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The Romanies in the European Court of Human Rights

How could racial discrimination contribute to the cases on the right to housing

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Abstract

Romanies are the most significant racialized minority in Europe, subjected to profound inequalities. Therefore, to identify the roots of such marginalization, it is crucial to understand how race – and racial discrimination – have embedded all levels of society. By contextualizing Romanies in this background, the thesis analyzes the cases judged by the European Court of Human Rights (ECtHR) involving housing Rights and Romanies under art.8 and art.14 of the European Convention of Human Rights (ECHR). Section 1 discusses race and racial discrimination involving Romanies and spatial policies. Additionally, the concepts of direct and indirect racial discrimination, as of the individual, institutional, and structural racism, are presented, followed by a dialogue with ethnicity/minority frameworks and substantive equality. Subsequently, Section 2 investigates spaces to discuss the right to housing and racial discrimination under articles 8 and 14 of the ECHR. Finally, Section 3, in the light of Sections 1 and 2, analyzes the cases dealing with housing issues and Romanies, aiming to identify advances and shortcomings in the Court's judgments and discuss how racial discrimination could contribute to the assessment.

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List of Abbreviations

ACFC - Advisory Committee of the Framework Convention on National Minorities

CEDAW – United Nations Convention on the Elimination of Discrimination against Women

CEDAW-Comm – United Nations Committee on the Elimination of Discrimination against Women

CERD – United Nations Committee on the Elimination of Racial Discrimination

CESCR – United Nations Committee on Economic, Social and Cultural Rights

CoE - Council of Europe

CRC – United Nations Convention on the Rights of Child

ECSR - European Committee of Social Rights

ECtHR - European Court of Human Rights

ERRC - European Roma Rights Centre

ESC - European Social Charter

EU - European Union

FCNM - Framework Convention for the Protection on National Minorities

FIDH - International Federation for Human Rights (Fédération International des ligues des droits de l'Homme)

FRA - European Union Fundamental Rights Agency

HRC – United Nations Human Rights Council

IACHR - Inter-American Convention of Human Rights

IACommHR - Inter-American Commission of Human Rights

IACtHR - Inter-American Court of Human Rights

ICCPR – United Nations International Covenant of Civil and Political Rights

ICERD – United Nations International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR – United Nations International Covenant of Economic, Social and Cultural Rights

ICRPD – United Nations International Convention on the Rights of Persons with Disabilities

IDPs – Internally Displaced Persons

LDH – League for Human Rights

OHCHR – United Nations Office of High Commissioner of Human Rights

UDHR - Universal Declaration of Human Rights

UN – United Nations

UK – The United Kingdom

WWII – World War II

Introduction

Romanies are known for their vulnerable situation as the largest minority in Europe. This vulnerability takes different forms in varied contexts within Europe; still, studies demonstrate Romanies' vulnerability as a consequence of similar discrimination patterns. Then, a question emerges of how the ECtHR has addressed such complexities when assessing cases involving Romanies.

In this thesis, Romanies are considered a racialized minority. Therefore, it is crucial to include debates on discrimination and race. Race is mentioned not because it exists as a valid scientific/biological category but as a concept indicating unequal power relations defining exclusions of persons/groups in several social fields, including state policies. Hence, racial discrimination should point to these structures generating disadvantages. But why is this term important when referring to Romanies? Plus, since ethnicity is also indicated when referring to Romanies, is ethnicity enough to understand the type of discrimination affecting them? A sociological view on racial discrimination is crucial to answering these questions, which are the first disquiets guiding this thesis.

The second disquiet is legal, as the thesis analyzes ECtHR's case law. From a positivist angle, a good outcome from a Human Rights perspective should be predictable. However, judgment is rather dynamic. The judicial field consists not only of a legal but also an epistemological/philosophical field in which ideas are always under dispute. From a racial perspective, which are the theoretical and legal tools for this dispute? To respond to this question, it is essential having socio-legal concepts that contribute to a racial assessment, namely: racial discrimination, direct/ indirect racial discrimination, and their contextualization in individual, institutional and structural racism.

As a result of the above, my research question is: how could the consideration of racial discrimination contribute to the assessment of housing cases involving Romanies? The hypothesis is that it should contribute. Yet, from a methodological view, it is necessary to justify why housing cases were chosen and which approach to the decisions will be used.

By categorizing the subjects arising from the 89 cases involving Romanies found in Hudoc and cited in the case law (as exposed in Chapter 3.1), it is identified a line of cases about housing rights, from the year 1996 to 2020, namely: Buckley v. UK (1996); Beard v. UK (2001), Lee v. UK (2001), Coster v. UK (2001), Jane Smith v. UK (2001), Chapman v. UK

(2001), Connors v. UK (2004), Yordanova and Others v. Bulgaria (2012), Hirtu and Others v. France (2020), and Hudorovič and Others v. Slovenia (2020) (all analyzed in Section 3). The cases against UK refer to the denial of planning permission to live in caravans on lands owned by the applicants, except Connors' case, which deals with an eviction order in Gypsy Camp. Yordanova's and Hirtu's cases deal with eviction orders – the former involving a long-term informal settlement, the latter involving Romanies that were for months in an unauthorized place for camping. Hudorovič's case is about access to water/sanitation in two long-term informal settlements.

In these cases, the ECtHR did not find a violation of art.14 of ECHR, although sociological studies explain how racial statal spatial policies have historically put Romanies in a disadvantaged position regarding housing (as addressed in Chapter 1.2). As detailed in Chapter 3.1, compared to other Romani cases in which a violation of art.14 was found and the state's policy/measures played a central role (e.g., police violence and education), the housing cases raise an interrogation on why no discrimination was recognized.

On the other hand, in the consulted doctrine on art.14 and Romanies, most of the references do not focus on housing cases but on others, such as police violence, sterilization, and education. The exception is only Chapman's, Buckley's, and Connors' cases; however, they did not present a positive outcome concerning discrimination. Still, from the case law and doctrine, additional spaces for discussing discrimination are inferred – whether in cases about Romanies or gender and disabilities, for instance. As exposed in Chapter 2.3, these spaces point to a broader understanding of the social context to identify discrimination.

According to the sociological context (see Chapter 1.2), the cases are divided into two categories, according to their contexts: in western European countries, the "caravan" cases, where discussions on nomadism appear (Buckley v. UK; Beard v. UK, Lee v. UK, Coster v. UK, Jane Smith v. UK, Chapman v. UK, Connors v. UK, and Hirtu and Others v. France); and in eastern European countries, the "settlement" cases - where issues about informal settlements arise (Yordanova and Others v. Bulgaria, Hudorovič and others v. Slovenia). Regarding the legal standard in these cases, the discussions focus on art.8 of ECHR. Plus, these cases cover a broader period (from 1996 to 2020). Therefore, the housing cases present shared realities and legal standards, enabling the recognition of trends until a recent date.

The research question implicates a methodological challenge: to deal with the tensions between a sociological perspective on racial discrimination – since it clarifies the concrete

reality coming to the ECtHR – and a legal perspective – to understand the legal assessment made in the face of this reality. These tensions require a careful analysis of the facts and arguments presented in the cases to identify the assessment's mechanisms hindering or enabling a racial discrimination perspective and how this perspective could add to the outcome.

Thus, the relevance of the thesis contributes to comprehending how ECtHR has assessed cases involving housing and Romanies, whether racial discrimination would interfere with the outcome and the shortcomings and advances in this regard.

To respond to the research question and consider the methodological issues, Section 1 deals with the concept of race and racial discrimination and justifies why they apply to Romanies. Chapter 1.1 debates how Romanies have been racialized – meaning, subjected to a racial categorization that became structural in social-institutional practices. Chapter 1.2 discusses how these racial processes interfered with spatial policies, as the housing cases are in these realities. Chapter 1.3 introduces socio-legal concepts on racial discrimination, its direct and indirect forms, as the individual, institutional, and structural concepts of racism, setting a theoretical repertoire to address racial discrimination. Finally, chapter 1.4 justifies why this racial lens is crucial for redressing Romanies' disadvantages - although not denying ethnic/minority dimensions - and presents elements of substantive equality.

In Section 2, Chapters 2.1 and 2.2 introduces the legal spaces in the ECHR to discuss housing rights in art.8 – regarding respect to private/family life and home - and art.14 – regarding discrimination. As the research question focuses on how racial discrimination could contribute to the assessment, Chapter 2.3 focuses on the additional spaces to be explored under art.14 to inspire a racial discrimination assessment in Section 3, also taking into account the theoretical repertoire of Section 1. In Sections 1 and 2, linkages with the cases and approach in Section 3 are flagged.

Section 3 analyses the housing cases chosen for this thesis. Chapter 3.1 briefly localizes the housing cases in the jurisprudence involving Romanies, with more detailed justification about the choice and division of the housing cases and the principal facts and legal standards at stake. Subsequently, Chapters 3.2 to 3.5 analyze how the ECtHR assesses the cases in the spaces of art.8 and art.14 and, in the light of Sections 1 and 2, present an approach highlighting elements of racial discrimination that could influence the assessment. Finally, Chapter 3.6 offers a summary of the identified trends.

Lastly, besides condensing this thesis' debates, the conclusion shares possible recommendations for a legal assessment that considers racial discrimination in housing cases involving Romanies. It is not the intention to be exhaustive in this task but rather to map insights for a debate on racial discrimination.

Section 1. Setting the theoretical framework for racial discrimination

1.1. Racialized Romanies

Discussions on race are controversial, mainly due to the criticism of the concept of race as a scientific/biological category. This chapter, though, presents race as an ideology formed in power relations within the colonial historical process, which also infiltrated Europe. Then, it elaborates on how race remains socially operative while shaping exclusions of racialized groups - such as Romanies -, despite its invalidity as a biological concept.

The idea of race originated in the 16th century, during the period of colonization (Almeida, 2019). In this context, Renaissance culture forged a set of knowledge to address the diversity of Humankind, taking as a universal model the European man - a model compared to which other persons were considered less evolved (pp. 24-25). During the Enlightenment, with the development of anthropocentric philosophy and scientific positivism, the distinction/classification of Humans based on physical and cultural characteristics emerged in terms of civilized-savage (pp. 25-27), aiming at explaining "scientifically" the differences between races (p. 29).

Although these theories on race were later invalidated (Bell, 2009, p. 8), they shaped the ideology of race during and after territorial colonization. Césaire (1972, pp. 2-5), among other authors in Post-colonial studies[3], reveals how racial ideology is a crucial element in modern thought while defining hierarchies between superior/inferior races. Then, race - and racism - emerge as an ideology of domination of the other (Fredman, 2001, p. 148).

Race and racism did not only shape social relations in the colonies. The formation of European nation-states[4] linked with colonization and corresponding racial ideology created tensions and exclusions within Europe, and the Romanies are an example of it (Tom, 2011, pp.

[3] E.g., Fanon (2004); Mignolo (2018); Quijano (2014); Santos (2007, 2018, 2020).

[4] On how Romanies have been neglected in the debate about Modernity and nation-state formation, see Costache (2021), Matache (2016a), and Tom (2011). About discussions on the origins of Romanies and the contradictions in this regard: Barany, 2002; Matras, 2004; Willems, 1997. About the tendency of homogenizing/stereotyping Romanies in scholarly and the consequent difficulty to see how race influenced diverse Romani identities, see Matache (2016a). This thesis does not aim at discussing all plural Romanies identities but focuses on how race forges their exclusion.

9-10). In this sense, Costache (2021) discusses how the "racial boundary" operated the subjugation of Romanies as the "ontological other" and "internal Orient" into nationalism and whiteness ideology in Europe. Parallelly, Stubbs (2022, pp. 315-316) identifies how white supremacy[5] infiltrated different regions of Europe, including countries without imperialist past.

So how has race ideology forged Romanies' disadvantaged social position? There are two main aspects to this question. The first aspect is of an epistemological/philosophical character, consisting of the Romanies' stereotypes of the "other" as a barbarian[7], backward, uncivilized, criminal, wanderer, disruptive minority (Matache, 2016a, 2016b), that seldom corresponds to the way these "others" recognize themselves (Willems, 1997, p. 7). Among stereotypes, there is no space for representations of Romanies' struggles and political organization or their severe social exclusion patterns corroborating these stereotypes. In Section 3, the social context and arguments presented in the cases will point to these stereotypes.

The second aspect concerns how state legality, policies, and social practices, create categories of non-humanity, or sub-citizenship, resulting in *de facto* and *de jure* exclusions. The concept of abyssal exclusions presented by Santos (2018) clarifies how some categories – e.g., race and gender – generate zones of absolute exclusion that cannot be managed through the tension between social regulation and emancipation. Santos (2018, pp.299-300) argues that social regulation and emancipation function on the "metropolitan side," where mechanisms for claiming rights are found. However, on the "colonial side" of the abyssal line, emancipation/regulation is replaced by violence and appropriation, by mechanisms that make persons/groups invisible and dehumanized – hence, not considered valid or adapted to the legal/social patterns imposed by the metropolitan side. In the case of the Romanies, the recognition of abyssal exclusions implicates acknowledging race ideology as a form of sociability independent from the end of territorial coloniality, which infiltrated the socio-institutional structures.

One of the most extreme examples of the above is the slavery of Romanies and how it was hand in hand with the formation of the Romanian state (Beck, 1989; Costache, 2021), corroborating their social-economic exclusion and deep-rooted stereotypes. Other examples are the deportation of Romanies to colonies (Barany, 2002, p. 93) and their extermination before and during Nazism (Hancock, 2010, p. 224 ff.; Tom, 2011, p. 7). There are also legal and

[5] On post-colonial thoughts on whiteness in Europe, see also Börocz (2021).
[7] Similarly: Meneses, 2010, p. 72.

institutional practices that, under the idea of a "civilizing mission" (Kóczé & Trehan, 2009, p. 52 ff.), resulted in the marginalization and assimilation of Romanies.

Difficulties in data about Romanies are also part of racial exclusion. States have manipulated data for segregation/assimilation measures or for making Romanies invisible. Moreover, due to stigmatization, Romanies would be unwilling to self-identify (Barany, 2002, p. 157; Kóczé & Trehan, 2009, p. 54). Also, there are methodological problems in collecting data (Barany, 2002, pp. 6-8) and even the absence of a consistent policy in this regard[8]. For sure, data policies – or lack of them – played for centuries an essential role in the invisibility of Romanies, mainly in governments that did not want to recognize Romanies as a minority.

This chapter introduced how race ideology has historically subjected Romanies to social disadvantages while infiltrating the epistemological/philosophical and legal/institutional spheres. The identification of abyssal exclusions based on race – meaning, how the socio-institutional legality and practices shape profound exclusions for racialized persons whereas impeding mechanisms for emancipation (generally, through rights claims) is central to verifying if and how racial patterns manifest in the cases in Section 3. The next chapter debates how racial patterns occur in spatial policies, aiming to illuminate the social aspect of housing issues in Romani cases.

1.2.Romanies and racial spatial policies

There is a tendency to discuss Romanies' housing issues starting from the definition of nomad/settled lifestyles. This chapter problematizes these starting points by adding historical elements to this discussion. Subsequently, it addresses two different contexts: in Western Europe - where home in caravans appears linked to nomadism - and in Eastern Europe - where issues on Romani settlements arise. The present chapter aims to give a sociological background for the cases in Section 3.

There are three general historical elements for a nuanced view of the nomadic and settled lifestyles linked with Romanies' identities. Firstly, by the time Romanies arrived in Europe,

[8] E.g., see FRA (2014, p. 9) and D.H. and others v. Czech Republic (2007, §191), about education; Perić (2001), about failures in the registering of Romanies leading to non-citizenship in Slovenia; ACFC (2020, p. 15), about lack of identification documents of Romanies; ERRC (2017, p. 7), on the lack of "country-wide representative data on housing and public utility" in Romani settlements.

nomadism was not extraordinary, whether for pilgrimage or commercial aims (Barany, 2002, p. 11). Secondly, slavery, discrimination, and even expulsion by several European Countries, among other social pressures, have historically caused the movement of Romanies (Barany, 2002, p. 85-86; Kenrick, 2004, p. 82-83). Thirdly, several governments invested in forced settlement and assimilation policies instead of simply expelling Romanies, as will be discussed later. These aspects do not mean to deny nomad characteristics of several Romani communities from an ethnic perspective, nor to impede cultural recognition for settled Romanies. Instead, they open the analysis field to grasp how racial models have affected them.

In this sense, Picker (2017) reveals how colonial powers started to plan European cities influenced by their experiences in the colonies. British colonies' experiments of racial segregation based on "health" and "hygiene" reasons implied leaving natives out of the clean areas (pp. 26-27). This *rationale*, in the metropolis, was translated into the treatment of Romani nomadism as a "problem of public order and criminality" (p. 35). Then, the "Gypsy camp" was initially a policy-driven tool for sedentarization (p. 37) based on a racial hierarchy between sedentary and non-sedentary lifestyles (p.112). The 1968 Caravan Sites Act, cited in the English cases[9], was a continuum of this policy; parallelly, economic pressures since the 1960s, accompanied by discourses on (in)civility, pushed the claim for Gypsy Camps (pp.37-38).

Moreover, because evictions of Romanies had increased during the period, the camps became "a least worse alternative," despite differences in each family's perceptions (Picker, 2017, p.38). However, changes in the planning legislation caused a decrease in the number of Gypsy sites, while the Criminal Justice and Public Order Act 1994 gave powers to local authorities to remove Romanies and criminalized the non-compliance with such orders (Ringelheim, 2013, pp. 427-428). A growing shift from nomadism to sedentarism resulting from this policy is identified, accompanied by increasing evictions of unauthorized camps and difficulty in obtaining planning permission; due to these legal limitations, Romanies' settlements are precarious and raise safety and health problems (Cleemput, 2007, pp. 104-106). On the other hand, planning policies in English cities only consider the majority's way of life, whereas Romanies remain squeezed between opposition of neighbors and environmental and traffic safety aspects impeding permissions (Ringelheim, 2013, p. 429).

[9] Beard v. UK, Lee v. UK, Coster v. UK, Jane Smith v. UK, Chapman v. UK, Connors v. UK, Buckley v. UK. See Chapters 3.2 and 3.3.

It is submitted that race, producing Romanies as this racialized "other", operates in the concept of Gypsy camps and the lack of its availability, as in their invisibility in the planning legislation. This is the background of the English "caravan cases" [10] in Section 3. Connors v. UK[11] case deals with an eviction order in a Gypsy Camp; the others[12] deal with the denial of planning permission to allow the applicants to live in their caravans in their lands.

In other western European countries, resonances between colonial and metropolitan policies regarding nomadism and racial segregation are also found. For example, French policies in Africa based in the *Ville Nouvelle* - for Europeans - and in the *cordon sanitarie* - separating "indigenous agglomeration" (Picker, 2017, p. 25) – were translated into areas to control unwanted populations identified with an ethnic group in France, bearing similarities with Gypsy camps as well as refugee camps (pp. 84-85). More recently, the inauguration of "villages d'insertion" consisted of the first French experience, after WWII, of monitoring an ethnic group aiming at "re-educating" (assimilating) Eastern European Romanies (p. 85). Legislation in 1990 and 2000 determining areas for travelers[13] and giving powers to local authorities to expel persons out of such spaces reinforced racial stereotypes about vagrancy (p.89) and increased the number of evictions (p.65). The migration of Romanies from eastern European countries (Barany, 2002, pp. 242 ff.; Fejzula, 2019, p. 2110; Ignăţoiu-Sora, 2011, pp. 1699-1700) adds more complexities to this context, as there are not consistent housing policies redressing homelessness. This is the background in Hirtu and others v. France[14], which deals with eviction order against Romanian Romani families in the surroundings of Paris and the effects of policies on travelers.

In Eastern Europe, racial spatial policies have different characteristics, as racism took the form of assimilation/prohibition measures. There are similarities between the Habsburg's actions to "civilize" Romanies - by settlement and taxes policies, prohibition of marriage, putting Romani children into official care, or simply banning nomadism – and the socialist

[10] Chapman v. UK and similar cases judged together (Beard v. UK, Lee v. UK, Coster v. UK, and Jane Smith v. UK); Buckley v. UK; Connors v. UK. See, respectively, Chapters 3.2, 3.3.1, 3.3.2.
[11] Chapter 3.3.2.
[12] Chapters 3.2 (Chapman's and similar cases) and 3.3.1 (Buckley's case).
[13] Picker (2017, p. 38) contends that "lumping 'Gypsies and travelers' together" – like in several European documents, e.g. CoE (2015) – "deserves serious scrutiny" because ethnic classification should not be limited to a simplistic concept. On the other hand, UK's and France's legislation on "Gypsy" and "travelers" bear the similarity of not referring to "race" (although Romani "Gypsies" are recognized as an ethnic group in the Race Relations legislation, as cited in Connors v. UK, 2004, §57). The absence of racial markers covers the fact that such legislations have disproportionate impacts on Romanies (in line with the racial patterns in spatial policies discussed in this chapter).
[14] Chapter 3.3.3.

governments' efforts to include Romanies into the proletariat in homogenous public policies (Barany, 2002, pp. 93 ff. and 114 ff.; Tom, 2011, pp. 5 ff).

Socialist states' policies aimed to settle Romanies during urbanization and industrialization, affecting nomad communities and smaller villages (Barany, 2002, p. 129). However, these actions did not observe cultural aspects and commonly lacked suitable structures and access to facilities (pp.130-131). Later, since governments considered a "danger" keeping these "ghettos", policies aiming to disperse Romanies were implemented (p. 130).

Parallelly, Romani informal settlements started during and after socialism through similar dynamics. For example, in Bulgaria, Romanies were displaced from city centers to peripheric regions where they "remained invisible", accompanied by authorities' omissions concerning "housing conditions, informal property relations, and the ongoing encroachments on public property" (Ivancheva, 2015, p. 39).

Resembling tendencies occur in most Eastern European countries, where the settlements' informality hinders the security of tenure and access to facilities, resulting in segregation/ghettoization (FRA, 2009, pp. 43-44, 56-57; Muižnieks, 2017, p.16; Zhelyazkova et al., 2002, p. 15). E.g., in Slovenia, problems related to the illegality of settlements and their overlapping with non-residential lands, racist manifestations against Romani settlements, segregation, and even forced removals are also identified (Perić, 2001). Additionally, the "denial of access to basic public services to Roma settlements has been used historically (…) as a method of pressuring the Roma to move elsewhere" (Pouikli, 2020, p. 362).

In Eastern Europe, this insecurity of tenure and lack of essential facilities, added to the increase of poverty with the introduction of neoliberal policies and the market interests in land use, made Romani settlements an easy target for evictions (Ivancheva, 2015, p. 51). Such context is worsened by the lack of public policies targeting Romanies' needs and the non-observation of existing legal provisions to combat discrimination in this regard (Peric, 2011, p. 18). Concerning this last point, Romanies are forced to live in segregated towns' outskirts and are often discriminated against by local authorities regarding access to facilities (ERRC, 2017, pp.7 and 21)[15].

[15] FRA (2012, pp. 3, 22-24) exposes the situation of Romanies in 11 EU countries (Bulgaria, Czech Republic, France, Greece, Italy, Hungary, Poland, Portugal, Romania, Slovakia, and Spain) showing that 90% of them are under the poverty line, as well as the difference in the access of basic housing space and facilities. About the

The Eastern European context is the background of Yordanova and Others v. Bulgaria (2012)[16], about eviction order against a Romani informal settlement, and Hudorovič and others v. Slovenia (2020)[17], about access to water and sanitation of two Romani informal settlements.

