

**The dynamics of "hate crimes" in the ecosystem of discrimination and the factors influencing the investigation of acts motivated by discrimination in the logic of ECHR case law and academic perspectives. Data set no. 1: "non-violation"**

## **1. Introduction**

Debates on hate and its repercussions on vulnerable groups have gained momentum in terms of the need for regulation and legislative attention. Discussions focused on the mechanisms that should attribute discriminatory motivation to acts of hate, in particular criticisms of evidentiary "requirements," have also included the European Court of Human Rights (ECHR). In this study, we aim to investigate some of these criticisms by focusing on a segment of European case law (82 ECHR judgments handed down between 1998 and 2025). We analyze cases alleging discrimination (Art. 14 + Articles 2, 3, or 8) in connection with hate crimes and the where the European Court produced rulings of "no violation." The research objective is threefold: to map the case law, to document the factors that facilitate or hinder the investigation of "hate crimes", and to examine the Court's position on such factors. This research exercise is structured as follows: Section 2 explores the debates in academic research; Section 3 explains the methods of analysis; Section 4 presents the mapping of case law from the perspective of the impediments identified in academic research; and Section 5 presents the conclusions of the study.

## **2. Hate crimes from an academic research perspective**

The different positions and criticisms expressed in academic research have highlighted tensions on various sensitive issues regarding hate crimes. For example, both the purpose and the manner of formulating the normative objectives of liberal states to criminalize hate without interfering with individual freedoms such as freedom of expression, association, or demonstration have been questioned. The advancement of studies on hate crimes has shifted the focus from legislation to institutional factors that reduce the detection or identification of "hate" motivations. Last but not least, the review of ECHR jurisprudence has highlighted the approach of the European court, which has repercussions through the mechanism of the burden of proof and the standard of evidence. These theoretical and practical dimensions are synthesized in order to identify the major aspects that overlap the options for investigating hate crimes with the factors that ultimately block the identification, prosecution, and punishment of these acts.

### **2.1. Conceptual difficulties regarding the criminalization of hate**

In academic research, the issue of hate crimes has often been raised, particularly the role that criminal law can play in promoting the liberal principles of equality and non-discrimination, from the perspective of "criminalizing hate."<sup>1</sup> According to Mark Walters, the challenge for liberalism in European states lies in setting normative objectives that ensure a

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\* Doctor, Faculty of Political Science, University of Bucharest

Email: dezideriugergely@gmail.com

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<sup>1</sup> Mark Austin Walters, *Social Justice Liberalism and the Criminalization of Hate in Criminalizing Hate. Law as Social Justice Liberalism*, Palgrave Hate Studies. Palgrave Macmillan, 2022, [https://doi.org/10.1007/978-3-031-08125-5\\_3](https://doi.org/10.1007/978-3-031-08125-5_3).

balance between individual freedoms and the prevention of "hate crimes," which have negative effects at both the individual and collective levels. Walters notes, on the one hand, Paul Roberts' argument that "*actions that strike at the fundamental norms of equality, such as racially motivated violence and misogynistic harassment, are good candidates for criminalization in the context of a liberal legislative framework.*"<sup>2</sup> On the other hand, he does not ignore the positions of liberal commentators who argue that legislative approaches to criminalizing hate crimes or hate speech are "illiberal,"<sup>3</sup> because they place themselves in a contradictory position of restricting individual freedoms or that criminalizing the individual acts of private subjects "*assigns responsibility for the propagation of identity-based hostility*" and leaves "*the structural and institutional causes of hate crimes*" unaddressed.<sup>4</sup>

As a counterargument to these positions, some invoked the fact that liberalism based on social justice aims to protect vulnerable and historically marginalized groups, including as a result of state actions, and within *the framework of the rule of law and human rights*, the rules are applied regardless of the status of the subjects, whether private individuals or agents of the state, and the obligation to take effective measures against hate crimes applies to them, as demonstrated by European Union rules and the case law of the European Court of Human Rights (ECHR).<sup>5</sup> The extent to which these objectives are achieved in practice is a matter that goes beyond the recognition, definition, and punishment of "hate crimes" at the national level.

A discussion of hate crimes cannot ignore the difficulties discussed in academic research. In *Hate Crimes: Criminal Law and Identity Politics*, James Jacobs and Kimberly Potter describe hate crimes as an uncertain "social construct" due to the lack of a clear definition.<sup>6</sup> Laverick and Joyce, while reviewing academic approaches, classify this type of crime as characterized by "conceptual ambiguity," including in terms of the consequences of identifying them.<sup>7</sup> According to the two researchers, it is no coincidence that terms ranging from discrimination and prejudice to harassment, hostility, or "targeted violence" have been used in the context of analyzing hate crimes.<sup>8</sup> Despite these drawbacks, Hardy and Chakraborti emphasize that academic debates have contributed significantly to demonstrating the relationship between institutionalized prejudice, hate crimes, and the dynamics of power in the acts of violence committed against marginalized groups in modern societies.<sup>9</sup>

Jacobs and Potter noted that in the US, the term "hate crime" was proposed in 1985 by the initiators of a legislative act that aimed to require the publication of statistical data on crimes

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<sup>2</sup> Paul Roberts, 'Criminal Law Theory and the Limits of Liberalism' in Antje du Bois-Pedain, A. P. Simester, Ulfrid Neumann, (eds), *Liberal Criminal Theory: Essays for Andreas von Hirsch*, London: Hart Publishing, 2004, <http://dx.doi.org/10.5040/9781474200868>.

<sup>3</sup> Mark Austin Walters, *Criminalising Hate. Law as Social Justice Liberalism*, 52-53. Walters cites James B Jacobs, Kimberly Potter, *Hate Crimes: Criminal Law and Identity Politics*. Oxford University Press, 1998, <http://ndl.ethernet.edu.et/handle/123456789/61899>; Heidi M. Hurd, "Why Liberals Should Hate 'Hate Crime Legislation.'" *Law and Philosophy* 20, no. 2 (2001): 215–32, <http://www.jstor.org/stable/3505240>.

<sup>4</sup> Mark Austin Walters, 52–53. Walters refers to Doug Meyer. *Resisting Hate Crime Discourse: Queer and Intersectional Challenges to Neoliberal Hate Crime Laws*. *Crit Crim* 22, 113–125 (2014), <https://doi.org/10.1007/s10612-013-9228-x>.

<sup>5</sup> Mark Walters refers to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, as well as to the case of *Nachova and Others v. Bulgaria*, 43577/98, 43579/98, (6 July 2005).

<sup>6</sup> James B Jacobs, Kimberly Potter. *Hate Crimes: Criminal Law and Identity Politics*. Oxford University Press, 1998, 4, <http://ndl.ethernet.edu.et/handle/123456789/61899>.

<sup>7</sup> Wendy Laverick, Peter Joyce. *Racism and Hate Crime: Its Historical Roots*. In: *Racial and Religious Hate Crime. The UK from 1945 to Brexit*, Palgrave Macmillan, Cham, 2019, 1-20, [https://doi.org/10.1007/978-3-030-21317-6\\_1](https://doi.org/10.1007/978-3-030-21317-6_1).

<sup>8</sup> Wendy Laverick, Peter Joyce, *Racism and Hate Crime: Its Historical Roots*.

<sup>9</sup> Stevie-Jade Hardy, Neil Chakraborti, "Implications for Scholarship" in S. J. Hardy, N. Chakraborti (Eds.) *Blood, Threats and Fears. The Hidden Worlds of Hate Crime Victims*, Palgrave Pivot, Cham. 2020, 149-160. [https://doi.org/10.1007/978-3-030-31997-7\\_10](https://doi.org/10.1007/978-3-030-31997-7_10)

"that show evidence of prejudice."<sup>10</sup> Between 1980 and 1990, the vast majority of US states adopted legislation on hate crimes related to race, religion, sexual orientation, or ethnicity.<sup>11</sup> Natan Hall notes that the situation in Europe was different because legislative regulations were initially absent, and the term "hate crime" was correlated with racist elements or racial motivation at the operational level in police structures in the United Kingdom, but only legislated in the UK in 1998 and subsequently extended to include motivation based on other protected characteristics.<sup>12</sup> The concept of "hate crimes" has been adopted over time, in one form or another, in the legislation of European states, particularly under the impetus of the case law of the European Court of Human Rights, the EU legislative framework<sup>13</sup>, and the standards of the Council of Europe.<sup>14</sup>

Jacobs and Potter proposed a framework for analyzing hate crimes classified into four categories based on two axes, depending on the perpetrator's prejudice (high or low) and the causal relationship between prejudice and the criminal act (high or low), in order to highlight the difficulties of classifying them when prejudice or hatred are the determining factors for the classification or categorization of crimes.<sup>15</sup> Jon Garland and Corinne Funnell summarized some of the issues discussed in the academic debate,<sup>16</sup> some of which concern the extent to which this type of crime is determined primarily by "hatred" or, equally, by social tensions or the perceived identity of the victim in relation to a particular group.<sup>17</sup> Other issues concerned the establishment of categories of persons protected by law, the preferential inclusion of historically disadvantaged groups (racial, ethnic, religious, etc.) or of other social groups.<sup>18</sup>

In the same vein, the issue of how the perpetrator selects the victim as a "dangerous stranger," as Gail Mason calls it, was raised, implying a perception of the victim's identity rather than knowledge of it, or, on the contrary, based on a known connection to a particular social group<sup>19</sup> or as a process by which members of socially dominant groups select victims in a

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<sup>10</sup> James Jacobs, Kimberly Potter, *Hate Crimes: Criminal Law and Identity Politics*.

<sup>11</sup> Erik Bleich, 'From Race to Hate. A Historical Perspective,' in Thomas Brudholm, Birgitte Schepelehn Johanssen (eds.), *Hate Politics Law. Critical Perspectives on Combating Hate*, Oxford University Press, New York, 2018, 15-33, <https://doi.org/10.1093/oso/9780190465544.003.0002>.

<sup>12</sup> Nathan Hall, *Hate Crime*. Second Edition, Routledge, London, New York, 2013, p.4, <https://doi.org/10.4324/9780203107423>.

<sup>13</sup> Jennifer Scheppe, Mark Austin Walters (eds), *The Globalization of Hate: Internationalizing Hate Crime?*, Oxford University Press, 2016, 15-30, <https://doi.org/10.1093/acprof:oso/9780198785668.003.0002>.

<sup>14</sup> Among others, ECRI, General Policy Recommendation No. 1 Combating racism, xenophobia, antisemitism and intolerance, CRI(96)43, No. 3 Combating racism and intolerance against Roma, CRI(98)29, No. 5 Preventing and combating anti-Muslim racism, CRI(2000)05, no. 7 National legislation for combating racism and racial discrimination CRI(2003)8 REV, no. 9 on Preventing and combating anti-Semitism CRI(2021)28, no. 11 on Combating racism and racial discrimination in police activities CRI(2007)39, no.15 on Combating hate speech CRI(2016)15, Committee of Ministers, Recommendation on combating hate speech, CM/Rec(2022)16, Recommendation on combating hate crimes CM/Rec(2024)4.

<sup>15</sup> James Jacobs, Kimberly Potter, *Hate Crimes: Criminal Law and Identity Politics*. The authors propose a diagram based on category 1 when the perpetrator has strong prejudices and these prejudices are a determining causal factor in the criminal act, category 2 when the perpetrator has prejudices similar to category 1 but the criminal act is not exclusively determined by prejudices or strongly motivated by them, category 3 when the perpetrator does not particularly have prejudices but these constitute a strong causal element of the criminal act, and category 4 when the perpetrator does not have prejudices and the criminal act is the result of circumstantial situations.

<sup>16</sup> Jon Garland, Corinne Funnell. 'Defining Hate Crime Internationally: Issues and Conundrums' in Jennifer Scheppe, Mark Austin Walters (eds), *The Globalization of Hate: Internationalizing Hate Crime?*, Oxford University Press, 2016, 15-30, <https://doi.org/10.1093/acprof:oso/9780198785668.003.0002>.

