

Roma people in the EU – the legal issues of discrimination

Roma population in Europe today is around 10 million people. They are the most marginalised and disadvantaged ethnic group in today's Europe. They suffer from anti-Romani sentiments that create a supportive background for a discrimination and segregation.

Of course, there is no official policy of apartheid in any of the EU countries, on contrary, most of the countries sincerely attempt to introduce various plans for the integration of Roma people. In the other hand, it does not mean that the public actors do not discriminate Roma, especially local or municipal authorities, who are closer to their electorate, often tend to the acts of populism. Generally, it can be said that the combination of the anti-Romani sentiment and populism of the politics creates the biggest obstacle to the elimination of the discrimination of Roma. The other problem is that the feeling of the social exclusion and segregation due to its historical roots descends from generation to generation, which is why the Roma themselves feel a little motivation to integrate to the major community that is perceived as hostile.

The Roma are discriminated in practically all the fields covered by the Race Equality Directive (Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – hereinafter "RED"). It starts with a substandard education. Hand in hand with the education comes unemployment, as the disadvantage of Roma on the labour market is a result of the substandard education. What is more, on the labour market the Roma most often enter a relation with private subjects, who apply stereotypes in great extent. The unemployment rate of Roma is disproportionately high.

Finally, the Roma suffer from the discrimination in access to goods and services, including the housing as a specific category of the provision of services.

With accession of the post-Communist countries another problem arose, in connection with the free movement of people within the EU. The attention of the public has been recently attracted by the situation in Italy, where the right-wing Government declared in May 2008 a state of emergency and ordered a census in Romani camps, both official and unofficial ones.

At that time, there were about 150 thousands of Roma living in Italy, about 50 % of them being Italian citizen, approximately 25 % coming from other EU countries, mostly from Romania, and the rest had come from non-EU countries, mostly from former Yugoslavia. During the census personal data were collected, the Roma in the camps were photographed, in some of the camps the fingerprints were taken, too. The evictions and expulsions took place. The measures included also the children. The census met strong criticism for being openly aimed at the Roma ethnic group, however, so far I have no information about any outcome of legal proceedings concerning those measures.

There is another specific issue concerning the legal protection of Roma from the discrimination, which is also linked to their social status. Even in cases where the quality of the legal framework for the protection of Roma is quite decent, the Roma themselves very rarely seek a legal protection. Almost all of the cases filed by the Roma victims or alleged victims of discrimination before the Czech courts were initiated by the non-governmental organizations within their strategic litigation projects, that paid a lawyer for the plaintiffs and

covered all the risks of defeat. The evidence for the purposes of establishing the *prima facie* discrimination case was secured by the method of testing.

I believe that the reluctance of the Romani victims is one of the reasons why we have practically no case-law of the Court of Justice of the European Communities (“ECJ”) regarding the RED so far. Actually I have found only one judgement, which does not concern Roma, but the North African immigrants to Belgium. It is the judgement in the *Feryn* case of July 2008, no. C-54/07.

First of all, the ECJ stated that the specialised non-governmental organization may have a standing to sue a defendant for his discriminatory acts even if no individual victims of discrimination are identified, as according to the Article 6 of the RED the member states may introduce provisions that are more favourable to the protection of the principle of equal treatment than those laid down by the RED. The court further concluded that even in such a case the sanctions meeting the criteria stipulated by the Article 15 of the RED may be imposed on the defendant. According to the ECJ, the public statement of the employer that it will not recruit employees of a certain ethnic origin constitute direct discrimination as it is likely to dissuade certain candidates from submitting their candidature and to hinder their access to the labour market. Finally the ECJ ruled that such a public statement is sufficient for a presumption of the existence of the directly discriminatory recruitment policy.

Therefore the more significant case-law regarding the discrimination of Roma has to be sought beyond the scope of the EC/EU law, which does not mean that the principles formulated in such a case law cannot be applied in cases relying on the RED.

First case I would like to mention is a decision of the House of Lords in the case *Regina v. Immigration Officer at Prague Airport and another ex parte European Roma Rights Centre and others*. The case concerned the practice of the U.K. Immigration Authorities “pre-clearing” the passengers to the United Kingdom in order to decrease the quantity of the asylum applicants from the Czech Republic, who were in vast majority, if not exclusively, Roma.

As regards the House of Lords, Baroness Hale of Richmond formulated in her opinion, that was joined by other members of the Appellate Committee, the main principles that should be borne in mind when considering the case of alleged direct discrimination. She explained the difference between the direct and indirect discrimination and emphasised that in case of direct discrimination no justification is possible. It was stressed that neither a stereotype that may very likely be true can justify the direct discrimination.

Another source of the case-law concerning the discrimination of Roma is the European Court of Human Rights (“ECHR”). Paradoxically, the attitude of this court to the discrimination issues and especially to the distribution of the burden of proof had been quite conservative for a long time, the EC/EU law being more progressive. The breakthrough came with the judgement in the case *Nachova and others v. Bulgaria* (2005), concerning the police violence with fatal consequences. The Grand Chamber of the court found the violation of the provision of the European Convention of Human Rights prohibiting discrimination in that the Bulgarian investigating authorities had not paid sufficient attention to the well-founded suspicion that the policemen acted by virtue of a racial hatred.

As regards the indirect discrimination, the Grand Chamber of the ECHR rendered in 2007 a landmark judgement in the case of *D.H. and others v. the Czech Republic* concerning the discrimination in education of the Romani children from the city of Ostrava, who had been enrolled to the special schools for mentally handicapped. The ECHR extensively cites from the EC/EU law, namely from the RED and from the judgements of the ECJ concerning the statistics and indirect discrimination. The court approved the statistical evidence submitted by the applicants and ruled that such an evidence is sufficient to create a presumption of discrimination. Then it dealt with the objections raised by the Government and found that they are not capable to rebut such a presumption. Finally the court ruled that it is not necessary to examine the individual cases of the applicants.

The landmark cases provide for the framework and formulate the main principles. However, the practice of the domestic courts of the lowest level gets unified mainly by the quantity of small cases, sometimes repetitive, sometimes seemingly trivial. Of course, the quantity of lawsuits cannot itself integrate the Roma population into the society, nonetheless, it can show to both sides - the victims as well as the actors of discrimination – that there is a legal protection against the discrimination and that it is not illusory, but effective.