In both Western and Eastern contexts, racial spatial exclusion becomes "a factor of racial identification (…) drawing a clear boundary between 'our' and 'their' territory that has been built upon the relation between race, identity, and space" (Fejzula, 2019, p. 2108). These spatial patterns reinforce prejudices and stereotypes in a web of "micro manifestations of stigmatization" (Cretan et al., 2021, p. 82) and subject Romanies to factual disadvantages concerning housing rights, even though housing policies could be a tool for inclusion (Zhelyazkova, et al., 2002, pp. 83-84). In the cases in Section 3, it will be crucial to recognize, in the facts and discussions, the presence of stereotypes and policies (or omissions) affecting Romanies' housing rights in the broader social-historical context. The next chapter is dedicated to the socio-legal concepts to address such situations from a racial discrimination perspective.

1.3. Direct and indirect racial discrimination; individual, institutional and structural racism

The notions of direct and indirect racial discrimination and the individual, institutional and structural concepts of racism are crucial to addressing how different levels of sociability reproduce racism. Thus, it is assumed necessary to engage legal concepts with the sociological discussions on race[18] to redress the structural and institutional means through which racism produces exclusions. Hence, this chapter defines these concepts following the contributions of Almeida (2019) – while he highlights the state's and social institutions' role in this regard – and relates them to Human Rights standards, enabling a racial discrimination assessment of the cases in Section 3.

Racial discrimination is systematic discrimination based on race – as the categorization of persons/groups - expressed through conscious or unconscious means, which results in privileges/disadvantages to racially identified belonging (Almeida, 2019, pp. 32-33). In the

differences between Romani and non-Romani access to housing and corresponding facilities in countries of central and eastern Europe (except Slovenia), see also Peric (2011).

[16] Chapter 3.4.

[17] Chapter 3.5.

[18] This position finds resistance from those who submit that stressing the idea of race might enhance its strength in the population's imagination (Bell, 2009, p. 13).

light of Chapters 1.1 and 1.2, racial discrimination is not only at an individual level but also at socio-historical ones. In the cases in Section 3, it will be fundamental to have this concept of racial discrimination in mind to perceive racial patterns defining spatial policies interfering with housing rights.

The UDHR (art.2), the ICCPR (arts.2, 4, 20, 24, and 26), ICESCR (arts.2 and 13), and the ECHR (art.14) mention race as one of the prohibited grounds of discrimination, and do not have any definition for racial discrimination. In turn, ICERD defines racial discrimination as "any distinction, exclusion, restriction or preference" on the ground of "race, color, descent, or national or ethnic origin"[19], with the aim or consequence "of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Human Rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (art.1)[20]. This definition resonates with the disadvantages mentioned above affecting racialized persons.

In turn, ECRI (2017) defines racism as any belief based on "race, color, language, religion, nationality or national or ethnic origin", which includes "the notion of superiority of a person or a group of persons" (p.5). The focus on "belief" should benefit from a conjoint reading with ICERD, as racism is a belief expressed in actions at the individual and collective levels. Therefore, in Section 3, the notion of racial discrimination should interfere with the assessment of cases under ECHR, mainly regarding art.14[21].

Racial discrimination manifests directly or indirectly. Direct racial discrimination is the ostentatious prejudice against persons/groups racially categorized, revealed in intentional disadvantageous treatment (Almeida, 2019, pp. 32-33). Art.2 of the Council Directive 2000/43/EC formulates this notion using the idea of a comparator[22] in the face of which the victim is treated less favorably. ECRI (2017) refers to a lack of "objective and reasonable justification" of the measure, as 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" (p.5). The CERD (2009, p.3) has a similar concept, and the term "purpose" in Art.1 of ICERD relates to direct discrimination. On the other hand, the IACommHR (2009, p.32)[23] highlights

[19] Chapter 1.4 debates relations between race and ethnicity and emphasizes the importance of race for this thesis.
[20] The crucial role of the so-called Global South in the formation of ICERD (Jensen, 2016, 2017) points to racial discrimination as a crucial element of colonial-modern heritage, resonating with the discussions in Chapter 1.1.
[21] Chapters 2.2 and 2.3 further discuss spaces for a racial perspective under art.14 of ECHR.
[22] Chapter 2.3.1 presents the limitations of a "comparator" to grasp structural inequalities.
[23] The IACommHR's position is mentioned in light of the well-known positive dialogues between the several regional Human Rights systems.

the prohibited grounds on which direct discrimination through a policy or law can manifest and adds that direct discrimination can also occur when a "positive action mandated by law is not taken". These views on direct racial discrimination enable the perception, in Section 3, of patterns of racial discrimination in the state's acts and omissions and the social context. Although elements of direct discrimination may not be central in the legal assessment, they contribute to grasping the context of structural and institutional racism.

In turn, indirect racial discrimination happens when the conditions of specific racialized persons/groups are not considered or over which supposed neutral rules are imposed without previewing its consequences concerning racial markers (Almeida, 2019, pp. 32-33). Indirect discrimination is more difficult to identify because of the lack of a clear intention. Moreover, such identification may require deeper scrutiny of the aims and proportionality of the measure. Indirect racial discrimination points to long-term policies and laws devoid of specific racial awareness, which, conjoined with direct discrimination, shape a situation of inter-generational marginalization of racialized persons/groups.

The Council Directive 2000/43/EC (art.2.b) and ECRI (2017, p. 5) stress the appearance of neutrality of rules/practices resulting in indirect discrimination. The ECRI states that these practices/rules hinder "the compliance by, or causes disadvantages, to certain persons/groups identified with a race or ethnic origin". The CERD (2009, p. 3) refers to "discrimination in effect" (Art.1.1, ICERD), thus not discussing intent (or "purpose"). The IACommHR (2019, p. 32) mentions the "disproportionately prejudicial effect" by "law, measures, policies" on a given person/group. Considering Chapters 1.1 and 1.2, Section 3 investigates whether indirect racial discrimination patterns can be found in the cases regarding state spatial policies and omissions interfering with housing rights.

The other three important concepts are the individualist, institutional, and structural concepts of racism since they contextualize how direct and indirect discrimination manifest. The individualist concept of racism focuses on personal behavior as an individual anomaly[24] (Almeida, 2019, pp. 36-37). It comes with a positivist view of racism as a violation of rational norms that, under the imaginary of equality before the law, are supposed to organize society (pp. 133-134). The individualist concept is generally linked to direct racial discrimination arising from individual behavior. But restricting racism to its individual dimension results in

[24] Bell (2009, p. 10) refers to a cultural perspective on racism as related to anti-racist strategies that focus on individual behavior and also identifies limitations in this approach.

forgetting that: 1) most injustices based on race happened under legality and institutional practices; and 2) race ideology shapes subjectivities, affecting, conscious and unconsciously, individuals and relations (pp. 36-37, 64). In some aspects of the cases, Section 3 points out whether the ECtHR uses the individualist concept when addressing discrimination issues and the consequent limitations of this approach; furthermore, acknowledging such limitations enables the identification of direct racial discrimination as a contextual element of broader institutional and structural racism.

The institutional concept reveals that racism is not only a result of individual acts but mostly of laws and institutional policies/practices generating disadvantages for racialized groups. Institutions keep social stability as long as they absorb social conflicts through norms, patterns, and standards (Almeida, 2019, pp. 36-41). However, these normalizing/standardizing processes are not neutral while imposed within power relations that impede the diversification of persons taking part in the decisions in the social spheres. Hence, racialized groups – like Romanies – are out of these citizenship spheres, causing their interests to be invisible in policies and laws. Chapter 1.2 exposed racial patterns in states' policies generating disadvantaged position of Romanies concerning housing, which could contribute to noticing, in Section 3, elements of institutional racism.

Institutional racism manifests through direct and indirect forms. In the latter case, the social acceptance of certain practices corroborates the appearance of neutrality (Almeida, 2019, p. 43-44)[25], hand in hand with the idea of formal equality before the law. In the cases in Section 3, it will be important to pay attention to neutrality and formal equality debates and how using these concepts individualizes situations that instead indicate a complex racial context. Additionally, in light of Section 1, it will be crucial to check how domestic legal and institutional measures shape situations of abyssal exclusions where Romanies find themselves in a disadvantaged situation to claim housing rights.

The structural concept of racism demonstrates that institutional and individual practices reproduce racism because the social order as a whole is racist. Structural racism is a political and historical process in which all individuals, institutions, and social relations are embedded (Almeida, 2019, pp. 47-48; 52-54). Similarly, the IACommHR (2019, pp. 30-31) defines structural discrimination as "a set of norms, rules, routines, patterns, attitudes, and standards of behavior, both *de jure* and *de facto*" that results in clear inferiority of certain persons/groups

[25] In a similar sense referring to institutional racism: Bell (2009, p. 11).

through generations, which is identifiable by data[26] regarding access to public services and by the collective mindset towards certain groups expressed in pejorative stereotypes. Therefore, the recognition of structural discrimination requires a "broad appraisal of the historical, temporal, and geographic context in cases where patterns of discrimination appear," as well as imposing obligations to states to "take suitable measures to reduce and eliminate the situation of inferiority or exclusion" (IACommHR, 2019, p.30). Chapters 1.1 and 1.2 discussed how long-term spatial policies, beyond individual acts, have affected Romanies as a racialized group. Then, Section 3 investigates whether the cases present aspects picturing long-term social and statal practices, stereotypes, and omissions defining structural racism intertwined with institutional racism in direct and indirect forms of racial discrimination.

In summary, the assessment of racial discrimination requires not only an individual approach but mainly a collective one, enabling pinpointing institutional and structural racism and contextualizing the direct/indirect forms of racial discrimination shaping spatial policies and, consequently, hindering the exercise of housing rights by the Romanies in the cases analyzed in this thesis.

1.4. Contextualizing ethnicity/minority issues with a racial lens and substantive equality

This chapter firstly discusses why ethnicity/minority markers, although relevant in clarifying differences, must be racially contextualized and highlights the importance of a racial lens in Section 3. Secondly, it addresses which could be the parameters for substantive equality.

Initially, the idea of ethnicity emerged within the racial ideology of "other", hence not recognizing the value of cultures that are out of the Western European model (Césaire, 1972, pp. 19-20). However, the development of sociological and anthropological studies identified how identities and cultures have autonomous value; then, ethnicity emerges as a theoretical tool to capture "cultural variables" leading to "internal or external perception of differences" (Bell, 2009, p. 15). Ethnicity can also illuminate how nothing is innate in a particular identity but rather dynamic ways of being (Giddens, 2001, pp. 248-249).

In turn, Santos (2002) stresses how identities are formed in power relations that are rarely reciprocal, consequently shaped as subaltern identities (p.20). In the case of Romanies,

[26] Nevertheless, see difficulties with data (as mentioned in Chapter 1.1.).

power relations are racialized - and Chapters 1.1 and 1.2 exposed how this dynamic has put them in a disadvantaged position in general and in spatial/housing issues in particular. Considering race as theoretically crucial does not mean that these identities are unchangeable or condemned to oppression. Instead, it turns our gaze to the racial complexities in which these identities seek recognition and autonomy in the available social, legal, and institutional spaces.

Therefore, I am distancing from the ECtHR's understanding in Timishev v. Russia (2005, §55), also referred to by Bell (2009, p. 16), according to which race is simply a biological categorization and ethnicity is related to nationality, and cultural, language, and traditional markers. This thesis highlights race as an indicator of structural inequalities crucial to comprehending Romanies' disadvantages.

Consequently, questions on the ethnic identity of Romanies must be contextualized, avoiding any concept implying essentializing a particular tradition[28] or ethnic purity. Such avoidance is vital because difficulties in grasping identity complexities in the legal field can result in stereotyped or distorted ideas (Farget, 2012, pp. 292-393), thus impeding the identification of exclusion patterns[29]. It is submitted, then, that paying attention to such complexities implies comprehending how race and racial discrimination interfere with identities specificities. Section 3 indicates how the ECtHR manages notions such as "lifestyle" (whether nomadic or settled), "traditions", "vulnerabilities", and so on – as terms supposedly pinpointing Romanies' specificities - and how they influence the assessment. Plus, it analyses how a racial discrimination perspective can problematize such notions and unveil stereotypes.

Remains the question of how could race and ethnicity/minority frameworks dialogue[30]. Art.27 of ICCPR and FCNM do not refer to race[31]but ethnicity; in turn, art.14 of ECHR relates to race and minority. On the other hand, the FCNM does not define "national minority", and its explanatory report states that not "all ethnic, cultural, linguistic or religious differences necessarily lead to the creation of national minorities" (CoE, 1995, p.16). Although the FCNM and other minorities instruments can be strategic to guarantee rights to Romanies[32], this depends

[28] On the traditions as "relict": Rufer (2018); on an ethnography for capturing complex realities: Bidaseca (2018).
[29] On how issues on identity are crucial for Human Rights and judicial decisions, see Johnson (2014, p. 558).
[30] On mutual strengthening between the Law of Anti-discrimination – represented, e.g., by ICERD, ICCPR, ICESC, UDHR, CEDAW, ICRPD, and CRC – and the Law of Minorities (e.g., UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and also FCNM) through a trans individual and collective approach, see Rios et al. (2017).
[31] FCNM's Explanatory report (CoE, 1995, p. 6) mentions race only once when referring to the 1993 Vienna Declaration and Plan of Action on combating Racism, Xenophobia, Anti-Semitism and Intolerance.
[32] E.g., Articles 4.2, 5.1, 5.2, and 6 of the FCNM set important obligations to avoid assimilation, provide effective equality in economic, social, political, and cultural fields and promote intercultural dialogue.

on their statal recognition as a national minority - which is not every time the case, albeit the Romanies are considered, by the CoE and European Parliament, a "European minority" (Bell, 2009, p. 21). On the other hand, the ECtHR cites the FCNM only in some of the English "caravan" cases in Chapter 3.2[33], but it does not result in a positive outcome.

Anyhow, even if we take Romanies as a minority with ethnic specificities, it is submitted that, primarily, it is needed a precise understanding of how race, at the individual, institutional and structural levels, shapes their social disadvantages[34]. Therefore, when analyzing the cases in Section 3 under ECHR, art.14 should be the space for addressing racial discrimination (as will be further debated in Section 2).

Additionally, the debate on racial discrimination attracts reflections on substantive equality. Fredman (2016, pp. 283-286) sets a four-dimensional approach to substantive equality that includes redistribution, recognition, participation, and accommodation. The redistributive dimension detects the shortcomings of the formal equality approach by acknowledging that the individual and groups are in concrete disadvantaged situations that also implicate indirect discrimination patterns. Consequently, it highlights the importance of different treatment to redress disadvantages. The recognition dimension challenges the generic idea of dignity and targets wrongs related to stigma, stereotyping, and violence on the grounds of a specific element (such as race). The participative dimension points to the lack of political power of marginalized groups hence including the positive obligation of inclusion in the decision-making process. Lastly, the transformative dimension stresses that equality must go beyond the idea of sameness; therefore, equality consists of respect and accommodation of differences, which requires changes in the structures that are oriented in terms of groups in power (male-oriented, majority-oriented, non-disabled-oriented, and so on). All these dimensions are interrelated, consequently requiring nuanced and complex solutions. Acknowledging this interrelatedness also demystifies the common argument based on liberal theories on the agency (the "individual choice" discussion) that blocks equality claims, as it implies liberty of choice that cannot be realized in discrimination contexts.

[33] Judged in 2001: Chapman v. UK, Beard v. UK, Lee v. UK, Jane v. UK, Coster v. UK. See Chapter 3.2.

[34] Henrard (2006, pp. 5-6) identifies that, when minorities and ethnicities are affected by racial discrimination, CERD tends to have higher scrutiny. In turn, ECRI (1998) correctly recognizes Romanies as victims of racism. Bell (2009) refers to "categories of persons vulnerable to racism" (p. 17) and locates Romanies in both migrant and black/ethnic minority categories (p. 19). But I prefer stressing race as a constitutive aspect of Romanies' exclusions.

In summary, despite the importance of the ethnicity/minority frameworks, the exclusion of Romanies passes through racial discrimination – and understanding it is crucial to reach the root causes of housing difficulties in Section 3. Then comes the question of the available spaces under ECHR to address housing rights and racial discrimination (Section 2) and whether the ECtHR's assessment of the cases in Section 3 opens possibilities for substantive equality in this regard.

1.5.Appreciation

This Section discussed how Romanies were racialized while racial ideology has historically shaped social, legal, and epistemological patterns resulting in profound exclusion. This racialized "other" is pictured as a backward, uncivilized subject devoid of political or cultural autonomy, corroborating prejudices and stereotypes. Moreover, state legality and policies have played a crucial role in pushing the Romanies to a disadvantaged position for enjoying housing rights – in other words, excluding them from the emancipation-regulation field. Finally, the concepts of direct/ indirect racial discrimination, and individual, institutional and structural racism, were presented, and relations between them and the Human Rights framework were discussed, aiming at setting a theoretical repertoire to address racial discrimination.

Ideally, a judicial assessment of housing issues concerning Romanies should be made from a racial perspective. This approach implies analyzing the social context of segregation policies conjointly with the case elements, leading to recognizing racial discrimination in its direct/indirect forms in the context of individual, institutional and structural racism. Furthermore, it is crucial to consider the interrelatedness of all these concepts, and from it, the identification of racial discrimination in housing cases should end up in a discussion about strategies toward substantive equality.

Consequently, paying attention to the state's central role in racial discrimination problems and solutions (in which an ethnic/minority lens could collaborate) is necessary. Still, acknowledging racial discrimination and its deep-rooted dynamics should be the first step to perceiving and changing patterns impeding the full enjoyment of housing rights in a substantive equality view. The following Section investigates the legal spaces for this task in the ECHR.

Section 2. Spaces in the ECHR to discuss right to housing and discrimination

Arts.8 and 14 of ECHR are the main provisions in the Court's assessment of the cases in Section 3. Firstly, this section 2 addresses the spaces under art.8 – which provides for the right to respect for private and family life and home - for discussing the right to housing. Secondly, it addresses the spaces for discussing racial discrimination in art.14. After that, as the research question focuses on how racial discrimination could contribute to the assessment of the cases in Section 3, it exposes the other spaces already explored under art.14 that could inspire a discrimination assessment in Section 3.

2.1. Right to housing and Article 8 of ECHR

This chapter introduces international standards on the right to housing based on ICESCR, ESC, and the corresponding CoE's recommendation on Romanies. Subsequently, it investigates spaces in the scope of art.8 of ECHR for housing rights, as well as advances and limitations in the ECtHR's positions on positive obligations and the test under art.8§2, highlighting the links with the cases in Section 3.

The right to housing is a social right provided for in art.11 of ICESCR, as part of the right to an adequate standard of living, and arts. 16 and 31 of ESC. The General Comment n. 4 (CESCR, 1991,§8) has indicated the main features of the right to housing, namely: legal security of tenure; availability of service, materials, facilities, and infrastructure; affordability; habitability; accessibility; adequate location; and cultural adequacy. Availability of services and facilities includes access to water and sanitation (CESCR,1991,§8), which is corroborated by the General Comment n.15 (CESCR, 2003) and the CoE Recommendation Rec (2001)14 (item 5). Considering art.2.1 of ICESCR, the General Comment n.3 (CESCR, 1990) has clarified the immediate applicability of certain socio-economic rights, including the non-discrimination clause (§5) and the minimum core obligations (§10).

Security of tenure and evictions have been addressed explicitly by General Comment n.7 (CESCR,1997). Forced evictions are, in principle, a violation of ICESCR and other Human Rights (§§1,4), generally caused by the states' actions or omissions (§5). Moreover, states must have legislation to avoid evictions or restrict their circumstances, aiming to protect tenure

security (§9). When an eviction is necessary, it must observe Human Rights standards and proportionality (§14). Extra prudence is needed concerning large groups: on these occasions, "all feasible alternatives" must be checked "in consultation with the affected persons," and remedies against violations of Rights need to be available (§13). Lastly, as evictions should not result in homelessness, the states must provide housing alternatives (§16).

The CoE's Committee of Ministers Recommendation Rec(2005)4[35], regarding Romanies, defines "housing" as any accommodation, including caravans/mobile homes. Having similar provisions to the CESCR's standards and drawing inspiration from ESC and FCNM, it recommends policies targeting Romanies "as a matter of emergency and in a non-discriminatory way" (II.2) within the general framework of housing policies (II.1). Such policies must enable freedom of lifestyle choice (II.3), prevention of ghettoization (II.4), access to basic facilities (III.11) and participation of Romanies in the planning and implementation. Finally, it adds a discrimination perspective when referring to ghettoization, racial segregation, and harassment in housing.

In Section 3, denial of planning permission to live in caravans[36], eviction orders[37], and access to water/sanitation[38] relate to the basic standards of adequate housing and whether the states' are providing conditions for the exercise of housing rights. Furthermore, as the standards above refer to a discriminatory lens, issues on racial discrimination and substantive equality in state measures should arise in the cases. This last point will be further discussed in Chapters 2.2 and 2.3 in relation to art.14.

Reinforcing the interrelatedness and interdependence of all Human Rights (UN, 1993), CESCR (1991) has affirmed that the right to housing is not isolated from other Human Rights (§9). It also relates housing to the "right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence" (CESCR,1991,§9). Then comes the question of whether art.8 of ECHR provides space for housing rights.

Art.8§1 comprehends the right to respect for private and family life, home, and correspondence, shielding these four dimensions of personal autonomy against authorities'

[35] The recommendation refers to Roma and Travelers. For critics of this approach, see Picker (2017, p. 38) and footnote n. 13 supra.
[36] Chapman v. UK and similar cases in Chapter 3.2; Buckley v. UK (Chapter 3.3.1).
[37] Connors v. UK (Chapter 3.3.2), Yordanova and others v. Bulgaria (Chapter 3.4), Hirtu and others v. France (Chapter 3.3.3).
[38] Hudorovič and others v. Slovenia (Chapter 3.5).

interference (Roagna, 2012, p. 9). As the cases in Section 3 concern the three first dimensions, this chapter focus on them below.

"Home" consists of the place of permanent or temporary living, including mobile homes (Roagna, 2012, pp. 30-31). However, if a continuous link with a given place is not present, the case may not be admitted under this dimension; on the other hand, illegality may not be an obstacle to admission (Binder & Steiner, 2016, p. 239). "Home" also refers to living conditions, therefore associated with private and family life (Roagna, 2012, pp. 30-31). "Private life" relates to physical and moral integrity (Burbergs, 2013, p. 315), as well as social and ethnic identity (Roagna, 2012, pp. 12,17). "Family life" includes marriage or de facto relationships involving social, moral, cultural, and material relations (Roagna, 2012, pp. 27-28). Since home does not entail only a pecuniary interest but also conditions to one's identity, physical integrity, and relation with others (Remiche, 2012, pp. 795-796), it is often desirable a conjoint reading of these three dimensions in art.8.

Burbegs (2013) and Waddington (2013) list different rights addressed under art.8 that went beyond its literal interpretation. For example, the ECtHR has managed, in relation to housing aspects, issues on environmental pollution and living conditions[39]; eviction/security of tenure; and planning permission[40]; access to social housing policy[41] and water/sanitation[42] . In such cases, the ECtHR identifies how the dimensions of private and family life and home are affected, commonly interpreted conjointly (Roagna, 2012, p. 10).

These understandings point to a non-strict distinction between civil/political and social rights (Leijten, 2013, p. 112). Thus, theoretically, an interpretation of ECHR inspired by the international standards above could allow targeting housing rights. In Section 3, the admission of housing cases within the scope of art.8 does not face obstacles, despite the different consequences of not considering "home" in the assessment[43]. Still, it is necessary to investigate advances and constraints under art.8 regarding positive obligations and assessing art.8§2.

