungary\\_turns\\_ugly](http://www.ilga-europe.org/home/guide_europe/country_by_country/hungary/10_hurt_45_detained_as_gay_pride_march_in_hungary_turns_ugly) [Last Accessed 19 April 2014]

<sup>125</sup> Petra Bárd, „*The Social Conditions Of the Effective Fight Against Hate Crimes*”, Page 2-3, Unpublished.

<sup>126</sup> Bárd, Page 4.

Further, it is to be analysed whether the Hungarian and Romanian hate crime legal provisions are following the “*hostility model*” or the “*discriminatory selection model*”<sup>127</sup>.

The hostility model requires that the perpetrator acts out of feelings of hate or hostility towards the victim. The discriminatory selection model does not require the perpetrator’s emotions to be proven. The distinction is relevant for evidentiary considerations. As it is pointed out in the literature, what is relevant for the discriminatory selection model is “*whether* someone has chosen to target a person from a protected vulnerable group, not *why* they did so”<sup>128</sup>. Scholars criticize this model, which is actually favoured by the OSCE, considering it “over-inclusive”, “vague and counter-intuitive”<sup>129</sup>. It is criticized that the OSCE does not adequately motivate its preference for this model, as the OSCE simply mentions that this model is also used in the US. Goodall counter-argues, proving in her paper that the discrimination selection model is not necessarily preferred in the US, by making reference to several cases<sup>130</sup>. She also adds that there is no developed model in the European legal systems. Both Hungarian and Romanian provisions follow the discriminatory selection model, which is less burdensome, as the perpetrator’s emotions when committing the offense does not have to be proven. For the issue of hate crime against Roma, the discriminatory selection model is preferable. For the serial killings of Roma in Hungary, from 2009, the hostility model would have worked well also, taking into account that the perpetrators were right-wing extremists and it would have been easier to prove the *animus* as well. For cases such as the 1990s’ interethnic conflicts in Romania the hostility model would have not worked that well, taking into account that the mass violence was started by villagers: it would have been a very difficult task to prove that all of them acted based on emotions of hatred towards Roma.

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<sup>127</sup> OSCE, 2009, Page 48.

<sup>128</sup> Kay Goodall, “*Conceptualizing ‘Racism’ In Criminal Law*”, (Legal Studies, Vol. 33, No 2, June 2013), Page 223

<sup>129</sup> Ibid, Page 223

<sup>130</sup> Ibid, Page 224.

Another important consideration with regard to the hate crime legal provisions is whether they include the issue of “perceived characteristic” or “association with a characteristic”. Article 174/B of the Hungarian Criminal Code covers the “perceived characteristic”, by explicitly mentioning “*whether in fact or under presumption*”. Article 77 of the Romanian Criminal Code does not explicitly mention it, but it can be interpreted as to cover “mistakes of fact”, because it refers to the perpetrator’s motive and not to the victim’s real identity (“Committing a crime for motivations related to race, nationality...”). “Mistakes of act” only covers perceived characteristic, and not association with a characteristic.

Neither of the Hungarian or Romanian provisions does cover affiliation or association with a protected characteristic. This is a gap which should be taken into account by the legislator, as it leaves unprotected, for example, non-Roma spouses of Roma.

Further, in the case of anti-Roma violent attacks, perpetrators often destruct Roma property. It was frequently the case during the inter-ethnic conflicts in Romania. The Hungarian Criminal Code provision does not cover this situation. The Romanian Criminal Code does cover it, as the general aggravating factor can apply to the offense of destruction.

The issue of multiple motives can be frequently met in practice<sup>131</sup>. Whenever such situations might occur, it is likely the investigators would disregard the bias motive, since the financial one, for example, can be easier to prove. To prevent such developments, the law should explicitly mention how strong the evidence should be in the case of mixed motives.

Another important discussion that has to be made, with regard to hate crime legislation, is a crucial topic, which was very present in academic debates: why should additional punishment be imposed in the case of crimes motivated by hate?

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<sup>131</sup> Ibid, Page 53

It is argued that hate and bias are actually “novel” mens rea, which are targeting emotional, not mental states<sup>132</sup>. In this context, the additional punishment imposed on perpetrators of hate crime is, according to some scholars, “punishment for bad character”<sup>133</sup>. Those who criticise hate crime legislation, for “punishing bad character” put under question whether a person can choose their emotions or beliefs. Also, it is questioned whether hatred and prejudice are worse than other emotions. Hate crime legislation is further criticized for regulating “not only what we do, but also who we are”<sup>134</sup>.

Further, it is argued that establishing a “moral hierarchy of motives” will not contribute to reducing the existent crimes, but it will have negative effects of race relations<sup>135</sup>. Jacobs considers that the civil rights paradigm does not fit crimes committed by private individuals against others. The root problem, of hate and prejudice, will not be eliminated by having more severe punishments for crimes committed out of hate, according to Jacobs and other scholars.

An interesting point made by Jacobs, in 1993, when the cited article was written, is that hate crimes might be, in the future, used against black offenders<sup>136</sup>. Interestingly, the prediction Jacobs, and others as well, has made was confirmed, including in Hungary. In 2013, the Miskolc County Court upheld the prosecution’s finding that the action of Roma, of attacking a car of extreme-right activists, was motivated by hate against Hungarians. As the organization Hungarian Civil Liberties Union (HCLU) reports<sup>137</sup>, on the 14<sup>th</sup> of September

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<sup>132</sup> Heidi M. Hurd, “*Why Liberals Should Hate ‘Hate Crime Legislation’*”, (Law And Philosophy, Volume 20, No 2, Hate Crime Legislation, March 2001), Page 216

<sup>133</sup> Ibid, Page 216

<sup>134</sup> Ibid, Page 232

<sup>135</sup> James B. Jacobs, “*Should Hate Be A Crime?*” (The Public Interest, Fall, 1993), Page 14

<sup>136</sup> Ibid, Page 10

<sup>137</sup> Hungarian Civil Liberties Union, “*Romas Sentenced For Hate Crime Against Hungarians*”, (13 July 2012, HCLU Website), And “*Those Racist Roma Again*” (15 May 2013, HCLU Website), Available Here:

[Http://Tasz.Hu/Node/2785](http://Tasz.Hu/Node/2785)

[Http://Tasz.Hu/En/Romaprogram/Those-Racist-Roma-Again](http://Tasz.Hu/En/Romaprogram/Those-Racist-Roma-Again)

2009, in Sajóbáony, more than one hundred Jobbik party members gathered, dressed similarly to Hungarian Guard uniforms. Several Roma tried to enter the place where the Jobbik members gathered, but have been stopped by the police. The police have not taken any action against the extremist group. The next day, as a result of the intimidation conducted by the Jobbik members, and dissatisfied with the police inaction, several Roma attacked with sticks a car of extreme-right activists, who got into the locality, again. Light injuries were caused to two persons in the car. The Roma have been found guilty of “violence against a member of the community”, and received more severe punishment, taking into account they were considered to attack the Jobbik members motivated by hate against Hungarians. It is important to mention that this incident occurred only few weeks after the serial killings of Roma by members of the extreme-right. Both the HCLU and the Hungarian Helsinki Committee have been highly critical about this interpretation of the hate crime law by the Hungarian courts. As they put it, the law was applied “against a population that had been traumatized by a series of murders by racist extremists”, which shows “wide-spread, negative discrimination in the criminal justice system”<sup>138</sup>.

Petra Bárd considers this judicial interpretation an abuse of rights, in the sense of Article 17 of the European Convention on Human Rights, pointing out that, basically, the states shows “sympathy with those attacking and undermining its foundational values” and that it becomes an accomplice in the majoritarian oppression of a discreet and insular minority”<sup>139</sup>.

Jacobs also highlighted that student law review writers pointed out the necessity of making it clear that hate crime laws apply only to white defendants<sup>140</sup>. Another point made by Jacobs refers to hate crime politics. He mentions that in the case of visible cases, politicians

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<sup>138</sup> Ibid

<sup>139</sup> Bárd, Page 10

<sup>140</sup> Jacobs, 1993, Page 10

and police are put in a very difficult position: in case the label of hate crime is attached to the case, there will be high criticism from the side of the perpetrator's group for "bias, hasty judgment, and double standards", while by not considering the case as a hate crime, the high criticism will come from the victim's group for "bias and insensitivity"<sup>141</sup>. This might be the case in the United States, where interracial crimes are often the centre of public attention, which does not happen to the same degree in countries such as Romania.

When investigating whether a crime was motivated by prejudice, Jacobs questions whether the police should investigate, for example, what publications the defendant subscribes to, "what organizations he's a member of, what jokes he tells, what stereotypes he holds"<sup>142</sup>. This is considered to be "not in the spirit of a Strong First Amendment", as it would impose harsher punishments due to "'bad' beliefs and attitudes"<sup>143</sup>. In fact, for the U.S. Supreme Court case *Mitchell v. Wisconsin*, Chief Justice Rehnquist, for a unanimous Court, mentioned that "the First Amendment does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent"<sup>144</sup>.

