Dezideriu GERGELY[*]

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 ECtHR case law and academic perspectives. Data set no. 2: „violation"

1. Introduction

In the previous study, which focused on the first segment of the research regarding the dynamics of "hate crimes" within the ecosystem of discrimination (Data Set No. 1: "no violation"), we analyzed a series of specific factors regarding hate-motivated acts that frequently led to rulings of no violation of the European Convention on Human Rights. With the aim of mapping European case law, we utilized concepts identified in academic research as impediments that "block" the investigation of "hate" motivation and the manner in which the European Court addresses these acts within the ecosystem of discrimination, in the context of the application of Article 14 of the European Convention. An examination of a selective body of case law from the European Court of Human Rights (ECtHR) (82 judgments issued between 1998 and 2025) revealed that obstacles such as *evidentiary inflation, decoupling of motive, alternative explanations,* and *validation of investigations* often manifest, and overlap, across the spectrum of hate crimes, regardless of whether the motivations are racial, ethnic, or related to gender, sexual orientation, religious affiliation, etc.[1]

The European Court maintains a high evidentiary threshold, derived from the requirement to prove discriminatory motivation "beyond a reasonable doubt," which leads to "evidentiary inflation." The Court distinguishes between individual and circumstantial indicators, diminishing the role of the broader dimension of discrimination against groups targeted by hate crimes. Consequently, the social context and the structural dimension of prejudice are decoupled from the analysis of racist motivations, and the emphasis is placed on establishing a *sine qua non* link between the alleged act and discrimination. In other words, the discriminatory criterion in relation to the commission of the act requires demonstrating an indissoluble link with the criminal act. In this regard, an asymmetry emerges between victims and states in cases pending before the ECtHR, as the application of Article 14 of the European Convention is contingent upon the ability to prove discriminatory motivation. This evidentiary dimension is complicated by the fact that investigations, even superficial ones,

[*] *Ph.D., Faculty of Political Science, University of Bucharest*
Email: dezideriugergely@gmail.com
Manuscript received on March 26, 2026.
[1] Dezideriu Gergely, "The dynamics of "hate crimes" in the ecosystem of discrimination and the factors influencing the investigation of acts induced by discriminatory motives in the logic of ECHR jurisprudence and academic perspectives. Dataset no. 1: "non-violation"." In *The New Journal of Human Rights*, 4, Vol. 21 , (December 2025): 47-74.

that lead to criminal prosecution and the conviction of perpetrators, where the discriminatory motive is diluted or invisible, may be validated by the Court and result in the neutralization of suspicions of discrimination.[2]

As we emphasized in the conclusions of the first analysis, the ECtHR's approach to hate crimes cannot be considered in its entirety without examining the cases in which the European court found a violation of Article 14 in conjunction with Articles 2, 3, or 8 of the European Convention. Therefore, this study is structured around "Data Set No. 2: Violation," consisting of 100 ECtHR decisions, and applies the same methodology to test whether the obstacles theorized in academic research are equally relevant in ECtHR rulings involving "violations."

2. Premises regarding the classification of acts motivated by discrimination in the context of international monitoring

According to data published at the end of 2025 by the OSCE/ODIHR and summarized in the report on hate crimes, OSCE States continue to face shortcomings in recognizing acts motivated by prejudice and discrepancies in the processing of information during the stages of criminal investigation and prosecution. A total of 12,714 incidents were recorded, of which 5,370 included details processed by the ODIHR. Although 42 of the 57 participating states reported official police-recorded data on hate crimes, reporting rates decline in subsequent phases. Only 31 states provided data recorded by criminal investigation authorities, and 27 states provided statistics on court rulings. However, even among the 42 countries, only 35 record the motivation (discriminatory element) of hate crimes, and only 21 countries record hate crimes as a distinct category of offenses.[3] The international body emphasizes the need for effective recognition of the *bias motivation* in both the nature of the criminal act and the corresponding punishment for hate crimes; without this, there is a significant risk of treating them as crimes disconnected from discriminatory motivation.[4]

The need for a systematic institutional response to hate crimes is also articulated in the recent conclusions of the Council of Europe's monitoring bodies. A combined analysis of the reports of the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), adopted in 2025 and early 2026, reveals shortcomings that manifest themselves also in the investigation of discriminatory motivation or the imposition of criminal sanctions in cases of hate crimes. The reluctance of criminal investigation authorities to identify and record the element of "bias motivation" may result in the impediment we have classified as "decoupling of motive." In Finland, although the use of the hate crime classification has increased, ECRI notes that police officers remain "often hesitant to analyze racist elements and classify criminal acts as hate crimes."[5] This type of omission in the early stages of classification and investigation is found in Portugal, Turkey, Croatia, and Montenegro, where

[2] Dezideriu Gergely, "The Dynamics of Hate Crimes": 67–69.
[3] OSCE, 'Key Findings,' ODIHR's Hate Crime Report 2024, November 6, 2025, www.hatecrime.osce.org.
[4] OSCE, 'Hate Crime Data,' 2024 Hate Crime Report, https://hatecrime.osce.org/hate-crime-report?year=2024 . At the time of submission, all links in this article were accessible.
[5] ECRI, Sixth Report on Finland, October 28, 2025, para. 57.

specific elements of hate crimes (motivation based on discriminatory criteria, bias) are not identified or recorded by police officers.[6]

In some cases, such as Romania, ECRI considers that the insufficient application of criminal law creates major difficulties for criminal investigators, prosecutors, and judges in uncovering, identifying, and consistently addressing the specific motivation behind hate crimes throughout the criminal proceedings.[7] This type of discrepancy can lead to the loss of the specific element of motivation even if it is recorded by the police, due to substantive considerations – institutional passivity – as well as procedural issues – inconsistent classification, or a lack of connection between databases within the judicial system. Unlike Serbia, which classifies hate crimes based on discrimination criteria within police and prosecution systems, regarding criminal investigation and prosecution decisions,[8] in Latvia, although hate is an aggravating circumstance under criminal law, hate crimes are not reported.[9] In Ireland, Cyprus, or Turkey, the lack of mechanisms to monitor criminal investigations and of a consolidated judicial database prevents the assessment of the criminal justice system's effectiveness regarding hate crimes, although discriminatory motivation is identified in the police system but not in court decisions.[10] In Sweden, the systems used by the police and the prosecution are not interconnected, and in the absence of a requirement for courts to specify in the decision the consideration of aggravating circumstances such as the motive of "hate," the result is an extremely low percentage of elements specific to hate crimes being included.[11] ECRI notes, on the other hand, cases of criminal investigations lacking promptness, conducted over unreasonably long periods of time, which leave hate-motivated criminal acts unpunished by the courts, in the case of Romania,[12] or, when penalties are imposed, they lack a deterrent effect, in the case of Spain.[13]

These assessments by international bodies significantly reflect a recurring theme before the European Court regarding the approach to hate crimes and discriminatory motives. Recent ECHR case law confirms this pattern, for example, in the cases of *Kuruová and Horváthová v. Slovakia*, *Koffi v. Bulgaria*, and *Stalović v. Serbia* (2026), *Bednarek and Others v. Poland*, and *N.T. v. Cyprus* (2025), *F.D. and Others*, *T.V. and Others*, *Derrek and Others* v. *Russia* (2025), or *I.C. v. the Republic of Moldova* (2025) and *Panayotopoulos and Others v. Greece* (2025).[14] Therefore, analyzing the dataset of "violation" decisions is relevant for

---

[6] ECRI, Sixth Report on Portugal, June 18, 2025, para. 57; ACFC, Fifth Opinion on Portugal, February 26, 2026, paras. 110, 113; Sixth Report on Türkiye, June 12, 2025, para. 54; Sixth Report on Croatia, June 16, 2025, para. 49; Sixth Report on Montenegro, October 28, 2025, para. 37.

[7] ECRI Sixth Report on Romania, October 30, 2025, paras. 66, 70; ACFC, Fifth Opinion on Romania, September 5, 2023, paras. 120–121.

[8] ACFC, Fifth Opinion on Serbia, May 5, 2025, paras. 100, 103.

[9] Sixth Report on Latvia, June 19, 2025, para. 48.

[10] Sixth Report on Ireland, October 28, 2025, paras. 52 and 54; ACFC, Fifth Opinion on Ireland, February 27, 2025, para. 104; ACFC, Sixth Opinion on Cyprus, November 21, 2025, paras. 69, 72; Sixth Report on Türkiye, op. cit., para. 54.

[11] Sixth Report on Sweden, June 17, 2025, paras. 54, 55.

[12] ECRI Sixth Report on Romania, op. cit., paras. 66, 70;

[13] ECRI Sixth Report on Spain, October 30, 2025, para. 63; ACFC, Sixth Opinion on Spain, November 27, 2025, paras. 4, 98–99.

[14] *Kuruová and Horváthová v. Slovakia, 29229/22*, March 26, 2026; *Koffi v. Bulgaria*, 95/24, February 17, 2026; *Stalović v. Serbia*, 35786/22, February 17, 2026; *Bednarek and Others v. Poland*, 58207/14, July 10, 2025; *N.T. v. Cyprus*, 28150/22, July 3, 2025; *F.D. and Others v. Russia*, 47254/21 and 7 others, May 15, 2025; *T.V. and Others v. Russia*, 31323/19 and 4 others, May 15, 2025; *Derrek and Others v. Russia*, 31712/21, April 29, 2025; *I.C. v. Republic of Moldova*, 36436/22, February 27, 2025; *Panayotopoulos and Others v. Greece*, 44758/20, January 21, 2025.

examining the stance of states and, in particular, of the Court, in relation to the impediments identified in academic research.

3. Hate crimes and institutional barriers: perspectives from academic research

As argued in the first study describing this research, academic debates regarding the conceptualization of hate crimes have gradually moved beyond the issue of the need for criminalization, focusing increasingly on the analysis of factors that facilitate or hinder the identification and attribution of discriminatory motives. Beyond the ambiguities surrounding the classification of hate crimes, extensively theorized by James Jacobs and Kimberly Potter, recent literature has highlighted a wide range of barriers in investigating acts motivated by intolerance, prejudice, or discrimination.[15] Research by Ryan King and Besiki Kutateladze has highlighted "institutional impediments" in the prosecution of hate-motivated acts, particularly the concept of "evidentiary inflation" to describe the tendency of criminal investigative agencies to artificially raise evidentiary standards and rely on direct and unambiguous evidence of "hate" or "prejudice." Subsequently, through the concept of "weak coupling" (institutional decoupling), the authors explain the divergent approaches of police investigative structures compared to those of prosecutors, which results in the low rate of classifying offenses into the special (hate) category and the failure to apply special aggravating circumstances by disregarding the discriminatory motive.[16] This perspective is supplemented by Mika Hagerlid and Görel Granström, who discuss the "double burden" of proving the criminal act and, at the same time, the indissoluble causal link to the motive of "hate/prejudice." The authors emphasize, in this context, that the recognition of hate crimes often depends on "organizational prioritization" and the institutional capacity to correctly identify elements of discrimination.[17]

In the context of the case law of the European Court of Human Rights, academic debate has raised substantial criticisms regarding how the European court applies the burden of proof under Article 14 in conjunction with other articles of the Convention. Authors such as Ruth Rubio-Marín, Mathias Möschel, and Kristin Henrard have argued that the Court's restrictive approach has frequently led to a decoupling of acts of violence from the broader context of systemic discrimination and historical prejudice, as well as to ambiguities in clarifying the criteria for determining the distribution of the burden of proof and the need to prove both the discriminatory act itself and the causal link with the discriminatory motives.[18] Against this backdrop, Lourdes Peroni and Bea Streicher argue that discriminatory motives, "racism," or "intolerance" often remain "invisible," which leads to an asymmetry between

---

[15] James B. Jacobs, Kimberly Potter. *Hate Crimes: Criminal Law and Identity Politics*. Oxford University Press, 1998, 4, in Dezideriu Gergely, "The Dynamics of Hate Crimes," *New Journal of Human Rights*, 4, Vol. 21, (December 2025): 47–74.