Since ECHR mainly evokes the idea of civil rights and negative obligations, the ECtHR is cautious when dealing with social rights (Binder & Schobesberger, 2015, p. 51) and often

[39] López Ostra v. Spain (1994); Öneryıldız v. Turkey (2004).
[40] Stanková v. Slovakia (2008); Orlić v. Croatia (2011); in Section 3: Yordanova and others v. Bulgaria (2012), Hirtu and others v. France (2020), Connors v. UK (2004), Chapman v. UK (2001), and Buckley v. UK (1996), respectively in Chapters 3.4, 3.3.3, 3.3.2, 3.2, and 3.3.1.
[41] Bah v. UK (2011).
[42] Hudorovič and others v. Slovenia (2020) (Chapter 3.5).
[43] Discussed in Hirtu and others v. France (Chapter 3.3.3).

hesitates to define obligations (Leijten, 2013, p. 134). Therefore, the Court generally does not examine abstractly domestic legislation/policy nor obligates the state to implement housing policy (Roagna, 2012, pp. 73-74). Consequently, there is a vagueness about the enforceability of social rights, as it also touches on budgetary/policy decisions (Leijten, 2013, pp. 114-115).

Nonetheless, although affirming "article 8 does not guarantee the right to have one's housing problem solved", the ECtHR accepts that extreme circumstances may reveal positive obligations (Marzari v. Italy, 1999, p. 12-13). For instance, in eviction cases, the Court has recognized the obligation to whether restitution of the property or provision of a housing alternative[44] to avoid homelessness (hence closer to international eviction standards). Still, the criteria for defining social rights and corresponding positive obligations remain unclear; despite the case law occasionally admitting some idea of "minimum core obligations" (Leijten, 2013, 130), the fact is that issues on the scope are often intertwined with the discussions on the margin of appreciation and states' justification in art.8§2 (pp. 118-119), as addressed later on.

In Section 3, questions are present on whether the Court concretely recognizes positive obligations targeting Romanies' housing needs and how this is influenced by the assessment of states' justifications under art.8§2, with the corresponding limitations of not addressing the legislation/policy as a whole. Hudorovic and others v. Slovenia[45] focuses more specifically on positive obligations concerning access to water/sanitation; however, issues arise on how long-term state policy has hindered such access. All other cases in Section 3 present more substantial debates under art.8§2; thus, problems regarding how these debates influence the definition (or not) of positive obligations are at stake. In this sense, jurisprudence developments in eviction cases will be significant[46].

According to art.8§2, interference by a public authority in the rights in art.8§1 is possible only when provided by law and "necessary in a democratic society in the interests of national security, public safety, and economic well-being" as well for "prevention of disorder or crime" and for the protection of health, morals or rights of others.

Generally, the ECtHR does not question the legality of the interference (Roagna, 2012, p. 37). On the other hand, as it is for the state to expose the legitimate aims in the list of art.8§2 (p. 42), legitimacy is usually the principal argument in the cases. ECtHR's jurisprudence trend

[44] E.g., Saghinadze and others v. Georgia (2010), Stanková v. Slovakia (2008).
[45] Chapter 3.5.
[46] Connors v. UK, Hirtu and others v. France, Yordanova and others v. Bulgaria – Chapters 3.3.2, 3.3.3, 3.4, respectively.

also does not question legitimacy (p. 9). Still, as legality and legitimacy are not enough to justify an interference (p. 44), the major discussions deal with its necessity and proportionality.

Concerning necessity, the ECtHR has deeper scrutiny of the state's justifications as the right in question has more importance, consequently exposing the tensions between the individual's and state's interests (Roagna, 2012, p. 44). In this balancing, proportionality plays a crucial role as an element of the margin of appreciation.

The ECtHR usually gives a wide margin of appreciation to the states when defining policies in the socio-economic ambit, as it considers the states in a better condition to evaluate their contexts and budgets (Arnardóttir, 2014, p. 346; Binder & Schobesberger, 2015, p. 56; Roagna, 2012, p. 45). On the other hand, the Court has already narrowed the margin of appreciation when "the right at stake is crucial to the individual's effective enjoyment of intimate or key rights" (ECtHR, 2021, p. 101), hence coming closer to the idea of positive obligations regarding "minimum core rights". Nevertheless, as seen previously, this approach is not always consistent but has had some advances in eviction cases. Eventually, the ECtHR also recognized the discriminatory effects of legislation affecting housing rights when examining the proportionality and state's justifications[47] , but the wide margin of appreciation still predominates in the case law on social rights (Binder & Steiner, 2016, p. 226).

In most cases in Section 3[48], the legality of authorities' decisions based on spatial legislation is at stake, in association with legitimate aims concerning environmental and spatial organization interests, public order and illegal occupation, and public health. Thus, Section 3 discusses how the Court evaluates legality and legitimacy and how this evaluation affects understanding the broader socio-legal context in relation to Romanies' illegality and stereotypes. On the other hand, questions on necessity and proportionality –involving margin of appreciation and positive obligations - bear the main dilemmas in Section 3, and attention is paid to whether addressing racial discrimination should interfere with the balancing of individual's and state's interests under art.8§2 in the face of the Court's resistance in evaluating legislation/policy.

In the margin of appreciation, issues on procedural safeguards are also evaluated to avoid arbitrariness (Roagna, 2012, p. 45). Still, how the Court balances individuals' and states'

[47] E.g., Kozak v. Poland (2010), in which the Court found a violation of arts.8 and 14 concerning the legal impossibility of a homosexual widower to succeed in the tenancy.
[48] Chapman v. UK and similar cases in Chapter 3.2, Buckley v. UK (Chapter 3.3.1), Connors v.UK (Chapter 3.3.2), Yordanova and others v. Bulgaria (Chapter 3.4), Hirtu and others v. France (Chapter 3.3.3).

interests interfere with the analysis of procedural safeguards. In this sense, in eviction cases, besides narrowing the margin of appreciation and recognizing positive obligations to avoid homelessness, the ECtHR has criticized summary procedures[49], resonating with international standards on housing. However, the Court does not question the states' assessment of the whole policy context (Binder & Schobesberger, 2015, p. 57). These developments are significant in the cases in Section 3 related to eviction[50]. In turn, in all cases in Section 3, questions on how racial elements could influence the evaluation of procedural safeguards are discussed.

Lastly, there is a trend to address vulnerabilities of certain groups (such as minorities) under art.8 and other substantive articles (Binder & Steiner, 2016a, p. 243). The ECtHR, under art.8§2, has required "specific justification" when the interference results in deprivation of their home (Binder & Steiner, 2016, p. 231), thus requiring strict scrutiny in the necessity and proportionality test. Hence, despite the non-recognition of positive obligations to provide a home, the Court may impose duties "to assist persons in a particularly vulnerable situation in finding a temporary accommodation" (Binder & Steiner, 2016, p.233).

This trend should lead to the comprehension that Romanies' vulnerability may emerge from racial discrimination patterns. Hence, the question remains if a due debate under art.14 could change the assessment of art.8 regarding positive obligations and elements of art.8§2 – including the identification of regulatory legislation's discriminatory impact on housing Rights (Binder & Steiner, 2016, p. 226). For this investigation, Chapter 2.2 exposes the general features of art.14, and Chapter 2.3 elaborates on the spaces already explored in the jurisprudence and commentaries about how a conjoint reading of art.14 and the substantive article contributes to the recognition of racial discrimination and substantive equality claims.

2.2. Discrimination and Article 14 of ECHR

Art.14 prohibits discrimination and has an open list of grounds, including race. However, it does not define racial discrimination. Thus, the first important observation refers to the meaning of "race" and racial discrimination. Section 1 proposed a theoretical framework

[49] E.g., Saghinadze and others v. Georgia (2010), about the eviction of IDPs without a judicial decision.
[50] Connors v. UK, Hirtu and Others v. France, Yordanova and Others v. Bulgaria –– Chapters 3.3.2, 3.3.3, 3.4, respectively.

on race and racial discrimination, submitting that art.14 should be the space for identifying racial discrimination in the cases' assessment.

A second important observation deals with the scope of art.14, as it is restricted to the substantive rights provided for in the ECHR[51]. Hence, its scope is narrower than art.7 of UDHR and art. 26 of ICCPR (O'Connell, 2009, p. 3). Consequently, art.14 is a "parasitic" provision since its assessment depends on the case's evaluation within the scope of a substantive article (Arnardóttir, 2014, p. 331; Gerards, 2013, p. 100) regardless of a violation of the latter (Rainey et al., 2021, p. 653). Hence art.14 can widen the possibilities of admission of a case under a substantive article (Scheinin, 2013, p. 267). Nonetheless, the ECtHR is not clear in specifying the criteria to define the ambit of a substantive article and if the case also attracts art.14 (Arnardóttir, 2014, p. 339 ff.). In the cases in Section 3, it will be essential to perceive how the ECtHR justifies the inclusion/exclusion of art.14 from the assessment and how it interferes with the discussion about racial discrimination and the outcome under art.8.

The methodology applied by the ECtHR under art.14 commonly implies four main questions (Rainey et al., 2021, pp. 652-653): 1) if the case is within the scope of a substantive article; 2) if the discrimination is under one of the grounds listed in art.14; 3) if there is a comparator that received better treatment than the applicant, and 4) while existing a different treatment, if it has an objective and reasonable motivation. Regarding the first two questions, it is necessary to check a) which criterion is used to include or not the art.14; b) whether the evaluation of art.14 changes the scope of the substantive article, consequently determining obligations towards equality.

Respecting the criteria for considering or not art.14, formerly, the ECtHR would not analyze the case under art.14 when it found a violation of the substantive article. Due to critics, the ECtHR started to apply art.14 in an increasing number of cases, whether assessing it in conjunction with the substantive article when the discrimination is a crucial element[52] or verifying violation under the substantive article taken alone and in conjunction with art.14[53] (Rainey et al., 2021, pp. 649-650). However, in several cases involving Romanies, despite the

[51] The Protocol n. 12 has broadened the scope of non-discrimination to reach "any right set forth by law", but since only 20 member states have ratified it (CoE, 2022), the focus on art.14 is justified because its case-law is more robust.
[52] E.g., Konstantin Markin v. Russia (2012), about parental leave for fathers.
[53] E.g., Opuz v. Turkey (2009), about gender violence.

elements of racism, the Court understands there are "no issues" under art.14[54]or does not recognize a violation[55]. Both patterns are present in the cases in Section 3, and Chapters 3.2 to 3.5 investigate how the Court manages this debate.

When it comes to whether the discrimination could interfere with the scope of the substantive article, how the Court addresses the facts detecting or not discrimination affects the obligations recognized and raises questions about substantive equality measures. The Court already affirmed that art.14 might entail the obligation to treat persons differently in different situations (Rainey et al., 2021, p. 648), but this approach is not always consistent. Chapter 2.3 presents some advances on this subject flowing from the conjoined reading of art.14 and substantive articles to target specific groups. In turn, Section 3 discusses, in the cases, the Court's assessment on this subject.

In turn, questions on the comparator are mostly related to a formal concept of equality before the law, which is the traditional Court's approach (Timmer, 2011, p. 710). The ECtHR generally uses a classic definition of discrimination: "treating differently, without an objective and reasonable justification, persons in relevantly similar situations" (Opuz v. Turkey, 2009, §45). But this analysis is inadequate to address structural inequalities (such as those arising from racial discrimination) because persons/groups in these situations are not in a comparable position. Chapter 2.3 indicates other approaches on this subject, and Section 3 detects the absence of a comparable situation regarding housing rights and the limits of a formal equality perspective.

While existing a different treatment, the state must present reasonable justification for the legitimate aim and proportionality. This point refers to the margin of appreciation given to the states in each context. Firstly, there can be a clash between the narrow margin of appreciation applied to suspected grounds of discrimination - such as race, disability, and gender - and the wide margin of appreciation in the socio-economic field (Rainey et al., 2021, p. 661; Timmer, 2011, p. 736). Secondly, debates on the procedural safeguards in the decision-making process are evaluated to identify if the state stepped out of the given margin (D.H. and others v. Czech Republic, 2007, §206). Also, the discussions on the margin of appreciation should consider whether the Court recognizes certain positive obligations under art.14 towards

[54] E.g.: V.C. v. Slovakia (2012), about forced sterilization; Carabulea v. Romania (2010), about police violence; Aksu v. Turkey (2012), about books and dictionaries with stereotyped views on Romanies. In Section 3: Connors v. UK, Yordanova and others v. Bulgaria, Hirtu and Others v. France.

[55] E.g., Anguelova v. Bulgaria (2002), about police violence. In Section 3: Chapman v.UK (2001) and similar cases in Chapter 3.2; Hudorovic and Others v. Slovenia (2020).

substantive equality. Chapter 2.3 gives examples of additional spaces in art.14 in this sense. In turn, Section 3 shows these issues coming up in a mirroring with proportionality, the margin of appreciation, procedural safeguards, and positive obligations in art.8 (as indicated in the previous chapter); thus, it will be important to perceive whether the ECtHR includes or not art.14 in its assessment and corresponding consequences in the outcome.

Once analyzing art.14, the ECtHR does it in two phases: initially, the ECtHR checks if there is a *prima facie* discrimination, in which the burden of proof falls on the applicant; next, the Court analyses if the discrimination is a prohibited one, in which the burden of proof falls on the state, which needs to demonstrate justifiable reasons (Arnardóttir, 2014, p. 330).

Generally, the Court applies the standard of proof "beyond reasonable doubt". At the same time, there are no specific rules regarding the kind of proof nor the way the Court assesses the facts; in its free evaluation, the ECtHR can also make inferences (ECtHR, 2021, p.21). There are, however, situations in which the burden was shifted on the state (pp. 21-22): i) when the information about the case is only, or in a significant part, with the public authorities; ii) when it is complicated for the applicant to prove discrimination; iii) when an inference of discrimination flows from the *prima facie* evidence presented by the applicant that, although not meeting the standard "beyond reasonable doubt", is sufficient to form a strong presumption against which the state must prove that its measures were not discriminatory; iv) where, in the face of indirect discrimination, it is difficult for the applicant to prove discriminatory treatment. Once the burden of proof is shifted, the state must not only present due justification for the measures but demonstrate that their disproportionate effect is not resulting from any discrimination ground. In such situations, the Court has already stated that statistics can form a presumption of discrimination, yet not the only way for that - which is very important in cases involving Romanies, as lack of official data is an element of historical institutional racism (as in Chapter 1.1). Commonly, the ECtHR resists shifting the burden of proof, thus jeopardizing discussions on racial discrimination, although racialized persons/groups are in one or more of the four situations cited above. Likewise, Arnardóttir (2007) criticized the ECtHR's tendency to impose an unbearable burden on the applicant in ethnic/racial cases, as "racial discrimination seems to hinge on a presumption in favor of states" (p. 38). Still, Chapter 2.3.4 presents positive steps taken by the Court in this regard, which could be considered in Section 3.

After exposing the main features of art.14's, the next chapter debates the further spaces explored in this regard in the judgments, doctrine, and dissenting opinions, aiming at inspiring a racial discrimination perspective.

2.3. On further spaces under Article 14

2.3.1 From individual to social/collective approach

The cases in Section 3 are situated in collective racial dynamics, consequently presenting tensions between the individualist procedure before the ECtHR and the need to understand the social context. Hence, this chapter elaborates on the possibilities of a collective approach regarding stereotypes and vulnerabilities.

As exposed previously, the ECtHR generally applies a formal equality idea using a comparator. Despite the importance of this approach, it has shortcomings while leading to an individualistic approach that may not reveal institutional/structural discriminations. An individualistic view may be considered a natural tendency in an individual complaint before the ECtHR. Nevertheless, some examples point to a collective/social approach.

For instance, the ECtHR recognized stereotypes/stigmas of persons of vulnerable groups, acknowledging the broader discriminatory situation, and having a comprehensive case law, e.g., in gender cases (ECtHR, 2021, p. 23ff.). Rainey et al. (2021, p.659) cite Carvalho Pinto de Sousa Morais v. Portugal (2017), in which the Court found a violation of arts.14 and 8 when the domestic court decreased the non-damage condemnation related to the failure in a surgery that has caused sexual limitations. The concurrent opinion of Judge Yudkivska clarifies that "stereotypes affect the autonomy of groups and individuals" and must be seen in the context of the person's experience (Carvalho Pinto de Souza v. Portugal, 2017, concurrent opinion, §18)[56]; hence, the comparator would not be adequate in such cases.

The attachment to a comparator covers that certain persons/groups – such as Romanies - are not in a comparable situation. In material aspects – as subjected to institutional/structural racism in all social spheres, mainly in statal policies/legislation – and symbolic aspects – concerning deep-rooted stereotypes -, Romanies are commonly in a concrete disadvantaged

[56] Addressing problems to treat women's rights in relation to the male parameter, also Timmer (2011, p. 711 ff.).

position. Hence, a due dispensing of a comparator – replacing it with a "disadvantage test" (Timmer, 2011, pp. 723-724) - opens paths to discuss substantive equality.

Similarly, discussions on vulnerability stimulate a collective view. For example, Arnardóttir (2014a, p. 664) identifies a tendency related to suspected grounds of discrimination to a "social-contextual approach" that perceives marginalization/stereotyping, pointing to structural exclusions[57]. However, the Court is not always consistent in recognizing a violation of art.14. E.g., in V.C. v. Slovakia (2011)[58], the Court acknowledged the applicant's vulnerability as Romani when noticing the lack of consent for sterilization (§177). Plus, it considered reports indicating the "particular risk" to which Romani women were subjected due to "widespread negative attitudes" and "systemic shortcomings in the procedures" (§146). Despite the clear signs of institutional racism, the ECtHR concluded there were no issues under art.14 while finding a violation of arts.3 and 8. The dissenting opinion of judge Mijovic, though, stresses how art.14 was crucial to the case (p. 45). This opinion highlights the need to carefully scrutinize the facts from a racial discrimination perspective, perceiving how vulnerabilities result from racism.

Indeed, stereotypes and vulnerability are not personal characteristics but, in the case of Romanies, are contextualized in a historical process of structural racism reflected in individual and institutional practices. For that, a collective approach beyond the need for a comparator that grasps social structures generating stereotypes and vulnerability is crucial for a racial discrimination perspective in the cases in Section 3. The following subchapter refers to another level of this collective approach.

2.3.2. Indirect racial discrimination

As exposed in Chapters 1.2 and 1.3, the notion of indirect racial discrimination is critical to identifying whether patterns in states' policies/legislation have disproportionate effects on racialized persons/groups. Below, some examples are examined in this regard, aiming at inspiring such assessment in Section 3.

[57] About possible shortcomings in the vulnerability approach, see Arnardóttir (2017, p. 168): "the classification of a group as vulnerable can reinforce negative stereotypical images of the relevant groups and thus, in the end, reproduce disadvantage". On the "paternalistic outlook" on vulnerability, see Farget (2012, p. 300). Despite these possible limitations of "vulnerability", it is stressed its possibilities for addressing structural discriminations.
[58] Also cited by Arnardóttir (2014a, p. 665).

In the cases about education for Romani children, the ECtHR took important steps in recognizing indirect discrimination and the responsibility of states to solve factual inequalities. In D.H. and Others v. Czech Republic (2007), it noticed the indirect discrimination concerning the supposed neutrality of tests applied to Romani children, which resulted in their placement in special schools for "mentally handicapped children" (§41). It stated that the prejudicial effects of a general policy on a specific group could result in discrimination even if it does not aim at such persons (§175). Also, it identified the "history of Roma segregation in education" (§142). The information, data, and standards provided by the applicant and other institutions (§§54-107), the references to ICERD, CERD, and FCNM (§§66, 95-99,192), as well as ECRI's notion of indirect discrimination and Council Directive 2000/43/EC (§184), played an important role in the Court's assessment.

In the same case, while noticing the indirect discrimination, the ECtHR considered it unnecessary to examine the applicants' situation individually (§209)[59]. In analogous circumstances, the Court adopts a deliberate collective view of the Romani community as a disadvantaged minority, acknowledging their historical vulnerability (e.g., Oršuš and Others v. Croatia, 2010, §147; Horváth and Kiss v. Hungary, 2013, §104). On such occasions, the notion of vulnerability is used to "target more complex and deeply embedded situations of disadvantage by looking towards social context", thus corroborating the perception of "indirect discrimination, reasonable accommodation, and positive obligations" (Arnardóttir, 2017, p. 170). Although not revealing in detail how race has defined Romanies' exclusions, these are valuable advances allowing institutional and structural racism assessment.

Section 3 analyzes whether factual elements point to patterns of indirect racial discrimination concerning states' policies and legislation - regardless of intention or direct reference to Romanies – and how they interfere with Romanies' vulnerabilities and limitations to claim housing rights.

2.3.3. Direct racial discrimination

As exposed in Chapter 1.3, direct and indirect forms of racial discrimination are interconnected in the social environment. Thus, this subchapter investigates how the ECtHR has addressed situations of direct discrimination and reflects on how they can reveal

[59] On limitations of the individual litigation to eliminate inequalities, see Bell (2009, pp. 82-83).

institutional and structural racism contexts. Plus, it pinpoints the shortcomings of an approach restricted to individual racism.

The ECtHR has found a violation of art.14 in cases where the intent to discriminate is clear. E.g., in Moldovan and Others v. Romania n. 2 (2005), about the destruction of Romanies' houses, it recognized the racist behavior of authorities in the events and corresponding domestic proceedings (§§103,139)[60]. The violence itself was not the object of the judgment because, by that time, Romania was not a party to the ECHR. Then, the ECtHR scrutinized whether there was a violation of ECHR in the following living conditions of the applicants and corresponding domestic procedures. Anyhow, the violence's context influenced the acknowledgment of racial discrimination in how the authorities dealt with the attack's results. Similarly, in Burlya and Others v. Ukraine (2018), the Court found a violation of arts.14 while noticing the authorities' role in the attack, the ineffective investigation, and the prejudice in Ukrainian society towards Romanies (§§169-170).

In the cases above, the Court does not refer to the concept of direct discrimination but acknowledges the discriminatory intent[61]. The Court usually relates harassment, as well as "difference in treatment of persons in analogous, or relevantly similar situation" based on "identifiable characteristic", to the idea of direct discrimination (ECtHR, 2021, p.11). Still, as discussed in Chapter 2.3.1, it is crucial to scrutinize the need or not of a comparator critically.

In turn, in cases related to police violence and hatred against Romanies - such as Nachova and others v. Bulgaria (2005)[62] and Škorjanec v. Croatia (2017)[63] - the Court tends to find a violation of art.14 in conjunction only with the procedural limb of art.2 and 3, imposing the positive obligation to investigate racial motivation. Indeed, it resists finding a violation in the substantive limb, arguing difficulties in proving intent[64], thus being attached to an individual concept of racism.

Nevertheless, rather than finding proof of intention in direct racial discrimination issues, cases like Moldovan and Others v. Romania n.2 and Burlya and others v. Ukraine show the

[60]In the friendly settlements in similar cases - Moldovan and others n.1 v. Romania (2005), Kalanyos and others v. Romania (2007), Gergely v. Romania (2007), and Tanase and others v. Romania (2009), Romania recognized issues under art.14 and proposed general measures.
[61] This element is important in the burden of proof in, e.g., police violence cases (e.g., Nachova and others v. Bulgaria, 2005). See Chapter 2.3.4.
[62] Police violence.
[63] Hatred.
[64] Another level of criticism of this approach is in Chapter 2.3.4.

importance of identifying direct racial discrimination situated in the broader context. In this line, it is noticed a tendency in the ECtHR to reference ICERD, as well as reports from ECRI, CERD, and ACFC about violence against Romanies[65] which leads to the recognition of a whole racial context and results in a better discussion under art.14 beyond an individual concept of racism. This approach opens ways to identify racist behaviors in the context of institutional and structural racism influencing the state's acts/omissions in Section 3, hence revealing direct racial discrimination interrelated with indirect forms at institutional levels.

