



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

FLASH REPORT

Country:	Romania
Title:	High Court quashes prior judgment and maintains decision finding segregation in education of the NCCD
Date:	26 February 2020
Expert:	Romanita Iordache
<u>Context</u>	
Issue at stake:	Segregation in education of Roma children under the colours of proximity concerns
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Education
Source:	National court decision
Applicable law:	Articles 2, 11, 15 of the Governmental Ordinance 137/2000

Content

Case development: The case was initiated in 2016 by the NGO Center for Advocacy and Human Rights (*Centrul de Advocacy și Drepturile Omului* (C.A.D.O.)), which during its monitoring work identified a case of school segregation in the city of Iasi and filed a complaint with the national equality body against the school responsible and the Iasi county inspectorate in charge (*Școala Gimnazială Bogdan Petriceicu Hașdeu* from Iasi and *Inspectoratul Școlar Județean Iași*). Based on the complaint and its own investigation work, the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) issued its decision no. 769 from 7 December 2016 in which it found discrimination of Roma children who were disproportionately placed in one building of the school (building C) for primary education (0-4 classes). In the NCCD decision, the building is described as having reduced educational resources and being in a poor condition (raining through the roofs), with only one qualified teacher and providing an overall poorer educational experience compared to Romanian children who are enrolled in the other buildings of the same school.

The NCCD decided based on Article 2(1) – direct discrimination, Article 2(4) – indirect discrimination, Article 11 – general prohibition of discrimination in education and Article 15 – right to dignity of the GO 137/2000. The school was sanctioned with a fine of RON 3 000 (approximately EUR 667 at an exchange rate of 4.5), as well as the Iasi school inspectorate with a fine of RON 5 000 (approximately EUR 1 111 at an exchange rate of 4.5). Furthermore, both defendants were asked to produce a desegregation plan, different than the plan produced by the school each year and which was presented as being a desegregation plan. This decision was challenged before the Court of Appeal Iasi by both the school and the county school inspectorate.

In Decision 90/2017 the Court of Appeal Iasi annulled the NCCD decision. The court found that the school and the school inspectorate 'provided the reasonable and objective justification...the way in which they managed the situation of primary education in the C building of the school, the margin of appreciation which the state has in such situations

being, in this specific case, a reasonable one and able to guarantee the right of children not to be discriminated against and to have access to education'. The Court of Appeal discussed also hetero-identification done by the school during the registration process with the support of the Roma educational mediator to enrol Roma children in the C building (which is a prior Roma school attached through re-organization to the elite school). In spite of providing information on the ethnicity of the pupils previously in requests of public information, before the NCCD the school argued that it does not have any information on the ethnicity of the children and in the defence of the Iasi county school inspectorate it was argued that there is no clear proof that the children in the school are Roma or declare themselves as Roma, while CADO argued that in building C 50 % of the children are Roma. The Court of Appeal mentioned in its reasoning that self-identification is the only scientific and relevant criterion and desegregation cannot be achieved as long as there is no official data on the ethnicity of the pupils. The best interest of the child was used as justification for the differential treatment leading to the segregation of children with the argument that the residential proximity and the custom of sending Roma kids to this school serve the best interest of the children. The custom referred to was that in the case of some families, the parents also studied in the C building and some of them allegedly even asked for their children to be enrolled in the same school. The school and the school inspectorate denied that any ethnic segregation occurred but both of them agreed both during the NCCD proceedings and before the Court of Appeal Iasi that segregation on grounds of socio-economic status might occur given the poverty of the community in the neighbourhood.

The Court of Appeal judgment was appealed by both the NCCD and C.A.D.O. A request for fast track proceedings was denied by the High Court. In addition, the claimant's request to submit a reference for a preliminary ruling to the CJEU was also rejected by the High Court.

Decision of the court: The High Court of Justice and Cassation (*Inalta Curte de Justitie si Casatie*) had its hearing on 6 February 2020 and on 20 February it issued its decision 1015/2020 in file 1067/45/2016, quashing the judgment of the Court of Appeal Iasi and rejecting the arguments of the school and of the school inspectorate, reinstating the NCCD decision and ordering the defendants to pay the legal costs to C.A.D.O.

The reasoning of the High Court of Justice and Cassation is not communicated to the parties so far. However, this decision is final and cannot be further appealed.

Key points of analysis: In assessing the case of segregation of Roma children in the C building with significantly reduced resources, the national equality body and the courts had to respond to challenging questions regarding hetero versus self-identification, the use of the argument of geographical proximity presented as the best interest of the child, the defence of an existing desegregation plan submitted and approved each year, the role of the parents, and what amounts to a legitimate justification from the perspective of Article 2(2) letter b of Directive 2000/43/EC.

Internet link source: Case history available on the website of the High Court in Romanian:
<http://www.scj.ro/1094/Detalii-dosar?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=4500000000024874>. The reasoning of the court is to be communicated at a later date.