[16] Ryan D. King, Besiki L. Kutateladze. "A Higher Bar: Institutional Impediments to Hate Crime Prosecution." *Law & Society Review* 57, no. 4 (2023), 489–507.

[17] 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, (2025), 193–210.

[18] 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, 881–899, Kristin Henrard, "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. In the same vein, Vandita Khanna, "Seydi and Others v. France: Proving Racial Profiling in Discrimination Law," *Strasbourg Observers*, December 4, 2025.

victims and investigative authorities regarding the ability to demonstrate the direct causality of criminal acts with discrimination.[19] This theoretical framework, which I used in the previous study to explain "non-violation" rulings, is also essential in the current analysis. This analysis of the "violation" case law aims to test the extent to which the European Court sanctions the manifestation of institutional barriers (evidentiary inflation, decoupling from motivation, validation of superficial investigations) and, in particular, the inertia of investigative authorities regarding the uncovering of discriminatory motivation.

4. Selection methods, analytical framework, and mapping

To ensure continuity with the first phase of the research, this study applies the same methodology. Dataset No. 2: "violation" was obtained by identifying 100 decisions in the HUDOC database, delivered by the ECtHR between February 26, 2004, and March 1, 2026.

Table 1 Data set: cases in which the ECtHR finds a violation of the Convention in connection with acts motivated by discrimination

Protected characteristic / Grounds	**ECtHR cases**
Ethnic origin (Roma)	*Nachova and Others v. Bulgaria* (2004, 2005); *Bekos and Koutropoulos v. Greece* (2005); *Moldovan and Others v. Romania (No. 2)* (2005); *Šečić v. Croatia* (2007); *Cobzaru v. Romania* (2007); *Anguelova and Iliev v. Bulgaria* (2007); *Petropoulou-Tsakiris v. Greece* (2007); *Stoica v. Romania* (2008); *Fedorchenko and Lozenko v. Ukraine* (2012); *Yotova v. Bulgaria* (2012); *Ciorcan and Others v. Romania* (2015); *Balázs v. Hungary* (2015); *Boacă and Others v. Romania* (2016); *R.B. v. Hungary* (2016); *Škorjanec v. Croatia* (2017); *Király and Dömötör v. Hungary* (2017); *Alković v. Montenegro* (2017); *M.F. v. Hungary* (2017); *Lingurar and Others v. Romania* (2018); *Burlya and Others v. Ukraine* (2018); *Lakatošová and Lakatoš v. Slovakia* (2018); *Lingurar v. Romania* (2019); *R.R. and R.D. v. Slovakia* (2020); *Budinova and Chaprazov v. Bulgaria (2021); Memedov v. North Macedonia* (2021); *Paketova and Others v. Bulgaria* (2022); *M.B. and Others v. Slovakia (No. 2)* (2023); *Panayotopoulos and Others v. Greece* (2025); *Stalović v. Serbia* (2026), *Kuruová and Horváthová v. Slovakia* (2026)
Ethnic origin (Chechen, Avar, Armenian)	*Makhashevy v. Russia* (2012); *Antayev and Others v. Russia* (2014); *Grigoryan and Sergeyeva v. Ukraine* (2017); *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020); *Adzhigitova and Others v. Russia* (2021).
Racial origin (skin color)	*Turan Cakir v. Belgium* (2009); *B.S. v. Spain* (2012); *Abdu v. Bulgaria* (2014); *Basu v. Germany* (2022); *Wa Baile v. Switzerland* (2024); *Uzu v. Ukraine* (2024); *Seydi and Others v. France* (2025); *Koffi v. Bulgaria* (2026).
Religion	*Congregation of Jehovah's Witnesses in Gldani and Others v. Georgia* (2007); *Milanovic v. Serbia* (2010); *Begheluri and Others v. Georgia* (2014); *Kornilova v. Ukraine* (2020); *Zagubnya and Tabachkova v. Ukraine* (2020); *Mikeladze and Others v. Georgia* (2021); *Georgian Muslim Relations and Others v. Georgia* (2023); *Allouche v. France* (2024).
Political opinion, xenophobia, migrants	*Virabyan v. Armenia* (2012); *Kreyndlin and Others v. Russia* (2023); *Ilareva and Others v. Bulgaria* (2025).
Sexual orientation	*Identoba and Others v. Georgia* (2015); *M.C. and A.C. v. Romania* (2016); *Aghdgomelashvili and Japaridze v. Georgia* (2020); *Beizaras and Levickas v. Lithuania* (2020); *Sabalić v. Croatia* (2021); *Genderdoc-M and M.D. v. the Republic of Moldova* (2021); *Women's Initiatives Supporting Group and Others v. Georgia* (2021);

[19] See Lourdes Peroni and Bea Streicher cited in Dezideriu Gergely, "The Dynamics of Hate Crimes," New Journal of Human Rights, 4, Vol. 21 , (December 2025): 47–74. In the same vein, Sibel Yilmaz Coşkun, "Derrek and Others v. Russia: Hesitancy on the Path to a Qualitative Article 3 Threshold in LGBT-Phobia Cases?", *Strasbourg Observers*, August 27, 2025.

	Association Accept and Others v. Romania (2021); *Oganezova v. Armenia* (2022); *Stoyanova v. Bulgaria* (2022); *Ivanov v. Russia* (2023); *Beus v. Croatia* (2023); *Nepomnyashchiy and Others v. Russia* (2023); *Lapunov v. Russia* (2023); *Karter v. Ukraine* (2024); *Hanovs v. Latvia* (2024); *Yevstifeyev and Others v. Russia* (2024); *Minasyan and Others v. Armenia* (2025); *Bazhenov and Others v. Russia* (2025); *Derrek and Others v. Russia* (2025); *Bednarek and Others v. Poland* (2025).
Gender (domestic violence)	*Opuz v. Turkey* (2009); *Eremia v. the Republic of Moldova* (2013); *Mudric v. the Republic of Moldova* (2013); *T.M. and C.M. v. the Republic of Moldova* (2014); *M.G. v. Turkey* (2016); *Halime Kiliç v. Turkey* (2016); *Talpis v. Italy* (2017); *Bălșan v. Romania* (2017); *Volodina v. Russia* (2019); *Munteanu v. the Republic of Moldova* (2020); *Polshina v. Russia* (2020); *Tkhelidze v. Georgia* (2021); *Tunikova and Others v. Russia* (2021); *A and B v. Georgia* (2022); *Ivashkiv v. Ukraine* (2022); *A.E. v. Bulgaria* (2023); *Gaidukevich v. Georgia* (2023); *Luca v. the Republic of Moldova* (2023); *Vieru v. the Republic of Moldova* (2024); *I.C. v. the Republic of Moldova* (2025); *T.V. and Others v. Russia* (2025); *F.D. and Others v. Russia* (2025); *N.T. v. Cyprus* (2025).
Disability	*V.I. v. the Republic of Moldova* (2024); *Clipea and Grosu v. the Republic of Moldova* (2024).

4.1. Classifications, Exclusions, and Research Questions

The primary selection criterion was a finding of a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), or Article 8 (right to private life). The cases included in the analysis encompass complaints involving allegations regarding facts that the ECHR classifies in various ways, such as "incidents triggered by suspected discriminatory attitudes," "discriminatory motives," "motivated by discrimination," or "prejudice-motivated offenses." For this reason, specific keywords were used in the selection process, such as *"hate crimes*," *"prejudice-motivated crimes*," *"motivated by discrimination*," *"discriminatory motive*," etc.

The ECtHR decisions included in the analysis were classified according to the grounds for discrimination invoked by the parties. The sections corresponding to the complaints, the parties' arguments, and the Court's reasoning were excerpted to highlight the grounds that led to the findings of a violation of the European Convention. Cases based on Article 14 in conjunction with other provisions of the Convention were not included in the selection process, which may constitute a limitation of this study. On the other hand, a set of cases concerning the violation of Article 14 together with Article 8 from the perspective of discriminatory speech[20] was included in the dataset, although these cases do not, in all instances, involve criminal acts. This choice relates to the failure to analyze the causal link with the discriminatory criterion, an aspect that is relevant to the investigation of hate crimes. This study maps, in its first phase, ECtHR decisions that address acts motivated by discriminatory criteria such as ethnic origin (Roma, Chechens, Avars, Armenians), racial origin (skin color), religion (Jehovah's Witnesses, Hare Krishna, Judaism, Islam), and xenophobia (migrant affiliation, foreign organizations). A subsequent analysis aims to map acts motivated by discriminatory criteria such as sexual orientation, sex, gender, and

[20] *Beizaras and Levickas v. Lithuania*, No. 41288/15, January 14, 2020 (social media, hostile speech, homophobic threats); *Budinova and Chaprazov v. Bulgaria*, No. 12567/13, February 16, 2021 (political speech, criminalization of the Roma community); *Association Accept and Others v. Romania*, No. 19237/16, June 1, 2021 (homophobic hate speech); *Yevstifeyev and Others v. Russia*, No. 42125/13, 2024 (hate speech, homophobic threats); *Minasyan and Others v. Armenia*, No. 35844/14, January 7, 2025 (media, homophobic hate speech); *Bazhenov and Others v. Russia*, No. 31448/17, February 4, 2025 (social media, homophobic hate speech); *Ilareva and Others v. Bulgaria*, No. 41810/21, September 9, 2025 (social media, hate speech, threats, migrants).

disability. The list of decisions included in the current analysis is reflected in Table 1 and is appended to this study.

Unlike the previous dataset focused on the "impediments" theorized in academic research from the perspective of rulings where no violation of the Convention's provisions is found, in the current analysis we focus on how the same factors (evidentiary inflation, decoupling of motive, validation of investigations, alternative explanations) are found in the analytical processes that converge toward invalidating the institutional responses of criminal investigation bodies or national courts in investigating acts motivated by "discrimination." These conclusions lead to a finding of a violation of the relevant articles of the Convention. As such, the research questions are recalibrated to identify the factors that facilitate the dynamics focused on the material elements of acts motivated by discrimination and the investigative elements of the causal link with discriminatory motives. While in the first data set the research questions focused on the high evidentiary threshold, the distinction between individual and circumstantial indicators of discrimination, and their analysis, in the second data set the questions focus on how the evidentiary standard is adjusted, how discriminatory motives are "unmasked," and how the burden of proof is shifted. (*See Table 2*) Not only were the research questions recalibrated, but the working hypotheses were as well. Unlike the "non-violation" data set 1 (in Table 2 Set 1N), in which the hypotheses address the Court's "strict" position on substantive and evidentiary matters, in the "violation" data set 2 (in Table 2 Set 2V), one can note the emphasis on a certain "flexibility" regarding the procedural aspect of applying Art. 14 in cases of acts motivated by "discrimination" or "prejudice."

