



**The Impact of the Jurisprudence of the European Court of
Human Rights on Roma Rights**

By

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Executive Summary

The aim of this thesis is to assess the effectiveness of three landmark cases decided by the European Court of Human Rights concerning the Roma: *Nachova and Others v Bulgaria*, *Moldovan and Others (No.2) v Romania*, *D.H and Others v The Czech Republic*. These cases have been deliberately selected due to the fact that they set the standards for the protection of Roma rights in Europe and moreover they are relevant not only for the victims/applicants, but the principles stated by the Court in its reasoning can also impact other minorities in Europe. *Nachova and Others v. Bulgaria* is the first case in the history of the European Court of Human Rights to conclude that being a Roma may play a role in the events of a crime. *Moldovan and Others v. Romania (No.2)* is the second most important case (being decided just one week after *Nachova and Others v. Bulgaria case*) and refers to a situation of community violence upon the Roma in which the Court emphasizes the positive obligation of the state to ensure that respect for rights of its citizens. *D.H and Others v. The Czech Republic* is a recent case concerning the systemic placement of Roma children in special schools in Ostrava region of the Czech Republic. To this end, this study assesses not only the expected outcome of the judgments made in these cases but also the implementation of general and individual measures by the state that has been found in breach of his obligations under the ECHR.

Thus, the main research question is how effective the judgments have been in the cases mentioned above for the Roma applicants at the Court and the Roma rights protection in Europe. This question divides into two fundamental sub questions. First, whether the states have implemented the general and individual measures in order to comply with the judgment. Second, whether the supervisory role of the Committee of Ministers during the implementation of judgments by the states is effective or not.

The analysis revealed that the cases of *Nachova and Others v. Bulgaria, Moldovan and Others v. Romania (No.2)* and *D.H. and Others v. The Czech Republic* are of great relevance to the protection of Roma rights in Europe and moreover, that the reasoning of the Court is likely to impact not only on Roma rights but also on the protection of other minorities in Europe. To this end, the implementation of the individual and general measures by the respondent states proved to be difficult due to reasons connected to either the reluctance of the authorities to comply with it (*Moldovan and Others v. Romania (No.2)*) or minimal impact of the new adopted legislation (*D.H and Others v. The Czech Republic*). Furthermore, the research study identified a gap within the implementation of judgment process, between the “supervisory role” of the Committee of Ministers and state’s roles in compliance with the judgments. In this regards, recommendations for further study have been made.

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I would like to dedicate the work of this thesis to my family for their support and understanding throughout my life.

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INTRODUCTION

In recent years, increasing attention has been paid attention to the protection of minorities in Europe. The key reason of the later is the fact that by definition, members of a minority group find themselves in a vulnerable position compared to that of other citizens and hence, require effective protection.¹ Among various minority groups in Europe, the Roma constitute the biggest and arguably the most marginalized group.²

The life of many Roma has been marked by a history of persecution, racism and social exclusion.³ The most striking example in this sense is the extermination of at least five hundred thousand Roma during the Nazi regime.⁴ After the fall of communism the situation of most of the Roma who were facing difficult socio-economic problems and constant human rights violations called for international interference.⁵ Facilitating factor for this interference was the fact that after the collapse of communism, most Central and Eastern European countries became member states of international organizations and in particular the Council of Europe whose aim is “*to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage...*”.⁶

¹ Kristin Henrad, *The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity*, European Diversity and Autonomy Papers EDAP no.5, available at www.eurac.edu/edap, 2004

² James A. Goldston and Mirna Adjami, *The Opportunities and Challenges of Using Public Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Draft Prepared for World Justice Forum July 2-5 Vienna 2008, p.1, available at: http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf , 2008

³ Jean-Pierre Liegeois and Nicolae Gheorghe, *Roma/Gypsies: A European Minority*, Minority Rights Group International Report, available at: <http://www.minorityrights.org/1010/reports/romagypsies-a-european-minority.html>, 1995

⁴ Romani Rose, *The Roma and Sinti During Holocaust and Today, Remembrance and Beyond*, December 2006, available at: <http://www.encyclopedia.com/doc/1G1-160756355.html>. Please also see: Roma Rights Network, *The Genocide of European Roma*, available at: <http://www.romarights.net/content/genocide-european-roma>

⁵ Dena Ringold, Mitchell Orenstein, Erika Wilkens, *The World Bank: Roma in an Expanding Europe: Breaking the Poverty Cycle*, p.3., available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/12/23/000090341_20041223131347/Rendered/PDF/30992.pdf, 2005

⁶ Council of Europe, *Statute of Council of Europe, Preamble*, London 1949, ETS No.1, available at: <http://conventions.coe.int/Treaty/en/Treaties/HTML/001.htm>

The Council of Europe, an intergovernmental organization set up in 1949, founded on principles of human rights, rule of law and democracy⁷ created a unique tool for the protection of human rights in Europe which is the *Convention for the Protection of Human Rights and Fundamental Freedoms* [hereinafter ECHR].⁸ According to Art.34 of the ECHR, an individual has the possibility to apply to the European Court of Human Rights (the main enforcement mechanism of the ECHR) in case his/her human rights have been breached by a member state of the Council of Europe.⁹ Having said that the Roma and in particular those living in Central and Eastern European countries referred to the European Court of Human Rights in pursuit of their human rights, over the years, the European Court of Human Rights has shown an interest in protecting the rights of the Roma which is proved by the positive judgments in cases such as *Nachova and Others v Bulgaria*, *Moldovan and Others v Romania* or recently, *D.H. and Others v The Czech Republic etc.*

However, little is known about the implementation of these judgments. The judgment of the Court counts nothing without its effective implementation by the state that has been found in breach of its obligations under ECHR. Under Council of Europe structure, the Committee of Ministers supervises the implementation of the judgments by the state that had been found in breach of its obligations under European Convention on Human Rights.¹⁰ To this end, the Committee of Ministers adopts an action plan (submitted by the state responsible) containing individual and general measures that the state should comply with for the fulfillment of the judgment. The importance of the effective execution of judgment has also been acknowledged by the president of the Parliamentary Assembly Mrs. Leni Fisher at the inauguration of European Court of Human Rights in 1998:

⁷*Ibid*, Art.3

⁸Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Rome 1950 available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

⁹*Ibid*, Art. 34

¹⁰ Council of Europe, Committee of Ministers, available at: http://www.coe.int/t/cm/home_en.asp

What the new European Court of Human Rights needs most is unequivocal respect for and follow-up to its decisions in the Council of Europe member countries. This alone will provide the Court with the authority it needs in order to protect the fundamental rights of our people.¹¹

Therefore, the aim of this thesis is to assess the effectiveness of three landmark cases within the European Court of Human Rights jurisprudence concerning the Roma: *Nachova and Others v Bulgaria*, *Moldovan and Others (No.2) v Romania*, *D.H and Others v The Czech Republic*. These cases have been deliberately selected due to the fact that they set the standards of protection for Roma rights in Europe. Moreover, these cases are relevant not only for the victims/applicants, but the principles stated by the Court in its reasoning can also be applied to other minorities in Europe. To this end, this study assesses not only the expected outcome of the case as such or judgment/decisions made in these cases but also the implementation of general and individual measures by the state that has been found in breach of his obligations under the ECHR.

Thus, the main research question is how effective the judgments have been in the cases mentioned above for the Roma applicants at the Court and the Roma rights protection in Europe. This question divides into two fundamental sub questions. First, whether the states have implemented the general and individual measures in order to comply with the judgment. Second, whether the supervisory role of the Committee of Ministers during the implementation of judgments by the states is effective or not.

In order to answer the research questions, the method will be based on in depth analysis. Thus, each judgment will be analyzed in light of the main principles used by the Court to conclude the violation. Secondly, each of the cases will be analyzed in light of the implementation of the general and individual measures by the state found in violation. To this

¹¹ Jacobs and White, *The European Convention on Human Rights*, Fourth Edition, Oxford University Press, p. 493, 2006

extent, the analysis will provide the reader with the latest developments on the implementation of general and individual measures in each of the cases listed. For giving answers to the research questions, the thesis is structured as follows:

The first chapter, entitled, *Roma in the European Context*, is an analysis of the situation of Roma at European level, underlining some of the most difficult problems that Roma are faced with. It provides a clear picture of today's Roma situation in Europe and some of the international organizations efforts to tackle Roma issue. Thus this chapter will analyze generally, some of the most important efforts of the Council of Europe to address the Roma issue and particularly stressing the role of the European Convention on Human Rights and the Court as important tools used by the Roma in pursuit of their human rights.

The second chapter, *Roma at the European Court of Human Rights*, is an analysis of three of the most important cases of the European Court of Human Rights on Roma rights. *Nachova and Others v. Bulgaria* is the first case in the history of the European Court of Human Rights to conclude that being a Roma may play a role in the events of a crime. *Moldovan and Others v. Romania No.2* is the second most important case (being decided just one week after *Nachova and Others v. Bulgaria case*) and refers to a situation of community violence upon the Roma in which the Court emphasizes the positive obligation of the state to ensure that respect for rights of its citizens. *D.H and Others v. The Czech Republic* is a recent case concerning the systemic placement of Roma children in special schools in Ostrava region of the Czech Republic. Besides the legal analysis of the case, the chapter also highlights some of the legal scholar's reactions about the case and decision of the Court.

The third chapter, *The implementation of European Court of Human Rights Judgments concerning the Roma*, analyses the implementation of the judgments of the European Court of Human Rights with particular relevance to Roma victims of violations. Its

aim is to identify whether the states have implemented the general and individual measures and main problems when it comes to the implementation of the judgment.

Finally, the *Conclusion* will summarize the main findings of the thesis and make recommendations.

1. CHAPTER 1 – ROMA IN THE EUROPEAN CONTEXT

This introductory chapter is aimed at providing the reader with a picture on the actual situation of the Roma in Central and Eastern Europe, where most of the Roma live. To this end, the chapter will highlight some of the efforts of international organizations in tackling Roma issue: Organization for Security and Cooperation in Europe, European Union and Council of Europe. Moreover, under Council of Europe analysis, a picture will be drawn on the European Court of Human Rights activity concerning the Roma.

