



**Legal seminar 6 October 2009
on the implementation of EU law on equal opportunities and anti-discrimination**

**SUMMARY WORKSHOP PROCEEDINGS
DISCRIMINATION AGAINST THE ROMA: LEGAL DEVELOPMENTS**

Panel members

Chair: Ms Lilla Farkas, expert non-discrimination Network
Panellist: Mr David Strupek, lawyer, Czech Republic
Rapporteur: Juhani Kortteinen, expert non-discrimination Network

At the beginning of the meeting it was announced that due to unforeseeable circumstances, Prof. Alessandro Simoni from Italy was unable to attend. Workshop 5 therefore had only one panellist.

Ms Lilla Farkas gave an introduction to recent legal developments concerning discrimination against the Roma in Europe. What distinguishes the Roma from other protected ethnic groups is the extent of the poverty and deprivation they suffer. The inclusion of the Roma in mainstream social services is therefore of paramount importance. The individual justice model inherent in the Racial Equality Directive (RED) does not necessarily suit the structural and institutional discrimination faced by them. The ECtHR considered in *D.H. v. Czech Republic*, a case concerning the education of Roma children, that the respondent state should have "taken into account these children's special needs as members of a disadvantaged class".

Mr David Strupek, counsel for the applicants in *D.H. v. Czech Republic*, gave an overview of ECtHR case law in a presentation entitled "Discrimination against the Roma before the European Court of Human Rights". Notably, in *DH II* the ECtHR accepted the complaint as a group issue and considered that there was no need to examine individual cases. The Court made extensive reference to EU law and the RED, and applied the Convention using similar principles regarding the burden of proof as exist in EU law, such as use of statistical evidence in proving discrimination.

The participants discussed the specific nature of legal action to effectively combat discrimination against the Roma. In the EU, diversity as such is protected and not only the rights of an individual or group, making legal protection of the Roma particularly complex. There is no Community definition of "Roma", but to achieve uniform application of EC law, the Roma need to be defined in broad terms, taking into account culture, language and ethnicity. However, no separate directive on the Roma is needed, but emphasis must be on their integration and inclusion. Separate schools and day care, labour market integration mechanisms and similar special arrangements tend to develop into forms of segregation and exacerbate their exclusion from mainstream society.

There was agreement among participants that there is an urgent need to pass "legislation with teeth" in Roma issues, but that legal remedies can only complement the wider social agenda needed to deal with their huge social problems. The RED individual approach is insufficient to combat discrimination against the Roma. Norms on different levels, such as the UN, EU, and CoE, have to interact, as was the case in *DH II* before the ECtHR. Some amendments to EU legislation would be useful in sharpening the legal response to discrimination against the Roma. Introducing formal group complaints and a statutory duty to promote equality, and strengthening the procedural guarantees for fair proceedings would be helpful. In addition, the Network of legal experts could advise on the better implementation of European non-discrimination law.

So far it is unclear whether the RED has of help in rooting out anti-Roma discrimination, and the ECJ has not yet dealt with Roma discrimination cases where the Directive would have been applied. A follow-up study on the effectiveness of the RED in combating discrimination against the Roma appears to be necessary.