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Implementing Judgments: Making Court Victories Stick

ROBERT KUSHEN¹

As a lawyer who has worked in the area of human rights for over 20 years, it has been an exhilarating and frustrating experience to lead the European Roma Rights Centre. Exhilarating to work in the most developed regional human rights system in the world and to practice law before a court that has helped set global standards in human rights jurisprudence. Frustrating because the morning after a court victory I am frequently left wondering just what we have won. For individual applicants, victories can be, at best, symbolic: they receive some money (usually a small amount) in non-pecuniary damages, but that is all. The money in no way compensates them for the actual damage they have suffered. In the case of *D.H. and Others v The Czech Republic*, for example, each applicant received 4,000 EUR. How does this compare to being falsely labelled as having a disability and relegated to substandard schools and to jobs that don't require anything more than the most rudimentary education? For the broader human rights agenda, victories can also seem hollow. While the European Court of Human Rights (ECtHR or the Court) sometimes indicates general measures designed to remedy systemic problems and reduce the likelihood that violations will recur, these measures are seldom very specific and most often ignored. Hence, the morning after a European Court judgment is the time when the real work of the human rights defender begins. Years of effort are required to make sure that the judgment sticks.

This issue of *Roma Rights* is dedicated to a consideration of implementation of ECtHR judgments and other decisions of international adjudicatory bodies. Implementation problems plague national justice systems as well, but the European and international systems, without coercive enforcement mechanisms, present particular challenges to implementation at the national level. This issue offers a number of perspectives on the problem. First, Constantin Cojocariu reviews recent developments in the ECtHR's structural and procedural reform and their impact on implementation of judgments. Mr Cojocariu notes that the failure of States to implement judgments has a direct impact on the Court's work by increasing the opportunity for repetitive cases to

be brought to the Court and by increasing markedly the workload of the Council of Europe (CoE)'s Committee of Ministers as the number of unimplemented judgments piles up before it. Unfortunately, it seems that structural reform of the Court under Protocol 14 may not have a significant impact on implementation per se, although hopefully improvements in overall Court efficiency will help to some extent. In the meantime, Mr Cojocariu suggests that civil society should engage actively in monitoring and advocacy with the Committee of Ministers and the CoE's Parliamentary Assembly. In a somewhat more utopian vein, he also suggests that civil society be actively engaged in the process of defining what measures, if fulfilled, would constitute compliance with a judgment.

Krassimir Kanev next focuses on Bulgaria, where he asserts that almost 50% of the ECtHR judgments against Bulgaria are still under supervision, meaning that they have yet to be fully implemented. Many of these cases are in the area of police abuse of detainees, which in several of the cases cited led to the death of the victim. In all cases, the State satisfied the monetary portion of the Court's judgment (in all cases symbolic awards) but for the most part failed to conduct effective investigations into the circumstances of abuse or to conduct the prosecution of perpetrators of such abuse. The State also did not address the systemic reform that would prevent such violations from being repeated. Most significantly, Bulgaria has failed to guarantee the independence of investigations regarding allegations of ill-treatment inflicted by the police, to amend the rules on the use of force by law enforcement or to require explicitly the consideration of racist motive in criminal investigations.

István Haller next focuses on several Romanian cases. The interesting feature of these cases is that they involve "friendly" settlements (in some cases accepted by the applicants, in other cases imposed on the applicants by the Court). The settlements offered by the government were relatively more detailed than the kind of measures customarily imposed by the Court. One might think that these more detailed requirements would provide a stronger basis for enforcement.

¹ Robert Kushen is the ERRC Executive Director.

However, the Committee of Ministers seems no more able to compel a State to comply with its own promises than with a judgment imposed by the Court. Despite the fact that the State set the terms of the settlements, implementation has been completely inadequate due to a failure of political will, insufficient funding and poor management. As many of the original applicants in these cases were driven out of their homes and communities, they have not benefited from any implementation work done in the communities themselves; they received only a small cash payment, many years after the violations occurred, that is insufficient to enable them to establish a new life elsewhere.

Failure to implement international judgments is not a problem limited to Eastern Europe. Panayote Dimitras takes up our country tour d’horizon with a description of the fate of judgments against Greece by the European Court of Human Rights and the European Committee of Social Rights (ECSR). Mr Dimitras concludes that “Greek authorities as a rule do not execute international (quasi-) judicial decisions in cases related to Roma (as well as in cases related to non-Roma).” In the case of Greece, these judgments include ones relating to school segregation, substandard housing and evictions and police violence. Features of non-compliance are similar to other countries noted above: applicants may receive a symbolic monetary award, but the State failed to conduct effective investigations into wrongdoing, to implement existing law or policy or undertake the needed legislative or policy reform to ensure that violations are not repeated. Implementation of ECSR judgments is a particularly challenging area as these judgments point to deep systemic problems that frequently require significant financial resources to remedy.

My colleague Lydia Gall and I have contributed an article on the case of *D.H. and Others v The Czech Republic*. Noteworthy in this case is the creation of an NGO coalition to press specifically for implementation of the judgment and the reform of the Czech education system to provide equal opportunities for Roma. Although the government has taken some small steps toward addressing segregation in special education, there has been no significant change in the proportion of Roma studying in segregated special education classes.

Chris Johnson, Andrew Ryder and Marc Willers contribute a history of the failure of the UK government to implement the decision in *Connors v The United Kingdom* and several similar cases. The decision, involving the illegal eviction of a Gypsy

family from a caravan site, exposed systemic violations in the way the UK treat(s) the right of Gypsies and Travellers to security of tenure. While the State acknowledged the problems and pointed to the need for a legislative solution, six years later such a solution remains elusive, caught up in the slow lawmaking machinery of the UK without a strong political champion.

Our tour takes us back to Eastern Europe with Zoran Girilovski’s article on Macedonia. The author focuses on one case that is emblematic of systemic deficiencies in how Macedonia treats allegations of police abuse. The case reveals “systematic *lacunae* in the legislation and practice of the Public Prosecution Office and the Ministry of Interior regarding criminal complaints filed against Ministry officials;” *lacunae* that remain to this day. Despite recent favourable law and policy developments, the problem seems to be primarily a lack of political will to subject police to independent oversight.

The theme concludes with a fascinating look from inside the Court, an account by former Judge Loukis Loucaides of Cyprus, of systemic impediments that hinder the Court from rendering justice. He identifies one of the key problems to be the politicisation of the Court, in the sense that the Court is “reluctant to find violations in cases that would present serious problems to a State’s financial capabilities, to the general legal or governmental system or to the political objectives of the respondent State.” As judges themselves are the products of their own political cultures, we cannot expect an international tribunal to be immune from politics. Deference to politics, and deference to the competences of national governments in the Council of Europe system, inhibits the Court from crafting detailed remedies that might be more susceptible to monitoring and successful implementation than the general remedies that seem to be the staple of the Court’s jurisprudence.

Given the lackluster track record of implementation of the Court’s judgments at the systemic level, what can we as advocates do? To some extent, we can do more of the same, as several of the authors suggest: engage in consistent and long-term monitoring of States’ failure to implement judgments; engage in advocacy before the Committee of Ministers and other Council of Europe institutions; engage friendly governments in pressing recalcitrant States at Committee of Ministers meetings and in other diplomatic fora; work with local NGOs to engage States on implementation, in a cooperative way if possible, as well as in a

watchdog and critical role; and publicise judgments widely within the country concerned, among various constituencies but in particular among those who may have violated the law or who are charged with implementing change.

We can also do more to encourage the Court to craft remedies that are detailed and clear. At the ERRC, most of our briefing before the Court is taken up with proving that a violation has taken place; why not invest some effort in suggesting remedies, including both individual damages and general measures?

The level of damages awarded by the Court is frequently symbolic, which has no deterrent effect whatsoever. States absorb these damages as the cost of “doing business” (in this case the business of violating rights). Advocates before the Court therefore do not always spend much time describing the nature of the damages or explaining the amount. Perhaps if pecuniary damages claims were better briefed, the awards would go higher. For example, every case involving death or disability induced by a State actor should include detailed information about work-life expectancy and the amount of money the deceased could have been expected to earn for their family. The prospect of larger awards, susceptible to repetition if systemic problems go unaddressed, might compel a more robust State response.

Arguments on general measures would require giving the Court a good idea of the scope of the problem: if a violation has its roots in systemic deficiencies, and is likely to result in additional petitions before the Court, applicants might usefully present evidence on how many people are likely to be affected by these deficiencies. Applicants

should then be prepared to offer remedies to these problems that the Court should pronounce for the respondent State to undertake. In the *D.H.* case, the Czech NGO coalition Together to School has tried to define these concrete remedies by interpreting the more general guidance provided in the Court judgment.

The Czech NGO coalition offers another instructive example: the critical need for local NGOs to take up where the litigators leave off. Sustained engagement by the coalition since the judgment in 2007 has yielded modest but demonstrable results so far, and years more engagement will be required to complete the job. The work of an ERRC in litigating before international bodies will be worthless without local advocates to immerse themselves in the details and time-consuming work of law and policy advocacy.

Failure to implement a judgment could be a reason to undertake additional litigation before domestic courts with new applicants facing similar violations. Another tactic, not yet tested to the best of my knowledge, is domestic litigation to compel enforcement of the decision of the ECtHR, ECSR or some other international adjudicatory body, perhaps on the theory that the decision of the international body constitutes binding international law that must be given primacy in a national jurisdiction. We invite readers to send us other ideas of work that we can do to encourage the implementation of judgments.

As lawyers, it is okay to pat ourselves on the back the day we receive news of a favourable judgment. As activists, however, it is back to work the next day to make sure that the judgment sticks.

Improving the Effectiveness of the Implementation of Strasbourg Court Judgments in Light of Ongoing Reform Discussions

CONSTANTIN COJOCARIU¹

The system of human rights protection instituted by the European Convention on Human Rights (ECHR or the Convention) is rightly considered to be the most successful and innovative in the world. However, in the past 15 years the European Court of Human Rights (ECtHR or the Court) has faced escalating challenges threatening its very existence. The most significant problem is that the Court is overwhelmed by a mounting number of cases. In May 2010, the number of cases pending before a judicial formation within the Court had risen to 126,200, representing a 60% increase since the beginning of the year.² Managing this caseload is an increasingly difficult task causing very long waiting times, which are potentially in breach of the fair trial rules included in the Convention. This crisis has engendered an extensive debate, which has now been ongoing for many years. It aims at identifying the best solutions for stemming the flow of cases and restoring the effectiveness of the Court. The reform discussions have led to the publication of many reports (by the Evaluation Group,³ Lord Woolf,⁴ the Group of Wise Persons⁵ and the Court⁶), declarations, recommendations, resolutions and at least one Protocol to the Convention (No. 14). The process received fresh impetus from a high-level inter-governmental conference, which took place in February 2010 and led to the adoption of the *Interlaken Declaration*.⁷ Therein, the 47 Council of Europe Member States formally reaffirmed their commitment to the Convention and the Court and adopted an action

plan “as an instrument to provide political guidance for the process towards the long-term effectiveness of the Convention system,”⁸ including a timeline for its implementation.

This article provides a non-exhaustive account of the main themes of the discussions aimed at improving the implementation process and examines the main achievements of the reform process in that context. States are primarily responsible for enforcing the Convention in their jurisdiction, under the supervision of the Committee of Ministers. In addition, the Court and the Parliamentary Assembly of the Council of Europe (PACE) have the ability to influence the process to ensure better execution. I will examine the international dimensions of the implementation process in light of the wider debates concerning the reform of the Court.

This article should provide some useful background to the discussion hosted by the current issue of *Roma Rights*, which focuses on the perceived poor implementation of ECtHR judgments concerning Romani applicants. Claims that the States’ records of implementing Roma rights judgments is poorer compared to judgments concerning other categories of claimants are not supported by empirical evidence. Recent research concludes that “on the whole [...] minority-related judgments are not characterised by slower or delayed implementation in comparison to the other cases.”⁹ On the other hand, a detailed

- 1 Constantin Cojocariu is a lawyer in the Europe programme at INTERRIGHTS. In that capacity he has been involved in the work of a group of international NGOs monitoring the Court reform process.
- 2 European Court of Human Rights (ECtHR), *Statistical Information 1/1-31/5/2010*, available at: <http://www.echr.coe.int/ECHR/EN/Header/Reports+and+Statistics/Statistics/Statistical+information+by+year/>. Six States were responsible for almost 70% of these applications: Russia, Turkey, Romania, Ukraine, Italy and Poland.
- 3 J. Harman, L. Wildhaber and H.C. Kruger, *Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights* (27 September 2001).
- 4 Lord Woolf et al., *Review of the Working Methods of the European Court of Human Rights*, December 2005.
- 5 *Report of the Group of Wise Persons to the Committee of Ministers* (Strasbourg: Council of Europe, November 2006).
- 6 ECtHR, *Opinion of the Court on the Wise Persons Report*, 2 April 2007.
- 7 High Level Conference on the Future of the European Court of Human Rights, *Interlaken Declaration*, 19 February 2009, available at: http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf.
- 8 *Ibid.*
- 9 Dia Anagnostou and Alina Mungiu-Pippidi, *Why Do States Implement Differently the European Court of Human Rights Judgments? The Case-law on Civil Liberties and the Rights of Minorities*, Juristras project comparative report, 2009, 27, available at: <http://www.juristras.eliamep.gr/wp-content/uploads/2009/09/why-do-states-implement-differently-the-european-court-of-human.pdf>.

understanding of the challenges and opportunities presented in the implementation process would assist Roma rights advocates in maximising their chances of achieving full compliance with judgments of the Court in their area of interest.

The efficiency and transparency of the process of supervision conducted by the Committee of Ministers

Under Article 46.2 of the Convention, the Committee of Ministers is responsible for supervising the enforcement of the Court's judgments, namely payment of just satisfaction, implementation of individual measures bringing an end to the consequences of the violation for the individual concerned and general measures aimed at preventing similar violations in the future. The Committee of Ministers meets four times a year to analyse progress in the execution of judgments either at the level of Ministers of Foreign Affairs, or more frequently, at the level of Deputies (the Permanent Representatives of Member States of the Council of Europe).

The nature of the activity of supervision undertaken by the Committee of Ministers is subject to some controversy. Although Article 46.1 of the Convention spells out a State's duty to implement Court judgments, implying in turn that the activity of supervising the enforcement of judgments is legal in nature, many inside the system insist it is a political process.¹⁰ The features of the process certainly seem to point in that direction: the procedure before the Committee is not adversarial and the decision to accept potential communications from NGOs is discretionary (see below). Furthermore, the Committee of Ministers has said in the past that it is "paramount that supervision of execution is treated as a cooperative task and not an inquisitorial one."¹¹ Considering the fundamental flaws of the current system, which is based on peer pressure and the common responsibility of Council of Europe Member States for ensuring the effectiveness of the system, certain

preferences have been expressed towards adopting a more judicial approach to the process of supervision. Thus, Erik Fribergh, the Registrar of the Court, argued recently that:

Enforcement issues are becoming more and more judicial and it would seem to me that in the future reform work, one issue that could be taken up is whether the enforcement issues should not be entrusted to a more quasi-judicial organ. This could be a separate body, or one operating under the auspices of the Committee of Ministers. I think a lot could be achieved to solve many enforcement issues if for instance a Panel of five to seven legal/judicial experts were entrusted with that duty.¹²

Growing awareness that deficient implementation at the national level is at the root of the caseload problem experienced by the Court has placed the spotlight firmly on the effectiveness of the process of supervision conducted by the Committee of Ministers. The Committee was criticised for its lenient approach in dealing with States and for the inaccessibility of the process of supervision.¹³ In response, the Committee of Ministers has taken great strides to improve the process over time, replacing an originally lax approach with a more rigorous type of supervision.

It is fair to admit at the same time that the Committee of Ministers is faced with significant challenges outside of its control. The Court's heavy case load is slowly shifting to the Committee of Ministers, while a more rigorous approach to the process of supervision translates into an increase in the length of execution. According to statistics, the workload of the Committee of Ministers has increased threefold in the last ten years based on the number of new cases and has quadrupled in terms of the number of pending cases. The number of cases transmitted by the Court to the Committee increased by 90% between 2008 and 2009 and the number of pending cases increased by 19%.¹⁴

10 Philip Leach, "On Reform of the European Court of Human Rights", *E.H.R.L.R.* Issue 6 (2009): 732.

11 Committee of Ministers, *Human rights working methods – Improved effectiveness of the Committee of Ministers' supervision of execution of judgments*, CM/Inf(2004)8 Final, 7 April 2004, paragraph 1.3, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf%282004%298&Ver=final&Language=lanEnglish&Site=COE&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

12 E. Fribergh, "Pilot Judgments from the Court's perspective" (lecture, Stockholm Colloquy, 9-10 June 2008).

13 Philip Leach, *The Effectiveness of the Committee of Ministers in Supervising the Enforcement of Judgments of the European Court of Human Rights*, (P.L. 2006, AUT), 443-456.

14 Committee of Ministers, *Supervision of the execution of judgments of the European Court of Human Rights, 3rd Annual report 2009*, available at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Source/Publications/CM_annreport2009_en.pdf.

The Committee of Ministers is guided in its work by the Rules of Procedure adopted in 2001 as revised in 2006¹⁵ and the Working Methods adopted in 2004.¹⁶ In the initial phase of the execution process, within six months after judgments become final, States are expected to provide an action plan with a specified timeframe for the measures envisaged. An execution timetable is established on the basis of information submitted by States and a publicly available status sheet is opened. Cases come up for examination by the Committee at regular six-month intervals until the Committee is satisfied that the State concerned has executed the judgment. However, the Rules do not make any reference to the timing of the States' communications with the Committee. In case of delays or other obstacles in the execution process, a more robust framework for execution may be imposed on States. Throughout the execution process, the Committee may make use of a series of means of pressuring States to comply including interim resolutions, press releases, etc. (see below).

