

Litigation Briefing – *D.H. and Others v. Czech Republic*
Implementation of the Grand Chamber Judgment

On November 13, 2007, the Grand Chamber of the European Court of Human Rights found that the Czech Republic had violated the European Convention of Human Rights by segregating Roma children into special schools for the mentally disabled.

The case concerned the city of Ostrava, where the evidence demonstrated that in 1999, Roma children were 27 times more likely to be placed in such schools than non-Roma children. The court found that this differential treatment had no justification and amounted to discrimination contrary to Article 14, in conjunction with the Right to Education protected in Article 2 of Protocol 1.

The judgment required the Czech Republic to undertake general measures “to put an end to the violation found by the Court and to redress so far as possible the effects.” The case was then transferred to the Committee of Ministers of the Council of Europe to ensure its implementation. The committee meets every six months to consider the measures that have been taken.

Two Years On—No Change for Roma Children

Two years after the judgment of the Grand Chamber, there has been little change within the Czech education system and Roma children continue to be segregated. Without more concrete steps towards integration the situation will not improve.

Continued Segregation. Across the country as a whole, recent government statistics confirm that 30 percent of Roma continue to be placed into re-named special schools, compared with only 2 percent of non-Roma. In some regions Roma children are still 26 or 27 times more likely to be placed in special schools than non-Roma. Once assigned to special schools the chance of transferring to mainstream schools is virtually nil. In July 2009, a government minister admitted that the figures demonstrated “an unbelievably large imbalance” meaning that there were “unequal educational opportunities available to Romani versus non-Romani pupils.”

Lack of Integration. The legal measures that were introduced by the government to promote integration are inadequate and have had little effect. Special schools have merely been re-named as “practical primary schools,” with the same teachers, class rooms and curriculum. Giving head teachers the power to set their own curriculum has not led to any results. Positive measures such as the use of teachers’ assistants and preparatory classes have been underutilized due to a lack of change in the attitude of teachers and non-Roma parents, who are still in favor of segregation.

The Judgment. The government has failed to circulate the judgment to legal and educational authorities or to the public.

Recommendations

The Justice Initiative together with the European Roma Rights Centre is pressing the Committee of Ministers at their next meeting in January 2010 to ensure the proper implementation of the judgment, requesting that the government undertake the following steps:

- Enact legislation creating a duty to integrate schools, together with an effective plan to achieve that objective.
- Adopt transparent statistical targets to achieve full integration within a reasonable period of time, no later than 2015.
- Implement a public and effective system of statistical monitoring of attempts to achieve those targets.
- Publicly allocate sufficient budgetary resources to achieve integration.
- Ensure the provision of early childhood education for disadvantaged children to assist entry to standard primary schools.
- Introduce methods of assessment that take account of the special needs of Roma children.
- Develop a curriculum to support integration together with measures to change attitudes within the teaching profession.
- Continue to provide educational support (e.g., in the form of teacher assistants) and take other measures such as language training for children whose home language is not Czech.
- Disseminate the judgment of the court to the education and legal professions, as well as to the judiciary and the general public.

The Committee of Ministers of the Council of Europe

The Committee of Ministers is the decision-making body of the Council of Europe. It is made up of the Ministers of Foreign Affairs of each of the 48 member states, or their permanent diplomatic representatives in Strasbourg. It meets four times a year in order to consider the implementation of judgments of the court. It is assisted by staff from the Department for the Execution of Judgments of the Directorate General for Human Rights within the Council of Europe.

Article 46(1) of the European Convention of Human Rights requires states to “undertake to abide by the final judgment of the Court in any case to which they are parties.” There are three aspects to the implementation of any judgment which the Committee of Ministers must monitor: “a judgment in which the Court finds a breach imposes on the respondent state a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order *to put an end to the violation found by the Court and to redress so far as possible the effects....* Subject to monitoring by the Committee of Ministers, the respondent state remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such measures are compatible with the conclusions set out in the Court’s judgment.”

Just Satisfaction. The court will often order the payment of “just satisfaction” for the violation of the convention, which is often a sum of money, although sometimes the court considers that the finding of the violation is sufficient. The damages, with interest, must be paid to the Council of Europe for onward transmission to the applicant.

Individual Measures. The purpose of individual measures is put the applicant in the position that they would have been in, had the violation not occurred. The measures will depend on the individual circumstances of the case and the individual concerned. The court will sometimes make recommendations for what needs to be done. Examples of individual measures that have been required by the court include:

- Ordering the release of detainees: *Assanidze v. Georgia, Ilascu v. Russia and Moldova.*

- Reconsideration of a decision to deport: *D. v. United Kingdom*.
- Reconsideration of a decision prohibiting publication of materials: *Open Door and Dublin Well Woman v. Ireland*.
- Destruction of police files obtain in breach of right to privacy: *Amann v. Switzerland*.
- Recognition of a banned church: *Metropolitan Church of Bessarabia v. Moldova*.

General Measures. The purpose of these measures is to prevent further similar violations of the Convention by examining the causes of the original violation. This may require

- The amendment of legislation or introduction of new legislation.
- Executive actions in the form of regulations, circulars or changes of practice.
- Administrative measures.
- Practical measures such as the recruitment of judges, or the building of prisons.
- Changes of judicial practice by disseminating the judgment together with an explanatory circular.

Procedure. When a final judgment is transmitted to the Committee of Ministers the respondent state is invited to explain how just satisfaction has been given, and the individual and general measures that have been taken or are proposed in order to satisfy the judgment. The committee may keep the case on the agenda of future meetings, requiring explanations, adopting interim resolutions and setting out a provisional calendar for the measures to be implemented. The secretariat can provide advice and opinions to the committee, and in difficult cases will become involved in examining potential solutions in more detail. NGOs can submit materials to the secretariat who will present them to the committee. In exceptional cases the committee may pass a resolution noting the failure of the respondent state to comply with the convention. Only when the committee is satisfied that the judgment of the court has been implemented will they adopt a “final resolution” striking the case off their list.

For further information on the case including case related documents, visit the Justice Initiative website at <http://www.soros.org/initiatives/justice/litigation>

November 2009