



NEWS REPORT

Date: 30 March 2010
Expert: Lovorka Kušan
Title: ECHR Judgment on Discrimination of Roma Pupils in Croatia
Country: Croatia

Context

Issue at stake: Discrimination of Roma children in primary education
Ground of discrimination: Race/ ethnic origin
Source: European Court for Human Rights, Grand Chamber
 Oršuš and others v. Croatia
 Application no. 15766/03
Field: Education

Content

In 2001, 57 Roma children filed an action before the Municipal Court in Čakovec, in Međimurje County, claiming to be victims of discrimination in education. They were placed in separate, Roma-only classes in four, otherwise regular, primary schools. In those classes curriculum was significantly reduced comparing to other classes. After Municipal Court in Čakovec rejected their claim in judgment no.P.313/02 of 26.9.2002 and the County Court in Čakovec confirmed the first instance decision in judgment no.GŽ.539/02 of 14.11.2002, 15 students decided to file a constitutional claim before the Constitutional court as well as a complaint before the European Court of Human Rights (case of *Oršuš and others v. Croatia*). Croatian Constitutional Court, in decision no.U-III/3138/2002 of 7.2.2007 confirmed judgments of the lower courts. In its reasoning, the Constitutional court held that it was appropriate and legal to place Roma children in separate classes due to their serious problems with the Croatian language. In 2008, First section of the European Court of Human Rights, by its judgment of 17 July 2008, found that their rights were not violated and that the state cannot be prohibited from setting up separate classes or different types of school for children with difficulties, or implementing special educational

programmes to respond to special needs. The Court found it satisfying that the authorities invested themselves in addressing that sensitive and important issue, and that the placement of the applicants in separate classes was a positive measure designed to assist them in acquiring knowledge necessary for them to follow the school curriculum.

Decision of the Court:

On 16 March 2010, the Grand Chamber of the European Court of Human Rights ruled in favour of the Roma pupils, finding that there had been a differentiation in treatment and that, such separations, allegedly as a result of their lack of command of the Croatian language, had not been satisfactorily justified.

The Grand Chamber said that while temporary placement of children in separate classes due to their lack of knowledge of the language would not automatically constitute discrimination, when such practice affects members of one ethnic group, special safeguards that would ensure that the State had sufficient regard to their special needs as members of a disadvantaged group, have to be put in place.

The Grand Chamber noted that there was no legal basis for placing children with linguistic difficulties in special classes. Furthermore, pre-school testing, allegedly basis for decision whether or not to place children in separate classes, was not aimed at assessing their command of the Croatian language, but only their general psycho-physical condition. Once placed in separate Roma-only classes, children were not provided with a programme to address their alleged language deficiency. Some of them never received additional Croatian classes and some of them received it only in some of the grades.

The Grand Chamber held that the time the applicants spent in Roma-only classes appears to fall short of the requirement that their immediate and automatic transfer would be ensured as soon as adequate language proficiency was attained.

All applicants left school at the age of 15 without completing their primary education. The Grand Chamber noted that such a high rate of drop-out of Roma pupils should have called for positive actions in order to raise awareness of the importance of education among Roma population and to assist Roma pupils with any difficulties encountered in following the school curriculum. Some additional steps, the Court noted, were needed in order to address these problems, such as active and structured involvement of the relevant social services.



The Grand Chamber concluded that schooling arrangements for Roma children were not adequately supported by safeguards that would ensure that the State had paid sufficient attention to their special needs as members of a disadvantaged group.

Internet link source and additional information:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=864619&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>