One of the flaws of the system is that the Committee is not able to scrutinise the suitability of action plans submitted by States in the initial phase of execution. Based on the principle of subsidiarity, States have the latitude to decide the nature and scope of individual or general measures that they have to adopt in order to execute Court judgments. Furthermore, doubts persist concerning the quality of evidence required from States to prove execution has been successful. The Committee of Ministers has become increasingly strict in this regard over time. The evidence it requires from the State may range from changes in the practice of national courts, especially in the approach of higher and constitutional courts to enacting legislation. However, the process has been criticised on the basis that "what the Committee regards as sufficient evidence that the violation has been remedied varies from case to case with little apparent rationale."¹⁷ Furthermore, it is doubtful that the

Committee possesses the expertise required to assess the effectiveness of measures taken by States in the context of execution of complicated cases.

The aforementioned shortcomings are somewhat mitigated by allowing the limited participation of the applicant and civil society and by improving the transparency of the process. The Committee's Rules of Procedure, as amended in 2006, provide that the Committee may consider any communication from the applicant with regard to the payment of just satisfaction or the taking of individual measures and any communication from non-governmental organisations and national human rights institutions. One significant objection is that the decision as to whether to take the position of the applicant or civil society into account is discretionary. Furthermore, according to Philip Leach:

NGOs and national human rights institutions across Europe are not fully aware of the possibilities, nor the mechanics, of engaging in this process, and so the Council of Europe could very usefully hold workshops or seminars to facilitate civil society engagement specifically in the implementation process (with a focus on states where there is still civil society activity and on states with the most serious, or most numerous violations).¹⁸

Romani organisations have yet to make full use of the possibility of communicating with the Committee during execution proceedings in relation to cases they have an interest in. The Committee of Ministers has received extensive information from NGOs in relation to the implementation of the landmark judgment *D.H. and Others v The Czech Republic*¹⁹ concerning the practice of segregating Romani children in special schools.²⁰ Although it is still too early to assess its impact on the execution process, the expertise offered by NGOs can only be beneficial, especially considering the complexity of the measures required in this case.

15 *Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements*, available at: http://www.coe.int/t/dghl/monitoring/execution/Documents/CMrules2006_en.asp.

16 *Human rights working methods - Improved effectiveness of the Committee of Ministers' supervision of execution of judgments*, available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf\(2004\)8&Language=lanEnglish&Ver=final](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf(2004)8&Language=lanEnglish&Ver=final).

17 Steven Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects* (Cambridge University Press, 2006), 158.

18 Leach, *On Reform of the European Court of Human Rights*, 732.

19 ECtHR, *D.H. and Others v The Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

20 Based on information available on the Committee of Ministers' website dedicated to the execution of ECtHR judgments, available at: http://www.coe.int/t/dghl/monitoring/execution/Default_en.asp.

NGOs also made a significant contribution in a critical phase of the implementation process in a block of cases concerning the anti-Roma pogroms which took place at the beginning of the 1990s in Romania, grouped around the judgment of *Moldovan and Others v Romania*.²¹ Two documents were submitted to the Committee in relation to these cases by the European Roma Rights Centre and a coalition of Romanian NGOs respectively, in response to the Romanian Government's claims that its action plan including a set of community development measures had been successfully implemented. The NGOs demonstrated that the Romanian Government had failed to implement many of its commitments, which in turn triggered increased scrutiny from the Committee and a request for more detailed information as well as an updated calendar of execution.

The Committee of Ministers has made considerable progress in improving the transparency of the execution process. The website on the execution of judgments has changed radically from a headache-inducing amorphous mass of information to a much friendlier and easy-to-use tool. The website now contains such information as the meeting agendas (published in a basic format in advance of the meeting and in an annotated format afterwards) or the Committee decisions. The Committee has published detailed annual reports on its execution activities since 2007 and explanatory guides on issues such as the payment of just satisfaction.

Despite the progress achieved, there is still room for improving the process of execution before the Committee of Ministers. This stance is confirmed by the *Interlaken Declaration* which called on the Committee of Ministers to “develop the means which will render its supervision of the execution of the Court's judgments more effective and transparent.”²² Some authors are of the opinion that absent a substantial restructuring of the institutional architecture provided by the Convention, particularly through granting the Council of Europe a supranational character, which in

any case would be very unlikely, the potential of further changes in the mechanism of supervision conducted by the Committee of Ministers is quite limited.²³

The interaction between the Committee of Ministers and States

Although the overall rate of compliance with Court judgments is positive,²⁴ the Committee of Ministers is confronted with substantial and growing enforcement problems. Unfortunately, the Committee is currently ill-equipped to pressure recalcitrant States into implementing Court judgments.

The Committee adopted a system of prioritisation of cases for debate during its meetings based on a set of criteria which include the applicant's situation, whether the case represents a new departure in case-law or illustrates a potential systemic problem or whether there has been a significant delay in execution. Similar criteria are used to shorten procedural intervals normally applicable during the supervision process. It is reasonable to assume that more pressure will be exerted if cases are debated during the Committee's meetings. At the same time only a very small fraction of cases are actually discussed – 20-30 cases from an agenda which includes as many as 2,000-3,000 cases for every meeting.²⁵

The proliferation of repetitive applications, many of which result from problems already addressed by the Court in its case-law, led to increasingly urgent calls for the Committee to prioritise the execution of cases revealing structural or systematic problems to prevent similar applications reaching the Court in the future.²⁶ Considering that these currently make up over half of the judgments issued by the Court, repetitive cases may end up dominating the Committee's meetings.²⁷ A focus on complex and sensitive systemic problems giving rise to repetitive applications may detract attention from more isolated cases, which may,

21 ECtHR, *Moldovan and Others v Romania*, Application nos. 41138/98 and 64320/01, 12 July 2005, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=780024&portal=hbk&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

22 *Interlaken Declaration*, paragraph 11.

23 For more information, see: Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, 164.

24 David Harris, Michael O'Boyle and Colin Warbrick, *Law of the European Convention on Human Rights*, (Oxford University Press (Second edition), 2009), 881-883.

25 *Ibid.*

26 See, for example, the *Interlaken Declaration*, paragraph 11.

27 Despite the rule saying it should not be detrimental to new cases.

however, raise important human rights issues. Roma rights judgments, most of which involve violations of Articles 2 and 3, and are still relatively few in number and may therefore receive comparatively less attention during the execution process. However, this situation may change as the focus of litigation shifts towards violations of other rights included in the Convention, such as the right to education, which affect larger numbers of people and originate in structural/systemic problems which may in turn warrant priority treatment from the Committee of Ministers.

The Committee may increase the intensity of the “soft” pressure applied on States in response to delays or refusals to comply with Court judgments. The Committee may apply a variety of measures, such as stronger insistence during its meetings on the State’s duty to comply, increasingly frequent examinations of the case and persistent communications between the chair of the Committee and various officials of the State concerned. The strongest means of pressure available to the Committee during the execution stage is adopting interim resolutions which record progress or the lack thereof, inviting States to take further measures or even threatening them with more serious measures in case of a lack of compliance. The Committee may even issue successively more strongly-worded interim resolutions, which may be accompanied by press releases, public statements by the Chair or special decisions. Such steps have been increasingly utilised by the Committee with mixed results.

According to Protocol 14, which entered into force on 1 June 2010, the Committee has the opportunity to refer a case back to the Court in two situations: if the execution of a final judgment is hindered by a problem of interpretation of the judgment and in case of a refusal from a State to abide by a final judgment to which it is party. The explanatory report anticipates that the latter procedure will be utilised by the Committee only in “exceptional circumstances”.²⁸ Finally, the Committee of Ministers may also request the ultimate sanction, based on Article 8 in conjunction with Article 3 of the Statute of the Council of Europe - the suspension or

the termination of the membership of the State concerned. This sanction has not been employed so far and can be seen to be of limited use. It is felt that if recalcitrant States were ejected from its ranks, the Council of Europe would lose that modicum of influence that comes with membership and the mechanism of peer pressure, and therefore such a sanction would ultimately be counterproductive.

An idea which is aired periodically - and then abandoned - in the framework of discussions regarding Court reform is that of introducing fines to be paid by States for failure to comply with Court judgments.²⁹ This approach is questionable considering the reasons why States fail to implement Court judgments in the first place. A Steering Committee for Human Rights (CDDH) report from 2000 enumerates possible causes for the failure to adopt general measures as a result of binding Court judgments: political problems, the daunting scale of the reforms required, legislative procedures, budgetary issues, public opinion, casuistic or unclear judgments of the Court, the possible impact of compliance on obligations deriving from other institutions and bureaucratic inertia.³⁰ Comparative research undertaken in nine Council of Europe Member States identified “the sources of (non) compliance not in the wilful disobedience on the part of national authorities, but in the varying capacities of governments of member states to implement their provisions.”³¹ If the cause of non-implementation is not wilful obstruction, then any approach based on punitive measures, such as fining offending States or having the Committee of Ministers refer cases back to the Court, may not prove effective.

It follows that approaches whereby States are provided with technical, financial or other types of assistance in implementing their obligations is currently favoured. In the run-up to the Interlaken Conference, various governments supported the establishment of a separate Council of Europe body with the role of providing States with technical assistance in implementing complex general measures derived from judgments delivered by the Court. This proposal was ultimately abandoned, mostly on the basis that the

28 Council of Europe, *Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention: Explanatory Report*, paragraphs 99-100, available at: <http://conventions.coe.int/Treaty/EN/Reports/Html/194.htm>.

29 See, for example, European Commission for Democracy through Law (Venice Commission), *Opinion on the Implementation of the Judgments of the European Court of Human Rights*, available at: [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)034-e.asp](http://www.venice.coe.int/docs/2002/CDL-AD(2002)034-e.asp).

30 Eric Jurgens, *Execution of judgments of the European Court of Human Rights* (July 2000), available at: <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/Doc00/EDOC8808.htm>.

31 Dia Anagnostou and Alina Mungiu-Pippidi, *Why Do States Implement Differently the European Court of Human Rights judgments? The Case-law on Civil Liberties and the Rights of Minorities*, 27.

new body might undermine the Committee of Ministers. A working group established inside the Court suggested that financial assistance may be sought from the European Union and/or other donor agencies to assist States which experience financial difficulties in complying with Court judgments. The actors involved in the execution process - the Court, the Parliamentary Assembly, the Committee of Ministers and States - are more actively interacting at all stages of the proceedings in order, for example, to deal more effectively with repetitive applications while they are pending before the Court or during the execution stage. At the same time, one cannot help but notice that such direct contacts usually exclude applicants or civil society.

An increasing role for the Parliamentary Assembly

The Parliamentary Assembly has exercised an increasingly active role in the process of implementation of Court judgments. It has done so by publishing reports, resolutions and recommendations, holding debates and tabling oral and written parliamentary questions. The Parliamentary Assembly's Committee on Legal Affairs and Human Rights (CLAHR) in particular has published six reports on the implementation of judgments, with the seventh due in June 2010. The CLAHR focuses on "particularly problematic instances of non-execution" and sees its role as complementary to the existing system of supervision.³² Thus, in its activities it focuses on judgments and decisions which have not been fully implemented more than five years after their delivery and those raising important implementation issues, whether individual or general, as highlighted notably in the Committee of Ministers' interim resolutions or other documents. In the course of its implementation activities, the CLAHR requests that States provide information on the individual and general measures adopted to implement the judgments addressed and carries out visits to the states concerned (in 2009-2010 to Bulgaria, Ukraine, Greece, Italy, Moldova, Romania, Russia and Turkey).

For its 2010 report, the CLAHR initiated a dialogue with national parliaments aimed at strengthening their involvement in the implementation of Court judgments. In his 2009 progress report, CLAHR-appointed Rapporteur Christos Pourgourides invoked the findings of a comparative research report, according to which State parties with strong implementation records are regularly characterised by active involvement of parliamentary actors in the execution process.³³ It makes sense that PACE should attempt to draw national parliaments into the execution process considering that it is composed of national Members of Parliament. Currently, national parliaments are involved in implementation activities on an exceptional basis only. The CLAHR stated in 2008 that not only do "very few parliamentary mechanisms exist with a specific mandate to verify compliance of [draft legislation] with ECHR requirements" but "parliaments in very few states exercise regular control over the effective implementation of Strasbourg Court judgments."³⁴

In the provisional version of his 2010 report, Mr Pourgourides refers to several national good practice examples of systematic national parliament involvement in the implementation process.³⁵ Thus, for instance, the Dutch Agent before the Court presents an annual report to the Parliament concerning judgments delivered by the Court against the Netherlands, as well as other judgments of relevance in the Dutch context. Parliamentarians then have the opportunity to scrutinise the contents of the report, to consider the measures taken by the Government in this context and to make recommendations. A similar procedure was introduced under the Azzolini Law in Italy.³⁶ In the United Kingdom, the parliamentary Joint Committee on Human Rights monitors the Government's response to adverse Strasbourg judgments and publishes its findings in an annual report.

The Court's more proactive approach

In recent years, the Court has adopted a more active approach in relation to the matter of redress for violations of the Convention. Thus, the Court has developed a practice of giving

32 Christos Pourgourides, *Implementation of judgments of the European Court of Human Rights, Progress Report, 2009*, available at: http://assembly.coe.int/CommitteeDocs/2009/ejdoc36_2009.pdf.

33 *Ibid.*, paragraph 24.

34 Eric Jurgens, *Implementation of judgments of the European Court of Human Rights* (2006), available at: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc11020.htm>.

35 *Ibid.*, paragraphs 21-51.

36 Italy, *Azzolini Law*, Italian Official Bulletin no.15, 19 January 2006.

indications under Article 46 as to the most appropriate individual and general measures needed to provide redress. In fact, Article 46 is the central component of the “pilot judgment procedure”,³⁷ which aims to manage repetitive applications more efficiently. Furthermore, the practice of asking States to take certain individual measures to remedy the violation found under Article 41 of the Convention, other than payment of just satisfaction, has become increasingly frequent. As noted by one scholar, the Court’s newly found confidence contributes significantly to the execution process:

There are three particular advantages to the Court being more specific about the kind of systemic action required by national authorities: compliance with the judgment is less open to political negotiation in the Committee of Ministers, it is easier to monitor objectively both by the Committee and by other bodies such as NGOs and other domestic human rights agencies, and a failure by relevant domestic public authorities to comply effectively is, in principle, easier to enforce by both the original litigant, and others, through the national legal process as an authoritatively confirmed Convention violation.³⁸

Roma rights advocates should seek to take advantage of this new approach by developing their argumentation under Articles 41 and 46 of the Convention and requesting that more specific wording is included in judgments. The same rationale applies, *mutatis mutandis*, to friendly settlements and unilateral declarations made by the Government under Article 37.1(c) which are expected to proliferate over the following period as ways to manage more effectively the Court’s caseload.³⁹

Finally, it has been suggested that the Court could be inclined in the future to review the States’ compliance with its judgments as a free-standing complaint under Article 46 and thus revise its previous case law on the matter.⁴⁰ This possibility

is envisaged as similar to, but distinct from, the infringement proceedings provided for by Protocol 14 (see above).

Conclusion

The ongoing reform process has been partially successful in improving the process of implementing Court judgments, particularly through further streamlining the process and through encouraging a more cooperative approach among the actors involved. In particular, the Committee of Ministers rendered the process of supervision more transparent and allowed some limited involvement of the applicants and civil society. Execution proceedings have become more effective by spelling out in more detail the procedural steps that States have to take during the supervision process. Furthermore, the Committee now makes a vast amount of information available through its website aiming, among other goals, to assist States in executing their obligations. The Committee has made increasingly good use of the limited tools in its armoury aimed at pressuring States to fully execute their obligations. However, the character of their supervisory activity has remained fundamentally unaltered. The process is not adversarial but rather relies on soft power: peer pressure and political persuasion. More essentially, the Committee is not equipped to deal with States which refuse to comply or delay execution. The Court is exercising a more active role by making more detailed indications as to redress under Articles 41 and 46 of the Convention. Finally, the Parliamentary Assembly attempts to encourage national parliaments to be more active in this area and to constructively engage with Governments in difficult cases where implementation lags.

In the *Interlaken Declaration*, Council of Europe Member States have committed to a broad action plan for the reform of the

37 “[W]hen the Court receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment. In dealing with the selected case or cases, it will seek to achieve a solution that extends beyond the particular case or cases so as to cover all similar cases raising the same issue. The resulting judgment will be a pilot judgment.” ECtHR, *The Pilot-Judgment Procedure: Information note issued by the Registrar*, available at: http://www.echr.coe.int/NR/rdonlyres/DF4E8456-77B3-4E67-8944-B908143A7E2C/0/Information_Note_on_the_PJP_for_Website.pdf.

38 Greer, *The European Convention on Human Rights: Achievements, Problems and Prospects*, 160-161.

39 Stakeholders involved in the reform process, including the Court, advocate for the increased use of friendly settlements and unilateral declarations as a means to dispose more efficiently of repetitive applications pending before the Court. See, for example, *Interlaken Declaration*, available at: http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/europa/euroc.Par.0133.File.tmp/final_en.pdf, paragraph 7(a); and Steering Committee for Human Rights, *CDDH final opinion on putting into practice certain procedures envisaged to increase the Court’s case-processing capacity*, 30 March 2009, available at: http://www.interights.org/app/webroot/userimages/file/CDDH_2009_007%20Addendum%20I%20Final%20Opinion%20+%20Activity%20Report_.pdf, paragraphs 20-21, 35.

