



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Sweden
Title:	Roma registration was discrimination
Date:	19 May 2017
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Update of news report:	Update on Police Registration of Swedish persons with Roma ethnic origin (21 January 2014), Roma registration update (3 January 2014), 11 Roma persons request civil damages in connection with the police registration scandal (16 April 2015) and Roma registration was discrimination (28 June 2016)
<u>Context</u>	
Issue at stake:	Police Roma Registration regarded as discrimination
Ground of discrimination:	Ethnicity
Source:	Appeal court case
Field:	Other
Applicable law:	Article 14 of the European Convention of Human Rights

Content

Previous development: The famous Roma registration case started in September 2013 when it was revealed that the police had been registering more than 4000 Roma persons or persons having a relationship with a Roma person.

The majority of those persons have been awarded 5000 SEK (550 Euros each) by the Chancellor of Justice as compensation for the police violation of Section 48 of the Data Protection Act.¹ The main criticism was that it was impossible to see if a person was not suspected of any crime and it was also impossible to remove people once registered.

Throughout this process, the Police statement that it never had done any ethnic registration has been accepted – or at least not disproven – by all the involved authorities, most of them making their final decisions in 2013-2015.² All of them have viewed it as a register practise in violation of the Data Protection Act, but nothing more. It started from three criminal families and grew into a very extensive “tree” of families and friends. The decision on economic compensation of the Chancellor of Justice was set

¹ Chancellor of Justice, decision 2014-05-07 dnr 1441-14-47.

² Commission on Security and Integrity Protection (decision in December 2014) <http://www.sakint.se/dokument/rapporter-och-uttalanden/Uttalande-PM-Skaane-Uppfoelning-Kringresande.pdf> Equality Ombudsman (decision in February 2014). <http://www.do.se/Documents/granskningar/Beslut%20GRA%202013-617.pdf> Public prosecutor (decision in December 2013). <http://www.aklagare.se/Upload/Media/Nyheter/131220%20Beslut%20AM%20139971%202013.pdf>. The Parliamentary Ombudsman (decision in March 2015) <http://www.jo.se/PageFiles/6353/5205-2013.pdf>.

at the same level as a Swedish Non-Roma person would have received in the same situation.

Eleven persons have been helped by the Civil Right Defenders to bring a case before the appealed and Svea Court of Appeal upheld the decision of Stockholm District Court on 28 April 2017.³

Decision of the two Courts: The claimants were awarded 30 000 SEK (3 000 Euro) each in addition to the damages already awarded by the Chancellor of Justice. The important difference is that while the Chancellor of Justice found only a violation of the Data Protection Act not connected to the ethnic background of the individuals, Stockholm Municipal Court (confirmed by Svea Court of Appeal) found that the only reason for the registration was the ethnicity. It thus became a violation of the Police Data Act and of Article 14 of the ECHR in conjunction with Article 8.

The court applied a shared burden of proof. Given that the eleven claimants had proved the existence of the register and that people were registered because they were friends or relatives of three criminal Roma families or friends of friend, it was obvious that these eleven persons were registered because they were Roma (ten persons) or married to a Roma (one person). It was then up to the State to prove that there was also another valid reason not connected to ethnicity to register the persons. Nobody could remember why these eleven persons were registered in 2011 and thus the State failed to prove a valid reason not connected to ethnicity.

Criminal law does not fall under the Discrimination Act. The amount of 30 000 SEK was set as a violation of Article 14 of the European Convention on Human Rights in conjunction with Article 8. The Municipal Court pointed to the long historic discrimination of Roma persons as a reason to set the amount higher compared to what it would have done if the ethnic group had been Danish or another group with no history of discrimination.⁴

In the Court of Appeal the Swedish state for the first time admitted that the registration amounted to discrimination. The reason for the registration was partly caused by the claimants' Roma ethnicity. If ethnicity is a contributing causal factor it is sufficient to make it ethnic discrimination within Article 14 of the ECHR in conjunction with Article 8.

The state however claimed that the ethnic background was not the sole reason for the registration and therefore there was no violation of the Police Data Act. The Court of Appeal applied the shared burden of proof in the same way as Stockholm Municipal Court and as the state failed to prove that any other valid reason had influenced the registration process, ethnicity was regarded as the sole reason and thus the registration amounted to a violation of the Police Data Act too.

Key points of analysis: All other authorities dealing with this case have failed to find any discrimination. They have been very critical of the Police but have abstained from going further than saying that ethnic profiling by the Police cannot be ruled out (Equality Ombudsman). The key to this outcome was the use of a shared burden of proof regarding discrimination according to Article 14 of the ECHR (and the Police Data Act) in the same way as would have been done under the Discrimination Act.

Internet link source: <http://www.svea.se/Om-Svea-hovratt/Nyheter-fran-Svea-hovratt/Romer-far-skadestand-for-att-de-funnits-med-i-Kringresanderegistret-enbart-pa-grund-av-etniskt-ursprung/>.

³ Svea Court of Appeal, Case T 6161-16, *Fred Taikon (and ten more plaintiffs) v. Swedish State through the Chancellor of Justice* (judgement 2017-04-28).

⁴ See decision of the municipal court p. 17f.