However, this is not the case for European states, which don't have a tradition in protecting hate speech. During the trial of the Roma serial killings, such investigations have been conducted, in order to prove the prejudice which triggered the crimes. As several international, European and national NGOs highlighted, as a response to the Hungarian court's decision on the Roma killings, "the culprits' past demonstrated that they had strong aversion against Roma before committing the series of crimes"<sup>145</sup>. Further, during the trial of

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<sup>141</sup> Ibid, Page 9

<sup>142</sup> Ibid, Page 7

<sup>143</sup> Ibid, Page 7

<sup>144</sup> *Mitchell V. Wisconsin*, 508 U.S. 476 (1993)

<sup>145</sup> Amnesty International, The European Roma Rights Centre, The Hungarian Helsinki Committee, The Legal Defence Bureau For National And Ethnic Minorities, And The Hungarian Civil Liberties Union, „*Roma Killings in Hungary: The Court Has Done Its Job, The State Needs To Act*”, (ERRC Website, 7 August 2013), available here: <http://www.errc.org/article/roma-killings-in-hungary-the-court-has-done-its-job-the-state-needs-to-act/4180>

the Roma killings, the tattoo of one of the defendants, Z.P., namely the number 88, was discussed by the judge, while interviewing witnesses<sup>146</sup>.

Scholars who are defending harsher punishments for hate crimes, as opposed to ordinary crimes, bring compelling arguments as well. In the absence of the protected characteristic, it is important to highlight that no crime would occur<sup>147</sup>. There are several surveys which indicate that hate crimes are qualitatively different from other types of crimes.<sup>148</sup> Hate crime offenders intentionally target victims due to their immutable characteristic. Hate crimes have a special emotional impact on the victims, but also on the overall community the victim belongs to. It has been acknowledged, from various points of view, that hate crimes are “morally worse”. The debate is over they should be “legally worse” as well<sup>149</sup>.

Hate crime laws do not, actually, punish “bad character” or the actual sentiment of hate. Further, considering the U.S. framework, which is highly protective of all forms of expression, hate crime laws do not punish any form of expression of hate, but those expressions which are in violation of criminal law provisions. Hate crime laws punish the crime which is committed as a result of the sentiment of hate. It is important to apply harsher punishments for the fact that a crime was committed out of hate, taking into account all the considerations mentioned above, such as impact on the victim, impact on the overall society, deterrent effect, and others. Further, hate crimes are crimes committed in particular

<sup>146</sup> Eszter Hajdu, Film „*Judgment In Hungary*” (Hungarian Title: Ítélet Magyarországon), (Date Of Release In Hungary 12 June 2014), Miradouro Media LDA

<sup>147</sup> Michael Lieberman, “*Hate Crime Laws: Punishment To Fit The Crime*”, (Dissent, Summer 2010), Page 81

<sup>148</sup> Mcdevitt, Balboni, Garcia And Gu, 2001, Mcdevitt And Levin, 1993, Herek, Gillis And Cogan, 1999, Mentioned In Lieberman, 2010, Page 82.

<sup>149</sup> Lieberman, 2010, Page 82

circumstances. To ignore those particular circumstances leads to ignoring principles such as equality before law and equal access to justice<sup>150</sup>

The Hungarian and the Romanian Criminal Codes' provisions grant the minimum necessary tools to investigators to look into the bias motive. A positive aspect is that none of the two legal models has followed the "hostility model", which would have led to burdensome evidentiary standards. However, there are legislative gaps such as the regulation of affiliation or association to a protected characteristic, or the multiple motives situation. These legislative gaps are not reasons for the police, prosecutors and courts not to seriously look into bias motivation, whenever there is a reasonable assumption there could be one. The judiciary should take into account the general factors in their countries related to inter-ethnic relations, conflicts and tensions, when deciding whether to look into biased motivation of a crime. This should be the case particularly for Hungary, a country where far-right movement has gained more and more territory.

There is plenty of room for legislative improvement of hate crime laws. Beside amendments of the current legislative framework, which would be necessary, particularly in Hungary, the crucial issue is how the judicial bodies are working with the legislative tools they are currently having. A critical problem in the case of Hungary is the inconsistent interpretation of the law. Unfortunately, as the Hungarian courts have proven, they seem to be eager to use the available legal tools also for the purpose of further victimising the Roma.

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<sup>150</sup> Olena Bondarenko, *"Response To Hate Crimes In The US, UK And Ukraine: Consideration Of Victims' Perspective"*, (Central European University, 2014), Page 64.



## CHAPTER 3: HATE CRIMES LAWS IN PRACTICE: WHAT DIFFERENCE DID IT MAKE FOR ROMA VICTIMS?

### 3.1. Effectiveness of hate crime laws

The effectiveness of any piece of criminal law, regulating any type of crime, should be proven. It is important for the state, in the first place, to show that the laws it has adopted have been actually put into practice, in order to prove to its citizens that it is a state that respects the rule of law. The effectiveness of criminal laws is also important from two other points of view: firstly, the deterrent effect it can have and secondly, the impact on the victims. This general discussion is valid for any vulnerable group, which can be victim of hate crime, but for the purpose of this thesis, it will be focused on the Roma.

This section discusses the effectiveness of hate crime laws from three perspectives: implementation of the law, proven by statistics, how the investigation is conducted and deterrent effect on the general population.

As discussed in the previous chapter, the supporters of the additional punishments imposed for crimes committed out of hate, motivate their option also by the additional impact of hate crimes on the victims. In the case of interethnic conflicts in Romania, beside the immediate damage caused to Roma, which was in some cases both material and physical, the entire Roma community started to feel exposed and threatened by the mere fact of their ethnic identity.

Therefore, an important indicator which can show how effective a hate crime law was is the **remedy** it provided for the victim. Beside compensation, pecuniary or non-pecuniary damages that can be received by the victim, the declaratory judgment, establishing the crime was committed because the victim was Roma, it can have a crucial importance.

The effectiveness of a hate crime is also proven by the degree of its implementation. This can be shown by statistics, which should be collected by judicial bodies. In order to have a clear view on how relevant legal provisions are being implemented, statistics should show information such as:

- number of cases reported to police
- number of cases for which the police has investigated the bias motive
- number of prosecuted cases
- number of convictions
- number of convictions for hate crime, as opposed to convictions for base crimes

The bodies that should collect this type of data, in Romania, are the General Inspectorate of the Romanian Police, the Ministry of Public Affairs. The statistics of the General Inspectorate of the Romanian Police for the period 2004-2013 don't show the number of investigated crimes, committed out of hate<sup>151</sup>.

The Superior Council of Magistrates and the Romanian Ministry of Justice collect data on the judiciary system within courts. The focus, however, is to observe number of cases, caseload per judge or per prosecutor, and other indicators which offer a view on the administration of justice<sup>152</sup>.

In 2006, the Romanian National Focal Point (NFP) for the European Monitoring Centre on Racism and Xenophobia (EUMC) has requested public information on data

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<sup>151</sup> Statistics for the period 2004-2013 that have been checked are available on the website of the general inspectorate of the Romanian police here: <http://www.politiaromana.ro/ro/utile/statistici-evaluari/statistici/statistica-principalelor-activitati-desfasurate-de-politia-romana-in-perioada-2004-2012>

<sup>152</sup> Statistics for the period 2008-2013 that have been checked are available on the website of the Superior Council of Magistrates here, for courts: <http://www.csm1909.ro/csm/index.php?cmd=2301> and here, for the prosecutors' offices <http://www.csm1909.ro/csm/index.php?cmd=2302>

collected with regard to racist violence. The Superior Council of Magistrates responded to the Romanian NFP that the data it collects does not focus on the characteristics of the victims. It further mentioned that the Ministry of Justice should collect this type of data. The Ministry of Justice did not make reference to such activity, in their reply to NFP<sup>153</sup>.

In Hungary, no public body has the specific competence to collect data on hate crimes. The data related to crimes, which are reported, are collected in the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (*Egységes Nyomozóhatósági és Ügyészségi Bűnügyi Statisztika, ENYÜBS*). NEKI organization made several observations on the flaws of the system, relevant for the topic of hate crimes. NEKI firstly observes that there would be included in the system only those crimes which were considered to be *motivated by hate* by the public authorities. Therefore, if a victim or witness considers a crime was motivated by hate, but the prosecutor does not take it into consideration, when qualifying the crime, then that crime will not appear in the system as a crime motivated by hate<sup>154</sup>. The system also includes the base motive, as a qualifying circumstance, for crimes such as genocide, homicide, bodily harm and partnership violence. However, “disaggregation by protected characteristics is not possible for these crimes”, which “results in the odd outcome that more detailed data is available for less severe forms of crime such as assault, than for more severe forms of crime such as homicide<sup>155</sup>”.

Further, the data is introduced in ENYUBS system only after the investigation had been closed or suspended. Usually, investigations take a long time, therefore, a case will be introduced in the system months, or even years after it happened. Therefore, the system does

<sup>153</sup> Iustina Ionescu, Romanița Iordache, Maria Kovacs, Cătălin Berescu, 'Romanian NFP „National Data Collection Report - 2006”: RAXEN 7', Produced by the Romanian National Focal Point for the European Monitoring Centre On Racism And Xenophobia (EUMC), 2006, Page 64.

<sup>154</sup> Tamás Dombos, Márton Udvari, "Hate Crimes In Hungary: Problems, Recommendations, Good Practices-Summary Report", (NEKI, 2014), Page 16.

<sup>155</sup> Ibid, Page 16

not reflect trends<sup>156</sup>. Most importantly and relevant for the topic of law effectiveness, NEKI notes that “it is impossible to trace a crime from reporting to sanctioning; one cannot figure out, for example, what happened to the hate crimes reported in 2007 by 2014, in how many of them the police were able to identify the perpetrator, how many of them were prosecuted, in how many of them the courts found the defendant guilty, and what kinds of sanctions were imposed”<sup>157</sup>.

