

Discrimination against Roma in **Criminal Justice and** **Prison Systems in Romania**

Comparative Perspective of the Countries
in Eastern and Central Europe

By Sorin Cace and Cristian Lazar

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Penal Reform International - ROMANIA

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INTRODUCTION

The current study is based on a review of existing literature, studies and documents that present violations of Roma people's rights in the criminal justice and prison systems in Central and Eastern Europe.

This material highlights some of the issues related to discrimination against Roma in the countries of Central and Eastern Europe – an area encompassing Bulgaria, Czech Republic, Hungary, Poland, Romania and Slovakia. The focus is on the situation in Romania and also, where data from the region was available, on the situation in other countries of the region.

It is reasonable to state from the outset that discrimination in various fields, and particularly in the criminal justice and prison systems, has similar features in all countries. Nevertheless, these exhibit different degrees of intensity according to the national context.

The situation of minorities has been recognised during the past few years as forming part of a range of problems that countries in transition must deal with.

The official recognition of the Roma minority constituted, in itself, a first step towards the confirmation of their specific identity and contributed to the promotion of inter-culturalism and multiculturalism in Eastern and Central Europe.

The ex-Soviet satellites in Central and Eastern Europe – along with Spain – are home to the majority of the world's Roma population.

The Roma ethnic minority cannot be analysed without taking into consideration the harsh historical reality of forced assimilation, the destruction of an important cultural heritage, economic marginalization through the loss of traditional crafts, and the absence of coherent and culturally appropriate educational programmes.

Discrimination against the Roma in Romania and Central and Eastern Europe goes back at least several centuries. In Romania, the first documentary evidence of discrimination against Roma dates from 1385¹ and, for a long time, the status of this population has been highly marginal, involving semi-slavery and servitude.

The current situation must be analysed with this historical legacy in mind. It is also important to examine cultural differences between the majority population and the Roma, and the social-economic particularity of the current transition period in Romania.

It is not the purpose of this study to focus on these aspects. Rather, we emphasise that there is vigorous debate² regarding where ethnic minorities' cultural rights end, and where the majority's right to label certain cultural practices deviant if not delinquent begins.

It must also be noted that Romania's current transition has most severely affected vulnerable sectors of the population (women, youth, the elderly and unemployed etc.) The Roma population has borne the brunt of this turmoil, weathering economic recession, poverty, lack of

¹ Achim, V- Țigani în istoria României, ("Gypsies in the history of Romania") Editura Enciclopedica, Bucharest, 1998.

² Elena Zamfir, Cătălin Zamfir, (1993), Țigani între ignorare și îngrijorare ("Gypsies, between ignorance and concern"), Alternative, București.

education and upheaval of traditional values.

In recent years, the issues related to the Roma minority have raised a special interest for the majority of social participants, from the national level down to civil and political leaders of the local communities.

For countries in this region, positive government action has occurred mostly in response to recommendations and pressure from the international community, in particular the European Union, the European Council, and the OSCE, but also as a result of powerful lobbying campaigns led by Roma civil society.

Five countries in transition, which have a large number of Roma, have developed comprehensive strategies aimed at assisting the Roma population, with extensive support from the European Union³.

- The Slovak Government has elaborated a 'Government Strategy for Addressing Problems of the Romani Minority', which is now in the process of implementation.
- The Bulgarian Government has adopted a 'Framework Programme for the Equal Integration of Roma in Bulgarian Society'.
- The Hungarian Government in 1999 adopted a programme of 'medium-term' measures relating to the Roma population, and a consultant from the Council of Europe is providing assistance for the elaboration of a long-term strategy.
- The Czech Government has approved a proposal for a 'Concept of Government Policy towards Members of the Romany Community'.

³ For more details, see annexe.

- The Romanian Government has adopted a national strategy for integration of Rroma with EU support under the PHARE Programme.

National strategies also include plans aimed at fighting discrimination and exclusion of Rroma. Among the objectives of the national Romanian strategy⁴ are the following:

“Elimination of stereotypes, prejudices and practices of some civil servants from central and local public institutions, which encourage discrimination against Romanian citizens of Rroma ethnicity.”

“Prevention of institutional and social discrimination against Romanian citizens of Rroma ethnicity in their access to services offered by society.”

STATISTICAL DATA REGARDING RROMA POPULATION IN THE REGION

Romania

According to the Census of January 1992, the number of declared Rroma persons was 409,723, representing 1.8% of the total population.

The Rroma minority is placed in second position among minorities in Romania, after the Hungarian minority (7.1%).

⁴ Ministry of Public Information, Strategia Guvernului Romaniei de îmbunătățire a situației romilor, (“Romanian Government's Strategy for the Improvement of the Situation of Roma”) Bucharest, 2001.

To date, three other estimates of the Roma population have also been made. These provide figures that are closer to the actual Roma population, in that they recognise that many Roma do not declare themselves as being such for a variety of reasons, principally due to the negative connotations attributed to the terms Roma or Gypsy.

One of the first estimates was made by Mihai Merfea which provided the figure of 1,180,163 people, representing 5.14% of the Romanian population (1985).

The study “Gypsies between ignorance and concern”⁵, using a number of criteria, provides an estimate of 1,010,646 people, representing 4.6% of the Romanian population.

The Institute for Research on the Quality of Life estimates the number in 1998 from 1,450,000 to 1,600,000, of which between 900,000 and 1,000,000 are self-identified.

Surveys elsewhere in Central and Eastern Europe have yielded varied results. In Bulgaria, the 1992 Census indicated that the Roma population was 312,000, representing 3.7% of the total population. In the Czech Republic, official figures estimate the Roma population at 33,500, or 0.3 % of the total population, whereas other estimates indicate the Roma population could be up to 300,000 (2.9% of the total population). Similarly, in Slovakia, estimates range from 80,600 (1.5% of the total population) to 350,000 (6.6% of the total

⁵ E. Zamfir, C. Zamfir, Țiganiii între ignorare și îngrijorare, (“Gypsies, between ignorance and concern”) Editura Alternative, 1993.

population). In Hungary, the 1990 Census indicated that the Roma population is 143,000 (1.3% of the population), whereas other estimates range from 250,000 to 800,000 people (2.4 to 7.8% of the total population).

THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF MINORITIES

Most of the countries in the region have signed the primary international instruments with regard to minorities, racial and ethnic discrimination and racially motivated violence, and have established and developed specialised institutions in the field.