2.3.4. Burden of Proof

Debates on the burden of proof in art.14 are crucial for noticing discrimination as it touches on how the facts are verified and interpreted. We have seen that the ECtHR commonly resists shifting the burden of proof on the states, and this chapter elaborates on controversies in this subject and pinpoints some advances, aiming at mapping possibilities for a discrimination perspective.

Disputes on the burden of proof are not a novelty in Romani cases. The dissenting opinion of Judge Bonello in Anguelova v. Bulgaria (2002), about police violence, criticized the non-recognition of a violation of art.14, highlighting the need for a different approach to the burden of proof (dissenting opinion, §9-12). The dissenter advocated for overcoming the "beyond any reasonable doubt" standard, hence shifting the burden of proof on the state due to the signs of racial discrimination.

In Nachova and others v. Bulgaria (2004), also about police violence, the Chamber, based on domestic law (§66) and in previous cases of police violence (§§173-174), shifted the burden of proof back to the State, so that, "on the basis of additional evidence or a convincing explanation" it should demonstrate that its agents' were not discriminating (§171). In the end, the Chamber found a violation of arts.14 and 2 in its substantive and procedural limbs (§175).

Nevertheless, the Grand Chamber found a violation of arts.14 and 2 only in its procedural limb. The Grand Chamber cited art.8 of Council Directive 2000/43/EC (Nachova and others v. Bulgaria, 2005, §80), which provides for the shift of the burden of proof for both direct and indirect discrimination. Nonetheless, it argued the supposed impossibility of shifting

[65] E.g., Bekos and Koutropoulos v. Greece (2005,§§33 ff); Boacă and Others v. Romania (2016,§§ 35 ff); and Nachova and others v. Bulgaria (2005,§§55 ff); Burlya and others v. Ukraine (2018,§§59 ff).

the burden of proof to the State in the substantive limb of art. 2 since it was impossible to check the subjective intent (§134). Indeed, the Grand Chamber focused on the individual concept of racism and applied a standard of proof of a criminal proceeding (as noticed by InteRights in §140). Differently, the Chamber's approach went towards the recognition of institutional and structural racism. Similarly, the dissenting opinion of judges Gyulumyan and Power in Carabulea v. Romania (2010)[66] recognizes the vulnerability of Romanies and the impossibility for the applicant to prove racial motivation (dissenting opinion,§§9 ff.).

In D.H. and Others v. Czech Republic (2007), involving indirect racial discrimination, the ECtHR noticed that the statistical information provided by the applicant formed a presumption of discrimination (§§189-190), hence shifting the burden of proof. Consequently, the state should "show that the difference in treatment is not discriminatory" because "it would be extremely difficult in practice for applicants to prove indirect discrimination" (§189). It also cited Council Directive 2000/43 and Nachova's case (§§187,189) and stressed that indirect discrimination could be proved without statistical evidence (§188). This position challenges the usual argument of states affirming the inexistence of statistics demonstrating discrimination and resonates with difficulties on data as part of institutional racism. Similar understandings prevail in gender violence cases such as Talpis v. Italy (2017) and Opuz v. Turkey (2009), in which reports of CEDAW-Comm constituted evidence of states' failure to protect women.

I want to add another element to this debate. Danisi (2011, pp. 799-800) cites Opuz v. Turkey (2009) as an example of a conjoined reading of art.14 with the substantive article, as the Court, based on the contributions and IACommHR and UN Commission on Human Rights, uses a definition of violence against woman as a form of discrimination caused by state's failure to prevent/investigate, resulting in "*de jure* and *de facto* discrimination" (Opuz v. Turkey, 2009, §188-190). Thus, the ECtHR includes the state in the definition of gender discrimination. From this perspective, it addresses the facts, using all data and opinions of other institutions and taking into account that the government did not challenge such findings (§§193-198). Likewise, Danisi (2011) cites Oršuš and others v. Croatia (2010), about segregation of Romani children in schools, in which the ECtHR analyses the case "from the standpoint of Article 14" (Oršuš v. Croatia, 2010,§145) and considers evaluations from CERD and CoE (Danisi, 2011, pp. 796-797). These moves indicate that a shift in the burden of proof depends on a viewpoint change

[66] Police violence against Romanies.

that, under art.14, enables the very definition of discrimination that recognizes the state as part of it.

Although the ECtHR does not reach a position of a presumption of discrimination concerning "suspected categories" such as race (like IACommHR, 2019, pp.52-53), the above developments point to the possibility of a theoretical shift allowing the identification of a *prima facie* indirect/direct racial discrimination. Consequently, shifting the burden of proof would consider the difficulties of racialized persons/groups to produce evidence and force the state to scrutinize its policies under racial markers. Section 3 investigates whether this approach could add to the outcome from a racial discrimination perspective.

2.3.5. Margin of Appreciation, positive obligations, and general measures

As mentioned in Chapter 2.2, there is tension between the large margin of appreciation given to states in the socio-economic field and the narrow margin of appreciation regarding suspected grounds of discrimination. Therefore, how the Court manages this tension interferes with recognizing rights and obligations. Another point is the evaluation of procedural safeguards in a discriminatory context. The last question concerns whether the ECtHR defines general measures and how they relate to the margin of appreciation. This chapter elaborates on these issues, aiming to provide examples that could enable a racialized assessment in Section 3.

Respecting rights and duties, the ECtHR already stated that art.14 imposes the obligation of treating persons differently in different situations and providing reasonable accommodations (Arnardóttir, 2014a, p. 668). Indeed, this points to a substantive equality approach to art.14, opening paths in its four dimensions.

In this sense, Broderick (2015), citing D.H. and others v. Czech Republic (2007), indicates the consequence of the shift of the burden of proof in the narrowing of the margin of appreciation, hence admitting the responsibility of the state to end racial segregation (Broderick, 2015, pp.105-106). She also mentions (p.116) Glor v. Switzerland (2009), about a disabled person obliged to pay a fee due to the inexistence of fittable alternatives to military service, as an example of recognition of positive obligation for accommodation by narrowing the margin of appreciation under art.14 (§§94-95,98). The link between shifting the burden of proof and narrowing the margin of appreciation is found in Nachova and Others v. Bulgaria

(2005), where the ECtHR recognized the positive obligation to investigate the racist motivation of police violence. These conclusions clarify the state's responsibility to act positively toward substantive equality, targeting factual inequalities.

Ringelheim (2013, p. 441) stands for a reduced margin of appreciation based on obligations set in FCNM. Nonetheless, considering Chapter 1.4, it is vital to perceive elements indicating racial discrimination requiring positive actions to address structural inequalities instead of restricting the debate to ethnicity/minority markers isolated. For example, in Horváth and Kiss v. Hungary (2013), the ECtHR goes in this direction when referring to positive obligations to "undo a history of racial segregation in special schools" (§127), as noticed by Broderick (2015, p. 108). This conclusion is in line with the Committee of Ministers of CoE's Resolution Res (2004)3, also mentioned by Ringelheim (2013, p. 438), which invites the Court to identify the "underlying systemic problem" to "assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments".

Indeed, these developments in Romani education cases are especially significant because the cases in Section 3 also deal with social rights and challenge the usual ECtHR's limitations in this regard (as seen in Chapter 2.1). In Section 3, issues arise on whether the state has obligations to target Romanies' vulnerabilities/inequalities regarding housing and how recognizing racial discrimination would require substantive equality measures.

Concerning the procedural safeguards and margin of appreciation, D.H. and others v. Czech Republic (2007) is, again, an example of how recognizing indirect racial discrimination implies questioning the neutrality/qualification of authorities' assessment. In this case, the government affirmed that tests applied by "educational psychology centers" to Romani children were "racially neutral" (§147). The Court noticed that these tests did not take into account the cultural specificities of Romani children and particular limitations, such as knowledge of the majority's language (§§200-201, 207). The government contended that educational psychology centers would only recommend the location of Romani children in special schools and that it always depended on the parents' consent; it also argued that the latter could ask for a transfer to another school (§153). The Court affirmed there was no possibility of waiving the right of non-discrimination and perceived flaws in how parents' consent was obtained since due clarification was not guaranteed (§§202-203). It was also considered, by FIDH, that the parents' fear of harassment in the standard schools influenced parents' decisions (§173).

Indeed, the ECtHR took steps to demystify a liberal theory on the agency (as mentioned in Chapter 1.4), hinting at limitations to the freedom of choice in the context of institutional racism[67]. Therefore, the matter is not denying the ability of a person to make choices but to observe that, in the light of the four dimensions of substantive equality, one can have severe limitations to decide.

Another point concerning procedural safeguards is balancing individual and community interests. Small (2003, pp. 61-62) raises a caution of duly considering the meaning of equality when assessing discrimination issues; otherwise, nearly every interest can outweigh an equality interest. Section 3 elaborates on these procedural safeguards matters while recognizing underlying ideas of a liberal theory of agency in the ECtHR's assessment and analyzing which equality perspective (formal or substantive) it uses to balance applicants' and states' interests.

Lastly, in the same case, the ECtHR took a step forward regarding the general measures "to be adopted in their domestic legal order to put an end to the violation found"; the state, however, remained "free to choose the means" for this task (§216). Binder (2011, pp. 382-383) acknowledges that the ECtHR has limited reach in defining general measures due to this wide margin of appreciation, hence not being comparable to IACtHR's experience under art. 63.1 of IACHR; nevertheless, in some cases, the ECtHR has been more specific, e.g., determining restitution and releasing prisoners. Likewise, Larsen (2013, pp.504-505) indicates cases in which the ECtHR was more incisive in requering legislative changes under art.46 of ECHR. Section 3 investigates, in the cases, if there are spaces in the Court's assessment for general measures toward substantive equality in housing rights.

2.4. Appreciation

Although the ECHR firstly aims to protect civil and political rights, the ECtHR's case law has dealt with social rights, such as housing, referring to the right to respect for private and family life and home. Considering that all Human Rights are interrelated and interdependent, Chapter 2.1. addressed how ECHR's interpretation could benefit from housing rights standards. Nevertheless, there are limitations in this regard.

[67] Also identifying institutional discrimination in this case, see Bell (2009, p. 12).

The ECtHR commonly states that art.8 does not provide for a right to be given a home but, in exceptional circumstances, recognizes rights resonating with the idea of minimum core obligations. In the test under art.8§2, though, the main challenge affecting the determination of positive obligations is the wide margin of appreciation in the socio-economic field and the proportionality and procedural safeguards debate.

The acknowledgment of vulnerability of certain persons/groups under art.8 has resulted in better outcomes while it leads to the identification of some positive obligations and changes the assessment of art.8§2, but this approach is not always consistent. Still, vulnerabilities in housing matters and corresponding international standards point to the inclusion of a non-discrimination perspective, which should attract art. 14 to the ECtHR's analysis.

About art.14, its main limitation is its "parasitic" character, which facilitates its exclusion from the ECtHR's assessment. This limitation is one of the main issues in the cases in Section 3 because none of them have a profound analysis of art.14. However, Chapter 2.3 presented judgments, dissenting opinions, and commentaries indicating ways for a better investigation of discrimination under art.14, having this standing point for evaluating the case with the substantive article.

Benefiting from the repertoire in Section 1 and the legal spaces for discussing housing rights and racial discrimination exposed in Section 2, the main features of a racialized assessment of the cases in Section 3 can be envisaged, as summarized below.

Firstly, while not being restricted to an individual approach, the comparator idea must be questioned, consequently allowing the perception of stereotypes and vulnerabilities in the social context and grasping facts and arguments indicating racial discrimination interfering with housing rights.

Secondly, benefiting from other international standards and documents, also considering a sociological perspective (Section 1), a racial lens enables the identification of systematic direct/indirect – or "de facto" - racial discrimination in the facts, in light of the broader context of individual, institutional and structural racism. This lens recognizes prima facie evidence of racial discrimination and considers whether the state has contributed to housing vulnerabilities.

Thirdly, recognizing *prima facie* racial discrimination implies refusing an unbearable burden of proof on the applicants while acknowledging their disadvantaged position in

producing evidence and the difficulties with data as an element of long-term institutional racism. Moreover, shifting the burden of proof on the state forces its engagement with a scrutiny of its own practices/laws/policies affecting housing in light of racial matters.

Fourthly, the margin of appreciation should be narrowed to impose positive obligations to end racist patterns in legislation and policies hindering access to housing, thus affecting rights under art.8. Careful consideration of the margin of appreciation also implies suspecting the supposed neutrality/qualification of the procedures provided for by the state in the context of institutional racism. Furthermore, when assessing the statal measure's proportionality, it is important to suspect the supposed liberty of choice of the individual/group (to find a home) and apply a substantive equality approach in balancing applicants' and states' interests.

Finally, from the facts and arguments, it is desirable to think of specific general measures that could address racial structural causes affecting the enjoyment of housing rights. The ECtHR, generally, has limitations in this regard; however, spaces within the ECHR could be explored to guide more assertively the measures for structural changes toward substantive equality.

Consequently, in the approach proposed above, the inclusion of art.14 would change the assessment of art.8, mainly concerning positive obligations and the discussions in the test under art.8§2.

Section 3 addresses how the ECtHR dovetails its findings in the legal spaces presented in Section 2, aiming at understanding advances and shortcomings in the judgment of housing cases involving Romanies.

Section 3. Housing and Romanies in the ECtHR

This Section focuses on the analysis of the housing cases involving Romanies. Chapter 3.1 contextualizes these judgments in the jurisprudence involving Romanies and gives an overview of the cases. It also highlights the social context justifying their division into "caravan" and "settlement" cases, the legal standards at stake (arts.8 and 14 of ECHR), and the line of analysis used in each case. Then, Chapters 3.2 to 3.5 address the chosen cases, and Chapter 3.6 provides an overview of trends and shortcomings.

3.1. The housing cases in Romani jurisprudence: the "caravan" and "settlement" cases

In the 89 cases involving Romanies judged by the ECtHR (found in Hudoc and cited in the case law, as listed in Annex 1), different subjects are identified, namely: immigration, fair trial, political rights, sterilization, police violence, education, civil law, violence and hatred, freedom of thought/expression, death in public institutions, children's rights, and housing. From a racial discrimination perspective, the first inference from their outcome is that, in most cases, no violation of art.14 is found. This inference does not ignore the fact that discrimination might not be present in some cases. However, as discrimination against Romanies is well-known, extra attention to this dimension is expected.

Chapter 2.2 indicated cases involving Romanies in which the ECtHR was reluctant to assess art.14 – whether by concluding there were "no issues" under art.14 or by not recognizing discrimination. This was the trend from the late 1990s to the beginning of the 2000s. With the accumulation of evidence of discrimination against Romanies in new applications and reports from CoE, UN, and NGOs, the Court inaugurated a different trend of recognizing discrimination (Goldston, 2010, p. 321 ff.). This tendency is perceived, for instance, in cases of police violence[68], hatred[69], and education[70]; the Court found a violation of art.14 for the first time in relation to Romanies in Nachova and others v. Bulgaria (2004, 2005). In police violence and education cases, there is a critical similarity relevant to this thesis: the primary role of statal measures/omissions in the facts directly at stake.

[68] E.g.: Nachova and others v. Bulgaria (2004, 2005)and Boacă and others v. Romania (2016).
[69] E.g.: Burlya and others v. Ukraine (2018), Tanase and others v. Romania (2009).
[70] E.g.: D.H. and others v. The Czech Republic (2007), Lavida and others v. Greece (2013), and Horváth and Kiss v. Hungary (2013).

In this sense, there are some elements drawing attention to the housing cases identified in this research – namely, Buckley v. UK (1996), Chapman v. UK (2001), Beard v. UK (2001), Lee v. UK (2001), Coster v. UK (2001), Jane Smith v. UK (2001), Connors v. UK (2004), Yordanova and Others v. Bulgaria (2012), Hudorovič and Others v. Slovenia (2020), and Hirtu and Others v. France (2020). Firstly, a common feature is the non-recognition of violation of art.14, although all cases involve the central role of the states' measures/omissions.

Secondly, the first ECtHR's judgments about Romanies – Buckley's case in 1996 by the Chamber and Chapman's case in 2001 by the Grand Chamber[71] - referred to housing matters. And, as Connors v. UK, despite the non-recognition of racial discrimination, these cases are constantly cited in the subsequent Romanies' case law - whether in decisions where a violation of art.14 was found[72] or not[73]. Furthermore, the housing cases judged in the last decade – Yordanova and Others v. Bulgaria, Hudorovič and Others v. Slovenia, and Hirtu and Others v. France – did not follow the trend of recognition of violation of art.14 started in 2004/2005 (with Nachova's case).

Thirdly, the housing cases provide a wide range of social contexts – from western to eastern Europe – while bearing a common legal standard on which the ECtHR focuses its debates – namely, arts.8 and 14. These two features provide a thought-provoking field for comparing and identifying trends from 1996 to 2020 from a racial discrimination perspective in varied contexts. Plus, there is a favorable opportunity for a conceptual debate while assessing the cases in Section 3, regardless of the chronological line compared to the case law mentioned in Chapter 2.3.

According to the racial spatial contexts in Chapter 1.2, the cases are divided into the "caravan" and "settlement" cases. The "caravan" cases (Chapters 3.2 and 3.3) are the ones that, at some point, evoke questions on nomadic/sedentary lifestyles and related policies in Western Europe. The "settlement" cases (Chapters 3.4 and 3.5) do not deal with nomadism but with long-term policies creating conditions for marginalized Romani settlements in Eastern Europe.

[71] After Protocol n.11, as the other cases judged on the same date: Beard v. UK, Lee v. UK, Coster v. UK, Jane Smith v. UK. See Chapter 3.2.
[72] E.g., Horváth and Kiss v. Hungary (2013,§127); D.H. and others v. Czech Republic (2007,§181).
[73] E.g. Hudorovič and others v. Slovenia (2020, §§ 134,114); Yordanova and others v. Bulgaria (2012,§§105, 118).

Chapman v. UK, judged by the Grand Chamber in 2001 (Chapter 3.2), refers to planning permission for living in caravans on the applicant's land, whose sociological background concerns long-term spatial policies in England pressuring Romanies between the lack of Gypsy camps and difficulties with planning permission. Special attention is given to Chapman's case since it was the first case judged by the Grand Chamber after FCNM entered into force and consisted of a reference to the other cases judged on the same date dealing with the same issue and context: Beard v. UK, Lee v. UK, Coster v. UK, and Jane Smith v. UK. References to these cases are included in footnotes in Chapter 3.2.

Buckley v. UK, judged by the Chamber back in 1996 (Chapter 3.3.1), also dealt with planning permission and had its approach reproduced in 2001 in the cases mentioned above. But it deserves a separate analysis due to the insights in its dissenting opinions that could allow a racial discrimination perspective.

Connors v. UK, judged in 2004 in the First Section (Chapter 3.3.2), has the same social context as Chapman's case. But it regards an eviction order against a Romani who was lawfully living in a Gypsy Camp, thus revealing another layer of housing issues concerning the growing settlement of Romanies in such sites (mainly regarding the security of tenure).

Hirtu and Others v. France, judged in 2020 in the Fifth Section (Chapter 3.3.3), involves an eviction order against an illegal settlement of Romanies from Romania in public lands with their mobile homes. Tensions emerge from the "travelers" legislation and how the state's pressure causes mobility of Romanies with constant evictions without housing options.

Yordanova and Others v. Bulgaria, judged in 2012 in the Forth Section (Chapter 3.4), involves an eviction order against an informal Romani settlement. Questions on racist mobilization against Romanies and actions/omissions of the state in giving housing alternatives are at stake, as well as the illegality of the settlement in contrast with long-term state toleration.

Hudorovič and Others v. Slovenia, judged in 2020 in the Second Section (Chapter 3.5), regards access to water/sanitation of two informal long-term Romani settlements. Two layers of exclusion are involved: the illegality of the settlements in long-term segregational policies and how it has historically hindered access to basic facilities.

As regards the legal standards, under art.8, the cases involve debates on positive obligations related to Romanies' specificities/vulnerabilities regarding housing and the test under art.8§2, mostly on the necessity/proportionality of the interference in the right to respect

for private/family life and/or home. Under art.14, the way aspects of the cases could point to racial discrimination interfering with the exercise of housing rights are discussed.

When analyzing the cases in Chapters 3.2 to 3.5, a brief description of the facts and the ECtHR's decision is presented (citing corresponding important paragraphs), followed by the racial discrimination approach proposed in this thesis. In this part, some facts and reasonings are highlighted (also indicating the judgments' paragraphs on which the argument is elaborated), aiming at identifying advances and shortcomings in the Court's assessment. Finally, some reflections on how a due consideration of art.14 could influence the outcome are shared.

3.2. Between nomadism and settlement: the individualistic approach in Chapman v. UK

Mrs. Chapman[74] is a "Gypsy by birth" (Chapman v. UK, 2001,§10) who has been traveling with her family in the Hertfordshire area searching for work. The family used to be in temporary and unofficial sites, and due to police and authorities' measures, they were constantly moving. To avoid harassment and guarantee education[75] for the children, the family was on a waiting list for a permanent site. Since it was not granted, in 1985, the applicant bought land in the same area to live in her caravans. She applied for planning permission for her children to go to school. Her application was denied under the argument that her land was in a Green Belt area. Although enforcement orders and fines were applied, the family remained on the land as there were no options. Finally, they "returned to a nomadic life" to avoid other penalties (§15), jeopardizing the children's education. A new application for a bungalow was denied for the same reason (§20). The family did not have anywhere to go since "there are no local authority

[74] The other cases judged on the same date by the Grand Chamber - Beard v. UK (2001), Lee v. UK (2001), Coster v. UK (2001), Jane Smith v. UK (2001) – present the same planning permission claim and dynamic of the constant movement of Romanies due to police/authorities' measures and the lack of "Gypsy" sites with no adequate housing options. E.g., in Lee's case, the applicant had been expelled from more than 40 sites; Beard's case is referred to as being without permanent address after leaving his land; Jane Smith was offered improper lands and accommodation in town in apartments, and this last option was also offered in Coster's case. However, it resulted in being culturally inadequate, therefore raising questions on forced settlement and cultural inadequacy (see Chapter 1.2).

[75] Education, access to health services, and security against prosecutions (including the risk of prison, as happened in Beard's case) are also reasons for Romanies deciding to acquire land in the cases cited in the previous footnote.

sites or private authorized sites" in the district (§19)[76]. Also, family members had health diseases to be treated continuously (§18). Then, the family remained on her land illegally.

The 1976 Cripps Report shows the effects of the 1968 Caravan Sites Act: there were available places for only ¼ of Romanies in England and Wales, forcing them to illegality (§§35-37). The Criminal Justice and Public Order Act 1994 considers a criminal offense the non-compliance with authorities' orders against unauthorized camping (§44). Circular 1/94, despite encouraging local authorities to help Romanies "who wish to acquire lands" to "avoid breaches of planning control", reinforced the limits "determined solely in relation to land-use factors"; it also stated "it was not appropriate to make provision of Gipsy Sites in areas of open land" (§46). Parallelly, Circular 18/94 encouraged authorities to "adopt a policy of toleration for short periods towards unauthorized gypsy encampments" when they were not "causing a level of nuisance which cannot be effectively controlled" (§47).

The ECtHR accepted the case under art.8 concerning private and family life and home (§74). It considered the life in caravans as "an integral part of her ethnic identity", "the pressure of development and diverse policies" in the "nomadic existence", and that the interference in her right - by the denial of planning permission - also affected the ability to keep "Gypsy" identity (§73). Nevertheless, by ten votes to seven, the Court found no violation when discussing positive obligations and balancing the applicant's and state's interests under art.8§2.

