Oršuš and Others v. Croatia (Application no.15766/03)

1) Reference Details

Jurisdiction: European Court of Human Rights
Date of Decision: 16 March 2010
Case Status: Grand Chamber, Concluded
Link to full case:
http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=864619&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

2) Facts

The applicants were 15 Croatian nationals of Roma origin. They were born between 1988 and 1994 and all live in Orehovica, Podturen and Trnovec in northern Croatia. The applicants attended primary school in the villages of Macinec and Podutren at different times between the years 1996 and 2000. They participated in both Roma-only and mixed classes before leaving school at the age of 15. In April 2002, the applicants brought proceedings against their primary schools. They claimed that the Roma-only curriculum in their schools had 30% less content than the official national curriculum. They alleged that this was racially discriminatory and violated their right to education as well as their right to freedom from inhuman and degrading treatment. They also submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002, Čakovec Municipal Court dismissed the applicants' complaint. It found that the reason why most Roma pupils were placed in separate classes was that they needed extra tuition in Croatian language skills. Furthermore, the Municipal Court held that the applicants failed to prove the alleged difference in the curriculum of the Roma-only classes. Consequently, the applicants had failed to substantiate their allegations concerning racial discrimination. The applicants' complaint was also dismissed on appeal.

The applicants' constitutional complaint, lodged in November 2003, was dismissed on similar grounds in February 2007.

On 17 July 2008, the Chamber section of the European Court of Human Rights held that in respect to applicants' complaint that they were placed in Roma-only classes at primary school there had been no violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the European Convention on Human Rights (the Convention) however there was a violation of Article 6 (1) of the Convention concerning the excessive length of the proceedings brought by the applicants, in particular, before the Constitutional Court. On 13 October 2008 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 1 December 2008 the panel of the Grand Chamber accepted that request.

3) Law

European Convention on Human Rights

Articles 6 (1), (right to a fair trial within reasonable time)

Article 2 of Protocol No 1, (right to education)

Article 14, (prohibition of discrimination)

National Law

Article 2 of the Primary Education Act

4) Legal Arguments

The Applicants

The applicants alleged that their segregation in Roma-only classes deprived them of their right to a multi-cultural environment, discriminated against them, and made them endure educational, psychological and emotional harm, such as feelings of low self-esteem and alienation.

They claimed that the best way to improve their language would have been to place them in classes with other children who spoke Croatian. They relied on various research reports and expert bodies within the Council of Europe, European Union and United Nations that recommended an integrative approach to the education of Roma children.

They argued that there had been no clear, accessible and foreseeable procedures regarding the assignment of pupils to separate classes. The applicants also contended that, apart from the grading system, there had been no other periodic assessment to address whether the pupils had acquired adequate command of the Croatian language. Furthermore, even when they had achieved a pass mark in the Croatian language they had not been transferred to a mixed-class.

It was also argued that there had been no measures taken to improve poor school attendance and drop-out rates amongst Roma-children and that they had not taken part in any extra-curricular activities in an ethnically/racially mixed group organised by the school. They claimed that these factors amounted to discrimination in violation of Article 14, taken in conjunction with Article 2 of Protocol 1 (right to education).

The Government

The government claimed that the applicants had not been denied the right to education as they had all attended school until the age of fifteen, after which schooling was no longer mandatory. They claimed that the Roma children's segregation had been because they lacked adequate command of the Croatian language. The Government admitted that it was possible that the curriculum in Roma-only classes was reduced by up to 30% in relation to the regular, full curriculum. They argued that this was admissible under relevant domestic laws, and that such a possibility had not been reserved for Roma-only classes but was applied in respect of all primary school classes in Croatia, depending on the particular situation in a given class.

The government asserted that the pupils had been assigned to Roma-only classes under section 2 of the Primary Education Act. Under this legislation the aim of primary school education is to "ensure the continuing development of each pupil as a spiritual, physical, moral, intellectual and social being, according to his or her capabilities and affinities". The government argued that this could only be achieved through a permanent group of pupils of approximately the same age and knowledge as one another.

They contended that procedural safeguards had also been put in place, as each of the applicants' parents could have challenged the teacher's assessment to segregate their child. In the present

case none of the applicants' parents challenged the decisions or requested the transfer of their children into mixed classes.

The government submitted that measures to address the problems of poor-attendance and drop-out rates had been taken, asserting that teachers encouraged pupils to attend school and held regular meetings with parents, but that most of these invitations were ignored by the parents of the applicants. The applicants' parents were also informed that their children could continue school after the age of fifteen and that they could attend evening classes in a nearby town in order to complete their primary education.

Finally, the government put forward that they had made attempts to integrate Roma children by actively involving them in extra-curricular activities, as well as the fact that they shared common school facilities with other children. They argued that they also organised special activities to improve non-Roma children's understanding of Roma traditions and cultures, such as celebrating Roma day.

5) Decision

The Grand Chamber of the European Court of Human Rights (the Court) pointed out that as a result of history, the Roma had become a disadvantaged and vulnerable group and therefore required special protection, including in the sphere of education. Despite the fact that there was no general policy to automatically place Roma children in separate classes, the reality was that only Roma children had been placed in such classes. The Court asserted therefore that there had been a clear differentiation which indirectly discriminated against the applicants and that the state had to show that the practice of segregating Roma children had been objectively justified, appropriate and necessary.

The Court noted that while temporary placement of children in a separate class due to language deficiency would not automatically be contrary to Article 14, when such practices exclusively affected the members of one ethnic group, special safeguards had to be put in place.

The Croatian laws at the time had not provided for specific classes for children lacking proficiency in the Croatian language. In addition, the tests applied to decide whether to place children in Roma only classes did not specifically assess the children's command of the Croatian language, but instead tested their general psycho-physical condition. The Court acknowledged that while the children may have had some learning difficulties, as demonstrated by the fact that they had failed to go up a class in the first two years of their schooling, those difficulties had not been adequately assessed by simply placing them in Roma only classes.

Once allocated to the separate classes the Roma children had not been provided with a programme to address their alleged linguistic difficulties. Additional Croatian classes had been offered to the individuals but this was not satisfactory as three of the applicants had never received language classes and some other applicants only received them in their first or third grades. The Court also held that additional classes in Croatian could have at best only compensated in part the lack of curriculum specifically designed to address the needs of pupils placed in separate classes on the grounds that they lacked an adequate command of the Croatian language.

The applicants, without exception, had left school at the age of 15 without completing their primary education and their school reports evidenced poor attendance. Such a high drop-out rate of Roma pupils should have called for positive action. However, the social services had been informed of poor attendance only in the case of the fifth applicant and no specific follow up procedure had been applied. Regarding the applicants' parents' failure to challenge decisions to place their children in Roma-only classes, the Court held that as Roma parents, they were

themselves at a disadvantage and may also have been poorly educated. This meant that they may have been unable to weigh up the consequences of giving their consent to the segregation of their children. The Court asserted that there could be no waiver of the right not to be subjected to racial discrimination as this would be counter to the public interest. The applicants could have attended the government-funded evening school in a nearby town but that alone would not have been enough to rectify the deficiencies in the applicants' education.

The Court held that no adequate safeguards had been put in place to ensure sufficient care for the applicants' special needs as members of a disadvantaged group. It was held therefore that the segregation of children in Roma-only classes had not been justified and was in violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1.