Legislative Framework

1. Minority rights

Romania has ratified all international instruments regarding the protection of national minorities' rights, and in particular the UN Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities; the Framework Convention for the Protection of National Minorities (Council of Europe, Strasbourg, 1995); Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights; Recommendation 1203 (1993) on Gypsies in Europe of the Council of Europe; and the Conference for Security and Co-operation in Europe 1975 Summit Helsinki Final Act.

In relation to internal legislation, Romania's Constitution guarantees a certain number of rights that are relevant to minorities, including equal

rights for all citizens of Romania and the right to identity for persons belonging to national minorities.⁶

The right to use one's mother tongue in criminal and civil procedures is constitutionally guaranteed⁷ and stipulated in the Criminal and Civil Codes. The Criminal Code stipulates the right of the defendant to use his/her mother tongue during all stages of a criminal procedure.⁸ Interpreters are initially paid by the state, but in the event of a guilty verdict the defendant is responsible for all expenses, including interpretation.⁹

There is no discrimination under domestic law regarding the rights of persons belonging to the Roma community in the areas of citizenship, property, language, education, housing, medical assistance or employment. However, a large number of legislative instruments fail to consider specific problems, necessities and interests which arise in the case of ethnic minorities, including Roma, and the reality concerning discrimination in these fields, which sometimes has an indirect discriminatory effect. There are very few positive measures, such as legal provisions or public policies, which are intended to achieve effective equality for minorities as systematically disadvantaged as the Roma.

⁶ Romanian Constitution, 1991, Articles 4, 16 and 6.

⁷ Romanian Constitution, Article 23 para 5 stipulates the right of the defendant to be informed of criminal charges criminal in a language "that he/she understands".

⁸ Criminal Procedure Code, Article 128.

⁹ This provision raises questions with regard to equal access to justice and a fair trial. Civil Procedure Code, Article 142.

2. Racial and ethnic discrimination

Romania has ratified the most important documents regarding racial and ethnic discrimination, including the ILO Convention No. 111/1958, the UN Convention on the Rights of the Child (November 20, 1989), the UN Convention for the Elimination of all forms of Racial Discrimination (Resolution 2106 (XX) of December 21, 1965), the UN Covenant on Civil and Political Rights (December 16, 1966), the UN Covenant on Economic, Social and Cultural Rights (Resolution 2200 A (XXI), December 16, 1966) and the European Convention on Human Rights (November 4, 1950), and all its protocols.

The Romanian criminal code includes provisions intended to combat discrimination and xenophobia, together with the prohibition of propaganda for the creation of a totalitarian state¹⁰, nationalist/xenophobic propaganda or incitement to racial or national hatred¹¹, prevention of the freedom of religion¹², and any action of a civil servant resulting in the limitation of the civil rights of citizens based on race, sex or religion¹³. In practice, however, these are only rarely applied.

¹⁰ Article 166 para 1: “Propaganda for the establishment of a totalitarian system, achieved by any means, in public, is punishable by imprisonment from 6 months to 5 years and the suppression of certain rights”.

¹¹ Article 317 forbids “nationalist-xenophobic propaganda, incitement to racial or national hatred” punishable by imprisonment up to 5 years.

¹² Article 318 :“Prevention or alienation of the liberty to exercise a religious cult, which is organised and functions according to the law, is punishable by imprisonment from 1 month to 6 months or a fine”.

¹³ Article 247: “The limitation, by a civil servant, of the use or exercise of any citizen's rights, or the creation for him/her of situations of inferiority based on nationality, race, sex or religion, is punishable by imprisonment from 6 months to 5 years”.

The Government has adopted Ordinance No. 137 regarding the prevention and punishment of all forms of racial discrimination¹⁴. Ordinance 137 defines discrimination as “any distinction, exclusion, restriction or preference, based on race, nationality, ethnic belonging, language, religion, social category, beliefs, sex or sexual orientation, belonging to a disadvantaged category or any other criterion, which has as its purpose or effect the restriction or elimination of the recognition, use or exercise, in conditions of equality, of human rights and fundamental freedoms or rights provided by law, in the politic, economic, social and cultural areas or any other areas of public life.”¹⁵ Active or passive discriminatory behaviour against individuals are forbidden.

Ordinance 137 specifically forbids discrimination in employment¹⁶, access to public services, health services and other services, goods and facilities¹⁷, access to education¹⁸, freedom of movement and free choice of residence¹⁹, and the right to personal dignity.²⁰

The EU Report on Romania in 2000 noted the adoption of the Ordinance against discrimination as “a very positive step”, but cautioned that “supplementary legislation will be required, along with the revision of some institutional arrangements before the provisions of Ordinance 137 are capable of being applied”.

¹⁴ The Official Monitor 432/02.09.2000; (Ordinance No. 137/31.08.2000 regarding the prevention and punishment of all forms of discrimination). The Ordinance came into force on November 2nd, 2000.

¹⁵ Idem, Art. 2.

¹⁶ Idem, Chapter I Art. 5-9.

¹⁷ Idem, Chapter II, Art. 10-14.

¹⁸ Idem, Chapter III, Art. 15.

¹⁹ Idem, Chapter IV, Art. 16-18.

²⁰ Idem, Chapter V, Art. 19.

3. Racially motivated violence

There is currently no law forbidding racially motivated violence, nor is there legislation outlawing crimes motivated by racial hatred.

Article 30, para 7 of the Constitution forbids “the denigration of the country and the nation, incitement to ... national, racial, class or religious hatred, or incitement to discrimination”. Article 317 of the Constitution forbids hateful language, but its provisions have been applied only once by the courts; to date there has not been a single criminal investigation regarding racist discourse or hateful language against Roma.

The domestic legal system does not assign prosecutors with special responsibilities to apply legislation regarding discrimination and racially motivated violence. Such cases are investigated by ordinary police officers and prosecutors.

B. Institutional framework for the protection of Roma rights

Until the latter part of 2000, the main governmental institution with responsibilities for minority issues was the Department for the Protection of Minority Rights (DPMR). However, one of the first decisions of the newly-appointed Government of Romania was to place the DPMR in the Ministry for Public Information, changing its name into the “Department for Inter-Ethnic Relations”.

