

## **Equal Treatment Authority Advisory Board**

**Viewpoints of Meeting 23 March 2007**

### **The Requirement of Equal Treatment in Public Education**

**Ethnic discrimination at school can also be based on the supposed ethnic origin of the pupils. Segregation is illegal even if the segregated group of children does not participate in worse education than the majority. The maintenance of segregation without any attempts to change it is also illegal. The Respondent's attempts to produce exculpation can only be accepted if he legally organized the education of the segregated group, the participation in it is optional, the level of education is not lower than the majority's and segregation is reasoned by the target and timetable of the segregated group.**

As researchers esteem the number of school aged Roma children will have reached 138,000 that will be 15% of the Hungarian pupils by 2008. At present there are minimum 178 schools in with a majority of Roma students. Several researchers emphasized that the scarcity of kindergarten places and the tests and methods that are suitable to select the children who need special education and the scarcity of suitable spec ed schools (typically the schools run by local governments) and qualified spec ed teachers lead to the less favourable treatment of Roma children. This is one of the reasons for their failure.

Although recently a number of positive provisions have been made to abolish segregation, the implementation and the enforcement of rights have brought serious problems. To assist the solution of these problems the Advisory Board of the Equal Treatment Authority has issued our viewpoints The ombudsman of ethnic minority rights already issued his aspects about the enforcement of ethnic rights in the form of amicus curiae in 2005 which were taken into consideration when composing this paper.

The protected characteristic of being a Roma is based on skin colour, race, ethnic origin, language, and social position.

In our country the skin colour of the Roma population is different from the majority's. Of course, there are exceptions and it also happens that someone's Roma identity is known if he/she lives in a Roma slum and he/she is dressed like his/her neighbours, his/her Roma origin is not obvious if he/she moves away. If discrimination is based on the look of a person, the production of exculpation that the respondent did not realize that the applicant was Roma can only be accepted exceptionally.

If we want to know the reason for the discrimination of a Roma child, we have to define exactly if it was his/her skin colour or rather his/her mother tongue, culture or belonging to an ethnic group it can be taken as means of evidence. If it is doubtful, the race itself including all the characteristics gives the answer.

Section 8) of Act CXXV. of Equal Treatment and the Promotion of Equal Chances of 2003 (Equal Treatment Act) lists the characteristics that can indicate Roma ethnicity: b) ethnic belonging, c) skin colour, e) belonging to a nation or ethnic group and the requirement of minority education, f) mother tongue, p) social origin, q) financial position – and the development of abilities according to the last two points or the required standard after integrated preparation.

As for the significant part of Hungarian Gypsies one of the six characteristics above or the combination of the protected characteristics is the basis of discrimination. In their case race, colour and ethnic belonging mark the same characteristic. Our legal regulation uses the same words to mark a minority: belonging to an ethnic group, belonging to a nationality, ethnic belonging, ethnic origin, national belonging, minority national belonging, origin.

Section 1) of the international agreement about the elimination of each form of racial discrimination accepted in on 21 December 1965 is the legal guide of Decree 8 of 1969 which is the Hungarian standard showing the inherence among the characteristics in Section 8 b-c) of Equal Treatment Act. It says "racial discrimination" means all sorts of exclusion, restriction or favourable treatment which is based on race, colour, origin,

nationality or ethnic origin which aims to destroy or damage other people politically, economically, socially, culturally, in any field of social life or prevent people from practising their right of freedom.

In the above context race is not meant biologically which was the basis of nazi ideology, suitable legal regulation puts the negatively meant comments out of the way. Section 1 (2) of Act LXXVII on the rights of ethnic and national minorities is the other guidance. Section 42) of this act gives instructions which ethnicities belong to this group: Hungarian Romany or Boyash languages spoken by Gipsy communities are parts of this group.

Discrimination based on ethnicity or nationality is also racial discrimination, as racial characteristics are protected, ethnicities enjoy protection. Ethnic origin can have significance when the colour of individuals is different from the majority's. Descendants of mixed marriages can fall in this category.

During a procedure of the Authority it is essential to judge if the respondent really discriminated the applicant because of his/her real or supposed Roma origin. As it is clearly set forth in Section 19) of Equal Treatment Act ethnic segregation at schools can also be based on the supposed ethnic belonging of certain pupils. Both forms of segregation come under the ruling of Equal Treatment Act.

In case of supposed ethnic belonging it is based on the respondent's perception, during the procedure it is necessary to conclude if the child looks Roma and he/she was supposed to be Gipsy by the respondent. It can occur that based on the individual explanation of the rules of data protection while seeking exemption, the respondent denies that he/she has taken the child Roma. In such case it is necessary to examine if the children can be taken for Roma.

When the discriminated child declares his/her ethnic origin, it undoubtedly shall be his ethnic origin. The applicant can give a written declaration to the Authority or it can be stated in his/her lodged complaint. In the published cases it is not necessary to identify the person. If statistic proof is needed which requires the data of a class or school, individual written declaration can be disregarded, it is enough if the pupils orally declare their ethnic belonging to an expert sociologist, anthropologist or a member of the local Roma Minority Government who investigate the case.