1.1. Social context

Minority rights form an integral part of the international protection of human rights. The need to protect minorities is in the first place connected to the maintenance of internal as well as international stability and in the second place to the need for the protection of human dignity, as the supreme value in society.¹² By definition, members of minorities find themselves in a vulnerable position compared to that of other citizens and hence require an effective mechanism of protection.¹³

The Roma represent the biggest ethnic minority of Europe. Although, there is no available data on the real number of Roma living in Europe, a report of the World Bank indicates a number between 7 and 9 million people.¹⁴ In a more recent study, the European

¹² Gaetano Pentassuglia, *Minorities in International Law: An introductory study*, Strasbourg, Council of Europe, p. 48-49, 2002

¹³ Kristin Henrad, *The European Convention on Human Rights and the Protection of the Roma as a Controversial Case of Cultural Diversity*, European Diversity and Autonomy Papers EDAP no.5, at www.eurac.edu/edap, 2004

¹⁴ Dena Ringold, Mitchell Orenstein, Erika Wilkens, *World Bank: Roma in an Expanding Europe: Breaking the Poverty Cycle*, p.3., available at: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/12/23/000090341_20041223131347/Rendered/PDF/30992.pdf, 2005

Commission study shows that there are between 10 and 12 million Roma living in Europe.¹⁵ Coming originally from India and having no territory or country of their own, the Roma spread all over Europe and parts of the near and middle East and received the citizenship of whichever country they settled in. During the communism, the Roma have been subjected to assimilation programs in an effort of the socialists to eradicate racism.¹⁶ Moreover, the Roma women have been subjected to coerced sterilization, a practice which persists even in today's Europe.¹⁷ After the fall of communism, the Roma were the first ones to lose their jobs and their means of subsistence, as they often employed in uneconomic sectors and lacked formal qualifications and became in this way the scapegoat of the society.¹⁸ Various studies indicate that *"the change from communism to a free-market economy marked the beginning of a crisis period for the Roma, due to social and economic changes, and the loss of social programs and initiatives upon which many may have depended"*¹⁹ It has also been noted that hate crime rate increased after the fall of the communism and violent attacks against the Roma have been registered in the Central and Eastern Europe.²⁰ Presently, most of the Roma continue facing discrimination that affects all areas of social life: employment, housing, education, health etc.²¹ Moreover, they confront with high rates of poverty, social exclusion, poor living conditions, which make their life substandard.²²

¹⁵ European Commission, DG Employment and Social Affairs, *The Situation of Roma in an Enlarged European Union*, Luxembourg for Official Publications of the European Communities:
<http://www.errc.org/db/00/E0/m000000E0.pdf>, 2005

¹⁶ Ibid, p. 8-9, 2005

¹⁷ Florinda and Jill Collum, *The Roma: During and After Communism*, Human Rights and Human Welfare Journal, Topical Research Digest: Human Rights in Russia and The Former Soviet Republics, p.98 -106, 2007

¹⁸ Human Rights Features, *Roma Europe's Forgotten Minority*, vol. 6, issue no.6, available at:
<http://www.hrdc.net/sahrdc/hrfchr59/Issue6/roma.htm>, 2003

¹⁹ *Supra* note no.15 at p. 99

²⁰ *Supra* note no.15 at p.99

²¹ Jelena Subotic, *Europe's Untouchables: Roma Sex Work After Communism*, p.4, available at:
<http://www.maxwell.syr.edu/moynihan/programs/gandg/pdfs/gypsyprostitution.pdf>

²² Claude Cahn, *Roma Rights: Racial Discrimination and ESC Rights (2005)*, available at
http://www.coe.int/t/dg3/romatravellers/documentation/discrimination/RomaESC_en.asp, 2005

Being characterized by negative stereotyping and prejudice, the life of the Roma has been compared to that of American blacks, Jews in Nazi-controlled Europe or other minorities facing similar problems:

*The vicious circle of negative stereotyping and marginalization, if not deprivation, is likely to cast them out of the social integration course. They are not alone in that sense: Arabs, Asians, black people, dark skinned people, 'Easterners', immigrants, Jews, Muslims, and many others have accompanied them in the same boat of racial discrimination for decades or for centuries.*²³

Recently, some studies suggest that the European societies have developed a strong anti-Romani feeling. For example, 79% of the Czech Republic's citizens would not like to have a Roma as a neighbor.²⁴ Taking into consideration the context in which Roma were living and the situation of discrimination that they were facing, the international human rights organizations, of various kinds, were entrusted with responsibility to assist Roma in various ways. Some of the international organizations ways to tackle Roma's situation in Europe are analyzed below.

²³ Gokcen Sinan, *Pictures in our heads*, Roma Rights: Quarterly Journal of the European Roma Rights Center (Perceptions), no.3, 2007

²⁴ European Commission, DG Employment and Social Affairs, *The Situation of Roma in an Enlarged European Union*, Luxembourg for official publications of the European Communities, 2005

1.1.1. Organization for Security and Cooperation in Europe and the Roma

One of the organizations that became involved in the protection of the Roma in Europe is the Organization for Security and Cooperation in Europe [hereinafter OSCE].²⁵ Having highlighted already in its 2000 report²⁶ the difficult situation that Roma people in Europe and especially within the OSCE area are faced with, OSCE adopted an *Action Plan on Improving the Situation of Roma and Sinti in OSCE Area [hereinafter action plan]*. According to the action plan, adopted in 2003, there are currently 55 states, which agreed to take steps in improving the situation of the Roma and Sinti within their territory.²⁷ The action plan contains recommendations on how the situation of the Roma and Sinti could be improved, *inter alia*, need of adopting legislation on prohibiting discrimination and law enforcement, development of national action plans on improving the situation of the Roma and Sinti etc.²⁸

However, a report recently released by the Organization for Security and Cooperation in Europe indicates that the anti-Romany feeling has not decreased in Central and Eastern Europe.²⁹

²⁵ Organization for Security and Cooperation in Europe (OSCE), *About*, available at: <http://www.osce.org/about/19298.html>

²⁶ Organization for Security and Cooperation in Europe, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, available at: http://www.osce.org/documents/hcnm/2000/03/241_en.pdf

²⁷ Organization for Security and Cooperation in Europe, *Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, 2003, available at: http://www.osce.org/documents/odihr/2003/11/1751_en.pdf,

²⁸ *Ibid*, p.4

²⁹ Organization for Security and Cooperation in Europe, *Hate Crimes in the OSCE region – incidents and responses, Annual report for 2008*, available at: http://www.osce.org/odihr/item_11_41314.html, 2009

1.1.2. European Union and the Roma

Another international organization that has had a say in influencing the governments of the members states to take action in protecting the rights of minorities is the European Union [hereinafter EU]. The EU, being a supranational organization, with 27 member states (with the recent 2007 enlargement with Romania and Bulgaria)³⁰ acknowledged the difficult situation of minorities within the EU and in particular of the Roma which makes the biggest minority of the European Union: “*the treatment of Roma is today among the most pressing political, social and human rights issues facing Europe*”.³¹ In accordance with its aim which is to create “*an ever close union among the peoples of Europe*”,³² the European Union addressed the Roma issue through various programs, as described below:

For example, by the adoption of Copenhagen criteria, in 1993, the European Union required each candidate country to have in its national system, a legal framework aimed at protection of minority rights and, hence, minority protection became part of EU enlargement policy.³³ Another way that the European Union thought to deal with the Roma issue was by way of adopting a minimum standard on respect for equal treatment between persons within each of the member states. As a result in 2000, the European Commission adopted the Race Equality Directive, aimed at “*implementing the principle of equal treatment between persons*

³⁰ European Union, *Index*, available at: http://europa.eu/index_en.htm

³¹ European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, *Segregation of Roma children in Education*, Luxembourg: Office for official Publications of the European Communities, available at: <http://ec.europa.eu/social/main.jsp?catId=518&langId=en&pubId=44&type=2&furtherPubs=yes>, 2007

³² Treaty on the European Union, *Preamble*, Official Journal C 115 09/05/2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0001:01:EN:HTML>, 2008

³³ European Commission, DG Employment and Social Affairs, *The Situation of Roma in an Enlarged European Union*, Luxembourg for official publications of the European Communities, p.6, available at: <http://www.errc.org/db/00/E0/m000000E0.pdf>, 2005

irrespective of racial or ethnic origin".³⁴ The Directive is aimed at ensuring equality of treatment for all citizens within the European Union and explains the scope and necessity of banning racial discrimination as well as analyzes the main areas where discrimination might take place, including employment, housing, health and education – the most pressing areas of concern for Roma people. Unfortunately, the so-called "Race Directive", did not influence noticeably the improvement upon the situation of the Roma in Europe.

The inefficiency of the directive is in particular the responsibility of the Member States, which did not fully apply the directive due to difficulties in incorporating it into their national legal systems. The Czech Republic was the last member state of the European Union to have implemented the Race Directive, in June 2009 after it was threatened with a possible lawsuit at the European Court of Justice, in accordance with Art.226 of the Treaty on European Union.³⁵

Furthering its efforts, in December 2007 conclusions, the Council of the European Union acknowledged the difficult situation of the Roma and asked the member states to take all available measures for the integration of the Roma. In particular, it stated:

*[...] in this connection the European Council, conscious of the very specific situation faced by the Roma across the Union, invites Member States and the Union to use all means to improve their inclusion.*³⁶

In June 2009, the European Union (Council of the European Union) recalled upon the member states to take all the measures to promote the inclusion of the Roma and to use in this

³⁴ European Commission, *The Race Equality Directive (RED)*, 2000, available at: http://ec.europa.eu/employment_social/fundamental_rights/roma/rpub_en.htm#leg

³⁵ Hanna Dolezelová, *Anti Discrimination Law still in limbo*, Research Institute for Labor and Social Affairs, (RILSA), European Industrial Relations Observatory on-line, available <http://www.eurofound.europa.eu/eiro/2008/06/articles/cz0806029i.htm>, 2008

³⁶ European Union, Council of the European Union, *Conclusions*, December 2007, para.50, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/97669.pdf

sense the EU Platform for Roma Inclusion (created in April 2009 in Prague).³⁷ The EU Platform Inclusion represents an “*open and flexible environment*” (not a formal body) composed of EU institutions, national governments, international organizations, experts that put together their knowledge and expertise to formulate policies for the inclusion of the Roma.³⁸

However, the situation of some of the Roma within some of the Central and Eastern European states has not improved noticeably. The recent event in Hungary is probably the most poignant example in this respect:

The case of Robert Csorba (27 years old) and his son (five years old) who were shot dead in the village of Tatarszentgyorgy on 23 February 2009 while trying to escape from their house, which had been set on fire, it is apparently a result of racism.³⁹ As concluded by different NGOs report on the events, the Hungarian authorities failed to effectively deal with the case and to investigate the possibility of racist motives in the killing of the man and his son. Besides that, taking into consideration that between February - May 2009 no perpetrators have been identified, the NGOs (European Roma Rights Center, Hungarian Civil Liberties Union, Legal Defense Bureau for National and Ethnic Minorities) requested that the Hungarian authorities identify possible killers and establish a criminal profile so that the public would assist in their apprehending.⁴⁰

³⁷ The European Union Platform for Roma Inclusion, *Press Release*, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/193&format=HTML&aged=0&language=EN&guiLanguage=en>

³⁸ European Union, Council of the European Union, *Conclusions*, June 2009, available at: <http://ec.europa.eu/social/main.jsp?catId=518>

³⁹ European Roma Rights Center, Hungarian Civil Liberties Union, Legal Defense Bureau for National and Ethnic Minorities, *Report on the circumstances of the double murder committed at Tatarszentgyorgy on 23 February 2009 and conduct of the acting authorities (the police, ambulance and fire services)*, available at: <http://www.errc.org/db/03/DA/m000003DA.pdf>, Budapest, 2009

⁴⁰ *Ibid*, p.12

This is not the only case in Hungary in recent months. A Roma woman has been shot dead in a village in Hungary in August 2009.⁴¹ There have been in total 39 cases of attacks against Roma in Hungary within 2008 -2009, as explained by Amnesty International and Reuters. The report, recently released of the Organization for Security and Cooperation in Europe plus the recent events of Roma killings in Hungary, proves that the anti-Romany feeling has not decreased in Central and Eastern Europe.⁴²

1.1.3. Council of Europe and the Roma

Last but not least, within its working framework, the Council of Europe felt the need to take action in protecting the rights of minorities even since 1990. In the Recommendation no.1134 (1990), the Parliamentary Assembly requested to Committee of Ministers to either create a protocol to the European Convention on Human Rights or a separate convention for the protection of national minorities. Thus, in paragraph 17, it stated:

*The Assembly therefore recommends that the Committee of Ministers draw up a Protocol to the European Convention on Human Rights or a special Council of Europe convention to protect the rights of minorities in the light of the principles stated above.*⁴³