The activities of the “National Office for Roma” within the DPMN led to the development and implementation of the national strategy for the protection of Roma²¹ funded by PHARE. This strategy will be taken

²¹ The National Office also has as part of its mandate “the establishment and maintenance of relations with organisations of the Roma, with a view to solving specific problems and facilitating social integration”. Art. 8 of the Governmental Decision no. 17/1997 amended by the Governmental Decree 506/1997.

over by the office of the Under-Secretary of State for Roma within the DPMR. The DPMR has signed a protocol with a coalition formed of 16 Roma NGOs with a view to ensuring the structural participation and involvement of the Roma community.

Communication between the DPMR and various ministries has been maintained through an Inter-Ministerial Committee for National Minorities²². One of the objectives of the Committee has been to ensure coordination of governmental support for the development and implementation of the strategy for the protection of Roma. An Inter-Ministerial Sub-Commission for Roma issues has been established a mixed entity comprised of governmental and independent experts appointed by Roma non-governmental NGOs in order to provide assistance for the development of certain “strategic areas”, one of the stages of implementation of the national strategy. However, the relationship between the Committee and the Sub-Commission has not been entirely clarified.

The Office of the Ombudsman was created in March 1997, with the mandate of protecting the rights and freedoms of citizens against the illegal or abusive intervention of governmental authorities. Any person may submit a complaint, regardless of citizenship, age, political membership or religious belief. The Ombudsman is authorised to make recommendations to the competent authorities, including recommending restorative measures and compensation for persons whose rights have been violated.²³

There is currently no official mechanism of cooperation between the Ombudsman and the future Council for Combating Discrimination.

²² Governmental Decision No. 458/1998 regarding the organisation and functioning of the Inter-Ministerial Committee for National Minorities, Official Monitor 295 from 11.08.1998.

²³ Ombudsman Law, 35/1997.

THE CRIMINAL JUSTICE SYSTEM IN ROMANIA AND DISCRIMINATION

Legal Assistance

Romanian law guarantees automatic legal assistance when the defendant is in custody awaiting trial, when he is serving in the army, or in cases where the punishment stipulated by law is more than five years imprisonment or where the court decides that the defendant cannot defend him/herself.²⁴

In civil cases, a lawyer can be appointed at the request of any party who cannot afford legal representation or who is otherwise incapable of choosing a representative²⁵; the appointment is made by the local Bar Association. The quality of such services is very poor.

In these conditions, access to justice (including the general requirement of fairness at all stages of the judicial process) for indigent defendants in criminal cases and for indigent parties in civil cases is clearly doubtful. Although guaranteed by the Article 21 of the Constitution, free access to justice is illusory for those who cannot pay for a defence attorney or representative. As many Roma have limited resources, they are often the victims of this defect within the legal system.

Criminal Justice

Studies carried out by intergovernmental organisations and NGOs

²⁴ Article 171 of the Criminal Procedure Code.

²⁵ Articles 74-81 of the Criminal Procedure Code.

indicate that Roma suffer from discrimination on a large scale within the legal system in various countries in Europe²⁶. Romania is not an exception.

There have been a number of governmental²⁷ and non-governmental initiatives intended to improve relations between law enforcement officials and Roma communities. The most recent took place on March 8th, 2000, when the Romanian National Police Force signed a Partnership Protocol with representatives of the Roma minority, with a view to fostering cooperation and mutual trust. The main goals of the protocol are the organisation of an efficient system of communication between Roma and the law enforcement community and the establishment of special teams of negotiators to prevent the escalation of conflict between Roma and the general population. However, there is currently no institutional context which could make a continuous program of this kind possible, so such initiatives remain sporadic, and dependent upon the will of decision-makers.

²⁶ ERRC identifies two widely spread forms of discrimination, often encountered by Roma in the criminal justice system: first, the complaints submitted by Roma against violations of human rights are not adequately investigated by the competent authorities for the provision of order and justice; second, Roma defendants are more often kept in custody before trial and for longer periods than non-Roma. Moreover, the defendants receive punishments which are significantly more severe. "Racial Discrimination and Violence against Roma in Europe", declaration of ERRC, submitted to UN CERD on the occasion of the Thematic Debate regarding Roma, August 15-16, 2000, p. 10.

²⁷ The Ministry of the Interior has undertaken training sessions for police officers, together with Roma NGOs. The General Police Inspectorate organised on February 16, 1999, together with Roma community representatives, a meeting dedicated to the involvement of Roma communities in activities aimed at combating and preventing crime.

Access to Justice

In the 1999 Report on the Implementation of the Framework Convention for the Protection of National Minorities, the government stated that minorities enjoyed equal treatment in justice and free legal representation, and asserted that there were no complaints from persons belonging to national minorities regarding the right to be assisted by an interpreter.

In practice, however, court files are never translated into the mother tongue of the parties, and some experts also suggest that oral interpretation is often insufficient to ensure a thorough understanding of the court proceedings, the evidence or the content of the case. Moreover, as noted above, many Roma have limited financial resources, and are obliged to rely on the inadequate legal representation which is offered by the state. As a result, in practical terms, these persons (and others who must rely on State legal assistance) do not benefit from equal access to justice and the right to properly defend themselves.

The number of complaints registered by the Ombudsman's office has increased from 1,668 in 1997 to 4,379 in 1999. Between January and September 2000, the Ombudsman's Office received 4,321 complaints. However, more than 90% of these complaints are related to matters which are not within the competence of the Ombudsman. For example, the Ombudsman confirmed that his office has received allegations regarding racial discrimination, but stated that these claims cannot be investigated until the government passes legislation against discrimination (Government Decision No. 1194, regarding the organisation and functioning of the National Council for Combating Discrimination, published in the Official Bulletin of Romania no.

792/12.12.2001.).

The 2000 Special Report regarding public order, military and special services, prisons, protection of minorities, religions, foreigners, consumers, and taxpayers²⁸ acknowledges that national minorities are not informed of the existence and powers of the Ombudsman²⁹. For 1998 and 1999, the Report mentioned nine complaints from Roma individuals. When the 2000 Report was examined more carefully, there were 10 complaints regarding cases of minorities, of which seven related to Roma. Three complaints were related to the refusal of entry into public places (for example restaurants and bars) and four mentioned ill-treatment by local civil servants.

The 2000 Report describes several cases which involved illegal police raids, an increase in the rate of abandoned children from poor families, employment disputes with a racial basis, denied access to social services and benefits, refusal of access to public stores, bars and discotheques. It also acknowledges the absence of effective remedies in certain cases.