The table below indicates the extent of data collection on hate crimes against Roma in Hungary and Romania, by looking at the data provided by the OSCE, in its annual reports on hate crimes, based on both official data as well as on NGO reports. The period for which statistics have been searched for is 2009-2012.

In the United States, the responsibility to collect data on hate crimes belongs to the Attorney General, according to the Hate Crime Statistics Act<sup>158</sup>. The Federal Bureau of Investigation also collects data on hate crimes, indicating the incidents and offences, the type of victim (an individual, a business, an institution, or society as a whole), number of offenders and sometimes, race of offenders, location type (e.g. homes, schools), jurisdiction<sup>159</sup>.

Year	Official data		Non-governmental organizations	
	Hungary	Romania	Hungary	Romania
2009	Six murders, four assaults causing serious injuries and one minor assault on Roma persons.	No official data	HCLU: 6 murders, five violent attacks, arsons.  ERRC: 3 murders, 3 violent assaults, 6 arson attacks	Romani CRISS: 2 inter-ethnic conflicts

<sup>156</sup> Ibid, Page 16

<sup>157</sup> Ibid, Page 16

<sup>158</sup> Hate Crime Statistics Act as amended, 28 U.S.C. § 534

<sup>159</sup> Information available on the website of the Federal Bureau of Investigation, here: <http://www.Fbi.Gov/About-Us/Cjis/Ucr/Hate-Crime/2012/Hate-Crime>

2010	No official data	No official data	<p>ERRC: Two arson attacks, one property damage, one physical assault</p> <p>Human Rights First: Four arson attacks (Molotov cocktails)</p> <p>The Movement for Desegregation Foundation: 12 murders, 24 physical assaults, seven cases of threats, 29 arson attacks, 10 property damage, 2 cases graffiti to property</p>	Romani CRISS: one property arson, and one physical assault
2011	One assault against a man who was perceived by the perpetrator to be involved in “Roma issues” and a threat against 6 Roma children	No official data	<p>NEKI: one physical assault by a group.</p> <p>Athena Institute: two shootings directed at a house belonging to Roma, two cases of graffiti, and one physical assault</p> <p>Regional Centre for Minorities: graffiti on the doorway of the house belonging to one of their staff members, who worked on Roma</p> <p>A World Without Nazism: one case of harassment, including against children.</p>	Romani CRISS: clashes against Roma and the non-Roma for 24 hours - 7 physical assaults

2012	No official data	-	<p>UNHCR, Athena Institute, ERRC: one house damage during anti-Roma rally</p> <p>UNCHR, Athena Institute: gun threats against Roma, one graffiti case, one physical assault</p> <p>ERRC: knife threats against Roma case, four physical assaults, one arson</p>	-
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The table shows there is often complete lack of official data on hate crimes. Even in situations when the public authorities provide certain information to the OSCE, there is a discrepancy between what the authorities report and what the NGOs report.

It is important to mention that even if a state has proper hate crime laws, which also determine specialized bodies to collect and make public statistics on hate crimes, this does not mean the problem of underreporting is solved. Available statistics, released by public authorities enable a view on whether the state responds to hate crime. Such statistics show if the existent hate crime legislation is put into practice. They also show how committed are the authorities in investigating bias motives of committing crimes. Statistics, however, do not show us the real extent of hate crimes in a country, mostly because many of this type of crimes remain unreported. NGOs might compensate, to a certain degree, by reporting on cases which were identified, but not reported to police or prosecution. Even so, the victims of hate crime are so much more vulnerable, compared to victims of other types of offences, and the fear of retaliation prevents them, frequently, from reporting.

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Therefore, statistics would only respond to the question which we are seeking responses to, namely whether legislation is effective or not. The issue before us is that both in Hungary and Romania collection of data on hate crimes is weak, which makes it hard to assess legislation effectiveness, based on existent statistics.

Another point in discussing law effectiveness is how the investigation is conducted. In Hungary, a professional stream was created by the National Police Headquarters, with the purpose of dealing with hate crimes<sup>160</sup>. The professional stream is composed of police officers who are investigating hate crime incidents. The aim of this professional stream was to increase the effectiveness of hate crime investigations. NEKI organization has made observations on why this stream has not achieved its purpose. It firstly observed that these police officers deal with other type of crimes as well, and the caseload does not allow for a proper specialization. Further, NEKI observed that training courses are an important tool, but

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<sup>160</sup> Dombos And Udvari, 2014, Page 12

the fluctuation of police officers is high, which diminishes the impact of the courses. A main obstacle identified by NEKI was that police officers don't take into consideration the circumstances which hint towards a crime committed out of hate. The police officers in Hungary are mostly unaware of hate indicators that must be used in investigation<sup>161</sup>. This leads to underqualification (*alulminősítés*)<sup>162</sup>, which is qualifying a crime as a base crime, instead of a hate crime. NEKI also highlights the police officers' prejudice towards Roma as a determinant of ineffective investigation of hate crimes against Roma. Interestingly, it is noted by the same research that police officers and prosecutors neglect the bias motive of crimes as it is more difficult to investigate and prove. They prefer to close the case as fast as possible, as this is the sole indicator of their professional performance which is evaluated.

In terms of weak investigation, the situation is similar in Romania. There is no research on how the bias motivation is investigated by Romanian police and prosecution bodies. Romani CRISS organization has documented and reported cases of police abuse against Roma people, requesting for the racial motivation to be investigated on<sup>163</sup>. For none of these cases, which were finalized, the racial motivation was not investigated<sup>164</sup>.

With regard to the deterrent effect the legislation can have, for both Romania and Hungary is hard to assess whether there has been any. Lack of statistics in Romania does not allow for an analysis to be made to see whether the number of hate crimes has decreased or not, as a result of the application of law. While in Hungary some disaggregated data are collected, there are many flaws of the data collection system, which does not allow us to seek

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<sup>161</sup> Ibid, Page 12

<sup>162</sup> Ibid, Page 12

<sup>163</sup> One example is a case from 2012, from Agristeu, Mures  
<http://www.romanicriss.org/pdf/adresa%20jandarmerie%20errc.pdf>

<sup>164</sup> Romani CRISS Case Files – Not Public



a response to the question of deterrence. For both Romania and Hungary it is impossible to draw a conclusion on a possible deterrent effect, as low number of cases is being recorded.

On the other hand, the statistics provided by the FBI show a decrease of the number of hate crime incidents, in the past years. Prior to the adoption of the Hate Crime Statistics Act, hate crime data was not being collected regularly, so there are no comparative data<sup>165</sup>.

An “unanticipated” effect<sup>166</sup> of hate crime laws, both in Hungary and US, is the conviction of minorities as hate crime offenders. Statistics from 1995 to 1999 show that the rate of the black offenders is reported to be disproportionate<sup>167</sup>. The effects of the hate crime legislation in Hungary, with respect to the Roma minority have proven to be more damaging than beneficial. As observed earlier, the legislation is used to convict Roma people, and to victimize members of extreme-right groups.

### **3.2. Case studies in Hungary and Romania: serial attacks of Roma case and Hadareni case**

In 2008 and 2009, a series of violent attacks targeted Roma in Hungary. According to OSCE, 40 incidents were reported, either physical attacks against Roma, or attacks targeting properties of Roma<sup>168</sup>. The incidents involved targeting Roma from outskirts of small localities, use of fire-arms and incendiary devices<sup>169</sup>. 9 of these crimes have been grouped as part of a series of planned, organized crimes, while the rest have been considered by the

<sup>165</sup> Tim Bakken, “*The Effects Of Hate Crime Legislation: Unproven Benefits And Unintended Consequences*”, (International Journal Of Discrimination And The Law, Vol. 5, 2002), Page 238

<sup>166</sup> Ibid, Page 238

<sup>167</sup> Ibid, Page 238, 239

<sup>168</sup> OSCE, “*Field Assessment Of Violent Incidents Against Roma In Hungary: Key Developments, Findings And Recommendations*”, (15 June 2010), Page 5

<sup>169</sup> Ibid, Page 5

Hungarian police to be sporadic<sup>170</sup>. Four persons were arrested in August 2009 and charged for the 9 incidents. The case study will focus on this series of violent attacks targeting Roma.

### **3.2.1 Context in Hungary**

There are several factors that need to be emphasized, to understand the context of the violent attacks against Roma, such as the socio-economic situation of Roma, the demographic factors, the presence of extremist groups and political parties, with anti-Roma rhetoric, as well as the perceived “Gypsy criminality”.

The socio-economic situation of the Roma in Hungary, as in other European countries as well, has not improved, but became even worse, in recent years<sup>171</sup>. Further, there are at least two demographic factors which influence the majority’s attitudes towards Roma. First of all, there is a tendency of migration of Roma, from cities to villages, while the opposite happens in the case of Hungarians. This brings about Roma from small, rural communities, to be perceived by locals, but also by public officials, as outsiders<sup>172</sup>. Second of all, the Roma population is generally younger than the overall population of Hungary<sup>173</sup>. 36,8% of Roma are between 0-14 years old, while 15,4% of the non-Roma population are between 0-14 years old<sup>174</sup>. This, jointly with other well-known prejudices against Roma, inflates the anti-Roma sentiments, as the majority population feels threatened by being out-numbered by Roma.

