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Proving discriminatory violence at the European Court of Human Rights

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Proving discriminatory violence at the European Court of Human Rights

Being invisible and without substance, a disembodied voice, as it were, what else could I do? What else but try to tell you what was really happening when your eyes were looking through?

Ralph Ellison, *Invisible Man*

Proving Discriminatory Violence at the European Court of Human Rights

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
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Jasmina Mačkić

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in 1984

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prof. dr. J.H. Gerards (Universiteit Utrecht)
mr. dr. M. den Heijer (Universiteit van Amsterdam)

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Preface

In the powerful book *Between the World and Me*, the American author Ta-Nehisi Coates describes what it is like to live in his country where unarmed African-American men and boys are dying at the hands of police officers and where families and bodies are broken. According to Coates this type of violence is not inflicted accidentally but by design. After describing how his African-American friend Prince Jones was gunned-down by a police officer, he notes that “Prince was not killed by a single officer so much as he was murdered by his country and all the fears that have marked it from birth.”¹ For Coates it does not matter whether the perpetrator of violence is ‘white or black’, what matters is the system that makes your body breakable.

Reading his book in 2015 reminded me of how important it is not only to hold a single perpetrator responsible for an act of discriminatory violence, but – above all – the system that conditions it. In my thesis, which focuses on discriminatory violence complaints before the European Court of Human Rights, I have attempted to find ways to hold states responsible for this type of physical abuse especially when it is systemic in nature. When I first began to study this issue, back in 2011, I could not have imagined that hate crimes and discrimination would receive as much attention as they do today in popular media and in reports from intergovernmental and non-governmental organisations. Partially due to the European refugee crisis and the rising popularity of far-right parties, it is uncertain how the position and the rights of disadvantaged groups in European societies will evolve and how European states will respond to discriminatory violence inflicted upon members of these groups. Therefore, my hope for this book is that it can contribute in finding ways to address and acknowledge discriminatory violence.

Writing this thesis has been quite an adventure, as I was faced with several obstacles along the way. However, those obstacles never really mattered to me. Finding an answer to the main research question has been my driving force and achieving that aim was worth overcoming them. I would like to gratefully acknowledge various people who have encouraged me to start a PhD, persevere with it and finally to finish it.

I am very grateful to Professor Rick Lawson for encouraging me to start writing a thesis on this important and fascinating research topic and for his input in the early stages of this thesis. I am also very grateful to Ard Schoep for providing useful feedback on my research proposal and on the first

1 T. Coates, *Between the World and Me*, New York: Spiegel & Grau 2015, p. 78.

drafts of some of the chapters. I would like to express my gratitude for the supervision provided by Professor Larissa van den Herik and Pinar Ölçer. You have helped me to remain persistent, encouraged me to form original ideas on this research topic and to work daily towards the achievement of my goal. In essence, the two of you have been the key to finalizing this PhD thesis.

I would like to thank my committee members – Professor Stefaan Van den Bogaert, Professor Christa Tobler, Professor Janneke Gerards, Dr. Michiel van Emmerik and Dr. Maarten den Heijer – for their valuable questions and comments on the thesis. I would especially like to thank Professor Janneke Gerards who has shared her expertise with me and who has provided some very useful feedback on the case notes and papers that I have written throughout the years.

This book began life as a PhD at the Europa Institute at Leiden Law School, a period in which I have been able to get to know many interesting people who have helped me to grow and offered me great support and encouragement during the writing process. I would like to express my appreciation to Professor Rikki Holtmaat, who has offered me valuable insights on discrimination-related matters. I would also like to thank Professor Stefaan Van den Bogaert, the Director of the Europa Institute, for his support during the writing process and for giving me an opportunity to work at the Institute again. I would like to thank all my colleagues from the Europa Institute. Nevertheless, I would like to highlight a few who have offered me tremendous support and gave me a helping hand when needed during my PhD: Jorrit Rijpma, Moritz Jesse, Vicky Kosta, Narin Idriz, Nelleke Koffeman, Darinka Piqani and Erik Koppe (Grotius Centre for International Legal Studies).

I have finalised this thesis during my time as a lecturer at the Institute of Criminal Law and Criminology and the Moot Court Department at Leiden Law School. Thank you to the staff of both departments, especially to Professor Jan Crijns and Professor Clementine Breedveld-de Voogd. My sincere gratitude also goes out to the Meijers Institute in assisting me while I was organising the seminar ‘Fact Finding in Human Rights Litigation’ in 2013 and while I was finalising this book.

Whilst writing this book, I have gained many valuable insights from several individuals from outside Leiden. During my PhD I presented papers at various conferences, including at the University of Sussex, the University of Michigan Law School, the Vrije Universiteit Amsterdam and the Vrije Universiteit Brussels. I have benefited from the feedback at these events.

During my PhD I was also able to work for a couple of months at the Council of Europe’s Roma Support Team, and for this I would especially like to thank Jeroen Schokkenbroek and Eleni Tsetsekou very much. Thank you to the University of Michigan Law School for welcoming me as a Visiting Research Scholar. Here I would like to acknowledge Roopal Shah and Stephanie Wiederhold for enabling me to work in such a friendly and intellectual climate. A special word of gratitude is dedicated to Professor Samuel

Gross: your guidance and the many conversations we had in Ann Arbor have been very helpful and inspiring. I will cherish the wonderful memories of Ann Arbor.

I am most grateful to the Netherlands Organisation for Scientific Research (NWO) for awarding me a Mozaïek Scholarship and offering me the opportunity to become part of an academic network. I would also like to express my gratitude to the Leids Universiteits Fonds (LUF) for awarding me an additional scholarship to cover my travel expenses for my trip to the University of Michigan Law School.

Finally, I will conclude on a more personal note. I was lucky to be surrounded with people who have provided me with a lot of love and support throughout my life. Thank you to 'my twins', my sister Arna and my brother Adi. We went through quite a journey together, coming from war-torn Yugoslavia to The Netherlands. We have helped each other to move forward and to build things from scratch. I have so much to thank to my partner, Onno, who has been the greatest support in the last couple of years of my writing process. This thesis could not have been written without his love, support, patience and guidance. I am also very grateful to Onno's family for their heart-warming kindness. Above all, this book is dedicated to my parents. They have always had my back and offered support on every step of writing this PhD. I could not have wished for better parents and would not want to trade with anyone. It is thanks to them that I have learned to deal with circumstances in which the wind was at my face.

Jasmina Mačkić
Amsterdam, February 2017

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