Firstly, despite generically recognizing positive obligations under art.8 to "facilitate the Gypsy way of life" (§96), the ECtHR admitted a large margin of appreciation in the socio-economic field; consequently, art.8 would not entail the obligation to provide sites for Romanies (§98) whereas no consensus among member states of FCNM existed (§§93-94). Hence, no space for guaranteeing housing rights according to international standards (as seen in Chapter 2.1).

Secondly, when balancing the needs of the applicant (housing) with the communities' interests (Green Belt preservation, as a legitimate aim), the Court concluded in favor of the latter, being the illegality of the applicant's occupation crucial in this outcome (§102).

[76] In Beard v. UK, it is discussed whether there were private sites available, although they did not cater to Romanies; in Lee v. UK, places in two official sites were offered but considered uninhabitable (hence recalling the precarious conditions in Gypsy sites, as seen in Chapter 1.2).

Thirdly, when the Court debates, in the proportionality test, the humanitarian issues at stake (risk of homelessness), it states that the applicant could not be exempt from planning rules and reiterates the absence of positive obligations regarding housing in the case (§115).

Finally, although the applicant and the third part intervener (ERRC) argued for the application of art.14 (§§83-85,89), the ECtHR did not find any discrimination and referred to its conclusions under art.8 (§129) [77].

From a racial discrimination perspective, in light of Section 1, another view of the facts and judgment is shared by reflecting on how the Court interacts with sociological elements that would attract the identification of racial discrimination and how this interaction interferes with the legal assessment. Hence, primarily it is highlighted the ECtHR's individualistic approach, then the main features of this assessment are discussed considering the concepts of lifestyle, vulnerability, individual choice/agency, procedural safeguards, and positive obligations.

Chapman's case is treated, under art.8, as an individual "banal problem of refusal of planning permission" (Ringelheim, 2013, p. 430), having the Court denied to redress the broader background by assuming the impossibility to examine "legislation and policy in the abstract" (Chapman v. UK, 2001, §77).

Despite the individualistic view, the Court referred, generically, to the impacts of policies in the nomadic life of Romanies, as well as to ideas of "lifestyle" and "gypsy identity", which could result in a better understanding of the social context. Nevertheless, the Court uses these ideas as homogenous and unclear concepts (Farget, 2012, p. 307) and contradictorily affirms that the case is not of a "traditional itinerant Gypsy lifestyle" (Chapman v. UK, 2011, §105). Thus, the Court agrees with the government's argument that the applicant is not nomadic, hence cannot claim rights as such, and since she chose to settle, she must observe the laws (§87). To Farget (2012, pp. 306-307), it appears to be a paradox between claiming the right to be nomadic and the right to be settled by applying for planning permission; still, the author acknowledges the paradox as a sign of how Romanies try to adapt to the "majority's reality" and to the available "legal categories" (p. 307).

It is submitted, though, that this paradox point to the racial patterns discussed in Chapters 1.2 and 1.3 and reflected in the case regarding how spatial policies – and

[77] In Lee v. UK, Jane Smith v. UK, Coster v. UK, and Beard v. UK, the Court applied the same approach.

corresponding legal categories[78] - have affected Romanies' access to housing. The vagueness with which the Court manages this "lifestyle" discussion, instead of revealing institutional racism and indirect racial discrimination flowing from legislation' effect on Romanies, reinforces this socio-legal limbo – as a sign of an abyssal exclusion – in which Romanies are vulnerable: they cannot, whether as nomadic or sedentary, claim full housing rights; their interests, in any case, are excluded from the statal sociability of planning and housing strategies, and no space for substantive equality is left; they can be, at least, tolerated.

Regarding vulnerability, the Court's approach is ambiguous. Farget (2012, pp. 300-301) argues that vulnerability is pictured as an essential characteristic of being a Romani. Be that as it may, the Court, despite noting "the vulnerable position of Romanies (Chapman v. UK, 2001, §96), does not contextualize this vulnerability in the social context of the spatial policy and adopts an individualistic approach.

In this individualistic perspective, there is an underlying liberal idea of agency as the ECtHR concludes that the applicant would always have a choice. As Ringelheim notes (2013, p.433), the Court simply assumes that vacancies are available periodically and the applicant did not show any financial impediment or efforts to settle somewhere else (Chapman v. UK, 2001,§§111-112). Nevertheless, reports proved the lack of available sites and how policies limited Romanies' housing choices (§§36,63-67).

On the other hand, the applicant made decisions on where to live under external pressures that, differently from stated by Ringelheim (2013, p. 434), do not relate only to a "traditional way of life". For example, the applicant came back to a "nomadic life" to avoid court actions (Chapman v. UK, §15) and evaluated the need to access health treatment and education (§18)[79]. As seen previously, the Court acknowledges data about the absence of housing options and even notices the effects of policies on Romanies. However, as it remains in this liberal agency idea, it hinders the comprehension of institutional and structural racism mechanisms impeding a "free" choice.

The individualistic perspective also influences the assessment of procedural safeguards under a formal equality approach. Ringelheim (2013, pp. 433-434) shows how this formal equality is revealed when the ECtHR states that accepting the illegality of a "Gypsy who has unlawfully stationed a caravan" would cause problems under art.14 to non-Romanies

[78] Notice that the Caravan Sites Act 1968 define "Gypsies" as "persons of nomadic lifestyle, whatever their race or origin" (Chapman v. UK, 2001, §29), hence making racial markers invisible.
[79]Also, the tendency of settlement in Gypsy sites is mentioned in Connors v. UK (2004, §88). See Chapter 3.3.2.

(Chapman v. UK, 2001, §95). There is a comparator idea in this approach; however, the situation of Mrs. Chapman is not comparable to that of a non-Romani. As the Court takes Chapman's position individually with no consideration of the process pushing Romanies to illegality, it is not surprising the disregard for her interests (housing rights) in the face of the alleged legitimate aim (Green Belt preservation) and the state's argument of neutrality/qualification of domestic procedures giving "due regard" to the applicant's interests (Chapman v. UK, 2001,§87). Here is the point where we see, with Small (2003), how an equality interest is outweighed by any other interest if there is no clear meaning to equality – mainly when no other housing options are available, as in Chapman's case.

Indeed, the ECtHR seems to intuit an equality/discrimination issue in the case but addresses it under a formal equality idea. Hence, it does not engage with tensions the word "race" in art.14 disclose. Addressing the applicant's situation as a Romani would require a substantive equality comprehension of how disadvantages regarding housing rights are shaped within the racial patterns in the policy, then formulating strategies to undo this paradigm through positive obligations. Nonetheless, the individualistic approach results in an ineffective discussion on positive obligations, as the Court maintains a large margin of appreciation. At this point, it is submitted that the Court not only trivialized minority rights - as Ringelheim (2013, p. 431) argues – but denied addressing racial discrimination complexities.

Besides impeding racial discrimination and substantive equality debates involving housing, this individualistic and formal equality approach also reinforces Romanies' stereotypes as outlaw persons looking for exemptions (Farget, 2012, p. 299), as a disruptive minority threatening society's interests.

In summary, the art.8 is the realm where the ECtHR simplifies various socio-historical elements blocking access to housing rights by restricting its view to the individual case; and the notions of lifestyle, vulnerability, agency, procedural safeguards, and positive obligations, instead of leading to reflections on racial discrimination and substantive equality, tarnish this discussion and reinforce stereotypes. Consequently, no additional spaces under art.8 for positive obligations are explored – not even respecting the risk of homelessness[80].

This approach, as well as the legal outcome of non-violation of arts.8 and 14, is reproduced by the Grand Chamber in the other cases judged with Chapman v. UK, which had

[80] Which could attract an interpretation analogous to CESCR's position on eviction (see CESCR, 1997).

the same claim on planning permission, namely: Coster v. UK, Beard v. UK, Jane Smith v. UK, and Lee v. UK. In all cases, the ECtHR did not find a violation of arts.8 and 14, and, as in Chapman, the voting was not unanimous.

Judges Ridruejo, Bonello, Tulkens, Strážnická, Lorenyen, Fischbach, and Casadevall, in their dissenting opinion in Chapman's case, also recalled in all cases above, recognize the effects of laws and long-term failures of authorities to deal with Romanies' needs and criticizes the toleration practice (Chapman v. UK, 2001, dissenting opinion, §§4-5). It also criticizes the general presumption, accepted by the Court, that the presence of Romanies would be inappropriate in the Green Belt area while placing a high burden of proof on the applicant to prove particular circumstances, thus giving her interests only a "token weight" in the domestic procedures (§4). Plus, by addressing the tensions between positive obligations and margin of appreciation, it affirms how the "lifestyle" could interfere with art.8 (§2), considering the disproportionate interference in her right because of the lack of alternatives (§3). However, the dissenters hesitated to "impose any particular solution" (§5) and, despite touching on issues that could lead to a discrimination assessment, found a violation of art.8 taken alone.

Remains the question of what an assessment of racial discrimination, in a conjoined reading of arts.14 and 8, would add to the outcome. By keeping in mind the spaces explored under art.14 (Chapter 2.3) and the repertoire on racial discrimination (Chapter 1.3), the individual case should be seen within the broader socio-legal context, thus identifying a *prima facie* indirect racial discrimination flowing from the disproportionate effect of state's measures on Romanies' housing rights, both due to the legislation on Gypsy sites and the planning policy as a whole. This situation should be contextualized in the historical institutional racism generating disadvantages/vulnerabilities to Romanies, consequently jeopardizing the respect for home, private, and family life. Then, the shift of the burden of proof on the state would oblige it to scrutinize the whole decision-making process and the effects of its policy.

Additionally, by narrowing the margin of appreciation in the light of substantive equality, we would suspect the neutrality/qualification of the procedural safeguards given to the applicant and question institutional racism hidden behind the official formal equality discourses. Narrowing the margin of appreciation would also result in recognizing positive obligations to target vulnerabilities flowing from racial patterns. Thus, the legal outcome could go beyond the necessity and proportionality test under art.8 taken alone in the individual case and explore additional spaces in light of international housing standards and substantive

equality. Consequently, a room could be opened for general measures to avoid, with structural changes, similar violations.

3.3 The patterns in other "caravan" cases

3.3.1. Insights in the dissenting opinions: Buckley v. UK (1996)

In Buckley v. UK (1996), the applicant lived and traveled in caravans until she had her third child and acquired the land in question in 1988 (§§7ff.). She received several enforcement orders since 1990, and the available Gypsy site in the region was not safe due to the reports on crimes (§§26,65)[81]. The private sites' price was prohibitive (§66). The applicant had the planning permission denied and constantly faced authorities' orders and criminal proceedings (§18). The applicant argues she was prevented from following the "traditional lifestyle of a Gypsy" (§44) while also intends to settle for security and education (§64). As there were no other options, the applicant remained in her land under precarious toleration (§83). The Court acknowledges the domestic practice and laws as in Chapman's case, citing the Cripps report verifying the lack of sites (§38 ff.).

The ECtHR admitted the case under art.8 concerning respect for home despite the illegality of her occupation (§§54-55). A similar "token weight" to the applicant's needs as a Romani was also the tone in the local proceedings, having the Court stated that "art.8 does not go so far as to allow individuals' preferences as to their place of residence to override the general interest" (§81). Hence, when balancing the individual's and society's interests under art.8§2, the ECtHR considered the interference in the applicant's right (by the denial of planning permission) necessary and proportional to the legitimate aim pursued by the planning legislation (highway safety, environment, and public health), and kept a wide margin of appreciation regarding the corresponding policy (§§62,74-84). Hence, the Court concluded, by six votes to three, that there was no violation of art.8.

There is no debate on the applicants' vulnerability as Romani. Discussions on the "traditional lifestyle" as related to nomadism take place, the applicant arguing the legislation (mainly the 1968 Caravan Sites Act and the Criminal Justice and Public Order Act 1994)

[81] As in Lee v. UK (see footnote n.76) and Connors v. UK (Chapter 3.3.2), questions about living conditions demonstrate how the policy of Gypsy camps does not completely solve Romanies' housing needs (see Chapter 1.2).

resulted in discrimination against "Gypsies" (§§35-37,86). Nevertheless, when discussing art.14 with art.8, the Court decided, by eight votes to one, that there was no violation because "it does not appear that the applicant was at any time penalized or subjected to any detrimental treatment for attempting to follow a traditional Gypsy lifestyle" (§88).

In Buckley v. UK, we find, back in 1996, the roots of the individualistic approach applied in Chapman v. UK in 2001. As in the previous chapter, a racial discrimination perspective on Buckley's case is shared below, but now exploring the dissenting opinions' insights in resonance with Section 1.

Both partly dissenting opinions of judges Lohmus and Repik focused their criticism on the proportionality test and the margin of appreciation under art.8§2, thus finding a violation of art.8 taken alone. Still, judge Lohmus acknowledges that when the Court states "the applicant as a Gypsy has the same rights and duties as all the other members of the community", it oversimplifies "the question of minority Rights" and that "it may not be enough to prevent discrimination" with "equal treatment before the law" (Buckley v. UK, 1996, p.25). He also argues that "different treatment may be necessary to preserve their special cultural heritage" (p.25). In other words, Lohmus points to elements that, from a racial perspective, could challenge the formal equality idea underneath the Court's decision in Buckley's case, reproduced in Chapman v. UK.

Judge Pettiti's dissenting opinion goes further by identifying "exclusion measures" taken against Romanies throughout history (Buckley v. UK, 1996, p. 26). First, he recognizes a violation of art.8, considering the links between respect for home and family/private life and the positive obligation of guaranteeing "the survival of families" rather than prioritizing "bucolic or aesthetic concerns" (p.29). Second, in a conjoined reading with art.14, he refers to "aspects of discrimination and breach of the right to accommodation and home, inasmuch as they necessarily have an impact on the right to respect for family life" (p. 28). Pettiti also stresses that "the discriminatory aspects serve indirectly to show that the claimed justification for the interference (in art.8) is unfounded" (p.30), as the reasons regarding "rural and open quality of the landscape and environmental protection" have been used only against Romanies (pp. 27-28).

By closely scrutinizing all reports and facts and noticing the contradictory assessment by the Chamber, Pettiti acknowledges the social-legal limbo in which Romanies are concerning housing, as they can never be "legal" or claim rights – in other words, an abyssal exclusion, as

in Chapman's case. Additionally, his analysis grasps social complexities where the limits between direct and indirect discrimination flowing from states' measures seem blurred (Buckley v. UK, 1996, pp.26 ff.):

> The Strasbourg institutions' difficulty in identifying this type of problem is that the deliberate superimposition and accumulation of administrative rules (each of which would be acceptable taken singly) result, firstly, in its being totally impossible for a Gypsy family to make suitable arrangements for its accommodation, social life and the integration of its children at school and, secondly, in different government departments combining measures relating to town planning, nature conservation, the viability of access roads, planning permission requirements, road safety and public health that, in the instant case, mean the Buckley family are caught in a "vicious circle". In attempting to comply with the disproportionate requirements of an authority or a rule, a family runs the risk of contravening other rules. Such unreasonable combinations of measures are in fact only employed against Gypsy families to prevent them living in certain areas. The British Government denied that their policy was discriminatory. Yet a number of legal provisions expressly refer to Gypsies in order to restrict their Rights by means of administrative rules (…) (p. 26)

> (…) the Caravan Sites Act 1968 expressly refers to Gypsies, thereby discrimination in its treatment of them compared with other nationals. The apparent aim of the British legislation is to promote acceptance of Gypsies in towns and villages (…) but the use made of this section has achieved the opposite result (p. 29)

Pettiti's opinion, back in 1996, presents a better sociological and legal perspective of how Romanies' housing vulnerabilities are generated, resonating with the dynamics exposed in Chapters 1.2 and 1.3 to acknowledge the discrimination – in indirect and even direct forms– resulting from legislation and the lack of integrated policy to redress Romanies' needs. Thus, he previews later developments regarding discrimination discussed in Chapter 2.3 as it contextualizes the individual case in the broader socio-historical situation to pinpoint discrimination. In doing so, he highlights how art.14 could interfere with the assessment under art.8 by imposing heavier scrutiny of the state's justifications in the test under art.8§2. In this way, although not using the terms of direct and indirect racial discrimination or institutional

racism, the dissenter illuminates how both forms can be recognized and have their limits even challenged within historical institutional and structural racism in the spatial policy. Additionally, a conjoined reading of arts.14 and 8 reveals how housing challenges faced by Romanies interfere with both respect for home and family and private life – which could result in positive obligations, hence opening ways to interpret art.8 in line with international housing standards and substantive equality. Finally, the focus on the discriminations patterns, rather than void references to "lifestyle" or formal equality approach, made a difference in Pettiti's opinion.

Buckley v. UK proves that social and legal perspectives on discrimination have been disputed since the first Romani case and that a different lens to perceive social complexities can change the legal discussion. However, as seen in Chapter 3.2, the ECtHR opted for another path in Chapman's and similar cases in 2001.

3.3.2. Settled Romanies in Gypsy sites? Security of tenure in Connors v. UK (2004)

In Connors v. UK (2004), the applicant and his family "led a traditional traveling lifestyle" and, to avoid "being moved" and harassed, they settled in an official "Gypsy site" for more than a decade (§§9,85). Due to security reasons[82], they moved to a rented home. However, since the adaptation was impossible, they returned to the same site (§9). The summary proceedings resulting in the eviction order were started under accusations of nuisance against the applicant's relatives, which would breach the license agreement (§§11,14,15, 18, and 92). There are discussions on whether: 1) the accusations were specific (§18); 2) the family's social needs regarding housing, health, and education were considered (§§18-20); 3) the applicants had accessed an adequate judicial review of the eviction order (§§22 ff.). The eviction was enforced by officers and police, with claims about the abuse of power (§§28 ff.). There were no housing options in the locality to respect community ties (§32). Hence, the applicant and his family needed to move on constantly (§35).

The ECtHR accepted the case under art.8 in relation to respect for home, and private and family life (§68). The parties and the Court agreed on the legality of the eviction and the legitimate aim pursued (rights of others in the camp and official management interests - §69). The fact that the eviction order was against a lawful occupation made the Court reinforce an

[82] As in Lee v. UK and Buckley v. UK (see footnotes 76 and 81), issues on the living conditions of Gypsy Camps arise, showing the problems of the correspondent policy besides precarious security of tenure (see Chapter 1.2).

individualistic approach, turning its gaze to the procedural safeguards and the proportionality of the interference under art.8§2.

Firstly, it affirms that the case "is not concerned with matters of general planning or economic policy but with the much narrower issue of the policy of procedural protection" (§86).

Secondly, it maintained a wide margin of appreciation in socio-economic matters stating that "it will respect the legislature's judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation" (§82). However, despite mentioning that the "vulnerable position of gypsies" and "their different lifestyle" would result in positive obligations to facilitate it (§84), the Court does not go further regarding policies targeting Romanies' needs.

Thirdly, the ECtHR turns its gaze to the security of tenure in summary proceedings in the legal context of Gypsy camps (§43 ff.) and concludes the procedural safeguards were not observed because of the lack of judicial review (§§89,92 ff.).

Fourthly, the Court considered the eviction order not necessary and proportional due to both resulting homelessness and failures in the procedural safeguards (§§85,95). Consequently, the Court unanimously recognized a violation of art.8.

In relation to discrimination, the Court unanimously concluded there were no issues under art.14 (§§96-97), reproducing the practice of not addressing art.14 when finding a violation of the substantive article.

From a racial discrimination perspective, in light of Section 1, crucial elements in the judgment are discussed below, revealing some advances and shortcomings in how the ECtHR dealt with essential sociological aspects interfering in housing issues and how it influenced the legal outcome.

The case exposes that the government focused on providing sites for Romanies' "nomadic style" (§79), while the facts also demonstrate the constant move of Romanies owing to the pressures of the statal policy (as it is challenging to find housing options). Additionally, the Court, perceiving the long-term occupation of sites by Romanies (§60,88) and the complexity of the situation, turns its gaze to the procedural safeguards concerning security of tenure, as it acknowledges limitations in this regard in the legal context considering the growing settlement of Romanies in such camps (§§43-46,93-94).

Farget (2012) notices in Connors v. UK a more elaborated discussion regarding "lifestyle" that tries to capture "a vision of contemporary western Roma, settled and nomadic at the same time" (p. 302). But I add another layer to this discussion and take a moment to compare Connors' and Chapmans' cases. Connors v. UK shows how the debate about lifestyle in Chapman v. UK, while ambiguously attached to nomadism, does not reveal the forced settlement promoted by Gypsy Camp's precarious policy and its shortcomings in respecting, among other issues[83], security of tenure. Then, what Farget (2012) observes is actually pointing to how Romanies have been squeezed into a socio-legal limbo in which the available legal categories reinforce a situation of abyssal exclusion: they do not have space to claim full housing rights as "nomadic" or "settled". And, as in Chapman's case, this tensioned limbo has racial roots manifested in indirect forms.

Anyhow, since the Court recognizes the flaws in the public policy jeopardizing the security of tenure (with the use of summary eviction), it makes better scrutiny under art.8§2, while criticizing such proceedings and the resulting homelessness (§85,92), with better resonance with the international standards on forced evictions (despite not expressly referring to them).

Nevertheless, the fact that the eviction order had started due to accusations of nuisance (§§14,15,92) reinforces stereotypes of Romanies as a disruptive minority. Thus, it is interesting that the Court criticizes the use of summary eviction as a tool to solve conflicts in Gypsy camps when this option is rarely used in similar places (§89). In other words, the ECtHR perceives differences in the treatment of Romanies affecting their security (which could even be corroborated by the complaints about abuses during the eviction's enforcement). In conjunction with the social context, this point could indicate at least *prima facie* indirect – or even direct – racial discrimination linked with institutional and structural racism intertwined with stereotypes. But the Court did not take this path.

Albeit the specificities of Connors' situation led to another legal analysis regarding the individual eviction order, it is acknowledged that the Court does not redress the fundamental problem related to institutional and structural racism - which explains why Romanies have their

[83] The Report on the Provision and Condition of Local Authority Gypsy/Traveler Sites in England from the office of the Prime Minister (October 2002) mentions other failures in Gypsy camps policy: "lack of specific duty to consider gypsy/traveler needs, and in part a tendency to equate gypsy/traveler accommodation with site provision – so an authority without a site has no policy" (…) "where policies exist, they are not always comprehensive and integrated" and mostly "without input of Gypsies" (Connors v. UK, 2004, §59).

security jeopardized. Thus, as seen in previous chapters, the Court's references to vulnerability and positive obligations to target Romanies' needs remain void.

Therefore, a question remains of how an assessment of art.14 could contribute to the outcome beyond recognizing the violation of art.8 in the individual aspect. Reading arts.14 and 8 conjointly and using the elements of the case to situate the applicant's situation in the Gypsy sites' policy (as indicated in Chapters 3.2 and 3.3.1), it is possible to identify a prima facie indirect racial discrimination consisting in the adverse effects of the legislation on Romanies, mainly concerning security of tenure, therefore seeing their vulnerability as a result of these patterns. Aspects linked with stereotypes and signs of direct (intentional) racial discrimination could be noticed in the broader context of institutional and structural racism. By shifting the burden of proof, the state would be obliged to scrutinize, under a racial lens, how the eviction order was edited and how the overall situation was causing a disproportionate effect on Romanies, thus requiring careful analysis of the state's justifications by the Court. Finally, a narrowing of the margin of appreciation in light of substantive equality under art.14 could expand the boundaries of art.8 for identifying positive obligations and general measures targeting vulnerabilities in housing issues.