In this context, the Framework Convention for the Protection of National Minorities [hereinafter FCNM] was adopted in 1995 and entered into force in 1998 but unfortunately, it

⁴¹ Amnesty International, *Romani Woman Shot Dead in Hungary*, available at: <http://www.amnesty.org/en/news-and-updates/news/romani-woman-shot-dead-hungary-20090804>. Please also see REUTERS, *Roma Woman Shot Dead in Latest Hungary Attack*, available at: <http://www.reuters.com/article/latestCrisis/idUSL362272>, 2009

⁴² Organization for Security and Cooperation in Europe, *Hate Crimes in the OSCE region – incidents and responses, Annual report for 2008*, available at: http://www.osce.org/odihr/item_11_41314.html, 2009

⁴³ Council of Europe, Parliamentary Assembly, *Recommendation no.1134*, para.17, available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta90/EREC1134.htm>, 1990

has not been ratified by all member states of Council of Europe (by 2008, 39 out of 47 member states of the Council of Europe ratified the FCNM).⁴⁴

As it is stated in its preamble, the FCNM is aimed at promoting a democratic and pluralist society, in which the national minorities could “*express, preserve and develop*” their identity:

*Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.*⁴⁵

In accordance with Art.25 (1) of the FCNM, the states are obliged to submit a progress report⁴⁶ on the activities they undertook to protect the rights of minorities within their territory:

*Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.*⁴⁷

Besides adopting the *Framework Convention for the Protection of National Minorities*, the Council of Europe in 2005 requested its members to take “*a comprehensive approach to Roma issues*” and therefore, asked them to take positive measures regarding the protection of Roma people including combating racism, intolerance as well as fight against anti-gypsism and social exclusion.⁴⁸ Moreover, it created Committee of Experts on Roma and Travelers,

⁴⁴ Council of Europe, *Framework Convention for the Protection of National Minorities*, CETs no.157, Status of signatures and ratifications, available at:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=&DF=&CL=ENG>

⁴⁵ Ibid, *Preamble*, available at:

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CL=ENG>, 1998.

⁴⁶ For a list of the reports submitted by each country, please consult:

<http://www.minelres.lv/coe/statereports.htm>

⁴⁷ *Supra note* no.44, Art. 25 (1)

⁴⁸ Council of Europe, *Working with Roma to improve their own lives*, available at:

<http://www.coe.int/T/DG3/RomaTravellers>

which is aimed at advising member states on the protection of the Roma rights, when action is needed.⁴⁹

Moreover, the Council of Europe designated the European Convention on the Protection of Human Rights and Fundamental Freedoms [hereinafter ECHR]⁵⁰, which, by its enforcement mechanism, the European Court of Human Rights, has succeeded to giving some substance to the rights of the Roma. The presence of Roma before the European Court of Human Rights dramatically increased after 1990, when it could be said the Roma Rights movement emerged.⁵¹ In the literature, it has been stated that there are two reasons for growth in the number of applications by Roma to the European Court of Human Rights. The first reason is a result of extreme circumstances of the cases of Roma people and failure of the national governments to properly deal with the matter, which has necessitated international review. The second reason is that Roma rights have become part of the quest for international justice, by the fact that minority rights form part of international justice.⁵² In March 2009, HUDOC (The European Court of Human Rights Case-Law) indicated 62 cases decided by the European Court of Human Rights [hereinafter ECtHR] concerning the Roma.⁵³

Although there is no specific article in the ECHR referring directly to minorities, the Roma mostly invoked, as it will be seen in the analysis provided in Chapter II, Art.14 (“*Prohibition of Discrimination*”). In literature, it has been argued, that due to the scope of

⁴⁹ Council of Europe, *Committee of Experts on Roma and Travellers*, (MG-S-ROM), available at: http://www.coe.int/T/DG3/RomaTravellers/mgsrom/default_en.asp

⁵⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 1950

⁵¹ Claude Cahn, *Roma Rights, Racial Discrimination and ESC Rights (2005)*, available at http://www.coe.int/t/dg3/romatravellers/documentation/discrimination/RomaESC_en.asp

⁵² Ibid

⁵³ European Court of Human Rights, *Case-law (HUDOC database)*, available at: <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=20925211&skin=hudoc-en&action=request>

the European Convention of Human Rights that does not contain a separate article for the protection of minorities, it is therefore difficult for a person, member of a minority group to complain as a result of his status.⁵⁴ Art.14 has an accessory character and can be invoked only in conjunction with another article from the Convention. In this regard Kristin Henrad argues that, European Convention on Human Rights lacks protection of minorities in general and of Roma minority in particular, being given the fact that Art.14 (*'Prohibition of discrimination'*) is not a *"guarantor of substantive equality"*, which constitute the base for the protection of minorities in general and of Roma in particular.⁵⁵

The first case, which concerned the rights of a member of the Roma community at the European Court of Human Rights, was *Buckley v. United Kingdom* in 1995. The final decision was given in 1996.⁵⁶ Although, the decision was not in favor of the Roma woman, the Commission highlighted the difficult situation of the Roma and need for special consideration.⁵⁷ Judge Petiti, dissented in regard to the decision of the Court. He made an impressive commentary on the situation of the Roma in Europe and the obligation of the European Court of Human Rights to take positive action upon protecting their rights:

*Before analyzing the reasons that have led me to this opinion, I have a general observation to make. This is the first time that a problem concerning Gypsy communities and "travellers" has been referred to the European Court. Europe has a special responsibility towards Gypsies. During the Second World War States concealed the genocide suffered by Gypsies. After the Second World War, this direct or indirect concealment continued (even with regard to compensation). Throughout Europe, and in member States of the Council of Europe, the Gypsy minority has been subject to discrimination, and rejection and exclusion measures have been taken against them. There has been a refusal to recognize Gypsy culture and the Gypsy way of life. In Eastern Europe the return to the democracy has not helped them. Can the European Convention provide a remedy for this situation? The answer must be yes, since the purpose of the Convention is to impose a positive obligation on the States to ensure that fundamental rights are guaranteed without discrimination. Did the present case afford the opportunity for a positive application of the Convention in this sphere?*⁵⁸

⁵⁴ Reid Karen, *A Practitioner's Guide to the European Convention on Human Rights*, Sweet&Maxwell publishing, 2007

⁵⁵ Kristin Henrad, *Devising an adequate system of minority protection "Individual Human Rights, Minority Rights and the Rights to self-determination*, MARTINUS Nijhoff Publishers, London, p.141-142, 2000

⁵⁶ *Buckey v United Kingdom*, application no. 23/1995/529/615, final judgment, 1996

⁵⁷ *Ibid*, final judgment, para. 71

⁵⁸ *Ibid*, Dissenting Opinion Judge Petiti

The following cases in the jurisprudence of the Court after *Buckley v The United Kingdom*, such as *Chapman v the United Kingdom*, *Assenov and Others v Bulgaria*⁵⁹, *Velikova and Others v Bulgaria*⁶⁰, are considered in the literature as part of the “early phase” in which the Court was more concerned about ensuring equality of treatment being based on the “rule of law” principle.⁶¹ Ralph Sandland argues that in deciding the above mentioned cases, the Court failed to take into consideration the difference as a characteristic of minorities, which had particular consequences for the Roma minority.⁶²

The “late phase” as provided by Ralph Sandland started with those cases that followed *Nachova and Others v. Bulgaria*, in which the Court found a violation of Art.14 in conjunction with Art.2 (“*Right to life*”) of the European Convention of the Human Rights.⁶³ It is the first case in the history of the European Court of Human Rights to conclude that state officials must investigate whether racist motives played a role in the events of a crime.⁶⁴ That is why, the case has been perceived as the first positive development for the Roma Rights protection, being named in the literature as a “*mixed blessing of the positive obligations*”.⁶⁵ Due to its great significance for the protection of Roma rights in Europe, the case will be analyzed in great detail in second Chapter.

The others cases, *Moldovan and Others v Romania*⁶⁶, *D.H and Others v The Czech Republic*⁶⁷ were very much influenced by the reasoning of the Court in *Nachova and Others*

⁵⁹ *Assenov and Others v Bulgaria*, application no. 90/1997/874/1086, final judgment, 1996

⁶⁰ *Velikova v. Bulgaria*, application no.41488/98, final judgment, 2000

⁶¹ Ralph Sandland, *Developing a Jurisprudence of Difference: The Protection of the Human Rights of Traveling Peoples by the European Court of Human Rights*, in *Human Rights Law Review*, no.3, p.481, 2008

⁶² *Ibid*, p.480

⁶³ *Nachova and Others v. Bulgaria*, application no. 43577/98 and 43579/98, final judgment, 2005

⁶⁴ *Ibid*, para. 161

⁶⁵ Hepple Bob, *Positive Obligations to Ensure Equality*, in *Interights Bulletin (A Review of the International Center for the Legal Protection of Human Rights)*, no.15, 2006

⁶⁶ *Moldovan and Others v. Romania*, application no, 41138/98 and 64320/01, final judgment, 2005

v Bulgaria. Due to their importance in setting out the standards for the protection of Roma rights in Europe, these cases will be in great detail analyzed in the subsequent chapters.

1.2. Conclusion

This chapter has been aimed at providing the reader with a clear picture on the situation of the Roma at European level. As it could be seen, the difficult situation of most of the Roma in Central and Eastern Europe has been already acknowledged by different international organizations. As a result, they put lots of effort in tackling Roma issue at European level, but unfortunately, as different reports show, the situation has not improved noticeably.

A way that Roma thought to use in getting their rights respected has been by way of litigation. Therefore over years, the Roma applied at the European Court of Human Rights and looked for remedies, as they could not get them at national level.

The European Court of Human Rights as the main enforcement mechanism of the European Convention on Human Rights has contributed enormously to the protection of Roma rights in Europe. By its judgments, it made clear that the states of the Council of Europe must ensure equal access to rights to those living within their territory, as stated by Art.1 of the European Convention.

It is worth analyzing in greater detail some of the European Court of Human Rights judgments that contributed to setting the standards on the protection of Roma rights in

⁶⁷ *D.H. and Others v. The Czech Republic*, applications no. 57 325/00, Final judgment, Grand Chamber, 2007

Europe. The next chapter is solely dedicated to analyzing some of the most famous decisions of the European Court of Human Rights regarding Roma rights.

2. CHAPTER 2 – ANALYSIS OF THE JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS ON ROMA RIGHTS

This chapter is aimed at analyzing some of the landmark decisions of the European Court of Human Rights on Roma rights. Not randomly selected, these cases have greatly impacted the protection of Roma rights in Europe. The below analysis will deal with three cases decided by the European Court of Human Rights in recent years: *Nachova and Others v. Bulgaria* (2005), *Moldovan and Others v. Romania* (2005) and *D.H. and Others v. The Czech Republic* (2007).

The cases have contributed in a unique manner to the protection of Roma rights in Europe. The decisions of the Court will be analyzed in great detail with particular relevance to the key principles stated by the European Court of Human Rights in reaching the final decision. Moreover, the reader will be provided with a good sense on how the decision of the Court was received by legal scholars and lawyers involved in defending the applicants.

The cases mentioned above, will be also treated in the fourth chapter, which is aimed at the implementation of the judgments by the member state found to have violated the rights enshrined in Convention.