There is little relevant scientific research regarding Roma discrimination in Romanian prisons. However, reports by groups such as of the Helsinki Committee Romania and the Romanian Independent Society for Human Rights have addressed the problem to a limited extent.

The aforementioned reports are of some significance, but they can be

²⁸ Ombudsman, Department for issues regarding public order, military and special services, prisons, re-education institutions for youth, protection of minorities, religions and foreigners, consumers and tax contributors, Bucharest 2000.

²⁹ Idem.

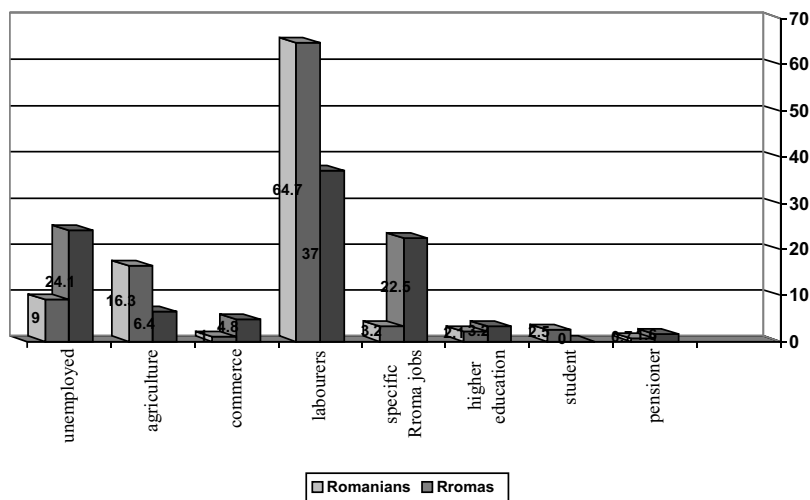
easily rejected by the General Penitentiary Division as being irrelevant at the national level, and as applying to only the small number of cases analysed.

Common sense complements scientific analysis, and scientific analysis sometimes does no more than confirm what common sense dictates. Where a minority is systematically discriminated against on a daily basis, there is the danger that even well-intentioned individuals can “forget” that an analysis of gestures, thoughts, expressions and so forth translates into what can be defined as discriminatory practice. In a country such as Romania, which has widespread corruption, it is difficult to find an institution or social sub-system which is unaffected by the diseases of discrimination and corruption. By the same logic, it is unlikely that in a general environment which discriminates against the Roma minority that the criminal justice system would be unaffected.

The large number of Roma within criminal justice institutions is significant in itself. This does not mean that all Roma defendants who appear in the courts are innocent, or that they are accused simply by virtue of the fact that they are discriminated against. The causes of crime within the Roma minority are fundamentally the same as those identified amongst Romanians or Hungarians. The disproportional number of Roma in the criminal justice system is attributable to factors such as their pervasive poverty, marginalisation, and low levels of education. There is, therefore, clearly the need for an analysis of the reasons for which criminal accusations are more easily made against Roma. There is also the need to examine the extent to which remand custody is applied more frequently to Roma than to other defendants, especially since it is an accepted fact that remand custody often leads to

difficulty in obtaining non-custodial sentencing alternatives. Finally, there needs to be an analysis of the extent to which sentence length is greater for Roma compared to other similar cases for non-Roma defendants.

An analysis of quality-of-life indicators shows that the percentage of Roma population below the poverty line is larger than that of the majority population. The Durnescu and Lazăr study shows that while the breakdown of categories of crimes committed by Roma does not differ from that of other ethnic groups (for example, approximately 60% of prisoners or persons on probation are convicted of theft), their lack of adequate legal representation due to poverty may result in more convictions. Thus, it is necessary to ask: How many Roma defendants can afford to hire a lawyer, compared to Romanians? And what kinds of lawyers are provided, in terms of professional capacity and experience? These are also areas which require detailed studies in order to fully inform decision-making processes and national policies if discrimination is to be truly eradicated.



If we consider the employment rate of the Roma ethnic minority, we can note that unemployment is higher than the majority population. A study undertaken in the prison system shows that while over 50% of the Romanian interviewees had completed more than 8 years of schooling, only 20% of Roma had a similar educational level. Only 10% of Romanian prisoners were unemployed when arrested, compared with 25% of the Roma. Over 20% of the Roma interviewees were engaged in traditional gypsy crafts at the time of incarceration (brick making, collecting and selling recyclable waste, silverware processing etc.). It is well known that these small-scale industries were dramatically affected by new economic circumstances since 1989. Obviously, this fact does not in itself constitute discrimination within the criminal justice system, but it can be used to understand the mechanisms which have led to the current situation.

The effects of “profiling”, that is, discriminatory assumptions which impact on particular racial, social and other groups, are noticeable if we examine the rate of recidivism: While over 65% of Romanian prisoners are in prison for the first time, over 60% of Roma interviewed were in prison for at least the second time. This fact also highlights the absence of strong support structures which are necessary for the post-release phase, the fragility of embryonic social reintegration institutions, and the absence of a support network from within the Roma community itself, the social service system, and governmental agencies. Besides state institutions or the support of non-governmental organisations, the family is one of the most important factors in preventing recidivism. Roma families are traditionally extended in nature; the households of the Roma

interviewees have double the number of members compared to Romanian households, and the ratio of children per family unit is also greater. Instead of aiding reintegration, the particular family structure of Rroma ex-prisoners is actually one of the complex causes of recidivism.

According to the tradition of Rroma communities, the wife is the one who takes care of children, and the husband is the one who ensures the subsistence of the family. In a Rroma family where the male head of the household is, for example, a musician, everything becomes focused on him: Children learn the same skills and the woman ensures that men can exercise their occupation without being involved in household duties etc. When we analyse male Rroma, the entire family structure should be considered: The male is the head of the household, and by engaging in illegal actions, his family is also encouraged to behave in similar ways, including begging and other crimes. His children grow up in an environment of crime, and value financial gain obtained from illegal behaviour. A man considers that his duty to the family is fulfilled if he brings money and prestige, regardless of the means he adopted to do so; a teenager considers prison as a test of his manhood; and a woman unconditionally respects the head of the family and very often becomes an accomplice to his illegal activities.