The presence of Jobbik party and Hungarian Guard is extremely relevant in the context of violence attacks against Roma. The anti-Roma rhetoric used by these groups, presenting

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<sup>170</sup> Ibid, Page 5

<sup>171</sup> Ibid, Page 5

<sup>172</sup> Ibid, Page 6

<sup>173</sup> Lidia Balogh, “Possible Responses To The Sweep Of Right-Wing Forces And Anti-Gypsyism In Hungary”, (In “The Gypsy “Menace” Populism And The New Anti-Gypsy Policy”, Editor Michael Stewart, Hurst & Company, London, 2012), Page 242

<sup>174</sup> Ministry of Social Administration and Justice, “National Social Inclusion Strategy. Extreme Poverty, Child Poverty and Roma” (Budapest, December 2011), available here:  
[http://ec.europa.eu/justice/discrimination/files/roma\\_hungary\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_hungary_strategy_en.pdf)

Roma as a threat, echoes in the perception of Roma among the general population, particularly in times of global economic crisis. These groups use Roma as scapegoats, including during electoral campaigns, to gain public support.

The idea of “Gypsy criminality”, an important element used by the right-wing extremist groups, is supported by specific cases which have been exploited to strengthen the image of Roma as criminals. One of the most well-known such case was the killing of a Hungarian teacher by Roma, who were convicted (2006). Another case was the rape and murder of a 14-year old Hungarian girl (2008), which several Roma have been accused for, but eventually a Hungarian was charged for. The most recent such case occurred in 2009, when a Romanian athlete was killed by several Roma, in Hungary. This case generated anti-Roma sentiments among the public opinion in both Romania and Hungary<sup>175</sup>.

Such cases were heavily exploited by Jobbik and by the Hungarian Guard, including during the electoral campaign for the European Parliament in 2009<sup>176</sup>.

FXB Centre for Health and Human Rights, at Harvard University, concluded, after analysing the subject of anti-Roma violence in Hungary, that the Government has not responded in an adequate manner to frequent situations such as: hate speech promoted by extremist groups, as well as by political leaders, hate-motivated murders, individual and structural discrimination. This lack of response, according to FXB Centre, “has emboldened the perpetrators and their followers, and has led to the perception that such action is the preferred solution to a problem defined in racist terms”<sup>177</sup>.

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<sup>175</sup> Ibid, Page 242, 243

<sup>176</sup> OSCE, Field Assessment, 2010, Page 6.

<sup>177</sup> François-Xavier Bagnoud Center For Health And Human Rights, Harvard School Of Public Health And Harvard University, „*Accelerating Patterns Of Anti-Roma Violence I Hungary*”, (Boston, February 2014), Page 43.

### **3.2.2 Case development**

Four Hungarian men have been indicted, trialed and convicted, for committing several crimes against Roma, in 2008 and 2009, in several villages in Hungary.

The first incident involved shooting 10-15 gun shots at three Roma houses, from Galgagyörk, on 21 July 2008<sup>178</sup>. In Pircse, self-made fire bombs (Molotov cocktails) were used to set two Roma houses on fire. While trying to escape from one of the houses, a woman was shot in her leg<sup>179</sup>.

In Nyíradony-Tamásipuszta, on 5 September 2008, several gun shots were fired at a Roma house, but fortunately, no one was injured<sup>180</sup>.

In Tarnabod, on 29 September 2009, three Roma houses were thrown Molotov cocktails at, and shots were fired at the same houses. For this incident, three Roma boys have been arrested and held in pre-trial detention for 11 months. After the arrest of the four men, in August 2009, the three Roma have filed a case against the state for wrongful detention<sup>181</sup>.

In Nagycséc, on 3 November 2008, two Roma homes were firebombed. While trying to escape the fire, a 43-year-old Roma man and a 40-year-old woman were fatally shot by the perpetrators.

In Alsózsolca, on 15 December 2008, a 19-year-old Roma man was chopping wood in his yard, was shot while doing this and was severely injured. His partner was also shot, but was caused a minor injury from the shot.

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<sup>178</sup>The description of the cases was elaborated by consulting three sources:

OSCE, Field Assessment, 2010, Pages 58-63

Lidia Balogh, in *The Gypsy "Menace"*, 2012, Page 249, 250

Online Resource, *Monitoring Extremism – European Hate Crime Early Warning System* [Http://Www.Red-Network.eu/?I=Red-Network.En.Items&Id=396](http://www.Red-Network.eu/?I=Red-Network.En.Items&Id=396)

<sup>180</sup> Ibid

<sup>181</sup> Ibid

In Tatárszentgyörgy, on 23 February 2009, a Roma house was bombed by a Molotov cocktail. While trying to escape from fire, two persons were fatally shot (a 27-year-old Roma man and his 5-year-old son) and other 3 persons were injured (the man's wife, their 6-year-old daughter and a 3-year-old child). Initially, the place was not considered a crime scene, as the police and the forensic expert who were present at the scene appreciated that the fire was caused by improper electricity connections, and that the two deaths were the result of the same problem. The police and the forensic expert ignored the injuries on the victims' bodies which were clearly caused by gun shots.

In Tiszalök, on 22 April 2009, a 54-year-old Roma man was fatally shot, in the chest, while leaving his home for work.

In Kisléta, on 3 August 2009, a 45-year-old Roma woman was fatally shot. Her 13-year-old daughter was also shot and was caused severe injuries.

### **3.2.3 Case investigation and prosecution. Application of the law and sanctioning.**

#### **Remedies for the victims**

The case has been finalised, the Budapest District Court held that the series of attacks, including killings, were motivated by racial hatred, three of the defendants have been sentenced to life time imprisonment, while the fourth one was sentenced to 13 years imprisonment<sup>182</sup>.

It seems, overall, that the state has done its job: the attackers have been identified, the bias motivation was investigated on and proven, and the sentences were proportionate to the gravity of the crimes. A more careful analysis of what happened since the beginning of the

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<sup>182</sup> Amnesty International, The European Roma Rights Centre, The Hungarian Helsinki Committee, The Legal Defence Bureau For National And Ethnic Minorities, The Hungarian Civil Liberties Union, *"The Court Has Done Its Job, The State Needs To Act"*, (7 August 2013), available here: <http://tasz.hu/en/romaprogram/court-has-done-its-job-state-needs-act>

attacks, in July 2008, until the court judgment was released, in August 2013, shows numerous flaws in the system.

Organizations such as the OSCE and Human Rights First observe that the “Hungarian authorities have responded to the violent attacks on a number of levels”<sup>183</sup>. Human Rights First firstly notices that these cases determined reactions from public officials, condemning violence against Roma. Secondly, it is highlighted that high numbers of law enforcement resources were devoted into identifying the perpetrators, that international cooperation was started with the same purpose, and that rewards were offered<sup>184</sup>.

A special investigation unit was established, to conduct the investigation attacks on Roma, which has gradually reached 120 members<sup>185</sup>. The reward for helping the identification of the perpetrators was gradually increased until it reached the record of 100 million Hungarian forints<sup>186</sup>. International cooperation was reached for, by the Hungarian government, as the evidence was examined with the support of Europol and Interpol. Further, the United States Federal Bureau for Investigation was involved in the investigation, by creating a perpetrator’s profile. The National Police informed that investigators had interviews with “more than 200 witnesses, checked more than a million phone calls and information concerning more than 1.5 million cars, and examined the files in cases involving the illegal use of weapons by 360 different persons”<sup>187</sup>

NGOs highlighted flaws in the investigation. It was considered, during the investigation, that police was not paying enough attention to the hate motivation of the attacks. The European Commission against Racism and Intolerance, in its four monitoring cycle report on Hungary, highlighted that crimes committed for racist motivation are not all

<sup>183</sup> Human Rights First, “*Combating Violence against Roma in Hungary*”, (October 2010), Page 5.

<sup>184</sup> Ibid, Page 6

<sup>185</sup> OSCE-ODIHR, (15 June 2010), Page 15.

<sup>186</sup> Human Rights First, (October 2010), Page 6.

<sup>187</sup> OSCE-ODIHR, (15 June 2010), Page 16

investigated and prosecuted as such<sup>188</sup>. The Hungarian Helsinki Committee highlighted, in 2010, that in the case of hate crimes, the difficulty of proving the motivation of the perpetrators, leads to police and prosecutors choosing an easier path, namely, “a qualification that is easier to substantiate”<sup>189</sup>.

It is highly problematic, in the case of the serial killings, the delay in observing the connections between these crimes, and in investigating the hate motivation of these at such a late stage, after so many victims have been attacked or killed<sup>190</sup>.

One of the reasons for the failure to check the hate motivation at an earlier stage is attributed to lack of protocols or guidelines that should help police and prosecution to investigate hate crimes<sup>191</sup>.

Numerous flaws of the early investigation are reported by NGOs for the Tatárszentgyörgy crimes. It is reported by NGOs that the site of the murders have not been immediately closed off, which might have compromised important case evidence. NGOs consider that the crime scene should have been secured by closing off a 100 meters perimeter around it, which has not occurred. Further, it is reported that homicide was ruled out, in spite of evidence raising doubts on this<sup>192</sup>.

When the police got to the crime scene, it has failed to close off the site, to interrogate witnesses and to collect evidence. In spite of witnesses' declarations that gun shots were

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<sup>188</sup> European Commission Against Racism and Intolerance, „*ECRI Report On Hungary (Fourth Monitoring Cycle)*”, (Adopted On 20 June 2008 Published On 24 February 2009), Page 15, Par. 22.

<sup>189</sup> Hungarian Helsinki Committee, “*Suggestions For Questions To Be Included In The List Of Issues For Consideration Of the 5th Periodic Report Of Hungary Task Force Of the Human Rights Committee 98th Session, 8-26 March 2010*”, Page 3.

