



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

### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	Court of Cassation, Criminal Chamber, 23 January 2018, n° 17-81369
<b>Date:</b>	28 February 2018
<b>Expert:</b>	Sophie LATRAVERSE
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Criminal liability of a Mayor for refusal to register Roma children in elementary school
<b>Ground of discrimination:</b>	Race/ethnic origin, other (place of residence)
<b>Source:</b>	National court decision
<b>Field:</b>	Education
<b>Applicable law:</b>	Articles 225-1, 225-2, 432-7, 432-1 of the Penal code; articles L. 111-1, and L. 131-1 et seq. of the Code of education

### Content

**Case development:** A Mayor has been prosecuted before the penal court for discrimination on the ground of ethnic origin and place of residence for having refused to register in elementary school, five Roma children who were living in a camp that was under an evacuation order taken by the Mayor a few weeks before on the basis of safety and sanitary requirements. The parents were accompanied by NGO representatives who testified that the communal services did neither give definite indications on the documents and proof of residence necessary to register the children, nor officially inform them or the families of the refusal to register the children.

In her defence the Mayor alleged that she had only requested the filing of required legal documents, and that these documents were necessary.

The Criminal Court dismissed the case. The public prosecutor did not appeal and only the civil parties (the children and their parents) brought the case in appeal. The Criminal Court of Appeal also dismissed the case, for lack of evidence of discriminatory intent. This finding was based on the (alleged) fact that the Mayor and the communal services lacked knowledge about the situation and domicile of the children, and could therefore not have discriminated against them on this basis.

The Civil parties to the penal case brought the case before the Criminal chamber of the Court of cassation.

**Decision of the Court:** On 23 January 2018, the Criminal chamber of the Court of cassation quashed the decision of the Court of appeal despite the absence of the public prosecution.

The Court held that evidence showed that the communal services knew who the five children were and where they lived on the territory of the town.

The Court considered that the trial judge had failed to verify whether the pretext of requesting formal documents and proof of domicile to refuse registration of the children was not a dissimulation of unequal treatment of the children because they were members of the Roma community.

In addition, the Court took in consideration the legal duty of the Mayor to identify all children to be registered in school, to conclude that the trial judge had failed to verify whether the failure of the Mayor to inquire into the situation of the children or to officially inform the parents was not intended to hide intentional unequal treatment.

The Court concluded that the refusal of a mayor to register children in school, when those children are in fact living in a precarious camp and are members of the Roma community, constitutes the offense of refusal of the benefit of a right as defined by Article 432-7 of the Penal Code. The Court further concluded that this offense and the failure to comply with her duties as mayor also constitute a civil fault for which the Mayor is liable to the civil parties, and referred the case back to the Court of Appeal for further decision.

**Key points of analysis:** The usual standard applied in penal discrimination cases is very strict regarding the requirement of express evidence of intentional fault.

This is one of the first decisions that requires the trial judge to specifically enquire into the intentional component of the offense and to verify hidden intentions by all means.

In addition, the Court concluded to criminal liability despite the absence of appeal of the public prosecutor and invited the appeal judges to conclude to civil fault to the benefit of the claimants.

**Internet link source:**

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000036584795>.