Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Grasping the Best Interest of the Child: Education and Roma People in Portuguese Case Law

Question(s) at stake:

Whether the early school leaving of a 14-year-old Roma/Gypsy girl, justified by Roma/Gypsy traditions, should be legally considered a case of child endangerment warranting state intervention.

Outcome of the ruling:

Appeal granted. Between the parents' refusal to allow the minor to attend school and the minor's interest in completing (at least) the compulsory schooling period, the latter should prevail. The complaint procedure should continue, according to domestic laws, with the aim of establishing a "supportive measure to the parents".

Topic(s):

- Education
- Personal Status, Family and Inheritance

Keywords:

- Best interests of the child
- Compulsory education
- Minority rights
- Parents
- Proportionality
- Pupils

Tag(s):

- Roma

- Cigano
- School drop-out
- Protection of Children and Young People in Danger Act
- Gypsy

Author(s):

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Country:

Portugal

Official citation:

Court of Appeal Lisbon, Judgment of 20 March 2012, 783/11.2TBBRR.L1-1 (Tribunal da Relação de Lisboa, Acórdão de 20 de março de 2012, Processo n.º 783/11.2TBBRR.L1-1)

Link to the decision:

https://diariodarepublica.pt/dr/detalhe/acordao/2012-98856575

ECLI:

ECLI:PT:TRL:2012:783.11.2TBBRR.L1.1.AE

Date:

20 March 2012

Jurisdiction / Court / Chamber:

Court of Appeal Lisbon

Remedy / Procedural stage:

Appeal

Previous stages:

- First instance court (date not mentioned)

Subsequent stages:

None

Branches / Areas of law:

Family Law, Constitutional Law

Facts:

A 14-year-old teenager of “Roma/Gypsy” ethnicity was reported to the Commission for the Protection of Children and Young People (hereinafter CPCJ) because she left school in the eighth grade. The mother justified this departure by the circumstance that her daughter had reached menarche. Following communal cultural practices, this implied that she should leave school to preserve her “purity”.

Consequently, the Public Prosecutor’s Office initiated a child protection procedure under the Law on Protection of Children and Young People in Danger (hereinafter LPCYPD, Law No. 147/99 of 1 September 1999) to guarantee that the child would return to school until completion of compulsory education. The Public Prosecutor claimed that the child’s education was in danger. Then the court initiated legal proceedings, set a date for the child’s and her parents’ compulsory hearing, and ordered the preparation of a social report by the judicial multidisciplinary technical support team (in Portuguese EMAT).

Next, according to the procedure stipulated in the PCYPDA, the judge convened a judicial meeting with the parties involved to solve the matter. The solution proposed to the child’s parents was a judicial agreement including a “supportive measure to the parents”, namely social psycho-pedagogical support for the child as defined by law. In addition, the agreement would have obliged the child’s parents to guarantee the conclusion of their daughter’s compulsory education. They refused the solution proposed at this meeting.

Afterwards, the first instance court decided to dismiss the case in accordance with Article 111 of the PCYPDA. It examined the conflict of rights between the child's right to education, on the one hand, and, on the other hand, the following rights: the parents' right to education and maintenance of their children; the child's right to identity, to freedom of thought, conscience, and religion, and not to be deprived of the right, together with the members of her group, to have her own cultural life. The court referred to the provisions of the Portuguese Constitution and the United Nations Convention on the Rights of the Child. The judge considered the child to be safe because she was well integrated in her family and community, according to the judicial social report. She was not in a risky situation with regard to her education and development, since the parents' refusal to let her return to school was justified on the basis of intrinsic values attached to the family's origins. Considering several principles of law (*inter alia*, proportionality and the best interest of the child), the first instance court decided for non-intervention in the family environment and dismissed the case.

The Public Prosecutor appealed the first instance decision before the Lisbon Court of Appeal. It argued that the child's education, development, and future professional career were at risk. Accordingly, the first instance court's decision did not respect the best interest of the child and the child's right to education. The appeal should be granted, it argued, so that legal proceedings pursuant to PCYPDA could follow with a view to establishing a protective measure for the child's benefit.