40 Harris et al., *Law of the European Convention on Human Rights* (USA: Oxford University Press, 2009), 881-883.

Court. In reality, absent fundamental changes in the mechanism set up in the Convention, further efforts to tinker with current international procedures have relatively limited potential to achieve solutions to the problems experienced by the Court. As the Protocol 14 experience has demonstrated, building consensus around massive institutional reform is fraught with political difficulties. All of this means that the spotlight has to shift to the States' records in implementing Court judgments and, in particular, to the biggest contributors to the Court's caseload. From the beginning, States have had to implement the Committee of Ministers' recommendations related to the implementation of the Convention, which have so far been largely ignored. More broadly, States have an obligation to do more to develop a genuine human rights culture and rule of law, and to improve the process of reception of the Convention in their domestic legal orders, including providing effective remedies for violations of Convention rights.

The reform process holds a number of lessons for Roma advocates. They should further expand and consolidate their arguments under Articles 13, 41 and 46 of the Convention in line with recent trends from the Court to adopt a more proactive approach to the matter of redress for the violations of Convention rights. Furthermore, they should improve their understanding and make full use of legal and advocacy possibilities offered by various institutional actors involved in the implementation process, such as the Committee of Ministers or the Parliamentary Assembly. More crucially, Roma advocates should be involved in the implementation process from the early phases and on a systematic basis, including by defining the most appropriate measures required for the full execution of Court judgments early on, monitoring Governments' efforts in this context and providing their assistance to authorities to achieve full implementation.

Non-Execution of European Court Judgments Involving Romani Victims in Bulgaria

KRASSIMIR KANEV¹

One of the guiding principles in the execution of European Court of Human Rights (ECtHR or the Court) judgments that the Committee of Ministers (CoM or the Committee) adopts is that of integral restitution. This includes not only the payment of compensation awarded in the Court's judgment but also other individual measures which aim at the restoration, to the extent possible, of the *status quo ante* and seek further justice for victims at the national level. This is particularly necessary for serious human rights violations where restricting the execution of justice to the payment of compensation allows government agents to commit human rights abuses with virtual impunity in some cases. The ECtHR established this requirement for addressing serious human rights violations at the domestic level² and the CoM is guided by the same principle in its supervision of the execution of judgments. In addition, the execution requires adoption of general measures, a change of the laws or judicial practice, to prevent similar violations of the European Convention of Human Rights (ECHR or the Convention) in the future.

Bulgaria's record of execution of ECtHR judgments

Execution of ECtHR judgments is at present one of the most serious human rights problems in Bulgaria. As of March 2010, the CoM was supervising the execution of individual and general measures in 159 judgments against Bulgaria. This is almost 50% of all the judgments delivered

by the Court against this country.³ But, more importantly, a significant number of these judgments, which are under supervision, involve "leading cases", i.e. cases identified by the CoM as revealing systematic problems and requiring the adoption of general measures. According to the latest CoM report on the supervision of the execution of ECtHR judgments in 2009, there were 72 such Bulgarian cases pending before the Committee.⁴ Among the Council of Europe (CoE) Member States, only Turkey had more leading cases pending supervision of execution in this period with 125. Bulgaria, however, had the highest share of such cases on a per capita basis. The Bulgarian share of the total number of the leading cases pending before the Committee had not decreased since 2008 – it was 9% of all such cases in that year and remained 9% in 2009.⁵

The official Bulgarian approach to the execution of ECtHR judgments has traditionally been very narrow. When confronted with the problem, especially in cases involving serious human rights violations and politically sensitive issues, the government keeps stressing that it has paid the compensations awarded but remains very reluctant to consider other measures.⁶ It has been more open to adopting legislative measures on less sensitive issues related to structural problems in the criminal and the civil procedure which generated many ECtHR applications. Thus, in 2005 the Bulgarian Parliament adopted a new Code of Criminal Procedure and in 2007 it adopted a new Code of Civil Procedure, in both cases aiming at speeding up proceedings by introducing shorter time

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- 2 Among other judgments: European Court of Human Rights (ECtHR), *Krastanov v Bulgaria*, Application no. 50222/99, 30 September 2004, paragraph 60; ECtHR, *Yasa v Turkey*, Application no. 22495/93, 2 September 1998, paragraph 74; ECtHR, *Tanrikulu v Turkey*, Application no. 23763/94, 8 July 1999, paragraph 79; ECtHR, *Ayder and Others v Turkey*, Application no. 23656/98, 8 January 2004, paragraph 98.
- 3 The list of cases pending for execution as of March 2010 is available on the CoM website at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Bulgaria_en.pdf. Those initiated by the ERRC are available at: <http://www.errc.org/en-strategic-litigation-european-court.php>.
- 4 CoM, *Supervision of the Execution of Judgments of the European Court of Human Rights, 3rd Annual Report*, Strasbourg, April 2010, 44.
- 5 *Ibid.*, 40.
- 6 See, for example, the very typical reaction to the execution of the Court's judgments involving violations of the freedom of assembly and of association of ethnic Macedonians in: ECRI, *Report on Bulgaria (fourth monitoring cycle)*, 24 February 2009, paragraph 52; Reply of the Bulgarian government to the CERD list of issues, 74th Session, 17 February 2009, Article 4, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds74.htm>.

limits, stricter sanctions for delays and omissions and limiting appeals. However, there has been little improvement in the organisation of the judiciary and thus the effects of these legislative reforms remain to be seen. In March 2009 the Council of Ministers adopted a concept paper for overcoming the reasons for the negative judgments of the Court.⁷ It envisaged a series of measures addressing those structural problems of legislation and the administration of justice that generated ECtHR judgments finding violations of the Convention in the areas of the right to liberty and security (Article 5), fair trial (Article 6) and the right to property (Article 1 of Protocol 1). The concept paper does not address adequately some of the most serious violations identified in the ECtHR judgments against Bulgaria, or problems stemming from politically sensitive cases. Still, more than a year after its adoption, none of its recommendations have been implemented.

The ECtHR judgments explicitly involving Romani victims can be classified into three groups according to the problems identified therein. All groups include cases resulting in violations of the right to life and/or torture or other prohibited ill-treatment (articles 2 and/or 3 of the ECHR). In the first group violations were caused by excessive use of force by law enforcement officers; in the second group, by excessive use of firearms; and in the third group, Roma were victims of bias-motivated crimes resulting in loss of life. Thus, in addition to articles 2 or 3, in the latter group the Court also found violations of Article 14.

Of all the cases against Bulgaria explicitly involving Romani victims, only one, *Assenov and Others v Bulgaria* from 1998,⁸ was declared by the CoM to be closed for execution of individual and general measures. This is due to the 1999 reform of the Criminal Procedure Code, which deprived prosecutors of the power to indicate remand measures in pre-trial proceedings and transferred this authority to the courts.⁹

7 Council of Ministers, *Concept Paper for Overcoming the Reasons for the Negative Judgments of the European Court of Human Rights against the Republic of Bulgaria and for Solution of the Problems Stemming from Them*, adopted with Decision of the Council of Ministers No. 144, 9 March 2009, available at: <http://www.justice.government.bg/new/Pages/Verdicts/Default.aspx>.

8 ECtHR, *Assenov and Others v Bulgaria*, Application no. 24760/94, 28 October 1998.

9 CoM, *Interim Resolution CM/ResDH(2000)109*.

10 ECtHR, *Velikova v Bulgaria*, Application no. 41488/98, 18 May 2000.

11 ECtHR, *Angelova v Bulgaria*, Application no. 38361/97, 13 June 2002.

12 ECtHR, *Ognyanova and Choban v Bulgaria*, Application no. 46317/99, 23 February 2006.

13 ECtHR, *Sashov and Others v Bulgaria*, Application no. 14383/03, 7 January 2010.

14 CoM, *Interim Resolution CM/ResDH(2007)107*.

Right to life, protection against torture and other prohibited ill-treatment

In some of its earlier judgments against Bulgaria the ECtHR considered cases involving serious crimes against Roma perpetrated by police officers resulting in deaths in custody after severe physical ill-treatment. These include *Velikova v Bulgaria* from 2000,¹⁰ *Angelova v Bulgaria* from 2002¹¹ and *Ognyanova and Choban v Bulgaria* from 2006.¹² In the *Velikova* case the Court found two violations of Article 2 (substantive and procedural) and a violation of Article 13 (right to effective remedy) of the ECHR. In the *Angelova* case the Court found three violations of Article 2 (causing death, denial of medical treatment and failure to investigate), a violation of Article 3, a violation of Article 5 (right to personal liberty and security) and a violation of Article 13. In the *Ognyanova and Choban* case the Court found two violations of Article 2 (substantive and procedural), a violation of Article 3, a violation of Article 5 and a violation of Article 13. All these cases are currently under review by the CoM for execution of individual and general measures. With the recent judgment in the case of *Sashov and Others v Bulgaria*, the ECtHR found two violations of Article 3 (substantive and procedural) in a case of police ill-treatment of three Romani men during their arrest.¹³ This judgment has not yet been included in the CoM list of Bulgarian judgments pending for execution, but most probably will be after it enters into force.

In its *Interim Resolution CM/ResDH(2007)107* from October 2007 the CoM recalled the Government's obligation to conduct effective investigations capable of establishing the circumstances and the effects of the use of force by police officers, to identify and to punish the perpetrators. It stated clearly that "continuing obligation exists to carry such investigations in these cases where procedural violations of Articles 2, 3 and 13 have been found."¹⁴ Subsequent developments in these cases, however, show a stubborn resistance of the government to reopen the

cases for new investigation. In the *Anguelova* case, the Supreme Prosecutor's Office of Cassation stated that the case could not be reopened and the competent appellate prosecutor concluded that the initial decision to discontinue the proceedings was lawful and justified.¹⁵ In the *Ognyanova and Coban* case, the Supreme Prosecutor's Office of Cassation also concluded that no reopening of the criminal investigation was needed and that the initial prosecutorial decision not to prosecute was lawful and justified.¹⁶ Only in the *Velikova* case does the CoM file refer to "oral" information from the Supreme Prosecutor's Office of Cassation that an inquiry had been opened in 2007.¹⁷ However, if opened at all, there have certainly not been any results yet. Thus, as of March 2010, none of the three judgments had been executed.

In addition to the above cases, the *Velikova* group of cases that are pending execution includes 12 other cases that involve police ill-treatment of non-Romani victims in violation of Article 3 of the ECHR and in one case of Article 2, some dating from 2004. None of the judgments in these cases has been fully executed. The authorities either openly refused to reopen the investigations or brought the perpetrators to trials in which they were not properly punished.¹⁸

With regard to the general measures, the government reports the introduction in 2001 of a judicial review of the prosecutors' decisions to close criminal proceedings, as well as awareness-raising and training activities. Some of these measures, along with the improvement of the legal framework for access to legal aid for indigent defendants contributed to a reduction in the incidence of ill-treatment at the pre-trial stage in the period 1999-2003, measured by the responses of prisoners who were surveyed by NGOs about their pre-trial experiences.¹⁹ This downward trend continued in the period 2004-2005.²⁰ After 2005 the Bulgarian Helsinki Committee (BHC) continued to conduct

regular surveys every year in four Bulgarian prisons among newly-arrived prisoners on their conditions of preliminary detention.²¹ The responses on whether force was used against them during pre-trial proceedings reveal the following results over the past five years:

Use of Force by Police by Year

% of interviewees responding that force was used against them

Year	2005	2006	2007	2008	2009
At the time of the arrest	23.2	20.1	17.1	23.1	24.0
Inside police stations	23.2	20.8	22.9	23.1	22.3

Source: Annual reports of the Bulgarian Helsinki Committee

The responses do not indicate any positive developments in the use of force at the pre-trial stage since 2005. Most importantly, the share of respondents who report the use of force at the time of arrest, when it can be legal under certain circumstances, is the same as those indicating use of force inside the police station, where it is illegal.

CoM *Interim Resolution CM/ResDH(2007)107* urged the Bulgarian government to guarantee the independence of investigations regarding allegations of ill-treatment inflicted by the police. No reform to that effect has been undertaken. The legal and the administrative framework for the investigation of police brutality remains the same as described in the *Velikova* and the *Anguelova* judgments.

Excessive use of firearms

The second group of ECtHR judgments against Bulgaria pending execution according to the CoM are related to the excessive use of firearms by law enforcement officers as a result of which Romani victims were either killed or seriously wounded. The Grand Chamber case of *Nachova and*

15 See the list of pending Bulgarian cases at footnote 3 above, examination of the *Velikova* group of cases.

16 *Ibid.* This conclusion refers to the same act, closing the investigation, which the ECtHR found to be deficient, giving rise to a procedural violation of Article 2.

17 *Ibid.*

18 This was the case of *Nikolova and Velichkova* (judgment of 20 December 2007) in which the ECtHR found two violations of Article 2 (substantive and procedural). The perpetrators of a killing in police custody (police officers) received suspended minimum sentences of more than seven years after the wrongful act. They have continued to serve in the police force and one was even promoted.

19 See: BHC, *Human Rights and the Work of the Bulgarian Police* (Sofia, 2004), 36.

20 See the BHC annual reports on human rights developments in Bulgaria for 2004 and 2005, available at: www.bghelsinki.org.

21 All the surveys were conducted in November-December of the respective year.

Others v Bulgaria from 2005 concerned the killing by military police officers during pursuit of two Romani conscripts who escaped from a prison where they were serving short-term sentences for repeated escapes from their military detachment. The subsequent investigation found that the use of firearms, based on an unpublished regulation of the Military Police, which repeated the provisions of the National Police Act, was lawful.

The ECtHR found that the use of firearms was not absolutely necessary under the circumstances and that the legislative framework regulating the use of firearms and its implementation fell short of the level of protection of the right to life as guaranteed by Article 2 of the Convention. The Court also considered that the investigation into the circumstances of the killing was not effective as it ignored significant facts without proper explanation and was in essence directed at shielding the officers from prosecution. In light of the findings in the *Velikova* and *Anguelova* cases, the ECtHR expressed “grave concern” as to the objectivity and impartiality of the investigators and prosecutors involved.²² Thus, the Court found substantive and procedural violations of Article 2. The other judgment in the group is *Tzëkov v Bulgaria* from 2006. This case involved two police officers shooting a Romani man in the course of a police operation to stop him for an identity check while driving his horse cart. The Romani man was seriously wounded and had to undergo an operation. Subsequent investigation established that the officers’ use of firearms was lawful. The ECtHR found both substantive and procedural violations of Article 3. With the *Tzëkov* judgment the Court made it very clear that the regulation of the use of firearms in the Bulgarian National Police Act is incompatible with Convention standards:

In this case, the Court notes with concern that the relevant provisions of the National Police Act allowed the use of a firearm by the police to arrest a person, regardless of the seriousness of the offense that the person was supposed to have committed, or of the danger he represented. Under this legislation, members of law enforcement could thus legitimately shoot any fugitive who did not stop after a warning. A simple warning

appeared sufficient for the courts to admit that the firearms were used as an “ultimate measure”.²³

Thus, in the subsequent supervision of the execution of the two judgments, insofar as the use of firearms is concerned,²⁴ two issues appear to be of major relevance: amendment of the national legislative framework in line with Convention standards, including the regulation on the use of firearms by the Military Police and the relevant provisions of the National Police Act; and the possibility of reopening of the investigations. According to information submitted by the Bulgarian government to the CoM, a new investigation was opened into the killing of the two men as follow up to the *Nachova* judgment. However, it was soon closed, concluding that the officers had acted in accordance with the rules applicable at the material time. In the *Tzëkov* case, prosecuting authorities expressed the view that the investigation could not be reopened, that the decision to discontinue the proceedings was lawful and justified and that the limitation period had expired. With regard to general measures, in October 2007 the Directorate for Legislation within the Ministry of Justice expressed the view that the legal framework regulating the use of firearms is appropriate and that it had been incorrectly applied by the law enforcement officers and investigating authorities in the two cases.²⁵ This is precisely the opposite of what the ECtHR found in the *Tzëkov* case. As a result, there have been no legislative initiatives to amend the National Police Act.

Bias-motivated crimes

With the *Nachova* judgment, the Grand Chamber found also a violation of Article 14 of the Convention (discrimination) in conjunction with the procedural aspect of Article 2 because of the failure of the authorities to investigate the possible racist motive of the killing of the two Romani conscripts. One of the officers involved in the pursuit, Major G., allegedly pointed his gun at a Romani bystander in a brutal manner and insulted him, saying: “You damn Gypsies!” Failure to investigate the possible racist motive, according to the Court, is “compounded by the behaviour of

22 ECtHR, *Nachova and Others v Bulgaria*, Application nos. 43577/98 and 43579/98, 6 July 2005, paragraphs 116-117.

23 ECtHR, *Tzëkov v Bulgaria*, Application no. 45500/99, 23 February 2006, paragraph 54 (translation from French by the author).

24 The *Nachova* judgment also concerns the legal and policy framework for the investigation of bias-motivated crimes (see below).

