

Press release issued by the Registrar

**GRAND CHAMBER JUDGMENT
D.H. AND OTHERS v. THE CZECH REPUBLIC**

The European court of human rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *D.H. and Others v. the Czech Republic* (application no. 57325/00).

The Court held, by 13 votes to four, that there had been a **violation of Article 14** (prohibition of discrimination) of the European convention on human rights **read in conjunction with Article 2 of Protocol No. 1** (right to education) to the Convention on account of the fact that the applicants had been assigned to special schools as a result of their Roma origin.

Under Article 41 (just satisfaction), the Court, by 13 votes to four, made awards of 4,000 euros (EUR) each in respect of non-pecuniary damage and EUR 10,000 jointly in respect of costs and expenses. (The judgment is available in English and French.)

1. Principal facts

The applicants are 18 Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region (Czech Republic).

They allege that, as a result of their Roma origin, they were assigned to special schools.

Between 1996 and 1999 they were placed in special schools (*zvláštní školy*) for children with learning difficulties who were unable to follow the ordinary school curriculum. Under the law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests to measure the child's intellectual capacity carried out in an educational psychology centre, and required the consent of the child's legal representative.

14 of the applicants sought a review of their situation by the Ostrava Education Authority (*školský úřad*) on the grounds that the tests were unreliable and their parents had not been sufficiently informed of the consequences of giving consent. The Authority found that the placements had been made in accordance with the statutory rules.

12 of the applicants appealed to the Constitutional Court. They argued that their placement in special schools amounted to a general practice that had resulted in segregation and racial discrimination through the coexistence of two autonomous educational systems, namely special schools for the Roma and "ordinary" primary schools for the majority of the population. Their appeal was dismissed on 20 October 1999.

2. Procedure and composition of the Court

¹ Grand Chamber judgments are final (Article 44 of the Convention).

The application was lodged with the European court of human rights on 18 April 2000 and declared partly admissible on 1 March 2005 following a hearing before a Chamber.

On 7 February 2006 the Chamber held by six votes to one that there had been no violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

On 5 May 2006 the applicants requested that the case be referred to the Grand Chamber under Article 43¹ (referral to the Grand Chamber) and on 3 July 2006 the panel of the Grand Chamber accepted that request.

The applicants and the Government each filed written observations on the merits. In addition, third-party comments were received from various non-governmental organisations, namely the International Step by Step Association, the Roma Education Fund and the European Early Childhood Research Association; Interights and Human Rights Watch; Minority Rights Group International, the European Network Against Racism and the European Roma Information Office; and the *Fédération internationale des ligues des droits de l'Homme* (International Federation for Human Rights – FIDH), each of which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 2).

A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 17 January 2007.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Boštjan M. **Zupančič** (Slovenian),
Riza **Türmen** (Turkish),
Karel **Jungwiert** (Czech),
Josep **Casadevall** (Andorran),
Margarita **Tsatsa-Nikolovska** (citizen of “the former Yugoslav Republic of Macedonia”),
Kristaq **Traja** (Albanian)
Vladimiro **Zagrebelky** (Italian),
Elisabeth **Steiner** (Austrian),
Javier **Borrego Borrego** (Spanish),
Alvina **Gyulumyan** (Armenian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian),
Ján **Šikuta** (Slovak),
Ineta **Ziemele** (Latvian),

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Mark **Villiger** (Swiss)¹, *judges*,

and also Michael **O'Boyle**, *Deputy Registrar*.

3. Summary of the judgment²

Complaints

The applicants complained that, on account of their Roma origin, they had suffered discrimination in the enjoyment of their right to education.

Decision of the Court

Article 14 read in conjunction with Article 2 of Protocol No. 1

The Chamber had held that there had been no violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No 1. In its view, the Government had established that the system of special schools in the Czech Republic had not been introduced solely to cater for Roma children and that considerable efforts had been made in those schools to help certain categories of pupils to acquire a basic education. In that connection, the Chamber had observed that the rules governing children's placement in special schools did not refer to the pupils' ethnic origin, but pursued the legitimate aim of adapting the education system to the needs, aptitudes and disabilities of the children.