<sup>190</sup> Hungarian Civil Liberties Union, “*It's The Court's Turn To Step Up Against Racism*”, 7 August 2013, Available Here: <http://Tasz.Hu/Node/3677>

<sup>191</sup> European Roma Rights Centre, “*Written Observations On The Situation Of Roma In Hungary - For Consideration By The Commission On Security And Cooperation In Europe, U.S. Helsinki Commission*” (19 March 2013), Page 3

<sup>192</sup> The European Roma Rights Centre, The Legal Defence Bureau For National And Ethnic Minorities, The Hungarian Civil Liberties Union, “*Report on the Circumstances of the Double Murder Committed At Tatárszentgyörgy On 23 February 2009 and conduct of the Acting Authorities (The Police, Ambulance and Fire Services)*”, (7 May 2009, Budapest)

heard, and in spite of the visible wounds of the injured Roma, the police considered the deaths to be caused by a domestic fire. The 2 victims were found 6-8 meters away from the house. In spite of this, the police left the crime scene without classifying the incident as a murder. They returned at the place when the family of the victims called and reported to find empty shot cartridges. The family of the victims showed the police footprints and cigarette butts. The police representatives' reaction to these declarations was despicable: one of them urinated on one of the footprints, while the other accused the Roma family for putting there the empty shot cartridges<sup>193</sup>.

Only late in the afternoon was the place secured, by the National Investigation Bureau, who had been called by Viktória Mohácsi, a Member of the European Parliament.

NGOs are critical not only about the immediate investigation conducted by the police, in Tatárszentgyörgy, but also about the conduct of other public services, namely of the fire brigade, the ambulance service and the doctor who arrived at the crime scene. The fire brigade found that the fire was caused by an illegal electrical connection, even if, according to NGOs, the police had already seen the bottles used for Molotov cocktails<sup>194</sup>. The NGO report on the investigation of the Tatárszentgyörgy crimes notices that the ambulance took “an unreasonably long time to arrive at the scene”<sup>195</sup>. The emergency personnel arriving at the crime scene had not undressed the victims, to examine them, since the doctor arriving at the crime scene at a later stage, found the bodies with their clothes on. The doctor described the injuries on the victims' bodies, in the death certificates, but concluded that the cause of death was a house fire.

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<sup>193</sup> Ibid, Page 5

<sup>194</sup> Ibid, Page 5

<sup>195</sup> Ibid, Page 9



All these aspects led to disciplinary proceedings to be ordered by the Pest County Police Headquarters<sup>196</sup>. Press releases of the police mentioned mistakes were made during the investigation, and disciplinary action had been taken against 2 police members. NGOs criticized that the results of the disciplinary action had not been revealed to public.

Later, the Legal Defense Bureau for National and Ethnic Minorities, together with Viktória Mohácsi, the Hungarian MEP, have lodged a complaint, on behalf of victims' family, with regard to the unprofessional investigation carried out<sup>197</sup>. The complaint was lodged before the Independent Police Complaints Committee, which concluded police regulations were not followed during the early investigation of the Tatárszentgyörgy crime.<sup>198</sup>

Finally, an investigation on these points was ordered by the Government as well. A report was elaborated by three ministries, which claims that the "fire brigade and the ambulance services acted professionally"<sup>199</sup>. The same report indicates that disciplinary action was taken against the fire and arson investigator.

In August 2009, further issues were revealed, which adds doubts on the state responses to the case, both in terms of crime prevention and also in terms of cooperation among different levels of state authorities. The Hungarian National Security Office (NSO) was monitoring several of the perpetrators, before the crimes had been committed. The surveillance had stopped a few weeks before the first attack. The NSO was aware that several perpetrators were members of extreme-right groups<sup>200</sup>. The NSO also had information that one of the perpetrators had purchased weapons<sup>201</sup>. Moreover, one of the perpetrators was a

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<sup>196</sup> Ibid, Page 10

<sup>197</sup> OSCE-ODIHR, (15 June 2010), Page 18

<sup>198</sup> Ibid, Page 18

<sup>199</sup> The European Roma Rights Centre, The Legal Defence Bureau For National And Ethnic Minorities, The Hungarian Civil Liberties Union, (7 May 2009), Page 10

<sup>200</sup> Hungarian Helsinki Committee, „*Suggestions For Questions To Be Included In The List Of Issues For Consideration Of the 5th Periodic Report Of Hungary Task Force Of the Human Rights Committee 98th Session, 8-26 March 2010*”, (2010), Page 5-6

<sup>201</sup> OSCE-ODIHR, (15 June 2010), Page 19

former informer of the Military Security Office<sup>202</sup>. All these were allegations, appeared online, that were further confirmed by the National Security Committee of the Hungarian parliament, after conducting a fact-finding investigation on the role of the NSO. OSCE reports that “prior to the first murder, the NSO had already collected significant information on the persons ultimately arrested and charged, but there had been no analysis or consolidation of this information at higher levels<sup>203</sup>.” Therefore, it seems the crimes committed by the four could have been avoided, if the NSO had focused on ethnic tensions. Further, the cooperation between the police and the NSO was extremely flawed.

All these flaws in the investigation phase of the case have determined a very long trial, which lasted for two years and a half. The judge had to perform a very active role, interrogate witnesses and administrate evidence that could have been done properly from the investigative phase already.

An effective remedy, in this case, was the fact that the perpetrators have been sanctioned and that the punishment was proportionate to the gravity of the crimes. It was crucial for the victims and families of the victims that a court has acknowledged that the crimes were committed against these particular individuals because they were Roma, and that they have been selected due to their ethnicity.

However, the support the victims’ families received from the authorities was far from being enough. The family of the Tatárszentgyörgy Roma victims declared they felt “abandoned after the attack”, with no measures to take steps on their own to feel safer, as they fear for other attacks. They mentioned that the way the investigation had been carried out left “little hope that there would be effective remedy for the loss of their family members”<sup>204</sup>.

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<sup>202</sup> Hungarian Helsinki Committee, (2010), Page 6

<sup>203</sup> OSCE-ODIHR, (15 June 2010), Page 19

<sup>204</sup> Ibid, Page 22

They, as well as NGOs, pointed out that there was not much information provided to them by the authorities, with regard to the status of the investigation<sup>205</sup>.

Eszter Hajdú, the film director of the documentary “Judgment in Hungary”, stated in an interview: “Those people are living in constant fear even five years after the murders. I spent the night more than once with the victims' families, and whenever there was noise outside in the street, everyone woke up, afraid those guys were coming for them again”<sup>206</sup>

The trial of the case was entirely filmed by Eszter Hajdú and her crew, and the edited footage became „Judgment in Hungary”. Scenes from the film show several instances when the judge is impolite and tough with the Roma people who take part in the hearings. At one point, he is angry with a Roma woman, victim of the perpetrators’ aggression, saying that he did not understand what she was explaining, adding that that was the way „you people” speak. The father of the Roma man killed in Tatárszentgyörgy makes several comments with regard to the perpetrators, from the audience, while he was not the person who was being heard. This troubles the judge, who warns the Roma man several times. In the end, he fines the Roma man for contempt of the court.

### **3.2.4 Conclusions on the Hungarian case-study**

With regard to the sanctioning itself, the court has played an important role, as it reached a satisfying verdict. As Eszter Jovánovics suggests, in spite of this, the court’s mandate was not to correct shortcomings of other state institutions. The court was not responsible to find answers to the question of whether other persons were involved in the crimes as well. The court was not responsible to acknowledge that some of the attacks could have been prevented from occurring, in case the National Security Office had acted

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<sup>205</sup> Ibid, Page 22

<sup>206</sup> One World Romania Interview, available here: <http://veiozaarte.ro/video/off-the-rec/one-world-romania-2014-interview-with-eszter-hajdu.html>

adequately<sup>207</sup>. To conclude on this topic, in spite of the verdict, it still feels justice has not been completely served.

In this case, the law itself has been applied. This is important, first of all, for the victims and victims' families. Furthermore, this is important because of the deterrent effect the court's decision and the sanctioning can have on other members of extremist groups. It is also important because of the effect it can have on society, in general, and on interethnic relations, in particular. These killings and attacks had a damaging effect way beyond the families of the victims. Entire Roma communities felt unsafe in their own country, in their own homes. There were cases of Roma being found guilty of hate crime against non-Roma, after they responded to extreme-right threats, cases which have not occurred, in the absence of the terrifying context caused by the serial attacks and killings. Having a decision acknowledging and punishing the racial motivation can have an effect on all these different levels.

The state response to the hate crimes from 2008-2009 targeting Roma was far from reaching a reasonable standard. Responses came extremely late, in spite of clear signs of society's unrest, in terms of interethnic relations and anti-Roma sentiments, so widely and publicly expressed. There was no preventive action from the side of state, even if the National Security Office had enough information as to preserve its focus on interethnic relations and actions of extreme-right groups. In spite of a court disbanding the Magyar Garda, paramilitary groups have continued to organize rallies and manifests, and the state remained passive to it. There was much the authorities could have done, immediately after the first attacks, which would have prevented further attacks. The lack of cooperation of the National Security Office and the police raises serious question marks. Flawed investigation caused an extremely long trial. Flawed investigation, inappropriate victims' outreach, from the side of the authorities, a

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<sup>207</sup> Hungarian Civil Liberties Union, (7 August 2013), available here: <http://tasz.hu/node/3677>

lengthy trial and a hostile judge, have all contributed to Roma victims and victims' families distrusting the system and not hoping for adequate remedies. Prejudices towards Roma and anti-Roma sentiments are deeply rooted throughout Hungarian society, throughout its all levels. The extreme-right groups are surely outnumbered by the rest of the population. If the entire population, jointly with the authorities (Parliament, police, secret service, courts), were prejudice-free, the fight against the anti-Roma actions of the extreme-right would have been an easier battle to win. Unfortunately, the roles of the police men, of the fireman, of the doctor, of the authority who is supposed to enhance safety and security in a community, were played by people who are also prejudiced against Roma, who believe Roma should not be treated with same respect as any other citizen, and who can under no circumstance picture Roma as victims, but only as criminals.