3.3.3. Between wheels, travelers, migrants: eviction in Hirtu and others v. France (2020)

Hirtu and others v. France (2020) deals with an eviction order against Romanies from Romania who were living in France for many years, part of a group of 43 caravans with 141 people (being around 50 children) illegally staying in a municipal land in La Courneuve (suburbs of Paris). This Romani community has been in the mentioned land since 2012, after leaving another encampment. The eviction order of 2013 was based on the legislation regulating places for reception/housing for travelers, regardless of their origin, and whose traditional habitat consists of mobile residences. This legislation determines that the prefect can notify the illegal occupants outside the reception areas to leave; the intervention happens only if the parking affects health, safety, or public tranquility (§27).

The main reasons for the eviction order, besides the illegality of the settlement, were the risk to public health (since there were no hygiene facilities or electricity) and nuisance (§7). The eviction order gave only 48 hours for the community to leave the land, and the administrative court maintained the decision (§24). The appeal against this decision was not

suspensive (§30). Then, some of the applicants asked for an interim measure before the ECtHR, and the duty judge concluded it was not necessary because the government assured that "before any expulsion, the prefect would carry out the social diagnosis provided for by domestic law and provide emergency accommodation" (§25). The application of the solutions cited in domestic law (§§37-38) is precarious, as they separate families and impede schooling (§63).

Owing to the police's information on the evacuation, some applicants settled in another land in Bobigny; however, they had their caravans seized (§19). Authorities did not offer accommodation for most of them (§§19-21). Some applicants returned to Romania after the camp's evacuation; others settled in the municipality's camps (§23) but, again, were obliged to leave in 48 hours (§24); only one family accepted social housing provided in 2014 (§23).

The ECtHR admitted the case under art.8 concerning only private and family life, stating that, since the applicants were in the land only for six months, they could not invoke art.8 for home (§§65-66). Subsequently, it focuses on the test under art.8§2. As in Connors' case, the Court does not question the legality of the eviction but scrutinizes the necessity/proportionality of the interference. For that, it notices the vulnerability of Romanies and criticizes the removal terms due to the lack of procedural safeguards (since the domestic courts did not enable a proportionality assessment)[84] and the absence of reasonable housing alternatives (§§70-74). In the last point, the Court recognizes the state's obligation to comply with the measures provided for by the domestic law regarding support in school, health, and accommodation (§73), considering the applicants as "socially disadvantaged group" (§75). Then, it finds, unanimously, a violation of art.8. Art.14, in turn, is absent in the Court's assessment because the domestic proceedings did not address it (§92).

From a racial discrimination perspective, benefiting from Section 1, some elements of the case are highlighted, aiming to reflect on how the Court manages the sociological aspects and how it interferes with the legal assessment. The main points regard the debate on the lifestyle and the corresponding policy, and why it did not assess respect for home.

Discussions on sedentary/nomadic lifestyles interfere with identifying the applicable legislation and the legality of the eviction order. Mr. Hirtu argued that he had a sedentary lifestyle in his caravan, so he could not be considered a traveler as mentioned in the legislation that based the eviction (§§9, 27, 60). The government affirmed they were travelers based on

[84] Thus, it was also found a violation of art.13 (Hirtu v. France, 2020, §91).

photos showing wheels in the caravans (§61). The Defender of Rights argues that, since 2012, thousands of Romanies from Romania and Bulgaria were commonly subjected to forced nomadism resulting from several evictions (§53). Indeed, as mentioned previously (§§19-24), one can perceive this same movement in the applicants' case.

The debate on the lifestyle, as in Chapman v. UK and Buckley v. UK, also points to a socio-legal limbo in Hirtu's case: since Romanies are recognized as travelers – and racial markers are not duly considered in the legislation - the legality of the eviction is not questioned (Hirtu and others v. France, 2020, §§67-68). But if they are sedentary, the legality should be challenged; hence, issues on security of tenure and access to a consistent housing policy could be central. However, since reasons concerning nuisance or public health are not acknowledged as a matter of public policy for redressing Romanies' needs, they reinforce negative stereotypes. Moreover, the solutions to avoid homelessness in the case of eviction are not adequate, as seen previously (§§37-38, 63). All this situation resonates with spatial policies discussed in Chapter 1.2 regarding the limitations of traveler's legislation. Therefore, the lifestyle discussion covers a deeper assessment of an abyssal exclusion hindering Romanies' housing rights, as the social-legal context does not consistently allow this possibility. In other words, the ECtHR's approach can never address signs of indirect racial discrimination flowing from the disproportionate effect of travelers' policy on Romanies, further corroborated by the lack of adequate housing options.

Additionally, the fact that the ECtHR did not address respect to home under art.8 raises other issues. In Chapman's and Connors' cases, where discussions on sedentary/nomadic life also took place, the ECtHR analyzed the case under home and private/family life, while Buckley's case considered only home. These differences reveal not only some inconsistency in the Court's approach to the scope of art.8 but, in Hirtu, reinforce their socio-legal limbo: they do not have a home to be protected, although being for years in France and arguing they have a settled life; on the other hand, they are treated as travelers, whereas the context of migration reinforcing their vulnerability should also be taken into account.

Nonetheless, a more profound discussion under art.14 is impeded, as the ECtHR affirmed it was not debated in the domestic proceedings (§92). This argument only appears in this Hirtu's case. Still, since the facts were analyzed in the domestic courts, there should not be limitations to discussing racial discrimination by applying the ECHR. As in Connors v. UK, the recognition of a violation of art.8 regarding eviction, despite being useful as it questions the

procedural features and indicates minimum core obligations (to avoid homelessness), only partially solves the situation in the individual case. The institutional and structural racism embedded in state policy remains untouched.

If art.14 were debated conjointly with art.8, the situation of the applicants would be contextualized in the disproportionate effect of the policies (mainly the legislation on "travelers") leading to eviction orders without competent policy targeting Romanies' housing needs. Therefore, recognizing *prima facie* indirect racial discrimination jeopardizing rights provided in art.8 would be possible. By shifting the burden of proof, the state should give extra explanation, analyzing its policy under racial markers, requiring further scrutiny of its justifications by the ECtHR under art.8§2. The vulnerability in housing issues would be situated in the context of institutional and structural racism, leading to a narrowing in the margin of appreciation to impose positive obligations not only to review procedural safeguards in the individual eviction procedures but also to solve factual inequalities in housing issues in a substantive equality approach.

3.4. A step forward under art.8, a step back under art.14: eviction in Yordanova and Others v. Bulgaria (2012)

Yordanova and Others v. Bulgaria (2012) deals with an eviction order against an informal Romani settlement on public land in the neighborhood of Batalova Vodenitsa in Sofia. The state expropriated the land in the 1960s for housing policy and later earmarked it for a green area (§9). The informal occupation started in the1960s in the vacant plots. The informality remained since "the applicants never sought to regularize the buildings they have constructed" because it "was difficult" as "they are poor" and "isolated from the rest of the society" (§13). In 1996, the land became Sofia municipality's property, and authorities never took steps to remove the applicants (§17) nor to develop a housing policy/regularization. Changes in the legislation impeded the acquisition of ownership of municipal lands (§18). In 2000, third persons with decisions recovering their ownership of the lands claimed that Romanies were there illegally (§25).

In 2005, the municipality "invited" Romani families to leave in 7 days due to the illegality (§29), and the applicants appealed against it (§30). Nevertheless, on 17.9.2005, the mayor ordered the forcible expulsion (§31). This order was maintained by the national courts

owing to the illegality of the occupation (§36). The government mentions the social pressure by non-Romani neighbors against housing policies for Romanies: e.g., in §93, there are references to "complaints by the Bulgarians living in Batalova Vodenitsa" such as "we complain against Roma" and requirements to "have the Roma (…) returned to their native places". State officials affirm that "the nuisance that a Roma settlement would create (…) would surpass by far the inconvenience" of a "refuse tip" and that Romanies "could not expect to live among the citizens as they did not have the necessary culture" (§46). The government alleges "sanitary risk" (§94) and the illegality of the constructions disfiguring the city landscape "regardless of the ethnicity of the persons concerned" (§97). It also mentions problems in Romanies' integration (§95). Local authorities affirmed that the Romani community could not claim access to housing policies because they were unlawfully on municipal land (§42). In 2006, the municipality transferred adjacent lands to a private investor, aiming to develop the area (§§26-27).

Meanwhile, the Romani community formed a committee of representatives for negotiations (§34). They signed an agreement with the government on 28.9.2005 for alternative housing, but nothing was done (§33). Attempts for removal in 2006 were unsuccessful thanks to the European Parliament's pressure (§40). Negotiations for alternatives/resettlement went on in 2006, with NGOs' participation, but faced opposition from non-Romanies supported by local officials' (§45-46).

In 2008, an interim measure of ECtHR impeded the realization of a new removal attempt. The Court required "detailed information about any arrangements made by the authorities to secure housing for the children, elderly, disabled or otherwise vulnerable individuals" (§49). The district mayor suspended the eviction "pending resolution of the housing problems" (§52). In 2009, because of a Programme for the "revitalization of Roma neighborhoods", non-Romanies pressure in favor of eviction (§§55-56). In 2010, plans for resettlement were discussed, with no concrete progress (§§57-58). The government argues that tailored policies for Romanies would be discriminatory against the majority (§128).

The ECtHR, under art.8, concluded there was an interference in private/family life and home, considering the applicants "as part of a community of several hundred persons" and that the eviction "could have repercussions on the applicants' lifestyle and social and family ties" (§105). Despite accepting the legitimate aim pursued, the Court carefully scrutinizes art.8§2.

Firstly, it recognized that the toleration concerning the illegal occupation promoted the development of "community life" and "strong links with Batalova Vodenitsa" (§121), stressing

that the proportionality test in such a case is different from an individual one. Hence, the ECtHR noticed that the procedural safeguards were inadequate as domestic courts did not consider proportionality (§122).

Secondly, it criticizes the contradiction between Bulgaria's "long-term programmes and declaration on Roma inclusion" and the absence of measures redressing sanitary and security risks and the illegality of settlements (§125).

Thirdly, it acknowledged that the risk of homelessness was not taken into account and refused the government's discriminatory argument justifying the lack of policies targeting Romanies' needs (§128).

Fourthly, it recalled its art.14 case law while pointing to "socially disadvantaged groups" requiring correction of "factual inequalities" (§129), hence recognizing positive obligations "in exceptional cases" of vulnerability (§130).

Lastly, by finding, unanimously, a violation of art.8 because of the absence of procedural safeguards and proportionality, it also imposed general measures, including changes in the domestic law to "ensure that orders to recover public land or buildings" must identify "the aims pursued, the individuals affected and the measures to secure proportionality" (§166). On the other hand, the Court unanimously declared there were no issues under art.14 and referred to its findings under art.8 (§§145-149).

The outcome under art.8 is a step further compared to Connors v. UK, as it is expressly in line with the international standards involving forced evictions (Yordanova and others v. Bulgaria, 2012,§83) and reveals the overlap between civil rights and housing rights (Remiche, 2012, p. 794). It also points to minimum core obligations regarding social rights under ECHR, especially concerning homelessness of vulnerable groups (Binder & Schobesberger, 2015, pp. 67-68). Additionally, the ECtHR had a collective view of Romanies' housing issues when highlighting the community ties anent home and private and family life.

Furthermore, differently from Chapman's and similar cases in Chapter 3.2 – in which the social tension was "cushioned" by an individualistic approach in the proceedings -, Yordanova v. Bulgaria displays the political organization of the community accompanied by the interference of other institutions (European Parliament and NGOs), and the strategies before other Human Rights institutions, such as the ECSR (Yordanova and others v. Bulgaria, 2012,

§73). Romanies' agency has another tone[85] in the face of the racist manifestations and denounces private investors' interests in land use (§§86,27). In Yordanova, the social tension and collective dimension cannot be entirely cushioned by the proceedings, which seemed to have been crucial for a better outcome under art.8.

Still, from a racial discrimination perspective, in light of Section 1, elements of the case – used or not in the outcome under art.8 taken alone - are emphasized to reveal sociological aspects pointing to racial discrimination and to reflect on the advances and shortcomings in how the Court interacts with these aspects in the legal assessment.

The facts described in the case indicate, in the light of Chapters 1.2 and 1.3, signs of racial discrimination, whether in its direct - due to the officials' and non-Romani declarations against Romanies - or indirect forms – considering the long-term toleration and planning legislation affecting Romanies' (jeopardizing the security of tenure and living conditions) accompanied by lack of policies targeting Romanies' needs. And there are elements to contextualize these forms in institutional and structural racism.

E.g., the government admits the historical omission of authorities about Romani settlements as well as the shortcomings in housing policy for Romanies – whether because of material limitations or the "unwillingness" of Romanies "to resettle in municipal flats" (Yordanova v. Bulgaria, 2012,§62). This last assertion, instead of obliging cultural adequacy according to housing and minority/ethnicity international standards, discloses an underlying liberal idea of agency that ignores the limitations of Romanies' choices in a racist context. These limitations emerge, for instance, from the fact that Romanies would not be able to "earn a living" separated from their community (§51), the difficulties in adapting to the "radical change" of moving to flats (§131), the racist manifestations supported by officials described in the facts (as seen above), and the impossibility of affording housing-related expenses (§131).

Additionally, the government's formal equality approach – identified when the government affirms that tailored policies for Romanies would result in discrimination against the majority – and the argument of the illegality of the settlement – used to justify the eviction and the denial of access to housing policies - cover how institutional and structural racism has shaped spatial segregation and jeopardized the security of tenure. In other words, they cover

[85] Questions on the agency of Romanies have been questioned in ECtHR. In Assenov v. Bulgaria (1998), it is questioned whether the applicants were aware of the proceedings before the ECtHR (§§49). In D.H. and others v. Czech Republic (2007), the dissenting opinion of Judge Borrego, when criticizing the collective approach adopted by the majority, questions if the applicants have ever met their lawyers (§9), although the case was carefully prepared by the ERRC and several Roma NGOs in the country (Ignăţoiu-Sora, 2011, pp. 1704-1705).

how abyssal exclusions in housing issues are formed: one could question if, in such circumstances, Romanies can ever receive adequate housing policies to avoid the emergence of illegalities. Furthermore, these institutional and structural patterns reinforce stereotypes of Romanies as an "illegal" and "isolated" minority instead of disclosing a historical process to be changed.

The alternatives provided by the government also offer signs of institutional racism. E.g., it informs that "two local social homes could provide five rooms each" and "several elderly persons could be housed in a third home" with no efforts to keep families together (§50); similarly, it sought alternative housing "in separate districts" to "avoid large concentrations of Roma" (§95). These options disrespect individual family and community ties while mirroring long-term policies to disperse Romanies (as in Chapter 1.2).

The ECtHR seems to know it deals with a special eviction involving a "disadvantaged" group and cites art.14 case law – specifically, D.H. and others v. Czech Republic (Yordanova v. Bulgaria, 2012, §129). Nevertheless, even in front of all racial discrimination signs obstructing housing rights for Romanies, the ECtHR, when discussing art.14, affirms that it cannot preview that "hypothetical future enforcement of the removal order would be discriminatory" (§147) or conclude that "authorities were unduly influenced" by "complaints from neighbors" (§148). However, this opinion only makes sense considering the refusal to give equal importance to the past acts related to the attempt of summary remotion, disregard of agreements with the community, presence of racist complaints, and indifference to the risk of homelessness (§155). This refusal resonates with a focus on the individual dimension of racism because, instead of taking the racist statements/claims (from officials and the population) as contextual elements indicating structural and institutional racism, the Court accepted as sufficient the existing domestic legislation on individual manifestations of racism (§160)[86].

Moreover, the exclusion of art.14 from the assessment impeded the deepening of the debate on substantive equality and positive obligations under art.8. When the ECtHR recognizes duties regarding "particularly vulnerable individuals," it cites Chapman v. UK referring to "positive obligation to facilitate the itinerant way of life" (§131). It continues by affirming that Romanies' "the disadvantaged position" should be considered to give them "status of persons in need of housing (…) for the available social dwellings on the same footing as others" (§132). So the ECtHR has an ambiguous opinion: in Chapman's case, it did not

[86] It almost equals the standard "beyond any reasonable doubt" applied in relation to the substantive limb of art. 2 of ECHR, as discussed in Chapter 2.3.4 (see Nachova's case).

concretely recognize positive obligations (and had a superficial debate on the "lifestyle", as discussed in Chapter 3.2); on the other hand, the Court only partially solves the immediate problem of homelessness resulting from the eviction whereas not observing housing cultural adequacy and ethnic/minority frameworks.

Although not being evicted because of the positive outcome under art.8, the applicants remain in a socio-legal limbo zone concerning security of tenure (which would imply in, e.g., regularization redressing illegality), access to public facilities, and cultural adequacy. Thus, they continue to be an easy target for insecurity, not for a competent policy.

Therefore, the assessment of art.14 could push further the collective approach and the advances achieved under art.8, keeping in mind the spaces discussed in chapter 2.3. The case's elements form a prima facie racial discrimination manifested indirectly - regarding the long-term toleration and effects of planning legislation on Romanies without adequate housing options. Signs of direct racial discrimination (due to the officials' and non-Romani declarations against Romanies) could help better contextualize Romanies' vulnerability/illegality into institutional and structural racism obstructing housing rights. Shifting the burden of proof would force the state to discuss its policy/omissions under racial markers. Moreover, narrowing the margin of appreciation would result in recognizing positive obligations to redress factual inequalities regarding housing beyond the necessity and proportionality test under art.8§2 in the individual case, expanding art.8 in light of international housing standards and substantive equality (also benefiting from the domestic framework).

3.5. A step back under art.8 and art.14: water and sanitation in Hudorovič and others v. Slovenia (2020)

Hudorovič and others v. Slovenia concerns two applications involving two Romani informal settlements claiming that they have been discriminated against in the access to water and sanitation. ECRI monitored the situation (ECRI, 2017a, pp. 6-7).

The first application (n. 24816/14) - Hudorovič's and his son's case – relates to the Goriča vas settlement in Ribnica Municipality, which has existed for more than 30 years. It is located on a public agricultural land near high voltage power lines, where no buildings are permitted (Hudorovič and others v. Slovenia, 2020, §9). Demolition orders were never executed since there were no housing alternatives (§10). There is no plumbing or sewage piping (§11). Local authorities affirm that the illegality of the settlement impedes access to public facilities

(§13). The government states that the first applicant (also the community's representative) refused resettlement in Lepovče partly because of conflicts between two Romani groups. However, there are controversies in this regard, as non-Romanies manifested against the measure (§§14,122).

Authorities installed in Goriča vas a water tank with a regular water supply by the fire brigade, and the community shared the related costs and bore chemical toilets expenses (§15-16,19). There are controversies about the installations' conditions: applicants affirm they became damaged due to mold, and the water froze in the winter (§§18,70), but the government contests it (§151). Another water source is a cemetery 1km distant (§21).

The second application (n. 25140/14) – Novak's and his 14 relatives' case – relates to the informal settlement in Dobruška vas 41 in Škocjan Municipality, formed when authorities removed the community from Novo Mesto in 1963 (§25). The lands belong to the Škocjan municipality and the Krka Agricultural Cooperative, and building is allowed under the environmental agency's approval since natural interest areas are implicated (§25). The municipality's spatial plan includes the development of a business zone in the lands, while there are no alternatives for the community's resettlement (§25). Demolition orders based on the illegality of settlement were not executed (§26), but criminal proceedings were started (§27). Because of conflicts with neighbors, the applicants moved 200m without access to water and sanitation or building permission (§28). The other water source is located 1.8 km away (§33).

The CoE's Commissioner of Human Rights perceives that, in 2016, authorities installed some cisterns as a precarious solution, which were not always filled; also, the water quality was not adequate, which affected children's social relations in school and caused difficulties in employment (§72). The Commissioner also gathered information on the lack of willingness of municipalities to solve the settlements' illegality and living conditions (§73).

Despite the illegality of the settlement, local and state authorities decided to build a water distribution system to which individual connections could be made at residents' costs, and a "local commission on Roma issues" would mediate the question of water bills (§29). Applicants say neighbors impeded the installation of the individual connections; the government affirms they could do it through the road, although the applicants submit that the latter option was never presented (§32). The government also states that the applicants did not check if the individual connection was possible in the new place they moved to (§§28,32). Some applicants receive social benefits (§35).

Municipalities in both applications did not take sanitation measures (§157).

The Court identifies, besides international/regional standards and reports on water/sanitation (§§52-74), domestic legislation providing for the consideration of Romanies in spatial plans and other programs, based on the government's acknowledgment of Romanies' needs and historical lack of policies regarding informal settlements and utilities (e.g., §§48,50,130). Moreover, it recognizes that some local authorities have not observed the mentioned legislation, hence preventing legalization/development of Romani settlements or other housing policies (§51); on the other hand, it cites information from ECRI about municipalities that have provided access to piped water by waiving the requirement of prior legalization (§67).

The ECtHR's decision was the first case under art.8 about the right to access water and sanitation when the applicant cannot connect to the public system (Pouikli, 2020, pp. 352-353). The Court analyzed the case under private/family life and home and focused on corresponding positive obligations rather than in the test under art.8§2. It reinforces that art.8 does not entail the obligation to provide home or water but accepts that long-term lack of access to water affects private life and home and triggers positive obligations in specific circumstances (Hudorovic v. Slovenia, 2020,§§114-116). In this sense, it affirms that Romanies' vulnerability requires assistance to allow them "the same right as the majority" and cites art.14 case-law (§142).

However, by five votes to two, the ECtHR, satisfied with the measures taken by the government, concludes there is no violation of art.8 because (§158): 1) the applicants received social benefits that could be used to improve their conditions; 2) the states have a wide margin of appreciation in housing policies; 3) the applicants did not prove detrimental consequences to health and dignity (as core elements of art.8) from the state's measures shortcomings. The Court also mentions the "progressive nature of the development of water supply system" (§146). Moreover, the ECtHR states that the applicants, in the context of "the limited access to sanitation" in both municipalities, did not prove that their situations "were accorded less importance" (§157), thus being ambiguous about the corresponding positive obligations and not finding a violation of art.8 in this regard. Finally, the Court unanimously concluded there was no breach of art.14 and referred to its findings under art.8 (§162).

From a racial discrimination perspective, in light of Section 1, it is possible to identify shortcomings in the judgment by reflecting on how the Court considers sociological elements in the case that point to racial discrimination. First, the socio-historical aspects of the case and

the dissenting opinion are debated, then details in the ECtHR's assessment under arts. 8 and 14 are addressed.

In both applications, the informality of the settlements is the crucial element resonating with what was discussed in Chapter 1.2, pointing to institutional and structural racism historically pushing Romanies to illegality/segregation and impeding access to full housing rights. Besides the absence of specific data about Slovenia[87], it is revealed when the government assumes the lack of housing options to execute demolition orders (§128) and the omission, for decades, regarding control and regulation of settlements (§50). It is disclosed in the state's active role in creating the second application's settlement and later plans for a business area with no housing strategy for Romanies (§25). The manifestations against Romanies' resettlement in the first application (§122) also demonstrate it. Moreover, the informality of settlements and the consequent non-access to basic facilities – the two levels of vulnerability in Hudorovič -, instead of critically located in *de facto* inequality resulting from long-term state measures/omissions, are used as the government's justifications for not providing such public facilities, reproducing institutional racism.

Additionally, the government's approach concerning informality of the settlements has two consequences: it reinforces stereotypes of Romanies as "illegal seeking for exemptions" (as in Chapman v. UK) and enables the higher tolerance of the ECtHR with the precarious solutions provided "notwithstanding the irregular status of their settlements" (§156).