DISCRIMINATION AGAINST RROMA IN THE ROMANIAN PRISON SYSTEM

Principal characteristics of the Romanian prison system

Romanian prisons bring to mind Winston Churchill's 1910 statement that:

“The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of a country [being the] sign and proof of the living virtue in it”.

In general, the Romanian prison system can be compared to those of the former Soviet bloc, both from an architectural and institutional point of view.

Organisations have “cultures”, just as people have “personalities” (Nancy Foy³⁰) and the Romanian prison system is no different.

The culture of the prison institution in Romania is very close to the model called the Rol-type culture³¹, which is a concept of bureaucracy represented graphically as a “temple”. Being a military institution *par excellence*, it is very clear that the director of the institution represents the “roof” of the temple, whereas the “columns” of the temple are very different. Some columns are flexible, such as the departments in charge of the re-education of prisoners or the training of staff, and some are more sturdy or rigid, such as the departments in charge of guarding the prisoners.

³⁰ Foy, N (1981) To strengthen the mixture, first understand the chemistry, The Guardian, September 2, 1981.

³¹ Lazăr, C (2000), Emergența culturii organizaționale (“The Emergence of organisational culture”), Internal Bulletin, Ministry of Justice.

The model above is, however, purely theoretical, and we must therefore make several distinctions. While personnel are selected according to their role, it must be borne in mind that there is a certain confusion which occurs in institutions dominated by paternalistic management. In other words, the official rules for selection and promotion are in fact not as powerful as the direct influence of those persons who have the ability to circumvent them. Selection of personnel therefore obeys rules of clientelism, rather than good management criteria.

Nevertheless, it is difficult to see how such a system could be otherwise after such a radical change in 1989. Confusion and frustration have reigned, since many continue to see the penitentiary system as rooted in its totalitarian origins, rather than on modern systems based on international norms and standards. The structure of the penitentiary system was quasi-military in nature, because it was in fact based on the principles of a military institution: discipline, conformity, conservatism, and the value given to qualitative military standards (rapidity and accuracy in executing orders, promotion in grade and function, social status of the direct supervisor, *esprit de corps* etc). At the same time, the military structure maintains its stronghold in those departments responsible for guarding the prisoners and becomes quasi-military in departments such as logistics, medical care and social services.

This culture which seemed to be infallible, and this system which appeared to be self-sufficient, both corresponded perfectly to Goffman's description of total institutions³². But three major events

³² Goffmann, E (1968), *Asylums*, Harddmonsworth, Penguin.

have recently shaken the temple and produced necessary and positive changes:

- a) the massive influx of staff employed from the civil sector (civilians, or soldiers without military schooling)
- b) “opening the gates” to civil society (NGOs, media etc.) and to international scrutiny;
- c) the exchange of military staff with civilian staff, at the highest levels (general directors, prison governors etc.)

Although this system exhibits the general characteristics of those in Central and Eastern European countries, both in relation to the historical developments from the period 1945-1989 and the current reforms, it must be mentioned that, at the political level, there is a major difference which can be identified for the period between 1977 and 1989. A particular case was the attempt to ignore prevailing crime, and to apply measures which resulted in the demolition or dissolution of a significant number of prisons (about 25% of the system). During this period, what was left of the penitentiary system was self-financed, becoming an enormous chain of working colonies. No new prisons were built, and no modernisation or acquisition of equipment was undertaken for existing prisons.

Another distinct issue was the massive and systematic use of collective amnesties, which applied to approximately 50% of prisoners. These were implemented to solve problems related to over-crowding, arising from the abovementioned political developments.

In the 1990s, in a different political context but with very limited resources, a series of reforms were undertaken, the renovation of a number of prisons was initiated, and a relatively modern prison was

built. Unfortunately, the criminal legislation has remained as punitive as ever and, as emphasised below, Romania has an incarceration rate of over 200 per 100,000 inhabitants. This compares with the following 1988 figures: Czech Republic: 190; Slovakia: 150; Poland: 145; Hungary: 120; Bulgaria: 110; Slovenia: 50; Croatia: 50; France: 91; Austria, Germany, Italy: 85³³.

In Romania there are 32 prisons and 2 re-education centres for minors³⁴. There are 7 maximum security prisons, mainly reserved for long-term prisoners. The majority are closed prisons, which also have some open sections (particularly for prisoners who come from the region where the penitentiary is situated), a semi-open prison, a women's prison, and a prison for minors and youth. There are also 5 prison-hospitals, one training centre for staff and one Central Logistic unit. This entire system is under the jurisdiction of the General Department for Prisons of the Ministry of Justice, but has a special regime, with its own budget etc.

Apart from a few very old prisons in Transylvania, the majority were built, or improvised using existing buildings as prisons, in various places after 1945, with an average capacity of 1,000-1,500 prisoners, and with dormitories which usually contain 50-60 prisoners. The problem of over-crowding is the prison system's most difficult challenge, with prisons currently filled to approximately 151% capacity.³⁵

³³ Prison Reform, Attempts and achievements, Vivien Stern/ Kharkov group for human rights protection, 1999.

³⁴ The data base of the General Department for Penitentiaries.

³⁵ Lazăr, C, (2001) Politică criminală. A pedepsi iertând ("Criminal politics. To punish by forgiving"), Community Security Magazine.

The budget of the prison administration was approximately 50 million Euros in 2000, 30% of which was expenditure for its 12,000 staff members.

Statistics regarding the prison population for the last few years demonstrate that Romania has a prison population comparable to that of England or France, despite having half the total population of these countries³⁶.

Approximately 20% of the total prison population are in remand custody or are first-time offenders. More than half of the prisoners are convicted for theft, while recidivists account for 42% of the population (2000). The percentage of sentences of one year or less is much lower than in other European countries, but this is not as encouraging as it sounds. Generally, this statistic reflects the punitive nature of criminal legislation, and not a greater percentage of minor crimes.

In both the juvenile and adult population, custodial measures are imposed in over 50% of all sentences.

Roma Population in Romanian Prisons

General characteristics of the Roma ethnic group

In general, when the subject of Roma is discussed in any context, ethnic discrimination looms large as a problem. A discussion of Roma prisoners is no exception.

³⁶ Home office research and Statistics Department (1995), Digest.

There are, however, no provisions which contradict European law regarding the issue of discrimination based on ethnic grounds in the Romanian Constitution (1991), Criminal Procedure Code, Law 23, regarding prison sentences (1969) or any other legislation.

