



D.H. v. Czech Republic

MAJOR CONCLUSIONS OF THE JUDGMENT

Strasbourg, 14 November 2007—

In a momentous decision for Roma across Europe, the Grand Chamber of the European Court of Human Rights, by a vote of 13 to 4, ruled yesterday that segregating Roma students into special schools is a form of unlawful discrimination in breach of Article 14 of the European Convention (prohibiting discrimination), taken together with Article 2 of Protocol No. 1 (securing the right to education).

The Court awarded 4,000 Euros to each of the applicants in respect of non-pecuniary damage and 10,000 Euros jointly in respect of costs and expenses.

The ruling came in *D.H. and Others v. the Czech Republic*, a case launched eight years ago by 18 Roma children who sought legal redress for the practice—widespread in Central and Eastern Europe—of shunting Roma students, regardless of their intellectual abilities, into “special” schools for children with learning disabilities. Research by the European Roma Rights Center (ERRC) showed that Roma students in the city of Ostrava were 27 times more likely than similarly situated non-Roma to be placed in special schools.

The judgment is pathbreaking in a number of respects, including the following:

- *Patterns of Discrimination* – For the first time, the European Court of Human Rights has found a violation of Article 14 of the Convention in relation to a pattern of racial discrimination in a particular sphere of public life, in this case, public primary schools. As such, the Court has underscored that the Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups.
- *Segregation is Discrimination* - The Court clarified that racial segregation amounts to discrimination in breach of Article 14.
- *Equal Access to Education for Roma is a Persistent Problem Throughout Europe* - The Court went out of its way to note that the Czech Republic is not alone -

discriminatory barriers to education for Roma children are present in a number of European countries.

- *Unified Anti-Discrimination Principles for Europe* - This decision brings the European Court of Human Rights' Article 14 jurisprudence in line with principles of antidiscrimination law that prevail within the European Union.

The Court further established, clarified or re-affirmed the following principles:

- *Indirect Discrimination* - A difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a racial or ethnic group. Indeed, for the first time the Court clarified that such a situation may amount to "indirect discrimination," in breach of the Convention.
- *Intent Not Required* – A difference in treatment without objective and reasonable justification may violate Article 14 even absent discriminatory intent. Thus, where it has been shown that legislation produces an unjustified discriminatory effect, it is not necessary to prove any discriminatory intent on the part of the relevant authorities.
- *Facially Neutral Law* - Even where the wording of particular statutory provisions is neutral, their application in a racially disproportionate manner without justification which places members of a particular racial or ethnic group at a significant disadvantage may amount to discrimination.
- *Statistics* - When it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The Court confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination.
- *Shifting Burden of Proof* – In order to guarantee the effective protection of rights of non-discrimination, less strict evidential rules should apply in cases of alleged indirect discrimination. Where an applicant alleging indirect discrimination establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which show that the difference in treatment is not discriminatory.
- *No Waiver of Right to Non-Discrimination* - In view of the fundamental importance of the prohibition of racial discrimination, no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest.
- *The Special Situation of Roma* - As a result of their history, the Roma have become a specific type of disadvantaged and vulnerable minority who require special protection.

Background

This case originated with the unsuccessful filing of complaints in the Czech courts in 1999 on behalf of eighteen children represented by the European Roma Rights Center (ERRC) and local counsel. In 2000, the applicants turned to the European Court of Human Rights, alleging that their assignment to “special schools” for children with learning disabilities contravened the European Convention. Tests used to assess the children’s mental ability were culturally biased against Czech Roma, and placement procedures allowed for the influence of racial prejudice on the part of educational authorities.

Evidence before the Court, based on ERRC research in the city of Ostrava, demonstrated that school selection processes frequently discriminate on the basis of race:

- Over half of the Romani child population is schooled in remedial special schools.
- Over half of the population of remedial special schools is Romani.
- Any randomly chosen Romani child is more than 27 times more likely to be placed in schools for the learning disabled than a similarly situated non-Romani child.
- Even where Romani children manage to avoid the trap of placement in remedial special schooling, they are most often schooled in substandard and predominantly Romani urban schools.

Racial segregation in education remains widespread throughout the Czech Republic and in neighbouring countries. ERRC field research in five countries has consistently documented the separate and discriminatory education of Roma, as well as additional practices by educational authorities that result in the segregation of Roma in schools.

An ERRC report describes the most common practices of segregating Romani children in education based on their ethnicity. These includes segregation in so-called "special schools" for children with developmental disabilities, segregation in Romani ghetto schools, segregation in all-Romani classes, denial of Romani enrolment in mainstream schools, as well as other phenomena. Whatever the particular form of separate schooling, the quality of education provided to Roma is invariably inferior to the mainstream educational standards in each country.

More information on the case is available at www.errc.org and www.justiceinitiative.org.

The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship, and anticorruption. Its offices are in Abuja, Budapest, and New York.

www.justiceinitiative.org

The European Roma Rights Centre (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves, in particular, strategic litigation, international advocacy, research and policy development, and training of Romani activists. The ERRC is a cooperating member of the International Helsinki Federation for Human Rights and has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

www.errc.org