

Measuring the effectiveness of the implementation of *D.H. and Others v. the Czech Republic*

*HRLIP Workshop organised in the framework of the OSF/OSJI Conference
“At School Together: Next Steps for Roma Education in the Czech Republic”*

15 November 2017, Schebek Palace, Prague

The [Human Rights Law Implementation Project](#) (HRLIP) Workshop **Measuring the effectiveness of the implementation of *D.H. and Others v. the Czech Republic*** took place at Schebek Palace, Prague on 14 November 2017, in the framework of the Open Society Fund Prague/Open Society Justice Initiative Conference “At School Together: Next Steps for Roma Education in the Czech Republic”. The event brought together representatives of the Ministry of Justice of the Czech Republic, Czech and international non-governmental organisations engaged in Roma rights advocacy and litigation, scholars, parent organisations of Roma children, school teachers and headmasters as well as representatives of civil society.

The workshop served as a forum to assess the impact that the European Court of Human Rights’ (ECtHR, the Court) Grand Chamber judgment in [D.H. and Others v. the Czech Republic](#) (Application No. 57325/00, 13 November 2007) and the Committee of Ministers’ process of supervising its implementation have had on triggering and shaping reform in the education of Roma children in the Czech Republic. Panelists and participants explored what benchmarks or indicators of success might be identified such that the Committee of Ministers, the executive body of the Council of Europe, might declare itself satisfied that the Czech Republic has fully and effectively implemented the ECtHR’s judgment, and close the examination of the *D.H. and Others* case.

Introduction to the Human Rights Law Implementation Project

Dr Alice Donald (Middlesex University, London), Co-Investigator of the HRLIP, presented the [Human Rights Law Implementation Project](#) (HRLIP), a comparative research project (2015-18) which is tracing the responses of nine states in Europe (Belgium, the Czech Republic and Georgia), Africa (Burkina Faso, Cameroon and Zambia) and the Americas (Canada, Colombia and Guatemala) to selected human rights judgments and decisions issued by (i) regional courts and commissions and (ii) selected UN treaty monitoring bodies. The HRLIP aims to identify and elucidate the factors which impact upon implementation in relation to:

- structure: the institutions, formal mechanisms and procedures of the respective systems;
- capacity: the ways in which domestic and supranational actors operate, taking into account issues such as information, expertise, resources and relationships; and
- attitudinal factors, e.g. different actors’ motivations, interests, incentives and assumptions.

Implementing *D.H. and Others*: government and civil society views

Dr Donald recalled that the Grand Chamber of the ECtHR judgment in *D.H. and Others v. the Czech Republic* found that the schooling arrangements in the Czech Republic had resulted in Roma children disproportionately being assigned to special schools for pupils with mild mental disabilities, where they received an inferior education. The impugned situation was held to have amounted to a violation of the right of the applicants – a group of 18 Roma students from the Ostrava region – not to be discriminated against in the enjoyment of their right to education (violation of Article 14 read in conjunction with Article 2 of Protocol No. 1 to the European Convention on Human Rights ([ECHR](#), the Convention)).

Vít Alexander Schorm, Czech Government Agent before the European Court of Human Rights, (Ministry of Justice) pointed out that the Court's judgment did not contain any specific indications as to what measures the Czech Republic should take to give effect to the ruling, leaving significant discretion to the state in deciding – under the supervision of the Committee of Ministers – how to remedy the violations found. Whereas the ECtHR had first and foremost criticised the fact that the enrolment of Roma children in 'practical schools' for children with mild mental disabilities had not been coupled with adequate procedural safeguards, the Czech authorities today took a broader view of the problem. Taking into account the state's international obligations stemming from, *inter alia*, the UN Convention on the Rights of Persons with Disabilities (CRPD), they had thus moved towards a system of inclusive education. One benefit of this approach was that it diverted attention away from the Roma minority, which was still largely unpopular in the country. Mr Schorm expressed satisfaction at the Committee of Ministers' supervision (under the enhanced procedure) of the implementation of the *D.H. and Others* judgment. He welcomed the CM's flexible approach to assessing the progress of implementation and its taking into account submissions not only from the state but also from NGOs and the Office of the Public Defender of Rights. In terms of the indicators of successful implementation, he pointed to the decrease in the number of children placed outside the mainstream education system, while acknowledging that the percentage of Roma children outside mainstream schools remained relatively high. Yet, if the number of Roma children placed in special schools were reduced, this would lead, over time, to a situation in which the percentage of Roma children outside the mainstream education system will no longer be excessive.

