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FLASH REPORT

Country:	France
Title:	Court of Appeal of Versailles, 19/06/2019 n° 18/01049, return decision further to the decision of the Court of cassation, Criminal Chamber, 23 January 2018, n° 17-81369
Date:	9 July 2019
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Update of flash report:	France - Court of Cassation, Criminal Chamber, 23 January 2018, n° 17-81369 (PDF 135 kB)
<u>Context</u>	
Issue at stake:	Civil and criminal liability of a Mayor for refusal to register Roma children in elementary school
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	National court decision
Applicable law:	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.

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, which was dismissed by the Paris Court of Appeal.

Further to dismissal of the Court of Appeal of Paris, the civil parties to the penal case brought the case before the Criminal chamber of the Court of cassation.

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 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.

Decision of the court: In accordance with the decision of the Court of cassation, the criminal chamber of the Versailles Court of appeal concluded to discrimination based on the place of residence and the Roma origin of the children, as well as refusal of the benefit of a right on the same grounds by the Mayor.

The Court stresses that the fundamental right to education, guaranteed by many provisions of national and international law, must be interpreted in such a way as to provide the Roma and Travellers an effective access to rights.

The Court goes so far as stating that particular attention must be drawn to ensuring access to rights of the members of the Roma and Traveller communities, who cannot provide the usual justifications of residence but have a right of access to school that is independent of their conditions and period of residence on the territory of the town.

The Court condemned the Mayor herself to pay EUR 1000 to each child plus EUR 500 of costs for each child.

Key points of analysis: This is the first conviction of a Mayor by a criminal court for the refusal to give the benefit of a right in relation to school registration.

Moreover, by stating that the right of children to have access to education must be enforced regardless of the means by which they will establish residence, the Court actually affirms that denying them this right is a criminal offence under French law.