



Roma people in the EU: legal issues of discrimination

Lilla Farkas
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? Matters because of justification defences allowed
- Structural and institutional discrimination
- Discriminatory laws
- At EU level: Case C-394/11 (Valeri Belov case) EB is not court or tribunal – Art 267 TFEU



Protected ground I.

- Roma are covered by RED *rationae personae*: dual minority of race and ethnic origin
- National or ethnic minority in national laws
- ECtHR definition of the Roma based on minority rights
 - Developed in UK Traveller cases: *Beard v. the United Kingdom*, Application No. 24882/94; *Buckley v. the United Kingdom*, judgment of 25 September 1996; *Chapman v. the United Kingdom*, judgment of 18 January 2001; *Connors v. the United Kingdom*, judgment of 27 May 2004.



Strategic thinking
on equality and mobility

Protected ground II.

- ECtHR definition transferred to Roma education cases
 - particularities and characteristics of Romani children, members of disadvantaged community, often poorly educated, making decisions under constraint, social and cultural differences (possibly including language), risk of isolation and ostracism in majority settings (Paras 201-203, D.H. Grand Chamber judgment)
- Duty to accommodate? (DH. para. 201.)
 - the vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.



Ethnic minority identity

In its Advisory Opinion of July 31st 1930 concerning the Greco-Bulgarian Communities (Opinion No. 17) the Permanent Court of International Justice stated that a (minority) community is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other”.



Strategic thinking
on equality and mobility

Protected ground III.

- Yordanova and Others v Bulgaria (judgment of 24 April 2012)
 - *Recognition of the Community Life in Batalova Vodenitsa* (para. 105).
 - *Roma as a “socially disadvantaged group”* (paras. 129, 130, 132 and 133).
 - outcast community and one of the socially disadvantaged groups (para. 129).
- <http://strasbourgoobservers.com>



The Roma education cases I.

- In *DH. and Others v the Czech Republic* (Grand Chamber judgment of 13 November 2007) the form of segregation was the placement of non-disabled Roma children into special schools established to cater for mentally disabled + some other categories of children (misdiagnosis). On appeal by the applicants, the ECtHR found indirect discrimination.



Strategic thinking
on equality and mobility

The Roma education cases II.

- In *Sampanis and Others v Greece* (judgment of 5 June 2008) the form of segregation was segregation between school buildings, coupled with majority parents' threatened physical violence against the Roma children, picketing and pressure on the local administration to physically segregate Roma children. Roma children lived in a segregated settlement that was rather close to the main school building. The ECtHR found discrimination.



The Roma education cases III.

In *Orsus and Others v Croatia* (Grand Chamber judgment of 16 March 2010) the form of segregation was between classes under the apparently race-neutral criterion of providing Roma children with catch-up education in the majority language. On appeal by the applicants, the ECtHR found indirect discrimination.



The Roma education cases IV.

Sampani and Others v Greece (judgment of 11 December 2012) the case was a follow-up on *Sampanis and Others v Greece* as the Greek authorities failed to take adequate steps to eradicate segregation between schools (including bridging gaps in language proficiency). The ECtHR recommended that applicants still of school age be enrolled in non-segregated schools, while those beyond school age enrol at 'second chance schools'. The judgment is final.



Strategic thinking
on equality and mobility

The Roma education cases V.

In *Horváth and Kiss v. Hungary* (judgment of 29 January 2013) the form of segregation was identical to that uncovered in *DH*. In this case the chamber judgment was unanimous, finding indirect discrimination leading to isolation and segregation + that *States have a duty to implement positive action measures to stem discrimination against Roma children in education*. The judgment is final.

Lavida and Others v Greece (judgment of 30 May 2013)

Aksu v Turkey (judgment of 15 March 2012)