<sup>17</sup> Mark Austin Walters, 'A General Theories of Hate Crime? Strain, Doing Difference and Self Control,' *Critical Criminology*, 19 (4), pp. 313-330, 2011, <https://ssrn.com/abstract=2470051>.

<sup>18</sup> Carolyn Turpin-Petrosino, *Understanding Hate Crimes: Acts, Motives, Offenders, Victims, and Justice* (1st ed.). Routledge.2015, <https://doi.org/10.4324/9780203883693>

<sup>19</sup> Gail Mason, 'Hate Crime and the Image of the Stranger,' *The British Journal of Criminology*, Volume 45, Issue 6, November 2005, 837-859, <https://doi.org/10.1093/bjc/azi016>.

"subordinate" position in order to maintain and capitalize on their "advantage" in society<sup>20</sup> but also the "domino effect" produced by these crimes, beyond the individual, family, and community.<sup>21</sup> Garland and Funnell review recent approaches that extend the scope of hate crimes to acts of hostility based on "difference," "perceived vulnerability," or identity,<sup>22</sup> while Walters highlights legislative models that focus more on the idea of selecting the victim based on a prohibited discriminatory characteristic, and not necessarily on the idea of motivating the criminal act through "hatred" or "prejudice" towards the victim.<sup>23</sup>

In recent debates, studies have shifted from focusing on legislative issues and defining the concept to analyzing societal and, in particular, institutional practices that influence the approach to and response to this type of crime. Mika Hagerlid and Görel Granström provide a literature review that discusses the "screening" of hate crimes in an organizational context (when carried out by special police units, and there is an objective assumed by police structures to investigate this type of crime as a priority).<sup>24</sup> On the other hand, they refer to studies that reflect the inconsistent approach to these crimes and the discrepancies in criminal investigations and court proceedings, from the perspective of the "double burden" of proving both the "crime" and the "motive," especially the link between them in the investigation of hate crimes.<sup>25</sup> Ryan King and Besiki Kutateladze addressed the issue of these crimes from the perspective of factors that hinder the investigation and prosecution of hate crimes from an institutional point of view.<sup>26</sup>

Recent European research on hate crimes against different groups subject to discrimination and acts motivated by intolerance has focused on identifying organizational barriers, social and cultural factors involved in this area, and analyzing practices that influence the recognition or non-recognition of hate crimes and institutional responses, against the backdrop of underreporting of such acts by victims<sup>27</sup> and of limited criminal measures at the institutional level.<sup>28</sup> It is interesting to note that in both the American and European contexts, the difficulties in addressing or investigating hate crimes converge on common points. For example, King and Kutateladze use the concept of "evidentiary inflation" and Hagerlid and

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<sup>20</sup> Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (1st ed.). London: Routledge. 2001. <https://doi.org/10.4324/9780203905135>

<sup>21</sup> Joe R. Feagin, Melvin P. Sikes, *Living with Racism. The Black Middle-class Experience*, Boston: Beacon Press.1994.

<sup>22</sup> Jon Garland, Corinne Funnell. 'Defining Hate Crime Internationally: Issues and Conundrums'. in Jennifer Schweppe, Mark Austin Walters (eds), *The Globalization of Hate: Internationalizing Hate Crime?*; Neil Chakraborti, Jon Garland (eds), *Responding to hate crime: The case for connecting policy and research*, Bristol: Policy Press, 2014. <https://doi.org/10.1332/policypress/9781447308768.001.0001>

<sup>23</sup> Mark Austin Walters, 'Legislating Hate Crime Globally: Putting "Social Justice" Into Practice,' Part 2. In *Criminalising Hate. Law as Social Justice Liberalism*, 2022, 161-204.

<sup>24</sup> Mika Hagerlid, Görel Granström, Hate Crime Investigation and Sentencing in Sweden: What Have We Learned in the Past 20 Years?, *Eury J Crim Policy Res* 31, 193–210 (2025), <https://doi.org/10.1007/s10610-023-09563-9>.

<sup>25</sup> Mika Hagerlid, Görel Granström, *Hate Crime Investigation and Sentencing in Sweden: What Have We Learned in the Past 20 Years?*

<sup>26</sup> Ryan D. King, Besiki L. Kutateladze. 'A Higher Bar: Institutional Impediments to Hate Crime Prosecution.' *Law & Society Review* 57, no. 4 (2023), 489–507. <https://doi.org/10.1111/lasr.12685>.

<sup>27</sup> EU FRA, 'Being Muslim in the EU – Experiences of Muslims' (Vienna, 2024) Publications Office of the European Union, 2024; EU FRA, 'Jewish People's Experiences and Perceptions of Antisemitism (Vienna, 2024) Publications Office of the European Union; EU FRA, 'LGBTIQ at a crossroads: progress and challenges' (Vienna, 2024) Publications Office of the European Union; EU FRA, 'Being Black in the EU' (Vienna, 2024) Publications Office of the European Union; EU FRA, 'Roma in 10 European Countries - Main results' (Vienna, 2022) Publications Office of the European Union, 2023.

<sup>28</sup> EU FRA, Stepping up the Response to Victims of Crimes: FRA's Findings on Challenges and Solutions, (November 28, 2024), <https://fra.europa.eu/en/publication/2024/stepping-response-victims-crime>; EU gender-based violence survey. Main findings 2024 edition, Luxembourg: Publications Office of the European Union, 2024, EU FRA, 'Underpinning Victims' Rights. Support Services, Reporting and Protection,' Publications Office of the European Union, 2023; EU FRA, 'Encouraging Hate Crime Reporting. The Role of Law Enforcement and Other Authorities,' Publications Office of the European Union, 2021.

Granström use the concept of "double burden"<sup>29</sup>, both of which focus on the artificial raising of evidentiary standards by criminal investigation bodies, leading to the exclusion or non-classification of crimes in this category. King uses the concept of "weak coupling" to highlight divergent approaches between police investigative structures and prosecutors as institutional decoupling, and Hagerlid uses the concept of "organizational prioritization" to discuss regional differences in terms of the resources and competences of criminal investigation structures, which affect the reduced impact of classification as hate crimes and the retention of specific aggravating circumstances.<sup>30</sup>

## 2.2. Conceptual positioning in ECHR case law and related criticism in academic research

The European Court of Human Rights does not use a fixed terminology when addressing hate-motivated acts or "hate crimes." Rather, it could be said that the court often refers to relevant elements that facilitate the deconstruction of this category of acts that intersect with discrimination, at least from the perspective of the causal relationship between the (criminal) act and the criterion (personal characteristic or other status). The European Court usually characterizes "hate crimes" as "incidents triggered by attitudes suspected of discrimination"<sup>31</sup>, "discriminatory motives"<sup>32</sup> or "motivated by discrimination"<sup>33</sup>, or "crimes motivated by prejudice."<sup>34</sup> The Court also generically associates the concept of "hate crimes" with "hate-motivated violence"<sup>35</sup> and in particular with "racially induced violence,"<sup>36</sup> "violent acts motivated by religious prejudice,"<sup>37</sup> "gender-based violence,"<sup>38</sup> "ill-treatment motivated by homophobia,"<sup>39</sup> "violence motivated or influenced by ideology or the nationality of the victim"<sup>40</sup> or "politically induced violence."<sup>41</sup>

The complex interaction between racial discrimination, ethnic profiling, and hate-motivated acts of violence has become increasingly prominent in the case law of the European Court of Human Rights. In the case law of the ECtHR, acts motivated by prejudice in relation to protected personal characteristics have manifested themselves in a wider range of

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<sup>29</sup> For example, King and Kutateladze use this concept to refer to the reflexive position of authorities to investigate "hatred" as the sole determining factor or exclusive motive for committing hate crimes. See King & Kutateladze, 'A Higher Bar,' pp. 497-498. Hagerlid and Granström use the concept in correlation with the difficulties invoked by authorities in demonstrating the causal link between the crime and the motivation, including in situations where the perpetrator uses racist expressions when committing the act, without these being considered a causal element. See Hagerlid & Granström, *Hate Crime Investigation*, p. 196.

<sup>30</sup> King and Kutateladze use the concept of "weak coupling" or, more precisely, decoupling, from academic research to highlight a system that is not "synchronized" in terms of the investigation of hate crimes by the police in the first instance and subsequently by the prosecutor. Hagerlid and Granström refer to "organizational prioritization" to highlight regional discrepancies in the investigation of hate crimes where specialized police structures are established, where assessments are carried out on how the criminal investigation of these crimes was conducted and on the prioritization of this issue by the police and prosecutors. See King & Kutateladze, *A Higher Bar*, p. 499, Hagerlid & Granström, *Hate Crime Investigation*, pp. 201-202.

<sup>31</sup> Kreyndlin and Others v. Russia, 33470/18, (January 31, 2023), para. 55, Lapunov v. Russia, no.28834/19, (September 12, 2023) para. 112.

<sup>32</sup> Karter v. Ukraine, 18179/17, (April 11, 2024), paras. 76-77.

<sup>33</sup> Bednarek and Others v. Poland, 58207/14, (July 10, 2025), para. 89.

<sup>34</sup> Karter v. Ukraine, (2024), paras. 91.

<sup>35</sup> Bazhenov and Others v. Russia, 8825/22, 19130/22, (February 4, 2025), para. 64.

<sup>36</sup> Panayotopoulos and Others v. Greece, 44758/20, (January 21, 2025) paras. 148, 149.

<sup>37</sup> Georgian Muslim Relations and Others v. Georgia, 24225/19, (November 30, 2023), para. 100

<sup>38</sup> B.A. v. Iceland, 17006/20, (August 26, 2025), paras. 80, 84.

<sup>39</sup> Oganezova v. Armenia, 71367/12, 72961/12, (May 17, 2022), paras. 90, 116, 108.

<sup>40</sup> Kreyndlin and Others v. Russia, 33470/18, (January 31, 2023), para. 58.

<sup>41</sup> Virabyan v. Armenia, 40094/05, (October 2, 2012), para. 218.

discriminatory practices that did not necessarily involve physical harm or homicide, but rather a wide range of manifestations in the form of threats, verbal abuse, or acts of harassment closely linked to prejudice against certain vulnerable groups distinguished by their racial or ethnic origin, religion, sexual orientation<sup>42</sup>, or other similar characteristics<sup>43</sup>. On the other hand, the issue of ethnic profiling by the police in Eastern European countries such as Romania or North Macedonia<sup>44</sup> and racial profiling in Western European countries has „gained ground” in the case law of the European Court, with the most recent cases concerning France and Switzerland.<sup>45</sup> Even if it cannot be formally integrated into the legal category of hate crimes, profiling has several common elements, such as the causal link with prejudice against certain racial or ethnic groups, the victim being targeted on the basis of their real or perceived identity/physical characteristics, and the mechanism of operation within the same "ecosystem" of discrimination.<sup>46</sup>

A critical aspect of hate crimes is related to the investigation process and "uncovering possible discriminatory motives,"<sup>47</sup> which involves "not overlooking suspicious facts" that may indicate violence induced by racial or religious intolerance or discrimination based on gender or sexual orientation.<sup>48</sup> It is important to note that such acts are not limited to those committed on the basis of the victim's own characteristics, but may also arise from "the victim's perceived association with another person who has protected characteristics or status."<sup>49</sup> In addition, hate-motivated acts may be induced by "mixed motives," where prejudice is not the sole factor, as situational aspects that combine with bias or attitude toward the group to which the victim belongs may play "an equal or greater role" in their commission.<sup>50</sup>

At the academic level, Ruth Rubio-Marín and Mathias Möschel questioned the Court's reluctance to "recognize the discriminatory aspects of racially motivated violence," in contrast to its recognition of racial discrimination in other areas of law, as well as the decoupling from the systemic nature of discrimination generated by societal or historical factors.<sup>51</sup> Other researchers have analyzed these issues in the Court's case law, finding that a much more

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<sup>42</sup> R.B. v. Hungary, 64602/12, (April 14, 2016), paras. 80, 84-85, Király and Dömötör v. Hungary, 10851/13, para 76, (January 17, 2017), Alković v. Montenegro, 66895/10, (December 5, 2017) paras. 8, 11, 65-69, Milanović v. Serbia, 44614/07, (December 14, 2010), para 99; Begheluri v. Georgia, 28490/02, (October 7, 2014) para 176, Association Accept and Others v Romania, 19237/16, (June 1, 2021), para. 114.

