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## **Victory in a long court battle for equal rights: Czech Roma win the Ostrava special schools case (D.H. and Others v Czech Republic)**

On November 13, 2007, the Grand Chamber of the European Court of Human Rights, overturning the Chamber judgment of 7 February 2006, found that the right to non-discrimination guaranteed by Article 14 of the European Convention on Human Rights had been violated by Czech authorities who had been placing disproportionately high numbers of Romani children in substandard special schools for children with learning disabilities.

The Equal Rights Trust notes that the Grand Chamber judgment is an important contribution to reaffirming and clarifying the content of the right to non-discrimination as a basic human right and a fundamental principle of social justice. By adopting a contextual approach in which the facts of the case emerge as elements of a bigger picture of entrenched past systemic discrimination, the Court vindicated the equal rights of disadvantaged Romani children who had been victims of systematic exclusion from equal educational opportunity.

The Equal Rights Trust welcomes the way in which the Grand Chamber majority (13 to 4) has built on existing legal doctrines to advance Strasbourg anti-discrimination jurisprudence and bring it to the level of best judicial thinking on discrimination and equality. The judgment in D.H. and Others applies several previously established principles developed in the framework of European Communities', UN and national anti-discrimination law to one of the most egregious cases of racial discrimination in Europe, consisting in the assignment of generations of Romani pupils to sub-standard schools for the mentally disabled in the Czech Republic. This stigmatising practice has been typical also in other countries of Central Europe and despite attempts at reform, has not been successfully reversed to date.

In the judgment, modern approaches to key non-discrimination issues are taking shape, marking the beginning of a next and higher stage of Article 14 jurisprudence.

These issues include the presumption of indirect discrimination, prima facie evidence capable to trigger a shift of the burden of proof, and the role of statistics, among others. The notion of discrimination, defined as less favourable treatment without objective and reasonable justification, takes a further step toward its emancipation from subjective elements such as intent and purpose in cases other than hate crime.

The Equal Rights Trust's Executive Director, Dr Dimitrina Petrova, headed until December 2006 the Budapest-based European Roma Rights Centre, the organisation which built this important strategic case from the ground, as part of a larger vision of combating educational discrimination against the Roma in Europe. The ERT Founding Chair Lord Lester of Herne Hill Q.C. and the ERT Chair Professor Sir Bob Hepple Q.C. have both been involved in the leadership of the European Roma Rights Centre in the past. Lord Lester served as the lead counsel of the applicants in this case, along with James Goldston and David Strupek.

To see the press release of the European Court of Human Rights, go to:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825441&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

To see the full judgment, go to:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>