



Roma people in the EU: legal issues of discrimination

Lilla Farkas

lfarkas@[migpolgroup.com](mailto:lfarkas@migpolgroup.com)

legal policy analyst



Strategic thinking
on equality and mobility

Violation of Roma rights

- In all fields covered by EC Dir 43/2000: health, education, social provisions, housing, employment
- Extreme forms of discrimination: segregation = direct discrimination in RED
- Often perpetrated by state authorities and agents (local governments, schools)
- Structural and institutional discrimination
- Discriminatory laws



Special laws on Roma and Travellers I.

- Special laws on status: eg. 1968 law in France
- Positive action measures: mid term packages in new MSs, Traveller accommodation
- Minority rights acts: eg. Slovenia (autochthonous)
- 21 May 2008 decree, Declaration of the state of emergency with regard to nomad community settlements in the territories of Campania, Lazio and Lombardia regions (extended) + ordinances and pacts of security in 16 + 2 cities



Strategic thinking
on equality and mobility

Special laws on Roma and Travellers II.

- Legislative Decree on Security No 733 of 5 February 2009: last chapter of fingerprinting procedure.
- Appr. 900,000 immigrants, incl 10-15,000 Roma and some Italians affected.
- Two cases challenging decrees in Lazio and Milan
- 4 Roma children's death linked to forced eviction
<http://www.errc.org/cikk.php?cikk=3810>



Roma cases I.

- ECtHR – individual petitions
 - Traveller accommodation cases (UK)
 - Death and ill-treatment (Nachova, Assenov – Stoica)
 - Right to education (DH, Sampanis, Orsus)
 - Coercive sterilisation (pending v SK)
- ECeSR – collective complaints
 - Right to housing (Greece)
 - Right to health care (Bulgaria)



Roma cases II.

- CeeERD
 - Access to public services (Laczko v SK)
 - Housing (Koptova v SK)
- Domestic courts
 - Mainly employment, education and access to service, sterilisation
 - SC jurisprudence on education in HU: **desegregation can be ordered on the basis of detailed plans**
- Art 13 RED equality bodies
 - All fields covered in RED
- ECJ
 - None



ECHR case law I.

- Minority rights approach (FCNM) v non-discrim (Art 14 ECHR + Protocol 12)
- *Eg in Connors v the UK*: vulnerable position of Gypsies warrants special consideration of their needs arising from Gypsy way of life, and imposes positive obligation on States under Article 8
- Constraints of ECHR: covers mainly civil and political rights v RED material scope



Strategic thinking
on equality and mobility

ECHR case law II.

- D.H. et al v Czech Rep II, 2007:
- Application: misdiagnoses of 18 Roma children as intellectually disabled in the town of Ostrava amounts to in/direct discrimination
- Finding: legislation and implementation led to de facto (indirect) discrimination - „a danger that the **tests were biased** ...cannot serve as justification for difference in treatment”
- Due to **disproportionately prejudicial effect of legislation** on Roma no need to examine individual cases.



ECHR case law III.

- (1) the right not to be murdered or ill-treated requires adequate investigation of such incidents, including racial motivation;
- (2) Romani parents must be informed adequately about the education of their children (informed consent);
- (3) no consent can be given to ethnic discrimination;
- (4) the special needs of Roma children in public education (including minority language) must be reasonably accommodated.
- (5) indirect discrimination: the use of ethnic statistics as evidence.



ECHR case law IV.

- DH II viewed more as a special case
- Reasoning still followed in Orsus II.
- No distinction among different forms of discrimination in ECtHR jurisprudence: same tests = justification of direct discrimination?
- Is coercion an element of segregation?



Strategic thinking
on equality and mobility

Hate speech = harassment

Unintended side-effect of RED transposition in new MSs: actio popularis rights of NGOs and concept of harassment provides a tool to challenge Anti-Gipsy hate speakers in RO, BG and HU

Decisions by equality bodies condemning politicians

Supreme Admin Court upheld condemnation of mayor in BG: No 11158/2009