### **3.2.5. Context in Romania**

In Romania, unlike Hungary, the extreme-right wing is not that developed and present in the public life. There are no political parties with an extreme-right orientation. However, anti-Roma speech and discriminatory statements are often promoted by politicians representing mainstream parties.

Violence against Roma motivated by hate occurred at the beginning of the '1990s. Romani CRISS organization reports a number of 35 interethnic conflicts documented in that period<sup>208</sup>. These conflicts occurred between Roma and non-Roma, with no affiliation to extremist groups. All these incidents have in common that all of them were the result of "impromptu community violence"<sup>209</sup>, developed in the context of Romania transitioning to democracy, with very young democratic institutions and rule of law.

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<sup>208</sup> Romani CRISS (September 2007), Page 5

<sup>209</sup> Andrzej Mirga, "The Extreme Right And Roma And Sinti In Europe: A New Phase In The Use Of Hate Speech And Violence?", Roma Rights Quarterly, Issue 1 (2009), Page 6

The socio-economic situation of Roma in Romania is similarly to the one of Roma in all other European countries, which is extremely precarious. This, on the background of an anti-Roma prejudiced society, represents the context of interethnic conflicts.

As Mirga puts it, “there is often a spark that ignites the fire<sup>210</sup>” in the development of cases of mob violence against Roma. In some of the cases from the early 1990s, the overall conflict can be traced back to an incident caused by specific Roma individuals or families. The context before these concrete incidents “was already highly combustible<sup>211</sup>” and the incidents provoked by some specific Roma individuals are only the drop that fills up the glass<sup>212</sup>.

More recently, mob violence against Roma was reported in 2007, 2009 and 2011<sup>213</sup>, and their development was similar to the ones from the beginning of the 1990s.

The case study will be focused on Hadareni case. This particular case represented a “school-case”, as Romani CRISS names it<sup>214</sup>, as it represented the impetus or a model for all the subsequent collective violence cases, and also from the perspective of justice administration. This case was the first interethnic conflict case that was brought before the European Court of Human Rights, and the ECtHR has ruled on important aspects, such as the role the ethnicity has played in the incidents, as well as in how the authorities dealt with the investigation and with providing remedies for the victims<sup>215</sup>.

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<sup>210</sup> Ibid, Page 8

<sup>211</sup> Ibid, Page 9

<sup>212</sup> Stefania Toma, “*Segregation And Ethnic Conflicts In Romania*”, In “The Gypsy Menace”, Edited By Michael Stewart, Page 193

<sup>213</sup> Romani CRISS Case Files

<sup>214</sup> Romani CRISS, (September 2007), Page 5

<sup>215</sup> David M. Crowe, “*The Roma In Post-Communist Eastern Europe: Questions of Ethnic Conflict and Ethnic Peace*”, Nationalities Papers, Vol. 36, No 3 (July 2008), Page 539

### **3.2.6. Case development**

On 20 September 1993, a fight was started between three Roma men and a non-Roma, living in Hadareni village. The son of the non-Roma tried to interfere in the fight, to protect his father, but got killed during the fight. The three Roma men ran away, to hide in a house. They were followed by a crowd of local non-Roma, including the chief of the local police and other representatives of the local police. People from the crowd set the house on fire. While trying to escape, two of the Roma men were beaten to death by people from the crowd. The last Roma man, who remained in the house, because he wasn't allowed by the crowd to escape the burning house, died in the fire. Out of vengeance, the angered crowd continued to destroy other Roma houses in Hadareni as well, got to damage several Roma houses and to completely destroy 13 of these, as well as to burn cars, stables and goods belonging to Roma<sup>216</sup>.

The incidents on 20 September 1993 had long-term negative impact on the lives of the Roma. Several fled the locality, to live in relatives' homes, and have not return to Hadareni anymore. Many of them had to live in inhumane conditions, as they lost their homes and did not receive immediate support. They lived in "hen-houses, pigsties [...], windowless cellars [...], or in extremely cold and deplorable conditions: sixteen people in one room with no heating, seven people in one room with a mud floor, families sleeping on mud or concrete floors without adequate clothing, heat or blankets [...] twelve persons lived for a year in a summer kitchen without a proper roof, door or windows."<sup>217</sup> The living conditions caused several illnesses for many of the Roma affected by the conflict<sup>218</sup>.

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<sup>216</sup> Romani CRISS, Description of Hadareni Case, available here:

<http://www.romanicriss.org/description%20of%20inter-ethnic%20conflict%20in%20hadareni%20%201993.pdf>

<sup>217</sup> Case of Moldovan and Others v. Romania (*Applications Nos. 41138/98 And 64320/01*)\_Judgment No. 1, 5 June 2005, par. 27

<sup>218</sup> Ibid, par.28

### **3.2.7. Investigation and national courts response. Remedies for the victims**

Several Roma victims have lodged a criminal complaint, before the Prosecutor's Office. The Roma mentioned several individuals from the crowd, who were involved in the attacks, including police representatives. In 1994 three non-Roma civilians have been arrested for a few hours. The charges against the police representatives were dropped, as Military Prosecutor's Office considered that the "inability to stop the crowd in itself did not constituted participation". An indictment was issued by the Public Prosecutor in 1997, against 11 civilians and the trial started shortly after, both on criminal and civil accounts. After 2 appeals of the prosecution, in 1999 the Supreme Court charged 12 civilians were convicted for different criminal offenses, such as destruction of property and 6 civilians were convicted of serious murder. The sanction applied was imprisonment for 1-7 years<sup>219</sup>.

The civil action was still pending before the Supreme Court in 2005, when the ECtHR judgments were released.

Therefore, it took 3 years after the incidents to have an indictment against the defendant. It took 5 years after the incidents to have a final decision of the national court on the criminal account of the case. Finally, it took more than 11 years to have a court decision on the civil action introduced by the plaintiffs.

In spite of different testimonials from witnesses, that police representatives were part of the crowd, and that they encouraged the crowd to destroy other properties of Roma in the village, after the burning of the first house, both the prosecution and the courts have ignored this aspect.

With regard to remedies provided for the victims, shortly after the incidents the Romanian Government allocated money for rebuilding the houses and for victims' financial

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<sup>219</sup> Ibid, par. 16-26



support. The allocated amounts were not enough for rebuilding all the damaged houses, to compensate for the prejudices suffered or to ensure any financial support for the victims.

Two judgments of the European Court of Human Rights deal with Hadareni case. One of them decides to strike the case out of the list, due to reached friendly settlement. 8 out of 25 applicants have not agreed to the friendly settlement, which led to the second ECtHR judgment on Hadareni case.

The ECtHR found, in its second judgment, a violation of Article 8 (right to private and family life), of Article 3 (right not to be subjected to inhumane and degrading treatment), of Article 6 § 1 (right to fair trial, on account of the lengthy proceedings), of Article 14, in conjunction with Articles 6 and 8 (right not to be subjected to discrimination). The Court also imposed on the Romanian Government the obligation to pay compensation to applicants.

Romania has ratified the European Convention on Human Rights in June 1994. The interethnic conflict from September 1993, in itself, was not examined by the Court, but only the state's responses to the incident, after the enter into force of the Convention. Even if the ECtHR did not examine the incident, it however observed "that the attacks were directed against the applicants because of their Roma origin"<sup>220</sup>.

The Court held that the "general attitude of the authorities – prosecutors, criminal and civil courts, Government and local authorities – [...] perpetuated the applicants' feelings of insecurity"<sup>221</sup>.

With regard to the right to dignity of the applicants, the Court considered that the living conditions, the length of the period of living in such conditions, as well as the general

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<sup>220</sup> Case of Moldovan and Others v. Romania (as regards the applicants Iulius Moldovan, Melenuța Moldovan, Maria Moldovan, Otilia Rostaș, Petru (Gruia) Lăcătuș, Maria Floarea Zoltan and Petru (Dîgăla) Lăcătuș), (Applications nos. 41138/98 and 64320/01), Judgment No. 2, par. 139

<sup>221</sup> Ibid, par. 108

attitude of the authorities, have inflicted mental suffering on the applicants, therefore affecting their human dignity and causing “humiliation and debasement.”<sup>222</sup>

According to the ECtHR, the mayor of the victims’ locality, as well as national judges, made reference to “the applicants’ honesty and way of life.”<sup>223</sup> These references were considered by the ECtHR as “purely discriminatory.”<sup>224</sup>

With regard to ensuring remedies for the victims, the ECtHR considered that the non-pecuniary damage suffered by the applicants could not be covered by simply holding a violation. Further, it considered that the expert’s estimations, based on which the national civil court established the amount of non-pecuniary damages, was “inconsistent and incomplete”<sup>225</sup>.

### **3.2.8. Conclusions on the Romanian case-law - Moldovan and others v. Romania (Judgement no 2)**

As discussed, the second judgment on this case examines the merits, with regard to 8 of the applicants, who have not agreed on a friendly settlement with the Romanian Government. Unlike the Hungarian case-study, the analysis of the state’s responses to hate crime incidents is conducted, in the Romanian case-study, by the European Court of Human Rights.