<sup>43</sup> Dezideriu Gergely, "Synergies, overlaps, and distinctions between the approaches of the European Court of Human Rights and the Court of Justice of the European Union regarding criteria and forms of discrimination in practice in 2022 and early 2023." In *New Journal of Human Rights* 1, Vol. 19, (March 2023): 9-44.

<sup>44</sup> Lingurar v. Romania, 48474/14, (April 16, 2019), paras. 76, 79. Memedova and Others v North Macedonia, 42429/16, (October 23, 2023), paras. 91, 99.

<sup>45</sup> Seydi and Others v. France, 35844/17, (June 26, 2025), paras. 127-130, Wa Baile v. Switzerland, 43868/18, 25883/21, (February 20, 2024), paras. 127-129, 136. See also Basu v. Germany, no. 215/19, (October 18, 2022), paras. 34, 37, Muhammad v. Spain, 34085/17, (October 18, 2022), para. 99.

<sup>46</sup> By "ecosystem of discrimination" in this article we refer to the forms of discrimination and their specific mechanisms of manifestation (direct, indirect, multiple, association, disposition, harassment, victimization) as well as the causal link between the act of differentiation (less favorable treatment) and discriminatory criteria (characteristics) prohibited under European law. For a comparative analysis, see Dezideriu Gergely, "Synergies, overlaps, and distinctions between the approaches of the European Court of Human Rights and the Court of Justice of the European Union regarding criteria and forms of discrimination in practice in 2022 and early 2023," *New Journal of Human Rights*, Vol. 19, no. 1, (March 2023), 9-44.

<sup>47</sup> Sabalić v. Croatia, 50231/13, (January 14, 2021), para. 94.

<sup>48</sup> Bednarek and Others v. Poland, 58207/14 (2025), para. 88.

<sup>49</sup> Škorjanec v. Croatia, 25536/14, (March 28, 2017), para. 66.

<sup>50</sup> Balázs v. Hungary, 15529/12, (October 20, 2016), para. 70, Bednarek and Others v. Poland, (2025), para. 82.

<sup>51</sup> Ruth Rubio-Marín, Mathias Möschel, 'Anti-Discrimination Exceptionalism: Racist Violence before the ECtHR and the Holocaust Prism,' *European Journal of International Law*, Volume 26, Issue 4, November 2015, Pages 881–899, <https://doi.org/10.1093/ejil/chv058>, Mathias Möschel, 'Is the European Court of Human Rights' Case Law on Anti-Roma Violence 'Beyond Reasonable Doubt'?', *Human Rights Law Review*, Volume 12, Issue 3, September 2012, Pages 479–507, <https://doi.org/10.1093/hrlr/ngs018>

consistent approach by the European court is necessary in order to capture the elements of discrimination in manifestations motivated by "systemic prejudice."<sup>52</sup> Kristin Henrard considers that the Court's approach regarding the burden of proof in cases of direct discrimination, particularly in the area of criminal law and acts motivated by discriminatory characteristics, have led to inconsistencies on several levels.<sup>53</sup> Henrard questions the lack of clarity regarding the criteria used to determine the distribution of the burden of proof, the confusion between a *prima facie* case of discrimination and the need to prove the discriminatory act itself and the causal link with the grounds for discrimination.<sup>54</sup>

Along the same lines, Bea Streicher criticises the way in which the European court sets the threshold for a "plausible claim" in the context of investigating discriminatory motives and institutional racism.<sup>55</sup> Lourdes Peroni argues that the Court's restrictive approaches have led to a situation where, in some cases, the grounds for acts of religious intolerance and of discrimination remain "invisible."<sup>56</sup> Möschel has linked such issues to the Court's reluctance to extrapolate its own approach in cases of violence against women, of considering discrimination and associating individual situations with structural gender bias at the level of public institutions, to other types of violence motivated by discrimination.<sup>57</sup>

### 3. Selection methods, analytical framework, and mapping

Against the background discussed in academic doctrine, this study aims to analyze a set of data (*see Table 1*) obtained by identifying 82 decisions in the HUDOC database in which the European Court found that there was no violation of the provisions of Article 14 (non-discrimination) in conjunction with Article 2 (right to life), Article 3 (right not to be subjected to ill-treatment) or Article 8 (right to private life), handed down between February 19, 1998, and August 26, 2025. The selected cases involve allegations of hate/discrimination-motivated acts – whether explicitly formulated as hate crimes or described by the applicants or the Court as motivated by prejudice, discrimination or other similar characteristics.

*Table 1 Dataset: cases in which the ECtHR finds no violation of the Convention in relation to hate-motivated acts*

Protected characteristic / Ground	Cases
Ethnic origin – Roma	Assenov v. Bulgaria (1998); Velikova v. Bulgaria (2000); Anguelova v. Bulgaria (2002); Balogh v. Hungary (2004); Nachova v. Bulgaria (2005); Bekos and Koutropoulos v. Greece (2005); Ognyanova and Choban v. Bulgaria (2006); Karagiannopoulos v. Greece (2007); Beganović v. Croatia (2009); Sashov v. Bulgaria (2010); Stefanou v. Greece (2010); Vasil Sashov Petrov v. Bulgaria (2010); Carabulea v. Romania (2010); Seidova v. Bulgaria (2010); Mižigárová v. Slovakia (2010); Soare v. Romania (2011); Dimitrova

<sup>52</sup> Emma Varnagy, 'Anti-Roma violence cases in the jurisprudence of the European Court of Human Rights. Historical perspectives and other influences on effective protection against discrimination,' <https://studenttheses.uu.nl/handle/20.500.12932/38589>

<sup>53</sup> Kristin Henrard, 'Sharing of the Burden of Proof in Cases on Racial Discrimination: Concepts, General Trends and Challenges before the ECtHR.' In *Human Rights Tectonics: Global Dynamics of Integration and Fragmentation*, edited by Emmanuelle Bribosia and Isabelle Rorive, 271–302, Intersentia, 2018.

<sup>54</sup> Henrard, Kristin, 'The European Court of Human Rights and the 'Special' Distribution of the Burden of Proof, in Racial Discrimination Cases: The Search for Fairness Continues,' *European Convention on Human Rights Law Review* 4, 4 (2023): 426–446, <https://doi.org/10.1163/26663236-bja10065>.

<sup>55</sup> Bea Streicher, 'Tackling Racial Profiling: Reflections on Recent Case Law of the ECtHR,' *Strasbourg Observers*, <https://bit.ly/4jyxeUM>, December 16, 2022.

<sup>56</sup> Lourdes Peroni, 'Karaahmed v Bulgaria: The (In)visible racial and religious motivation of violence,' *Strasbourg Observers*, March 27, 2015, <https://bit.ly/3LyyYAy>.

<sup>57</sup> Mathias Möschel, 'Basu v. Germany and Muhammad v. Spain: Room for Improvement in the Court's First Judgments on Racial Profiling,' *Strasbourg Observers*, November 8, 2022, <https://bit.ly/45rdb4A>.

	v. Bulgaria (2011); Kalucza v. Hungary (2012); M. and Others v. Italy and Bulgaria (2012); Kleyn v. Russia (2012); Koky v. Slovakia (2012); Borbala Kiss v. Hungary (2012); Marian Chiriță v. Romania (2014); Ion Bălășoiu v. Romania (2015); Mihaylova and Malinova v. Bulgaria (2015); Boacă v. Romania (2016); Adam v. Slovakia (2016); Fogarasi v. Romania (2017); Osman v. Romania (2017); M.F. v. Hungary (2017); Lingurar and Others v. Romania (2018); Kovács v. Hungary (2019); R.R. and R.D. v. Slovakia (2020); X and Y v. North Macedonia (2020); P.H. v. Slovakia (2022); Mata v. Hungary (2022); Balkasi v. Albania (2022); J.I. v. Croatia (2022); L.F. v. Hungary (2022); M.B. v. Slovakia (no. 2) (2023); Panayotopoulos v. Greece (2025)
Ethnic origin – Kurdish	Kaya v. Turkey (1998); Kurt v. Turkey (1998); Tanrikulu v. Turkey (1999); Çakıcı v. Turkey (1999); Çiçek v. Turkey (2001); Sarlı v. Turkey (2001); İlhan v. Turkey (2002); Öcalan v. Turkey (2005); Yılmaz v. Turkey (2004); Hasan İlhan v. Turkey (2004); Talat Tepe v. Turkey (2004); Adalı v. Turkey (2005); Celikbilek v. Turkey (2005); Akdeniz v. Turkey (2005); Sevgin and İnce v. Turkey (2005); H.Y. and HÜ.Y. v. Turkey (2005); Nesibe Haran v. Turkey (2005); Yaşar v. Turkey (2006); Şeker v. Turkey (2006); Diril v. Turkey (2006); Soylu v. Turkey (2007); Osmanoğlu v. Turkey (2008); Cennet Ayhan v. Turkey (2006); Gürü Toprak v. Turkey (2007); Makbule Kaymaz v. Turkey (2014); Muhacir Çiçek v. Turkey (2016)
Ethnic origin – others	Kakoulli v. Turkey (2005) – Greek Cypriot/Christian religion; Zelilof v. Greece (2007) – Russian; Antayev v. Russia (2014) – Chechen; Mileusnić and Mileusnić-Espenheimer v. Croatia (2015) – Serbian; Adzhigitova and Others v. Russia (2021) – Avar; Gurbanov v. Armenia (2023) – Azerbaijani
Political opinion/Kurdish/opposition	Talat Tepe v. Turkey (2004); H.Y. and HÜ.Y. v. Turkey (2005); Cennet Ayhan and Mehmet Salih (2006); Ayan v. Turkey (2006); Mammadov v. Azerbaijan (2007); Gürü Toprak v. Turkey (2007); Virabyan v. Armenia (2012)
Sex (women)	Rumor v. Italy (2014); Y and Others v. Bulgaria (2022); Landi v. Italy (2022), M.A. v. Iceland (2025), B.A. v. Iceland (2025)
Racial origin / Skin color	Muhammad v. Spain (2022); Seydi and Others v. France (2025)
Religion (ethnicity)	Diril v. Turkey (2006); Mikeladze and Others v. Georgia (2021) – Jehovah's Witnesses
Disability (ethnicity)	P.H. v. Slovakia (2022) – Disability + Roma

### 3.1. Classifications, exclusions, and research limitations

The cases included in the analysis were classified according to the state, the year of the decision, and the criterion of discrimination invoked in order to identify the determining factors in the Court's conclusions regarding the dynamics of the evidence, the nature of the investigations, the type of justifications, the causal link with the criteria of discrimination, or procedural aspects. A further selection of cases was made based on the use of English search terms such as "hate crimes," "prejudice-motivated crimes," "motivated by discrimination," "discriminatory motive," "discriminatory attitudes," "racial profiling," "ethnic profiling," and "violence." ECtHR decisions concerning non-violation of Article 14 in conjunction with Article 8 that did not include these types of references were excluded from the data set. Cases based on the provisions of Articles 2, 3, and 8 in conjunction with Article 14 that were declared inadmissible by the Court were not included.

The sections related to the complaints, the arguments of the parties, and the way in which the Court dealt with them were extracted, and the analysis focused on how the ECtHR assessed the evidence and the reasons why it accepted or rejected the parties' explanations. The full list of 82 decisions and the relevant references are annexed to this study. When selecting the decisions, cases based on Article 14 in conjunction with other articles of the Convention were excluded as irrelevant to the purpose of the research. Some of the Court's conclusions regarding the manifestly ill-founded nature of complaints under the provisions of Article 14 in

conjunction with Articles 2, 3, and 8 were omitted from the analysis. All these choices constitute limitations of the present research. In fact, the picture provided by this data set should be viewed as only one of the two sides of the "coin." Therefore, for a complete picture we should overlap the complementary data set, that is the decisions in which the European Court of Human Rights found a violation of the provisions of Article 14 in conjunction with Articles 2, 3, and 8, identified on the basis of identical selection factors. This approach is the subject of a future article.