Table 2 Impediments, research questions, and hypotheses related to the identification of acts motivated by hate

Impediment	Research questions	Working Hypotheses
1. "Evidentiary inflation"	(Set 1N): To what extent does the standard of proof affect circumstantial indicators?	(Set 1N): The court applies a strict evidentiary threshold, such that the element of discrimination cannot be upheld.
	(Set 2V): To what extent is the standard of proof adjusted to uphold circumstantial indicators in the causal relationship?	(Set 2V): The Court relaxes the standard and shifts the burden of proof (prima facie) from a procedural standpoint.
2. Decoupling the facts from the motive	(Set 1N): How are the circumstantial elements of the facts related to discriminatory motives addressed?	(Set 1N): The Court distinguishes between circumstantial and individual indicators, thereby reducing the scope of discrimination.
	(Set 2V): How does the Court view the omission or isolation of the act from the context of discriminatory motives?	(Set 2V): The Court focuses on the manner of analyzing indicators of discrimination, from a procedural perspective.
3. Formal Validation of Investigations	(Set 1N): What weight is given to investigations with a limited focus on discriminatory grounds?	(Set 1N): The Court accepts fulfillment of the obligation even under conditions of superficial analysis of the motives.
	(Set 2V): Under what conditions does the Court refuse to validate investigations that ignore the ground of discrimination?	(Set 2V): The Court has a more nuanced position when investigations focus on material facts while omitting an analysis of discrimination, in the presence of relevant indicators
4. Alternative (neutral) explanations	(Set 1N): How are the substantive aspects of the act motivated by discrimination distinguished from those relating to the investigation of the motivation?	(Set 1N): The Court accepts neutral explanations regarding the facts and does not require an analysis under Art. 14.
	(Set 2V): How does the Court address the states' defense based on neutral explanations?	(Set 2V): The Court has a more nuanced position regarding neutral explanations, in the presence of indicators of discrimination.

In the following section, these questions are applied to data set No. 2a, and the "violation" casuistry is classified around the four impediments: evidentiary inflation, decoupling from motive, formal validation, and alternative explanations. This mapping (see Table 3) focuses on an initial set of criteria, such as ethnic and racial origin, religion, and xenophobia.

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

The process of analyzing the cases included in dataset 2 examines the mechanisms through which the European Court of Human Rights identifies and responds to institutional "impediments" identified in academic research and their effects on the investigation of acts motivated by discriminatory motives. While in the first dataset ("no violation") these acted as factors preventing the finding of a violation, in this dataset the focus shifts to situations where "impediments" are exposed and lead to a finding of violation. Consequently, the impediments do not facilitate the states' justifying arguments but rather are viewed as deficiencies "sanctioned" by the ECtHR. This dynamic is summarized in Table 3 through a classification based on the dominant impediment, the state's arguments, and the Court's position, both regarding the substantive aspects of the facts and discriminatory motives, and regarding the procedural aspect of the obligation to investigate the causal link with these motives.

Table 3 Mapping of case law according to impediments to investigation (ethnic and racial origin, xenophobia, religion)

Impediments	**The State's Position**	**The Court's Approach**	**ECtHR Cases**
1. Evidentiary inflation regarding attitudes suspected of discrimination (substantive)	Invokes the "beyond a reasonable doubt" standard; argues that the motivation is not directly proven	Evidentiary aspect. Deficiencies and omitted indicators (including contextual evidence) shift the burden of proof; in the absence of neutral explanations, a substantial violation is found	Ethnic origin – Roma: *Nachova and Others v. Bulgaria* (2004); *Stoica v. Romania* (2008); *Burlya and Others v. Ukraine* (2018); *Lingurar v. Romania* (2019); *Stalović v. Serbia* (2026)
			Ethnic origin – Chechens, Armenians, Avars: *Makhashevy v. Russia* (2012); *Antayev and Others v. Russia* (2014); *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020); *Adzhigitova and Others v. Russia* (2021)
			Religion: *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia* (2007); *Begheluri and Others v. Georgia* (2014).
1. Evidentiary inflation (procedural)	Cites the impossibility of proving the discriminatory element. Rejects indications regarding motivation based on the defendants' denials	Interpretative aspect. Deficiencies in investigating the context of prejudice and the role of the discriminatory motive constitute a procedural violation	Ethnic origin—Roma: *Moldovan and Others v. Romania (No. 2)* (2005); *Nachova and Others v. Bulgaria* (2005, Grand Chamber); *Bekos and Koutropoulos v. Greece* (2005); *Anguelova and Iliev v. Bulgaria* (2007); *Petropoulou-Tsakiris v. Greece* (2007); *Fedorchenko and Lozenko v. Ukraine* (2012); *Yotova v. Bulgaria* (2012); *M.B. and Others v. Slovakia* (No. 2, 2023); *Stalović v. Serbia* (2026); *Kuruová and Horváthová v.*

Impediments	**The State's Position**	**The Court's Approach**	**ECtHR Cases**
			Slovakia (2026)
			Ethnic origin: Avars *Adzhigitova and Others v. Russia* (2021)
			Racial origin: *Turan Cakir v. Belgium* (2009).
			Religion: *Kornilova v. Ukraine* (2020)
2. Decoupling of the acts from the motive	The state separates the material act from the discriminatory motive (known ethnic, racial, or religious element)	Evidentiary aspect. Penalizes the omission of circumstantial indicators, from a procedural standpoint	Ethnic origin—Roma: *Šečić v. Croatia* (2007); *Balázs v. Hungary* (2015); *Škorjanec v. Croatia* (2017); *M.F. v. Hungary* (2017)
			Racial origin: *Abdu v. Bulgaria* (2014)
			Xenophobia: *Kreyndlin and Others v. Russia* (2023)
3. Formal validation of investigations	The state invokes standard investigative procedures, treating the act as a common offense (violence/ hooliganism, etc.)	Interpretative aspect. Invalidates an investigation focused on the material act that ignores the element of discrimination, prejudice, (including the disregard of verbal abuse)	Ethnic origin – Roma: *Cobzaru v. Romania* (2007); *Ciorcan and Others v. Romania* (2015); *Burlya and Others v. Ukraine* (2018); *R.B. v. Hungary* (2016); *Király and Dömötör v. Hungary* (2017); *Alković v. Montenegro* (2017); *Lakatošová and Lakatoš v. Slovakia* (2018); *R.R. and R.D. v. Slovakia* (2020); *Budinova and Chaprazov v. Bulgaria* (2021); *Memedov v. North Macedonia* (2021); *Paketova and Others v. Bulgaria* (2022)
			Racial origin: *Abdu v. Bulgaria* (2014); *Uzu v. Ukraine* (2024); *Koffi v. Bulgaria* (2026)
			Religion: *Zagubnya and Tabachkova v. Ukraine* (2020), *Mikeladze and Others v. Georgia* (2021): *Allouche v. France* (2024)
			Xenophobia: *Kreyndlin and Others v. Russia* (2023)
4. Alternative explanations regarding the alleged acts	The State justifies the acts by citing routine procedures, administrative checks, maintaining public order, private disputes, or blaming the victim.	Interpretative aspect. Rejects "neutral" explanations; sanctions the failure to investigate the (discriminatory) motivation, from a procedural standpoint	Ethnic origin—Roma: *Boacă and Others v. Romania* (2016); *Lingurar and Others v. Romania* (2018); *Lingurar v. Romania* (2019); *Memedova and Others v. North Macedonia* (2023); *Panayotopoulos and Others v. Greece* (2025)
			Other ethnic groups: *Grigoryan and Sergeyeva v. Ukraine* (2017)
			Racial origin: *B.S. v. Spain* (2012); *Basu v. Germany* (2022); *Wa Baile v. Switzerland* (2024); *Seydi and Others v. France* (2025)
			Religion: *Milanović v. Serbia* (2010); *Georgian Muslim Relations*

Impediments	The State's Position	The Court's Approach	ECtHR Cases
			and Others v. Georgia (2023)
			Migrants/Xenophobia: *Ilareva and Others v. Bulgaria* (2025)

4.3. Evidentiary Inflation Regarding Attitudes Suspected of Discrimination: The Procedural Aspect

It has been noted in academic literature that neither the Rules of the European Court nor the European Convention "prescribe" a specific standard of proof before the ECtHR, nor do they define such a standard.[21] Jasmina Mačkić explains this omission by the nature of the various allegations brought before the Court, which would require a case-by-case approach depending on the correlated field, such as criminal or civil law, rather than a uniform approach, which would be difficult to implement.[22] The ECtHR has referred to the concept of "beyond a reasonable doubt" when addressing the standard of proof, and it appears *expresis verbis* in case law related to discrimination-motivated violence.[23] As Mačkić notes, this correlation with the standard of proof is not new, having been found in cases concerning ill-treatment and torture from 1969 and 1978 decided by the former Commission and subsequently by the European Court.[24] "The excessive rigidity of this standard" was challenged by the Irish government, which argued that its application would be ineffective in cases where there is a *prima facie* violation of Article 3, but the conduct of the respondent state is obstructive with regard to obtaining evidence.[25] The reasons for the ECtHR's application of the "beyond a reasonable doubt" standard appear to be far more complex. Mačkić notes that some authors have suggested it relates to a principle specific to the two states in dispute, rooted in the "*common* law" system, others that it was borrowed from the case law of the International Court of Justice, or that it implied the idea of state criminal liability for serious human rights violations. On the other hand, the introduction of the standard may have been a response to the sensitive political context - the mutual accusations of human rights violations between Ireland and the United Kingdom - as well as the Court's intention to apply a high standard of proof, given the nature of an interstate dispute.[26]

In the *Nachova* case, which addresses the issue of acts committed for potentially racist motives, the First Section of the ECtHR cited, among others, the case of *Ireland v. the United Kingdom* to explain that the standard of proof "beyond a reasonable doubt" should not be

[21] Jasmina Mačkić, "The Standard of Proof in Cases of Discriminatory Violence." In *Proving Discriminatory Violence at the European Court of Human Rights*, (Leiden, The Netherlands: Brill Nijhoff, 2018): 130, https://doi.org/10.1163/9789004359857.
[22] Jasmina Mačkić, "The Standard of Proof in Cases of Discriminatory Violence": 131.
[23] Among others, *Nachova and Others v. Bulgaria* [GC], 43577/98 and 43579/98, July 6, 2005, para. 147; *Bekos and Koutropoulos v. Greece*, 15250/02, December 13, 2005, para. 65; *Petropoulou-Tsakiris v. Greece*, 44803/04, December 6, 2007, para. 60; *Stoica v. Romania*, 42722/02, March 4, 2008, para. 126; *Virabyan v. Armenia*, 40094/05, October 2, 2012, para. 202; *Makhashevy v. Russia*, 20546/07, July 31, 2012, para. 148; *Ciorcan and Others v. Romania*, 29414/09 and 44841/09, January 27, 2015, para. 157; *Boacă and Others v. Romania*, 40355/11, January 12, 2016, para. 99; *M.F. v. Hungary*, 45855/12, October 31, 2017, para. 67; *Women's Initiatives Supporting Group and Others v. Georgia*, 73204/13 and 74959/13, December 16, 2021, para. 69; *Genderdoc-M and M.D. v. the Republic of Moldova*, 23914/15, December 14, 2021, para. 35.
[24] Jasmina Mačkić, The Standard of Proof, 142–143.
[25] *Ireland v. the United Kingdom, 5310/71,* January 18, 1978, para. 161.
[26] Jasmina Mačkić, 143–145.