Michal Zálešák, citing examples of the work of his organisation, the European Roma Rights Center (ERRC), underscored the continued importance, ten years after *D.H. and Others v. the Czech Republic*, of Roma rights litigation as a tool to exert pressure on the government to make further progress in ensuring equal access of Roma children to quality education. With public discourse being about segregation in primary schools, there was a danger that one may fail to explore the reasons for – and ways to tackle – segregation in middle schools, which was a prevailing problem in the Czech Republic. Mr Zálešák further noted that it would be desirable for the Czech legislature to pass a law allowing for class action to be taken on behalf of groups of persons alleging to have been discriminated against in their right to education. Lastly, he stressed the continuing need to measure the effectiveness of all measures adopted following *D.H. and Others*, with a particular focus on statistical data on the percentage of pupils of Roma origin in 'special schools'.

Magdalena Karvayová, Community organiser at *Awen Amenca*, presented a view from civil society. She ventured that grassroots activism had brought about a positive change in Roma

parents' perception of education. Civil society information campaigns had helped empower Roma parents to overcome obstacles to choosing the best possible schools for their children. Ms Karvayová drew attention to the problem of *de facto* segregation in mainstream primary schools, as well as to a decree that would cut funding for support measures, the primary beneficiaries of which are Roma pupils. In terms of the supervision of the implementation of *D.H. and Others*, she opined that the Committee of Ministers should continue to its monitoring until the *systematic* discrimination against Roma children is eradicated.

Discussion

Contributions to the ensuing discussions addressed issues ranging from

- misdiagnoses of children as having a mild mental disability;
- the need for further research on the reasons for segregation;
- the interconnectedness of the supervision of the implementation process of *D.H. and Others* and the infringement proceedings lodged against the Czech Republic by the European Commission;
- a practice detected among some kindergarden teachers of incentivising Roma parents to have their children exempted from the mandatory last year of pre-school education.

Participants highlighted the importance of also bringing to the Committee of Ministers' attention problems which may not be apparent from the statistics, such as Roma families' lack of access to facilities providing counselling and support, and *de facto* segregation in mainstream schools. Regarding the latter, it was said that one may expect some schools in segregated localities to be segregated; however, participants reiterated that the existence of majority-Roma schools in areas where Roma accounted for no more than ten percent of the population was unacceptable. Lessons could be learnt from other countries where inclusive education had been successfully implemented within the course of a short period of time.

While no consensus emerged as to which indicators or benchmarks the Committee of Ministers should rely on when considering the closure of the supervision process of the implementation of *D.H. and Others*, there was broad agreement concerning the following issues:

- The Committee of Ministers' assessment ought to be based on high quality statistics, which necessitates collecting reliable data using an appropriate methodology.
- Given the risk that even good faith efforts made by the Government may take an unintended course and create undesirable outcomes (e.g. parents' freedom to choose their children's school giving rise to the phenomenon of 'white flight'), another challenge is to design laws and policies which have a tangible impact on the ground.
- Assessing the impact of reforms requires balancing quantitative data and qualitative information from various sources, including information provided by the Public Defender of Rights (Ombudsman) and civil society organisations.
- Further reflections appear necessary regarding how the Committee of Ministers and the Department for the Execution of Judgments of the ECtHR can be made aware of the real impact of measures taken, as evaluated *inter alia* by grassroots actors and organisations.

Outlook

The HRLIP will carry on with its research on the implementation of the ECtHR's judgment in *D.H. and Others v. the Czech Republic* and broader themes relating to human rights implementation in Europe, Africa and the Americas. News about HRLIP activities and publications are available on the project website, at: <http://bit.ly/2A48rFc>.