### 3.2. Cataloguing case law and research questions

Our research focuses on cataloguing ECtHR case law (*see Tables 1 and 3*) based on the "impediments" discussed in academic research and extrapolated in the present analysis. Impediments such as the high standard of proof, the decoupling of facts from discriminatory motives, the formal validation of investigations, the acceptance of neutral explanations, and the complexity of determining discriminatory motives shape the research questions: 1) How does the Court apply the standard of proof in relation to the investigation of hate crimes from the perspective of circumstantial indicators that may presume a link to discriminatory motives? 2) How does the Court approach contextual and individual elements in relation to discrimination and intolerance/prejudice in the commission of hate crimes? 3) How does the Court position itself in relation to the arguments of states rejecting discriminatory motives? 4) How are the substantive issues related to the discriminatory act per se and the procedural issues related to the effective investigation of the discriminatory act delimited? These questions operate against the backdrop of working hypotheses that indicate a swing of the European Court between privileging the demonstration, "beyond reasonable doubt," of the motivation for the hate crime and the Court's reluctance to reverse the burden of proof or infer motives in the context of societal prejudices.

*Table 2 Impediments, research questions, and hypotheses related to the identification of hate crimes*

<b>Impediments</b>	<b>Research question</b>	<b>Working hypothesis</b>
1. "Evidentiary inflation" regarding the discriminatory motivation	To what extent does the standard of proof affect circumstantial indicators of discriminatory motives?	The Court applies a strict evidentiary threshold, so that the element of discrimination cannot be retained.
2. Decoupling the facts from the discriminatory motive	How are the circumstantial elements of the facts related to prejudice, intolerance, and similar discriminatory motives addressed?	The Court distinguishes between circumstantial and individual indicators, which diminishes the involvement of the broader dimension of discrimination.
3. Formal validation of investigations	What relevance is given to investigations with a low level of focus on discriminatory grounds?	The Court accepts the fulfillment of the procedural obligation to investigate the facts, in the absence or with only a superficial analysis of the discriminatory motive.
4. Alternative (neutral) explanations in the analysis	How are the substantive aspects of the act motivated by discrimination and the procedural aspects relating to the investigation of discriminatory motivation delimited?	The Court accepts neutral explanations regarding the facts that do not involve the analysis of Article 14

### 4. Mapping through the "lens" of impediments to investigating hate crimes

The impediments proposed by King and Hagerlid were incorporated into our analysis in the form of four categories into which the decisions of the European Court of Human Rights were classified (*see Table 3*). Passing the decisions handed down by the ECtHR through this filter of systematization provides the relevant framework for examining how the theorized impediments are reflected in European practice, including in terms of possible tensions in retaining the determining motives of hate crimes and in the mechanisms related to the burden of proof.

The first category concerns high evidentiary requirements or "evidentiary inflation," as King calls it, and involves rejecting discriminatory motivation in the absence of direct and explicit evidence (*beyond any doubt*) of the causality of the criminal act. The second category concerns the decoupling of facts from discriminatory motives, which involves separating the motive for the crime from the criminal act and circumstantial elements related to the broader context of societal prejudice or intolerance. The third category concerns the operational sufficiency of investigations and involves validating them even though they examine aspects related to motivation only tangentially or not at all. The fourth category concerns favoring neutral explanations regarding motivation and involves accepting that the alleged incidents are not related to discriminatory motives.

*Table 3 Mapping of case law according to impediments found in the investigation of hate crimes*

<b>Impediments</b>	<b>Positioning of the state</b>	<b>Calibration of the Court</b>	<b>ECHR cases</b>
1. "Evidentiary inflation" regarding attitudes suspected of discrimination, discriminatory motivation, discriminatory characteristics	The state rejects the contextual interpretation of remarks or insults with discriminatory connotations, invoking operational neutrality in the investigation	Evidentiary aspect. A restrictive approach to evidence is applied ("beyond reasonable doubt"), avoids shifting the burden of proof in relation to the alleged discriminatory act	Kaya (1998); Kurt (1998); Tanrıku (1999); Çakıcı (1999); Velikova (2000); Çiçek (2001); Sarlı (2001); Anguelova (2002); İlhan (2002); Öcalan (2005); Balogh (2004); Yılmaz (2004); Hasan İlhan (2004); Talat Tepe (2004); Adalı (2005); Celikbilek (2005); Akdeniz (2005); Nachova (2005); Sevgin & İnce (2005); H.Y. & HÜ.Y. (2005); Nesibe Haran (2005); Kakoulli (2005); Yaşar (2006); Şeker (2006); Ognyanova and Choban (2006); Diril (2006); Soylu (2007); Karagiannopoulos (2007); Osmanoğlu (2008); Beganović (2009); Sashov (2010); Stefanou (2010); Vasil Sashov Petrov (2010); Seidova (2010); Mižigárová (2010); Soare (2011); Dimitrova (2011); Kalucza (2012); M. et al. (2012); Kleyn (2012); Borbala Kiss (2012); Makbule Kaymaz (2014); Marian Chiriță (2014); Ion Bălăsoiu (2015); Mileusnić (2015); Mihaylova (2015); Muhacir Çiçek (2016); Adam (2016); Fogarasi (2017); Osman (2017); M.F. (2017); Lingurar (2018); Kovács (2019); R.R. and R.D. (2020); X and Y (2020); Adzhigitova (2021); Mikeladze (2021); P.H. (2022); Muhammad (2022); M.B. (no. 2) (2023); Panayotopoulos (2025); Seydi (2025).
2. Decoupling negative	The state attributes the negative	Evidentiary aspect. The causal link	Anguelova (2002); Hasan İlhan (2004); Bekos & Koutropoulos (2005);

consequences from attitudes suspected of discrimination or discriminatory motivation	consequences of the acts to neutral causes (personal disputes, ensuring public order).	between the criminal act and the motive for discrimination is decoupled, even when a substantial violation of Art. 2/3 or 8 is found.	Ognyanova & Choban (2006); Gürü Toprak (2007); Zeligof (2007); Beganović (2009); Vasil Sashov Petrov (2010); Seidova (2010); Mižigárová (2010); Soare (2011); Dimitrova (2011); M. et al. (2012); Adam (2016); Lingurar (2018); Adzhigitova (2021); M.B (no. 2) (2023); Gurbanov (2023).
3. Formal validation of investigations despite omission of the discriminatory dimension	The state invokes investigative measures (hearing witnesses, preparing reports, forensic examinations, etc.) even though indications of suspected discriminatory attitudes have not been examined in detail	Interpretative aspect. The procedural obligation to investigate is considered fulfilled, and implicitly a non-violation of Art. 14 from a procedural point of view is found.	Vasil Sashov Petrov (2010); Ion Bălășoiu (2015); Mileusnić and Mileusnić-Espenheimer (2015); Adam (2016); M.F. (2017); Kovács (2019); P.H. (2022); Muhammad (2022); Panayotopoulos (2025); Seydi (2025).
4. Alternative or neutral explanations for the alleged acts	The State invokes the absence of elements of discrimination in the context of Art. 2/3 or 8.	Interpretative aspect. The separate examination under Art. 14 is rejected, which leads to inadmissibility; sometimes there is a lack of analysis of attitudes suspected of discrimination, discriminatory motivation	Karagiannopoulos (2007); Beganović (2009); Carabulea (2010); Soare (2011); Boacă (2016); Osman (2017); Fogarasi (2017); Kovács (2019); Mata (2022); Balkasi (2022); J.I. (2022), L.F. (2022), Gurbanov (2023).

By correlating the ECtHR decisions grouped into categories of impediments, we tested the working hypotheses of the research, with the aim of assessing the extent to which the European Court's approaches shape specific patterns of dealing with hate crimes, or in other words, acts suspected of being discriminatory. To understand the dynamics of these impediments, we analyze them individually, starting with the most frequently identified within the dataset: evidentiary inflation.

### **Evidentiary inflation**

Academic literature refers to the application of an excessively high standard of proof in the context of retaining discriminatory motivation as "evidentiary inflation." From this perspective, in the cases examined, it can be seen that the European court uses an evidentiary standard that validates the working hypothesis, in the sense that the element of discrimination in the act alleged and examined is not usually retained. The Court requires evidence that directly or corroboratively indicates the discriminatory motive behind the acts committed, including in situations where the case presents relevant circumstantial evidence. In cases involving

allegations of homicide,<sup>58</sup> disappearances,<sup>59</sup> destruction of homes<sup>60</sup> and ill-treatment<sup>61</sup> on the grounds of the victims' Kurdish origin, the European court has dealt with these cases almost routinely by rejecting the complaints. Although most of the alleged acts were placed in an institutionalized context for ethnic reasons<sup>62</sup> (belonging to the Kurdish ethnic group) and, as a rule, "countered" by the simple denial of the facts by the respondent state, the European court did not base its analysis on the mechanism of shifting the burden of proof. Rather, it took the prevailing position that the evidence presented by the applicants did not "substantiate" the aspect of discrimination<sup>63</sup>, did not indicate that the acts were committed "on grounds of ethnic origin,"<sup>64</sup> in other words, "did not establish beyond reasonable doubt" the discriminatory element.<sup>65</sup>

Cases involving homicide<sup>66</sup> and ill-treatment committed by the police<sup>67</sup> or private individuals<sup>68</sup> in relation to the Roma ethnicity of the victims are more nuanced in terms of evidentiary mechanisms. A specific element of these cases is that the violent acts are accompanied by racist<sup>69</sup> and ethnic<sup>70</sup> insults directed at the victims; they are closely linked to

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<sup>58</sup> *Kaya v. Turkey*, no.158/1996/777/978, (1998); *Tanrikulu v. Turkey*, no. 23763/94, (1999); *Yılmaz v. Turkey*, no. 35875/97, (2004); *H.Y. and HÜ.Y. v. Turkey*, no 40262/98, (2005); *Makbule Kaymaz and Others v. Turkey*, no 651/10, (2014); *Muhacir Çiçek and Others v. Turkey*, no. 41465/09 (2016).

<sup>59</sup> *Kurt v. Turkey*, no. 15/1997/799/1002, (1998); *Çakıcı v. Turkey*, no. 23657/94, (1999); *Çiçek v. Turkey*, no. 25704/94, (2001); *Sarli v Turkey*, no.24490/94 (1999); *Adali v. Turkey*, no. 38187/97 (2005); *Şeker v. Turkey* no. 52390/99, (2006); *Diril v. Turkey* no. 68188/01 (2006); *Osmanoğlu v. Turkey* no. 48804/99 (2008).

<sup>60</sup> *Hasan İlhan v. Turkey* no. 22494/93 (2004); *Soylu v. Turkey* no. 43854/98 (2007).

<sup>61</sup> *Ilhan v Turkey* No. 22277/93 (1999); *Talat Tepe v. Turkey* no.31247/96 ) (2004); *Celikbilek v. Turkey* no.27693/95 (2005); *Akdeniz v. Turkey* no. 25165/94 (2005); *Nesibe Haran v. Turkey* no. 28299/95 (2005); *Sevgin and Ince v. Turkey* no. 46262/99 (2005); *Yaşar v. Turkey* no. 46412/99 (2006); *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey* no. 41964/98 (2006); *Gürü Toprak v. Turkey* no 39452/98 (2007).

<sup>62</sup> See, for example, *Kurt v. Turkey* (1998) para. 144, *Tanrikulu v. Turkey* (1999) para. 123, *Çakıcı v. Turkey* (1999) para. 115, *Yılmaz v. Turkey* (2004) para. 97, *Hasan İlhan v. Turkey* (2004) para. 129, *Adali v. Turkey* (2005) para. 92, *Nesibe Haran v. Turkey* (2005) para. 92, *Şeker v. Turkey* (2006) para. 99, *Soylu v. Turkey* (2007) para. 57.