In response, the parents – through their legal representatives – advanced the argument that their child was not at risk and thus a protective measure in the sense of the PCYPDA should not be applied. The early school leaving and the refusal of the judicial agreement were due to the traditions of the "Roma/Gypsy" ethnicity, to which the child belongs, as demonstrated in the judicial social report. The parents alleged that the report shows that they deeply care about their child, and that they see school attendance as a risk since it leaves her unprotected. Thus, they argued, the appeal should be denied.

Ruling:

According to the principles of proportionality and timeliness, state intervention should be necessary and appropriate to address the endangerment of the child at the time of the judgment. In addition, any intervention should only affect the child's life and that of his or her family to the extent strictly necessary. According to Article 3(1) of the PCYPDA, an intervention is necessary when the parents endanger the child's health, education, and development.

In the case at hand, it is necessary to balance the interest of the young girl in having access to an education equal to that of other young people, on the one hand, and her family background, on the other, which leads her to believe that she should leave school after the menarche. Such a balance is achievable. There is a need to explain to the parents the necessity of compulsory schooling for protecting children and youths and their psychological and social development. To do so, a "supportive measure to the parents" pursuant to Article 35(1)(a) of the PCYPDA should be put in place.

The appealed decision is revoked. The complaint procedure should continue, according to the PCYPDA, with the aim of establishing a "supportive measure to the parents".

Main quotations on cultural or religious diversity:

"Sociological realities are not static, and it is not acceptable that the justification for the minor to stop attending compulsory education is the preservation of her 'purity.'

It is necessary to explain to the parents that one thing does not exclude the other, and that compulsory schooling aims to protect children and young people, preventing them from entering the labour market prematurely and damaging their regular psychological and social development." (no para. or page no. indicated)

Main legal texts quoted in the decision:

Domestic law

- Law 46/86 of 14 October, Articles 2, 7
- Law 147/99 of 1 September, Articles 3, 4, 35
- Constitution, Articles 18, 36, 69

International law

- United Nations Convention on the Rights of the Child, Articles 8, 9, 14, 30

Cases cited in the decision:

None

Commentary

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As a preliminary remark, this analysis notes that the terminology surrounding the involved parties in this case is contentious on the political level and in the literature. In Portugal, the Roma self-identify as *ciganos* – literally translated in English as “gypsies” (Araújo 2016: 318; Cunha et al. 2015: 23; Jerónimo & Cunha 2022: 52), which is also the term used in the judgment and more generally in Portugal’s case law. Following the literature (Rodríguez Maeso & Araújo 2011: 3), this analysis opted to use “Roma” in relation to the European context and “Roma/Gypsy” or “*cigano*” in analyzing both the judgment and the Portuguese context.

Portugal’s Roma population faces some of the most concerning conditions in Europe. A 2022 report from the European Union Agency for Fundamental Rights (FRA) highlights this disparity: 96% of the *ciganos* in Portugal are at risk of poverty, compared to a European average of 80% (FRA 2022: 25). The situation is especially dire in education, where Portugal has the lowest rate in Europe of young Roma (aged 20–24) who have attained at least an upper secondary education (ibid.: 38).

In response, the Portuguese government, through the High Commission for Migration, has launched programs specifically targeting Roma/Gypsy communities

to promote education. One key initiative is the creation of “cultural mediators” in selected Portuguese cities, such as Lisbon, to help address the challenges these communities face. The judiciary also plays a critical role in fostering education for Roma children, as the present case demonstrates.

The statistical data from the FRA provide a glimpse into the social context of this case. As victims of discrimination and social marginalization, the *ciganos* in Portugal are often the subject of extensive media coverage (Pereira 2022; Pereira 2018). Frequently, these news items concern lawsuits over family matters (Pereira 2018), such as the present case (see also Monteiro de Matos 2025). This case in particular exposes the conflict between parental upbringing, the best interest of the child, and the right to education. The decision was later cited by other Portuguese judicial bodies (ECLI:PT:TRP:2017:1341.17.3T8MTS.P1.DE), demonstrating its impact beyond the immediate parties.

In cases concerning early school leaving and absenteeism among Roma/Gypsy children, courts frequently employ community-related justifications, though their application is varied. For the purpose of this analysis, which considers a selection of cases from the InclusiveCourts project (cases available at <inclusivecourts.pt> accessed 7 December 2022), the Portuguese case law in this matter is divided into three categories, referred to as “lines” of cases. Each line is defined by the specific type of judicial measure ordered under the PCYPDA to address the situation.

