D.H. and others v. Czech Republic (Application No. 57325/00) (Chamber decision)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights (Chamber decision)
Date of decisions: 7 February 2006
Link to full case:
http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=792053&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

2) Facts

A group of eighteen Czech nationals of Roma origin claimed the State had violated Article 14, taken together with Article 2 of Protocol No. 1, by placing them in "special schools" intended for the mentally disabled. They claimed that the system amounted to de facto racial discrimination.

The applicants, a group of eighteen Czech nationals of Roma origin, born between 1985 and 1991 and living in the Czech city of Ostrava, were all placed in special schools between 1996 and 1999. In the Czech educational system, the category of "special schools" is intended for children with learning disabilities who are unable to attend ordinary primary schools. The decision to place a child in a special school is taken by the head teacher on the basis of tests to measure the child's intellectual capacity (as required by law) and also requires the consent of the child's parent or legal guardian. The parents of all the applicants in this case gave the required consent. Until a change in Czech law in 2000, pupils attending special schools were ineligible to enter secondary education apart from vocational training.

In June of 1999, the applicants sought to challenge the placements, both through a special request to the Ostrava Education Authority, and through a constitutional appeal. They argued that they had not been properly informed of the consequences of the placement, and that as a result of the placement, they had received an inadequate education. The Educational Authority did not reconsider the placements, determining that they had been conducted according to the law and therefore the applicants could not challenge them outside a formal appeals process. The applicants' constitutional appeal argued that the system of "special schools" placement was discriminatory, resulting in de facto segregation of the school system by race – with "special schools" for Roma pupils, and "ordinary" schools for the majority population. The applicants argued that this de facto segregation amounted to degrading treatment and was an affront to their dignity. The appeal was dismissed, and the constitutional court found that there was no evidence that the relevant laws had been applied unconstitutionally.

In their submission to the ECtHR, the applicants claimed a violation of Article 14 of the Convention, taken together with Article 2 of Protocol No. 1, because they had been discriminated against in the enjoyment of their right to education on the basis of their race, colour, association with a national minority and their ethnic origin. The applicants argued that they were placed in special schools without justification, that they were denied access to secondary education as a result, and that the differential treatment was racially discriminatory and caused psychological damage. The asserted that the parents had not

been adequately informed of the consequences of the placement, and that they had been pressured by the school to give consent.

3) Admissibility

By a decision of 1 March 2005, the application was declared partly admissible.

4) Merits

The Court accepted that there were a number of serious arguments which formed the basis of the applicants' complaint. They acknowledged that the situation of education of Roma children was far from perfect and the statistics were troubling, and noted that several organizations have reported with concern about the educational opportunities for Roma in the Czech Republic. However, the Court asserted that its role was not to judge the overall social context, but rather to limit its inquiry to whether the placement of these particular applicants was done in a racially discriminatory manner. The Court ultimately held that, in the present case, there was no discriminatory action against these particular applicants.

This finding was based on the following reasons.

Firstly, the Court stated that curriculum planning falls within the margin of appreciation of the state and is not generally a matter for the Court to evaluate. The Court was satisfied that the State had established that the special schooling system was not designed specifically to cater for Roma children and accepted the Government's statement that race or ethnic origin was not a criterion for selecting the students for placement. The school system had the legitimate aim of responding to students with special needs, and the applicants had all been placed in the special schools because of the results of their psychological tests.

Secondly, the applicants argued that there were no rules governing the choice of tests or the interpretation of results. The Court however, stated that because the parties did not dispute that the tests were administered by qualified professionals, the Court found it difficult to go beyond this factual finding and require the Government to show that the professionals had not adopted particular subjective attitudes toward the applicants.

Finally, the parents of the applicants had failed to appeal the placement decisions, and, in some cases, had requested that their children be placed or remain in a special school. The applicants had argued that although the parents had given their consent to or requested the placements, they had note been informed of the long-term negative consequences of placement in a special school. The applicants argued that this inferior education would disadvantage them for the rest of their lives, but the parents did not have sufficient information to make decisions. (This argument was supported by the June 2004 ECRI Report on the Czech Republic.) The Court found, however, that it was the parents' natural responsibility to find out about the educational opportunities offered by the State.

5) Decision

The Court held, by six votes to one, that there was no violation of Article 14, taken together with Article 2 of Protocol No. 1.

6) Concurring Opinion

Writing separately, Judge Costa expressed concern about the situation of the Roma in general in Central Europe, noting that the Court has previously issued decisions in cases dealing with discrimination and violence against Roma in Slovakia and Bulgaria, and even in this present decision, the Court had noted that the education of Roma in the Czech Republic is far from perfect. As such, he called on the Court to be "extremely vigilant". Moreover, he expressed great concern over the possibility of psychological or intellectual tests being used as a cover for segregation of entire sections of the school population. He noted that this had occurred in some countries in the past as a method of excluding certain categories of people from universal suffrage. Despite these concerns, he agreed with the majority that the evidence in the present case tended to support the Government's arguments, and noted that it was undisputed that the tests of these applicants were carried out professionally and objectively. Although he found some of the arguments of the dissenting opinion to be very strong, he ultimately voted with the majority.

7) Dissenting Opinion

Judge Barreto noted that in the report made by the Czech Republic in April 1999 under the Framework Convention for the Protection of National Minorities, the Government itself conceded that "Romany children with average or above-average intellect [we]re often placed in [special] schools on the basis of results of psychological tests"; "[t]he tests [we]re conceived for the majority population and do not take Romany specifics into consideration"; and in some special schools, "Romany pupils made up between 80% and 90% of the total number." Judge Barreto found this to be an express acknowledgement by the Government of precisely the type of discriminatory practice asserted by the applicants.

He agreed with the majority that the State was permitted to take measures to compensate for the limitations – cultural, linguistic or other – of children who require a specific form of education. He emphasized, however, that this should never result in the increase of such a disadvantage, as in the present case where the applicants' placement in special schools effectively eliminated their opportunities for secondary education.

Judge Barreto emphasized that the court's statement in Thlimmenos v. Greece that Article 14 not only prohibits differential treatment of similarly situated persons but also requires that states treat differently those who are not similarly situated. As such, he asserted, in the present case Article 14 required that the State take measures to make up for disparities between the applicants and pupils in ordinary schools

Judge Barreto acknowledged the efforts made by the Czech Republic to introduce anti-discrimination measures and noted the State's changing position regarding "the practice of referring large numbers of Roma children to special schools as untenable." He nonetheless concluded that there had been a violation of Article 14 of the Convention, taken together with Article 2 of Protocol No.1.