<sup>63</sup> *Kaya v. Turkey* (1998), paras. 112-113; *Tanrikulu v. Turkey* (1999), paras. 124-125; *Makbule Kaymaz and Others v. Turkey* (2014), para. 150; *Muhacir Çiçek and Others v. Turkey* (2016), para. 82.

<sup>64</sup> *H.Y. and HÜ.Y. v. Turkey* (2005), para. 146.

<sup>65</sup> *Yılmaz v. Turkey* (2004), paras. 99, 199.

<sup>66</sup> *Anguelova v. Bulgaria*, no. 38361/97, (2002), *Nachova and Others v. Bulgaria*, nos.43577/98, 43579/98, (2005), *Carabulea v. Romania*, no. 45661/99, (2010), *Seidova and Others v. Bulgaria*, no.310/04, (2010), *Mižigárová v. Slovakia*, no. 74832/01, (2010), *Dimitrova and Others v. Bulgaria*, no.44862/04, (2011)

<sup>67</sup> *Assenov and Others v. Bulgaria*, no. 90/1997/874/1086, (1998), *Velikova v. Bulgaria*, no. 41488/98, (2000), *Balogh v. Hungary*, no. 47940/99, (2004), *Bekos and Koutropoulos v. Greece*, no. 15250/02, (2005), *Sashov and Others v. Bulgaria*, no 14383/03, (2010), *Stefanou v. Greece*, no. 2954/07, (2010), *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, (2010), *Borbala Kiss v. Hungary*, no. 59214/11, (2012), *Ion Bălăşoiu v. Romania*, no 70555/10, (2015), *Adam v. Slovakia*, no. 68066/12, (2016), *Fogarasi and Others v. Romania*, no 67590/10, (2017), *Osman v. Romania*, no. 59362/14, (2017), *M.F. v. Hungary*, no. 45855/12, (2017), *Lingurar and Others v. Romania*, no. 5886/15, (2018), *Kovács v. Hungary*, nos. 21314/15 et., (2019), *R.R. and R.D. v. Slovakia*, no. 20649/18, (2020), *X and Y v. North Macedonia*, no. 173/17, (2020), *P.H. v. Slovakia*, no. 37574/19, (2022), *M.B. and Others v. Slovakia* (No. 2), no. 63962/19, (2023), *Panayotopoulos and Others v. Greece*, no. 44758/20, (2025).

<sup>68</sup> *Beganović v. Croatia*, no. 46423/06, (2009), *Kleyn and Aleksandrovich v. Russia*, no. 40657/04, (2012), *Koky and Others v. Slovakia*, no. 13624/03, (2012), *Mihaylova and Malinova v. Bulgaria*, no. 36613/08, (2015).

<sup>69</sup> *Bekos and Koutropoulos v. Greece* (2005), para. 60, refers to "racist language" and "pejorative references to ethnic origin." *Nachova and Others v. Bulgaria*, (2005) para. 153, *Sashov and Others v. Bulgaria* (2010) para. 74, *Dimitrova and Others v. Bulgaria* (2011) para. 97, use of the expression "damn gypsies", *Boacă and Others v. Romania*, no. 40355/11, (2016) para. 9 use of the expressions "ugly gypsies", *Panayotopoulos and Others v. Greece* (2025) para. 139 reference is made to racial profiling of Roma and indication of ethnic origin, including references to unknown persons of "Roma origin".

<sup>70</sup> *Assenov and Others v. Bulgaria* (1998), para. 30, *Balogh v. Hungary* (2004) para. 75, "Gypsies would do well not to set foot in Orosháza," *Seidova and Others v. Bulgaria* (2010) para. 71, *Marian Chiriță v. Romania*,

the knowledge or perception that the victim is of Roma ethnicity<sup>71</sup> or is predominantly characterized from the perspective of ethnic affiliation<sup>72</sup>, and are committed in the vicinity of Roma communities<sup>73</sup> in conjunction with the fact that these acts occur against a backdrop of widespread prejudice at the societal level and among the police, and of impunity enjoyed by the perpetrators of racist acts<sup>74</sup> or, eminently in this context, in the absence of racist insults.<sup>75</sup> As a rule, in such cases, states reject the alleged remarks or their discriminatory connotation and invoke the operational neutrality of the perpetrators or authorities involved. The European Court has recognized the relevance of the arguments put forward by victims, coupled in some cases with the lack of plausible explanations from the state regarding the circumstances of the acts of violence and criticism of the conduct of the agents with regard to lethal or excessive force. However, these critical issues constituted an "insufficient basis" for determining the "racist motivation" of the alleged acts, a conclusion derived from the application of the "beyond reasonable doubt" standard of proof.<sup>76</sup> In general, the Court refused to establish a causal link between contextual evidence of systemic discrimination (international reports) and hate crimes, the evidence of racist language at the time of the acts, or the ethnic origin of the victims. Although considered relevant, these aspects were only taken into account to the extent that they were recorded in official documents, but without being decisive in directly establishing motivation. In other words, the Court appears to be substituting itself for a national judicial body in determining the guilt of the perpetrator of a crime, even though before the ECtHR "states do not appear as defendants in criminal proceedings" and the standards of proof differ in human rights proceedings.<sup>77</sup> This aspect has been consistently criticized within the Court, focusing on the transfer of the burden of proof to the state, given that it has control over the

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*no.9443/10*, (2014) para. 49, *M.F. v. Hungary* (2017) para. 62, *Kovács v. Hungary* (2019) para. 49, *R.R. and R.D. v. Slovakia* (2020) para. 196, *X and Y v. North Macedonia* (2020) para. 68, *M.B. and Others v. Slovakia* (No. 2) (2023) para. 89.

<sup>71</sup> *Nachova and Others v. Bulgaria* (2005) para. 152, *Anguelova v. Bulgaria* (2002) para. 164, *Velikova v. Bulgaria* (2000), para. 92, *Stefanou v. Greece* (2010) para. 59, *Carabulea v. Romania* (2010) para. 168, *Ion Bălășoiu v. Romania* (2015) para. 131.

<sup>72</sup> *Velikova v. Bulgaria* (2000), para. 92, explicit references by police officers to "Gypsy" and "skin color," *Anguelova v. Bulgaria* (2002), paras. 163-164, references to "Gypsy" in official statements, *Karagiannopoulos v. Greece* (2007) para. 73 reference in statements to "the majority of Roma criminals". *Soare and Others v. Romania* (2011) para. 198, reference to "attacked by a gypsy," *Dimitrova and Others v. Bulgaria* (2011) para. 98, reference to "gypsies," *Boacă and Others v. Romania* (2016) para. 93, reference to "gypsies," *Fogarasi and Others v. Romania* (2017), para. 104, reference to "Roma neighbourhood"; *Lingurar and Others v. Romania* (2018), para. 111, general reference to the Roma ethnic group as "aggressive and armed," *Panayotopoulos and Others v. Greece* (2025), para. 139, references to the "Roma" ethnicity, "unknown persons of Roma origin."

<sup>73</sup> *Nachova and Others v. Bulgaria* (2005) para. 152, *Vasil Sashov Petrov v. Bulgaria* (2010) para. 66, *Koky and Others v. Slovakia* (2012) para. 72, *Boacă and Others v. Romania* (2016) para. 9, *Lingurar and Others v. Romania* (2018) para. 116, *R.R. and R.D. v. Slovakia* (2020) para. 194, *X and Y v. North Macedonia* (2020) para. 68.

<sup>74</sup> *Anguelova v. Bulgaria* (2002) para. 164, *Ognyanova and Choban v. Bulgaria* (2006) para. 140, *Nachova and Others v. Bulgaria* (2005) para. 154, *Bekos and Koutropoulos v. Greece* (2005) para. 60, *Karagiannopoulos v. Greece* (2007) para. 73, *Sashov and Others v. Bulgaria* (2010) para. 74, *Mižigárová v. Slovakia* (2010) para. 122, *Soare and Others v. Romania* (2011) para. 204, *Boacă and Others v. Romania* (2016) para. 108, *Fogarasi and Others v. Romania* (2017) para. 105, *M.F. v. Hungary* (2017) para. 64, *R.R. and R.D. v. Slovakia* (2020) para. 194, *X and Y v. North Macedonia* (2020) para. 68, *Panayotopoulos and Others v. Greece* (2025) paras. 140, 145.

<sup>75</sup> *Ognyanova and Choban v. Bulgaria* (2006) para. 140, *Beganović v. Croatia* (2009) para. 90, *Borbala Kiss v. Hungary* (2012), para. 39, *Mihaylova and Malinova v. Bulgaria* (2015) para. 66, *Adam v. Slovakia* (2016) para. 85, *P.H. v. Slovakia* (2022) para. 118, *L.F. v. Hungary* (2022) para. 82-84, *M.B. and Others v. Slovakia* (No. 2) (2023) para. 83.

<sup>76</sup> *Velikova v. Bulgaria* (2000), para. 94, *Anguelova v. Bulgaria* (2002) para. 168, *Nachova and Others v. Bulgaria* (2005) paras. 152-153, *Bekos and Koutropoulos v. Greece* (2005) para 66, *Zelilof v. Greece* (2007) para. 75, *Vasil Sashov Petrov v. Bulgaria* (2010) para. 69, *Mižigárová v. Slovakia* (2010) para. 117, *Soare and Others v. Romania* (2011) para. 204, *M.F. v. Hungary* (2017) para. 68.

<sup>77</sup> *Hasan İlhan v. Turkey* (2004), partially dissenting opinion of Judge Loucaides.

material evidence, it is responsible for investigative shortcomings, or ignores contextual clues that point to racial or ethnic motivations.<sup>78</sup>

In post-*Nachova* case law, the European court has attempted to partially respond to internal criticism by allowing some flexibility regarding evidence that may result from "uncontested factual allegations" and in the distribution of the burden of proof depending on "the specifics of the facts, the nature of the allegations, and the law at issue."<sup>79</sup> Equally, the European Court has refined its approach regarding the role of the procedural obligation of states to investigate hate crimes<sup>80</sup>. However, the case law in this dataset confirms that, in the view of the ECtHR, it is incumbent on the applicant to indicate *prima facie* allegations of discrimination in relation to racial or ethnic hate crimes, which is consistent with the mechanism itself, but in practice, the transfer of the burden of proof to the state, in terms of the discriminatory motive, is so rare that it becomes exceptional,<sup>81</sup> even illusory. The evidentiary threshold of the Court in fact requires the existence of indisputable direct evidence establishing the motivation for committing hate crimes, which means that contextual elements indicating reasonable suspicion of a racist or ethnic aspect do not allow for a substantial finding of discrimination. This can be seen in the recent case of *Panayotopoulos*,<sup>82</sup> both in terms of the lack of finding of a causal link with racist motivation and the blocking of the burden of proof<sup>83</sup>. This conclusion results from comparing with the cases in which, cumulatively, the victims are of a certain ethnic origin, the perpetrators are agents of the state, witness statements support the existence of racist insults, these are documented in official police or prosecutor reports, they are complementary to acts of violence, the racist/ethnic remarks of the agents are either attested in official documents or are not contested by the authorities<sup>84</sup>. This type of correlation with exceptional situations in which the Court has upheld direct allegations of *prima facie* discrimination confirms the evidentiary inflation that has structural implications for the ability of victims to prove the nature of acts motivated by racism, and implies the "illusory" potential, at least from their perspective and the difficulty of gathering such a body of evidence.<sup>85</sup>

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<sup>78</sup> *Anguelova v. Bulgaria* (2002) partially dissenting opinion of Judge Bonello, *Yılmaz v. Turkey* (2004) partially dissenting opinion of Judges Bonello and Tulkens, *Hasan İlhan v. Turkey* (2004) partially dissenting opinion of Judges Loucaides and Mularoni, *Bekos and Koutropoulos v. Greece* (2005) partially dissenting opinion of Judge Casadevall, *Mižigárová v. Slovakia* (2010) partially dissenting opinion of Judge David Thor Bjorgvinsson, *Carabulea v. Romania* (2010) partially dissenting opinion of Judges Gyulumyan and Power, *Soare and Others v. Romania* (2011) partially dissenting opinion of Judges Ineta Ziemele, Ann Power, Boštjan M. Zupančič, *Muhammad v. Spain*, no.34085/17, (2022), dissenting opinion of Judges Zund and Krenc, *Basu v. Germany*, no. 215/19, (2022), dissenting opinion of Judge Pavli.