On the other hand, Judge Pavli's dissenting opinion, joined by judge Kuris, gives insights into discrimination aspects. Referring to the first application, it considers the case "a tale" of Romani and non-Romani communities in which only the former does not have water (Hudorovič and others v. Slovenia, 2020, dissenting opinion, §17). Plus, it identifies "de facto discrimination" that "may have contributed" to the situation (§21). It also notices "good reasons for rejecting strict formality justifications in this context" as a matter of "historical fairness (…) since Roma communities (…) may not have had a genuine choice in settling in certain informal locations" (§14). Indeed, the dissenting opinion gives elements for criticizing the formal equality and liberal concept of agency underlying the majority's approach and introduces

[87] Still, see Special Rapporteur's findings (Hudorovič and Others v. Slovenia, 2020, §§57ff.) and ERRC's research about European countries (§§135ff.), stressing similarities of racial segregation in eastern Europe.

substantive equality aspects by looking at the socio-historical context. Nevertheless, it finds unnecessary to include art.14 (§21).

The majority's assessment has a similar contradiction. It touches on equality matters when 1) it refers to art.14 case-law on the need for special assistance to correct factual inequalities (Hudorovic and others v. Slovenia, 2020, §142); 2) detects domestic programs for legalization of settlements and access to facilities; and 3) recognizes that "such legislation" – the domestic framework providing access to facilities only for legal residents (see §145) – "could produce disproportionate effects" on Romanies as "similarly to the applicants, they live in illegal settlements and rely on social benefits" (§147). The Court could further recognize indirect racial discrimination resulting from the state's policy. However, the ECtHR refuses to find a violation of art.14 because it dealt with positive obligations regarding vulnerable groups in art.8 (§§161-162).

Indeed, the ECtHR inverts the view above under art.8, resonating with the approach in Chapman v. UK. Firstly, when it affirms the applicants could use their social benefits for improving their conditions (§158), it applies the same individualistic formal equality and liberal idea of agency views while accepting that the state has dealt with applicants' situation by providing social benefits that could allow them to live somewhere else (§149). And, despite the unclearness about better housing alternatives, the ECtHR concludes the applicants remained in the settlements "by choice" (§148). Furthermore, as it mentions Romanies' lifestyle and specific needs (§107) without a consistent assessment in this regard, it does not consider racial and ethnic aspects interfering with their choices – e.g., the importance of community ties for identity (as indicated in the dissenting opinion in footnote n.3[88]) and for protection in a racist environment. Surely, there is a contradiction between addressing the individual case – in which the social benefits and the supposed liberty of choice plays a role - and the acceptance, at least partially, by the government and the ECtHR, of the social, legal, and historical process that led to that situation.

Secondly, when reinforcing the wide margin of appreciation in housing matters (§158) despite the alleged controversy about shortcomings of the solutions, the Court assumes that the authorities' measures were sufficient due to the "progressive nature of the development of a public water supply system" (§146). Nonetheless, since the ECtHR acknowledged the domestic strategies targeting Romanies' settlements in spatial and facilities policies (e.g.,§§

[88] As in Yordanova and Others v. Bulgaria (2012, §105).

48,50,51,67,130,147), the question, from a racial discrimination perspective, should concern why local authorities were not applying such standards. Here, hand in hand with the recognition of indirect racial discrimination (as exposed previously), there are elements to suspect direct racial discrimination in comparison to other municipalities that had applied positive measures (see Special Rapporteur in this sense in §61, and ERRC's position in §138). However, by keeping a wide margin of appreciation under art.8 taken alone and parallelly putting a high burden of proof on the applicants regarding "whether the municipal authorities (…) deprioritized their interests" in the regulation of their settlements and access to water in favor of other, less urgent, measures" (§155), the ECtHR does not enter into the racial debate.

Therefore, the ECtHR's assessment under art.8 does not enable touching an abyssal exclusion: there are long-term institutional and structural racism patterns pushing Romanies to informality/legality and vulnerability, in which they can never claim full housing rights, not to say water/sanitation; and, if any precarious solution is implemented, they are justified by their illegality and a wide margin of appreciation.

If art.14 was conjointly read with art.8, considering the spaces explored in Chapter 2.3 and the repertoire on racial discrimination (Chapter 1.3), the illegality of settlements, and the historical lack of access to water/sanitation, would be situated in the broader context of institutional and structural racism generating such vulnerabilities. Thus, it would be possible to identify *prima facie* indirect racial discrimination flowing from the disproportionate effect of domestic legislation/policy on spatial planning and facilities, and direct racial discrimination in the omission of local authorities in observing the domestic framework targeting Romanies' needs. Consequently, shifting the burden of proof would force the state to scrutinize authorities' decisions from a racial perspective. Finally, narrowing the margin of appreciation could enable the recognition of positive obligations to target factual inequalities regarding illegality and access to water/sanitation, benefiting from the existing domestic legislation on Romanies and international housing standards from a substantive equality perspective.

3.6. Appreciation

This chapter overviews the trends in the decisions discussed in Section 3. Firstly, it presents the development of ECtHR decisions under art.8, pointing to some advances and

constraints. Secondly, it exposes the limitations in the debate on racial discrimination and their repercussion in the legal assessment.

As regards the scope of art.8, there were no difficulties for the Court in accepting housing rights cases, but it presented different nuances. For example, in Chapman v. UK and other similar cases in Chapter 3.2, as in Connor's v. UK, Yordanova and Others v. Bulgaria, and Hudorovič and others v. Slovenia, the ECtHR considered conjointly private and family life and home. In Buckley's case, though, the majority considered "home" alone, and the dissenting opinion pointed to discrimination aspects showing links between home and private/family life. In Hirtu and others v. France, the exclusion of "home" revealed another layer of racial discrimination regarding housing and migration (with reference to the constant movement of Romani migrants due to the lack of options).

A second strong trend under art.8 was the wide margin of appreciation given to the states in the socio-economic field, resulting in the non-imposition of concrete positive obligations concerning housing policies targeting Romanies and resistance in evaluating legislation and policies as a whole. This trend is evident in Chapman v. UK and the other cases in Chapter 3.2 – where the ECtHR did not recognize any positive obligations - and in Hudorovič and others v. Slovenia – where the supposed recognition of positive obligations faces the ECtHR's tolerance with the precarious solutions. On the other hand, in most cases (except Hudorovič), the focus is identified on the test of necessity and proportionality under art.8§2. In this trend, art.8 becomes the realm of an individualistic approach intertwined with liberal agency and formal equality ideas. Still, within these tendencies, a gradation in the ECtHR's assessment under art.8 is perceived

At the first level of this gradient, where no breach of art.8 is found, is Chapman v. UK and similar cases in Chapter 3.2 - which mainly reproduce the findings of Buckley v. UK. The ECtHR notes Romanies' vulnerability/special needs and corresponding positive obligations; however, its assessment of procedural safeguards and necessity/proportionality test under art.8§2 is embedded by an individualistic approach, permeated by formal equality and liberal agency ideas, which makes void the Court's reference to vulnerabilities, special needs, and positive obligations. Instead of disclosing how racial discrimination obstructs the exercise of housing rights, such categories keep art.8 too restrictive to deal with the complex exclusion of Romanies. Noting these shortcomings in Chapman's and similar cases is crucial to demystify

its citations in the later case law since they are not good examples of considering these categories because they lack due examination of racial discrimination.

Hudorovič and others v. Slovenia, in turn, deal with two layers of exclusion. The first layer is the informality of the settlements systematically impeding access to water/sanitation. The second layer concerns whether the Court would recognize, under art.8, corresponding obligations regarding these facilities. The ECtHR, at least theoretically, recognizes them. Nonetheless, as the Court accepts the precarious measures while placing a questionable burden on the applicants to prove their shortcomings, it does not explore all spaces in art.8 for housing rights. For this task, the Court would need to address the informality of settlement and better scrutinize why local authorities were not observing legal possibilities to target Romanies' needs. In other words, the ECtHR needed to address the racial discrimination underlying the situation. However, the Court has a similar approach to art.8 as in Chapman, despite the advanced Slovenia legislation.

At the second level of the gradient, the cases dealing directly with eviction orders are situated – namely, Connors v. UK, Yordanova and others v. Bulgaria, and Hirtu and Others v. France. When assessing art.8§2, the ECtHR is more attentive to the complexities of the social-legal context. For instance, in Connors v. UK, the Court noticed the increasing settlement of Romanies in Gypsy sites and the detrimental consequences to security of tenure; therefore, it has better scrutiny of the procedural safeguards and the proportionality of the eviction order. This procedural assessment resonates with Yordanova and Hirtu: in both, the Court observes the lack of proportionality of eviction in the face of state omissions and defects in the procedural safeguards while a due proportionality assessment was impeded.

In this sense, at the second level, some minimum core positive obligations are recognized, thanks to a narrowing in the margin of appreciation and a strict evaluation of proportionality under art.8§2 considering vulnerability. This evaluation corroborated the duty to provide alternative accommodation according to domestic legislation. Additionally, it aligns with the international standards on eviction and housing. This trend is more evident in Yordanova and Hirtu and finds its peak in the former.

Yordanova and others v. Bulgaria is unique for several reasons. Firstly, when discussing the scope of art.8, the ECtHR distanced from an individual approach to acknowledge the collective aspect in the conjoint interpretation of the right to private/family life and home, pointing to Romanies' community ties. Secondly, the Court touches on the long-term toleration

concerning the informal settlement and the absence of other solutions besides simply evicting hundreds of people. Thirdly, the ECtHR sets more specific general measures imposing changes in the legislation to guarantee a better assessment of aims and proportionality in eviction orders. Fourthly, this socio-collective view appeared to be pushed by the political pressure from European Parliament and a different tone in the Romani's agency (marked by the community's organization and varied strategies, e.g., before the ECSR).

Yordanova and Hirtu deal with situations where a collective tragedy is evident, differently from Chapman v. UK and similar cases - in which the individualistic approach to individual planning permission was more likely to occur, cushioning the racial tension regarding Romanies' housing difficulties. In Yordanova, though, it was impossible to absorb all the pressures of Romanies' racialized position through an individualistic perspective. On the other hand, in Hirtu, the ECtHR did not address the right to respect for "home"; hence, it absorbs a more significant part of the social tension, as housing vulnerabilities involving racial and migration matters are not redressed.

At the second level, the Court reaches the urgent need related to the eviction as a result of a more contextualized understanding of Romanies' vulnerabilities. Nevertheless, it does not further neutralize the racial discrimination patterns generating these vulnerabilities, as it does not touch on why Romanies become an easy target for eviction and what corroborates tenure insecurity and impediments to other housing rights. On the other hand, at the first level, any of the applicants' needs are considered - not only because the Court reinforces the wide margin of appreciation in the socio-economic field, but also by reason of not dealing with the socio-institutional dynamics impeding access to adequate housing. At both levels, reaching the roots of Romanies' housing vulnerabilities would require the assessment of racial discrimination, which does not occur. In other words, housing-related rights may remain trickery without naming and redressing racial discrimination.

No violation of art.14 is recognized at the first level, while a more robust individualistic and formal equality approach is present. At the second level, where a positive outcome under art.8 takes place, the ECtHR states there are no issues under art.14. This tendency resonates with the partial solution of the urgent problem (the eviction), which somehow covers the need to engage with racial discrimination. However, facts and reasonings, as in dissenting opinions, enable the identification of, at least, prima facie racial discrimination.

In Chapman v. UK and similar cases in Chapter 3.2, as in Buckley v. UK, disproportionate effects on Romanies of policies (Gypsy Camps and planning legislation) shaping indirect – or even direct[89] – racial discrimination interfering with housing rights are found. The abyssal exclusion here consists of the fact that, whether nomadic or settled, Romanies are always in a disadvantaged situation; historical institutional and structural racism infiltrated in spatial policies generating these limbo zones remain untouched.

Connor's v. UK shows another layer of this exclusion as it exposes the shortcomings of Gypsy Camp legislation and the growing settlement of Romanies in Gypsy camps, with detrimental consequences on the security of tenure and living conditions.

Hirtu and Others v. France disclose the disproportionate effect of "travelers" legislation on Romani migrants, revealing indirect racial discrimination. Within institutional and structural racism, the abyss here consists of Romanies as "travelers" not being able to claim "respect for home" and consistent policy in this sense; and, as sedentary, also being impeded to access housing policies. In any case, the situation pushes Romanies to illegality, as in the previous cases above.

Yordanova and Others v. Bulgaria presents racism in true colors. The facts picture historical institutional and structural racism embedded in the formation of the informal settlement, and indirect racial discrimination can be identified in the disproportionate effect of planning policies on Romanies, pushing them to illegality and insecurity of tenure. Scenes of direct discrimination (related to population and officials' declarations) leave no doubt about the racist context. The illegality of the settlement is central in the abyssal exclusion: as Romanies are illegal, they do not enjoy any security of tenure (but at best toleration); their systematically disadvantaged situation generating such illegality is never addressed. They may not be evicted but remain in a socio-legal limbo, as in many other settlements.

Finally, Hudorovič and Others v. Slovenia involves a similar situation of racial discrimination involving informal settlements, with an additional complexity concerning access to basic facilities. Indirect racial discrimination deals with the disproportionate effect on Romanies of the legislation determining legalization as a prerequisite for accessing water/sanitation, with the underlying racial discrimination generating the settlements' informality and historical state's omissions. There were signs of direct discrimination in the

[89] As in dissenting opinion in Buckley's case.

population's and authorities' acts, highlighting institutional and structural racism. All these aspects define this abyssal zone: the constant Romanies' disadvantaged position to claim housing rights, even in a country with legislation and practices targeting Romanies' housing needs. So the question remained of why local authorities were not applying this framework, which would touch on discrimination matters.

Additionally, these racial patterns and the resistance to redress them clearly in the judgments corroborate Romanies' stereotypes. The most recurring is the one of Romanies as an outlaw, illegal: Romanies are illegally in their lands (Chapman v. UK and similar cases in Chapters 3.2, and Buckley's v. UK); Romanies are in informal/illegal settlements/camps (Yordanova's, Hirtu's and Hudorovič's cases); in such informality/illegality, they cannot have access to housing options or facilities (mainly in Hudorovič). Then, if they claim housing rights under art.8, it seems they seek exemptions (Farget, 2012). Other stereotypes picture Romanies as public health or public order problems (as in Hirtu), as persons jeopardizing the landscape (Chapman v. UK), or as "not civilized" (as in Yordanova). At the core of such stereotypes is the belief that these aspects are Romanies' characteristics and not a matter of how historical processes shape such racialized position. Thus, these stereotypes, at the legal discussion in the cases – mainly in the government's justifications under art.8§2 - cover racial discrimination matters.

Despite the signs above and the legal spaces to deal with racial discrimination and housing investigated in Section 2, the ECtHR opts not to deal with such matters. At best, it only suspects it is dealing with a particular situation: it refers to lifestyle, vulnerabilities, special needs, and positive obligations (in theory) regarding Romanies (in all cases); it cites art.14 case-law to redress factual inequalities (in Yordanova's and Hudorovič's cases); it considers, although not wholly, the broader social context and its complexities within better scrutiny of art.8§2 in the second level of the decisions' gradient. Nevertheless, it does not further debate art.14. Therefore, concepts of vulnerability, lifestyle, positive obligations, and special needs cover instead of revealing racial discrimination and giving space for further substantive equality claims.

Consequently, the ECtHR loses the opportunity to contribute to a deeper substantive equality debate for housing matters involving Romanies and does not reach the point of determining possible general measures in this sense. And the dynamics identified in the cases demonstrate that the acknowledgment of racial discrimination should be the first step to

grasping structural and institutional models that need to be changed while considering housing and ethnic/minority standards.

Conclusion and recommendations

This thesis started by discussing, in Section 1, why recognizing Romanies as a racialized group was pivotal to understanding the exclusion mechanisms regarding housing rights due to historical patterns of racism shaping spatial policies. Additionally, the sociological and legal repertoire to address racial discrimination was presented, culminating in the notions of indirect/direct discrimination and the individual, institutional and structural concepts of racism. Subsequently, Section 2 aimed at identifying spaces for housing and discrimination under arts.8 and 14 of ECHR. Being the research question of whether considering racial discrimination in housing cases involving Romanies could contribute to the outcome, Section 3, by analyzing the mentioned cases, distinguished elements pointing to racial discrimination and indicates patterns in the ECtHR's assessment. Lastly, some trends hindering a deeper discussion on racial discrimination were found, despite some advances in part of the decisions under art.8.

Concisely, the Court has opted not to redress racial discrimination in all cases - by whether not finding a violation of art.14 in the first level of the decisions' gradient under art.8, where no violation of the latter was found[90], or affirming there were no issues under art.14 in the second level if the gradient, where the Court recognized a breach of art.8[91].

The mechanisms enabling these outcomes were characterized by an individualistic and a formal equality approach hindering a broader comprehension of the social-legal patterns generating Romanies'exclusions affecting housing rights (consequently, rights under art.8). In these mechanisms, notions that could allow dealing with Romanies' specificities – such as lifestyle, vulnerability, positive obligations regarding special needs – remained void. This approach was partially eased in the second level of the gradient, in which the Court widened its gaze to grasp some social-legal important elements and started to give another view on Romanies' vulnerability, mainly giving it more weight in the test under art.8§2. Still, at both levels, as the Court does not redress racial discrimination, Romanies continue to be in a disadvantaged position to claim full housing rights; they, in short, remain in an abyss.

My conclusion, considering the discussions in Sections 1 and 2 and the cases in Section 3, is that the shortcomings regarding racial discrimination and housing rights were not a matter

[90] Chapman v. UK and other cases in Chapter 3.2, Buckley v. UK, Hudorovič and Others v. Slovenia.
[91] Connors v. UK, Yordanova and Others v. Bulgaria, Hirtu and Others v. France.

of a legal impossibility or a lack of factual elements to permit art.14 to come to the assessment and change the evaluation of art.8 for a better outcome for the applicants. Instead, it was a question of approach. By restricting the discussions under art.8, the Court was more likely to reinforce limitations in its jurisprudence related to positive obligations and the test under art.8§2 concerning social rights. And, by refusing to redress discrimination, it does not take into account all tensions and complexities that the word "race" in art.14 – and racial discrimination – would implicate to see institutional and structural patterns hindering housing rights. Consequently, no possibility of pushing further the boundaries of art.8 toward substantive equality, benefiting from housing rights standards. Section 2, especially Chapter 2.3, highlighted important hints in the case law, dissenting opinions, and commentaries, indicating that a conjoint reading of art.14 and the substantive article could similarly change the assessment of art.8 using the factual elements of the cases and an approach allowing the identification of racial problems and substantive equality claims.

That being said, a question remains of how to apply the lessons learned from the analysis of Romani housing cases. Hence, with no intention to be exhaustive but mention points for a debate, I share some recommendations considering the judicial space of a Human Rights court.

Recommendations

Firstly, an interdisciplinary view allowing a sociological perspective on race is vital for recognizing racial discrimination. Therefore, involving art.14 in the legal assessment is crucial when dealing with racialized groups, such as Romanies. Hence, when a case like the ones studied in this thesis knocks on the ECtHR's door, it is art.14, together with the relevant substantive article, that should open it. This direction is not only legally possible but desirable to deal with structural exclusions. The ECtHR has already pointed to this path, which should be further developed to strengthen racialized equality lens on the substantive article. Therefore, it would be possible to expand the legal boundaries of the latter by, primarily, naming the problem – meaning, acknowledging the racial discrimination elements arising from the case – and, secondly, indicating positive obligations accordingly.

Still, this expansion is not expected to be an automatic conclusion in a judgment because, in a judicial procedure, parties and judges are disputing not only legal concepts but theories on how to interpret and adjust facts in these legal spaces. Additionally, it is important to notice that the parties are in different power positions in this dispute. These issues, as seen in Section 3, were underlying all cases. For this reason, it is necessary to think of which

mechanisms could trigger a deeper discussion of racial discrimination, allowing notions like "vulnerability", "special needs", "lifestyle", and so on – to use the terms commonly adopted to refer to Romanies – to be taken seriously, turning our gaze to the complexities implicated in the reality and in the judgment process itself. That leads, in my view, to a central question under art.14: the shift of the burden of proof and the importance of having a theoretical framework to identify *prima facie* racial discrimination.

States usually do not evaluate racial markers both in the conception and in the effects of their laws and policies. From an anti-discriminatory Human Rights perspective, acknowledging racial elements in assessing its practices should be considered a state's primary task. Then, when a case like those studied in this thesis comes to a Human Rights Court, and as long as there is a racial lens sensitive to see discrimination evidence, there should be a space for the state to engage in a more profound debate about its measures.

Once art.14 comes to the assessment and prima facie evidence of racial discrimination arises, shifting the burden of proof on the state could give it a chance – and force it - to make scrutiny of its practices under racial markers. Hopefully, this could open a new field of discussion to allow the Court to recognize important aspects of the concrete situation in a broader, collective, and social perspective on housing rights. It may be, for sure, a challenging task that may not be finished in the judicial environment. Nonetheless, as I take the judicial procedures as legal and epistemological spaces, they can start a pedagogic reflection on the need to manage racial markers and take into account substantive equality claims.

A shift in the burden of proof could also allow the ECtHR to have more elements to go further in imposing specific and general measures. One can argue that a Court is not an adequate place to discuss legislation and policy. However, there is a space to be occupied by a Human Rights Court when a violation of Human Rights occurs. And recognizing a violation of Human Rights in the realm of racial discrimination implicates comprehending the racial processes that engender vulnerabilities and pointing out ways to rupture such dynamics, therefore putting the expected pressure on the states for it.

Lastly, I highlight the underlying belief permeating this thesis, agreeing with Rios et al. (2017, p. 137): Human Rights are not a result of abstract thoughts or norms but from concrete practices of several actors – from scholarly to social movements, from executive to judiciary organs and international organizations – that dispute world views and responses under certain historical circumstances. Hence, the existing interpretations linked with a given legal practice

cannot be taken for granted, but as a process of learning with limitations and being compromised with transformation.

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Sejdić and Finci v. Bosnia and Herzegovina, app. 27996/06 and 34836/06 (European Court of Human Rights - Grand Chamber, December 22, 2009).

Sidabras and Dziautas v. Lithuania, Apps. 55480/00 and 59330/00 (European Court of Human Rights - Second Section, July 27, 2004).

Sidjimov v. Bulgaria, app. *55057/00 (*European Court of Human Rights – First Section, January 27, 2005)

Škorjanec v. Croatia, App. 25536/14 (European Court of Human Rights - Second Section, March 28, 2017).

Stanková v. Slovakia, app. 7205/02 (European Court of Human Rights - Fourth Section, March 31, 2008).

Stec and others v. United Kingdom, App. 65731/01 and 65900/01 (European Court of Human Rights - Grand Chamber, April 12, 2006).

Stefanou v. Greece, app. 2954/07 *(*European Court of Human Rights – First Section, April 22, 2010)

Stoica v. Romania, app. 42722/02 (European Court of Human Rights – Third Section, March 4, 2008)

Sulejmanov v. the Former Yugoslav Republic of Macedonia, app. 69875/01 (European Court of Human Rights – Fifth Section, April 24, 2008)

Talpis v. Italy, app. 41237/14 (European Court of Human Rights - First Section, March 2, 2017).

Tanase and others v. Romania, app. 62954/00 (European Court of Human Rights - Third Section May 26, 2009).

Thlimenos v. Greece, App. 34369/97 (European Court of Human Rights - Grand Chamber, April 6, 2000).

Timishev v. Russia, Apps. 55762/00 and 55974/00 (European Court of Human Rights – Second Section, December 13, 2005).

Tyrer v. United Kingdom, App. 5856/72 (European Court of Human Rights – Chamber, April 25, 1978).