In terms of how the investigation was conducted, it was found to be faulty, on various levels. The lengthy proceedings, as well as discriminatory attitudes of authorities conducting the investigation, led to concluding the investigation was flawed. The national courts also acknowledged that the preliminary investigation was inadequate. Two partly dissenting judges of the ECtHR case consider that Article 6 § 1 (right to fair trial), was violated also on account

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<sup>222</sup> Ibid, par. 110

<sup>223</sup> Ibid, par. 111

<sup>224</sup> Ibid, par. 111

<sup>225</sup> Ibid, par.150

of the applicants' access to a court<sup>226</sup>. They argue that the national authorities have failed to investigate on the role the police representatives had in the 20 September 1993 events. This is, to some extent, similar to the case of Roma serial killings in Hungary. The role of the authorities (police, ambulance, doctor, fireman, National Security Office) was not analysed by any court, as the court was called upon only to clarify whether the four defendants were guilty of the crimes they had been indicted for.

The racial motivation behind the attacks was not analysed by the national bodies. Taking into account the development of the case indicated it was an act of vengeance towards Roma, as a result of the death of the non-Roma person, the selection of the victims because they were Roma was not relevant in the investigation. This was noted, however, by the ECtHR, which emphasized that the ethnicity of the victims was relevant for how the victims had been selected.

With regard to the role of national courts, the ECtHR highlights the discriminatory references made in their decisions, with regard to the honesty of the applicants and their way of life. This is another case of prejudice and anti-Roma attitudes promoted beyond the direct perpetrators, at different levels in the Romanian society, including by judges, called upon to clarify wrongdoings caused to Roma.

The aspects regarding the remedies ensured for the victims will be analysed in connection with the second judgment on Moldovan case.

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<sup>226</sup> Case of Moldovan and Others v. Romania, Judgment no 2, Partly Dissenting Opinion of Judge Thomassen Joined by Judge Loucaides

### **3.2.9. Conclusions on the Romanian case-study - Moldovan and others v. Romania**

#### **(Judgement no 1)**

The Romanian Government made several commitments toward the Roma victims, as a result of the friendly settlement reached before Strasbourg Court. Those commitments were transposed in a governmental program, through a Government Decision<sup>227</sup>.

To start with, in October 2008, a state secretary from Romania, Istvan Haller, who is a member of the Steering Board of the Romanian equality body (National Council for Combating Discrimination), declared a hunger strike to protest against the Romanian state's failure to comply with its legal obligations deriving from friendly settlements agreed on before Strasbourg Court, on three interethnic conflicts cases, including Moldovan and others<sup>228</sup>.

NGOs, including Romani CRISS and the European Roma Rights Centre, have repeatedly informed the Committee of Ministers of the Council of Europe on the failures of the state to respect the obligations it has, according to the ECtHR's decision.

The governmental program that was supposed to put in practice the legal obligations towards Roma victims of 1993 pogrom was elaborated from the perspective of community development, and not as a remedial program. The distinction is important for different reasons. The focus was shifted from building the destroyed houses, to building the general infrastructure, for the benefit of the entire community. Further, the focus on building the confidence among Roma and non-Roma was diminished, as a result of this community development general approach<sup>229</sup>. A program implemented by the government, designed in

<sup>227</sup> Decision no 523/2006, for approving the Community Development Program in Hadareni locality, Mures country, for 2006-2008

<sup>228</sup> Nicolae Gheorghe, statement at OSCE Human Dimension Implementation Meeting, 20 October 2008, available here: <http://www.osce.org/odihr/34595?download=true>

<sup>229</sup> Accept Association, Centre for Legal Resources, PRO EUROPE League and Romani CRISS, *Report concerning the implementation of Decision no. 1 from the 5th of July 2005 (amiable settlement) in the Case Moldovan and Others v. Romania (applications no. 41.138/98 and 64.320/01)*, page 13

terms of community development, is always welcomed. However, in this case, the community development program should not replace what should be allocation of remedies.

NGOs had several criticisms with regard to how the state dealt with ensuring remedies to Roma victims of 1993 pogrom. No institution was clearly responsible for the management of the governmental program. Lack of timely allocation of funds, as well as lack of financial transparency is highlighted by NGOs<sup>230</sup>. Local institutions had no role in designing and adopting the program. Most importantly, the members of the community, who were supposed to be direct or indirect beneficiaries of the program, were not consulted during the process.

Romani CRISS and the European Roma Rights Centre have lodged another complaint, on behalf of several victims of the 1993 pogrom, for failure of the state to implement the adopted decision and to provide remedies to the victims. The Court of Appeal of Cluj held that indeed, the authorities failed to respect their legal obligations, with respect to improving the interethnic relations and the living conditions, and each applicant was awarded moral damages (1500 EUR each).<sup>231</sup>

## **CHAPTER 4: THE ROLE OF THE CIVIL SOCIETY IN COMBATING HATE CRIMES**

Civil society, and in particular non-governmental organizations, has a crucial role in determining states to take action to address hate crimes.

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<sup>230</sup> Ibid, page 15

<sup>231</sup> European Roma Rights Centre and Romani CRISS, *9 Years Later - Romanian Government Hasn't Kept Its Promises*, press release 29 July 2014, available here: <http://www.errc.org/article/9-years-later--romanian-government-hasnt-kept-its-promises/4308>

The role of NGOs is important from the first step of the process: determining the state to acknowledge the existence of this phenomenon and the need to legislate in order to counter it. In Hungary, the Working Group against Hate Crimes (GYEM) was created in 2012 by Amnesty International Hungary, Hatter Society, the Hungarian Helsinki Committee, NEKI and the Hungarian Civil Liberties Union. The group expanded later, as other experts have joined it<sup>232</sup>. As already mentioned, the group had an important role in adding sexual orientation, gender and disability as protected characteristic in the Hungarian Criminal Code.

Similarly, a coalition of NGOs in the United States (American Association of University Women, American-Arab Anti-Discrimination Committee, Asian American Justice Centre, Human Rights First, Human Rights Campaign, Japanese American Citizens League, Mexican American Legal Defence and Educational Fund, National Partnership for Women and Families, Southern Poverty Law Centre<sup>233</sup>) have contributed to the adoption of Matthew Shepard Act, in 2009.

Back in the 1960s, during the civil rights movement in the US, the existent civil rights bills at the time did not ensure protection against the actions of the Ku Klux Klan. Many killings of African-American remained unpunished<sup>234</sup>. The Department of Justice has requested that the 14<sup>th</sup> Amendment and the civil rights laws to be reinterpreted by the Supreme Court. The Supreme Court expanded the power at federal level, in the area of civil rights protection. More protective law was passed by Congress, at the suggestion of the Supreme Court (in U.S. v. Guest, 1966 case)<sup>235</sup>.

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<sup>232</sup> Information about GYEM is available here: <http://gyuloletellen.hu/about-us#>

<sup>233</sup> Information about this coalition is available here: <http://www.civilrights.org/publications/hatecrimes/acknowledgements.html>

<sup>234</sup> David Chalmers, „The Ku Klux Klan“, available here: <http://www.splcenter.org/get-informed/intelligence-files/ideology/ku-klux-klan/the-ku-klux-klan-0>

<sup>235</sup> Ibid

It was the civil society which, through strategic legal innovation, has won a battle in the fight against the Ku Klux Klan. The Southern Poverty Law Centre asked for the application of the civil principle, according to which organizations could be held accountable for the actions committed by its members, and confiscation of the assets of the Ku Klux Klan was achieved in 1987<sup>236</sup>.

The role of civil society is extremely important when it comes to data collection as well. As observed in the cases of Hungary and Romania, NGOs are those which report hate crimes much more than the state. In the United States the situation is completely different, due to the adoption of the Hate Crime Statistics Act, which imposes the obligation of hate crime data collection on the Attorney General. The Federal Bureau of Investigation collects annually hate crime data.

In Hungary, as already seen, hate crime data is collected by the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution. A Hungarian non-governmental organization, NEKI, has analysed the methods of this system, pointing out several flaws, as seen in previous chapters. In such cases, when NGOs reveal flaws in the methods used by the authorities, the states should take into account the NGOs' expertise and put in practice their recommendations.

The Working Group against Hate Crimes (GYEM) intends, for 2014, to put together recommendations addressed to the Hungarian state, on adequate data collection<sup>237</sup>.

NGOs are significantly involved with victims of hate crime, by providing legal assistance and representation. This has been done in all three countries. In Hungary, NGOs such as Hungarian Civil Liberties Union have been involved in supporting the Roma victims

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<sup>236</sup> Ibid

<sup>237</sup> <http://gyulotellen.hu/about-us#>

of hate crimes. In Romania, Romani CRISS was founded in 1993 as a result of the interethnic conflicts, with the purpose of enabling a reconstruction of the communities affected by such incidents. Nicolae Gheorghe, founder of Romani CRISS, mentions: “Our aims were to rebuild Roma houses, create schools, promote income-generating activities and pioneer the role of health mediators and community organizers.”<sup>238</sup> Romani CRISS and European Roma Rights Centre have been involved in the litigation process in Hadareni, both immediately after the conflict, before national courts and the ECtHR, as well as recently, in the case on the non-implementation of the legal obligations of the state deriving from the ECtHR judgement. Beyond the litigation processes, NGOs in Romania have engaged in monitoring how the ECtHR judgment was implemented, by conducting field research and reporting to the Committee of Ministers of the Council of Europe.