"interpreted as requiring a degree of probability as high as in criminal proceedings," its role being "to rule on the State's responsibility under international law and not on guilt under criminal law," with the evidence potentially arising from "the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact." Furthermore, the Court's practice has been "to allow flexibility, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved."[27] This perspective included in the judgment of the First Section of the ECtHR was not novel, compared to its application to the right to non-discrimination, the approach to the difficulties involved in proving discrimination, and the adaptation of evidentiary rules regarding the shifting of the burden of proof in a homicide case where discriminatory attitudes were suspected.[28] The findings in this case culminated in the conclusion that the failure to investigate discriminatory attitudes and the lack of convincing explanations regarding these issues constituted a material aspect of the application of Article 14 of the Convention[29]. "The co-existence of sufficiently solid [...] inferences" resulted in the context of indicators such as the use of automatic bursts of fire in a populated area, a Roma neighborhood, against two unarmed Roma individuals who were fatally shot, the use of the expression "damn Gypsies" immediately after the use of firearms, and the existence of similar incidents reported by European and international bodies, including similar cases pending before the ECtHR, coupled with the failure to investigate possible racist motivations in the overall context of the events.[30] This approach was seen as "a giant step forward in combating discrimination" because it facilitated the establishment of proof of discriminatory acts beyond a strict examination of subjective aspects related to intent or *"animus*."[31]

In her analysis, Kristin Henrard described the Grand Chamber of the ECtHR's subsequent position in *Nachova* as a veritable "brake" on the mechanism applied in the 2004 judgment, primarily from the perspective of the firm distinction between the substantive and procedural dimensions of the prohibition of discrimination and the limitation of the burden of proof regarding the establishment of racist motivation ("negative proof"—the absence of *animus*).[32] Henrard criticizes the fact that, although the Grand Chamber introduced certain criteria allowing for the shift of the burden of proof (specificity of the facts, nature of the allegations, and the right at issue),[33] the European court did not provide concrete guidelines for analyzing them, which maintained a high standard that, as I indicated in the previous study, was asymmetrical regarding victims' ability to prove discriminatory motivation relative to the position of states and the administration of evidence.[34] Moreover, it was no coincidence that in academic research the Grand Chamber's divergent position relative to the Court's Chamber

---

[27] *Nachova and Others v. Bulgaria,* 43577/98 and 43579/98, February 26, 2004, para. 166.
[28] *Nachova* (2004), paras. 167–169.
[29] Ibid., paras. 164, 175.
[30] Ibid., paras. 160–161, 170–171, 173–175.
[31] Dimitrina Petrova, "Nachova and the Syncretic Stage in Interpreting Discrimination in Strasbourg Jurisprudence." *Roma Rights Quarterly Journal of the European Roma Rights Centre*, 2–3 (2006): 95–96. Petrova explains that the approach in Nachova involved shifting the burden of proof and allowing the respondent state to rebut the presumptions by presenting data and information regarding the organization of similar operations, the agents' modus operandi and their use of weapons in similar cases, regardless of the victims' ethnicity, and evidence regarding the agents' prior conduct or their relationship with persons belonging to the Roma minority.
[32] *Nachova and Others v. Bulgaria* [GC] (2005), paras. 144–159 (substantive aspect) and paras. 160–168 (procedural aspect).
[33] Kristin Henrard, "The European Court of Human Rights…," *supra*, 439.
[34] Dezideriu Gergely, "The Dynamics of Hate Crimes," 69.

was perceived as a conservative stance, in the sense that Art. 2 or Art. 3 together with Art. 14 could be materially violated only "if it is established beyond a reasonable doubt that racist attitudes played a role."[35]

The key aspect of the *Nachova* case is reflected in two significant positions: on the one hand, the Grand Chamber's dissociation from the First Section's approach on the grounds that the failure to investigate the alleged racist motive for the homicide should not shift the burden of proof to the state regarding the substantive aspect of Art. 14 in conjunction with Art. 2[36] and, on the other hand, the Grand Chamber's agreement with the First Section that states have a procedural obligation to investigate the existence of a possible link between racist attitudes and an act of violence. This procedural aspect stems from the obligation to ensure the exercise of the right to life without discrimination, pursuant to Art. 14 in conjunction with Art. 2.[37] The Grand Chamber's ruling resulted in a procedural maneuver to "shift" the indicators of prejudice, in other words the presumptions of discrimination (*prima facie* evidence), away from the discrimination analysis mechanism (shifting the burden of proof). This maneuver transforms the investigation of discrimination from an end (proving racist motivation) into a means (the obligation to expose the motivation). The establishment of a procedural mechanism triggered by plausible information sufficient to raise concerns about possible racist connotations creates a duty of diligence regarding the investigation of discriminatory motivations.[38] Essentially, without considering that the indicators in the *Nachova* case constituted *prima facie* evidence, the Grand Chamber found a violation of Articles 14 and 2 in relation to the procedural omissions of the authorities to verify the officers' statements regarding the Roma immediately after the use of service weapons, to interview witnesses, in the broader context of societal prejudices against Roma, to clarify the reasons for the excessive use of force, to verify the officers' prior conduct regarding their interactions or attitudes toward Roma, as well as the deficiencies in the investigations that cast doubt on the objectivity and impartiality of the investigators.[39] Case law regarding violations of Articles 2, 3, or 8 in conjunction with Article 14 in cases involving hate crimes must be analyzed from the perspective of this interpretive framework.

The argument regarding the lack of evidence establishing "beyond a reasonable doubt" the link between acts of violence perpetrated by state agents and a discriminatory motive has been adopted by states and is found beyond the case *of Nachova and Others v. Bulgaria.*[40] It was explicitly articulated, for example, in *Bekos and Koutropoulos v. Greece* and *Petropoulou-Tsakiris v. Greece*, both concerning ethnic motivation (Roma), or in *Turan Cakir v. Belgium*, concerning racist motivation.[41] Even if the standard is not invoked *expresis verbis*, states rely on the failure to demonstrate that ethnic, racial, or religious origin

---

[35] David Harris, Michael O'Boyle, Ed Bates, Carla Buckley, *Law of the European Convention on Human Rights*, Third Edition, Oxford University Press, Oxford, 2014: 812.
[36] *Nachova and Others v. Bulgaria* [GC] (2005), para. 157.
[37] *Nachova and Others v. Bulgaria* [GC] (2005), paras. 160–161.
[38] *Nachova and Others v. Bulgaria* [GC] (2005), para. 160. The Grand Chamber concurs with the Chamber's analysis that "The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute […]. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence."
[39] *Nachova and Others v. Bulgaria* [GC] (2005), paras. 163–168 and 114–118.
[40] *Nachova and Others v. Bulgaria* (2004), para. 151.
[41] *Bekos and Koutropoulos v. Greece*, 15250/02, December 13, 2005, para. 61; *Petropoulou-Tsakiris v. Greece*, 44803/04, December 6, 2007, para. 59; *Turan Cakir v. Belgium*, 44256/06, March 10, 2009, para. 74.

constituted the determining motive for the alleged acts,[42] whether the acts of violence are committed predominantly by private individuals or with the participation of state agents.[43]

Regarding the substantive and procedural aspects of Article 14, the European Court has placed greater emphasis on circumstances that indicate discriminatory verbal abuse.[44] These include insults or remarks related to ethnic origin, in recent cases such as *Stalovic v. Serbia* (2026) or *Kuruová and Horváthová v. Slovakia* (2026),[45] racial origin, recently in *Koffi v. Bulgaria* (2026),[46] religious affiliation[47] or xenophobia in *Ilareva and Others v. Bulgaria* (2025)[48], uttered by police officers or representatives,[49] prosecutors[50] or courts,[51] or by private individuals toward victims of acts of violence.[52] In some cases, the Court has linked the presence of offensive language to broader circumstances such as a societal climate of intolerance toward the group to which the victim belongs, as highlighted in international reports;[53] circumstances related to law enforcement agencies, such as passivity and tolerance

---

[42] *Stoica v. Romania*, 42722/02, March 4, 2008, para. 112; *Lingurar v. Romania*, 48474/14, April 16, 2019, para. 61; *Yotova v. Bulgaria*, 43606/04, October 23, 2012, para. 103; *Makhashevy v. Russia*, 20546/07, July 31, 2012, para. 127; *Antayev and Others v. Russia*, 37966/07, July 3, 2014, para. 116; *Makuchyan and Minasyan v. Azerbaijan and Hungary*, 17247/13, May 26, 2020, para. 207; *Kornilova v. Ukraine*, 47283/14, February 11, 2020, para. 55. *Kuruová and Horváthová v. Slovakia, 29229/22,* March 26, 2026, paras. 4, 30.

[43] *Moldovan and Others v. Romania (No. 2)*, 41138/98 and 64320/01, July 12, 2005, paras. 91, 107, 139. The Government contested the involvement of police officers in the destruction and arson on the grounds of the victims' ethnic origin. *Anguelova and Iliev v. Bulgaria*, application no. 55523/00, decision of July 26, 2007, paras. 109, 116. The Government contested both that the criminal investigation had been influenced by the victims' ethnic origin and that the acts of violence under investigation were motivated by ethnic origin. *Burlya and Others v. Ukraine,* 3289/10, November 6, 2018, paras. 117, 118, 154. Similarly, *Fedorchenko and Lozenko v. Ukraine*, 387/03, September 20, 2012, paras. 40, 61. The Government contested the officers' involvement in the destruction or burning of houses on ethnic grounds. *M.B. and Others v. Slovakia (No. 2)*, 63962/19, June 29, 2023, paras. 83, 95. The Government relied on internal investigations that ruled out the involvement of police officers in the mistreatment of minors on ethnic grounds and the use of racist language. *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 71156/01, May 3, 2007, para. 83. Similarly, *Begheluri and Others v. Georgia*, 28490/02, October 7, 2014, paras. 175, 177–178. The Government contested the involvement of police officers and the acts of violence motivated by religious considerations.

[44] *Nachova and Others v. Bulgaria*, (2004), para. 162.

[45] Issues regarding the ethnic affiliation of Roma in *Nachova* (2004), para. 161; *Bekos and Koutropoulos v. Greece* (2005), para. 72; *Stoica v. Romania* (2008), paras. 122, 128; *M.B. and Others v. Slovakia (No. 2)*, 63962/19, June 29, 2023, para. 95. Recently in *Stalović v. Serbia*, 412/22, January 27, 2026, paras. 2, 30 ("Gypsy mother," "criminal group," "white woman with a dark man"); *Kuruová and Horváthová v. Slovakia, 29229/22*, March 26, 2026, paras. 4, 30–35 ("Gypsies, degenerates," "group of Roma women"). Aspects regarding the ethnic affiliation of Chechens in *Adzhigitova and Others v. Russia*, 40165/07 and 2593/08, June 22, 2021, para. 277; *Antayev and Others v. Russia*, 37966/07, July 3, 2014, para. 125; *Makhashevy v. Russia*, 20546/07, July 31, 2012, para. 176.

[46] *Turan Cakir v. Belgium* (2009), para. 80. Recently, *Koffi v. Bulgaria*, 95/24, February 17, 2026, paras. 39, 44, 52.

[47] *Kornilova v. Ukraine* (2020), paras. 65, 74; *Mikeladze and Others v. Georgia*, 54217/16, November 16, 2021, para. 67.

[48] *Ilareva and Others v. Bulgaria* (2025), paras. 6–18.

[49] *Petropoulou-Tsakiris v. Greece* (2007), para. 64; *Stoica v. Romania* (2008), para. 49; *Lingurar v. Romania* (2019), para. 75. Similarly, *Stalović v. Serbia* (2026), paras. 2, 30–35; *Kuruová and Horváthová v. Slovakia* (2026).