2.1. Nachova and Others v Bulgaria

*Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.*⁶⁸

Nachova and Others v. Bulgaria is a Grand Chamber decision of 2005 and represents a breakthrough in the Roma Rights. It is so, because it is the first case in the history of the European Court of Human Rights to conclude that racist motives may play a role in the events of a crime and that there is a positive obligation upon the state officials to investigate whether racist motives played or not a role in the events.⁶⁹ The case concerns the death of two young Roma men by the military police forces while trying to arrest them. The facts of the case, as presented in the final judgment of the Grand Chamber in paragraph 13-35, are summarized below⁷⁰:

The two Roma men, Mr. Angelov and Mr. Petkov, aged 21, were working as part of the Construction Force in different projects involving construction of flats or other projects. They were subsequently arrested, due to the fact that they had been constantly absent from work without permission. Mr Angelov was sentenced to nine months imprisonment and Mr. Petkov was sentenced to five months imprisonment. As a result, they escaped the construction site and decided to hide in one of them grandmother's place. At the time they escaped, they were both unarmed. Consequently, the police forces issued an arrest warrant and went after them after they had received an anonymous call telling the police where the young Roma men are hiding. The commander of the police team informed his colleagues that

⁶⁸ *Nachova and Others v. Bulgaria*, applications no. 43 577/98 and 43 579/98, Final judgment, Grand Chamber, 2005

⁶⁹ *Ibid*, para. 168

⁷⁰ *Ibid*, para. 13-35

they should act “in accordance with the rules” and that the two Roma men are “criminally active” (term used when a person had been convicted or suspended from the execution of a crime).

When the two Roma men heard the police car, they tried to escape and started to run in the garden from the back of the house. However, sergeant N and major G noticed and went after them. After a while and because the Roma men continued running, major G shout: “*Freeze, military police, freeze [or] I'll shoot!*” and the shooting started.

The two Roma young men were shot dead by military police with an automatic gun. A subsequent investigation carried out by the authorities, concluded that the use of firearms had been in accordance with the law.⁷¹ The initial application with the Court was lodged in 1998 and was partly admissible. The case was decided by a Chamber of seven judges on 26 February 2004. The Chamber “*held unanimously that there had been violations of Articles 2 and 14 of the Convention and that no separate issue arose under Article 13*”.⁷²

The Government appealed against the decision of the Chamber and asked the Grand Chamber to “*re-examine the issues raised by the case under Article 14 of the Convention*”. They accepted the Chamber's findings under Art. 2 (in that the state was responsible for the death of Mr. Angelov and Petkov) and Art.13 (“Right to an effective remedy”).⁷³

First, the Grand Chamber investigated whether the death of the two young men was a result of the authorities that failed to protect their lives. The Court explained that Art 2 (“Right to life”) gives a positive duty on the state to have in place a legal framework on use of force and firearms, in accordance with the United Nation’s principles on use of force :

In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards (see

⁷¹ Ibid, para. 53

⁷² Ibid, para. 5

⁷³ Ibid, para. 83.

Makaratzis, cited above, §§ 57-59, and the relevant provisions of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paragraphs 71-74 above). In line with the above-mentioned principle of strict proportionality inherent in Article 2 (see McCann and Others, cited above, p. 46, § 149), the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed .⁷⁴

The Court noted that the Bulgarian national legal framework permitted the use of force even for the most minor crimes⁷⁵. The Grand Chamber took into consideration all the particular circumstances of the case and concluded that the authorities (though they were having other means available) used “*grossly excessive force*” which was in violation of Art.2 of the Convention.⁷⁶

With respect to whether the authorities conducted an effective investigation into the killings of the young two men, the Court concluded that the state failed to properly investigate the deprivation of life, which amounted to a violation of Art.2 (1) of the ECHR.⁷⁷ In particular, the Grand Chamber recalled the principles under which an investigation should take place and clearly stated that the use of force must be applied only if there is absolutely necessary :

Article 2 covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor however to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. With respect to whether the deprivation of life was a result of young Roma men ethnic origin, the applicants asked the Grand Chamber to make clear which is the standard of proof in a discrimination case. They argued that the standard should not be “proof beyond reasonable doubt” and that the burden of proof should always shift to the Government who must be able to provide an objective justification, in cases in which, prima facie, it is an

⁷⁴ Ibid, para. 96

⁷⁵ Ibid, para. 99

⁷⁶ Ibid, para. 109

⁷⁷ Ibid, para. 119

*indication that the crime might have been the result of racist motives. Therefore, the applicants requested the Grand Chamber to maintain the Chamber's view on this matter.*⁷⁸

In analyzing the case, the Grand Chamber recalled the definition of racial discrimination and its possible effects. Hence, it interpreted the racial discrimination as “a particular affront to human dignity”:

*Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.*⁷⁹

Therefore, the Grand Chamber departed from Chamber's view which had found a substantive violation of Art.2 in conjunction with Art.14 of the European Convention on Human Rights, in that the death of the two young men was a result of their ethnic origin. The Chamber concluded that from the facts of the case, racist attitudes played a role in the deaths of the two men:

*The applicants referred to the statement made by Mr M.M., a neighbour of one of the victims, who reported that Major G. had shouted at him “You damn Gypsies” immediately after the shooting. While such evidence of a racial slur being uttered in connection with a violent act should have led the authorities in this case to verify Mr M.M.'s statement, that statement is in itself an insufficient basis for concluding that the respondent State is liable for a racist killing.*⁸⁰

The Grand Chamber reversed the earlier interpretation of the Chamber and concluded that there is no violation of Art.14 taken in conjunction with substantive sense of Art.2:

*The Grand Chamber, departing from the Chamber's approach, does not consider that the alleged failure of the authorities to carry out an effective investigation into the supposedly racist motive for the killing should shift the burden of proof to the Government with regard to the alleged violation of Article 14 of the Convention taken in conjunction with the substantive aspect of Article 2.*⁸¹

⁷⁸ Ibid, para. 93

⁷⁹ Ibid, para. 145

⁸⁰ Ibid, para. 153

⁸¹ Ibid, para. 157

However, the Grand Chamber found a violation of Art.14 in conjunction with Art.2 of the ECHR, in its procedural sense in that the authorities failed to investigate racial prejudice as a possibility of the Roma men deaths. The Grand Chamber stated:

*[...] Would add that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination.*⁸²

Therefore, the Grand Chamber, found unanimously:

- a. A violation of Art.2, in respect of the death of Mr. Angelov and Petkov;
- b. A violation of Art.2 (1), in that the authorities failed to properly investigate the events;
- c. A violation of Art.14 taken in conjunction with Art.2, in that the authorities failed to investigate possible racist motives as a cause of Mr. Angelov and Petkov's death.

The Court considered that no separate issues arise under Art.13 ("Right to an effective remedy").

The Court found by eleven votes to six that there has been no violation of Art.14 taken in conjunction with Art.2, its substantive aspect, of the ECHR. The 6 judges of the Grand Chamber composition issued a dissenting opinion on the decision. They emphasized that the factual evidence would have been enough for the Court to find a violation of art.14 (not only in its procedural sense).⁸³

⁸²Ibid, para. 161

⁸³*Nachova and Others v. Bulgaria*, Final judgment, *Partly dissenting opinion of Judges Casadevall, Hedigan, Mularoni, Fura-Sandstrom, Gyulumyan, and Spielmann*, 2005

2.1.1. Reactions to the judgment

The 2005 decision of the Grand Chamber of the European Court of Human Rights in *Nachova and Others v. Bulgaria* was a great victory in the area in both human rights and Roma rights in Europe.⁸⁴ Immediately after the judgment, legal scholars analyzed the advantages of the decision on Roma Rights as well as its implications on the whole situation of Roma in Europe. Some of them are summarized below:

Branimir Plese, who is a former legal director of the European Roma Rights Center, explained that the decision in *Nachova* case was “*long overdue*”⁸⁵. In his article, he is positive about the judgment and underlines the fact that the decision will be of great significance not only for Roma but also for other disadvantaged groups, who need the most that their rights be ensured. Branimir Plese emphasized the fact that from the time of decision, the state officials will have the obligation to ensure a prompt and effective investigation into the alleged events and in case of non-compliance it will face the European Court of Human Rights.

On the other side of the road, another scholar (name unknown) stresses the fact that the Court should have found a substantive violation of Art.14 in that the killings were motivated by racial animus, instead of finding a procedural violation of Art.14 in conjunction with Art.2.⁸⁶ Due to the fact that, the Court distinguished between substantive and procedural sense of Art.14 (for the first time in its history), it will make more difficult for a person to prove discrimination. Before the distinction was made, a person could invoke the failure of an

⁸⁴ For more details, please consult, http://www.errc.org/Archivum_index.php

⁸⁵ Branimir Plese, *The Strasbourg Court Finally Redresses Racial Discrimination*, available at <http://www.errc.org/cikk.php?cikk=1851#1>

⁸⁶ Harvard Law Review, *European Court of Human Rights finds liable for failure to investigate racially motivated killings*, vol.119, available at: http://www.harvardlawreview.org/issues/119/april06/recent_cases/nachova_v_bulgaria.pdf, p. 1907

effective investigation by a state official, as an element for proving racial discrimination. After the judgment of the Court in *Nachova* case, it will be more difficult.⁸⁷

By contrast, Dimitrina Petrova (former ERRC legal director), sees *Nachova* decision of the Court, as really positive in proving discrimination in future cases. In her article, *Nachova and the Syncretic Stage in Interpreting Discrimination in Strasbourg Jurisprudence*, she explains that:

*Nachova is a crossroads case in that it reveals this syncretism starkly and thus creates the basis for overcoming it and moving toward an interpretation according to which proving discrimination would not depend of the perpetrator's state of mind.*⁸⁸

Last but not least, the opinion of James A. Goldstone (former ERRC legal director), addressed at a meeting organized by *SOS Racismo and Amnesty International*, Madrid, in 2004 about the consequences of *Nachova and Others v. Bulgaria*⁸⁹ is of particular significance. He explains that the reasoning of the judges in *Nachova* case, by finding a procedural violation of Art.14, is of great value because the decision of the Court “*has opened a pathway for those fighting racism in other countries [...], to challenge in court incidents of racial violence*”. He further states that the groundbreaking decision of the ECHR in the case, will have important consequences for “*both civil society - NGOs, advocacy groups and lawyers – and for government bodies*”.⁹⁰

⁸⁷ Ibid, p. 1912

⁸⁸ Dimitrina Petrova, *Nachova and the Syncretic Stage in Interpreting Discrimination in Strasbourg Jurisprudence*, Roma Rights Quarterly Journal, No.2 and 3, p. 95, 2006

⁸⁹ James A. Goldston, *The Strasbourg Court's Finding of Race Discrimination in Nachova v. Bulgaria: the Consequences for Spain*, available at:

<http://snap.archivum.ws/dspace/bitstream/10039/6534/1/The+Strasbourg+Court+Finding.pdf>, , 2004

⁹⁰ Ibid

2.2. Moldovan and Others v. Romania (No.2)

*A difference in treatment is discriminatory if it has no objective and reasonable justification, i.e. if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized. Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.*⁹¹

The *Moldovan and Others (No.2)* judgment, was given in July 2005, just one week after *Nachova and Others v. Bulgaria* judgment. The case of *Moldovan and Others v. Romania* is based on facts that happened in September 1993 in Romanian village, Hadareni (Targu-Mures county), therefore 16 years ago. The Grand Chamber decision was given in 2005 after 12 years from the incident and disclosed a violation by Romania of its obligations under the European Convention for Human Rights of Art.3 (“*Prohibition of torture*”), Art. 6 (“*Right to a fair trial*”), Art. 8 (“*Right to respect for private and family life*”) and Art. 14 (“*Prohibition of discrimination*”). The facts of the case disclose a situation of community violence against the Roma and are based on the following situation:

