

Roma people in the EU: legal issues of discrimination

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UNHCR (1993)

for the most part, an 'underclass'; uneducated, unskilled, unemployed, in poor health, primitively housed, and subject to both passive and active ethnic prejudice

a 'third-world' people, living under 'third-world' conditions

They are Europe's 'Untouchables'. If the Roma were citizens of a third-world nation they would be eligible for international aid

Race Directive 2000/43/EC

- ❑ Article 2 ~ indirect discrimination;
- ❑ Article 8 ~ shifting of the burden of proof
- ❑ Article 15 - sanctions must be 'effective, proportionate and dissuasive'.
- ❑ Preamble, paragraph 15 ~ rules of court permit statistical evidence to establish indirect discrimination

Buckley v UK (1996)

First claim ~ difficult facts

- refused permission to live on land she owned
- the same rules applied to everyone

Dissenting opinion Judge Pettiti

- Layer upon layer of restrictions
- The cumulative nature of this type of discrimination

Anguelova v. Bulgaria (2002)

Facts

- Judgment ~ accepted that complaint ‘grounded on a number of serious arguments’ and the State failed to provide a plausible explanation for the death.

BUT

- standard of proof ‘beyond reasonable doubt’
- no Article 14 violation

Anguelova v. Bulgaria (2002)



- **Dissenting opinion Judge Bonello**
- I consider it particularly disturbing that the Court, in over fifty years of pertinacious judicial scrutiny, has not, to date, found one single instance of violation of the right to life (Article 2) or the right not to be subjected to torture or other degrading or inhuman treatment or punishment (Article 3) induced by the race, colour or place of origin of the victim.

Anguelova v. Bulgaria (2002)



- Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion.

Race Directive 2000/43/EC

Jörg Haider

Came into force in 2003

- rules on the burden of proof must be adapted
- effective, proportionate & dissuasive sanctions
- indirect discrimination to be established by any means including ... statistical evidence

ECtHR vs EU competing agendas

Inter-American Court of Human Rights

- *Celestine Case*, (Commission report - 1989)

Nachova v. Bulgaria (2006)

- The incident ~ 1996
- The problem
- *Anguelova v Bulgaria* (2002)
- The Judgment
- The positive obligation to investigate racism

DH v Czech (2006 - 2007)

The facts

The problem

- (1) indirect discrimination;
- (2) only evidence statistical;
- (3) Strasbourg had not accepted reversed onus of proof

DH v Czech (2007)

Grand Chamber (13:4) violation

- the relevant legislation as applied in practice ... had a disproportionately prejudicial effect on the Roma community
- the Court is not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified

Thlimmenos v Greece (2000)



Facts

- refused admission to accountancy the same rules applied to everyone

Discrimination:

- Treating similar people differently
- Treating different people the same

Privatising of duty



Timishev v Russia (2005)

- Duty to combat racism: to reinforce 'democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment'

Šečić v Croatia (2007)

- Applying *Thlimmenos v Greece (2000)* duty to investigate racial motivated violence

European Court of Human Rights



40 year journey

- ❑ Prohibits indirect discrimination
- ❑ Accepts the need for a shifting of the burden of proof
- ❑ Accepts statistical evidence to establish indirect discrimination
- ❑ Imposes 'effective, proportionate and dissuasive' .