[50] *Stoica v. Romania* (2008), para. 121.

[51] *Moldovan and Others v. Romania (No. 2)* (2005), paras. 107–108, para. 111.

[52] *Moldovan and Others v. Romania (No. 2)* (2005), para. 139; *Anguelova and Iliev v. Bulgaria*, 55523/00, July 26, 2007, para. 116; *Yotova v. Bulgaria*, 43606/04, October 23, 2012, para. 106; *Burlya and Others v. Ukraine*, 3289/10, November 6, 2018, para. 130; *Kornilova v. Ukraine* (2020), para. 65. *Koffi v. Bulgaria* (2026), para. 39.

[53] Prejudice, acts of discrimination and violence against Roma in *Nachova and Others v. Bulgaria* (2004), para. 174; *Bekos and Koutropoulos v. Greece* (2005), para. 73; *Anguelova and Iliev v. Bulgaria* (2007), para. 116;

for acts of violence by third parties against victims belonging to the targeted ethnic[54] or religious[55] group; circumstances related to the incidents, such as prior tensions between perpetrators and victims;[56] or circumstances indicative of stereotyping.[57]

Taken together, the Court has framed these circumstances within the procedural context of the duty of diligence required to "uncover" discriminatory motivation. The Court has penalized authorities that fail to investigate[58], conduct an inadequate investigation, or refuse to investigate the causal link between the material act and the element of discrimination, particularly when they have plausible indications in this regard, such as the circumstances mentioned above. It is important to note that, as a rule, the Court does not treat these circumstances or indications as *prima facie* presumptions of discrimination capable of shifting the burden of proof. With the exception of certain cases we present at the end of this analysis, the Court identifies them as factors triggering the procedural obligation to "verify" causality with the suspected element (the discriminatory criterion).[59] In this context, the procedural violation in cases of evidentiary inflation concerned the omission of a combination of elements such as discriminatory statements, remarks, or insults invoked by the victims[60], the position of the perpetrators[61], corroboration with witness statements and the general context, the perpetrators' prior history regarding involvement in similar incidents or accusations, the manifestation of discriminatory attitudes in the past,[62] affiliation with or sympathy for racist groups or ideologies[63], disproportionate conduct in dealing with the victim or victims,[64] the overlap or combination of multiple motives in committing the acts.[65]

This paradigm shift indicates that the "standard of proof beyond a reasonable doubt" remains the primary barrier for the substantive aspect of Article 14, but this is counterbalanced at the procedural level by a duty of diligence. In other words, the finding of a procedural violation becomes the primary tool through which the ECtHR sanctions states'

Fedorchenko and Lozenko v. Ukraine (2012), para. 68; *Lingurar v. Romania* (2019), para. 76. Prejudice and acts of violence against members of Jehovah's Witnesses in *Begheluri and Others v. Georgia* (2014), para. 175.

[54] *Moldovan and Others v. Romania (No. 2)* (2005). Similarly, *Fedorchenko and Lozenko v. Ukraine* (2012); *Burlya and Others v. Ukraine* (2018).

[55] *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia* (2007). Similarly, *Begheluri and Others v. Georgia* (2014).

[56] Previous tensions and conflicts between Bulgarian and Roma groups in *Yotova v. Bulgaria* (2012); preparations for measures prior to the forced expulsion of Roma in *Burlya and Others v. Ukraine* (2018).

[57] Admission by suspects that the acts were aimed at identifying a Roma victim in *Anguelova and Iliev v. Bulgaria* (2007), paras. 13, 99; stereotypical statements regarding Roma in official documents in *Petropoulou-Tsakiris v. Greece* (2007), paras. 64–65; *Stoica v. Romania* (2008), paras. 122, 128; *Lingurar v. Romania* (2019), para. 75. Internal instructions regarding the intervention of special police forces when suspects of a crime are of Chechen origin in *Antayev and Others v. Russia* (2014), para. 127.

[58] *Stalović v. Serbia* (2026), paras. 5–8. The criminal investigation did not include any measures to hear testimony regarding racist verbal abuse. *Kuruová and Horváthová v. Slovakia* (2026), paras. 7–11, 30. The criminal investigation initially included the hearing of several witnesses and measures to identify the police officers but was subsequently suspended. References to ethnic origin recorded in the police reports on the victims' detention were not examined.

[59] *Nachova and Others v. Bulgaria* (2005), paras. 163–164,

[60] *Stalović v. Serbia*, (2026), paras. 33–3; *Kuruová and Horváthová v. Slovakia* (2026), paras. 4, 30.

[61] *Anguelova and Iliev v. Bulgaria*, 55523/00, July 26, 2007, para. 116.

[62] *Bekos and Koutropoulos v. Greece* (2005), para. 74; *Petropoulou-Tsakiris v. Greece* (2007), para. 64.

[63] *Yotova v. Bulgaria* (2012), para. 110.

[64] *Makhashevy v. Russia* (2012), paras. 142, 144; *Burlya and Others v. Ukraine* (2018), para. 130.

[65] The burning of houses linked to drug trafficking and the ethnic affiliation of Roma in *Fedorchenko and Lozenko v. Ukraine* (2012), paras. 68–69; ethnic origin and the marriage of a non-Roma person to a Roma person in *Stalović v. Serbia* (2026), paras. 27, 31; "sudden outbreak of hostility" and religious considerations in *Kornilova v. Ukraine* (2020), paras. 74–75.

passivity in "uncovering" discriminatory motivations. However, the domestic investigation entails an obligation of means, not of results, which allows for risks to arise in the examination by isolating the material acts of the offenses from the context of intolerance or prejudice. This hypothesis leads us to the analysis of the second impediment: the decoupling of the facts from the element of discrimination.

4.4. Decoupling the acts from the discriminatory motives

In cases where the decoupling of the acts from discriminatory attitudes is more nuanced, the decoupling obstacle is not apparent, *de plano*. Rather, it arises from the states' argument that the investigative procedures dissociated the discriminatory motivation as a result of the administration of evidence or the lack thereof, in other words due to objective reasons and not to investigative shortcomings. For example, in *Abdu v. Bulgaria* and *Balázs v. Hungary*, the focus on establishing the *actus reus* of the violence made it impossible to exclusively establish racist motivation under the "beyond a reasonable doubt" standard.[66] In *Šečić v. Croatia* and *Kreyndlin and Others v. Russia*, the lack of information from the victim or witnesses made it impossible to identify the perpetrators and establish an ethnic or xenophobic motive.[67] In *M.F. v. Hungary* or *Škorjanec v. Croatia*, either the physical acts of violence did not occur and the ethnic motive was irrelevant, or the violence occurred only circumstantially, affecting the victim "collaterally."[68] In light of these positions taken by the states, the Court primarily focused on the obligation to investigate acts of violence with an emphasis on identifying or "unmasking" any potential discriminatory motive, given the specific nature of hate crimes.

This requires conducting an effective, prompt, and impartial investigation,[69] identifying, securing, and managing all evidence, without overlooking suspicious facts that may indicate a racist motive.[70] In essence, the Court condemns the practice of treating hate-motivated acts of violence as ordinary criminal offenses, as this disregards circumstantial indicators. One example is ignoring the perpetrators' affiliation with extremist groups. In *Šečić*, the Court deemed it unacceptable that the investigation had stalled for seven years without arranging for further interrogation or information-gathering measures, even though the police believed the acts against the Roma victim were committed by a group of "skinheads."[71] Similarly, in *Abdu*, although the police described the suspects in the acts of violence against the black Sudanese man as "skinheads" known for promoting extremist ideologies, prosecutors did not thoroughly investigate this aspect.[72] In *Kreyndlin*, evidence submitted by the victims, including video recordings regarding the xenophobic nature of the acts of violence, was ignored, and the perpetrators remained unidentified four years after the incidents.[73]

---

[66] *Abdu v. Bulgaria*, 26827/08, March 11, 2014, para. 49; *Balázs v. Hungary*, 1553/12, October 20, 2015, para. 69.
[67] *Šečić v. Croatia*, 40116/02, May 31, 2007, para. 64; *Kreyndlin and Others v. Russia*, 31033/17, June 8, 2021, para. 58.
[68] *M.F. v. Hungary*, 45855/12, October 31, 2017, para. 63; *Škorjanec v. Croatia*, 25536/14, March 28, 2017, para. 51.
[69] *Balázs v. Hungary* (2015), paras. 52–53.
[70] *Škorjanec v. Croatia* (2017), para. 57.
[71] *Šečić v. Croatia* (2007), paras. 56, 68–69.
[72] *Abdu v. Bulgaria* (2014), para. 49.
[73] *Kreyndlin and Others v. Russia* (2021), para. 58.

Another issue concerns the application of excessive criteria that decouple the motivation from the circumstantial elements of the acts. In *Škorjanec,* the Court penalized the investigation of acts of violence on racist grounds strictly with regard to the Roma partner but not the non-Roma partner who suffered physical assault in the context of the same incident (discrimination by association). In *Balázs*, it penalized the investigation's focus on identifying the "exclusive" role of the racist motivation, even though the motives for acts of violence may be simultaneous or overlapping (mixed—situational and racist) and in *M.F.*, it penalized the failure to examine the racist motivation despite the evidence, which led to a procedural "violation" of Article 14.[74]

These types of deficiencies, ranging from the failure to investigate the indications of verbal abuse reported by the victims to the disregard of the perpetrators' ideological profile or the circumstances at the time of the acts and immediately following them, lead to decoupling and, at the same time, highlight a subsequent impediment: the formal validation of investigations. In this hypothesis, the failure does not necessarily stem from the isolation of the motivation, but rather from the standard nature of the investigation, which, although it meets the diligence requirement, hinders the specific "unmasking" of discrimination.

4.5. Formal Validation of Investigations

The cases classified under this impediment share the common argument regarding the validity of internal investigations, both in terms of due diligence and outcome. The prompt nature of investigations opened immediately after the alleged acts were committed constitutes a first benchmark in the position of states, where investigative measures were initiated and the persons involved were interviewed.[75] A subsequent point is the focus of investigations primarily on acts of physical or psychological harm, threats, trespassing, or homicide,[76] classifying the acts within generic categories of offenses such as acts of hooliganism or harassment,[77] reclassifying the acts as neighborhood disputes or interpersonal conflicts,[78] or reactions of civic outrage.[79] These investigative approaches are generally based on compliance with national administrative procedural standards and the evidentiary requirements necessary to meet the threshold of certainty in criminal matters, attributing the acts to causes unrelated to discriminatory attitudes, thereby diluting or eliminating the discriminatory motivation as a specific element of hate crimes.