25 See the list of pending Bulgarian cases at footnote 3 above, examination of the *Nachova* group of cases.

the investigator and the prosecutors, who [...] disregarded relevant facts and terminated the investigation, thereby shielding Major G. from prosecution.”²⁶

Failure to investigate possible racist motive also led the Court to find a violation of Article 14 in conjunction with Article 2 in the 2007 judgment in *Angelova and Iliev v Bulgaria*. It concerned a racially-motivated attack by a group of teenagers that resulted in the death of a young Romani man. The assailants were prosecuted but more than 12 years after the incident they had not been sentenced and the obvious racist motive was entirely overlooked. The Court was concerned with the delays and omissions in the investigation of the killing, but it was also particularly concerned by authorities’ failure “to make the required distinction [of the racially-motivated assault] from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14 of the Convention.”²⁷

The European Commission against Racism and Intolerance (ECRI) has mentioned the deficiencies of the Bulgarian criminal justice system in prosecuting bias-motivated crimes. In its third and fourth reports on Bulgaria, ECRI urged the Government to insert a provision into the Criminal Code stating that racist motivation for any ordinary offence constitutes an aggravating circumstance.²⁸ The Government’s response had been that in general the Criminal Code directs the courts to take the motives into consideration in sentencing and that “[w]here it is established that the motivation for the commission of a particular offence is racist, this in all cases is considered as an aggravating circumstance.”²⁹ The Government reiterated this position in the CoM review of the *Nachova* judgment.³⁰ How is this to be effected, however, without a specific and explicit direction as to the racist or other bias motivation? Both the *Nachova* and the *Angelova and Iliev* cases demonstrate clearly that neither the investigating authorities nor the courts take racist motive into consideration under the current legal framework. The government had not offered any evidence to ECRI or to any other body that this has ever happened.

Other problems related to the execution of ECtHR judgments and pending structural issues

On 25 March 2010 the ECtHR issued its judgment in *Paraskeva Todorova v Bulgaria*. The Court found a violation of Article 14 in conjunction with Article 6.1 of the Convention in a case of a Romani woman who domestic courts refused to sentence to anything less than effective imprisonment due to her ethnic origin. In its reasoning, the trial court underlined that there was “an impression of impunity, especially among members of minority groups, for whom a suspended sentence is not a sentence.”³¹ This judgment has not become final yet but is likely to enter the already long list of Bulgarian judgments pending execution before the CoM because it demonstrates the lack of sensitivity of the domestic justice system to discrimination and particularly to discrimination against Roma.

Although not explicitly recognised by the CoM, Roma are victims of numerous other structural problems of the Bulgarian justice system. These generate plenty of negative judgments by the ECtHR that subsequently become the subject of extensive reviews for execution by the CoM. These include problems involving:

- Excessive length of criminal proceedings and lack of effective judicial review of the lawfulness of the pre-trial detention (*Kitov* group of cases);
- Length of detention on remand (*Bojilov* and *Kirilov* groups of cases);
- Inhuman and degrading conditions of detention (*Ke-bayov* group of cases); and
- Monitoring of prisoners’ correspondence (*Petrov* group of cases).

All of these groups of cases have been under review by the CoM for years with little progress in implementing general measures at the domestic level. The Court is likely to rule soon on several cases involving excessive use of

26 ECtHR, *Nachova and Others v Bulgaria*, Application nos. 43577/98 and 43579/98, Grand Chamber judgment, 6 July 2005, paragraph 167.

27 ECtHR, *Angelova and Iliev v Bulgaria*, Application no. 55523/00, 26 July 2007, paragraph 117.

28 ECRI, *Report on Bulgaria (fourth monitoring cycle)*, Strasbourg, 24 February 2009, paragraphs 22-25.

29 *Ibid.*, paragraph 53.

30 See the list of pending Bulgarian cases at footnote 3 above, examination of the *Nachova* group of cases.

31 ECtHR, *Paraskeva Todorova v. Bulgarie*, Application no. 37193/07, 25 March 2010, paragraph 10 (translation from French by the author).

firearms against Roma and forced evictions of Romani families from their only homes. Other Bulgarian cases pending before the Strasbourg court and potentially involving Romani victims include placement in special schools for delinquent children in violation of due process standards, inhuman treatment in places for deprivation of liberty and racial discrimination.³²

Conclusion

With almost all judgments explicitly involving Romani victims not executed and with some pending for execution before the CoM for almost ten years (e.g. the *Velikova* judgment), Bulgaria demonstrates gross disregard for the international system of human rights protection and a lack of sensitivity to the structural problems faced by some of the most vulnerable members of Bulgarian

society when confronted with the justice system. The Government's failure to comply with ECtHR judgments creates serious problems for a number of stakeholders. In the first place are the victims of systematic human rights violations for whom justice, including international justice, remains detached from their daily lives and largely an illusion. Second are the local human rights advocates for whom the lack of execution is a strong disincentive in their efforts to bring structural human rights problems of vulnerable groups to the attention of domestic and international bodies. And last, but not least, are the Strasbourg human rights protection organs themselves, which are brought to the role of registrars of violations without the opportunity to significantly influence subsequent developments on the ground. This perhaps makes the reform of the execution of ECtHR judgments an even more urgent problem than the reform of the procedure for adjudication of cases.

³² See among others: *Yordanova and Others v Bulgaria*, Application no. 25446/06; *Mihaylova and Malinova v Bulgaria*, Application no. 36613/08; *V.T. and Others v Bulgaria*, Application no. 51776/08; *Dimov v Bulgaria*, Application no. 57123/08; and *Kirilov and Others v Bulgaria*, Application no. 50292/09.

The Mendacious Government: Implementation of the Romanian Pogrom Judgments

ISTVÁN HALLER¹

Introduction

Following the collapse of communism in Romania and until the middle of the 1990s, about 30 incidents of mob violence were committed against the Romani community.² Hundreds of houses were burnt and several people were lynched: a total of 11 people died. In some instances authorities were present but did not effectively intervene to prevent the significant or fatal results.³ Even later, the authorities refused to address the complaints of the victims which were filed several times with the support of human rights NGOs.

The present article analyses three of the four cases which were resolved before the European Court of Human Rights (ECtHR or the Court) through friendly settlements.⁴ These cases were investigated and promoted by the author while working for Pro Europa League in Tîrgu-Mureş and taken up by the European Roma Rights Centre (ERRC) after 1997.

The friendly settlements

The first judgment of the ECtHR in a case of mob violence against Roma was handed down on 5 July 2005 in the case

of *Moldovan and Others v Romania no. 1*.⁵ The Romanian Government, to avoid a substantive judgment establishing the violation of human rights on a discriminatory basis against Roma, and to avoid the establishment of a precedent, made a generous offer by way of settlement. Some of the Romani applicants (18 persons) accepted the friendly settlement but some of them refused (7 persons). The case was resolved in two separate judgments: one by way of friendly settlement and one establishing a violation of human rights and discrimination against Roma by State authorities.⁶

The friendly settlement awarded a total of 262,000 EUR to the 18 victims; the Government expressed its regret⁷ and promised to adopt measures to combat discrimination:

In particular, the Government will undertake to adopt the following general measures:

- enhancing the educational programs for preventing and fighting discrimination against Roma within the school curricula in the Hădăreni community, Mureş county;
- drawing up programs for public information and for removing the stereotypes, prejudices and practices

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2 It is likely that several cases remain unknown. The cases documented by human rights organisations include the following: Vârghiş (24 December 1989), Reghin (29 January 1990), Turulung (11 January 1990), Lunga (5 February 1990), Casinul Nou (12 August 1990), Cuza Vodă (7 October 1990), Mihail Kogălniceanu (9 October 1990), Bolintin Deal (6-7 April 1991), OGREZENI (16-18 May 1991), Bolintin Vale (18 May 1991), Găiseni (5 June 1991), Plăieşii de Sus (9 June 1991), Cărpiniş (17 March 1993), Hădăreni (20 September 1993), Racşa (29 May 1994) and Băcu (7-8 January 1995). Other undocumented cases were reported later.

3 European Roma Rights Centre, *Sudden Rage at Dawn - Violence Against Roma in Romania* (Budapest: European Roma Rights Centre, 1996).

4 For the fourth judgment *Tănase and Others v Romania* (Application no. 62954/00), the Government did not make any steps toward implementation.

5 European Court of Human Rights (ECtHR), *Moldovan and Others v Romania no. 1*, Application nos. 41138/98 and 64320/01, 5 July 2005. The case is known also as the Hădăreni case, after the name of the village in Mureş county in which the incident took place.

6 The friendly settlement refers to the Romani population in Hădăreni, not only to those who accepted the friendly settlement. Thus, the second group of victims are also entitled to the measures outlined in the friendly settlement.

7 ECtHR, *Moldovan and Others v Romania no. 1*, Application nos. 41138/98 and 64320/01, 5 July 2005. "The Government sincerely regrets the failure of the criminal investigation to clarify fully the circumstances which led to the destruction of the applicants' homes and possessions, which left them living in improper conditions thus obliging a number of them to leave their village, and rendered difficult the applicants' possibility of filing a civil action. It also regrets the length of the civil proceedings before the domestic courts and certain remarks made by some authorities as to the applicants' Roma origin." (Declaration of the Romanian Government made in letters dated 18 May and 19 October 2004, ECtHR, *Moldovan and Others v Romania no. 1*, Application nos. 41138/98 and 64320/01, 5 July 2005).

towards the Roma community in the Mureş public institutions competent for the Hădăreni community;

- initiating programs of legal education together with the members of the Roma communities;
- supporting positive changes in the public opinion of the Hădăreni community concerning Roma, on the basis of tolerance and the principle of social solidarity;



A mob destroyed 18 Romani homes in a pogrom in the village of Hădăreni on 20 September 1993.

PHOTO CREDIT: ISTVÁN HALLER

- stimulating Roma participation in the economic, social, educational, cultural and political life of the local community in Mureş County, by promoting mutual assistance and community development projects;
- implementing programs to rehabilitate housing and the environment in the community;
- identifying, preventing and actively solving conflicts likely to generate family, community or inter-ethnic violence.

Furthermore, the Government will undertake to prevent similar problems arising in the future by carrying out adequate and effective investigations and by adopting social, economic, educational and political policies in the future to improve the conditions of

the Roma community, in accordance with the existing strategy of the Government in this respect. In particular, it shall undertake general measures as required by the specific needs of the Hădăreni community in order to facilitate the general settlement of the case, also taking into account the steps which have already been taken with this aim, namely the rebuilding of some of the destroyed houses.⁸

In the two other cases - *Kalanyos and Others v Romania*⁹ and *Gergely v Romania*¹⁰ - the victims¹¹ refused the friendly settlement. However, the Court considered that it was no longer justified in continuing the examination of the application and ruled in April 2007 that the applicants must accept the settlement.

In terms of practical impact, the friendly settlements in these two cases are identical to the friendly settlement in the case of *Moldovan and Others v Romania*, with the following differences:

- “initiating programs of legal education together with the members of the Roma communities” was changed to “ensure the eradication of racial discrimination within the Romanian judicial system”;
- after the sentence “implement programs to rehabilitate housing and the environment in the community”, the following was added: “in particular by earmarking sufficient financial resources for the compensation”; and
- the last paragraph (“Furthermore, the Government will undertake [...]”) is missing.¹²

Short analysis of the friendly settlements

Some of the measures are directed towards the majority population (combating discrimination); while other measures are aimed at the Romani population (stimulating Roma participation in economic, social, educational, cultural and political life, by promoting mutual assistance and community development projects; and implementing programmes to rehabilitate housing and the environment in the community).

8 ECtHR, *Moldovan and Others v Romania no. 1*, Application nos. 41138/98 and 64320/01, 5 July 2005.

9 ECtHR, *Kalanyos and Others v Romania*, Application no. 57884/00, 26 April 2007. The case is also known as the Plăieşii de Sus case, after the name of the village in which the incident occurred in Harghita county.

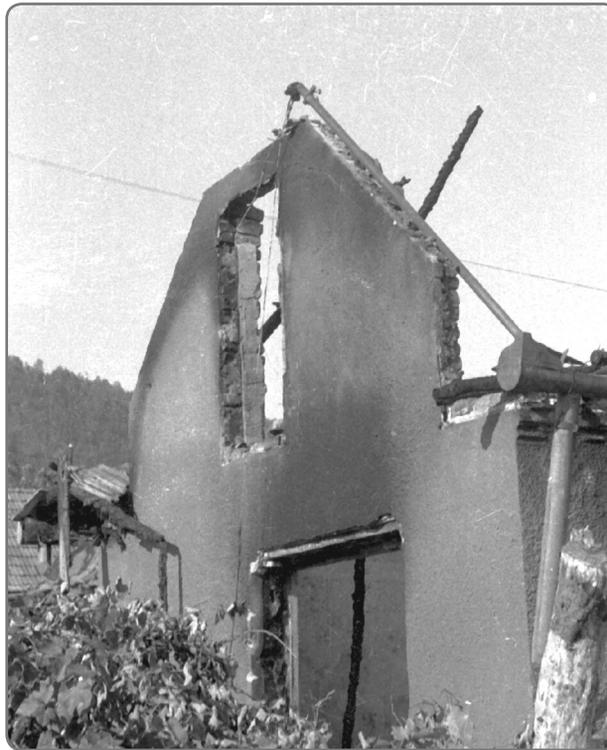
10 ECtHR, *Gergely v Romania*, Application no. 57885/00, 26 April 2007. The case is known also as Casinu Nou case, after the name of the village in which the incident occurred in Harghita county.

11 Four victims filed complaints with the ECtHR in the two cases; dozens of other victims were too afraid to submit complaints because of the possible negative consequences.

12 ECtHR, *Kalanyos and Others v Romania*, Application no. 57884/00, 26 April 2007.

Although this distinction is clear enough, the sphere of beneficiaries remains unclear. Could those victims who were forced to leave their villages by the majority population benefit from the programmes established by the friendly settlement in Hădăreni case? By the later interpretation of the Government,¹³ they could not.¹⁴ The Government's programme would benefit only the present villagers. Ultimately, the perpetrators and residents who were not affected by the conflicts became beneficiaries according to this interpretation.

No action has been taken with regard to the promise to “enhance the educational programs for preventing and fighting discrimination against Roma within the school curricula” in the affected communities. In fact, this appears to be impossible because in Romania the administration of education is centralised; the school curriculum is decided by the Ministry of Education, for all schools, from which exceptions are not allowed.



In addition to razing Romani homes, angry villagers killed three Romani men during the attack in Hădăreni in 1993.

PHOTO CREDIT: ISTVÁN HALLER

Implementation of *Moldovan and Others v Romania no. 1* until 2008

After the judgment became public in July 2005, Pro Europa League informed the Romanian Government (through the National Agency for Roma)¹⁵ of its obligation to implement the settlement. In October of the

same year, a large group of representatives from different ministries and other public authorities, together with NGO experts, visited Hădăreni to determine local needs from various aspects for the future programme to implement the judgment.

After one month, implementation began through a community development programme in Hădăreni, which was designed under the umbrella of the National Agency for Roma and sent to the Government for approval. Approval was delayed and in January 2006 (6 months after the ECtHR judgment was issued) Pro Europa League sent a letter to the Committee of Ministers of the Council of Europe and also informed the government about this.¹⁶

On 19 April 2006, Government Decision no. 523 approved the community development programme in Hădăreni, Mureş County,

for 2006-2008, but the Government omitted to provide a budget for the programme's implementation. In response, Pro Europa League sent a new letter informing the Committee of Ministers of this development one year after the judgment was issued.

Finally, in September 2006 the Government allocated a budget and the programme started. Various aspects of the programme, implemented during the last three months of 2006, were carried out mostly by NGOs: they

13 Government Decision no. 523 from 19 April 2006 approving the Community Development Programme in Hădăreni, Mureş for 2006-2008 established that the programme is for the villagers of Hădăreni, not for the victims of the events in 20 September 1993 or for the parts of the village affected in the case *Moldovan and Others v Romania*.

14 The friendly settlement in the judgment *Tănase and Others v Romania* therefore remains without effect because all of the victims were forced to leave Bolintin Deal. They moved to the edge of Bucharest.

15 The National Agency for Roma is a governmental agency under the General Secretariat of the Government.

16 In the friendly settlement, “the Government considers that the supervision by the Committee of Ministers of the Council of Europe of the execution of Court judgments concerning Romania in these cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context.”

offered short training programmes for police officers, prosecutors, judges, teachers and medical staff; organised intercultural activities in the village Hădăreni; and organised field visits to other multicultural regions in Romania. Although the ECtHR judgment required the implementation of “programmes to rehabilitate housing and the environment in the community” which was interpreted as introducing electricity, natural gas and drinking water; no infrastructural development was undertaken.

At the end of the year, the budget was not fully spent given the late start of the programme; the unspent budget was returned to the Government and all activity was stopped.

On 11 July 2007, the Romanian Government issued a new decree¹⁷ changing some aspects of the programme and transferring responsibility for implementation from the National Agency for Roma to the United Nations Development Programme (UNDP). The funds required for implementation were provided only in October. Subsequently, the programme of preventing and combating discrimination carried out from September – December 2006 was abandoned in favour of infrastructural developments. The most important activities benefited the community at large but not specifically the Romani victims of the pogrom who compose a small portion of the community: the local community centre,¹⁸ kindergarten and school were renovated; eight kilometres of road were paved; water was provided to 50 houses; and electricity was connected to 15 houses (12 of the houses receiving water and electricity belonged to Romani families). Only seven Romani houses were renovated although 14 houses had been burnt and another four destroyed during the 20 September 1993 pogrom in Hădăreni. When bad weather hit the region in November and December of that year, even UNDP recognised that the renovations were of very poor quality.¹⁹

The most important elements of the programme - rebuilding Romani houses, creating job opportunities for Roma and connecting Romani houses to infrastructure - have not been implemented effectively or fully. The National Agency for Roma established the needs of the community using a focus group of 15 villagers: 5 Romanian, 5 Hungarian and 5 Roma. Thus,

with the Roma as a minority in the consultation process, most of the resulting activities did not benefit Roma specifically. Concerning employment, for example, health mediator positions for Roma were planned: six mediators were appointed but only one (an ethnic Hungarian person) was later engaged because it was considered that this was sufficient according to local needs and because there were no funds to pay the salaries.

