



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Czech Republic
<b>Title:</b>	The Constitutional Court decision – when indirect discrimination in the placement of Roma children in former special schools can be stated
<b>Date:</b>	24 September 2015
<b>Expert:</b>	David Zahumenský
<b>Context</b>	
<b>Issue at stake:</b>	Indirect discrimination in the placement of Roma children in former special schools, statistical evidence
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	The Constitutional Court
<b>Field:</b>	Education
<b>Applicable law:</b>	Law on education, the Constitutional Court judgement No. III. ÚS 1136/13 of 12 August 2015

### Content

**Case:**<sup>1</sup> The claimant was a Roma person who asserted that in the 80s he had been assigned into the special needs school due to his Roma origin, not for the reason of his intellectual and mental capabilities. The applicant attempted to prove indirect discrimination using statistical data processed by the Office for School Information<sup>2</sup> according to which between 1985 and 1991 the Roma children accounted for 40% of the children assigned into special needs schools in the former Czechoslovak Socialist Republic. Considering that the Roma comprised approximately 1.5 to 2% of the total population in the Czech Republic in 1996, the obvious disproportion between the respective numbers was supposed to support the supposition that the Roma children were assigned into special needs schools due to their ethnic origin.

The claimant filed an action for protection of personal rights and demanded that the Czech Republic apologize and pay damages for discrimination for 500 thousand CZK (EUR 18 500).<sup>3</sup> The action was rejected by the City Court and the High Court in Prague as well as the Supreme Court.

**Decision of the Court:** The Constitutional Court agreed with the judgments of both appellate courts and did not make a finding of indirect discrimination on the ground of ethnic origin. Despite of the fact that the presented statistical data may be grounds for the supposition of indirect discrimination, the Constitutional Court asserted that they are not relevant in the applicant's case.

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<sup>1</sup> The Constitutional Court judgement no. III. ÚS 1136/13 of 12 August 2015.

<sup>2</sup> Office for School Information was part of the Ministry of Education of the Czech Socialist Republic.

<sup>3</sup> It is important to note that the proceedings were initiated in 2009, before the Anti-discrimination law came into force.

According to the Constitutional Court, the evidence presented by the Ministry of Education before the lower courts show that the mental capabilities of the applicant, and therefore also the reasons for his assignment into a special needs school, were evaluated during the whole course of his studies using psychological testing at different laboratories and observed throughout his studies, namely his grades. His assignment and stay in special schools was therefore not related to a single examination and obviously was not a result of a routine approach of authorities.

Nevertheless, the Constitutional Court considered that the reasoning of the Supreme Court, which ruled that it can be inferred from the statistical data that the disproportion was larger than 50%, was a bit simplifying and it fails to be relevant in relation to the applicant's case.

In this case the Constitutional Court ruled that the special circumstances of the case (proven lower mental capabilities of the applicant) allow to differentiate between the applicant's case and the judgment of European Court of Human Rights in case of *D.H. and Others v. The Czech Republic*.<sup>4</sup> This last decision concluded that indirect discrimination took place when Roma children were assigned into special schools designated for children with mental disabilities.

**Key point of analysis:** In this case the Constitutional Court criticizes previous decision of the Supreme Court (ruled that their decision may be seen as avoiding the right for judicial protection from Article 36(1) of the Charter). To evaluate the judgment in relation to the ECHR case law, better knowledge of court file would be necessary.

**Internet link source:** Can be viewed via:

[http://www.usoud.cz/fileadmin/user\\_upload/Tiskova\\_mluvci/Publikovane\\_nalezky/III. US\\_1136\\_13\\_an.pdf](http://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/III._US_1136_13_an.pdf), last accessed on 31 August 2015.

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4 Judgement of ECHR from 13 November 2007, Application No. 57325/00, accessible via: [http://hudoc.echr.coe.int/eng?i=001-83256#{\"itemid\":\[\"001-83256\"\]}.](http://hudoc.echr.coe.int/eng?i=001-83256#{\)