The validation or invalidation of these investigative arguments in the case law regarding "violations" of Article 14 is based on a framework that assumes that the procedural obligations of an effective investigation apply equally to acts of violence committed by state

---

[74] *Škorjanec v. Croatia* (2017), paras. 66, 70; *Balázs v. Hungary* (2015), para. 75; *M.F. v. Hungary* (2017), para. 76.
[75] *Abdu v. Bulgaria* (2014), para. 32; *Kornilova v. Ukraine,* 47283/14, November 12, 2020, para. 55; *Zagubnya and Tabachkova v. Ukraine*, 60977/14, November 12, 2020, para. 45; *Koffi v. Bulgaria* 95/24, February 17, 2026, paras. 184, 199; *Lakatošová and Lakatoš v. Slovakia* 655/16, September 20, 2018, para. 69; *R.B. v. Hungary* 64602/12, April 12, 2016, paras. 71–72; *Memedov v. North Macedonia,* 31016/17, June 24, 2021, para. 44.
[76] *Kreyndlin and Others v. Russia* (2023), para. 51; *Lakatošová and Lakatoš v. Slovakia* (2018), para. 69.
[77] *Uzu v. Ukraine,* 7164/18, November 21, 2024*,* para. 16*, R.B. v. Hungary* (2016), para. 72.
[78] *Alkovic v. Montenegro, 66895/10*, December 5, 2017, para. 56; *Cobzaru v. Romania, 48254/99, July 26*, 2007, para. 58; *Kornilova v. Ukraine* (2020), para. 56; *Zagubnya and Tabachkova v. Ukraine* (2020), para. 46.
[79] *Paketova and Others v. Bulgaria,* 17808/19, 36972/19, October 4, 2022, para. 137; *Burlya and Others v. Ukraine* (2018), para. 117.

agents and private individuals, and entails diligence correlated with the circumstances and nature of the violent crime. As such, the investigation must have the effective potential to establish the facts, identify and subsequently lead to the punishment of those responsible. It entails reasonable measures to secure evidence related to the incident in question, including examination of the crime scene, preservation of evidence, witness statements, and forensic evidence, without omitting suspicious facts that could indicate racially motivated violence[80]. The findings of the investigations must not be based on premature or unfounded conclusions, instead they must be fully reasoned, impartial, and objective.[81] In the Court's view, the investigations whose deficiencies, together, undermine the ability to establish the facts or the identity of those responsible[82] as well as those that treat acts of violence motivated by discrimination on an equal footing with those that do not have such connotations, thereby ignoring their specific nature, risk violating these standards.[83]

From the perspective of these criteria, the Court found fault with procedural deficiencies that undermined the ability to establish the facts or the identity of the perpetrators. In *Koffi v. Bulgaria*, the deficiencies in the investigation of acts of racial aggression, such as the incomplete nature of the investigation, were acknowledged even by the domestic courts[84]. In *Paketova*, the investigating authorities acknowledged that the Roma victims had left their homes under pressure from threats by private individuals but did not make sustained efforts to identify the suspects.[85] In *Király and Dömötör*, the investigations only partially identified the perpetrators, and relative to the scale of the anti-Roma incidents, only a limited number of investigations led to punitive measures.[86] In *Alkovic*, prosecutors failed to investigate all aspects raised by the victim related to religion and ethnicity, including an incident involving the use of a firearm.[87] In *Uzu*, the investigation into acts motivated by racism was characterized by slowness, even though the perpetrator had been identified by the victim, and a relevant linguistic analysis was ordered nearly three years after the incidents.[88] Negligence in preserving evidence or a cursory on-site investigation, that didn't collect ballistic evidence, led to procedural deficiencies sanctioned by the Court under Article 14.[89]

The investigation of acts of violence suspected of being motivated by discrimination, where plausible evidence is disregarded, is consistently invalidated in the Court's case law. This is the case with the complete omission of the victims' statements regarding racist, xenophobic, or religious abuse in *Memedov v. North Macedonia*, *Kreyndlin v. Russia*, or *Kornilova v. Ukraine, Mikeladze and Others v. Georgia*.[90] Similarly, the Court sanctioned the

---

[80] *Koffi v. Bulgaria* (2026), paras. 161–164.
[81] Ibid., paras. 163–164.
[82] Ibid., para. 163. The Court cites *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia,* No.71156/01 , May 3, 2007, para. 97, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 24014/05, April 14, 2015, para. 172, *Armani Da Silva v. the United Kingdom* [GC], 5878/08, March 30, 2016, para. 233, *Bouyid v. Belgium* [GC], 23380/09, September 28, 2015, para. 123.
[83] Ibid., para. 164. The Court cites *Nachova and Others v. Bulgaria* [GC], (2005), para. 160, *Identoba and Others v. Georgia*, 73235/12, May 12, 2015, para. 67.
[84] *Koffi v. Bulgaria* (2026), para. 190.
[85] *Paketova and Others v. Bulgaria* (2022), para. 156.
[86] *Király and Dömötör v. Hungary*, *10851/13*, January 17, 2017, paras. 71, 77, 79.
[87] *Alkovic v. Montenegro* (2017), para. 70.
[88] *Uzu v. Ukraine* (2024), paras. 21, 23–24.
[89] *Koffi v. Bulgaria* (2026), paras. 184–187. The police failed to secure evidence immediately after the acts of violence and to identify the witnesses present. *Alković v. Montenegro* (2017), para. 71. Simply taking photographs at the scene was not followed by any investigative measures.
[90] *Kreyndlin and Others v. Russia* (2023), para. 58. Despite indications of insults and xenophobic messages, the investigators attached no importance to these aspects, considering that since the perpetrators could not be

failure to consider the partial or implicit acknowledgment of the applicant's religious prejudices in *Zagubnya*[91], or the applicant's anti-Roma actions prior to the homicide in *Lakatošová*[92], and the disregard for the discriminatory language used during the incidents in *Abdu v. Bulgaria* ("stinking blacks, what are you doing here?"), *R.B. v. Hungary* ("damned stinking Gypsies," "we'll paint the house with your blood"), *Kuruová and Horváthová v. Slovakia* ("degenerate Gypsies"), *Uzu v. Ukraine* ("monkey, do you want bananas?").[93]

In cases involving state agents or investigative authorities, such as *Cobzaru*, *Ciorcan, and Others,* the Court penalized the failure to simultaneously examine individual circumstances, possible prior incidents involving similar acts (disproportionate use of force or service weapons, previous allegations of intolerance), the circumstances of the operation (disproportionate use of weapons in a Roma neighborhood, the necessity of special police forces' intervention), and the general circumstances, the high degree of prejudice and hostility in society, frequent incidents of police abuse, or convictions in similar cases handed down by the ECtHR.[94]

A final aspect specific to this category of cases concerns the findings of the investigation, which dissociate the specific nature of the acts suspected of discriminatory motives. First, the Court criticizes the "classification" of these offenses within the scope of common law by categorizing or reclassifying them under generic categories such as "hooliganism," "assault," or "harassment," when the discriminatory dimension of the motivation is omitted.[95] Similarly, the Court criticizes the failure to provide a fully reasoned, impartial, and objective response regarding the causal link to the discriminatory attitudes invoked by the victims[96] or the failure

---

identified, the motive could not be established. *Memedov v. North Macedonia* (2021), para. 48. Allegations of racist verbal abuse were not examined by prosecutors, and witnesses to the incidents were not interviewed, without any explanation being provided. *Kornilova v. Ukraine* (2020), para. 74. Investigators ignored the names used by the perpetrator toward the victim, even though they constituted evidence of possible religious prejudice. *Mikeladze and Others v. Georgia (2021),* para. 67. The criminal investigation failed to examine the derogatory language related to religion, and prosecutors investigated only aspects related to the physical assault, without interviewing witnesses or victims.

[91] *Zagubnya and Tabachkova v. Ukraine* (2020), para. 60. The perpetrator admitted that his actions were likely motivated by his opposition to Jehovah's Witnesses, but this statement was not taken into account in the investigation.

[92] *Lakatošová and Lakatoš v. Slovakia* (2018), para. 86. The investigators failed to expand their examination of the applicant's violent attitudes toward Roma prior to his acts of killing Roma individuals, an aspect also noted in his psychological evaluation.

[93] *Abdu v. Bulgaria* (2014), para. 7; *R.B. v. Hungary* (2016), para. 10; *Kuruová and Horváthová v. Slovakia* (2026), paras. 4, 30; *Uzu v. Ukraine* (2024), para. 2.

[94] *Cobzaru v. Romania*, 48254/99, July 26, 2007, paras. 97–100; *Ciorcan and Others v. Romania*, 29414/09, 44841/09, April 27, 2015, paras. 164–166. Similarly, *Abdu v. Bulgaria*, para. 52. The Court takes note of international and European reports highlighting deficiencies in the investigation of racially motivated crimes within the Bulgarian judicial system.

[95] *Koffi v. Bulgaria* (2026), para. 191, *Zagubnya and Tabachkova v. Ukraine* (2020), para. 59; *R.B. v. Hungary* (2016), paras. 87, 89; *Allouche v. France* (2023), paras. 57, 63; *Kornilova v. Ukraine* (2020), paras. 73, 75. In *Kornilova,* the abstract phrase "sudden hostility" is used, and there is no clear explanation regarding the religious motivation.

[96] *Lakatošová and Lakatoš v. Slovakia* (2018), para. 96. The prosecutors did not explain whether the act was racially or ethnically motivated. *R.R. and R.D. v. Slovakia*, 20649/18, September 1, 2020, para. 205. Aspects related to the racist motivation behind the planning of the police operation were not examined by the investigators. *Ciorcan and Others v. Romania* (2015), paras. 165–166. The investigation did not explain the necessity of using firearms in the Roma neighborhood or the intervention of special forces. *Zagubnya v. Ukraine* (2020), para. 58. The lack of a response regarding a coherent reason for rejecting the religious motivation of the alleged acts.

to account for mixed motivations, influenced by both situational factors and discriminatory attitudes[97].

4.6. Alternative or neutral explanations

From the "investigative shortcomings" identified in the case law on "violations," we turn our attention to the states' reliance on alternative explanations. Within this classification, arguments justifying procedural steps overlap with the justification of the acts based on seemingly neutral motivations. States argue that police operations in certain communities or targeting individuals of a particular racial, ethnic, or religious background are based on public safety concerns. In *Boacă v. Romania*, the interventions were initiated to restore public order following altercations between private individuals;[98] in *Georgian Muslim Relations v. Georgia*, they aimed to prevent confrontations during protests allegedly linked to disturbances of the peace.[99] In *Lingurar,* the operations were initiated in the context of general measures to combat forest crime.[100] Similar measures aimed to prevent trafficking or prostitution in a specific neighborhood,[101] to prevent antisocial behavior in train stations,[102] trains,[103] or border crossings,[104] or as part of random identity checks.[105] States frequently invoke reasons related to the victim's conduct[106] to justify a proportionate institutional action or response. These include suspicion of weapon possession in *Virabyan*,[107] of committing crimes in *Lingurar,*[108] resistance to arrest in *Panayotopoulos*,[109] aggressive behavior in *Grigoryan v. Ukraine*[110] or the victim's uncooperative conduct in *Milanovic*.[111]

When facing these neutral explanations, whose plausibility is linked to operational necessity and the legitimacy of public safety and order, the Court applies, on the procedural side of Article 14 in conjunction with Articles 3 and 8, the critical distinction between acts motivated by discrimination and those without such motivation, and the obligation to uncover the discriminatory causal link. In the context of the persistent invocation of acts of physical aggression, insults, or racist, ethnic, or religious verbal abuse in national proceedings, the Court highlighted the *pro forma* nature of the investigations, which lacked credible efforts to identify suspects or subjectivity.[112] Consequently, it sanctioned excessively lengthy investigations in which no effective measures were taken to identify the perpetrators or

