

## **Court Denounces Segregation of Roma Children Based on Language**

On 16 March 2010 the Grand Chamber of the European Court of Human Rights issued its decision in the case of *Oršuš v. Croatia*. The Court found that the segregation of Roma school children amounted to discrimination on the basis of ethnicity, in violation of the European Convention on Human Rights. The Croatian school authorities had placed the Roma children in separate classes within certain primary schools in the Međimurje County in Croatia, supposedly due to their lack of proficiency in the Croatian language.

The Grand Chamber decision follows the Court's landmark judgments in *D.H. and Others v. The Czech Republic* and *Sampanis and Others v. Greece*, which rejected the segregation of Roma students into special schools for children with mental disabilities, or into special classes within mainstream schools on the basis of ethnicity.

### **Factual Background**

The case was brought by 15 Croatian nationals of Roma origin, born between 1988 and 1994 and living in Orehovica, Podturen, and Trnovec in northern Croatia. At different times between the years of 1996 and 2000, the applicants attended primary school in the villages of Macinec and Podturen, attending both Roma-only and mixed classes, before leaving school at age 15.

In April 2002 the applicants filed claims against their primary schools, asserting that the curriculum in their Roma-only classes had 30 % less content than the official national curriculum. They argued that such treatment amounted to racial discrimination and a violation of their right to education, as well as a violation of their right to freedom from inhuman and degrading treatment. In support of their claims, the applicants offered a psychological study of Roma children who attended Roma-only classes in the region, which concluded that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity.

In September 2002 the Čakovec Municipal Court dismissed the applicants' claims, ruling that they had failed to prove their allegations of racial discrimination. The court stated that the placement of Roma pupils in separate classes was justified on the grounds that Roma children required more instruction in Croatian. The court also found that the Roma-only curriculum at the primary schools in question was no different from the curriculum of unsegregated classes at those schools. The applicants' subsequent appeal was also dismissed on similar grounds, as was their constitutional complaint in February 2007.

On 8 May 2003 the applicants lodged their complaint with the European Court of Human Rights, alleging that the placement of the children in Roma-only classes amounted to discrimination and a breach of their right to education in a multicultural environment, and had further resulted in severe educational, psychological and emotional harm. The applicants also asserted that the State had violated their right to a fair hearing, based on the excessive length of their proceedings before the domestic courts. In sum, the applicants alleged violations their rights under Article 3 (prohibition of inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing within a reasonable time), Article 2 of Protocol No. 1 (right to education) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights ("the Convention").

### **Violations of the European Convention on Human Rights**

On 16 March 2010 the European Court ruled that, because the state had failed to justify placement of the applicants in separate classes, the segregation amounted to differential treatment on the basis of ethnicity, in violation of Article 14 taken together with Article 2 of Protocol No. 1 of the Convention. With regard to the fair trial claim, the Court reiterated that the right to primary education is a civil right under Article 6 which therefore applied in this case. In light of this, the excessive length of proceedings before the Constitutional Court amounted to a violation of the applicants' right to a fair trial within a reasonable time under Article 6 §1 of the Convention.

### **Differential Treatment Impermissible**

The Court stated that, while the schools had no official policy of automatically placing Roma pupils in separate classes in the primary schools in question, education authorities had placed only Roma children in these classes. Consequently, there had been a clear difference in treatment applied to Roma children, which was permissible only "if it served the purpose of bringing their command of the Croatian language up to an adequate level and then securing their immediate transfer to a mixed class". The Court shifted to the State the burden of proving that the treatment was justified, appropriate, and necessary. To meet this burden, the State needed to show that it had established adequate safeguards to ensure sufficient care for the applicants' special needs as members of a disadvantaged group. Following an assessment of the process of placing Roma pupils into separate classes, the Court found that State had failed to show this.

The Court's assessment revealed that the Croatian laws at the time provided no legal basis for separate classes for children lacking proficiency in the Croatian language. In addition, the assessment tests given to Roma students to determine placement did not assess the children's command of the Croatian language, but merely their general psycho-physical condition. Furthermore, any learning difficulties the children might have had were not adequately addressed by placing them in Roma-only classes. As regards the curriculum, the Roma-only classes were not specifically designed to address the children's alleged linguistic deficiency. Finally, the Government had failed to show that it had adequately monitored the students' progress in learning Croatian.

### **No Possibility of Parental Consent to Discrimination**

The possibility that the applicants could have attended the government-funded evening school in a nearby town was insufficient to repair the deficiencies in their education. In addition, the parents were themselves members of a disadvantaged community and often poorly educated, and therefore had not been capable of assessing the situation and the consequences of giving their consent to the placement of their children in Roma-only classes. The Court would accept no waiver of the right not to be subjected to racial discrimination, as it would be counter to an important public interest.

The Court ordered Croatia to pay to each applicant 4,500 euro in non-pecuniary damages and 10,000 euro to the applicants jointly in costs and expenses. The Court also called for the implementation of positive measures aimed at raising awareness of the importance of education among the Roma population and assisting the applicants with any difficulties they had encountered in following the school curriculum.