The Romanian Constitution contains clear provisions establishing equal rights for all Romanian citizens, which guarantees the protection of ethnic minorities from any discrimination (Art.1 §3, Art.4 §2, Art.6 §1 and Art.16 §1). In addition, there are specific provisions stating that international treaties ratified by Romania are part of the domestic law (Art. 11 and Art. 20). In this regard, Romania has signed a series of international instruments protecting, implicitly or explicitly, the rights of ethnic minorities: The Universal Declaration of Human Rights (1948), the International Covenant on Social, Economic and Cultural Rights, the Convention against Torture (1984), the Beijing Rules (1985)³⁷, the Tokyo Rules (1990)³⁸, and the Riyadh Rules (1990)³⁹.

The social, economic and cultural reality demonstrates that legal provisions only represent the beginning of a very long journey. One major roadblock in this journey is a society where discrimination on ethnic grounds is tacitly approved. At the same time, combating discrimination in the criminal justice system and the administration of justice is essential to the solution as a whole.

The situation of the Roma ethnic minority is extremely complex, and in the new Europe that was born 10 years ago, it has ceased to be confined to Romania, Bulgaria or Spain and has become a European

³⁷ The United Nations Standards Minimum Rules for the Administration of Juvenile Justice.

³⁸ The United Nations Standards Minimum Rules for Non-custodial Measures.

³⁹ The United Nations Guidelines for the Prevention of Juvenile Delinquency.

issue. Borders are imposing fewer barriers every year, and the specific mobility of this minority throughout Europe makes the issue of the Roma ethnic minority is European one.

The incidence of Roma in Romanian Prisons

If we were to ask a Romanian on the street about the kind of people in their prisons, the most likely response would be: “the majority of criminals and, implicitly, prisoners, are gypsies, and in general the people belonging to this ethnic group are wrongdoers who break the law”. The print media and the television are full of such assertions. At the level of daily life, parents' warnings such as “you're not allowed to play with gypsies” or “if you don't behave yourself, I'll get the gypsies to take you away” are very common. In schools, history is repeating itself. Employment advertisements are filled with overt discrimination against Roma, and real estate announcements that want to be attractive specify that apartment blocks are without gypsies.

Romania is facing a generalised cultural climate in which discrimination against Roma is blatant. Even when the Ministry of Interior or other political representatives officially address the problem, the image most often shown is only the tip of the iceberg. Roma are very often in conflict with the law. Nothing, or virtually nothing, is mentioned of the huge economic and social problems, inadequate schooling or cultural differences. Absolutely nothing is mentioned about the “labelling factory” that all have entered and from which they cannot leave simply through workshops, conferences or endless references to non-discriminatory legislation.

In prisons, the same difficulties arise of establishing how many Roma

are in fact being imprisoned. Prison statistics do not take into account ethnic origin, and the repartition in cells does not take ethnicity into consideration. In addition, there are no sentencing laws or internal regulations which refer to negative or positive discrimination.

The particularities of the Roma minority in prison are not comparable with other ethnic minorities, whether in the Romanian prison system or those of other countries. The Hungarians show no reservation in declaring that they belong to a particular ethnic minority, and use their mother tongue on a daily basis. There are minority populations where a visible identification is more obvious, which raises issues of profiling. A different situation occurs when an attempt is made to identify persons from minorities like the Roma, Jewish people, Kurds or even Hispanics, whose physical traits may be more similar to the local majority population. This is more difficult where the country and context in which this identification process occurs is one dominated by racist and discriminating practices.

There is a fundamental ethical principle that one cannot classify a person as belonging to a minority when s/he states otherwise, identifying themselves as part of the majority population. With very few exceptions, as we shall see below, Roma individuals do not know or do not use the Romani language in their daily life, and physical appearances alone can not be relied upon. How can one know how many representatives of this ethnic minority are in a prison without using racist practices?

An interesting study⁴⁰ was undertaken in several Romanian prisons. It

⁴⁰ Durnescu, I; Lazăr, C, (2000), Identificarea proporției și caracteristicilor socio culturale ale populației de romi din penitenciarele românești, ("Identification of the percentage and social-cultural features of the Roma population in Romanian penitentiaries") Applied Psychology Magazine, Timisoara (in course of publication in Howard Journal, UK).

must be noted that given the geographic homogeneity of the prison population and the approximately uniform spread of the Roma at the national level, the results of this study apply to the entire Romanian prison system. In this case an efficient method was used for the identification of the percentage of Roma prisoners: a questionnaire was used as an investigation method, with a view to identifying the specific features of this ethnic minority: language spoken by the interviewee, by his/her parents or grandparents, aspects related to traditional crafts, cultural habits related to marriage, and so forth.

The results were surprising. With the exception of Roma minors, who comprise over 35% of youth detention centres, the percentage of Roma adults in custody was 17.2%. Surveyed individuals who gave conflicting answers regarding ethnicity in interviews were not included. These figures are taken from prisoners' own declarations regarding their ethnic origin, without taking into consideration the few cases in which prisoners answers suggested they were Roma, but had in the end declared themselves as being Romanians.

Given that estimates regarding the percentage of Roma in the total Romanian population are around 5 to 6%, it is therefore clear that there is a significant over-representation of Roma in the Romanian prison system.

CONCLUSIONS AND RECOMMENDATIONS

At the legislative level, the countries in Central and Eastern Europe have signed and ratified the majority of international documents that refer to the protection of national minorities, discrimination and racially motivated violence. National laws have included regulations which refer directly to discrimination, and positive measures have been taken against discriminatory attitudes and spread of racism.

Specialised institutions for dealing with Roma issues have been established; however, these are insufficiently developed. National strategies have been initiated and developed with a view to improve the situation of the Roma. All of these strategies include provisions regarding the prevention and reduction of discrimination in various areas, including the criminal justice and penitentiary systems.

Although important progress has been achieved at the legislative and institutional levels, in practice there are many cases of violation of Roma rights, within the criminal justice and the prison system. Police raids targeted at the Roma population are more frequent than in the case of non-Roma, there are few cases in which alleged Roma delinquents benefit from adequate legal assistance, and the complaints submitted by Roma victims against violations of human rights are not adequately investigated by the competent authorities for the provision of order and justice.