<sup>79</sup> *Nachova and Others v. Bulgaria* (2005) para. 147.

<sup>80</sup> *Ibid.* Paras. 160-161.

<sup>81</sup> *Stoica v. Romania*, no. 42722/02, (2008) paras. 128-132, *Antayev and Others v. Russia*, no. 37966/07, (2014) paras. 127-129, *Lingurar v Romania* (2019) paras. 75-78.

<sup>82</sup> *Panayotopoulos and Others v. Greece* (2025), para. 150.

<sup>83</sup> *Ibid.*, paras. 150-151.

<sup>84</sup> In *Panayotopoulos*, the Court refers to the cases of *Makhashev v. Russia*, no.20546/07, (2012), paras. 176-79 and *Stoica v. Romania*, (2008), paras. 128-32, singular cases in which discrimination was found on substantive grounds.

<sup>85</sup> For a critique of how the rules of evidence have been applied in discrimination cases, including in relation to causality with racial origin (African in police profiling), see the dissenting opinion of Judge Mourou-Vikstrom in the case of *Seydi and Others v. France* no.35844/17, (2025).

## Decoupling facts from discriminatory motives

Decoupling can be identified when criminal acts (destruction, assault, violence, bodily harm, homicide, etc.) are separated or dissociated from discriminatory attitudes, which implies that the state attributes the negative consequences of the acts to neutral causes, even though there is circumstantial evidence suggesting possible causal links with prejudice or discriminatory motives. The classic type of decoupling is found in cases where the state invokes the need for operational interventions by state agents due to security reasons (armed attack and identification of weapons in the possession of the victim's family), for example the *Hasan Ilhan* case,<sup>86</sup> or public order reasons (violent behaviour of the victim, repeat offender), for example the *Bekos* case,<sup>87</sup> the explanations being accompanied by official reports or statements. However, the decoupling is not always classic, often being ambivalent, when the arguments are based mainly on justifying the incriminated act through self-defense, as in the case of *Vasil Sashov Petrov*<sup>88</sup> or *Dimitrova*,<sup>89</sup> or through the defense of another person, in the case of *Soare and others*<sup>90</sup>, while contesting the racist nature of the insults or ethnic references. In effect, it is not the references themselves that are contested, but rather their connection to the ethnic element.<sup>91</sup> In other words, in these cases, decoupling is oriented towards the defensive hypothesis. In other cases, decoupling may be correlated with contextual aspects, particularly in situations where arguments are constructed by association with pre-existing conflicts or local tensions that would exclude ethnic motives, in the cases of *Beganovic*<sup>92</sup> and *M. and others*<sup>93</sup> (conflicts between groups of different or the same ethnic origin), or by correlation with public order issues, in *Lingurar*<sup>94</sup> (the execution of warrants) or *Zelilof*,<sup>95</sup> *Adam*<sup>96</sup> (arrest procedures) which would prevail over ethnicity. Decoupling can also be identified in arguments related to the prevalence of procedural grounds (the complexity of investigations that would objectify the

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<sup>86</sup> *Hasan İlhan v. Turkey* (2004), the government's arguments discussed in the dissenting opinion of Judge Loucaides suggested that the military operations were prompted by armed attacks that led to the destruction and burning of the applicant's house in connection with the discovery of weapons at the victim's home. Similar arguments were raised in *Adzhigitova and Others v. Russia*, nos.40165/07, 2593/08, (2021) paras. 259, 266.

<sup>87</sup> *Bekos and Koutropoulos v. Greece* (2005) para 61. The officers' acts of brutality were justified by the victim's aggressive behavior. Similarly, in *Panayotopoulos* (2025), it was argued that the police actions had no connection with the ethnic origin of the victims, who resisted arrest and fled the scene of the incidents.

<sup>88</sup> *Vasil Sashov Petrov v. Bulgaria* (2010) paras. 65, 71. The use of service weapons occurred during the pursuit of the victim at night, in conditions of reduced visibility, which would have precluded knowledge of ethnic identity. See also *Gürü Toprak v. Turkey* (2007) para 37. The intervention and use of force by the officers was necessary in view of the victim's violent behaviour.

<sup>89</sup> *Dimitrova and Others v. Bulgaria* (2011) paras. 97-98. The killing of the victim was justified by the victim's disproportionate reaction, and insults such as "damn gypsies" were not considered relevant.

<sup>90</sup> *Soare and Others v. Romania* (2011) para. 199. The use of the service weapon was justified by the need to intervene in order to "protect the life of another person of Roma origin."

<sup>91</sup> For example, in the case of *Boacă and Others v. Romania* (2016) para 95, the use of the term "Roma" in police reports was argued not to constitute evidence of racist motivation, as the intervention of state agents was motivated exclusively by the establishment of public order and the protection of persons. In *Fogarasi and Others v. Romania* (2017) para 108, it was argued that the reference to the "Roma neighborhood" was used strictly to indicate the location where an incident occurred.

<sup>92</sup> *Beganović v. Croatia* (2009) paras. 95-96.

<sup>93</sup> *M. and Others v. Italy and Bulgaria* (2012) paras. 172-174.

<sup>94</sup> *Lingurar and Others v. Romania* (2018) paras. 112-113, 116.

<sup>95</sup> *Zelilof v. Greece*, no.17060/03, (2007) para. 71.

<sup>96</sup> *Adam v. Slovakia* (2016) para. 88.

alleged facts), as in the cases of *Ognyanova and Choban*<sup>97</sup> and *Seidova*.<sup>98</sup> Last but not least, decoupling can be identified where there is an explicit challenge of the evidence invoked that would indicate possible discriminatory motives, for example *Mižigárová*<sup>99</sup> or discriminatory connotations, as in the case of *M.B. and others (2)*.<sup>100</sup> Along the same line of argument, in all 18 cases falling under the category of decoupling impediments in Table 3, the existence of discriminatory motivation was explicitly challenged, and in most cases, indications of insults or racist language were either denied, reinterpreted, or considered irrelevant<sup>101</sup>. The Court's position in these cases, across the board, suggests that the mechanism of shifting the burden of proof is not triggered because there is insufficient evidence to establish the racist motivation of the alleged acts. In other words, the operational, procedural, or defensive framework invoked by states supersede the elements of racist language or contextual elements relating to discrimination or social prejudice by isolating and reinterpreting them as insufficient to determine racial causality. Therefore, decoupling may favor neutral explanations in the absence of direct, precise, and consistent evidence.

### **Formal validation of investigations**

The validation of investigations primarily involves favoring the procedural dimension in relation to the investigation of the alleged discriminatory motivation behind the alleged acts. The working hypothesis is based on the idea that the investigative acts (witness hearings, forensic conclusions, expert reports, reports, decisions) are sufficient to reduce the likelihood of or even to exclude the inclusion of the discriminatory element. Consequently, the European Court tends to decide on "non-violation" with regard to the discriminatory dimension, from the perspective of the non-operationalization of the grounds for discrimination. The classic type of acceptance of the procedural dimension can be found in situations where the effectiveness of investigations is invoked in terms of identifying the perpetrators, prosecuting and convicting them, for example, in *Mileusnić and Mileusnić-Espenheim*<sup>102</sup>, or identifying the agents involved, examining their statements and police audio recordings, in *Kovács*<sup>103</sup> and *Muhammad*.<sup>104</sup> When the discriminatory element (ethnic origin) is diluted in the investigative process and even in the conviction, it seems that, in the Court's view, the effect of the criminal measures resulting in the conviction of the perpetrators for homicide is sufficient to find there was no violation of Article 14.<sup>105</sup> Where the discriminatory element is investigated, the Court

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<sup>97</sup> *Ognyanova and Choban v. Bulgaria* (2006) paras. 141-142. The authorities conducted thorough investigations based on witness statements, medical examinations, and additional tests.

<sup>98</sup> *Seidova and Others v. Bulgaria* (2010), para. 72. The authorities established that the use of firearms was proportionate and pursued the sole aim of protecting life.

<sup>99</sup> *Mižigárová v. Slovakia* (2010) para. 113.

<sup>100</sup> *M.B. and Others v. Slovakia (No. 2)* (2023) para. 83. Although the investigations were based on ethnic hatred, they established that the alleged acts were not abusive, including in the absence of remarks related to racial origin.

<sup>101</sup> *Anguelova* (2002) reference to "gypsy" does not constitute evidence of racist motivation, *Bekos and Koutropoulos* (2005) paras. 60-61 and *Zelilof* (2007) paras. 70-71 references to racist language were rejected, *Soare and Others* (2011) para. 199 reference to "a gypsy" was challenged, *Lingurar and Others* (2018) para. 116 references to "armed and dangerous" suspects in the police operational plan were challenged, *Vasil Sashov Petrov* (2010) para. 65 reference to "Gypsy" in the context of the Roma neighborhood has no discriminatory meaning, *Seidova and Others* (2010), para. 71 and *Dimitrova and Others* (2011) para. 97 witness statements regarding insults related to ethno-cultural affiliation were not relevant, *Kovács v. Hungary* (2019) para. 52 references to "four young Roma causing a disturbance" do not raise issues of discrimination, *M.B. and Others (No. 2)* (2023) para. 88 the reference to a "gang of gypsies" was not relevant.

<sup>102</sup> *Mileusnić and Mileusnić-Espenheim v. Croatia*, no. 66953/09, (2015) para. 72.

<sup>103</sup> *Kovács v. Hungary* (2019) para. 52.

<sup>104</sup> *Muhammad v. Spain* (2022) paras. 71-72.

<sup>105</sup> *Mileusnić and Mileusnić-Espenheim v. Croatia* (2015) paras. 74-75.

concur with the conclusions of national investigations that do not identify "indications" or links to "racist attitudes" during the proceedings.<sup>106</sup>

Along the same lines, similar to the impediment of "decoupling," we encounter mixed or ambivalent forms when procedural aspects are highlighted but investigations are superficial or deficient yet still deemed sufficient by the Court, leading to a finding of no violation of Article 14. For example, in *Vasil Sashov Petrov*, the investigations established that the use of weapons by agents was carried out within the limits of the legal framework. Proximity to the "gypsy neighborhood" was only one of the factors relating to their perception of the victim's ability to "escape," without any consideration of his ethnic origin<sup>107</sup>. This argument was upheld by the Court, although it found multiple deficiencies in the regulation and use of weapons in this case, citing the speculative nature of the role that the racist motivation may have played at the time of the shooting of the victim.<sup>108</sup>

Similarly, in *M.F.*, the court found that the measures taken to detain and interrogate the victim were lawful, and the shortcomings related to the conduct of the officers, including acts of violence against the victim, did not reveal racist motivations.<sup>109</sup> Another mixed validation hypothesis can be found in situations where the arguments are based on the idea that the statements of witnesses, police officers, or third parties did not indicate racist motives (ethnic insults), in *Ion Bălășoiu*, or on the idea that there were no individual elements of racism attributable to the officers involved, in *Adam*.<sup>110</sup> Interestingly, these arguments regard investigations that did not formally examine racist motivation at the time of the alleged acts, but the Court validates them on the grounds that the information available to the criminal investigation authorities did not constitute *prima facie* evidence of discrimination<sup>111</sup>. By comparison, in *Seydi*, the investigations specifically targeted racist motivation and the causal link with the alleged acts<sup>112</sup>, but it was noted that the statements of the victims and witnesses did not reveal any difference in treatment.<sup>113</sup> The Court validates these conclusions, including with regard to the insufficient nature of the evidence presented by the victims "capable of creating a presumption of discrimination."<sup>114</sup>

These positions of validating the investigations highlight a tendency to favor the procedural dimension in cases with racist motivations, with direct effects on the examination of the substantive aspect of discrimination. The impact is particularly visible in situations where investigations are superficial or procedurally flawed, in the absence of an in-depth examination of the discriminatory motivation. In the cases discussed, the burden of proof was placed entirely on the victim, and in the absence of reaching a "threshold of evidence necessary to establish a presumption"<sup>115</sup> *prima facie* of discrimination, the standard applied considerably reduces the chances of racist motivation being explicitly established.