Vasil Sashov Petrov v. Bulgaria, App. 63106/00 (European Court of Human Rights - Fifth Section, June 10, 2010)

V.C. v. Slovakia (European Court of Human Rights - Former Section IV, November 8, 2011).

Volodina v. Russia n. 2, app. 40419/19 (European Court of Human Rights - Third Section, September 14, 2021).

Vona v. Hungary, app. 35943/10 (European Court of Human Rights - Second Section, July 9, 2013).

X and Y v. North Macedonia, app. 173/17 (European Court of Human Rights – Fifth Section, November 5, 2020)

Yordanova and others v. Bulgaria, app. 25446/06 (European Court of Human Rights - Fourth Section, April 24, 2012).

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Annex 1

List of cases involving Romanies referred to in Chapter 3.1:

case	country	date of the final judgment	organ of final judgment	issue	outcome
BUCKLEY V. UK (PS: the first case about Romanies in the ECtHR; before FCNM and Prot. n.11).	UK	29.09.1996	Chamber	housing in caravan without planning permission.	6x3: no violation of art. 8; 8x1: no violation of art. 14 + art. 8
CASE OF ASSENOV AND OTHERS v. BULGARIA	Bulgaria	28.10.1998	Chamber	police violence	8x1- no violation of art. 3 (substantive). Unanimously: violation of art. 3 (procedural limb), no violation of art.6 §1, violation of art. 13. 8x1: no violation of art. 3 (conditions in detention). Unanimously: no violation of art. 5 §1, violation of art. 5 §3, violation of art. 5 §4, violation of art. 25 §1
CASE OF BEARD V. UK	UK	18.01.2001	Grand Chamber	housing in caravan without planning permission.	10x7: no violation of art. 8. Unanimously: no violation of art. 14
CASE OF COSTER v. UK	UK	18.01.2001	Grand Chamber	housing in caravan without planning permission.	10x7: no violation of art. 8. Unanimously: no violation of art. 1 Prot. n. 1, art. 2 Prot. n. 1, art. 14

CASE OF JANE SMITH v. UK	UK	18.01.2001	Grand Chamber	housing in caravan without planning permission.	10 x 7: no violation of art. 8. Unanimously: no violation of art. 1 Prot. n.1, art. 2 Prot. n. 1, art. 6, art. 14
CASE OF CHAPMAN v. UK	UK	18.01.2001	Grand Chamber	housing in caravan without planning permission	10 x 7: no violation of art. 8. Unanimously: no violation of art. 1 Prot. n. 1, art. 6, art. 14
CASE OF LEE v. UK	UK	18.01.2001	Grand Chamber	housing in caravan, planning permission	10x7 no violation of art. 8. Unanimously: no violation of art. 1 Prot. n. 1, art. 2 Prot. n. 1, art. 14.
CASE OF ČONKA v. BELGIUM	Belgium	05.02.2002	Third Section	asylum	Unanimously: violation of art. 5 §§1,2,4. 4x3: no violation of art. 4 Prot. n. 4. Unanimously: no violation of art. 13+art.3 and art. 13+Prot. n.4
CASE OF ANGELOVA V. BULGARIA	Bulgaria	13.06.2002	First Section	police violence	Unanimously: violation of art. 2 (substantive and procedural); violation of art. 3; violation of art. 5; violation of art. 13. 6x1: no violation of art. 14
CONNORS v. UK	UK	27.05.2004	First Section	housing in caravan without planning permission.	Unanimously: violation of art. 8; no issues under art. 14 or under art. 1 Prot. n. 1 or art. 6 or art. 13
CASE OF BALOGH v. HUNGARY	Hungary	20.07.2004	Second Section	police violence	4x3: no violation of art. 3. Unanimously: no violation of art. 13 or 6 or arts. 14+3+13
CASE OF MOLNÁR v. HUNGARY	Hungary	05.10.2004	Second Section	fair trial, discussion of a sale contract	Unanimously: violation of art. 6 §1
CASE OF SIDJIMOV v. BULGARIA	Bulgaria	27.01.2005	First Section	fair trial in a criminal proceeding against the applicant	Unanimously: violation of art. 6§1 and art. 13+art.6§1

CASE OF NACHOVA AND OTHERS V. BULGARIA	Bulgaria	06.07.2005	Grand Chamber	police violence	Grand Chamber analyzed all the articles again. Unanimously: violation of art. 2 (substantive and procedural) and no issues under art. 13. 11 x 6: no violation of art. 14+art. 2 (substantive) to one fact. Unanimously: violation of art. 14 + art. 2 (procedural)
CASE OF MOLDOVAN AND OTHERS v. ROMANIA (No. 1)	Romania	05.07.2005	former Second Section	destruction in a riot, hatred	Friendly settlement including damages and general measures by the government, but seven applicants went on with the case. The government recognized "problems" under the arts. 3, 6, 8, 14.
CASE OF MOLDOVAN AND OTHERS v. ROMANIA (No. 2) -	Romania	12.07.2005	former Second Section	destruction in a riot, hatred	Unanimously: violation of art. 8, art. 3, art. 6 §1(length of proceeding), art. 14 +3+8. 5x2: no violation of art. 6§1(denial of access to court)
CASE OF BEKOS AND KOUTROPOULOS v. GREECE	Greece	13.12.2005	Fourth Section	police violence	Unanimously: violation of art. 3 (substantive and procedural); no issues under art. 13; no violation of art. 14+art. 3 (substantive); violation of art. 14+3 (procedural)
CASE OF OGNYANOVA AND CHOBAN v. BULGARIA	Bulgaria	23.02.2006	First Section	police violence	Unanimously: violation of art. 2 (substantive and procedural); violation of art. 3; violation of art. 5§1; violation of art.13; no violation of art. 14

CASE OF BORISOVA v. BULGARIA	Bulgaria	21.12.2006	Fifth Section	police violence, fair trial	Unanimously: violation of art. 6 §§1, 3 “a”, “b”, “d”
CASE OF JASAR v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	ex-Yugoslav Rep. Macedonia	15.02.2007	Third Section	police violence	Unanimously: violation of art. 3 (procedural); no need to examine art. 13
CASE OF KALANYOS AND OTHERS v. ROMANIA	Romania	26.04.2007	Third Section	prosecution of those who destroyed Romanies houses, violence against Romanies, hatred	the government recognized violation of arts. 3,6,8,13, and 14, and proposed measures; the Court STRIKES OUT OF THE LIST. Settlement - Measures by the government in the MOLDOVAN CASE under the monitoring of the Committee of Ministers
CASE OF GERGELY v. ROMANIA	Romania	26.04.2007	Third Section	prosecution of those who destroyed Romanies houses, violence against Romanies, hatred	the government recognized violation of arts. 3,6,8,13,and 14, and proposed measures; the Court STRIKES OUT OF THE LIST. Settlement - Measures by the government in the MOLDOVAN CASE under the monitoring of the Committee of Ministers

CASE OF KONSTATINOV v. THE NETHERLANDS	The Netherlands	26.04.2007	Third Section	immigration, residence permit to stay with husband	Unanimously: no violation of art. 8
CASE OF ŠEČIĆ v. CROATIA	Croatia	31.05.2007	First Section	obligation to investigate violence - skin head group, hatred)	Unanimously: violation of art. 3 (procedural); no issues under art.8 or art. 13; violation of art. 14 +art. 3 (investigate racist motivation)
CASE OF COBZARU v. ROMANIA	Romania	26.07.2007	Third Section	police violence	Unanimously: violation of art. 3 (substantive and procedural) and art. 13 and art. 14+art. 3+art.13 (procedural limb)
CASE OF ANGELOVA AND ILIEV v. BULGARIA	Bulgaria	26.07.2007	Fifth Section	investigation of violence for racial reasons	Unanimously: violation of art. 2 (procedural); no issues under art. 3 and 13; violation of art. 14 +art. 2 (procedural); no separate issues under art. 14+ art. 3
CASE OF DH AND OTHERS V. CZECH REPUBLIC	Czech Republic	13.11.2007	Grand Chamber	education - placed in disabled people's schools	13 x 4: violation of art. 14 + art. 2 Prot. n. 1
CASE OF PETROPOULOU-TSAKIRIS v. GREECE	Greece	06.12.2007	First Section	police violence	6x1: no violation of art. 3 (substantive); violation of art. 3 (procedural); no need to examine art. 13; violation of art. 14+3

CASE OF STOICA v. ROMANIA	Romania	04.08.2008	Third Section	police violence	Unanimously: violation of art. 3 (substantive and procedural), no violation of art. 13; violation of art. 14 +art.3; no need to examine art. 13 alone or with art. 14
CASE OF DZELADINOV AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	ex-Yugoslav Rep. Macedonia	10.04.2008	Fifth Section	police violence	Unanimously: no violation of art. 3 (substantive), violation of art. 3 (procedural), no need to examine art. 13
CASE OF SULEJMANOV v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	ex-Yugoslav Rep. Macedonia	24.04.2008	Fifth Section	police violence	Unanimously: no violation of art. 3 (substantive), violation of art. 3 (procedural), no need to examine art. 13
CASE OF SAMPANIS AN D OTHERS v. GREECE	Greece	05.06.2008	First Section	education, acceptance of new Romanies students	Unanimously: violation of art. 14 + art. 2 Prot. n. 1; no need to examine art. 13
CASE OF K.H. AND OTHERS v. SLOVAKIA	Slovakia	28.04.2009	Fourth Section	possible sterilization; access to hospital files denied	Unanimously: violation of art. 8; no violation of art. 13; no need to examine art. 13+art.6. 6x1: violation of art. 6§1

CASE OF TANASE AND OTHERS V. ROMANIA	Romania	26.05.2009	Third Section	racial violence, burning of Romanies houses. Hatred	The government recognized the violation of arts. 3,6,8,13, and 14 and proposed measures; the Court STRIKES OUT THE CASE FROM THE LIST, referring to other cases with a settlement under the monitoring of the Committee of Ministers
CASE OF BEGANOVIĆ v. CROATIA	Croatia	25.06.2009	First Section	racial violence, hatred	Unanimously: violation of art. 3, no need to examine art. 13, no violation of art. 14 + art. 3
CASE OF MUÑOZ DÍAZ v. SPAIN	Spain	08.12.2009	Third Section	recognition of Romanies marriage	6x1: violation of art. 14 + art. 1 Prot. n. 1
CASE OF SEJDIĆ AND FINCI v. BOSNIA AND HERZEGOVINA	Bosnia and Herzego vina	22.12.2009	Grand Chamber	exclusion from elections on the grounds of one applicant being Romanies and the other being Jew	14 x 3: violation of art. 14 +art. 3 of Prot. n. 1; no need to examine art. 3 Prot. n. 1 taken alone or with art. 1 of Prot. n. 12, regarding elections to House of Peoples. 16x1: regarding presidential elections, violation of art. 1 of Prot. n. 12
CASE OF ORŠUŠ AND OTHERS v. CROATIA	Croatia	16.03.2010	Grand Chamber	education (segregation)	Unanimously: violation of art. 6 §1. 9x8: violation of art. 14 + art. 2 of Prot. n. 1; no need to examine art. 2 Prot. n. 1 alone
CASE OF PARASKEVA T ODOROVA v. BULGARIA	Bulgaria	25.03.2010	Fifth Section	fair trial, accusation of crime against Romanies possibly for racial reasons	Unanimously: violation of art. 14+art. 6§1

CASE OF STEFANOU v. GREECE	Greece	22.04.2010	First Section	police violence	Unanimously: violation of art. 3 (substantive), no need to examine art. 3 (procedural), no need to examine art. 13, violation of art. 6§1
CASE OF VASIL SASHOV PETROV v. BULGARIA	Bulgaria	10.06.2010	Fifth Section	police violence	Unanimously: violation of art. 2 (substantive and procedural), violation of art. 13, no violation of art. 14 + art. 2 (substantive and procedural)
CASE OF CARABULEA v. ROMANIA	Romania	13.07.2010	Section III	police violence	Unanimously: violation of art. 2 (substantive and procedural), art. 3(substantive and procedural), and art. 13; no need to examine art. 6. 4x3: no need to examine arts. 14+ arts. 2,3,13
CASE OF MIŽIGÁROVÁ v. SLOVAKIA	Slovakia	14.12.2010	Fourth Section	police violence	Unanimously: violation of art. 2 (substantive and procedural); no need to examine arts. 3 and 13. 6x1 no violation of art. 14 +art. 2
CASE OF DIMITROVA AND OTHERS v. BULGARIA	Bulgaria	27.01.2011	Fifth Section	fair trial, accusation of crime against Romanies possibly for racial reasons	Unanimously: violation of art. 2, no violation of art. 14
CASE OF ĐURĐEVIĆ v. CROATIA	Croatia	19.07.2011	First Section	police violence	Unanimously: no violation of art. 3 (event 16.6.09, both substantive and procedural)

CASE OF V.C. v. SLOVAKIA -	Slovakia	08.11.2011	Former Section IV	sterilization	Unanimously: violation of art. 3 (substantive); no violation of art. 3 (procedural); violation of art. 8; no need to examine art. 12; no violation of art. 13. 16x1: no need to examine art. 14.
CASE OF AKSU V. TURKEY	Turkey	13.02.2012	Grand Chamber	freedom of academic thought (materials about Romanies sponsored by the government and discussion if they were stereotyping)	16 x 1 - no violation of art. 8. GC did not address art.14 (§45)
CASE OF EREMIÁŠOVÁ AND PECHOVÁ v. THE CZECH REP UBLIC	Czech Republic	16.02.2012	Fifth Section	suicide in police quarters, fair trial (investigation)	Unanimously: violation of art. 2 (substantive - regarding death of V.P); violation of art. 2 (procedural), no need to examine art. 13
CASE OF YORDANOVA AND OTHERS v. BULGARIA - read	Bulgaria	24.04.2012	Fourth Section	eviction - Romanies settlement - housing	Unanimously: violation of art. 8 in the enforcement of the order 17.9.2005; no issues under art. 14 +art. 8; no need to examine art. 3 and 13, and art. 1 Prot. n. 1 in the event above; no issues under arts. 8+3+13+14 about the authorities' past actions.
CASE OF KLEYN AND ALEKSANDROVIC H v. RUSSIA	Russia	03.05.2012	First Section	police violence	Unanimously: no violation of art. 2 (substantive), violation of art. 2 (procedural)
CASE OF NACIC AND OTHERS v. SWEDEN	Sweden	15.05.2012	Fifth Section	asylum and residence permit (migration from Kosovo)	Unanimously: no violation of art. 3. 5x2: no violation of art. 8

CASE OF KOKY AND OTHERS v. SLOVAKIA	Slovakia	12.06.2012	former Section IV	investigation of violence for racial reasons, hatred	Unanimously: violation of art. 3(procedural); no need to examine art. 8, art. 1 Prot. n. 1, arts. 13+3+8, and arts. 14+3+8+13
CASE OF N.B. v. SLOVAKIA	Slovakia	12.06.2012	former Section IV	sterilization	Unanimously: violation of art. 3 (substantive); violation of art. 8; no need to examine art. 12; no need to examine art. 14
CASE OF BORBÁLA KISS v. HUNGARY	Hungary	26.06.2012	Second Section	police violence	Unanimously: violation of art. 3 (procedural and substantive)
CASE OF M. AND OTHERS v. ITALY AND BULGARIA	Italy and Bulgaria	31.07.2012	Second Section	procedures for punishing/investigation of kidnap of a Romanies child.	6x1: no violation of art. 3 (substantive), violation of art. 3 (procedural)
CASE OF FEDORCHENKO AND LOZENKO v. UKRAINE	Ukraine	20.09.2012	Fifth Section	violence against Romanies, hatred	Unanimously: violation of art. 2 (procedural); no violation of art. 2 (substantive); and art. 14 + art. 2 (procedural).
CASE OF LĂCĂTUȘ AND OTHERS v. ROMANIA	Romania	13.11.2012	Third Section	police violence, destruction in a riot - related to the MOLDOVAN V ROMANIA N. 1 AND N. 2.	Unanimously: violation of art. 3, violation of art.8, violation of art.6 §1, violation of arts.14+6+8; no need to examine art. 1 Prot. n. 1
CASE OF I.G. AND OTHERS v. SLOVAKIA	Slovakia	13.11.2012	Fourth Section	sterilization	Unanimously: violation of art. 3 (substantive and procedural - 1º and 2º app) and of art. 8(1º and 2º app); no need to examine art. 12; no violation of art. 13; no need to examine art. 14

CASE OF SAMPANI AND OTHERS V. GREECE	Greece	11.12.2012	First Section	education	Unanimously: violation of art.14+ art.2 Prot. n. 1; no need to examine art.13
CASE OF HORVÁTH AND KISS v. HUNGARY	Hungary	29.01.2013	Second Section	education - similar to D.H. v. Czech republic	Unanimously: violation of art. 2Prot. n. 1 + art. 14
CASE OF LAVIDA AND OTHERS V. GREECE	Greece	30.05.2013	First Section	education, acceptance of new Romanies students	Unanimously: violation of art. 14 + art. 2 Prot. n. 1; no need to examine art. 13
CASE OF VONA v. HUNGARY	Hungary	09.07.2013	Second Section	demonstration against Romanies, hatred, radicals - applicant is chairman of the association responsible for demonstrations	Unanimously: no violation of art. 11 of the Convention.
CASE OF CENTRE FOR LEGAL RESOURCES ON BEHALF OF VALENTIN CÂMPEANU v. ROMANIA	Romania	17.07.2014	Grand Chamber	death of a young disabled Romanies in a public hospital	Unanimously: violation of art. 2 (procedural and substantive); violation of art.13+ art. 2. 14x3: no need to examine art. 3. Unanimously: no need to examine arts. 5 and 8. 15x2: no need to examine art. 14.
CASE OF MARIAN CHIRIȚĂ v. ROMANIA	Romania	21.10.2014	Third Section	police violence	Unanimously: violation of art. 3
CASE OF CIORCAN AND OTHERS v. ROMANIA	Romania	27.01.2015	Third Section	police violence	Unanimously: violation of art. 2 (substantive and procedural regarding some applicants); no violation of art. 3 (substantive); violation of art. 3 (procedural), violation of arts. 14+2+3

CASE OF MIHAYLOVA AND MALINOVA v. BULGARIA	Bulgaria	24.02.2015	Fourth Section	police violence	Unanimously: violation of art. 2, no need to examine art. 13
CASE OF BALÁZS v. HUNGARY	Hungary	20.10.2015	Second Section	violence against Romanies, hatred	6x1: violation of art. 14 +art. 3
CASE OF BOACĂ AND OTHERS v. ROMANIA	Romania	12.01.2016	Fourth Section	police violence	Unanimously: violation of art. 3 (substantive and procedural); no violation of art. 14 + art. 3 (substantive); violation of art. 14 +art.3 (procedural)
CASE OF R.B. v. HUNGARY	Hungary	12.04.2016	Fourth Section	demonstration against Romanies (racist insults), radicals, hatred	6x1: violation of art. 8 (inadequate investigations on racially motivated abuse)
CASE OF ADAM v. SLOVAKIA	Slovakia	26.07.2016	Third Section	degrading treatment in detention	6x1: no violation of art. 3 (substantive). Unanimously: violation of art. 3 (procedural), no need to examine art. 13
CASE OF KIRÁLY AND DÖMÖTÖR v. HUNGARY	Hungary	17.01.2017	Fourth Section	demonstration against Romanies, hatred discourse, radicals	5x2 violation of art. 8
CASE OF ŠKORJANEC v. CROATIA	Croatia	28.03.2017	Second Section	hatred crime, discrimination by association	Unanimously: violation of art. 3 (procedural) + art. 14; rejected art. 6 and art. 8

CASE OF RANĐELOVIĆ AND OTHERS v. MONTENEGRO	Montenegro	19.09.2017	Second Section	disappearance of Romanies after an accident in the sea, migration, no investigation, human trafficking, lack of Romanies translators	Unanimously: strike out for some app; violation of art. 2 (procedural)
CASE OF ACHIM v. ROMANIA	Romania	24.10.2017	Fourth Section	Romanies children unduly put in authority care	Unanimously: no violation of art. 8
CASE OF M.F. v. HUNGARY	Hungary	30.10.2017	Fourth Section	police violence, fair trial	Unanimously: violation of art. 3 (procedural and substantive); no violation of art. 14+art. 3 (substantive); violation of art. 14+art.3 (procedural)
CASE OF ALKOVIĆ v. MONTENEGRO	Montenegro	05.12.2017	Second Section	violence against Romanies	Unanimously: art. 8 + art.14; no need to examine the other articles
CASE OF JANSEN v. NORWAY	Norway	06.09.2018	Fifth Section	Romanies children unduly put in authority care	Unanimously: violation of art. 8
CASE OF LEVAKOVIC v. DENMARK	Denmark	23.10.2018	Second Section	residence permit	Unanimously: no violation of art. 8
CASE OF BURLYA AND OTHERS v. UKRAINE	Ukraine	06.11.2018	Fourth Section	violence against Romanies, hatred	Unanimously: violation of art. 3 (substantive)+art.14 (some applicants); violation of art. 3 (procedural) + art. 14 (some applicants); violation of art. 8+14

CASE OF MAGYAR JETI ZRT v. HUNGARY	Hungary	04.12.2018	Fourth Section	the political party Jobbik started proceedings against supposed defamation by a newspaper that published an article about a football group causing violence to Romanies, erroneously relating it to the mentioned party. The national court accepted Jobbik's claim	Unanimously: violation of art. 10
CASE OF LAKATOŠOVÁ AND LAKATOŠ v. SLOVAKIA	Slovakia	11.12.2018	Third Section	violence against Romanies, hatred	Unanimously: - art. 14+ art. 2; no need to examine other articles
CASE OF DIMOVIĆ AND OTHERS v. SERBIA	Serbia	11.12.2018	Third Section	accusations against Romanies	Unanimously: violation of art. 6 §§ 1 and 3d
CASE OF A.P. v. SLOVAKIA	Slovakia	28.01.2020	Third Section	police violence	Unanimously: violation of art. 3 (procedural and substantive)
CASE OF HUDOROVIČ AND OTHERS v. SLOVENIA	Slovenia	10.03.2020	Fifth Section	housing – access to water and sanitation	5x2 no violation of art. 8 for one application. Unanimously: no violation of art. 8 for the other application. Unanimously: no violation of art. 14 + art. 8 nor art. 3 + art. 14
HIRTU AND OTHERS V. FRANCE	France	14.05.2020	Fifth Section	eviction Romanies settlement - housing	Unanimously: no violation of art. 3; violation of arts.8 and 13; inadmissible under art. 14 and art. 2 Prot. n. 1 because not addressed in domestic courts.

CASE OF R.R. AND R.D. v. SLOVAKIA	Slovakia	01.09.2020	Third Section	police violence	Unanimously: violation of art.3 (substantive and procedural); violation of art. 14 + art. 3 (procedural); violation of art.14 + art.3 in connexion with the remainder of the applicant's complaint; no need to examine art. 13
CASE OF X AND Y v. NORTH MACEDONIA	Macedonia	05.11.2020	Fifth Section	police violence	Unanimously: violation of art. 3 (procedural); no violation of art. 3 (substantive); inadmissible under art.14
CASE OF BUDINOVA AND CHAPRAZOV v. BULGARIA	Bulgaria	16.02.2021	Fourth Section	hatred discourse	Unanimously: violation of art. 14 + art. 8; no need to examine art. 6§1 and art. 14
CASE OF M.B. AND OTHERS v. SLOVAKIA	Slovakia	01.04.2021	First Section	police violence	Unanimously: no violation of art. 3 (substantive), so no issues under art.14; violation of art. 3 (procedural)