Other discrimination includes the fact that Roma defendants are more often kept in custody before the trial and for longer periods, and are given more severe sentences than non-Roma. In prisons, the percentage of Roma is higher than other groups, and also compared to

the declared Roma population at the national level.

At the community level, the support given by families to Roma prisoners is smaller than in the case of the other prisoners, mainly because of the economic hardships with which they are confronted.

RECOMMENDATIONS

It can be clearly seen that the current situation of Roma within the criminal justice and penitentiary systems is in urgent need of change at the policy and administrative level, and the implementation of the following recommendations would significantly diminish the discriminatory impact of the existing legal system:

1. The full audit, analysis and evaluation of potential discriminatory effects of current regulations and the improvement of the current legal system.
2. The necessity of undertaking scientific research regarding the practice of courts in cases where the defendants are Roma.
3. Development of specialised structures for the protection of Roma rights, both at central and local levels.
4. Training of staff from the police and legal system who could work with Roma persons and in Roma communities.
5. Development of information programs for all social actors involved, for the correct identification and solving of discrimination cases.
6. Development of a coherent system for monitoring cases of discrimination in all the areas of political, economic and social life.

7. Identification, prevention and concrete solving of conflicts capable of generating community or inter-ethnic violence.
8. Initiation of legal education and crime prevention programs, in collaboration with members of the Roma community.
9. Recruitment, selection and training of young Roma to work in the police, legal and prison systems.

ANNEXES

BEST PRACTICES CASE STUDIES⁴¹

ANNEXE 1

TIMISOARA, ROMANIA: CENTRE FOR LEGAL SUPPORT & CONSULTING FOR RROMA COMMUNITIES⁴²

Presentation of the organisation

The Rroma Social-Cultural Organisation of Banat was established in 1990, and its general objective is the protection of Rroma human rights in particular, the preservation, affirmation and development of their ethnic identity and their social protection.

The Organisation provides civic and human rights education in Rroma communities, educational extra-curricular activities and support for the education system for Rroma, the development of social, cultural, economic and development programs for Rroma communities, and spiritual-educational activities.

This project was developed in Timisoara over a period of 8 months. A Citizen's Advice Bureau was established and an informal initiative group, formed of "Rroma Civic Agents" and professional lawyers was created. The Civic Agent group was the result of a Phare Democracy

⁴¹ Other very interesting cases may be founded in "Practical examples in combating racism and intolerance against Roma/Gypsies" CRI (2001) 28, October 2001.

⁴² "Best practices in Rroma communities", Together Agency, Bucharest, 2000, Maria Ionescu & Sorin Cace.

project, developed in Timisoara by the Intercultural Institute and the County Council. The lawyers group was comprised of lawyers and final-year law students.

“The necessity of the project was determined by a real case. I was trying to help an old man, whom I accompanied to the Court of Justice, where I was unable to represent him. The old man did not have any lawyer and no money for legal fees. Then came the idea of establishing such a centre for providing advice in legal matters, with the purpose of helping other people in similar situations,” said Cornel Rezvimes, President of Organisation and Program Coordinator

Objectives

The objective of the project was to increase the level of legal assistance among disadvantaged communities in Timisoara, including Roma.

Activities

Initially, the project focused on legal assistance, provided by two lawyers two times a week, and information, consulting and representation in court, provided by two students, related to problems and cases identified by the organisation. At a certain point, the cases the organisation had to deal with were no longer within the competence of the Court of Justice, but they were able to rely on other collaborators from a previous project developed in partnership with the Intercultural Institute in Timisoara.

problems faced within the Roma community in Timisoara. They had to bring the cases they discovered to the attention of students providing legal information, who in turn prepared the files for lawyers who offered advice and representation in Court.

A register was kept in which details were recorded of all current cases requiring advice and court representation to keep track of the cases and the situations as they were handled.

The most difficult case which they tried to bring to public attention dealt with an assault. A shepherd, considered to be the most powerful man in the village, continually assaulted Roma people from the village, regularly entering their houses at night, and removing them from their homes.

One night he entered a Roma house, removed the entire family and seriously assaulted a family member. The victim was hospitalised, and he was advised by the organisation to go to a forensic medical expert, after which he returned to the village. The most difficult problem was that the victim was too afraid to enter his own house. This was on top of the fact that neighbours did not want to give any statements to the police, fearing retaliatory action. The organisation was therefore unable to find any people who were prepared to testify as to the assault, whereas in fact there were numerous witnesses.

They then established a committee, comprised of 10 civic agents who were familiar with the situation, and entered the community to investigate and to forward a fully constituted file to the Police Department, the District Attorney and the Court of Justice. They discovered however that people did not want to give written

declarations to be used in court. After this investigation, the trial was able to recommence. A police officer was sent to the shepherd's house with a summons. Work on this one case lasted almost the entire project period, and it was only after considerable effort that the defendant was finally convicted.

ANNEXE 2

FROM THE EUROPEAN COMMISSION COUNTRY REPORTS (2000)

THE ROMANIAN POPULATION IN CENTRAL AND EASTERN EUROPEAN COUNTRIES

Bulgaria

Bulgaria has made progress in bringing its legislation into line with European standards and recognises that steps need to be taken to address problems faced by certain minorities.

There is political commitment from the government to remedy their problems, but more effort must be put into translating this into concrete action and major efforts and resources will be required to reverse the situation of discrimination, poor living conditions, economic hardship, chronic unemployment, poor health care, appalling housing conditions and lack of effective access to education. Also, there are practices in access to social support and health care where particular eligibility criteria can have a discriminatory effect, making it difficult in practice for Roma to gain access to social support. A precondition for non-contributory health services is access to social support, so this also affects access to health services.

Since the welcome adoption of the framework programme for the integration of Roma into society reported on last year, some progress has been made. But in general, implementation of the programme has been progressing slowly, so the short-term Accession Partnership has

been only partially met. Experts of Roma origin have been appointed in 24 of 28 regions as experts on ethnic and demographic issues; 3 experts have been appointed to the Ministry of Regional and Urban Development, and 3 at the Health Ministry. Some training in administrative skills has been provided for these experts through the National Council on Ethnic and Demographic Issues (NCEDI). Cases of degrading treatment of Roma by law-enforcement bodies were referred to earlier in this chapter. The NCEDI is working on a programme against youth unemployment which includes recruiting 50 young Roma into the Police, which is a positive step.