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<sup>106</sup> Kovács v. Hungary (2019) paras. 52-53, Muhammad v. Spain (2022) paras. 101-103. In both cases, the European court validated the position of the authorities in the sense that the facts are not causally linked to the ethnic or racial origin of the victims, but are determined by their own conduct, which led to the incidents involving state agents. Kovács (2019), paras. 50, 52, Muhammad, paras. 99, 102. See also Gurbanov v. Armenia, no. 7432/17 (2023), para. 76, where the court validates the position of the national authorities regarding the forensic investigations and the absence of ethnic motivations during the criminal proceedings.

<sup>107</sup> Vasil Sashov Petrov v. Bulgaria (2010), paras. 72-73.

<sup>108</sup> Ibid., paras. 69-70.

<sup>109</sup> M.F. v. Hungary (2017) para. 68.

<sup>110</sup> Ion Bălășoiu v. Romania (2015) para. 134, Adam v. Slovakia (2016) para. 88.

<sup>111</sup> Ibid., Ion Bălășoiu, paras. 138-139, Adam, paras. 94-95.

<sup>112</sup> Seydi and Others v. France (2025) para. 97.

<sup>113</sup> Seydi and Others v. France (2025) paras. 77, 115, 118-121.

<sup>114</sup> Ibid., paras. 22-124.

<sup>115</sup> Ibid., para. 122.

## Alternative or neutral explanations

While in the case of decoupling the argument consists of separating the acts from possible discriminatory motives, in the case of alternative explanations the emphasis shifts to reinterpreting the facts. The authorities' argument focuses on justifications that interpret the facts in a new context, or rather, as devoid of possible motives or attitudes suspected of discrimination. When validated by the European Court, these justifications neutralize the elements of discrimination, either by excluding the causal link with racist motivation or by declaring its analysis "irrelevant" in the context of Article 14. A typical case concerns the argument that the circumstances of the facts are related to objective procedural problems faced by the criminal investigation authorities.<sup>116</sup> Other hypotheses concern situations where, from the authorities' perspective, evidence such as racist remarks must be viewed individually rather than collectively, as the subjective position of agents who "explain" the police operation in relation to the involvement of the victim and his or her family in criminal acts.<sup>117</sup> Similarly, references to "gypsies" or "the Roma neighborhood" in police documents must be recontextualized as individual situations (the victim's family identifying themselves by similar names)<sup>118</sup> or circumstantial situations (a specific location being objectively identified).<sup>119</sup> The Court's position in these cases tends to be formulated according to the rigor of these types of arguments, but the decisive element is more about the victims' inability to provide additional evidence to overturn them. Thus, on the procedural field of investigation, the authorities seem to benefit from an informational advantage that leads to the interpretation of non-violation of Article 14. Moreover, in cases where the Court finds separate procedural deficiencies under Articles 2 or 3, it no longer examines issues of discrimination<sup>120</sup>. With regard to the victims, the lack of direct evidence of racist motives, the failure to invoke them at the time of the acts or immediately during the investigation proceedings, are elements that lead to decisions rejecting the applicability or examination of Article 14.<sup>121</sup> Thus, these patterns confirm the approach to discrimination subsumed under the evidentiary and procedural framework, in which the racial/ethnic dimension is dependent on the corroboration of the evidence and the direct attestation of causality.

## Conclusions

The examination of the dataset consisting of the 82 decisions delivered by the ECtHR between 1998 and 2025 aimed to map the case law, document the factors that facilitate or "block" the investigation of "hate" motivation, and examine how the European Court approaches these acts in terms of the discrimination prohibited by Article 14 of the European Convention on Human Rights. To operationalize this analysis, we drew on concepts discussed

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<sup>116</sup> *Beganović v. Croatia* (2009), para. 91. By extension, see *Carabulea v. Romania* (2010) para. 137

<sup>117</sup> *Karagiannopoulos v. Greece* (2007) paras. 74, 77.

<sup>118</sup> *Boacă and Others v. Romania* (2016) paras. 96, 100

<sup>119</sup> *Fogarasi and Others v. Romania* (2017) paras. 104, 108.

<sup>120</sup> *Carabulea v. Romania* (2010) para. 168, *Koky and Others v. Slovakia* (2012) para. 244, *Mata v. Hungary* (2022) para. 19, *J.I. v. Croatia* (2022) para. 108.

<sup>121</sup> *L.F. v. Hungary* (2022) paras. 97-99, *Balkasi and Others v. Albania* (2022) para. 71, *X and Y v. North Macedonia* (2020) para. 75, *Osman v. Romania* (2017) para. 87, *Mihaylova and Malinova v. Bulgaria* (2015) para. 66, *Ion Bălășoiu v. Romania* (2015) para. 138, *Soare and Others v. Romania* (2011) para. 204, *Seidova and Others v. Bulgaria* (2010) para. 73-74.

in academic research and formulated a set of questions to identify the Court's vacillation between the arguments of the parties (victims and states), the relationship between contextual and individual elements (motivation and broader circumstances), the standard of proof applied (indications and proof), and the distinctions between substantive and procedural issues (the causal link between the alleged facts and the discriminatory motive).

The results of this study confirm that impediments such as *evidentiary inflation*, *decoupling from motive*, *alternative explanations*, and *validation of investigations* are not specific to cases involving racist or ethnic motivations. They are also found, to a greater or lesser extent, in cases involving acts of violence motivated by the victim's political opinions<sup>122</sup> (evidentiary inflation, establishing the motive beyond reasonable doubt), the victim's gender<sup>123</sup> (validation of investigations or alternative explanations) or religious affiliation<sup>124</sup> (evidentiary inflation, high standard in relation to discriminatory language). However, it is important to note that the analyzed data set cannot be viewed *sine qua non* from the isolated perspective of the four proposed impediments. These do not manifest themselves exclusively in one case or another; on the contrary, they frequently overlap and are found simultaneously in two or more categories. Similarly, the Court's approach is not limited to a single mechanism of analysis, but to a combination of factors that lead to the dismissal or explicit recognition of discrimination.

In the prevailing body of case law on racial or ethnic discrimination, in relation to the first question (the standard of proof), the analysis shows that the European court maintains a high-strict evidentiary threshold, derived from the requirement to prove "beyond reasonable doubt" the discriminatory motivation. This leads to "evidentiary inflation." In the absence of direct and indisputable evidence, attitudes suspected of discrimination and indications of discriminatory language or insults are rarely considered sufficient to establish discriminatory motivation and the applicability of Article 14. The raising of this standard has been consistently criticized from within the European Court, and even though it has sometimes been nuanced in comparison with the specific requirements of criminal law and relaxed in terms of the theoretical retention of possible presumptions, the recognition of discriminatory motive in practice has remained extremely difficult.

On the second question, concerning the circumstantial elements of hate crimes, there is a clear tendency on the part of states to decouple or separate the alleged acts from possible discriminatory motives. The Court distinguishes between individual and circumstantial indicators, diminishing the role of the broader dimension of discrimination against the targeted groups. The social context and structural dimension of prejudice are decoupled from the causal analysis of racist motivations, and the emphasis is placed on narrow examinations of the direct evidence relating to the motivation of the alleged acts.

With regard to the third question (the relevance given to investigations), the Court gives precedence to the procedural context of investigations when they lead to criminal prosecution and conviction of the perpetrators, even if the discriminatory motivation is diluted or not visible in the sanctioning act. Procedural and administrative justifications are associated with alternative explanations and, in some cases, superficial investigations may be validated, since the burden of proof remains entirely on the victim and this considerably reduces the chances of racist motivation being explicitly recognized. Against this background, the positions of the investigating authorities are confirmed and lead to the neutralization of suspicions of discrimination.

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<sup>122</sup> Cennet Ayhan and Mehmet Salih Ayhan v. Turkey (2006) para. 111, Gürü Toprak v. Turkey (2007) para. 52, Mammadov (Jalaloglu) v. Azerbaijan, no. 34445/04, (2007) para. 91, Virabyan v. Armenia, no. 40094/05, (2012) para. 216.

<sup>123</sup> Rumor v. Italy, no. 72964/10, (2014) paras. 76-77, Y and Others v. Bulgaria, no. 9077/18, (2022) para. 134, Landi v. Italy, no.10929/19, (2022) paras. 107-108.

<sup>124</sup> Mikeladze and Others v. Georgia, no. 54217/16, (2021) paras. 76-77.

With regard to the last question (alternative explanations and procedural delimitations), the states' arguments focus on mechanisms for reinterpreting the alleged facts. If these are validated, the effect is to exclude the causal link with racist motivation. The lack of direct evidence and the failure to invoke racist motives at the time of the incidents or during the investigations frequently lead to the rejection of the applicability of Article 14. In this context, discrimination is subsumed under the evidentiary and procedural framework, and the recognition of discrimination remains dependent on the evidence and a proven causality with racial or ethnic origin. In other words, these patterns, taken together, indicate an asymmetry between victims and states in cases before the ECtHR, with the application of Article 14 being strictly dependent on the ability to demonstrate a direct causal link with racist/ethnic motivations. This difficulty is amplified by the fact that the recognition of this causality in ECtHR case law is exceptional rather than common.

However, as we pointed out in the introduction, the picture presented by this set of data should be understood as representing only one of the two sides of the "coin." An analysis of ECtHR case law on "non-violation" cannot be considered complete without necessarily being coupled with an examination of cases in which the European court has addressed hate crimes and found there was a violation of Article 14 in conjunction with Articles 2, 3, 8, or 9. For the same period (1998-2025) and the same type of cases, 100 decisions handed down by the Court have been identified, which requires a comparative analysis of the conditions under which discrimination was found, from a substantive or procedural point of view, but especially from the perspective of the dynamics of impediments such as *evidentiary inflation*, *decoupling of motives*, *formal validation*, or *alternative explanations*. Such a comparative analysis, which will be the subject of further research, is indispensable for understanding the limits and real potential of Article 14 as an instrument of protection against hate crimes in the ecosystem of discrimination.

### Annex data set no. 1

No.	Case	Article 14 Application	Court decision
1. 1	Kaya v. Turkey (1998)	Alleged discrimination (Kurdish), killing, investigations.	Article 14 examined; no violation.
2.	Kurt v. Turkey (1998)	Alleged discrimination (Kurdish), disappearance, lack of investigation.	Article 14 examined; no violation.
3.	Assenov and Others v. Bulgaria (1998)	Alleged discrimination (Roma), ill-treatment and police investigation.	Article 14 invoked but not examined.
4.	Tanrıkulu v. Turkey (1999)	Alleged discrimination (Kurdish), killing and investigation;	Article 14 examined; no violation.
5.	Çakıcı v. Turkey (1999)	Alleged discrimination (Kurdish), disappearance and investigation.	Article 14 examined; no violation.
6.	Velikova v. Bulgaria (2000)	Death in custody and lack of investigation influenced by Roma origin.	Article 14 examined in conjunction with Article 2; no violation.
7.	Çiçek v. Turkey (2001)	Disappearance and lack of investigation influenced by Kurdish origin.	Article 14 examined in conjunction with Article 2; no violation.
8.	Sarli v. Turkey (2001) Sarli v. Turkey (1999)	Disappearance and lack of investigation influenced by Kurdish origin.	Article 14 examined in conjunction with Article 2; no violation.
9.	Anguelova v. Bulgaria (2002)	Death in custody and lack of investigation influenced by Roma	Article 14 examined in conjunction with Article 2; no violation.

