

Through Strasbourg to Luxembourg: the case study of Roma desegregation litigation

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Test yourself

- On a scale of 1-100%
 - how much do you know about your country's education system? (compulsory school age, fees, drop out rate, % of people with university degrees)
 - how much do you know about the relative position of the Roma in it?
 - where does your information come from?
 - is your information enough to judge a case?
 - where can you find the necessary information?

Outline

1. who are the Roma
2. the CJEU/EU and the Roma
3. the ECtHR and the Roma
4. mutual borrowing
5. receiving the wisdom back

Who are the Roma?

- EU citizens: 10-12 M
- Ethnic minority: language, culture, traditions, religion
- Racial minority: skin color and descent
- Extreme social exclusion: settlements

The Roma before the CJEU

- Belov I: No standing for BG EB
- Belov II: domestic institutional enforcement - EB administrative decision challenged in JR - indirect or direct discrimination?
- Infringement actions against the Czech Republic and Slovakia - not before CJEU yet - discriminatory legislation v-a-v Roma children
- Cases not referred from HU - actio popularis by CFCF - acte clair doctrine misunderstood

The Roma in EU policy documents

- Framework Strategies on Roma Integration
- National strategies - FRA and benchmarking
- Council Conclusions
- Council Recommendations on effective integration, 9 December 2013
- Commission reports
- ESF

The Roma and the ECtHR

- Extensive - see attached list
- Focus on civil and political rights - flows from ECHR scope and lack of ratifications and litigation under Protocol 12
- interest for EU lawyers: Article 14, right to education and aspects of the right to housing under Article 8
- Roma education cases
- *Yordanova and Others v BG, Winterstein et autres c France*
- collective expulsion: *Conka and Others v BE*

ECtHR borrowed from EU law: RED

- indirect discrimination
- reversal of the BoP
- statistical evidence
- *DH and Others v the Czech Republic and its legacy*

ECtHR own inventions

- Contextual analysis of discrimination against the Roma
- Definition of the Roma
- No justification for discrimination
- Substantive equality: mandatory positive action measures arising from the duty to accommodate ethnic minority needs
- use of ethnic statistics

Receiving back what was borrowed

- Segregation:
 - indirect discrimination?
 - (covert) direct discrimination?
 - will CJEU define it as a stand alone type? cf sex discrimination case law and definition of indirect discrimination
- Substantive equality:
 - ethnic data collection permissible for purposes of litigation - but see Meister!
 - effective, proportionate and dissuasive sanctions: Feryn and Accept promising
 - will CJEU read up Article 5 RED in light of ICERD Article 2 and 3?

Caution

Difference of effect in domestic law

US analogies unwarranted for mismatches between normative frameworks

more rigorous interpretation is needed in housing, where ECtHR did not establish discrimination