

Sampanis and Others v. Greece (application no. 32526/05)

1) Reference Details

Jurisdiction: European Court of Human Rights – Chamber judgment

Date of Decision: 5 June 2008

Link to case (French only):

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=32526/05%20%7C%2032526/05&sessionid=9006431&skin=hudoc-en>

1) Facts

The 11 applicants (Greek nationals of Roma origin) were living in Psari, an authorised residential site near Aspropyrgos (Greece). The applicants brought the case out of concern that the authorities' failure to provide schooling for their children during the 2004-2005 school year and the subsequent placement of their children in special classes, in an annexe to the main Aspropyrgos primary school building, was a measure related to their Roma origin of the children.

On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enrol their children. According to the applicants, the head teachers of two schools had refused to enrol their children on the ground that they had not received any instructions on this matter from the competent ministry. The head teachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enrol their children.

The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the head mistress had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary school teachers from Aspropyrgos had visited the Psari Roma camp to inform and persuade parents of the need to enrol their children.

An informal meeting was convened on 23 September 2004 and it was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes. On 9 June 2005, 23 children of Roma origin, including the applicants' children, were enrolled for the school year 2005-2006. According to the Government, the number of children came to 54.

In September and October 2005, from the first day of the school year, non-Roma parents protested about the admission to primary school of Roma children and blockaded the school, demanding that the Roma children be transferred to another building. The police had to intervene several times to maintain order and prevent illegal acts being committed against pupils of Roma origin.

On 25 October 2005 the applicants signed, according to them under pressure, a statement drafted by primary school teachers to the effect that they wanted their children to be transferred to a

building separate from the school. Thus, from 31 October 2005, the applicants' children were given classes in another building and the blockade of the school was lifted. Three classes were housed in prefabricated classrooms on land belonging to the municipality of Aspropyrgos. In April 2007, the Roma children were transferred to a new primary school set up in Aspropyrgos in September 2007.

3) Law

- European Convention on Human Rights Article 14 (prohibition of discrimination)
- European Convention on Human Rights Article 2 of Protocol No. 1 (right to education)
- European Convention on Human Rights Article 13 (right to an effective remedy)

4) Legal Arguments

The applicants

The applicants complained that their children had been subjected, without any objective or reasonable justification, to treatment that was less favourable than that given to non-Roma children in a comparable situation and this constituted a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education). They further claimed a violation of Article 13 (right to an effective remedy).

5) Decision of the Court

The judgment was given by a Chamber of seven judges.

Article 14 taken together with Article 2 of Protocol No. 1

In respect of the Article 14 claim, the Court observed that it was not disputed that the applicants' children had missed the school year 2004-2005 and that preparatory classes had been set up inside one of the primary schools in Aspropyrgos. It was also noted in regards to the composition of the preparatory classes that they were attended exclusively by Roma children and that the creation of the three preparatory classes in question had not been planned until 2005, when the local authorities had had to address the question of schooling for Roma children living in the Psari camp. Furthermore, the Government had not given any example prior to the facts of the case of special classes being created inside primary schools in Aspropyrgos, even though other Roma children had been enrolled there in the past.

The Court noted that even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the Greek authorities, **it could nevertheless be presumed** that those incidents influenced the decision to place pupils of Roma origin in an annexe to the primary school.

The Court considered that there was a strong presumption of discrimination and that it was for the Government to show that this difference in treatment was the result of objective factors, unrelated to ethnic origin.

The Court observed that whilst the evidence did not show that the applicants had met with an explicit refusal by the school authorities, given the Roma community's vulnerability and considering that Article 14 requires in certain circumstances a difference of treatment in order to

correct inequality, the competent authorities should have recognised the particularity of the case and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available.

The Court noted, due to Greek law recognising the specific nature of the Roma community's situation and domestic legislation providing for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, that this obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enrol them at primary school.

The Court considered that the competent authorities had not adopted a single, clear criterion in choosing which children to place in the special preparatory classes. In addition, the Court noted that whilst the declared objective of the preparatory classes was for the pupils concerned to attain the level of education which would enable them to enter ordinary classes in due course, there was no evidence that the preparatory classes facilitated this process.

Moreover, the Court was not satisfied that the applicants had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building. Reiterating the fundamental importance of the prohibition of racial discrimination, the Court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest.

The Court concluded that the conditions of school enrolment for those children and their placement in special preparatory classes resulted in discrimination against them and constituted a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 in respect of each of the applicants.

Article 13

The Court found that the Greek Government had not adduced evidence of the availability of an effective remedy and therefore there had been a violation of Article 13.