No.	Case	Article 14 Application	Court decision
		origin; use of the term “gypsy” and hostile attitudes.	
10.	Ilhan v. Turkey (2002) Ilhan v. Turkey (1999)	Prejudice against Kurds, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
11.	Öcalan v. Turkey (2005) Öcalan v. Turkey (2003)	Alleged Kurdish origin influenced conditions of detention and treatment.	Article 14 examined in conjunction with Articles 3 and 8; no violation. No separate examination of Articles 2, 3, 8, and 14 is necessary.
12.	Balogh v. Hungary (2004)	Alleged prejudice against Roma, ill-treatment by police and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
13.	Yılmaz v. Turkey (2004)	Alleged discrimination against Kurds, killing and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
14.	Hasan İlhan v. Turkey (2004)	Alleged discrimination against Kurds in the destruction of their homes, ill-treatment, and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation.
15.	Talat Tepe v. Turkey (2004)	Alleged discrimination against Kurds, ill-treatment, and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation.
16.	Adali v. Turkey (2005)	Alleged discrimination against Kurds, killing, and lack of investigation.	Article 14 examined in conjunction with Article 2; no violation.
17.	Celikbilek v. Turkey (2005)	Alleged discrimination against Kurds, ill-treatment, and failure to investigate.	No need to determine whether there was a violation of Article 14.
18.	Akdeniz v. Turkey (2005)	Alleged discrimination against Kurds, ill-treatment, and lack of investigation.	No need to determine whether there has been a violation of Article 14.
19.	Nachova and Others v. Bulgaria (2005)	Alleged racist motive, fatal shooting; racial insults, anti-Roma context.	Article 14 examined in conjunction with Article 2; no violation.
20.	Sevgin and Ince v. Turkey (2005)	Alleged prejudice against Kurds and political opinions, ill-treatment and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation
21.	H.Y. and HÜ.Y. v. Turkey (2005)	Alleged discrimination on ethnic grounds (Kurdish), killing and lack of investigation.	Article 14 examined in conjunction with Article 2; no violation
22.	Nesibe Haran v. Turkey (2005)	Alleged discrimination against Kurds, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation
23.	Kakoulli v. Turkey (2005)	Alleged discrimination against Greek Cypriots/Christians, fatal shooting and lack of investigation.	Article 14 examined in conjunction with Article 2; no violation.
24.	Bekos and Koutropoulos v. Greece (2005)	Alleged discrimination against Roma, ill-treatment by police and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
25.	Yaşar v. Turkey (2006)	Alleged discrimination against Kurds, ill-treatment, and lack of investigation.	No need to examine Article 14, as it was not invoked in the domestic courts.

No.	Case	Article 14 Application	Court decision
26.	Şeker v. Turkey (2006)	Alleged discrimination against Kurds, disappearance, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
27.	Ognyanova and Choban v. Bulgaria (2006)	Alleged discrimination against Roma, death in custody and lack of investigation.	Article 14 in conjunction with Articles 2 and 3; no violation.
28.	Cennet Ayhan and Mehmet Salih Ayhan v. Turkey (2006)	Alleged discrimination against Kurds, political opinions, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
29.	Diril v. Turkey (2006)	Alleged discrimination against Kurds, disappearance, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 2, no violation.
30.	Mammadov (Jalaloglu) v. Azerbaijan (2007)	Alleged political discrimination, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
31.	Soylu v. Turkey	Alleged discrimination (Kurdish), destruction of home, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
32.	Gürü Toprak v. Turkey (2007)	Alleged political discrimination (Kurdish), ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
33.	Zelilof v. Greece (2007)	Alleged racial discrimination, police conduct, and lack of investigation.	Article 14 examined; complaint rejected as manifestly ill-founded
34.	Karagiannopoulos v. Greece (2007)	Alleged discrimination against Roma, police ill-treatment and lack of investigation.	Article 14 examined in conjunction with Article 2; no violation.
35.	Osmanoğlu v. Turkey (2008)	Alleged discrimination against Kurds, disappearance, ill-treatment, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
36.	Beganović v. Croatia (2009)	Alleged discrimination against Roma, violent attack, and lack of investigation.	Article 14 examined in conjunction with Article 3; no violation.
37.	Sashov and Others v. Bulgaria (2010)	Alleged discrimination against Roma, ill-treatment by police and failure to investigate racist motive.	Article 14 examined in conjunction with Article 3; complaint rejected as manifestly ill-founded.
38.	Stefanou v. Greece (2010)	Alleged discrimination against Roma, ill-treatment by police.	Application declared inadmissible.
39.	Vasil Sashov Petrov v. Bulgaria (2010)	Alleged discrimination against Roma, shooting, police and failure to investigate racist motive.	Article 14 examined together with Article 2; no violation.
40.	Carabulea v. Romania (2010)	Alleged discrimination against Roma, death in custody, ill-treatment and failure to investigate.	Article 14 invoked; not examined separately.
41.	Seidova and Others v. Bulgaria (2010)	Alleged discrimination against Roma, shooting, failure to investigate racist motive.	Article 14 examined together with Article 2; complaint rejected as manifestly ill-founded.
42.	Mižigárová v. Slovakia (2010)	Alleged discrimination against Roma, death in custody and failure to investigate racist motive.	Article 14 examined together with Article 2; no violation.
43.	Soare and Others v. Romania (2011)	Alleged discrimination against Roma, ill-treatment, police and failure to investigate racist motive.	Article 14 examined together with Articles 2 and 3; no violation.

No.	Case	Article 14 Application	Court decision
44.	Dimitrova and Others v. Bulgaria (2011)	Alleged discrimination against Roma, homicide, and failure to investigate racist motive.	Article 14 examined together with Article 2; no violation.
45.	Virabyan v. Armenia (2012)	Alleged political discrimination, ill-treatment by police and failure to investigate motive.	Article 14 examined together with Article 3; no violation.
46.	Kaluczka v. Hungary (2012)	Alleged discrimination against Roma, domestic violence.	Article 14 invoked; declared manifestly ill-founded.
47.	M. and Others v. Italy and Bulgaria (2012)	Alleged discrimination against Roma, expulsion, lack of protection.	Article 14 examined together with Article 3; manifestly ill-founded.
48.	Kleyan and Aleksandrovich v. Russia (2012)	Alleged discrimination against Roma, arrest, ill-treatment, and failure to investigate.	Article 14 invoked; manifestly ill-founded.
49.	Koky and Others v. Slovakia (2012)	Alleged discrimination against Roma, acts of racial violence, and failure to investigate.	Article 14 invoked; not examined separately.
50.	Borbala Kiss v. Hungary (2012)	Alleged discrimination against Roma, police conduct, and failure to investigate.	Article 14 invoked; complaint manifestly unfounded.
51.	Makbule Kaymaz and Others v. Hungary (2012)	Alleged discrimination against Kurds, fatal incident, police.	Article 14 invoked; unfounded.
52.	Rumor v. Italy (2014)	Alleged gender discrimination in the state's response to domestic violence.	Article 14 examined together with Article 3; no violation.
53.	Antayev and Others v. Russia (2014)	Alleged discrimination against Chechens, ill-treatment, police and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation.
54.	Marian Chiriță v. Romania (2014)	Alleged discrimination against Roma, medical care in detention.	Article 14 examined in conjunction with Article 3; manifestly ill-founded
55.	Ion Bălăsoiu v. Romania (2015)	Alleged discrimination against Roma, police violence, and failure to investigate racist motives.	Article 14 examined together with Article 3; no violation.
56.	Mileusnić and Mileusnić-Espenheimer v. Croatia (2015)	Alleged ethnic discrimination, homicide, and lack of investigation.	Article 14 examined together with Article 2; no violation.
57.	Mihaylova and Malinova v. Bulgaria (2015)	Alleged discrimination against Roma, homicide, lack of investigation.	Article 14 examined together with Article 2; manifestly ill-founded.
58.	Boacă and Others v. Romania (2016)	Alleged discrimination against Roma, ill-treatment by police and lack of investigation.	Article 14 examined together with Article 3. No violation.
59.	Muhacir Çiçek and Others v. Turkey (2016)	Alleged discrimination against Kurds, homicide, police.	Article 14 examined together with Article 2; no violation.
60.	Adam v. Slovakia (2016)	Alleged discrimination against Roma, ill-treatment by police and investigation.	Article 14 examined together with Article 3; manifestly ill-founded.
61.	Fogarasi and Others v. Romania (2017)	Alleged discrimination against Roma, police conduct, and failure to investigate.	Article 14 examined together with Article 3. No violation.

No.	Case	Article 14 Application	Court decision
62.	Osman v. Romania (2017)	Alleged discrimination against Roma, ill-treatment by police and failure to investigate.	Article 14 examined together with Article 3; manifestly ill-founded.
63.	M.F. v. Hungary (2017)	Alleged discrimination against Roma, ill-treatment by police.	Article 14 examined together with Article 3; no violation.
64.	Lingurar and Others v. Romania (2018)	Alleged discrimination against Roma, police operation and failure to investigate.	Article 14 examined together with Article 3; no violation in case of doubt.
65.	Kovács v. Hungary (2019)	Alleged discrimination against Roma, police abuse, and failure to investigate.	Article 14 examined together with Article 3; manifestly ill-founded.
66.	R.R. and R.D. v. Slovakia (2020)	Alleged discrimination against Roma, planning and execution of police operation and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation.
67.	X and Y v. North Macedonia (2020)	Alleged discrimination against Roma, ill-treatment by police and failure to investigate.	Article 14 examined in conjunction with Article 3; manifestly ill-founded.
68.	Adzhigitova and Others v. Russia (2021)	Alleged ethnic discrimination (Avar origin), homicide, arson, searches.	Article 14 examined together with Articles 2 and 8; no violation found.
69.	Mikeladze and Others v. Georgia (2021)	Alleged religious discrimination, ill-treatment by police.	Article 14 examined together with Article 3; no violation <b>found</b> .
70.	Y and Others v. Bulgaria (2022)	Alleged gender discrimination, domestic violence, homicide.	Article 14 examined together with Article 2; no violation.
71.	Landi v. Italy (2022)	Alleged discrimination on grounds of sex, domestic violence.	Article 14 considered together with Article 2; no violation.
72.	P.H. v. Slovakia (2022)	Alleged discrimination on grounds of Roma ethnicity and disability, ill-treatment by the police, and failure to investigate.	Article 14 examined in conjunction with Article 3; manifestly ill-founded.
73.	Mata v. Hungary (2022)	Alleged discrimination against Roma, police conduct, and failure to investigate.	Article 14 invoked together with Article 3, without separate examination.
74.	Balkasi and Others v. Albania (2022)	Alleged discrimination against Roma, ill-treatment by police and failure to investigate the discriminatory motive.	Article 14 examined together with Article 3; no separate examination.
75.	J.I. v. Croatia (2022)	Alleged discrimination against Roma, police response to threats, and failure to investigate discriminatory motive.	Article 14 was invoked together with Article 3, without separate examination.
76.	L.F. v. Hungary (2022)	Alleged discrimination against Roma, home inspection, police, and failure to investigate discriminatory motive.	Article 14 invoked together with Article 8; failure to exhaust domestic remedies.
77.	Muhammad v. Spain (2022)	Alleged racial profiling and discriminatory behavior by the police based on skin color.	Article 14 examined together with Article 8; no violation.
78.	Basu v Germany (2022)	Alleged racial profiling and discriminatory behavior by the police based on skin color.	Article 14 examined in conjunction with Article 8; implicit finding of no violation.

No.	Case	Article 14 Application	Court decision
79.	M.B. and Others v. Slovakia (No. 2) (2023)	Alleged discrimination against Roma, ill-treatment by police, and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation
80.	Gurbanov v. Armenia (2023)	Alleged discrimination on grounds of ethnic and national origin	Article 14 examined in conjunction with Articles 3 and 8; no violation.
81.	Panayotopoulos and Others v. Greece (2025)	Alleged discrimination against Roma, police conduct and failure to investigate.	Article 14 examined in conjunction with Article 3; no violation.
82.	Seydi and Others v. France (2025)	Alleged racial discrimination, police conduct and failure to investigate on discriminatory grounds.	Article 14 examined in conjunction with Article 8; no violation.