At that time, the Roma community in Hadareni village confronted with the anger of the majority grounded on a previous situation when three Roma men were involved in a brawl which resulted in the death of a non-Roma person. As a result, all houses belonging to Roma in the village were set on fire and the Roma expelled. One Roma died in his house after it had been set on fire. The majority beat the other two Roma men to death. Its important to mention, in accordance with the facts of the case, it appears, that even though the police was present when the facts happened, they did not take any measures to stop the violence:

⁹¹ *Moldovan and Others v. Romania* (No.2), applications no. 41 138/98 and 64 320/01, Final judgment, Former Second Section, para. 137, 2005

*It appears that the police officers present did nothing to stop these attacks. The applicants alleged that, on the contrary, the police also called for and allowed the destruction of all Roma property in Hădăreni.*⁹²

At that time, in 1993, Romania was not yet party to the European Convention on Human Rights, though it was a member state of the Council of Europe since 7th October 1993.⁹³ This is relevant for the case, because the Court could not exercise its authority to investigate the facts of the case and conclude violations of the rights enshrined in the Convention, prior to 20th June 1994, when Romania ratified the European Convention on Human Rights.⁹⁴

Following the events in September 1993, the applicants submitted that they “*had been forced to live 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; fifteen people in a summer kitchen with a concrete floor (Melenuța Moldovan), etc. These conditions had lasted for several years and, in some cases, continued to the present day*”.⁹⁵ At the moment of application to the European Court of Human Rights, some of the applicants were living either in Spain or United Kingdom.⁹⁶

The Roma submitted a criminal complaint to the Prosecutor’s office. As a result within 7 years period, 11 defendants were convicted, four condemned for murder and 7 for arson. In June 2000, two of those condemned for murder were granted a presidential pardon and had been therefore, liberated.⁹⁷

⁹² Ibid, para 18: “*It appears that the police officers present did nothing to stop these attacks. The applicants alleged that, on the contrary, the police also called for and allowed the destruction of all Roma property in Hădăreni*”, 2005

⁹³ Information Office of the Council of Europe in Bucharest, *Resolution 1123 on the honoring of obligations and commitments by Romania*, 1997, available at: http://www.coe.ro/as_res1123-1997_en.html

⁹⁴ *Moldovan and Others v. Romania (No.2)*, Final judgment, para 102. For a description of the member states of Council of Europe, please visit <http://www.coe.int/aboutCoe/index.asp?page=47pays1europe&l=en>

⁹⁵ *Supra note 92* at para. 69

⁹⁶ *Supra note 92* at para. 15

⁹⁷ James A. Goldston and Mirna Adjami, *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Draft prepared for World

In 2000, European Roma Rights Center filled in a complaint at the European Court of Human Rights for twenty-five of the Hadareni victims. Consequently, Romania accepted a friendly settlement with eighteen of the applicants. In particular, Romania took the obligation to take measures regarding community development and policies that combat discrimination against Roma in Hadareni.⁹⁸

The other seven applicants, refusing the friendly settlement, in accordance with Art.38 b.,⁹⁹ complained that since 1993, the state did not take any action to ensure that they have a place where to live which affected their human dignity and subjected them to inhuman and degrading treatment that finally, amounted to a violation of Art.3 (*“Prohibition of torture”*). They further complained of having been deprived of a fair trial under Art.6 (*“Right to a fair trial”*), due to racial prejudice (Art.14 *“Prohibition of discrimination”*) and Art.8 (*“Right to family, home and correspondence”*).

In assessing the case, the Court, underlined the positive obligation of the state, in paragraph 98, to ensure that people, within its territory, are not inhumanly treated:

The obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals¹⁰⁰

It is interesting to note that, by this paragraph, the Court makes an important distinction in that the positive obligation of the state to protect its citizens does not apply only to treatment by the officials of the states but also treatment by private individuals.

Justice Forum, Vienna July 2-5, 2008, available at:

http://www.lexisnexis.com/documents/pdf/20080924043559_large.pdf

⁹⁸ *Moldovan and Others v. Romania (No.1)*, application no. 41138/98 and 64320/01, Former Second Section, Judgment no.1 (Friendly settlement), 2005

⁹⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, *Art.38 b., Examination of the case and friendly settlement proceedings*, adopted in Rome, 1950

¹⁰⁰ *Supra* note 96 at para.98

Further, the Court recalled the requirements of Art. 3 under the Convention (“*the treatment suffered must attain a minimum level of severity*”) and concludes that, in the present case, the state failed to comply with its obligation of redressing the victims with a sufficient remedy. It stated that, by its inaction, the state did not ensure that the applicants have where to live during all this time.¹⁰¹

The Court considered that the poor living conditions during the time combined with the racial discrimination to which the Roma were subjected and general attitude of the public authorities in dealing with their case, amounted to a violation of human dignity which is essential to the values of the Council of Europe and, hence, to a violation of the Art.3 of the European Convention of Human Rights.¹⁰² It also found a violation of Art. 14 of the ECHR in conjunction with Art.6 and 8, in that the treatment suffered by the Roma had been the result of their ethnic origin. The Government could not justify the differential treatment applied.¹⁰³

2.2.1. Reactions to the judgment

The *Moldovan and Others v. Romania (No.2)* represented the second case in which, the Court found a violation of Art.14. Legal scholars commented upon the judgment of the European Court of Human Rights in Moldovan case, as being “*a judgment that challenges the perception that Roma are powerless to confront the indifference and hostility of the police and state officials to their plight* “. ¹⁰⁴

After the ruling, Diane Post, the Legal Director of the European Roma Rights Center at that time, said:

¹⁰¹ *Supra* note 96 at para 99

¹⁰² *Supra* note 96 at para. 110

¹⁰³ *Supra* note 96 at para. 140

¹⁰⁴ Luke Clements, *Strasbourg Cases and Their Long Term Impact*, Roma Rights Quarterly, Issue 2-3, p.91-94, available at: <http://www.errc.org/cikk.php?cikk=2656&archiv=1>, 2006

*This ruling cannot undo the crimes of the past. It will not bring back to life people killed by mobs for the basest motives of racial hatred. It importantly however finally brings recognition of the extreme harms to which the families of the deceased have been subjected, and compels the Romanian government to pay them for its failures. We call on the Romanian government to take this opportunity publicly to express regret for this dark chapter of post-1989 Romanian history, during which Romani communities throughout the country were hounded from their homes by organized racist mobs.*¹⁰⁵

2.3. D.H and Others v. The Czech Republic

*The segregation at issue in Ostrava is a practice, not a legal mandate. Nowhere does the law command that Roma attend separate schools; this is rather the systematically biased application of neutral law. That the Court declined to hold that this is a breach of the Convention may not be so surprising, and may say little about the substantive merits of the case itself. De facto – as opposed to de jure – discrimination is notoriously subtle and often difficult to see, let alone prove. The Strasbourg Court has relatively little jurisprudence in this area, and what it has is not very clear. This unfortunately may have contributed to the rather confused reasoning of the Chamber in the Czech schools case.*¹⁰⁶

13 November 2007 represented a memorable day for the Roma education in Europe. On the above mentioned date, the Grand Chamber of the European Court of Human Rights gave the final judgment in the case of *D.H and Others v. The Czech Republic*. The Grand Chamber overruled an earlier decision of the Chamber (February 2006) and concluded that the Roma children in Ostrava region in the Czech Republic have been denied their right to education, in that the legislation in force (neutral on its face), which amounted to systemic placement between 1996-1999 of the Roma children in special schools, “*had a disproportionately prejudicial effect on the Roma community*” and it was therefore discriminatory¹⁰⁷. It concluded that there has been a violation of Art.2 of Protocol 1 of the ECHR (“Right to education”) in conjunction with Art.14 (“Prohibition of Discrimination”).¹⁰⁸

¹⁰⁵ European Roma Rights Center, *ERRC: European Human Rights Court Moves to Redress the Romanian Pogrom*, Press Release, 2005

¹⁰⁶ *D.H. and Others v. The Czech Republic*, applications no. 57 325/00, Final judgment, Grand Chamber, para, 2007

¹⁰⁷ *Ibid*, para.209

¹⁰⁸ *Ibid*, 210

The case of *D.H. v. The Czech Republic* was a pilot litigation case and the result of several years of continuous and intensive research in preparing clear evidence (statistics) that the children in Ostrava region suffer discrimination in their access to education.¹⁰⁹ James A. Goldstone, who was one of the lawyers of the applicants in the case, explains that the research carried on by different NGOs in the Czech Republic together with European Roma Rights Center, disclosed an:

*Overwhelming practice of disproportionate assignment of Romani pupils to special schools. Although Roma represented only 2.26 % of the total number of pupils attending primary school in Ostrava, 56% of all pupils placed in special schools in Ostrava were Romani. Further, whereas only 1.8% of non-Roma pupils were placed in special schools, the proportion of Romani pupils in Ostrava assigned to special schools was 50.3%. Overall, Romani children were more than 27 times as likely as non-Romani children to be sent to special school.*¹¹⁰

The Ostrava region in the Czech Republic was not randomly selected. It was strategically chosen because it comprises a big number of Romany sistematically placed in special schools and there are many Roma NGOs that act in the region. Moreover, the Czech Republic is one of the most developed post-communist country in Central and Eastern Europe and finding a breach of the law in its school system would raise awariness about the right to education of the Roma, not only in the Czech Republic but also in other european countries in that the education of the Roma needs to be changed.¹¹¹

According to the facts of the case, the decision of placing a pupil in a special school was based on a psychological test and the placement decision had to be accepted by the parents. The parent had to give his consent by signing a written decision of the placement in a special school. The written decision also contained the right of appeal but none of the 18 applicants exercised it.¹¹²

¹⁰⁹ James A. Goldstone, “Ending Racial Segregation in Schools: The Promise of DH”, Roma Rights Quarterly Journal, Issue no.1 p.2, 2008

¹¹⁰ Ibid, p.2

¹¹¹ Ibid, p.2

¹¹² *D.H. and Others v. The Czech Republic*, Final judgment, Grand Chamber, para. 20-21, 2007

The applicants exercised their rights and looked for remedies at domestic level. They applied at the Czech Constitutional Court and argued that the placement in special schools contravenes human rights norms and therefore their right to education is being denied. The Constitutional Court rejected their application and concluded that, it was ill founded and that, moreover, the Constitutional Court had no competence to hear such cases.¹¹³

Finally, in 2000 the 18 Romani children decided to look for a remedy at the European Court of Human Rights. After six years, in February 2006, the Chamber issued a judgment on the systemic placement of Romani children in their access to education. The Chamber could not conclude that the placement of the pupils in special schools was a result of racial prejudice. In paragraphs 52-53 of the judgment is concluded :

*Thus while acknowledging that these statistics disclose figures that are worrying and that the general situation in the Czech Republic concerning the education of Roma children is by no means perfect, the Court cannot in the circumstances find that the measures taken against the applicants were discriminatory. Although the applicants may have lacked information about the national education system or found themselves in a climate of mistrust, the concrete evidence before the Court in the present case does not enable it to conclude that the applicants' placement or, in some instances, continued placement, in special schools was the result of racial prejudice, as they have alleged. It follows that no violation of Article 14 of the Convention, taken together with Article 2 of Protocol No. 1, has been established.*¹¹⁴

Immediate reaction from legal scholars and lawyers involved in the case came out. They highly criticized the Chamber's decision. In particular, James A. Goldstone showed his great disappointment of the Chamber decision in an article entitled: *"The role of European anti-discrimination law in combating school segregation: the path forward after Ostrava"*. In his article, he explained that the decision of the Chamber was firstly disappointing for the Roma children, for their parents and all those who contributed to put an end to racial discrimination in Czech schools.¹¹⁵ Further, he characterized the judgment of the Court as a

¹¹³ Ibid, para 28

¹¹⁴ Ibid, para. 52-53

¹¹⁵ James A. Goldstone, *The Role of European Anti-Discrimination Law in Combating School Segregation: The Path Forward after Ostrava*, Brussels, available at: http://cms.horus.be/files/99935/MediaArchive/pdfevents/james_goldston.doc, 2006

“missed opportunity” and tried to understand what could be the reason of the Court to conclude that there was no discrimination in the case. He gave the following interpretation:

The segregation at issue in Ostrava is a practice, not a legal mandate. Nowhere does the law command that Roma attend separate schools; this is rather the systematically biased application of neutral law. That the Court declined to hold that this is a breach of the Convention may not be so surprising, and may say little about the substantive merits of the case itself. De facto – as opposed to de jure – discrimination is notoriously subtle and often difficult to see, let alone prove. The Strasbourg Court has relatively little jurisprudence in this area, and what it has is not very clear. This unfortunately may have contributed to the rather confused reasoning of the Chamber in the Czech schools case.¹¹⁶

However, following the Chamber decision, the applicants did not give up to fighting for their rights. Hence they used the last opportunity they had, to appeal at the Grand Chamber. They did so in April 2006.