Czech Republic

In June 2000 the Czech government adopted a draft outline for a long-term policy called, "Concept of the Government Policy towards Members of the Roma Community". It envisages a strategic action programme for the period 2001-2020, focusing on the key areas of education, employment, housing and the fight against discrimination. The Inter-Ministerial Roma Commission also submitted a progress report in June 2000 on the fulfilment of the measures of the government's 1997 action plan to improve the situation of the Roma. The report indicates that the vast majority of the measures have been fulfilled.

As regards the overall situation of the Roma in the Czech Republic, further efforts are needed, in particular to combat anti-Roma prejudice and to strengthen the protection provided by the police and the courts. Estimated Roma unemployment remains very high at 70-90%. Health and housing conditions are still much worse in the Roma communities than amongst the general population. Attitudes at local level are largely

unaltered, as illustrated by some recent district court judgements. The Inter-Ministerial Roma Commission still has no budget to implement policies, no executive power and few permanent staff. The long-term strategic action programme essentially comprises a list of tasks for individual ministries, but contains no overall budgetary provisions.

In June the government approved the draft principle of a law on the rights of national minorities.

In 1999 the number of racially motivated or extremist crimes rose to 316 (from 133 in 1998), of which 273 were solved (compared to 100 in 1998). The 2000 Report on Extremism stressed the improved effectiveness of the police and the increase in the number of crimes reported, especially by the Roma. In 1999, there were no fatalities caused by extremist movements, although a number of assaults took place.

A number of positive steps have been taken to fight discriminatory attitudes and the spread of racism. In particular, the government launched an anti-racism campaign for the first time in December, allocating CzK 10 million (approximately 325,000 Euros) from the state budget.

Hungary

In line with the short-term Accession Partnership priority and with the medium-term Roma action programme adopted in April 1999, the Government has provided specific support for addressing the difficult situation of the Roma minority. In particular, measures were launched in the areas of education (scholarships and support for educational institutions), culture (opening of Roma Community houses which play a very important role in strengthening the local communities and

in preserving Roma culture), employment (public work programmes and public utility work programmes), housing, health and anti-discrimination. Under the “Roma Policemen Programme” the number of Roma police officers was increased and co-operation with Roma organisations was reinforced.

However, concrete results from the action programme can only be expected in the medium term. In the meantime, the situation of the Roma population continues to be difficult.

Roma have continued to suffer prejudice and widespread discrimination in society. The Ombudsman for Ethnic and Minority Rights noted that discrimination was present in the judiciary, in the police, in employment and education. According to data from the Legal Defence Bureau for National and Ethnic Minorities, a majority of discrimination cases were lodged against the practices of local Self-Governments most of the cases involved “everyday racism”, e.g. the denial of entrance to bars, or in relation to employment. Discrimination in housing and access to public institutions also remained a serious problem.

In the meantime, the legal system has slowly responded to complaints of discrimination and Hungarian courts have started to launch court proceedings in cases of labour discrimination, police ill-treatment and in cases of denial of entrance to bars.

Poland

In Poland, respect for and protection of minorities continues to be assured. The 1998 Criminal code provisions regarding the use of the

mass media to “advocate discord” on national, ethnic, racial or religious grounds also appear to be functioning well. Polish attitudes to foreigners have been surveyed annually since 1993, and over this period there has been a reduction in negative attitudes towards minorities.

Considerable attention has been focused on the treatment of the Roma population in Poland over the reporting period. It is true that the economic and social circumstances of the Roma are poor and worse than those of the population in general. Moreover, some acts of discrimination by public authorities and violence against Roma do take place. There is, however, no overt policy of discrimination on the part of the Polish government towards the Roma. While there is no clear national policy on assisting the integration of minorities, local initiatives do exist. There are plans for nationwide television broadcasts with a view to propagating friendly attitudes toward refugees and foreigners.

Romania

Roma remain subject to widespread discrimination throughout Romanian society. However, the government's commitment to addressing this situation remains low and there has been little substantial progress in this area since the last regular report.

The 1999 Accession Partnership identified the development of a government strategy on the Roma as a priority for Romania. In spite of this, work on such a strategy has been delayed and preparations are still at an early stage. The newly established Inter-Ministerial Sub-Committee for Roma has met during the reporting period but proved

unable to produce any substantial results. A political memorandum was prepared by the Department for the Protection of Minorities in conjunction with Roma representatives but despite being submitted in March 2000 it has not been approved by the government.

One of the few positive developments that have taken place over the last year has been an initiative by the Ministry of Education to improve the Roma's access to education by reserving a limited number of places for Roma in high schools, vocational schools, teacher training colleges and universities. The recent government ordinance prohibiting all types of discrimination (see above) is also a potentially important development in countering discrimination against the Roma community.

The National Office for Roma has extremely limited staffing and has limited budgetary resources even though the 1999 Accession Partnership identified the provision of adequate financial support for programmes dealing with the Roma as a short-term priority. The office needs to be strengthened in order to fulfil its function, and this is an area where further work will be necessary.

Slovakia

After considerable progress in setting up the appropriate legislation and supporting institutions reported during the previous period, further progress has been made in developing approaches to tackle the problems of minorities, but only limited progress can be observed in actual implementation.

xenophobia, anti-Semitism and other forms of intolerance was adopted, covering the period 2000-2001. The plan aims to raise public awareness about all forms of intolerance and to promote and co-ordinate education initiatives vis-à-vis students, targeted professional groups (the police, judges, prosecutors, the army, health and social workers), as well as the population in general. It appears to be comprehensive and well conceived, though it does not contain budget allocations.

The Roma continued to suffer discrimination, violence at the hands of thugs ('skinheads') and lack of sufficient police protection. The strategy to tackle the problems of the Roma community which was adopted in September 1999 (stage I) was further elaborated in March 2000 (Stage II). The new document constitutes a list of valid intentions and good projects, but lacks in definition of objectives, assessment of progress to date, clarity in financial allocations and follow-up mechanisms. Further development and concrete measures would be needed to ensure its operational value.

A recent amendment to the Criminal Code explicitly recognised racially motivated offences against the person and raised the criminality for harm in such cases. A number of verdicts have already been based on this provision. For example, in April a court in Banska Bystrica modified the legal qualification of a crime, perpetrated four years earlier, deeming it racially motivated, although the sentence was not changed. This case represented the first case based on the above provision to be used in a court decision and publicised in Slovakia.

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