

**OSCE REVIEW CONFERENCE  
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**Implementation of Judgments of the European Court of Human Rights in Discrimination of Romani Children in Education (Croatia, Greece, Czech Republic)**

Discrimination of Romani children in education is a persistent problem in OSCE participating countries, starting with segregation in early childhood education, and sets a strong basis for life-long exclusion. The current trends of promoting inclusive education make the discrimination of Romani children even more visible: Even though inclusive education is a key principle in school systems across Europe, segregation of Romani children prevails in many countries. While the governments focus on overcoming the secondary barriers for Roma in access to education (poverty, social disadvantage, etc.), one of the primary obstacles - ethnic discrimination - is rarely addressed.

Segregation of Romani children in education takes various forms: mainly segregation into special education or segregation within mainstream education into ethnically separated classes or schools. In the last three years a series of significant decisions by the European Court of Human Rights (ECtHR) set standards for non-discrimination in education with a special focus on Romani children:

- In **D.H. and Others v the Czech Republic** (November 2007) the Court found that segregation and overrepresentation of Romani children in special schools/classes for children with mental disabilities constituted discrimination;
- In **Sampanis and Others v Greece** (June 2008) the Court found that the assignment of Romani school children to a separately built annex to the mainstream school constituted discrimination; and
- In **Orsus and Others v Croatia** (March 2010) the Court held that the segregation of Romani school children in separate classes due to alleged language difficulties amounts to discrimination.

**D.H. and Others v the Czech Republic**

This case was launched with the ECtHR in 2000 by 18 Romani children, supported by the ERRC and local lawyers, 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 ERRC showed that Romani students in the city of Ostrava, Czech Republic, were 27 times more likely than similarly situated non-Roma to be placed in special schools.

The Court’s November 2007 judgment broke new ground in defining the prohibition of discrimination as set out by Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR). Milestone findings of this judgement included:

- *Patterns of discrimination:* For the first time, the ECtHR found a violation of Article 14 in relation to a pattern of racial discrimination in a particular sphere of public life, in this case, public primary schools. The Court underscored that the ECHR 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 amounted 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.

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

- *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. Intent is not required.
- *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, though they are not a prerequisite for a finding of indirect discrimination.
- *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.

### **Sampanis and Others v Greece**

This case was filed with the ECtHR in 2005 by 11 Romani applicants, residents of a settlement located in the "Psari" area of Aspropyrgos, who were represented by Greek Helsinki Monitor (GHM). It concerned the initial refusal of education authorities to enrol the applicant's children in the local primary school during the 2004-2005 school year, the eventual acceptance of the children against which local non-Romani parents protested several times, and the subsequent placement of the children in an annex to the local primary school, attended only by Roma, located five kilometres from the primary school. The Court unanimously found a violation against Greece for effectively denying education to Romani children over a certain period of time and for then allocating segregated special premises for primary education in substandard facilities.

This June 2008 judgment reinforced some of the D.H. principles (*segregation is discrimination, shifting burden of proof, no waiver of the right to non-discrimination*) and further developed ECtHR standards in the following ways:

- *Education is obligatory:* The Court stated that not only is there a right to education but this right is coupled with a State obligation to ensure primary education for all.
- *Inclusive education:* The Court underscored that integration in schools is a fundamental element of integration into society as a whole.
- *Impact of racist incidents:* The Court held that it was necessary to take into account the "incidents of a racist character" and concluded that these events had an impact on the authorities' decision to send the Romani children to the segregated annex school.

### **Orsus and Others v Croatia**

This case concerns 14 applicants, originally part of a larger group, born between 1988 and 1994, who were placed in segregated Roma-only classes in otherwise mainstream primary schools in the Croatian villages of Macinec, Podtruen and Orehovica in Medimurje County. The government eventually sought to justify this segregation on the basis of alleged language difficulties. Represented by the ERRC, the Croatian Helsinki Committee and local attorney Lovorka Kusan, in December 2004 the applicants turned to the ECtHR claiming that their placement in the Roma-only classes stemmed from a blatant practice of discrimination based on their ethnicity by the schools concerned and further reinforced by anti-Romani sentiments by the local majority population.

In a great step forward, the Grand Chamber in its March 2010 judgment stated that the *segregation of the children in this case based on alleged language difficulties was not considered objective or reasonable*. The Court reinforced some of the D.H. and Sampanis

principles outlined below (*segregation is discrimination, impact of racist incidents*) and further developed ECtHR standards in the following ways:

- *Language is not a pretext for segregation*: The Court for the first time held that separation due to language is not allowed unless such measures can be objectively justified by a legitimate aim;
- *State obligation to take positive measures*: The Court stressed the obligation of the State to undertake appropriate positive measures to assist pupils in attaining necessary language skills and reduce high drop out rates in shortest time possible; and
- *Integrated education*: If and when appropriate, special language lessons should be a means to fast-track pupils into fully integrated mainstream education.

The three cases reaffirm that *separate is never equal* and define principles of non-discriminatory education in the European context. However, the implementation of the judgments and introduction of the principles in practice is lacking. Almost three years after the judgement in the case *D.H. and Others v The Czech Republic* there is no evidence of a decrease in the level of segregation of Romani children in schools in most countries. No evidence of visible changes in Greece and Croatia.

In their third submission to the Committee of Ministers of the Council of Europe on the implementation of the judgment in the case *D.H. and Others v The Czech Republic* (submitted on 13 November 2009) the European Roma Rights Centre and the Open Society Justice Initiative repeated their recommendations to the Czech government. Due to the universality of their impact the same action can be applied in other countries which segregate Romani children in education.

To end discriminatory treatment of Roma Governments must adopt the following measures:

- Collect anonymised statistical data on the ethnicity of school children and process the data to evaluate the desegregation progress;
- Enact legislation creating a duty to integrate Romani children into standard schools using a standard curriculum, 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 moratorium on the admission of Romani children to practical schools and classes following educational programmes for children with slight mental disability;
- 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 that assists 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's assistants) and take other measures such as language training for children whose home language is not the same as the language of instruction at school;
- Disseminate the judgments of the European Court of Human Rights to the educational and legal professions as well as the judiciary and the general public.