In front of the Grand Chamber, the applicants submitted that :

[...] the restrictive interpretation the Chamber had given to the notion of discrimination was incompatible not only with the aim of the Convention but also with the case-law of the Court and of other jurisdictions in Europe and beyond.¹¹⁷

The applicants reminded to respectful Court, the *Nachova and Others v. Bulgaria* case, where, the Court paid careful attention to distinguish “racially motivated violent crimes” and “non-violent acts of racial discrimination”:

*The applicants observed in particular that in explaining why it had refused to shift the burden of proof in its *Nachova and Others v. Bulgaria* judgment ([GC], cited above, § 157) the Court had been careful to distinguish between racially-motivated violent crime and non-violent acts of racial discrimination in, for example, employment or the provision of services. In their submission, racial discrimination in access to education fell precisely in the latter category of discriminatory acts which could be proved in the absence of intent.¹¹⁸*

In light of these considerations, the applicants asked the Grand Chamber, that being given the fundamental importance of Art.14, to explicitly state, « *that intent was not necessary to prove discrimination under Article 14, except in cases – such as, for example, of racially*

¹¹⁶ Ibid, p. 4

¹¹⁷ *D.H. and Others v. The Czech Republic*, Final judgment, Grand Chamber, para. 128, 2007

¹¹⁸ Ibid, para. 130

motivated violence – where it was already an element of the underlying offence». ¹¹⁹

Moreover, the applicants asked the Grand Chamber to make clearly what kind of evidence can be used when invoking a violation of Art.14, a situation of discrimination. They did so, referring to the Chamber decision who did not take into consideration the mass of research that different NGOs put on the table to prove discrimination in education of the Roma children. ¹²⁰

The Grand Chamber reasoning in this case contained in the paragraphs 175-210 of the final judgment is of great importance. It is full of rich interpretation of the law and principles protected by the European Convention on Human Rights. Therefore, it is worth stating some of the principles used by the Grand Chamber in concluding a violation of Art 2 Protocol 1 and Art.14 of the European Convention on Human Rights, in respect to denial of Roma children education.

Firstly, the Court recalls the meaning of racial discrimination, as it had previously stated in *Nachova and Others v. Bulgaria*¹²¹ and *Timishev v. Russia*.¹²² Hence the Grand Chamber explained:

*Discrimination on account of, inter alia, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment. [...] The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (Timishev, final judgment, para. 58).*¹²³

¹¹⁹ Ibid, para 132

¹²⁰ Ibid, para.134

¹²¹ *Nachova and Others v. Bulgaria*, applications no. 43 577/98 and 43 579/98, Final judgment, Grand Chamber, 2005

¹²² *Timishev v. Russia*, application no.55 762/00 and 55 974/00, Second Section, Final judgment, 2006

¹²³ Ibid, para.176

In respect to whether statistical evidence can be invoked when proving racial discrimination, the Court recalled its case-law, where, in two cases (*Hoogendijk*¹²⁴ and *Zarb Adami*¹²⁵) based its reasoning on statistical evidence:

*As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (Hugh Jordan, § 154). However, in more recent cases on the question of discrimination, in which the applicants alleged a difference in the effect of a general measure or de facto situation (Hoogendijk and Zarb Adami, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations.*¹²⁶

Regarding the burden of proof, the Court explained that:

*Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory (see, mutatis mutandis, *Nachova and Others*, cited above, § 157). Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (*ibid.*, § 147), it would be extremely difficult in practice for applicants to prove indirect discrimination without such a shift in the burden of proof.*¹²⁷

Last but not least, the Grand Chamber underlined the “vulnerable position of Gypsies” in society and need for special attention as it had already been stated in *Chapman v. The United Kingdom*:

[...] The vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (*Chapman v. the United Kingdom* [GC], no. 27238/95, § 96, ECHR 2001-I; and *Connors v. the United Kingdom*, no. 66746/01, § 84, 27 May 2004)¹²⁸.

Applying the proportionality test, the Grand Chamber concluded that the tests used in assessing whether a child should or should not attend special schools might have been biased, as it did not take into consideration the specific characteristics of the Roma community (e.g,

¹²⁴ *Hoogendijk v. The Netherlands*, application no. 58641/00, Inadmissibility decision, First section, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=717356&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, 2005

¹²⁵ *Zarb Adami v. Malta*, application no.17 209/02, Fourth Section, Final judgment, 2006

¹²⁶ *D.H. and Others v. The Czech Republic*, Final judgment, Grand Chamber, para.180, 2007

¹²⁷ *Ibid.*, para 189

¹²⁸ *Chapman v. The United Kingdom*, application no. 27 238/95, Final Judgment, 2001

the language) and concluded that the test cannot justify the difference in treatment applied to Romani children.¹²⁹

Regarding the parental consent to special schools, the Court explained that once a difference in treatment has been established, it means that if the parent consented to send his child to a special school, he accepted the difference in treatment and waived his right not to be discriminated against. However, the explains, the parental consent in this case, was not in accordance with the requirements with “*waiver of rights*” (of sending their children to special school), which (as having already been established by the Court), “*must be established in an unequivocal manner, and be given in full knowledge of the facts, that is to say on the basis of informed consent [...] and without constraint*”¹³⁰.

As a result, no justification was reasonable for the difference in treatment applied by the Czech authorities to the Romani children in Ostrava region. The respectful Court concluded:

Lastly, since it has been established that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the Court considers that the applicants as members of that community necessarily suffered the same discriminatory treatment. Accordingly, it does not need to examine their individual cases.

Consequently, there has been a violation in the instant case of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1, as regards each of the applicants.”¹³¹

2.3.1. Reactions to the judgment

The day of the judgment and the reasoning of the Grand Chamber in the case of *D.H and Others v The Czech Republic*, made international headlines. Different NGOs welcomed the decision of Grand Chamber of finding a violation of Art.2 Protocol 1 together with Art.14 of the ECHR. For instance, the European Roma Rights Center welcomed the decision of the Court. In a press release, *Europe’s Highest Court finds Racial Discrimination in Czech Schools*, European Roma Rights Center describes some of the immediate reactions of those

¹²⁹ *Supra* note 122 at para.201

¹³⁰ *Supra* note 122 at para. 201 and 202

¹³¹ *Supra* note 122 at para. 209 and 210

who have contributed to the final judgment of the Court.¹³² James A. Goldstone, welcomed the decision of the Grand Chamber in the case: “The court has made clear that racial discrimination has no place in 21st century Europe”.¹³³

¹³² European Roma Rights Center, *Europe’s Highest Court Finds Racial Discrimination in Czech Schools*, Press release, available at: <http://www.errc.org/cikk.php?cikk=2866>, 2007

¹³³ Ibid

3. CHAPTER 3 - IMPLEMENTATION OF EUROPEAN COURT OF HUMAN RIGHTS JUDGMENTS CONCERNING THE ROMA

This chapter is aimed at analyzing the state compliance with the judgments of the cases already analyzed in Chapter 2. Thus each of the cases, *Nachova and Others v. Bulgaria*, *Moldovan and Others v. Romania (No.2)* and *D.H. and Others v. The Czech Republic* will be analyzed in light of the general and individual measures implemented by each state in order to comply with the judgment.

Before analyzing the implementation of general and individual measures in each of the cases it is necessary to draw a picture on the general implementation of the judgments under Council of Europe's structure.

3.1. Execution of judgments under Council of Europe's structure

Implementation of judgments by the High Contracting States represents an important step after the European Court of Human Rights issued the judgment in the case. It is so, because without the implementation, the judgment would be of little importance to the victims whose human rights have been breached. The president of the Parliamentary Assembly, Mrs. Leni Fisher has also acknowledged its importance, at the inauguration of European Court of Human Rights in 1998:

What the new European Court of Human Rights needs most is unequivocal respect for and follow-up to its decisions in the Council of Europe member countries. This alone will provide

*the Court with the authority it needs in order to protect the fundamental rights of our people.*¹³⁴

In accordance with European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11¹³⁵, the states are obliged to comply with the judgments of the European Court of Human Rights. The legal basis is Art.41 and Art.46 and refers to the obligation of the state parties to the Convention to comply with the judgments of the European Court of Human Rights.

Art.46 (1)¹³⁶ provides: “*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties*”.¹³⁷ By Art.41, “*if the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party*”.¹³⁸

Under the Council of Europe structure, the Committee of Ministers has the role of supervising the implementation of the European Court of Human Rights judgments in accordance with the *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*.¹³⁹ The measures that could contribute to the reparation for the violation suffered by the victim could take the form of: just satisfaction, individual measures, general measures. Due to their importance in understanding the system of implementation of the judgments, they are summarized below and are intended to provide

¹³⁴ Jacobs and White, *The European Convention on Human Rights*, Fourth Edition, Oxford University Press, page 493, 2006

¹³⁵ Full text: <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm>

¹³⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, *Art.46*, 1950, available at: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

¹³⁷ *Ibid*, Art.46 (1)

¹³⁸ *Ibid*, Art.41

¹³⁹ Committee of Ministers, *Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*, available at: <https://wcd.coe.int/ViewDoc.jsp?id=999329&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

the reader with a clear picture on what happens, in general, after the judgment has been issued by the European Court of Human Rights.