In practice there can be cases when a person does not declare the reality, the declarations are not always based on reality.

If the investigating employee of the Authority or the expert in charge thinks that the ethnic origin of a person is different from what he/she declares, it shall be recorded and the indicators that prove the Gipsy origin shall be considered. If there is not a person who suffered direct discrimination these recorded indicators are particularly important. If a person's ethnic origin can not be identified by experts, he/she cannot be taken for Roma.

f) The above mentioned facts are also true for the minority languages. The mother tongue is naturally a protected characteristic which can be significant in the case of any spoken language. Even if a complainant speaks Hungarian it is generally easy to realize if it is not his/her mother tongue.

p) Social origin and q) financial position. Section 121 (1) / 14 of Public Education Act LXXIC of 1993 clearly interprets what is meant by disadvantageous position that can be the basis of preference in certain legal relations. As the majority of the Gipsy population of is in disadvantageous position it is important to understand if the complainant belongs to the Roma minority. Of course, Roma children can be segregated even if their social position is not disadvantageous The interpretation of these two sections is decisive.

#### The disadvantage

The definition of illegal segregation does not contain the element of disadvantage. Segregation is illegal even if the segregated class does not suffer disadvantages. If the quality of education of the segregated class is poorer than the majority group's, the Authority shall investigate the direct or indirect discrimination as well.

Those students who are forced to study in segregated classes do not have the freedom of choice, they are

excluded from choosing a school or the form of education for themselves. The disadvantage is seen in stigmatization.. The international documents or the Hungarian law are built upon the reasoning of I. Brown case where the Supreme Court of the stated that there were intangible considerations in the segregation of coloured people can cause such inferiority complexes that cannot be remedied later. The Supreme Court of the stated that segregation can be interpreted as the expression of the inferiority of coloured students. "Inferiority influences the motivation of the students in their studies." Segregation is illegal even if the conditions of education are equal for both groups.

### Segregation as a Form of Discrimination

According to Section 10 (2) of Equal Treatment Act segregation is a form of discrimination by itself and its Section 7 (3) does not leave any place for excuse. Segregation is only legal if it is legalized by the act.

a, According to the words of Section 10 (2) of Equal Treatment Act that has been effective since 1 January 2007 the text of the act centres on "provisions" like direct and indirect discrimination when it examines the nature of discrimination. Any provision including defaults can lead to discrimination as it is illustrated by final decision Pf.I.20.683/2005 of Debrecen Court of Appeal.

The Court of Appeal finally stated "Chapter III. of the Act prescribes a rule in education and training according to which the maintenance of such an institution that does not meet the professional requirements is violation of equal treatment. (Section 27(3) of Equal Treatment Act) The maintenance of such an institution that causes disadvantages is taken for the violation of equal treatment. Any different interpretation of the law would not give legal protection to those students who are discriminated in educational institutions which were based earlier but do not meet the present requirements of education.

Recommendation 19 of UN committee for the liquidation of racial discrimination "calls the attention on the fact that private people can segregate certain groups of society when deciding on their residence or payment contrary to the intention of the state. Differentiation in the payment is often based on ethnic origin or skin colour, the residents of certain areas are stigmatized. This is why states are recommended to fight spontaneous segregation. The reasoning of the decision of Debrecen Court of Appeal says that neglecting to fight segregation is also illegal.

b, The definition is complex, it describes a state which is resulted by an attitude. During the procedure of the Authority it must be examined if there is illegal segregation, or segregation is resulted by default, attitude, measure or practice.

c, What is illegal segregation? According to the act all sorts are illegal. Sociological segregation is somewhat different from that. As sociological studies show in segregation is most common in the education of Roma children. Ghettoization of the Roma communities, which is also illegal, leads to segregation. An educational unit is segregated if the number of Roma children is over 50% in it.

### Production of Excuse: Segregation with the Approval of Parents

The ombudsman of the minorities states that according to Hungarian law segregation is only allowed at the request of an national minority group if their education is organized within a school. In this case the target and the curriculum of the education have to be the reason for the segregation and the segregated pupils cannot suffer any disadvantage. Their interest shall be taken into consideration, the approval of the parents shall be based on thorough information.

The ombudsman states that Chapter VI of the Education Act is normative for national minority education. National minority education is different from segregation because it is optional, its aim is different and its quality has to be the same as ordinary classes'.

According to a Unesco Act this sort of special education is legal too. This special education is based on religion or nationality at the request of the parents. Section 28 (2) of Equal Treatment Act also emphasizes that these special classes have to be optional. Children over 14 have to be involved in the decision.

The decision is only valid if it is based on thorough information. Decision makers have to know the consequences of their decisions. The aim of the national minority education is keeping the cultural heritage and language while the level of education is the same as the majority's. It is optional, it does not exclude anybody, it does not generate worse circumstances.

Sometimes children are not segregated as a minority group, there can be other grounds of it (bridging the gap, teaching arts or languages). It has to be emphasized that in our country as well as in international law each form of segregation is forbidden.

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