The first line of cases consists of decisions where courts accept that early school leaving or absenteeism is justified by the communal practices of the Roma/Gypsy people. This approach is similar to the interpretation taken by the first instance court in the present case (for other examples, see Proc. 315/16.6T8FTR, 5.1.2017; Proc. 32/11.3TAPTG, 10.3.2011). Consequently, these cases are typically dismissed pursuant to Article 111 of the PCYPDA. In such rulings, the courts and tribunals find that the circumstances of the children do not meet the legal threshold for the “children at risk” designation as defined by the PCYPDA.

The second line of cases grapples with the complex interplay between Roma/Gypsy educational practices and the requirement of compulsory education. In these rulings, courts consider “culturally grounded arguments” but ultimately establish “protective measures” to foster an “intercultural dialogue”, much like the judgment at hand (see also ECLI:PT:TRE:2021:1674.18.1T8TMR.E1.EB). While acknowledging the difficulty of applying the “child at risk” designation, these courts maintain that early school leaving is impermissible because it violates domestic and international law. Consequently, they impose “supportive measures for the parents” under the PCYPDA (Article 35(1)(a) of the PCYPDA) to encourage educational compliance.

The third line of cases represents the strictest judicial response, the inverse of the first line. Here, courts reject “Roma/Gypsy tradition” as a justification for violating compulsory education laws. As a result, they order the placement of the children in foster care under Article 35(1)(f) or Article 35(1)(g) of the PCYPDA to guarantee their schooling (for example, see ECLI:PT:TRE:2012:290.09.3TMFAR.E1.C5; Proc. 732/13.3TBVFX-A.L1, 11.9.2014). This severe outcome is applied in the context of Portuguese law mandating education for all children aged six to eighteen (Law 85/2009 of 27 August), although placement in foster care is legally reserved as a measure of last resort for exceptional circumstances.

The division into these three lines of cases is not based on specific courts or time periods. Instead, each line reflects a distinct rationale that employs complex legal techniques, ranging from a gender-based interpretation of equality norms to the application of the legal notion of danger to children, which is itself thoroughly regulated by the PCYPDA.

Last update: December 2022.

Literature related to the main issue(s) at stake:

Case-relevant

- Jerónimo, Patrícia. 2020. “[Annotation to the judgment of the] Lisbon Court of Appeal, 783/11.2TBBRR.L1-1 (2012), 20.03.2012”, available at < https://inclusivecourts.pt/en/jurisprudencia2/> accessed 8 September 2022.
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General

- Cunha, Manuela Ivone and Patrícia Jerónimo. 2015. “Das leis, dos tribunais e das diferenças culturais”. In Manuela Ivone Cunha, Sónia Teixeira, and Patrícia Branco (eds), *Do crime e do castigo: Temas e debates contemporâneos*, available at < https://repositorium.sdum.uminho.pt/handle/1822/40111> accessed 8 September 2022.
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Interdisciplinary

- Araújo, Marta. 2016. “A Very ‘Prudent Integration’: White Flight, School Segregation and the Depoliticisation Of (Anti-)Racism”. *Race Ethnicity and Education* 19 (2): 300–323.
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- Casa-Nova, Maria José. 2006. “A relação dos ciganos com a Escola Pública: Contributos para a compreensão sociológica de um problema complexo e multidimensional”. *Interacções* (2): 155–182.
- Cunha, Manuela Ivone et al. 2015. “Introduction: Gypsy Economy”. In Manuela Ivone Cunha et al. (eds), *Gypsy Economy: Romani Livelihoods and Notions of Worth in the 21st Century*, 1–29. New York: Berghahn.
- Monteiro de Matos, Mariana. 2025. “State Intervention in Roma Families: Roma Children as ‘Citizens of Tomorrow’”. *Cultural and Religious Diversity under State Law across Europe*, DOI: 10.48509/ CUREDI018PT013.
- Rodríguez Maeso, Silvia and Marta Araújo. 2012. “The ‘Prudent’ Integration of Roma/Gypsy Pupils: Segregation and White Flight in Portuguese Compulsory Schooling”. CES Working Papers, available at < https://www.ces.uc.pt/ces/projectos/tolerace/pages/pt/dissemination-materials-activities/working-papers.html#> accessed 7 December 2022.

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