The Grand Chamber began by noting that as a result of their turbulent history and constant uprooting the Roma had become a specific type of disadvantaged and vulnerable minority. They therefore required special protection, including in the sphere of education.

Presumption of indirect discrimination

The applicants maintained that by being placed in special schools they had, without objective and reasonable justification, been treated less favourably than non-Roma children in a comparable situation. In support of that claim they had submitted statistical data based on information provided by head teachers that showed that more than half the pupils in special schools in Ostrava were from the Roma community.

The Court noted that in the reports they had submitted in accordance with the Framework Convention for the Protection of National Minorities, the Czech authorities had accepted that in 1999 Roma pupils made up between 80 % and 90 % of the total number of pupils in some special schools and that in 2004 "large numbers" of Roma children were still being placed in special schools. Further, according to a report published by ECRI (European Commission against Racism and Intolerance) in 2000, Roma children were "vastly overrepresented" in special schools.

The Court observed that, even if the exact percentage of Roma children in special schools at the relevant time remained difficult to establish, their number was disproportionately high and Roma pupils formed a majority of the pupils in special schools.

¹ Judge elected in respect of Liechtenstein.

² This summary by the Registry does not bind the Court.

The evidence submitted by the applicants could be regarded as sufficiently reliable and significant to give rise to a strong presumption of indirect discrimination so that the burden of proof shifted to the Government to show that the difference in the impact of the legislation was the result of objective factors unrelated to ethnic origin.

Objective and reasonable justification

The Court accepted that the Czech Republic's decision to retain the special-school system had been motivated by the desire to find a solution for children with special educational needs. However, it shared the disquiet of the other Council of Europe institutions who had expressed concerns about the more basic curriculum followed in these schools and, in particular, the segregation the system caused.

As regards the assessments, it was common ground that all the children examined had sat the same tests, irrespective of their ethnic origin. The Czech authorities had themselves acknowledged in 1999 that "Romany children with average or above-average intellect" were often placed in schools on the basis of the results of psychological tests and that the tests were conceived for the majority population and did not take Roma specifics into consideration.

The Court considered that there was a danger that the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them. In that connection, it observed, amongst other things, that ECRI had noted that the channelling of Roma children to special schools for the mentally-retarded was reportedly often "quasi-automatic" and needed to be examined to ensure that any testing used was "fair" and that the true abilities of each child were "properly evaluated" while the Council of Europe Commissioner for Human Rights had reported that Roma children were frequently placed in classes for children with special needs "without an adequate psychological or pedagogical assessment, the real criteria clearly being their ethnic origin". In those circumstances, the results of the tests could not serve as justification for the impugned difference in treatment.

As for parental consent, which the Czech Government had considered to be the decisive factor, the Court was not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent. In any event, in view of the fundamental importance of the prohibition of racial discrimination, the Grand Chamber considered that no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest.

In its conclusion, as was apparent from the documentation produced by ECRI and the report of the Commissioner for Human Rights of the Council of Europe, the Czech Republic was not alone in having encountered difficulties in providing schooling for Roma children: other European States had had similar difficulties. The Court was gratified to note that, unlike some countries, the Czech Republic had sought to tackle the problem. However, while recognising the efforts the Czech authorities had made to ensure that Roma children received schooling and the difficulties they had been confronted with, the Court was not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. In that connection, it noted with interest that new legislation in the Czech Republic had abolished special schools and provided for

children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.

Since it had been established that the relevant Czech legislation at the relevant time had had a disproportionately prejudicial effect on the Roma community, the applicants as members of that community had necessarily suffered the same discriminatory treatment. Consequently, there had been a violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

Judges Zupančič, Jungwiert, Borrego Borrego and Šikuta expressed dissenting opinions, which are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.