The government’s practice of making the budget available only in the last months of the year (October, November) in 2006 and 2007 made the realisation of the main objectives of the programme impossible.²⁰

Hunger strike for the implementation of the judgments

In 2008, the Government tried to completely abandon the programme. The author of this article made several statements at different governmental meetings advocating for the implementation of the Government’s commitments but these were without effect. In July of that year, the author announced that he would start a hunger strike in September if by that time the Government did not provide the necessary budget to continue the implementation of the judgment *Moldovan and Others v Romania no. 1* and to start implementation of the April 2007 judgments in *Kalanyos and Others v Romania* and *Gergely v Romania*.

In late August a representative of the government informed the author during a telephone conversation that the situation was resolved. In mid-September a meeting was organised in Bucharest at the UNDP office in the presence of Romanian media, Hădăreni villagers and NGOs to reaffirm the implementation of the programme.

On 2 October 2008, a high-ranking representative of the National Agency for Roma informed the author that the meeting was only a show, that the Government had not approved the requisite budget and that it would not soon be made available. The author immediately started a hunger strike. After 8 days, the Government signed a protocol with NGOs, promising that the judgments would be implemented and that it would

17 Decree no. 734 of 11 July 2007 regarding the modification and completion of Decree no. 523/2006 to approve the community development programme in Hădăreni, Mureş county, for the period of 2006-2008.

18 The goal was to create a space for specific intercultural activities but at present the community centre is used to organise weddings.

19 UNDP, *Implementation of the Hadareni Project, Analyse and Recommendations Realised by the United Nations Development Program in 2009*. On file with the author.

20 According to Romanian legislation, unspent public funds are returned to the state budget at the end of the year.



Violence in Plaiesii de Sus left the homes of many Roma destroyed in 1991.

PHOTO CREDIT: ISTVÁN HALLER

find a way for the funds remaining at the end of 2008 to be used in 2009 instead of being returned to the Government, as had happened previously.

Implementation of *Moldovan and Others v Romania no. 1* from late 2008

With the budget provided after the hunger strike, in October 2008 UNDP restarted implementation of the programme in the village of Hădăreni. However, the promised houses and jobs for Roma were not provided. Instead, the money was spent on a second renovation of the school and the community centre due to substandard work done during the first renovation. At the end of 2008, the unspent funds were returned to the State budget. After that, implementation of the programme was stopped. Although a Council of Europe delegation visited Romania in May 2009, their report has not been published to date. No Council of Europe sanctions

have been applied to Romania and no other organisation has been able to apply sufficient pressure on the Romanian Government to resolve the situation.

Implementation of *Kalanyos and Others v Romania* and *Gergely v Romania* from late 2008

On 8 October 2008, the Romanian Government issued Decision no. 1283²¹ approving a community development programme in the villages of Plăieşii de Sus and Casinu Nou, Harghita county, where the pogroms addressed in these cases took place.

In the framework of this decision, the National Council for Combating Discrimination (NCCD), not the Government, allocated a budget of 100,000 EUR for its implementation. The NCCD used these funds to organise short training programmes for police officers, teachers, judges

²¹ *Official Journal of Romania no. 700*, 15 October 2008.

and prosecutors, and ordered a feasibility study regarding the local infrastructure and job creation opportunities. The results of the feasibility study were sent to the Government but implementation of the programme was stopped.

Conclusion

In short, it could be concluded that the Romanian Government has hardly implemented the ECtHR judgments in these anti-Roma pogrom cases at all. What it achieved, without significant impact,²² came long after the judgment and did not particularly benefit the Romani victims, who remain without houses to date, without important facilities and also without the promised jobs. Several victims, who could not

recover their losses, have left Romania to start a new life in Western European countries. Instead, the Government spent important resources on a small level of community infrastructure developments in an effort to create the impression of genuinely complying with the judgment.

The Council of Europe, although informed of this situation through communications of the ERRC and others to the Committee of Ministers,²³ has not taken any actions against the Romanian authorities. Meanwhile, the Court has imposed another “friendly settlement” on the Romani pogrom victims in *Tănase and Others v Romania*. These facts clearly indicate to the Romanian Government that it can abandon the implementation of these judgments with impunity.

22 It is not possible to claim, for example, that a two-day training programme for a small group of police officers will remove the stereotypes, prejudices and discriminatory treatment directed at the Romani community.

23 ERRC, “ERRC Communication to the Committee of Ministers on Implementation of the judgment”, 26 March 2009, available at: <http://www.errc.org/cms/upload/file/implementation-moldovan-kalanyos-gergely.pdf>.

Greece's Non-Implementation of International (Quasi-)Judicial Decisions on Roma Issues

PANAYOTE DIMITRAS¹

Greece has one of the highest percentages of Roma in its population among European countries; Roma make up some 3-4% of the country's total population. Half of them live in destitute settlements and are subjected to both racist attitudes by the general population and severe discrimination by authorities. This is well reported, not only by NGOs, but also in all reports on Greece from the United Nations and Council of Europe human rights bodies. Additionally, a series of (quasi-)judicial decisions regarding some aspects of that discrimination, namely racist police violence, inadequate housing and evictions and exclusion from or segregation in education have been ignored by Greek authorities.

Access to adequate housing

In a decision taken on 11 December 2009 and made public on 26 May 2010 with regard to the collective complaint *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v Greece*,² the European Committee of Social Rights (ECSR) held unanimously that Greece violated Article 16 of the European Social Charter (Charter) on the grounds that the different situation of Romani families is not sufficiently taken into account with the result that a significant number of Romani families continue to live in conditions that fail to meet minimum standards; that Romani families continue to be forcibly evicted in breach of the Charter; and that the legal remedies generally available are not sufficiently accessible to them.

In the 2009 decision, the ECSR recalled that in its previous decision of 8 December 2004 in *European Roma Rights Centre v Greece*³ it had found that the situation in Greece was in breach of Article 16 of the Charter. In that decision,

the ECSR found: there was an insufficiency of permanent dwellings available for Roma and an insufficient number of temporary dwellings or sites which meant that many Roma were living in unacceptable conditions; it also found that the situation in Greece was in breach of Article 16 of the Charter on the grounds *inter alia* that Roma were often forcibly evicted, contrary to the requirements of the Charter. The Greek Helsinki Monitor (GHM) was the main source of information for these complaints and worked closely with the two complainant organisations; the European Roma Rights Centre (ERRC) and INTERIGHTS.

By recalling its 2004 decision, the ECSR was in fact criticising Greece for having failed to adopt the necessary measures to implement the decision taken five years earlier. The Greek Government had provided the ECSR with information on progress achieved in ameliorating the living conditions of Roma. According to this information, 9,000 housing loans had been approved and over 5,000 disbursed, a permanent settlement in Messinia had been constructed and medical and social centres had been established. The Government also provided information on recent developments in anti-discrimination law. Moreover, concerning the substantial amount of evidence on alleged forced evictions submitted to the ECSR, the Government disputed the details of certain circumstances surrounding some of them.

The ECSR found that there is significant evidence that many Roma continue to live in settlements which fail to meet minimum standards. It based its assessment not only on material submitted by INTERIGHTS, but also on the other sources such as a report of the Council of Europe's Commissioner for Human Rights,⁴ the 2008 report of

1 Panayote Dimitras is the Greek Helsinki Monitor (GHM) Spokesperson.

2 European Committee of Social Rights (ECSR), *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v Greece: Decision on the Merits*, Complaint No. 49/2008, 11 December 2009, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC49Merits_en.pdf.

3 ECSR, *European Roma Rights Centre (ERRC) v Greece: Decision on the Merits*, Complaint No. 15/2003, 8 December 2004, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC15Merits_en.pdf.

4 Commissioner for Human Rights, *Follow up Report on the Hellenic Republic (2002-2005)*, 29 March 2006, available at: <https://wcd.coe.int/ViewDoc.jsp?id=984125&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

the Greek National Commission for Human Rights,⁵ the Greek Ombudsman's 2007 annual report,⁶ the UN Independent Expert on Minority Issues' report to the UN General Assembly following a 2008 visit to Greece,⁷ the report of the European Commission against Racism and Intolerance⁸ and a report of the European Union Agency for Fundamental Rights (FRA) on the housing conditions of Roma and Travellers in the EU.⁹ The ECSR referred in particular to the Spata settlement near Athens where Romani families live in prefabricated housing with-



In 2007 Roma were relocated to a "model" settlement in Meligala, located far from the town making access to school impossible for the children residing in the settlement.

PHOTO CREDIT: GREEK HELSINKI MONITOR

out electricity, running water or regular waste collection services; to the settlement in Aspropyrgos which has no basic public utilities; and to that in the city of Komotini as examples. The ECSR added that serious infrastructure deficiencies are to be found in many other settlements, as evidenced by the recommendations of the Greek Ombudsman (the national equality body), which stressed that arrangements should be made to include all Romani settlements in water and power supply and sewage networks.¹⁰

Countering the Government's claim that the legislation provides adequate safeguards for the prevention of discrimination, the ECSR considered that in the case of Roma, merely ensuring identical treatment as a means of protection against any discrimination is not sufficient. In order to achieve equal

treatment, differences must be taken into account. The ECSR emphasised that the specific differences of Roma were not sufficiently taken into account and therefore Roma were subject to discrimination when it came to the enjoyment of the right to housing under Article 16 of the Charter.

The ECSR concluded that the Greek Government had failed to provide information demonstrating that the law on evictions in Greece provides for consultation with those to be affected, reasonable notice of and information on the eviction and the provision of alternative accommodation.

The Government had also failed to respond adequately to the allegations that Romani families are not adequately consulted prior to being forcibly evicted in practice and that no serious efforts are made to find alternative sites or accommodation. As regards the accessibility of existing legal remedies it appeared to the ECSR that many Romani families are not sufficiently aware of their right to challenge an eviction notice, do not know how to exercise it and/or simply do not avail themselves of their right to legal aid.

Affirming that there was sufficient material both in the complaint and in the external sources listed above to substantiate the claim that a significant number of Roma continue to be unlawfully evicted in breach of the Charter, the Committee referred *inter alia* to the forced evictions of Roma in

5 Greek National Commission on Human Rights, *Report and Recommendations of the NCHR on Issues Concerning the Situation and Rights of the Roma in Greece*, 18 February 2009, available at: <http://daccess-ods.un.org/TMP/6192327.73780823.html>.

6 Greek Ombudsman, *Promoting equal treatment - The Greek Ombudsman as national equality body: Report 2007*, 15 March 2008, available at: <http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf>.

7 UN Human Rights Council (HRC), *Report of the Independent Expert on Minority Issues, Gay McDougall – Addendum – Mission to Greece (8-16 September 2008)*, 18 February 2009, available at: <http://daccess-ods.un.org/TMP/8696818.html>.

8 European Commission against Racism and Intolerance (ECRI), *ECRI Report on Greece (fourth monitoring cycle)*, 15 September 2009, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf>.

9 European Union Agency for Fundamental Rights, Greece RAXEN National Focal Point, *Housing Conditions of Roma and Travellers*, October 2009, available at: http://fra.europa.eu/fraWebsite/attachments/RAXEN-Roma%20Housing-Greece_en.pdf.

10 Greek Ombudsman, *Promoting equal treatment - The Greek Ombudsman as national equality body: Report 2007*.

Patras, Votanikos (Athens) and Chania. It further noted that in 2007, the Greek Ombudsman found cases of forced eviction where no alternative housing had been identified with the necessary infrastructure to ensure dignified living conditions and recommended that this practice cease. Finally, the ECSR concluded that the legal remedies available in Greece cannot be considered to be sufficiently accessible. The special circumstances of Romani families threatened by eviction imply that special support should be available including targeted advice on availability of legal aid and on appeals.

In a related development, Thomas Hammarberg, Council of Europe Commissioner for Human Rights, met with Theodora Tzakri, Deputy Minister of Interior, Decentralization and e-Governance of Greece in Athens in February 2010; during the meeting the issue of unauthorised Romani settlements was discussed.¹¹ The Commissioner provided copies of two letters that were sent in 2006¹² and 2007¹³ to the then Minister of Interior to which he had not received a reply.

In the 2006 letter, Commissioner Hammarberg mentioned that although abusive decisions about evictions are often taken at the local level, this does not absolve the central Government from responsibility under its international obligations. He added that the State should exercise oversight and, if necessary, regulate local action. It was reported that during a brief visit in September 2006 to Patras he saw Romani families living in very poor conditions including a family whose simple home had been bulldozed away that day. It was obvious that the “procedure” for making the family homeless was carried out in total contradiction to well-established human rights standards. Commissioner Hammarberg was also disturbed that non-Romani people appeared on both sites during his visit and behaved in an aggressive, threatening manner to the extent that his interviews with some of the Romani families were disturbed. He had expected that the police would have offered more obvious protection and he did not get the impression of a principled, clear position by the local authorities against

such xenophobic, anti-Gypsy tendencies. He concluded with a request for further information on the measures taken to compensate and relocate Romani families after eviction or “administrative suspension” and on their security of tenure in current housing.

In his second letter, following a visit to Athens in December 2007, Commissioner Hammarberg asked for the Minister’s urgent attention to the situation in the Athens municipality, in Votanikos, where a large number of Roma were facing imminent eviction. This case was known since at least the summer of 2007 but no alternative and acceptable accommodation had been found. He expressed his extreme concern about the grave consequences such an action would have on these vulnerable people, many of whom were children. He reported to have been informed that the local and regional authorities, who bore the main responsibility on the ground, had so far either not reacted at all or failed to take adequate measures in response to the constructive proposals made by the Greek Ombudsman. He recalled that alternatives to evictions – or removal by “administrative sanction” due to illegal occupation of property – should be sought in genuine consultation with the people affected and adequate resettlement alternatives have to be offered by responsible authorities. The Commissioner added that this, apparently, had not been the case in Votanikos although this problem had been known to the responsible authorities for a considerable amount of time. This was not acceptable under any circumstances. He asked the Minister to do everything possible to ensure that the local and regional authorities take urgent measures to find and offer adequate alternative accommodation and that the evictions be postponed until a solution was found. He then requested further information on the measures taken to ensure that these and other vulnerable Roma are not evicted from their dwellings without adequate protection and alternative accommodation.

Following the 2006 and 2007 letters, the Minister of Interior did not take any action to prevent the subsequent evictions of Roma in Patras and Athens. Although she responded,

- 11 Commissioner for Human Rights, *Letter to Theodora Tzakri, Deputy Minister of Interior, Decentralization and e-Governance of Greece*, 8 March 2010, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1538638&SecMode=1&DocId=1565476&Usage=2>.
- 12 Commissioner for Human Rights, *Letter to Prokopis Pavlopoulos, Hellenic Minister for the Interior, Public Administration & Decentralisation*, 1 December 2006, available at: <http://wcd.coe.int/ViewDoc.jsp?id=1100661&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.
- 13 Commissioner for Human Rights, *Letter to Prokopis Pavlopoulos, Minister for the Interior, Public Administration & Decentralisation*, 19 December 2007, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1413785&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

Deputy Minister Tzakri did not provide any of the information requested by the Commissioner.¹⁴

On 22 June 2007, GHM filed a communication to the UN Human Rights Committee on behalf of the Patras Romani family whose eviction was reported in the Commissioner's December 2006 letter. Moreover, on 20 October 2007, GHM and the ERRC filed an application with the European Court of Human Rights (ECtHR or the Court) on behalf of 16 Roma evicted from Votanikos in Athens,¹⁵ following the Commissioner's 2007 letter. Decisions by both (quasi-)judicial bodies are pending.

The Council of Europe's expert bodies have therefore repeatedly cited Greece for the violation of Roma housing rights, in general and in specific communities. Greek authorities have consistently failed to take any action to remedy the situation and they have ignored or not responded adequately to the decisions, reports and letters sent to them by those institutions.

Access to equal education

On 5 June 2008, the ECtHR published its judgment in *Sampanis and Others v Greece*, a case filed by GHM on behalf of 11 parents from the Psari, Aspropyrgos Romani community.¹⁶ The Court held unanimously that there had been a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR or the Convention) in conjunction with Article 2 of Protocol No. 1 (right to education) on the basis of a State failure to provide schooling for the applicants' children and of their subsequent placement in separate classes because of their Romani origin. The Court also found a violation of

Article 13 (right to an effective remedy) of the Convention. The Court concluded that, in spite of the authorities' stated willingness to educate Romani children, the effective conditions of school enrolment for Romani children and their placement in special preparatory classes – in a separate “annex” to the 10th Primary School – ultimately resulted in discrimination against them.

Following the judgment, on 22 September 2008, a European Commission against Racism and Intolerance (ECRI) delegation visited the Psari community and the school annex, along with a GHM and Minority Rights Group-Greece (MRG-G) delegation. In 2009 ECRI issued a report on Greece elaborating the continuing problems of Roma school segregation in general and in particular in the Psari, Aspropyrgos Romani community.¹⁷ During its visit, the delegation met with the Mayor of Aspropyrgos on 25 September 2008, where he expressed his hostility towards Roma. In its report, ECRI expressed its concern that Roma remain at a great disadvantage with regard to education; there are still cases of schools refusing to register Romani children for attendance, in some instances due to pressure from some non-Romani parents; and there are also cases of Romani children being separated from other children within the same school or in the vicinity. It then referred to the ECtHR judgment in the Psari, Aspropyrgos case. ECRI urged the Greek authorities to strengthen the measures taken to address the problems faced by Romani children in education, with the main focus on exclusion, discrimination and under-performance in full compliance with the Court's judgment in *Sampanis and Others v Greece*¹⁸ and ECRI's *General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education*.¹⁹

Two weeks before the ECRI visit, on 9 September 2008, UN Independent Expert on Minority Issues Gay McDougall

14 Theodora Tzakri, Deputy Minister of Interior, Decentralization and e-Governance of Greece, *Letter to Commissioner for Human Rights*, 13 April 2010, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1538650&SecMode=1&DocId=1565486&Usage=2>.