---

[97] *Lakatošová and Lakatoš v. Slovakia* (2018), para. 87; *Kornilova v. Ukraine* (2020), para. 77.
[98] *Boacă and Others v. Romania*, No. 40356/11, January 12, 2016, para. 95.
[99] *Georgian Muslim Relations v. Georgia,* No. 57953/14, November 23, 2023, para. 74.
[100] *Lingurar v. Romania*, 48474/14, April 16, 2019, para. 59.
[101] *B.S. v. Spain*, 47159/08 , July 24, 2012, paras. 32, 51.
[102] *Wa Baile v. Switzerland*, 43868/18, February 20, 2024, para. 112.
[103] *Basu v. Germany*, 215/19, October 18, 2022, para. 30.
[104] *Memedova and Others v. North Macedonia*, 42429/18, May 11, 2023, para. 84.
[105] *Seydi and Others v. France*, 35844/17, June 26, 2025, paras. 3–15.
[106] *Wa Baile v. Switzerland*, (2024), para. 112.
[107] *Virabyan v. Armenia*, 40042/05, October 2, 2012, para. 196.
[108] *Lingurar and Others v. Romania*, 66645/09, April 16, 2018, para. 112.
[109] *Panayotopoulos and Others v. Greece*, 44758/20, January 21, 2025, para. 142.
[110] *Grigoryan and Sergeyeva v. Ukraine*, 63409/07, March 2, 2017, para. 88. Similarly, *Seydi and Others v. France*, (2025), para. 79 (acts of violence in the context of police interaction with the victim)
[111] *Milanović v. Serbia*, 44614/07, December 14, 2010, paras. 81, 100. Similarly, *Memedov v. North Macedonia,* para. 44 (the victim left the country) or *Alković v. Montenegro* (§56) (dysfunctional relationships).
[112] Investigators' doubts regarding the victim in light of his religious beliefs. *Milanović v. Serbia* (2010), para. 99.

potential witnesses,[113] no technical efforts were made to obtain material evidence or expert reports to identify suspects,[114] and hearings focused on officers who did not participate in the incidents, instead of those directly involved.[115] The disregard for the circumstances and verbal abuse perpetrated by state agents or private individuals, or the failure to investigate them in detail, constitutes a relevant indicator for the Court in the context of Article 14. This applies to investigations that did not examine the statements of victims or witnesses[116] regarding racist, xenophobic, or religious insults,[117] or ignored societal circumstances or international reports attesting to police hostility, racist or xenophobic incidents.[118] When racist motivations were formally investigated, the Court penalized the lack of objective and reasonable justifications for clearly establishing the dissociation between the material acts (excessive use of force, the necessity of special police forces' intervention, the "danger" posed by the victim in the absence of evidence) and the motivation (ethnic or racial background),[119] the failure to examine potentially racist antecedents of police officers[120] or the detailed examination of working hypotheses based on the ethnic composition of the population and criminal behavior in the planning of operations.[121]

5. Instead of conclusions: the exceptionalism of the substantive aspect

The ECtHR's overall sanctioning of investigative passivity or the formalism of inquiries, of the decoupling of discriminatory motivation or of neutral explanations, is carried out, in principle, based on the examination of *"plausible information, sufficient to alert to the need to conduct an initial verification and, depending on the result, an investigation into possible racist motives"*[122] (n.b. ethnic, religious). As previously noted, the Court devised a legal artifice derived from the obligations to investigate physical or psychological assault or homicide under Articles 2 and 3, and subsequently Article 8, through which it transferred these duties into the context of Article 14. The question arises as to the conditions in which "evidentiary inflation" as an obstacle to proving discriminatory motivation can be overcome in a manner that allows the Court to *"require the respondent State to rebut a presumption of*

---

[113] Ibid., para. 99; *Georgian Muslim Relations v. Georgia* (2023), paras. 90, 93, 99. *Mikeladze and Others v. Georgia (2021),* paras. 67, 68.
[114] *Ilareva and Others v. Bulgaria* (2025), paras. 136, 143–144; *Panayotopoulos and Others v. Greece* (2025), para. 158.
[115] *Virabyan v. Armenia* (2012), para. 224; *Grigoryan and Sergeyeva v. Ukraine* (2017), para. 95; *B.S. v. Spain* (2012), para. 43.
[116] Refusal to investigate allegations of racial profiling, to consider evidence, or to hear witnesses. *Basu v. Germany* (2022), paras. 37–38.
[117] *Panayotopoulos and Others v. Greece* (2025), paras. 158, 160; *Grigoryan and Sergeyeva v. Ukraine* (2017), para. 95; *Ilareva and Others v. Bulgaria* (2025), paras. 138, 141; *Georgian Muslim Relations v. Georgia* (2023), paras. 90, 93; *B.S. v. Spain* (2012), para. 61.
[118] *Boacă and Others v. Romania (2016)*, para. 108; *Grigoryan and Sergeyeva v. Ukraine* (2017), para. 97; *Lingurar and Others v. Romania* (2018), para. 119; *Lingurar v. Romania* (2019), para. 80.
[119] *Panayotopoulos and Others v. Greece* (2025), para. 160; *Lingurar and Others v. Romania* (2018), paras. 120–121; *Boacă and Others v. Romania* (2016), para. 107.
[120] Involvement in similar incidents, whether they were accused of displaying prejudice, and how they performed their duties in relation to persons belonging to ethnic minorities. *Panayotopoulos and Others v. Greece* (2025), para. 160
[121] *Lingurar v. Romania* (2019), paras. 79–80.
[122] *Panayotopoulos and Others v. Greece* (2025), para. 158.

discrimination and, if it fails to do so, to find, on that basis, a violation of Article 14 of the Convention."[123]

An analysis of the cases in this study, which focuses on the application of Article 14 of the Convention and includes Data Set No. 1 (82 judgments finding "no violation") and Data Set No. 2 (54 judgments finding "violation")[124] reveals that the mechanism of shifting the burden of proof specific to discrimination, in substantive terms, is invoked *expresis verbis* by the Court in an extremely limited number of cases concerning acts of physical and psychological aggression motivated by racial[125], ethnic[126], or religious[127] origin and resulting in a violation of Article 14.[128]

This conclusion is reached to the extent that a combination of circumstances and indicators manifest and are proven simultaneously: offensive language and insults with discriminatory connotations, when uncontested by the authorities;[129] stereotyping resulting from statements by state agents, investigators, or prosecutors, recorded in state documents;[130] the passivity, acquiescence, or refusal of the authorities to protect victims of acts of physical and psychological aggression, directly related to their membership in a particular group;[131] the actions of the authorities determined predominantly by the characteristics of the group to

---

[123] *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020), para. 212.
[124] This analysis does not examine 46 cases involving acts of violence motivated by sexual orientation, gender, sex, or disability, which are the subject of further research.
[125] Cases concerning the criterion of Roma identity in *Stoica v. Romania* (2008); *Burlya and Others v. Ukraine* (2018); *Lingurar v. Romania* (2019); *Stalović v. Serbia* (2026).
[126] Chechen ethnicity in *Makhashevy v. Russia* (2012); *Antayev and Others v. Russia* (2014). Armenian ethnicity in *Makuchyan and Minasyan v. Azerbaijan and Hungary* (2020) and Avar ethnicity in *Adzhigitova and Others v. Russia* (2021).
[127] *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia* (2007), *Begheluri and Others v. Georgia* (2014)
[128] This analytical framework, which involves *prima facie* presumptions of discrimination and the shifting of the burden of proof to the state, is found in cases unrelated to acts of violence, concerning ethnic profiling (Roma) in the context of planning a police operation in *Lingurar v. Romania* (2019), profiling by border police in *Memedova and Others v. North Macedonia* (2023), and racial profiling (based on skin color) through selective police checks in *Wa Baile v. Switzerland* (2024), *Seydi and Others v. France* (2025).
[129] *Stoica v. Romania*, para. 128. Insults preceding the acts of aggression: "are you a Gypsy or a Romanian?" *Burlya and Others v. Ukraine,* paras. 9–10. "Everyone knows that the spread of drug addiction, …, is their fault. … banditry and other [forms of crime]…"; "support the decision of the village residents' assembly to expel the Gypsies from the village" *Stalović v. Serbia,* para. 2. During acts of aggression: "damn Gypsy," "white woman with a dark man," *Makhashevy v. Russia,* paras. 17, 9, 24; "You damn Chechens, now we're going to send you to hell." Similarly, *Antayev and Others v. Russia,* paras. 12, 15, 30. Ethnic insults against Avars in *Adzhigitova and Others v. Russia,* paras. 19, 45, 52, 273, *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia* (2007), para. 28: "if I had been in the aggressors' place, I would have treated the Jehovah's Witnesses even worse."
[130] The police report regarding "purely Gypsy" behavior or the prosecutor's consideration of only the police officers' statements to the detriment of those of Roma individuals, in *Stoica v. Romania*, paras. 121, 122, 128. The police plan linking criminality and antisocial behavior to ethnicity in *Lingurar v. Romania*, paras. 37, 75. Internal police instructions to treat suspects of Chechen origin in a particular manner in *Antayev and Others v. Russia,* para. 127. Official statement by the investigator who acknowledged that, as an Orthodox Christian, he could not be impartial toward Jehovah's Witnesses in *Members of the Gldani Congregation and Others v. Georgia,* para. 44.
[131] The police's failure to intervene to stop protests against Roma people, to prevent the destruction of homes, and to prevent people from being forced to leave their homes in *Burlya and Others v. Ukraine,* paras. 132, 134. The police's refusal to intervene promptly to protect adults and children from the attackers' violence and to protect the gatherings of Jehovah's Witnesses in *Members of the Gldani Congregation and Others v. Georgia,* paras. 140, 141, and *Begheluri and Others v. Georgia*, para. 174. The refusal of the police and the courts to consider complaints regarding discrimination and ethnic insults in *Antayev and Others v. Russia,* para. 125.

which the victims belong.[132] Against the backdrop of such intertwined circumstances (*prima facie* presumptions), the lack of objective justifications on the part of the state leads to the finding that the racial or ethnic origin or religion constituted the causal factor of the alleged acts, contrary to Article 14, in its substantive aspect.[133]

Returning to the overall analysis of cases in which the Court finds a "violation," and the hypotheses of this research, it is evident that the European Court has clarified its position regarding the "beyond a reasonable doubt" standard of proof by emphasizing that its purpose is not to substitute itself for a national court or to apply procedural rules specific to criminal law. Against this backdrop, the Court has made its approach more flexible regarding the consideration of all circumstances that may give rise to "sufficiently solid, clear, and consistent" presumptions (*prima facie*) to shift the burden of proof. However, this flexibility does not provide a complete solution to mitigating the asymmetry between victims and states in the administration of evidence regarding discrimination.

The current analysis confirms the research hypothesis related to the first question (is the standard of proof being adjusted?). In the presence of plausible information, the Court examines compliance with the obligation to investigate the discriminatory motive, which shifts the analysis from the substantive aspect of discrimination to the procedural aspect of uncovering the motive. This approach is evident in *Kuruová and Horváthová v. Slovakia*, the Court's most recent decision in which references to ethnic origin in police documents, coupled with the victims' statements regarding racist verbal abuse, constituted *"plausible information sufficient to alert to the need to conduct an investigation into the possible racist connotations of the acts of physical aggression*."[134]

The working hypothesis regarding the subsequent question (is the analysis of indicators procedural?) is confirmed, in the sense that the European court penalizes the practice of treating hate crimes as mere common law offenses. This is done through decoupling, failure to investigate the evidence, and ignoring the ideological profile of the perpetrators or the circumstances at the time the acts were committed and immediately thereafter. *Koffi v. Bulgaria* is illustrative, the Court concluding that *"no specific efforts were made to investigate whether a discriminatory motivation (n.b. skin color) might have played a role in the physical assault."*[135]

Regarding the third research question, on the conditions under which the Court validates investigations, the research hypothesis is confirmed. The Court penalizes the conduct of investigations that lack the effective potential to identify the perpetrators of the acts and that dilute the dimension of discrimination. *Uzu v. Ukraine* confirms this thesis, as the Court considers that procedural flaws in national investigations that have the effect of undermining

---

[132] The police planned and carried out the operation in a discriminatory manner in *Lingurar v. Romania*, para. 76. The police called in special police forces because of the suspects' ethnic origin, not the seriousness of the offenses, in *Antayev and Others v. Russia*, para. 127. The police participated alongside private groups in disrupting religious gatherings and used force, systematically tolerating acts of violence against Jehovah's Witnesses. *Begheluri and Others v. Georgia*, paras. 105, 112, 174.