If a member state of the Council of Europe has been found in breach of its obligations under the Convention, the Court may award just satisfaction (in accordance with Art.41). The award is usually a sum of money, which is required to be paid by the respondent state within three months from the moment the judgment has been given. If the respondent states does not succeed to fulfill the payment after the expiry of three months period, the Committee of Ministers will revise the case at each of its meetings till is satisfied with the payment. The states are requested to pay simple interest rate, for each day, from the expiry of the three months limit term till the fulfillment of the payment.¹⁴⁰

3.1.1. Individual measures

Besides just satisfaction, the Court can apply individual measures. Individual measures are aimed at placing the individual, as far as possible, in the situation before the violation occurred, in accordance with the principle of “*restitutio in integrum*”. They depend on “*the nature of the violation and the applicant’s situation*” and may consist, for example, in the re-opening of the proceedings.¹⁴¹ In 2000, the Committee of Ministers adopted a recommendation upon which the member states are requested to ensure that “*there exist adequate possibilities of re-examination of the case*” especially in the following cases:

ii. The injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

(ii) the judgment of the Court leads to the conclusion that

¹⁴⁰ Jacobs and White, *The European Convention on Human Rights*, Fourth Edition, Oxford University Press, p. 496 2006

¹⁴¹ Committee of Ministers, *Execution of Judgments of the European Court of Human Rights*, available at: http://www.coe.int/t/dghl/monitoring/execution/Presentation/Default_en.asp,

- (a) *the impugned domestic decision is on the merits contrary to the Convention, or*
- (b) *the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of.*¹⁴²

For example, in *Nachova and Others v. Bulgaria* (which will be analyzed below), one of the individual measures that the Court considered to be necessary was the re-opening of the investigation into Mr. Angelov and Petkov's deaths.¹⁴³

3.1.2. *General measures*

The general measures are applied with the special purpose that no other similar situations would occur in the future. It has therefore, a prevention role. General measures look at the legal framework within the national legal system and may contain, for example, changing of legislation or adoption of new regulations in accordance with Council of Europe's values and principles stated in the European Convention on Human Rights.

For example, in the case of *D.H and Others v. The Czech Republic*, it was necessary the changing of the School Act.¹⁴⁴

States are free to choose the way they will implement the individual and general measures, but in doing so, they are monitored by the Council of Ministers and must report on the progress they have made. The judgment is transmitted to the Council of Ministers which will inform the responsible state of the steps to be taken to pay the sums awarded by the Court. The Committee of Ministers will also make aware the state that it has to submit an

¹⁴² Committee of Ministers, *Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*, adopted at the 694th meeting of the Ministers' Deputies, 19 January 2000

¹⁴³ Committee of Ministers, *Execution of Judgments of the European Court of Human Rights, Reports*, Bulgaria, available at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf

¹⁴⁴ *Ibid*, the Czech Republic, available at http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Czech_Republic_en.pdf

implementation plan of the general and individual measures. After the Committee of Ministers concludes the plan will contribute to the effective implementation of the judgment, will issue a resolution according to which, its functions under Art.46 (2) of the Convention have been fulfilled.¹⁴⁵ In its work, the Council of Ministers is assisted by the Directorate of Monitoring which has the role of assisting it on the whole duration of the implementation.¹⁴⁶

3.2. Implementation of individual and general measures in *Nachova and Others v. Bulgaria*

In accordance with final judgment, the Grand Chamber awarded the applicants, “*Ms. Nachova and Ms Hristova [jointly] EUR 25,000 for pecuniary and non-pecuniary damage and jointly to Ms Rangelova and Mr Rangelov EUR 22,000 for pecuniary and non-pecuniary damage*” to be paid within three months from the judgement.¹⁴⁷ The sums have been paid outside the limit.¹⁴⁸

3.2.1. Individual measures

After the judgment has been given, a copy of it together with the criminal file was sent to the prosecutor office, in Pleven locality in Bulgaria, competent to investigate the case.¹⁴⁹ Consequently, the Committee of Ministers was informed that a new investigation

¹⁴⁵ Committee of Ministers, Execution of Judgments of the European Court of Human Rights, *Monitoring arrangements and means used by the Committee of Ministers*, available at:

http://www.coe.int/t/dghl/monitoring/execution/Presentation/Default_en.asp#P74_10528

¹⁴⁶ For more details, please consult http://www.coe.int/t/dghl/monitoring/execution/default_EN.asp

¹⁴⁷ *Nachova and Others v. Bulgaria*, Final judgment, para 172

¹⁴⁸ Individual measures in Nachova case, available at:

http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf

¹⁴⁹ *Ibid*

into the killings of the two Roma has been opened.¹⁵⁰ Its aim was to investigate whether the police officer had acted within the limits of the law. Concretely, the Bulgarian authorities took the following steps:

- a. New witnesses and eyewitnesses have been interviewed regarding the events which resulted in the death of Mr. Angelov and Petkov;
- b. Reconstitution of the facts and examination of the shot trajectory;
- c. A new forensic and ballistic report

The new investigation concluded that, at the time of the events, the police officer had acted within its competences, therefore in accordance with the law on the norms on the use of firearms. The Committee of Ministers was informed about these developments by a letter, dating 20th March 2008. In the letter, the Bulgarian authorities explained that they have contacted the general prosecutor's office to inquire whether the decision concluding that the police officer had acted within its competences is definitive or not. To date, information is still awaited.¹⁵¹

3.2.2. General measures

Regarding the general measures, the Committee of Ministers adopted the following measures.

Firstly, the judgment was published on the Ministry of Justice's website¹⁵² and 1000 copies of it have been distributed to magistrates and academics but also to military courts and prosecuting organs as well as to Ministry of the Interior and Defense. Together with the copy of the judgment, was sent a circular letter explaining the most important conclusions of the

¹⁵⁰ *Ibid*

¹⁵¹ *Ibid*

¹⁵² Ministry of Justice Bulgaria, *Description*, available at: www.mjeli.government.bg

Court in the case, but in particular that the European Convention on Human Rights “*prohibits the use of fire-arms during arrest of fugitives who are not dangerous*”.¹⁵³

Secondly, in the resolution adopted, the Committee of Ministers suggested that training in regard to Convention’s requirements of using force and firearms should take place. As a consequence, the Institute of Justice in Bulgaria, organized more than 23 trainings consisting of judges, prosecutors, national experts, in total of 798 participants. It is important to mention that 4 trainings were organized in respect of Art.2, 3, 13, 14 of the European Convention on Human Rights.

Thirdly, the Ministry of Defense adopted a regulation on the circumstances in which use of force and firearms could be used. The regulation takes into consideration the nature of the crime that has been committed as well as the danger of it. However, so far, the Committee of Ministers has not been provided with a copy of the regulation, so that there is an assessment on need for further action.¹⁵⁴

Ministry of Justice explained that the events that had taken place were not caused by the lack of provisional safeguards of the framework legislation on use of force, but because of incorrect application of it. Therefore, there is no need to adopt a new legal framework. However, the Committee of Ministers requested that the Bulgarian authorities bring the National Police Act in line with the Convention’s requirements. So far, there is no information related to whether the Bulgarian authorities have complied with it or not.

Fourthly, the Minister of Justice concluded that there is no need that Criminal Code be amended. It will be enough, if instructions are adopted regarding Bulgaria’s obligation to

¹⁵³Committee of Ministers, *State of Execution/Bulgaria*, available at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf , p.4

¹⁵⁴ Ibid, p.5

investigate whether racist motives played a role in the events. However, the Committee of Ministers has not been provided with a copy of these instructions/regulations.

As provided by the Committee of Ministers, execution of judgments website, all the considerations of the case, in which the Committee of Ministers has not been provided with answers, will be discussed at the 1072nd meeting which will take place in December 2009.¹⁵⁵

3.3. Implementation of general and individual measures in *Moldovan and Others v. Romania (No.2)*

The Grand Chamber awarded the applicants with pecuniary and non-pecuniary damages (just satisfaction, Art.41 of the Convention), in sum of . It is necessary to recall that the Grand Chamber judgment concerns just 7 applicants out of 25, which initially applied at the European Court of Human Rights. The other 18 remaining applicants have signed a friendly settlement (*Moldovan and Others v. Romania (No.1)*) and are therefore part of a separate judgment.¹⁵⁶ In deciding upon the amounts, the Grand Chamber took into consideration, all the circumstances of the case. In paragraph 150 of the final judgment, it stated:

The Court considers that there is a causal link between the violations found and the pecuniary damage claimed, since the Government were found to be responsible for the failure to put an end to the breaches of the applicants' rights that generated the unacceptable living conditions. It notes that the expert reports submitted by the parties are inaccurate and inconsistent. It also takes the view that, as a result of the violations found, the applicants

¹⁵⁵Council of Europe, Committee of Ministers, 1072nd meeting of the Committee of Ministers, Agenda, available at:

<https://valwcd.coe.int/ViewDoc.jsp?id=1511493&Site=DG4&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>

¹⁵⁶ *Moldovan and Others v. Romania (No.1)*, applications no. 41138/98 and 64320/01, Friendly settlement, available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=moldovan%20%20others%20%20v%20%20romania&sessionid=37354099&skin=hudoc-en>, 2005

*undeniably suffered non-pecuniary damage, which cannot be made good merely by the finding of a violation.*¹⁵⁷

3.3.1. Individual measures

Besides just satisfaction, Romanian authorities were asked to investigate the possibility of re-opening of the proceedings in the events of 1993. However, the Romanian authorities argued that according to the case file, there is no evidence that the state committed homicide. Moreover, due to the Romanian legal system that provides that criminal liability is prescribed within 5 years the proceedings could not be opened.

In February 2006, the decision on forced execution of the sums granted by the Court to the applicants was still pending before Ludus court (a locality in Targu-Mures County). According to the execution of judgments website, there is no registered information on whether Romania has complied or not till with its obligation to provide the applicants with the sums in respect to pecuniary and non-pecuniary damages.¹⁵⁸

3.3.2. General measures

As regards general measures, Romania has adopted several measures aimed at fighting against discrimination. Among these measures, the public information programs for preventing discrimination in the school curricula in the locality where the events had taken place (Hadareni) and initiation of legal programs together with members of Roma community, so that it ensured eradication of racial discrimination within the Romanian judicial system, are worth being mentioned. In order to prevent similar situation, the Government adopted policies aimed at improving situation of the Roma in accordance with

¹⁵⁷ *Moldovan and Others v. Romania (No.2)*, Final judgment, para. 150

¹⁵⁸ Council of Europe, *Execution of Judgments,/ State of Execution*, Romania, p.30, http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Romania_en.pdf

the *Romanian Strategy for Improving the Situation of Roma*.¹⁵⁹ The Government took responsibility on taking steps on rebuilding the houses destroyed.

The National Agency for Roma, a governmental body¹⁶⁰ developed an action plan for the fulfillment of the obligations as assumed in the friendly settlement. By a decision of May 2006, the “Hadareni Community Development Plan 2006 – 2008 was adopted. Further, Romania ratified Protocol No.12 of the European Convention on Human Rights.¹⁶¹ Last but not least, National Agency for Roma signed an agreement with United Nations Development Program on creating six centers aimed at socio-economic integration of the Roma. One of the centers was established in Targu-Mures. In addition to publishing the judgment in the *Office Journal*, it has also been included in the training curricula for judges and prosecutors at National Institute of Magistrate.¹⁶²

The latest development in the case is the submission by European Roma Rights Center, in March 2009 of a report concerning the implementation of the measures by Romania. The European Roma Rights Center criticizes Romania by not fulfilling its obligations as agreed. In particular, the ERRC argued on the failure of the state to provide adequate housing and slow implementation of the community program.¹⁶³ Other four Romanian NGOs submitted their observations in regard to the implementation of general and individual measures. These NGOs are: Accept Association, Center for Legal Resources, PRO EUROPE League, and Romani CRISS. Their comments have been submitted to the

¹⁵⁹ Romanian Government, *Strategy for Improving the Situation of Roma*, available at: http://www.rroma.ro/gov_framework2.htm, 2000

¹⁶⁰ For more information, please consult *National Agency for Roma (NAR)*, available at: www.anr.ro

¹⁶¹ Council of Europe, *Execution of Judgments, / State of Execution*, http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Romania_en.pdf

¹⁶² Ibid.