15 European Court of Human Rights (ECtHR), *Demir Ibishi and Others against Greece*, Application no. 47236/07, Statement of facts, 4 February 2009, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=847297&portal=hbkm&source=externalbydocnumbmer&table=F69A27FD8FB86142BF01C1166DEA398649>.

16 ECtHR, *Sampanis and Others v Greece*, Application no. 32526/05, 5 June 2008, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=836273&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

17 ECRI, *Report on Greece (fourth monitoring cycle)*. ECRI also reported that Roma living in inadequate settlements also face at best indifference and at worst hostility (“as noted in Aspropyrgos”) on the part of some local authorities and non-Roma.

18 ECtHR, *Sampanis and Others v Greece*.

19 ECRI, *General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education*, 15 December 2006, available at: http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n10/eng-recommendation%20nr%2010.pdf.



The segregated school for children from the Psari, Aspropyrgos Romani community was vandalised and set on fire on 4 April 2007. The school was rebuilt and the children remain there until today.

PHOTO CREDIT: GREEK HELSINKI MONITOR

(UN IEMI) met with Ministry of Education officials to discuss implementation of *Sampanis and Others v Greece* and the access of Psari Romani children to school. The next day she visited the Psari community and the school annex, along with GHM and MRG-G. In the ensuing report,²⁰ Ms McDougall reported that in Psari, Aspropyrgos, education for the settlement's children remains a highly controversial issue and that as of the publication of her report, Greece had not satisfactorily resolved the situation in compliance with the European Court ruling. At the time of the visit, the Romani children were placed in the same "annex" of the main school that was condemned by the European Court judgment. Community members and civil society representatives believed that pressure from parents and the local authorities was a significant factor in the children's exclusion. The UN IEMI provided details about that school annex which consists of a fenced, concrete compound with two metal prefabricated units, one of which was used for teaching. The report noted that the teaching unit had been vandalised – which was never

investigated - and had no teaching facilities such as desks and chairs. A permanent security presence was required to guard against further vandalism, not carried out by Roma themselves. During the visit, Ministry of Education representatives acknowledged continuing problems regarding education of Roma. They agreed that significant challenges stem from local authorities and from communities that do not want Roma to attend mainstream schools, resulting in some cases in "branches" of schools being opened for Roma. The Ministry of Education indicated that it would integrate the annex into the main school by the end of October 2008.

However, the Ministry, with the help of the Greek Ombudsman, tried to integrate the annex into the new 11th Primary School, not the 10th Primary School which is closest to the Romani settlement (closer than the annex itself) and was the subject of the case. The 11th Primary School is not only further away but is on the other side of the major closed highway (Attiki Odos) and is located in another

²⁰ HRC, *Report of the Independent Expert on Minority Issues, Gay McDougall – Addendum – Mission to Greece (8-16 September 2008)*.

school district. However, this also failed because of opposition of the Mayor of Aspropyrgos, as detailed below.

In a 29 December 2008 letter to GHM, the Ombudsman reported that the decision to move the Romani pupils to the 11th Primary School rather than the nearby 10th Primary School had been made following an on-site visit of the Ministry of Education's Deputy Ombudsman for Children, the Special Secretary for Intercultural Education, the regional education director and the headmasters of the 10th and 11th primary schools; most likely before the ECRI visit. No representative of the Romani community or the 12th Primary School (as the segregated school annex to the 10th Primary School had been renamed) headmaster was present. On 24 September 2008, regional education authorities asked the Aspropyrgos Municipal Education Committee to approve the merger of the 12th School into the 11th School, alerting them that the operation was being watched by EU institutions [sic] and the Ombudsman following complaints against the country. After the Mayor met with ECRI, on 25 September 2008 the Aspropyrgos Municipal Education Committee supposedly met and rejected the proposal "to merge the 12th with the 11th Primary School with the raising of a separation wall that would indeed point at the Athinganoi and will accentuate the problems of order and co-existence between the repatriated Pontic brethren and the children of the passers-by Romani tent-dwellers."²¹

The decision clearly referred to the plan to raise a separation wall so that there is no contact between Romani and non-Romani pupils. It also made clear that municipal authorities favoured the Pontics (calling them "brethren"), while they were hostile if not racist towards the Roma, whom they called passers-by (διερχόμενοι) even though many have lived in Aspropyrgos longer than most Pontics.²²

Regional educational authorities insisted on the merger. On 2 October 2008, regional education authorities reported the opposition of the municipality and non-Romani parents to the merger and the detailed arguments – most obviously racist – of the local Parents Association. The Mayor instigated a sit-in at the 11th School with the parents

on 6 October 2008 to protest plans to transfer the 12th School. He publicly supported the sit-in with a letter full of racist language and attacks against those advocating for Roma rights which he sent to the Minister of Education and the regional education authorities along with a similar letter from the 11th School Parents Association. The following excerpt shows that the annex of the 10th Primary School, now the 12th Primary School, was created not because of any space reasons but because of a deliberate racially-discriminatory decision:

The establishment of the 12th Primary School was in no way intended by the Municipality or the Citizenry of Aspropyrgos to impose the segregation of Athinganoi children from the other pupils attending schools in the district. It became instead an unavoidable necessity because tent-dwelling Athinganoi themselves choose to live a nomadic life; their day-to-day living amidst garbage dumps of their own making; their indifference to rudimentary standards of hygiene, and, mainly, their persistence in illegal activities that have a negative impact primarily on vulnerable social groups, but also on the residents of Aspropyrgos in general.²³

On 17 October 2008, the Prefect of Western Attica rejected the move of the 12th Primary School into the building of the 11th Primary School and the construction of a separation wall.

In their 1072nd meeting on 3 December 2009, the Council of Europe Committee of Ministers in charge of overseeing the execution of Court judgments published a related decision. They noted with interest the information provided at the meeting by Greek authorities on the individual measures taken to allow the schooling of the applicants' children in ordinary classes, as well as on general measures aimed at including Romani children in the education system in a non-discriminatory manner. They noted that this information needed to be evaluated in depth and invited the Greek authorities to submit it in the form of a detailed action plan/action report. Finally, they decided to resume consideration of the execution of the judgment at their 1086th meeting in

21 Aspropyrgos Municipal Education Committee, Minutes 4/2008: 25 September 2008 (on file with GHM). "Athinganoi" is the term used for administrative purposes for Roma in Greek.

22 Pontics are Greeks repatriated from the former Soviet Union.

23 Municipality of Aspropyrgos, press release of the Mayor's letter, 6 October 2008, available at: <http://www.aspropyrgos.gr/PressOfficeNews-View.action?newID=29>.

June 2010.²⁴ At that meeting the Deputies decided to resume consideration of this item at the latest at their 1100th meeting in December 2010 in the light of the information already provided and on possible further information to be provided on individual and general measures.

The Committee also noted that information on individual and general measures was sent by the applicants' representative, GHM, in December 2009, and by the Greek authorities in January and March 2010. All information submitted is currently under examination. In its materials submitted in December 2009,²⁵ GHM provided detailed documentation showing that neither of the Greek State's claims were accurate: Romani children of the Psari, Aspropyrgos Romani community continued to attend the same segregated school rather than being schooled in ordinary classes; and segregated classes or schools only for Romani children continued to exist throughout Greece, contrary to the Government's claim that Romani children were integrated in the education system in a non-discriminatory manner.

Indeed, on 30 May 2009, GHM and MRG-G wrote to Mr Stefanos Vlastos, the Ministry of Education's then-Special Secretary for Cross-Cultural Education, about the lack of access to non-segregated education of Romani children in Psari, Aspropyrgos, and three other communities, one of them being Sofades (Karditsa – Thessaly). After not receiving an answer, on 20 July 2009, GHM and MRG-G wrote to Mr Aris Spiliotopoulos, the then-Minister of Education, appending parental authorisation from the three communities: for Psari they asked that the pupils attend the 10th School (mainstream) or that, if necessary, a school annex be created temporarily by the settlement. They also requested that a special support programme for the Romani pupils' integration be launched like the one which proved to be successful for Muslim Roma in Thrace. Both letters remained unanswered and were made public on 1 August 2009.²⁶

On 27 August 2009, GHM and MRG-G sent an urgent complaint to the Greek Ombudsman, and attached the unanswered letter to the Ministry of Education. On 12 March 2010, the Ombudsman responded that it had decided not to act upon the merits of the complaint: this was the second refusal to act on a GHM complaint against the continued racial segregation of the Romani pupils at the Psari, Aspropyrgos school (filed in September 2008).²⁷

In 2009-2010 the segregation of Romani pupils continued in Psari, Aspropyrgos and Sofades (and in many other schools around Greece) contrary to what Greek authorities were reported to have assured the Committee of Ministers at its December 2009 meeting.

As a result of the above on 7 October 2009, GHM filed an application with the ECtHR on behalf of 140 Roma residing in Psari, Aspropyrgos (98 children of mandatory school age and 42 parents or legal guardians). Subsequently, on 29 December 2009, GHM filed another application with the Court on behalf of 23 residents of the Sofades New Roma Housing Unit (15 children of mandatory school age and 8 parents). From May-July 2010, in cooperation with the ERRC, GHM and MRG-G collected information about dozens of Romani communities throughout the country. GHM, MRG-G and the ERRC sent requests to the Minister of Education to secure non-discriminatory access of the respective Romani pupils to education in September 2010; for many of whom such access had been denied in 2009-2010.

Freedom from police violence

On 22 April 2010, the ECtHR published its fourth judgment on police violence against Roma in Greece. In *Stefanou v Greece* the Court ruled that Greece violated Article 3 (torture or inhuman or degrading treatment and punishment) and Article 6.1 (excessive length of proceedings) of

24 Committee of Ministers, *Ministers' Deputies Decisions CM/Del/Dec(2009)1072*, 7 December 2009, available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282009%291072&Language=lanEnglish&Ver=immediat&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

25 GHM, *Memorandum on the Implementation by the Greek State of Individual and General Measures Flowing from the Sampanis and Others v Greece ECtHR Judgment* (10 December 2009), available at: http://cm.greekhelsinki.gr/uploads/2010_files/memo_on_execution_of_sampanis_ecthr_judgment_2008-2009.doc.

26 GHM and MRG-G, *Greece: Systematic discrimination of Roma access to education despite conviction by ECtHR* (August 2009), available at: <http://cm.greekhelsinki.gr/index.php?sec=194&cid=3489>.

27 Greek Ombudsman, *Letter to GHM and MRG-G*, Reference. no. 15965/2009/4: 12 March 2010.

the ECHR for the ill-treatment of a 16-year-old Romani boy named Theodore Stefanou.²⁸

Of the three previous ECtHR convictions against Greece for police violence against Roma, the first ruling, issued on 13 December 2005 in a case filed by GHM and the ERRC, concerned the ill-treatment of 18-year-old Romani youths, Lazaros Bekos and Eleftherios Koutropoulos, on 8 May 1998. Greece was found to have violated Articles 3 (torture or inhuman or degrading treatment or punishment; absence of effective investigation) and 14 (non-investigation of racial motive).²⁹

The second ruling, issued on 21 June 2007 in a case filed by GHM, concerned the shooting of a 17-year-old Romani youth, Ioannis Karagiannopoulos, on 26 January 1998, rendering him an invalid. Greece was found to have violated Article 2 in substance (injury that caused permanent disability by police) and in procedure (absence of effective investigation).³⁰

The third ruling, issued on 6 December 2007, in a case filed by GHM and the ERRC, concerned the ill-treatment of a 20-year-old Romani woman, Fani-Yannula Petropoulou-Tsakiris, on 28 January 2002. Greece was found to have violated Article 3 (absence of effective investigation of ill-treatment by police) and Article 14 (non-investigation of racial motive and racist behaviour).³¹

Moreover, on 24 July 2008, in a case submitted by the World Organization Against Torture (OMCT) and GHM, the United Nations Human Rights Committee (HRC) found that Greece violated Article 2.3 (right to an effective remedy) read together with Article 7 (prohibition of torture) of the International Covenant on Civil and Political Rights (ICCPR) concerning the lack of an effective investigation into the allegations of police brutality against a 21-year-old Romani man, Andreas Kalamiotis, on 14 June 2001.³²

In addition to these five Roma-related police violence cases, there have been seven other Greek police violence cases (four filed by GHM) that led to the finding of similar violations by the ECtHR or the HRC since December 2004.

In December 2010, the Committee of Ministers will once again examine Greece's execution of the non-pecuniary aspects in the eight police violence-related judgments that have become final (out of a total of ten).³³ Concerning the Roma-related cases, in a letter dated 10 June 2009 Greek authorities informed the Committee of Ministers that in the case of *Karagiannopoulos* and that of *Bekos and Koutropoulos*, new investigations would not be possible because domestic criminal proceedings ended in the acquittal of the accused police officers. On the other hand, concerning the *Petropoulou-Tsakiris* case, whose merits were never examined by domestic courts, the competent State Prosecutor informed the Greek Government that a new investigation would be carried out following the Court's judgment. However, one year later this investigation had yet to be launched.

In addition, on 14-15 October 2008, a high level meeting took place in Athens between the Committee of Ministers secretariat and Greek authorities during which questions relating to the individual measures in all these police violence cases were raised. Following this meeting, Greek authorities undertook to set up promptly, and at the latest before June 2009, a committee with three independent members who would be competent to assess the possibility of opening new administrative investigations in cases in which investigatory failures were found by the ECtHR.³⁴ One year later, this committee had yet to be formed.

In the agenda of its December 2010 meeting, the Committee noted that additional information is expected related to

28 ECtHR, *Stefanou v Greece*, Application no. 2954/07, 22 April 2010, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=866810&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

29 ECtHR, *Bekos and Koutropoulos v Greece*, Application no. 15250/02, 13 December 2005, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=790893&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

30 ECtHR, *Karagiannopoulos v Greece*, Application no. 27850/03, 21 June 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=819088&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

31 ECtHR, *Petropoulou-Tsakiris v Greece*, Application no. 44803/04, 6 December 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=826734&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

32 HRC, *Kalamiotis v Greece*, Communication no. 1486/2006, CCPR/C/93/D/1486/2006, 5 August 2008, available at: <http://www1.umn.edu/humanrts/undocs/1486-2006.pdf>.

33 Council of Europe, *Cases or group of cases against Greece*, available at: http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Greece_en.pdf, 18-22.

the investigation resumed in the *Petropoulou-Tsakiris* case and on the legislative developments concerning the establishment of the independent committee and is prerogatives.³⁵

Concerning the follow-up of the *Kalamiotis* case, the HRC recommended an effective remedy and appropriate reparation.³⁶ The Greek State refused to decide on an award for compensation and recommended that the author of the communication institute an action for compensation for damages suffered due to his ill-treatment.³⁷

OMCT and GHM, on behalf of the victim, submitted to the HRC that the State party had in effect rejected the Committee's Views, referring to the Minister of Justice's 22 September 2008 response to a parliamentary question in which he refuted the Committee's decision. OMCT and GHM informed the HRC that there is no indication that any domestic investigation will be re-opened to ensure punishment of the police officers involved. They attached information sent from the State party to the Committee of Ministers of the Council of Europe concerning the execution of judgments of the ECtHR, in which it refers to the State party's intention to have the competent prosecutor re-examine the files of certain cases. In Mr Kalamiotis' view, the same procedure should be applied in his case.

As to Greece's claim that the author should seek compensation by filing a lawsuit, OMCT and GHM submitted that the limitation period for such claims is five years and thus expired on 31 December 2006. Moreover, Greek administrative courts are extremely slow at considering these types of cases (on average it takes 8-10 years), which is why the ECtHR has found many cases of excessive length violations against the State party. OMCT and GHM argued that this was not the most appropriate procedure, as this administrative court is normally full of cases which first demand a finding of liability of the State and then a decision as to the quantity of compensation. In the current case, it is merely a question of the amount of compensation to be awarded, a measure which the Greek Legal Council of State has the authority to approve. As the State party has

acknowledged, the Views are equivalent to the judgments of the ECtHR and constitute *res judicata*, leaving only the question of the amount of compensation to be decided.³⁸ Thus, the amounts awarded in similar Greek cases by the ECtHR can serve as a fair basis for Mr Kalamiotis' compensation through a similar decision of the Legal Council of State and the Minister of Economy and Finance.

In reply, the State party noted that the Views did not hold that the victim had been ill-treated but that there were deficiencies in the procedure of the ongoing inquiry. Thus, the civil liability of the State can only be founded on the judgment of a court, the latter of which will also consider the issue of the limitation period of the author's claim. Any time limit for a claim against the State only starts running from the time it can be pursued. The State party argued that no one can foresee the outcome of a domestic remedy or question its efficiency without giving domestic courts the chance to consider a claim for compensation after the adoption of the Views.