[133] *Stoica v. Romania*, paras. 126, 127, 130; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, para. 140; *Makhashevy v. Russia*, para. 179*; Antayev and Others v. Russia*, para. 128; *Begheluri and Others v. Georgia*, paras. 176, 179, *Lingurar v. Romania*, para. 77, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, paras. 218, 221, *Adzhigitova and Others v. Russia*, para. 274, *Stalović v. Serbia*, paras. 14, 31.

[134] *Kuruová and Horváthová v. Slovakia* (2026), paras. 30–33.

[135] *Koffi v. Bulgaria* (2026), para. 201.

the discriminatory elements lead to a failure to fulfill *"the obligation to conduct an effective investigation and to uncover any racist motive behind an incident*."[136]

Last but not least, the final hypothesis of the study is also validated, regarding neutral explanations. The Court imposes an obligation to establish a causal link with elements suspected of discrimination and penalizes the lack of objective justifications for the disassociation between the material acts (excessive use of force, intervention by special police forces, instructions, assaults, homicide, etc.) and the discriminatory motivation. *Panayotopoulos and Others v. Greece* is significant because it demonstrates that the inclusion of a *pro forma* instruction to examine possible racist motivations in the criminal investigation, in the absence of any actual investigative action, is contrary to the obligation *"to take all possible measures to investigate whether or not discrimination may have played a role in the events*."[137]

It is evident that the Court has established a procedural standard of diligence that counterbalances the examination of acts motivated by discriminatory attitudes using the *"standard of proof beyond a reasonable doubt*." The finding of a procedural violation appears to be the primary means by which the ECtHR sanctions states' passivity in "uncovering" discriminatory motivations. This does not imply that the standard is inadequate in relation to the factors that calibrate it, such as the specificity of the facts, the nature of the allegations, and the right at issue.[138] However, a substantive violation remains exceptional, precisely from an evidentiary perspective. This maintains the persistent asymmetry between victims and states in proving discrimination, under Articles 2 and 3 in conjunction with Article 14. As Henrard points out, further clarification is still needed regarding the criteria that trigger the shift in the burden of proof and the potential implications on the substantive side of deficiencies in investigating discrimination.[139]

A rather atypical case, *Stalovic v. Serbia* compels us to reflect more deeply. The Court does not relax the standard of proof, nor does it examine the direct causal link between the ill-treatment and the discriminatory motivation. On the contrary, the finding of a substantial violation of Article 14 in conjunction with Article 3 becomes possible because civil, not criminal, courts had established the discriminatory nature of the physical assaults suffered because of ethnic origin, while prosecutors had dismissed the complaints without investigating the discriminatory motivation.[140] The conclusion was reached on the basis of *prima facie* presumptions (related to the husband's ethnicity and the treatment suffered by his wife) that shifted the burden of proof to the defendants. In practice, discrimination was not proven by the "beyond a reasonable doubt" standard specific to criminal law[141]. In this context, it remains to be analyzed to what extent these patterns marked by evidentiary asymmetry and the prevalence of the duty of diligence are reflected or differ in case law related to other discriminatory criteria, such as sexual orientation, gender, or sex, including from the perspective of indirect discrimination. Such a further examination could explore possible variations in the dynamics of institutional barriers within the ecosystem of discrimination and the processes that lead to a "violation" of Article 14.

---

[136] *Uzu v. Ukraine (2024),* paras. 24–26
[137] *Panayotopoulos and Others v. Greece* (2025), para. 142.
[138] Jasmina Mačkić, "The Standard of Proof in Cases of Discriminatory Violence," *cit. supra,* 156.
[139] Kristin Henrard, "The European Court of Human Rights…," *supra*, 446.
[140] *Stalović v. Serbia*, paras. 5–7.
[141] *Stalović v. Serbia*, paras. 8, 30–32

Appendix Data Set No. 2a

No.	Case	Article 14 Claim	Court decision
	Ethnic origin (Roma)		
1.	*Nachova and Others v. Bulgaria* (2004)	Use of lethal force and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 2
2.	*Nachova and Others v. Bulgaria* [GC] (2005)	Use of lethal force and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 2
3.	*Bekos and Koutropoulos v. Greece* (2005)	Ill-treatment, insults, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
4.	*Moldovan and Others v. Romania (No. 2)* (2005)	Destruction of homes, arson, homicide, racist motives	Violation of Art. 14 in conjunction with Art. 3/8.
5.	*Šečić v. Croatia* (2007)	Acts of physical assault, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
6.	*Cobzaru v. Romania* (2007)	Ill-treatment and failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
7.	*Anguelova and Iliev v. Bulgaria* (2007)	Ill-treatment and death in custody, racist motivation.	Violation of Art. 14 in conjunction with Art. 2/3.
8.	*Petropoulou-Tsakiris v. Greece* (2007)	Ill-treatment and failure to investigate racist motivation.	Violation of Art. 14 in conjunction with Art. 3.
9.	*Stoica v. Romania* (2008)	Ill-treatment and failure to investigate racist motivation.	Violation of Art. 14 in conjunction with Art. 3
10.	*Fedorchenko and Lozenko v. Ukraine* (2012)	Destruction of homes, arson, failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 2.
11.	*Yotova v. Bulgaria* (2012)	Failure to investigate the discriminatory motive in acts of violence.	Violation of Art. 14 in conjunction with Art. 3.
12.	*Ciorcan and Others v. Romania* (2015)	Ill-treatment and failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
13.	*Balázs v. Hungary* (2015)	Acts of physical assault, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
14.	*Boacă and Others v. Romania* (2016)	Ill-treatment and failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
15.	*R.B. v. Hungary* (2016)	Threats, harassment, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 8.
16.	*Škorjanec v. Croatia* (2017)	Acts of physical aggression, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
17.	*Király and Dömötör v. Hungary* (2017)	Anti-Roma marches, racist speech, failure to provide protection, racist motives.	Violation of Art. 14 in conjunction with Art. 8.
18.	*Alković v. Montenegro* (2017)	Acts of aggression, failure to investigate racist and religious motives.	Violation of Art. 14 in conjunction with Art. 8.
19.	*M.F. v. Hungary* (2017)	Unlawful detention, failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
20.	*Lingurar and Others v. Romania* (2018)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
21.	*Burlya and Others v. Ukraine* (2018)	Destruction of homes, inaction, failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3/8.
22.	*Lakatošová and Lakatoš v. Slovakia* (2018)	Homicide, failure to investigate racist motivation.	Violation of Art. 14 in conjunction with Art. 2.
23.	*Lingurar v. Romania* (2019)	Discriminatory planning, ill-treatment, racist motives.	Violation of Art. 14 in conjunction with Art. 3
24.	*R.R. and R.D. v. Slovakia* (2020)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
25.	*Budinova and Chaprazov v.*	Hate speech, lack of an effective remedy	Violation of Art. 14 in

	Bulgaria (2021)		conjunction with Art. 8.
26.	*Memedov v. North Macedonia* (2021)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
27.	*Paketova and Others v. Bulgaria* (2022)	Forced expulsion. Failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 8.
28.	*M.B. and Others v. Slovakia (No. 2)* (2023)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
29.	*Panayotopoulos and Others v. Greece* (2025)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
30.	*Stalović v. Serbia* (2026)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3
31	*Kuruová and Horváthová v. Slovakia* (2026)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3
	Ethnic origin (Chechen, Avar, Armenian)		
32.	*Makhashevy v. Russia* (2012)	Ill-treatment and failure to investigate ethnic motives.	Violation of Art. 14 in conjunction with Art. 3
33.	*Antayev and Others v. Russia* (2014)	Ill-treatment and failure to investigate ethnic motives.	Violation of Art. 14 in conjunction with Art. 3
34.	*Grigoryan and Sergeyeva v. Ukraine* (2017)	Acts of physical aggression, failure to investigate the ethnic motive.	Violation of Art. 14 in conjunction with Art. 3.
35.	*Makuchyan and Minasyan v. Azerbaijan* (2020)	Glorification of murder	Violation of Art. 14 in conjunction with Art. 2.
36.	*Adzhigitova and Others v. Russia* (2021)	Ill-treatment and failure to investigate ethnic motives.	Violation of Art. 14 in conjunction with Art. 3
	Racial origin (skin color)		
37.	*Turan Cakir v. Belgium* (2009)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
38.	*B.S. v. Spain* (2012)	Ill-treatment and failure to investigate racist motives.	Violation of Art. 14 in conjunction with Art. 3.
39.	*Abdu v. Bulgaria* (2014)	Acts of physical assault, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
40.	*Basu v. Germany* (2022)	Racial profiling during an identity check on a train.	Violation of Art. 14 in conjunction with Art. 8.
41.	*Wa Baile v. Switzerland* (2024)	Refusal to submit to a check based on racial profiling.	Violation of Art. 14 in conjunction with Art. 8.
42.	*Uzu v. Ukraine* (2024)	Acts of physical aggression, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
43.	*Seydi and Others v. France* (2025)	Racial profiling during identity checks.	Violation of Art. 14 in conjunction with Art. 8.
44.	*Koffi v. Bulgaria* (2026)	Acts of physical assault, failure to investigate the racist motive.	Violation of Art. 14 in conjunction with Art. 3.
	Religion		
45.	*Congregation of the Jehova's Witnesses Gldani v. Georgia* (2007)	Acts of physical assault, inaction, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 3/9.
46.	*Milanovic v. Serbia* (2010)	Acts of physical assault, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 3.
47.	*Begheluri and Others v. Georgia* (2014)	Acts of physical assault, inaction, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 3/9.
48.	*Kornilova v. Ukraine* (2020)	Acts of physical assault, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 3.
49.	*Zagubnya and Tabachkova*	Acts of physical assault, failure to	Violation of Art. 14 in

	v. Ukraine (2020)	investigate the religious motive.	conjunction with Art. 3.
50.	*Mikeladze and Others v. Georgia* (2021)	Acts of physical assault, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 3.
51.	*Georgian Muslim Relations v. Georgia* (2023)	Acts of physical assault, failure to investigate the religious motive.	Violation of Art. 14 in conjunction with Art. 9.
52.	*Allouche v. France* (2024)	Failure to investigate the discriminatory (religious) motive.	Violation of Art. 14 in conjunction with Art. 8.
	Political opinion, xenophobia		
53.	*Virabyan v. Armenia* (2012)	Acts of physical assault, failure to investigate the political motive.	Violation of Art. 14 in conjunction with Art. 3.
54.	*Kreyndlin and Others v. Russia* (2023)	Acts of physical assault, failure to investigate the xenophobic motive.	Violation of Art. 14 in conjunction with Art. 3.
55.	*Ilareva and Others v. Bulgaria* (2025)	Acts of intimidation, failure to investigate the xenophobic motive.	Violation of Art. 14 in conjunction with Art. 8.

Text translated from Romanian with DeepL, checked, corrected and edited by Cristina Andreescu.