¹⁶³ More information can be accessed at: <https://wcd.coe.int/ViewDoc.jsp?id=1451197&Site=CM>

Committee of Ministers and will be taken into consideration at the next meeting, which will take place in 2010.¹⁶⁴

¹⁶⁴ Council of Europe, *Execution of Judgments, / State of Execution*,
http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Romania_en.pdf

3.4. Implementation of general and individual measures in *D.H and Others v. The Czech Republic*

In accordance with Art.41 of the Convention¹⁶⁵, the Court awarded each of the applicants with 4000 EUR, in respect to non-pecuniary damage.¹⁶⁶

3.4.1. Individual measures

The *D.H. and Others v. The Czech Republic* took 8 years (between 1999-2007). Due to the fact that at the moment of the judgment (which was 13th November 2007), the applicants were already between 18-24 years old and, *restitutio integrum* was not possible. Therefore, no individual measures were necessary.¹⁶⁷

3.4.2. General measures

Firstly, a general measure appeared necessary in regard to the legislation that has been found in violation by the European Court of Human Rights. The New School Act (as adopted by Law no. 561/2004) provides now that pupils with special needs and those who are in a social disadvantaged position will be educated under primary school system. Those who cannot keep at the same level with the others are entitled to preparatory classes. The system of establishing if a child needs special education will be decided by an educational counseling center, after a psychological and educational exam.¹⁶⁸

¹⁶⁵ European Convention on Human Rights, Art.41 “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party allows only partly reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party”

¹⁶⁶ *D.H and Others v. The Czech Republic*, Final judgment, para 217

¹⁶⁷ Council of Europe, *DH and Others v. The Czech Republic, Execution of Judgments/State of Execution, The Czech Republic*, available at:

http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Czech_Republic_en.pdf

¹⁶⁸ *Ibid*, p.16

But, in 2008 the Committee of Ministers has been provided by European Roma Rights Center (on behalf of other NGOs) with a memorandum. The Memorandum is based on a research carried on by the European Roma Rights Center on the implementation of the judgment by the Czech Republic, from the date of the judgment, 13th November 2007 till August 2008). The main finding was that the new law adopted by the Czech Republic (new School Act) “*could reverse or even reduce the degree of segregation in education experienced by Roma, given that significant defects persisted in the legal framework of psychological examination of Roma children and in providing information to their parents*”.¹⁶⁹ Therefore, the ERRC stressed the fact that there is need of specific actions, binding on the Czech Republic, aimed at desegregation of Roma children in Ostrava region.

In April 2009, the Czech Republic informed the Committee of Ministers, that specific actions to be taken need to be implemented by the departments of the Ministry of Education in cooperation with NGOs. So far, the following measures have been taken:

1. In 2005, each school in the Czech Republic has been provided with the opportunity to create its own educational program in accordance with the needs of the children.
2. In 2006, Ministry of Labor and Social Affairs carried out an analysis of socially excluded Roma communities, which provides information about the specific problems of Roma communities.
3. In May 2008, the Government adopted the concept for the program “Early Care”, which is aimed at developing programs in order to help Roma pupils with their education.
4. The Czech Republic is part of the Decade of Roma Inclusion (2005-2015).¹⁷⁰

¹⁶⁹ Ibid, p.16

¹⁷⁰ Decade of Roma Inclusion: “*The Decade of Roma Inclusion 2005–2015 is an unprecedented political commitment by European governments to improve the socio-economic status and social inclusion of Roma. The Decade is an international initiative that brings together governments, intergovernmental and nongovernmental organizations, as well as Romani civil society, to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. The Decade focuses on the priority areas of*

Taking further action, the Czech authorities have submitted an action plan in which they included the undertaking of surveys. One of the surveys is in regard to socio-culturally disadvantaged children and is aimed at identifying possible causes of segregation and factors that contribute to unequal opportunities of education. The second survey is in regard to the teachers and their individual approach to children with special needs. The aim of the survey is to identify tools, which can be further used by the psychological centers in assessing the intellectual abilities of the pupil.

In parallel with the surveys, the Ministry of Education should develop between November 2008 and December 2009, the National Action Plan of Inclusive Education and should report on it to Committee of Ministers by February 2010 at the next meeting.¹⁷¹ In addition to all the measures taken, the judgment of the European Court of Human Rights has been published on the Ministry of Justice website.¹⁷² The latest developments on the implementation of the individual and general measures indicate that in July 2009, the Czech authorities have reported to Committee of Ministers on the initial conclusions of the surveys.¹⁷³

Recently, on 13th November 2009, European Roma Rights Center together with the Open Society Justice Initiative respectfully submitted to Committee of Ministers the third memorandum on the implementation of the general and individual measures by the Czech

education, employment, health, and housing, and commits governments to take into account the other core issues of poverty, discrimination, and gender mainstreaming", available at: <http://www.romadecade.org/about>

¹⁷¹ Council of Europe, DH and Others v. The Czech Republic, *Execution of Judgments/State of Execution, The Czech Republic*, available at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Czech_Republic_en.pdf , p.17

¹⁷² The Czech Republic Ministry of Justice, available at: www.justice.cz,

¹⁷³ *Supra* note 164 at p.8

Republic. They showed great disappointment and explained that there is little change since the moment the Grand Chamber issued the decision.¹⁷⁴

3.5. Conclusion

It can be concluded that the implementation of the judgments raises difficulties for the state both in compliance with the general measures or individual measures. The difficulties are either related to the difficulties in changing the national legal system or because the situation has changed meanwhile (E.g. D.H. and Others case – at the moment of the judgment, the children were already over 18 years ago, so they could not be sent back to school).

Moreover, looking at all cases that have been analyzed, it can be concluded that the implementation of the general and individual measures is taking too long. It can be concluded that the process of implementation of general and individual measures is a process that does not ensure efficiency (e.g. Nachova and Others case is taking already 4 years).

When asked if something positive has happened after the judgment people living in Hadareni explain that actually, nothing changed. Eleonora Rostas, one of the people who signed the friendly settlement explains in an interview, how her life changed (if changed) after the judgment of the European Court of Human Rights.¹⁷⁵ She explains that there exists fear that their houses would be again attacked and burnt. She ends the story:

*The case in the European Court of Human Rights was between Europe and the government of Romania," she said. Between her people and the attackers in the village, it settled nothing.*¹⁷⁶

¹⁷⁴ European Roma Rights Center and Open Society Justice Initiative, *Third Submission to the Committee of Ministers of the Council of Europe in the case of D.H. and Others v. The Czech Republic*, available at: http://www.soros.org/initiatives/justice/litigation/czechrepublic/czechrepublic_20091111.pdf, 2009

¹⁷⁵ Ibid

¹⁷⁶ Ibid

It is necessary that the Committee of Ministers strictly supervise the implementation of the general measures and individual measures and provide the state with a clear deadline which the member state should comply with it. The member states must be pushed to take action and the Committee of Ministers has the power to change words into meaning.

CONCLUSION

The main aim of this thesis was to assess three landmark cases from the European Court of Human Rights jurisprudence dealing with Roma. These cases are of great value for the protection and practice of Roma rights in Europe, therefore the actual implementation of the judgments made by ECHR is extremely important. As indicated in the Introduction, the main research questions posed were related to whether the respondent states have complied with their obligations and implemented the general and individual measures as requested by the Court. To this end assessment of the effectiveness of the actual mechanism of Council of Europe with Committee of Ministers as having a “supervisory role” within the implementation of the judgments has been made.

The analysis revealed that the cases of *Nachova and Others v. Bulgaria, Moldovan and Others v. Romania (No.2)* and *D.H. and Others v. The Czech Republic* are of great relevance to the protection of Roma rights in Europe and moreover, that the reasoning of the Court is likely to impact not only on Roma rights but also on the protection of other minorities in Europe. Furthermore the research carried on, disclosed the following findings:

First, the analysis of the situation of Roma in European context revealed that the Roma in Europe still confront with situations of violent attacks, discrimination in access to rights and more recently, hate crime.¹⁷⁷

Second, the analysis of the cases clarified that there is a positive obligation on the state side, in accordance with the European Convention on Human Rights requirements, to

¹⁷⁷ See Chapter 1 and in particular p.13-17

undertake measures so as to ensure that the rights of minorities and in particular of the Roma are respected.¹⁷⁸

Third, the judgments in the cases analyzed in Chapter 2 proved to be difficult to be implemented by the state found in violation of the European Convention on Human Rights. For instance in *Nachova and Others v. Bulgaria*, the authorities took the decision not to amend the Criminal Code, concluding that there is no need of adopting further legislation.¹⁷⁹ In contrary, in *Moldovan and Others v Romania (No.2)* case, the authorities were reluctant to comply with the judgment. For example, to date the state has not paid the just satisfaction sums as it had been asked by the Court.¹⁸⁰ As a result, there have been many efforts of the international organizations to provide the Committee of Ministers with reliable information on the actual situation in Hadareni village, scene of the pogrom which gave rise to the reference of the *Moldovan and Others v. Romania* case (No.2) to the ECHR. In *D.H. and Others v The Czech Republic*, although the authorities changed the legislation (New School Act), it has had a minimal impact on the situation of the Roma children in Ostrava region.¹⁸¹ As provided by the latest memorandum of the NGOs regarding the implementation of general and individual measures in *D.H. and Others v. The Czech Republic*¹⁸², the situation is same and the Roma children continue to fill up the special schools classes.

Fourth, due to the fact that none of the judgments of the European Court of Human Rights have been implemented (although the final judgments were given by the Court in 2005 for *Nachova and Others v. Bulgaria* and *Moldovan and Others v. Romania (No.2)* and in

¹⁷⁸ Please consult Chapter 2 p. 28-31

¹⁷⁹ See p.44-47

¹⁸⁰ See p.47-50

¹⁸¹ See p.53

¹⁸² Please see in particular p. 51, *supra* note no. 167

2007 for *D.H. and Others v. The Czech Republic*), it can be concluded the minimal impact of the judgments of the European Court of Human Rights on Roma rights.¹⁸³

Fifth the research carried on identified a relatively weak system of enforcement of the judgments under the Council of Europe structure. There is a gap between the “*supervisory role*” of the Committee of Ministers and the implementation of judgments by the respondent states. In particular, the principal weaknesses are related to the fact that the Committee of Ministers’ role of supervision discloses a minimal impact upon the implementation of judgments.

Therefore, in regard to more effectiveness of the judgments of the European Court of Human Rights on Roma rights, the following recommendations in regard to implementation of general and individual measures can be proposed:

1. The Committee of Ministers should set clear deadlines by which the states must comply with the judgments. In this respect I recommend that after the state has provided the Committee of Ministers with regular reports on the implementation of the judgments, the Committee of Ministers provides the state with guidelines on how the difficulties could be overcome and sets new deadlines for compliance. Therefore, there is need of active communication between Committee of Ministers and the states.
2. The states should take seriously the implementation of judgments and to this end to use all domestic means to ensure compliance. In this regard, the existing constitutional bodies could be used. They should report regularly on the implementation of general and individual measures to Committee of Ministers. The scope is identifying the difficulties of

¹⁸³ Council of Europe, Committee of Ministers, Execution of Judgments, *State of Execution*, available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

implementing the general and individual measures so that proper ways of overcoming them are adopted.

Finally, it has to be underlined that the subject requires deeper research in particular in regard of the Council of Europe's system of enforcement of delivered judgments by the European Court of Human Rights and the "supervisory role" of the Committee of Ministers. This deeper research will result in creation of a comprehensive framework that will enable the realization of the recommendations made in this paper.

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