In its October 2009 session, the HRC approved the Rapporteur's recommendation that a meeting be organised with the State party.³⁹

Conclusion

Greek authorities as a rule do not execute international (quasi-)judicial decisions in cases related to Roma (as well as in cases related to non-Roma). Greek authorities did very little to implement the ECSR decision on Roma housing and evictions: as a result, when faced with a new collective complaint, the ECSR found Greece to have violated once again the same Charter provisions and for the same reasons. For more than three years, two Ministers of Interior refused to provide answers to the Commissioner for Human Rights on the specific cases of evictions he had expressed concern about. Greek education authorities refused to send the Romani children to a desegregated school after an ECtHR judgment. Instead,

34 *Ibid.*

35 On file with the author.

36 HRC, *Kalamiotis v Greece*, Communication no. 1486/2006, CCPR/C/93/D/1486/2006, 5 August 2008.

37 On file with the author.

38 UN HRC summary of follow-up to the *Kalamiotis* case: September 2009 (on file with GHM).

39 On file with the author.

they tried to “hide” the segregated school in the building of another school for non-Roma with a separation wall between the two but anti-Roma local authorities refused even that. Furthermore, Greek authorities misinformed the Council of Europe that they did integrate the Romani pupils concerned and that they were making efforts to include Romani pupils in schools in a non-discriminatory manner, even though the country is full of segregated schools and classes. Finally, the Greek Government made vague commitments to the Council of Europe and the United Nations about possible remedies in cases of police violence, none of which they effectively pursued.

As long as the competent bodies of the Council of Europe (Committee of Ministers and Commissioner for Human Rights) and the United Nations (Human Rights Council) do not publicly cite Greece for non-compliance with its international obligations or even consider possible sanctions, the violations found by the international (quasi-)judicial bodies will continue. In this situation, the best that Roma (and non-Roma) can hope for is a decision by these bodies that will vindicate them and award a small amount of compensation many years after their rights were violated, provided they can afford a lawyer or find an NGO able to take their cases to these institutions.

What Happened to the Promise of *D.H.*?

LYDIA GALL AND ROBERT KUSHEN¹

In *D.H. and Others v The Czech Republic*, the case of 18 Romani applicants from Ostrava in the Czech Republic, the European Court of Human Rights (ECtHR or the Court) handed down a groundbreaking decision defining discrimination of Romani children in access to education.² The promise inherent in the judgment: fair treatment, equal educational opportunities and finally real improvement in the situation of Roma – was at that time unparalleled. However, more than two and a half years later and despite continuous efforts by local and international NGOs to push the Government to adhere to its international obligations, few changes have been brought to secure the abolishment of segregation within the Czech education system, in particular as it concerns Roma, and to promote the inclusive education of Romani children.

Background

Quality education lies at the core of any community's potential for economic and social progress and Roma face widespread discrimination in the field of education. In view of the above, the European Roma Rights Centre (ERRC) sought to address the problem of discrimination in part through litigation. In the Czech Republic as elsewhere, this discrimination manifested itself (in part) in seemingly neutral legal provisions whose effect was to disproportionately track Romani children into substandard special education. In 1998, the ERRC, together with local partners, brought a test case with the aim of securing a judicial ruling stating that the tracking of Romani children into special education was discriminatory.

With statistical data gathered over a period of six months and carefully selected litigants, the ERRC and

partners chose two separate legal routes to challenge the discrimination suffered by Romani children in education – through administrative review and at the Constitutional Court level, both of which failed.

As a result, in early 2000 18 Romani applicants filed a submission with the ECtHR alleging violations of Articles 3 (prohibition against degrading treatment), 6 (right to fair trial) and Article 2 of Protocol no. 1 (right to education) taken together with Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR or the Convention).³ The applicants contended that their placement in special schools for mentally disabled children made them suffer severe educational, psychological and emotional harm.

The judgment

In November 2007, the Grand Chamber of the Court held the Czech government in breach of its obligation not to discriminate on the basis of racial or ethnic origin in respect of access to education. The decision was a milestone for Roma rights and for the jurisprudence of the Court, which found a violation of Article 14 in relation to a pattern of racial discrimination in a particular sphere of public life for the first time: in this case, public primary schools.⁴ The Court further underscored that the ECHR addresses not only specific acts of discrimination but also systemic practices that deny the enjoyment of rights to racial or ethnic groups.⁵ It also clarified that racial segregation amounts to discrimination in breach of Article 14⁶ and went out of its way to note that the Czech Republic is not alone in that discriminatory barriers to education for Romani children are present in a number of

1 Lydia Gall is an ERRC Lawyer. Robert Kushen is the ERRC Executive Director.

2 European Court of Human Rights (ECtHR), *D.H. and Others v The Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

3 Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14*, Rome, 4.XI.1950, available at: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

4 ECtHR, *D.H. and Others v The Czech Republic*, paragraph 209.

5 *Ibid.*, paragraph 209.

6 *Ibid.*, paragraph 171.

European countries.⁷ The Court moreover stressed that, as a legal matter, it is impossible for individuals to consent to discrimination; the right to be free from discrimination cannot be waived. Each applicant was awarded 4,000 EUR in non-pecuniary damages, which were subsequently paid. The Court also required the Government to ensure non-discrimination in the field of education. The judgment, however, did not specify any remedy that would provide the applicants themselves with the quality education they had been denied.

Changes to the Czech education system

The Czech Government undertook changes in its education system while *D.H.* was pending before the Court and after the judgment, attempting in some manner to address the overrepresentation of Romani children in education for children with “mild mental disabilities.”

The Schools Act,⁸ which entered into force in January 2005, transformed the school system in that elementary schools now constitute a unified category. Special schools for pupils with “mild mental disabilities” were ostensibly abolished; these schools are now called “practical schools” and fall under the general category of elementary schools (*základní školy*) together with mainstream elementary schools.⁹

In reality, however, the eradication of remedial special schools was anything but; the schools have merely changed in name. These schools continue to offer a reduced curriculum and aim to develop “practical” skills. Such schools are still separately funded and monitored by self-governing regional authorities as opposed to mainstream elementary schools, which are funded and monitored by municipalities.¹⁰

7 *Ibid.*, paragraph 205.

8 *Law No. 561/2004 Coll., on preschool, primary, middle, higher technical and other education.*

9 *Ibid.*, Section 185 (3): “Remedial special schools under the current legal regulations will be elementary schools hereunder.” However, there is no guidance in the Schools Act or its implementing guidelines describing what this transformation actually means or how any changes should be undertaken.

10 Kateřina Hrubá, Zřívule Práva, *How the Czech “school reform” in effect influences the Czech elementary education system in relation to the position of Romani children*, 2007, 4, available at: http://www.zvuleprava.cz/?page_id=14.

11 Amnesty International, *Injustice Renamed – Discrimination of Roma in Education in the Czech Republic* (Amnesty International Publications, 2010), available at: <http://www.amnesty.org/en/library/info/EUR71/003/2009/en>.

12 It was repealed on 1 January 2005.

13 ECtHR, *D.H. and Others v The Czech Republic*, paragraph 216.

14 Three NGOs reports, published in August 2008, May 2009 and November 2009, were submitted; available at: <http://www.errc.org/cikk.php?cikk=3559>.

The progression to secondary school for Romani pupils remains nearly impossible due to their primary education in practical schools following a reduced curriculum, despite the 2005 legal amendments which formally enabled these children to access secondary school education.

The result of the mere re-labelling of special elementary schools to practical elementary schools has brought little change to the reality of Romani children in the Czech education system. In fact, more than two and a half years after the judgment Romani pupils still lose out in the Czech education system.¹¹

NGO monitoring and advocacy efforts for implementation

Although the Czech Republic had repealed the impugned national legislation by the time the judgment was issued,¹² the Court emphasised the need to adopt corrective measures to provide a remedy and prevent similar discriminatory practices against Romani children in the future.¹³

The Committee of Ministers of the Council of Europe is responsible for overseeing and monitoring implementation of the judgment with the aim to ensure that the underlying causes of human rights violations are eliminated. The Czech government has submitted two reports to the Committee of Ministers which included information about undertaken and planned corrective and preventive measures. In addition, several national and international non-governmental organisations, including the ERRC, the Open Society Justice Initiative (OSJI) and the Roma Education Fund (REF) have submitted reports outlining serious deficiencies in the Government’s efforts to implement the judgment and the continuing discrimination against Romani children in the Czech education system.¹⁴



D.H. applicants and their families with ERRC staff members Lydia Gall and Ostalinda Maya Ovalle in Ostrava; March 2010.

PHOTO CREDIT: ERRC

At the time the *D.H.* judgment was issued, the ERRC hosted a roundtable meeting bringing together Czech NGOs to discuss the judgment, the issues it addressed and its potential for bringing substantive change to Roma education in the country. Out of that meeting, Together to School, a coalition of Czech and international NGOs including the ERRC, was founded. The Coalition aims to make the promise of *D.H.* real in the Czech Republic through advocacy urging the Government to create equal opportunities for Romani children within the Czech education system and to dismantle racial barriers.

The Coalition has been very active since its founding and provides a model of NGO cooperation on Roma issues. It meets monthly to discuss developments and strategise. Since it was established, the coalition has held regular meetings with Ministry of Education officials (including Ministers Ondrej Liska and Miroslava Kopicova and Deputy Minister Klara Laurencikova, who was until recently responsible for inclusive education). It has maintained pressure on the Czech Government to remedy the violations found in *D.H.* The Coalition called first for a nationwide media campaign aimed at

changing the prejudiced attitude of the general public toward the Roma minority, recognising that a key factor in segregation is the pressure on Romani parents by the majority society and the discriminatory prejudice of teachers. Secondly, the Coalition demanded an immediate moratorium on the placement of Romani children into classes or schools teaching according to the Framework Education Programme for Children with Mild Mental Retardation (RVP ZV LMP or Framework Programme).¹⁵ The coalition also demanded the annulment of the Framework Programme for the 2010/2011 school year because of the systemic misuse of it to justify the creation of ethnically segregated classes or schools. In addition, the Coalition requested the immediate establishment of an ethical code governing staff responsible for student assessment and school placement.

In November 2008, the ERRC, REF, Open Society Fund Prague and the coalition Together to Schools, under the patronage of the Ministry of Education, hosted a conference in Prague to review the situation in Czech schools since the *D.H.* decision. At this conference, the ERRC and the Roma Education Fund launched a report

¹⁵ *Rámcový vzdělávací program pro základní vzdělávání – příloha upravující vzdělávání žáků s lehkým mentálním postižením*, available as part of downloadable package at: <http://www.msmt.cz/vzdelavani/ramcovy-vzdelavaci-program-pro-zakladni-vzdelavani-verze-2007>.

indicating that the number of Romani children in practical schools remained disproportionately high.¹⁶ Based on new research conducted in practical schools in 2008, the report confirmed Romani children continued to be over-represented in practical schools offering special education, laying waste to initial claims that the problem had disappeared with the 2005 legislative amendment. The research showed that in 8 out of 19 schools, Romani children accounted for more than 80% of all students. In 6 of 19, Romani children accounted for between 50 and 79% of all students and in only 5 schools did Romani children account for less than 50% of all students. As there is no official policy for ethnic data collection in the Czech Republic, it was not possible to get an accurate understanding of the discriminatory practices against Romani children in education through official sources. At the conference, the ERRC called on the Czech Government to abolish the practical schools and transfer the affected children into standard schools; short of that, the ERRC sought an immediate moratorium on the placement of Romani children in practical schools until their discriminatory admissions practices were ended.¹⁷

Government actions to give effect to *D.H.*

As a result of the *D.H.* decision, NGO advocacy and sympathetic Education Ministry officials, the Czech Government announced its intent to reform laws and regulations that encouraged the placement of Romani children in practical schools.

The most important actions undertaken to date include a series of exercises to collect data disaggregated by ethnicity on the school situation in the Czech Republic.

In 2009, the Czech Government commissioned NGOs to produce two monitoring reports related to Roma in

education and inclusive education. The first study, *Educational careers and educational opportunities of Romani pupils at primary schools in the neighbourhoods of excluded Romani localities*,¹⁸ confirmed the disproportionate number of Romani children in practical schools. The second report¹⁹ was a qualitative study looking at how practical and mainstream schools were promoting inclusion and how well prepared they were to do so.

In 2010, the Czech School Inspection Authority conducted its own assessment of the practical schools. It identified serious violations of law and regulations in the school placement of Romani children.²⁰ The subsequent report published in March 2010 revealed severe violations of the enrolment procedure at the special schools (invalid diagnosis of children, in the absence of valid recommendations, failure to obtain parental consent). The report further concluded that 34 schools will be fined and several others face closure due to fraudulent behaviour with granted subsidies.²¹ Together to School participated in preparations for the Czech School Inspection Authority visits to the former special schools and participated in some of the visits. Finally, the coalition has pushed for the Institute for Information in Education to follow up on previous investigation into the distribution of Romani children in the Czech education system, to research the conditions during the first half of 2010, including a demonstration of any positive changes as part of a year-on-year comparison.

The Government also enacted a National Action Plan on Inclusive Education (NAPIV), which is weak in terms of its content and how it is to be implemented.²² The ERRC and the Coalition were active in providing feedback on the draft NAPIV. While the NAPIV is described as an action plan, in reality it is more a framework for the development of a plan and lacks a clear timeline or targets for

16 Conference material and report available at: ERRC, “D.H. and Others Tabled for Discussion One Year On”, press release, 30 October 2008, available at: <http://www.errc.org/cikk.php?cikk=2986>.

17 ERRC, “D.H. and Others Tabled for Discussion One Year On.”

18 GAC Consulting, *Educational careers and educational opportunities of Romani pupils at primary schools in the neighborhoods of excluded Romani localities* (January 2009), available at: <http://spolecnedoskoly.cz/wp-content/uploads/analyza-spolecnosti-gac-pro-msmt.pdf>.

19 People in Need, *Analysis of individual approach of pedagogues to pupils with special educational needs* (February 2009), available at: <http://spolecnedoskoly.cz/wp-content/uploads/analyza-organizace-clovek-v-tisni-pro-msmt.pdf>.

20 Czech School Inspection, *Thematic Report – Compendium of results from the thematic control activity in practical elementary schools*, (March 2010), translation by OSF Prague, available at: <http://www.osf.cz/en/programove-oblasti/lidska-prava/roma/news>.

21 Czech School Inspection, *Thematic Report – Compendium of results from the thematic control activity in practical elementary schools*.

22 The NAPIV is on file with the ERRC.

the transition of Romani children from practical schools to mainstream schools and for the prevention of Romani children entering those schools in the future.

The Czech Government has also undertaken a series of smaller measures which are intended to promote implementation of the judgment. In 2009, the Minister of Education sent a letter to the heads of all of the practical schools asking them to make sure that Romani children were not erroneously placed in these schools.²³ The response of some teachers and other officials involved in the practical schools was to deny the problem existed, suggesting that resistance from the special education bureaucracy to real change will be fierce.²⁴ The Government also produced new informed consent requirements for the parents and legal guardians of Romani children before these children could be enrolled in non-standard schools.²⁵ Zvule Prava, one of the members of Together to Schools, was active in providing feedback on amendments to two Decrees (72 and 73) that incorporated revised regulations concerning informed consent designed to ensure that Romani parents understood the consequences of sending their children to practical schools.

Segregation persists

Despite rudimentary government efforts to address discrimination in education against Romani children, more than two years after the judgment, there has been little effective change in the Czech education system and Romani children are still being segregated. Government statistics confirm that 30% of Roma are still being placed in practical schools compared to 2% of non-Roma. In some areas, Romani children are 26 or 27 times more likely to be placed in special schools than non-Romani children.²⁶

Furthermore, legal measures to ensure integrated education introduced by the government are vague, inadequate and ineffective. The mere change in name of special schools to practical schools, involving the same teachers, the same class rooms and facilities and the same curriculum does not amount to effective changes from which Romani children benefit.²⁷ Non-Romani teachers and parents still favour segregation. Moreover, the Czech government has failed to introduce the safeguards necessary for addressing the special needs of Romani children in education. Such safeguards include the provision of targeted early childhood education programmes in all schools with a standard curriculum promoting co-education with non-Romani children and the adaptation of tests and other assessment tools to meet the needs of Romani communities.²⁸ Measures such as Romani teacher's assistants and preparatory classes are by and large unused.²⁹

In addition, the government has failed to take sufficient action to disseminate and circulate the judgment among relevant national authorities, judiciary professionals, educators and the public. An example of the failure of disseminating the judgment in an adequate manner is a judgment by the Prague City Court³⁰ last year that held that the plaintiff had to prove that he was placed in the school for ethnic and social reasons – contrary to the ruling of the ECtHR in *D.H.* which reversed the burden of proof in cases where a *prima facie* claim of discrimination is made.

Conclusion

Although serious efforts have been made by local and international NGOs, mainly within the framework of the Together to School coalition, and some steps have been undertaken by the Government to address the

23 ERRC, “Czech Minister’s letter on ending segregation of Romani children in practical schools welcomed by international organisations”, press release, 2 February 2010, available at: <http://www.errc.org/cikk.php?cikk=3061>.

24 “Official: Most Roma placed in “special” schools rightfully”, Prague Daily Monitor, 25 February 2010, on file with the ERRC.

25 Draft *Government Action Plan on Inclusive Education*, sections 72 and 73. On file with ERRC.

26 Czech School Inspection, *Thematic Report – Compendium of results from the thematic control activity in practical elementary schools*.

27 ERRC/OSJI, *Committee of Ministers of the Council of Europe – D.H. and Others v The Czech Republic. Third Submission by the European Roma Rights Centre and the Open Society Justice Initiative* (13 November 2009), available at: <http://www.errc.org/cikk.php?cikk=3559>, paragraph 16.

28 ERRC/OSJI, *Ibid.*, paragraph 3.

29 ERRC/OSJI, *D.H. and Others v Czech Republic – Memorandum Concerning the State and Implementation of General Measures to the Committee of Ministers of the Council of Europe from The European Roma Rights Centre and the Open Society Justice Initiative* (May 2009), available at: <http://www.errc.org/cikk.php?cikk=3559>, paragraph 18.