Particularly on the issue of hate crimes against Roma, NGOs, both Roma and non-Roma, have been active, responding to the needs of the victims, to the extent as their resources allowed it. Approaching hate crimes strictly from the legal perspective will not, unfortunately, ensure this phenomenon will become extinct. As Barbara Perry suggests, a more effective approach will be to “challenge [those] myths, and to this ‘humanize’ the victims and their communities”. She adds that “community-based responses- both proactive and active- represent valuable complements to state-based initiatives<sup>239</sup>”.

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<sup>238</sup> Nicolae Gheorghe, “*Choices to be made and prices to be paid: potential roles and consequences in Roma activism and policy-making*”, in “*From Victimhood to Citizenship – The Path to Roma Integration*”, edited by Will Guy, Kosuth Publishing Corporation, (2013), page 88

<sup>239</sup> Barbara Perry, “*Hate Crime: contexts and consequences*”, in *State of the World’s Minorities and Indigenous People*, Minority Rights Group, (2014), page 16



What Barbara Perry suggests should be done from a grassroots movement. Jack Greenberg considers there is no “forceful Roma rights movement that would play a role like that of the U.S. civil rights movement<sup>240</sup>”.

Jack Greenberg interviewed a Roma activist in the Czech Republic on lessons to be learnt from the civil rights movement:

“Sit-ins, bus demonstrations, marches — is there anything like that among the Roma?” He replied: “I’m waiting for this. There is social stratification. There are very poor whites that can’t even send their children to good schools. But they feel no connection with the Roma. The whites just don’t care about the Roma, so there can’t be a movement like in the U.S.” As an example, he stated that, “since 1989 there have been lots of racist murders, and nobody really noticed<sup>241</sup>”.

Greenberg adds that the “movement” was supported by various organizations: religious, civil rights, political and advocacy. By comparing to the Roma situation, he concludes that “the prospects for a movement based on similar foundations in Eastern Europe appear somewhat dim”.

To conclude, the role of NGOs surely benefited the fight against hate crime, on various levels. Firstly, they contributed to law adoption. Secondly, they contribute to data collection on hate crime and thus, by making the phenomenon visible. Thirdly, they offered the victims’ support the state usually failed to, in both Hungarian and Romanian examples. Finally, they contributed to the creation of national or European case-law, which deals with violence against Roma, motivated by hate.

The United States example shows that in spite of existent legislation, in spite of adequate data collection, the phenomenon of hate crime is still widespread. This leads to the conclusion that requesting states to act by adopting and applying hate crime laws is not

<sup>240</sup> Jack Greenberg, „*Report on Roma Education Today: From Slavery to Segregation And Beyond*”, Columbia Law Review, Volume 4, (May 2010), page 989

<sup>241</sup> Ibid, page 990

enough. The change that needs to occur in order to combat this phenomenon is to challenge its cause: anti-Roma prejudices.

Prejudices against African-American have been challenged through a very powerful movement. This lacks, in the case of Roma, unfortunately.

## CONCLUSION

The image of Roma as inferior can be traced back hundreds of years ago, as history shows. The historic oppression of Roma is indicated by events such as slavery in Romania, or Porajmos. Roma are still negatively perceived in Europe, still not being accepted as citizen of European countries, but as unwelcomed persons, beggars, thieves, lazy, and so on.

Not only the general perception of Roma has remained the same, but also the way states treat them. Expulsions of Roma, put into practice in the 15<sup>th</sup> century, in Spain or Germany, are recurrent nowadays in Europe.

The general anti-Roma sentiments, as well as the feeling that states tolerate, and in some cases, even promote discrimination and marginalization of Roma, leads to violence and hate crimes targeting Roma.

The issue of punishing hate crimes as a specific type of crime has been debated on significantly. Some believe that applying a harsher penalty for crimes committed out of the feeling of hate is, basically, punishing “bad character”. However, it is important to acknowledge when a crime was committed due to hate sentiments towards a group, and also to apply a specific sanction for that. Different crimes should be punished differently. There are factors such as the impact on the victim, the impact on the society, the deterrent effect punishments must have, which prove that hate crimes must be treated differently than ordinary crimes and punished adequately.

In Romania and Hungary there is no specific legislation defining and punishing hate crime. Romanian legislation includes a general aggravating circumstance for crimes committed on grounds of nationality, ethnicity, race, sexual orientation, etc. The Hungarian legislation includes a general aggravating circumstance the base motive. The judicial interpretation included as a base motive also the racist motive.

None of the two legal models has followed the “hostility model”, which would have led to burdensome evidentiary standards, since the actual sentiment of hate would have had to be proven. There are several legal gaps in both countries, such as affiliation or association to a protected characteristic, or the multiple motives situation.

The US hate crime legislation has been amended and has reached satisfying standards. However, in both US and Hungary the problem of punishing members of the minority groups has appeared. When deciding what protected groups are to be included in the legislation, states take into account also the historic oppression of particular groups, which are, in the cases of US and Hungary, the African-Americans and the Roma. Therefore, hate crime legislation is supposed to protect them. In spite of this, in both countries members of these groups have been convicted for hate crimes against members of the majority population. In conclusion, the hate crime legislation is not the most serious problem Hungary has, but the judicial interpretation often leads to unexpected results, such as punishing Roma for reacting to violent attacks of Neo-Nazi members.

Apart from the legislation, neither Romania nor Hungary is properly collecting data on hate crimes. Romania does not do this at all, according to the published police statistics. Hungary does collect data on hate crimes through the ENYUBS system. NEKI organization has pointed out several flaws in the system, such as the fact that the system only includes those crimes which were considered as hate crimes by the public authorities, not by victims or

witnesses. Most importantly and relevant for the topic of law effectiveness, NEKI notes that “it is impossible to trace a crime from reporting to sanctioning; one cannot figure out, for example, what happened to the hate crimes reported in 2007 by 2014, in how many of them the police were able to identify the perpetrator, how many of them were prosecuted, in how many of them the courts found the defendant guilty, and what kinds of sanctions were imposed”<sup>242</sup>.

US is an example to follow, with regard to hate crimes data collection, since it also has adopted a law specifically on this topic, the Hate Crime Statistics Act, and it annually publishes detailed data on this.

The two case studies included in the thesis are the Roma serial killings in Hungary, in 2008-2009 and the interethnic conflict from Hadareni, Romania, in 1993. It was analyzed how the law has been applied, how the investigation was carried out and whether the victims had access to remedies.

In the case of the Roma serial killings, the court has played an important role, as it convicted the four defendants, the punishments were adequate, taking into account the seriousness of the crimes, and, most importantly, the crimes were labeled as hate crimes against Roma.

There were many shortcomings of other state institutions, apart from the court, which could not be corrected not even by a satisfying verdict. The court was not called upon to see whether there were other persons involved in the crimes, which leaves a serious question unanswered. The National Security Office has failed to cooperate with the police, who led to a slow investigation and capturing the defendants only after people died. It is clear the National

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<sup>242</sup> Ibid, Page 16

Security Office, based on the information it possessed, could have prevented at least several attacks from occurring, if not all of them.

Victims and victims' families felt abandoned after the incidents, with low hopes of getting justice. No special measures have been taken after the incidents to ensure the security of the families. They did not have financial measures to ensure security on themselves, which contributed to the feeling of insecurity and mistrust in the authorities. Throughout the investigation, the victims' families were not regularly informed on how the investigation was being conducted, which increased their mistrust.

These serial killings are the perfect example of how hate crimes have an impact which goes beyond the victims and their families, and affects entire communities. The Roma communities felt insecure for long period, which led to situations when they took the matter into their own hands and were punished for that, namely in the Miskolc case.

Even if a just verdict was reached, there are so many other signs that show the state's responses were inadequate. Responses came too late, in spite of so many signs of an intolerant society and of interethnic tensions.

As for the second case-study, both decisions of the European Court of Human Rights have been analyzed. The investigation conducted by the Romanian authorities was considered flawed, due to lengthy proceedings and discriminatory attitudes of authorities. In a dissenting opinion of two of the judges, it was argued that the Romanian authorities have failed to investigate the role the police representatives had in the 1993 conflict.

The racial motivation was ignored by the Romanian authorities. Even if the ECtHR could not make a decision on the incident itself (as Romania was not a Party to the Convention, at the time of the conflict), it argued, in its decision that the ethnicity of the victims was relevant for how they had been selected.

The access of victims to remedies, for the Moldovan case, was extremely problematic. To highlight the extent of the problem, it is important to mention that a Romanian state secretary declared a hunger strike, due to the Romanian authorities' failure to comply with its legal obligations deriving from friendly settlements agreed on before ECtHR. The commitments made before the ECtHR, as part of the friendly settlement, were transposed in a governmental program. There was no institution responsible for the management of this program. Funds were not allocated timely, and the financial transparency has been heavily criticized by the NGOs. The program was not designed with adequate consultation of local institutions, or more importantly, with the consultation of the members of the community.

In such cases, NGOs play a crucial role. Their part is important starting with the advocacy work they conduct to persuade authorities to adopt adequate legislation. Further, they engage in collecting data on hate crimes, which often the states fail to do. Finally, they engage directly with victims, by providing legal assistance and representation.

It was seen, by analyzing the two case-studies, that approaching hate crimes just through legal means, it is not enough. Therefore, the role of the NGOs has to extend from making use of legal measures to a more powerful plight to challenge the negative perceptions on Roma.

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