30 Prague City Court, 10 April 2009.

situation of access to education for Romani children in Czech Republic, the situation has *de facto* not changed on the ground. In this respect, the Czech Government has failed to implement the judgment through adopting sustainable positive measures in combating discriminatory practices channelling Romani children into inferior special education. The Government's own research confirms that Romani children in the Czech Republic are still being discriminated against and denied access on equal terms to quality education in integrated. This fact is supported by a recent Amnesty International report.³¹

The modest progress achieved so far in response to *D.H.* has been in large part attributable to the personal commitment of high level education ministry officials, in the face of hostility or indifference from other officials. The future of these small steps forward depends in part on the future composition of the education bureaucracy, which was being decided by the new government as this article went to press.

What of the 18 applicants in *D.H.*? How, if at all, have their lives changed as a result of the judgment? Each applicant received a small compensation; none of them received an

adequate education. During an ERRC visit to Ostrava in March 2010, the ERRC met with most of the applicants, stressing the necessity of continuing the fight to force the

government to adopt positive measures vis-à-vis real change in the school situation of Romani children in the Czech Republic. Although the decision came too late to influence the schooling of the 18 applicants, they are in general happy about it. Darina Balazova, the mother of one of the applicants, stated that she was happy because the judgment will hopefully give other Romani children a chance to receive quality education without being discriminated against. Unfortunately, the applicants, most of them with their own children, reported to the ERRC that their children were still attending practical schools, with the same teachers that the parents had. That is why

it is important that we strive to realise the wishes of the original applicants who put the issue on the agenda, who brought attention to the issue of discrimination of Romani children in education, but who are too late to benefit from the actual judgment. Furthermore, it is our job to make sure that their struggle was not in vain by putting pressure on governments and by unmasking similar discriminatory practices in other countries in Europe.

TWO AND A HALF YEARS AFTER THE JUDGMENT, THE ERRC ASKED THE APPLICANTS WHAT CHANGED:

DENESA HOLUBOVA: "I went to a practical school and am now a chef. I am the only one from the case with a job."

DARINA BALAZOVA (MOTHER OF ONE OF THE APPLICANTS): "We are happy to have brought the complaint because of the compensation and the recognition of what happened to us. Despite the 10 long years of litigation, we would do it again even if it would take 10 more years. However, we do not think that much will change for our children. The attitude of the teachers has changed but the quality of teaching remains the same.

Before they [the teachers] would ignore me completely if I complained. Although my daughter is not of school age anymore, my granddaughter is now attending pre-school and she gets treated better than my daughter did. However she is attending a practical school and the majority of the other children are Romani. The school hasn't changed at all from the time of my daughter [the same teachers and director work there]."

CRISTINA RADZOVA: "When I went to school I was a slow learner and nobody attempted to help me, now my son is going through the same thing. We would like if our children did not have to go through the same thing [as us]."

31 Amnesty International, *Injustice Renamed – Discrimination of Roma in Education in the Czech Republic* (London: Amnesty International Publications, 2010).

Gypsies and Travellers in the United Kingdom and Security of Tenure

CHRIS JOHNSON, ANDREW RYDER AND MARC WILLERS¹

Introduction

Gypsies and Travellers living in caravans on local authority-run sites in the United Kingdom (UK) do not yet enjoy security of tenure, despite the fact that in 2004 the European Court of Human Rights (ECtHR or the Court) held in the case of *Connors v The United Kingdom*² that the lack of security violated Article 8 of the European Convention on Human Rights (ECHR). This paper explores the reasons why the UK Government has failed to implement the ECtHR's judgment in *Connors*.

Background

In 1968, the UK Parliament passed the Caravan Sites Act (CSA).³ The CSA 1968 imposed a statutory duty on certain local authorities to provide sites for Gypsies and Travellers residing in or resorting to their area.⁴ Having imposed a statutory duty on local authorities to provide sites, the CSA 1968 also gave local authorities the power to evict Gypsies and Travellers from such sites. The legislation simply requires that a local authority gives a resident four weeks notice in written form and that it obtains a possession order from the court before eviction takes place. There is no requirement imposed on a local

authority to prove any grounds for seeking possession⁵ and there is no opportunity for Gypsies and Travellers to contest an application for possession proceedings (other than in the rare circumstances where it might be possible to argue that the decision to seek possession was perverse and therefore unlawful).

Following the enactment of the CSA 1968 approximately 350 local authority sites were built in England and Wales. However, many local authorities failed to comply with their statutory duty to provide sites and successive governments failed to use their powers to force them to make provision.⁶

Then, in 1994, the Conservative Government decided to abolish the statutory duty and privatise Gypsy and Traveller accommodation provision. While doing so it issued planning guidance which encouraged Gypsies and Travellers to make their own provision and required local authorities to quantify the need for caravan sites and identify land on which such sites could be located.⁷ However, few, if any, local authorities complied with the government guidance and as a consequence, Gypsies and Travellers found it very difficult to obtain planning permission for their own sites. The repeal of the statutory duty coupled with the failure of the Government's privatisation policy led to a severe shortage of sites which is still acute today.⁸

1 Chris Johnson is a solicitor and partner at the Community Law Partnership in Birmingham and head of the firm's Travellers Advice Team (TAT) that has acted in many of the leading cases in this area of law. Mr Johnson drafted the Caravan Sites (Security of Tenure) Bill (July 2006) and he also acted for the Gypsies and Travellers in the Oxfordshire County Council licence agreement negotiations. He is a co-editor of *Gypsy and Traveller Law* (Legal Action Group, 2007). Andrew Ryder is a researcher and campaigner for Gypsy and Traveller rights and was formerly Policy Officer of the Gypsy and Traveller Law Reform Coalition and Irish Traveller Movement in Britain. At present he is the lead researcher for the Traveller Economic Inclusion Project. Marc Willers is a barrister and specialises in representing Gypsies and Travellers. He has appeared in a number of the most notable cases in this area of law and he is a co-editor of *Gypsy and Traveller Law* (Legal Action Group, 2007).

2 European Court of Human Rights (ECtHR), *Connors v The United Kingdom*, Application no. 66746/01, 27 May 2004.

3 The CSA 1968 was originally promoted as a private members' bill by the Liberal MP Eric Lubbock (now Lord Avebury).

4 Chris Johnson and Marc Willers, *Gypsy and Traveller Law* (Legal Action Group, 2007).

5 See CSA 1968, Sections 2 and 3.

6 Jo Richardson and Andrew Ryder, "New Labour's policies and their effectiveness for the provision of sites for Gypsies and Travellers in England," in *Contemporary Romani Politics: Recognition, Mobilisation and Participation*, Trehan and Sigona, ed. (London: Palgrave Macmillan, 2010).

7 Department of the Environment (DoE) Circular, January 1994.

8 In 2006 the Labour Government recognised that the policy in Circular 1/1994 had failed and published new planning guidance in the form of Office of the Deputy Prime Minister (ODPM), *Circular 1/2006 Planning for Gypsy and Traveller Caravan Sites (ODPM 2006)*, which was designed to address the shortage of sites.

In 2004, the Commission for Racial Equality (CRE) estimated that there were between 200,000 and 300,000 Gypsies and Travellers living in the UK.⁹ Approximately one third of those people pursue a nomadic or semi-nomadic way of life and lives in caravans.¹⁰ In England, 38% of those Gypsies and Travellers living in caravans reside on Gypsy/Traveller sites administered by local authorities¹¹ and in Wales the figure is 64%.¹²

As has been shown, those Gypsies and Travellers residing on local authority sites have no real security of tenure; they live in a state of vulnerability, powerless to prevent their own eviction.

Their predicament contrasts starkly with the position of occupiers of caravan sites which are not run by local authorities, who are afforded security of tenure by the Mobile Homes Act (MHA) 1983,¹³ and the position of tenants of local authority housing who are afforded protection by the Housing Act (HA) 1985.¹⁴ Both statutes provide that possession will not be granted except on proof of certain grounds and in circumstances where the court considers it reasonable to make such an order.

This unjustified difference in treatment has been highlighted by campaigners for Gypsy and Traveller law reform in the Parliament and UK courts. For example, in 2002 the Cardiff Law School drafted the Traveller Law Reform Bill¹⁵ in an attempt to persuade the government to change the law. Simultaneously, a number of unsuccessful attempts were made to challenge the provisions of the CSA 1968 on human rights grounds in UK courts.¹⁶ Thereafter, in Parliament Baroness Whitaker drew attention to the problem in a debate on the Tenancy Deposit Scheme 2004 in the House of Lords with the following story:

[T]his is the reality for Tom Sweeney, Co-Chair of the Irish Travellers' Movement: "[...] my licence states that I can be given as little as seven days notice [...]. This creates for me and my family a real lack of ownership in our site, we feel like we are under continual probation. Our home does not feel like a home. I have lived on my site for fourteen years and have been engaged in a whole range of charity and community work with bodies like the Catholic Children's Society. I have put something into the community but what has the community given Travellers like me in return?"¹⁷

Though no progress was made on law reform in the UK, the ECtHR did get the opportunity to address the issue in May 2004 when it issued the *Connors* judgment.¹⁸ Mr Connors and his family are Irish Travellers and they had lived for many years on a local authority site. Their licence to occupy the site was terminated as a result of allegations of nuisance. Though Mr Connors disputed the allegations he was unable to do so in the possession proceedings and his application for judicial review of the local authority's decision to seek his family's eviction failed. A possession order was granted and Mr Connors and his family were evicted from the site. Thereafter Mr Connors complained to the ECtHR that the eviction breached his rights under Article 8 of the ECHR. In its judgment, the ECtHR held that:

- there was a positive obligation on the United Kingdom to facilitate the Gypsy way of life;
- the eviction was a serious interference with Mr Connors' Article 8 rights and it required particularly weighty reasons of public interest by way of justification;
- there was no particular feature of local authority Gypsy/Traveller sites which would render their management

9 Commission for Racial Equality (CRE), *Gypsies and Travellers: A Strategy for the CRE* (2004).

10 Colin Clark and Margaret Greenfields, *Here to Stay: the Gypsies and Travellers of Britain* (University of Hertfordshire Press, 2006).

11 Department of Communities and Local Government (CLG), 2009.

12 Welsh Assembly Government, 2009.

13 United Kingdom, *Mobile Homes Act*, RSC 1983, Sch.1, Part 1, paragraphs. 4-6.

14 United Kingdom, *Housing Act*, RSC 1985 S. 84 and Sch. 2.

15 United Kingdom, *Traveller Law Reform Bill*, RSC 2002, available at: <http://www.publications.parliament.uk/pa/cm200102/cm-bills/171/2002171.htm>.

16 United Kingdom, High Court of England and Wales, *Somerset County Council v Isaacs and Secretary of State for Transport, Local Government and the Regions*, [2002] EWHC 1014 (Admin); and United Kingdom, High Court of England and Wales, R (*Albert Smith*) v *Barking and Dagenham LBC and Secretary of State for the Office of the Deputy Prime Minister*, [2002] EWHC 2400 (Admin).

17 "Tenancy Deposit Schemes", *Hansard Commons Debates* Volume 664, Col 1408 (6 September 2004), available at: http://hansard.millbanksystems.com/lords/2004/sep/16/tenancy-deposit-schemes#S5LV0664P0_20040916_HOL_902.

18 ECtHR, *Connors v The United Kingdom*, Application no. 66746/01, 27 May 2004.

unworkable if they were required to establish reasons for evicting long-standing occupants;

- the power to evict without the burden of giving reasons which were liable to be examined on their merits by an independent tribunal had not been convincingly shown to respond to any specific goal or to provide any particular benefit to members of the Gypsy/Traveller community;
- the eviction could not be justified by a “pressing social need” or be said to be proportionate to the legitimate aim pursued; and
- judicial review was not an adequate remedy as it provided no opportunity for examination of the facts in dispute.

As a consequence, the ECtHR concluded that there had been a violation of Article 8 and awarded Mr Connors just satisfaction.

Following the decision in *Connors*, Parliament enacted the Housing Act (HA) 2004, which amended the CSA 1968 so as to enable judges to suspend possession orders against Gypsies and Travellers residing on local authority sites for periods of up to 12 months.¹⁹ However, the amendment did not address the main breach of Article 8 identified by the ECtHR in *Connors*²⁰ - namely the lack of any independent examination of the merits of the case for possession and proportionality - and in November 2004 the government sent a memorandum to the Council of Ministers in which it stated:

Ministers have accepted during the passage of the Housing Act 2004 that tenure on local authority Gypsy and Traveller sites is out of line with tenure in bricks and mortar social housing, and that public sites have strong similarities to social housing in terms of client profile, landlord profile and management needs [...] Ministers have indicated that the most suitable way to take any proposals forward would be as part of future legislation on tenure reform relating to bricks and mortar housing.²¹

One local authority felt it did not necessarily need to wait until legislation was introduced by central Government

to give Gypsies and Travellers living on local authority sites security of tenure. When Oxfordshire County Council produced new licence agreements for their six sites in July 2005 they included clauses on security of tenure, succession, assignment, right to exchange and repairing obligations which will continue to have effect until the Government introduces proper security of tenure. Unfortunately, however, this innovative action was not replicated elsewhere.

Thereafter, little, if any, progress was made by the Government on the issue. In May 2006, the Law Commission produced its consultation document “Renting Homes: The Final Report” on the reform of security of tenure for tenants of dwelling houses.²² Notwithstanding the memorandum sent by the government to the Council of Ministers, the report failed to address the situation on local authority Gypsy/Traveller sites.

As a consequence campaigners took steps to raise the profile of the issue. In 2006 the Gypsy and Traveller Law Reform Coalition commissioned the preparation of a ten minute rule bill²³ which was designed to show the government just how easy it would be to adapt the security of tenure provisions that apply to tenants of local authority houses and flats in order to meet the needs of Gypsies and Travellers living on local authority sites.²⁴ Though the bill had no chance of being enacted it did put additional pressure on the Government to bring in the necessary reforms.

In January 2007, Julie Morgan MP highlighted the continuing vulnerability of Gypsies and Travellers living on local authority sites at the launch of a campaign entitled “Equal Tenancy Rights for Gypsies and Travellers”, stating:

Why should the statutory protection afforded to tenants in council housing not be available to a Gypsy or Traveller occupying a pitch on a permanent local authority site in the same circumstances? Living with the fear of losing one’s home, with the risk of children being taken

19 CSA 1968 Section 4 was amended by HA 2004 Section 211.

20 A point made by the House of Commons Joint Committee on Human Rights in its 13th report.

21 Johnson and Willers, *Gypsy and Traveller Law*, 67.

22 Law Commission, *Law Commission Report No.297*, 5 May 2006, available at: http://www.lawcom.gov.uk/renting_homes.htm.

23 The ten minute rule is a parliamentary mechanism that allows individual members of parliament to introduce legislation. Seldom are such bills enacted into law. United Kingdom, *The Caravan Sites (Security of Tenure) Bill*, RSC July 2006.

24 The bill was based on the security of tenure provisions for local authority tenants contained in HA 1985.

into care, is a constant stress, not just for the tenant or licensee of a pitch but for the whole family.²⁵

Finally, on the 15 November 2007, the Government announced that it would address the issue in the Housing and Regeneration Bill by bringing local authority Gypsy and Traveller sites within the scope of the MHA 1983.

In 2008 the House of Lords gave its judgment in *Doherty v Birmingham City Council*.²⁶ The facts of the *Doherty* case were very similar to those in *Connors*. The Council evicted an Irish Traveller from a local authority site by using the provisions of the CSA 1968. When allowing Mr Doherty's appeal, their Lordships indicated that had it not been for the fact that the Government was now in the process of amending the law, they would have declared the legislation to be incompatible with Article 8 of the ECHR.

The Housing and Regeneration Act (H&RA) was passed in 2008. H&RA 2008 Section 318 amends MHA 1983 Section 5 so as to extend the security of tenure provisions in MHA 1983 to cover Gypsies and Travellers residing on local authority sites.

However, the government decided that H&RA 2008 Section 318 should not be brought into force until an extensive consultation process on supplementary matters (such as assignment and succession) had been concluded. While it was understandable that the Government consult on such matters, campaigners were frustrated by the further delays caused by the process and questioned why the provision relating to security of tenure could not be brought into force in isolation. Their frustration was compounded on 10 February 2010 by an e-mail communication to a number of organisations in which the Department of Communities and Local Government (CLG) indicated that there was not enough time to debate the statutory instrument required to bring the amendment into force before the dissolution of Parliament for the forthcoming General Election.

That frustration was expressed by Julie Morgan MP in a parliamentary question put to the Parliamentary Under-Secretary of State for the CLG in the following terms:

I am dismayed that Gypsies and Travellers as yet have no security of tenure, bearing in mind that the Connors judgment in the European Court was six years ago and the Government's proposals to change the law using the Mobile Homes Act 1983 were more than two years ago. There has been intensive discussion with Gypsies and Travellers and with support groups and I wish to express my extreme dismay. What hope can the Government give Gypsies and Travellers who are living in uncertain situations and who had great hopes of this Government?²⁷

Since then campaigners have written to Government ministers and presented Downing Street with a petition urging the government to take immediate action.²⁸ In addition, two residents of a local authority site have instituted proceedings for judicial review of the Government's decision not to bring H&RA Section 318 into force. However, that case will not be decided for some time and the pleas for immediate action seem to have fallen on deaf ears.

Those campaigning on behalf of Gypsies and Travellers for equality of treatment and security of tenure must keep up the pressure on the new coalition government. The UK has been in breach of the ECtHR judgment in *Connors* for six long years and it will need to be reminded of that embarrassing fact at every available opportunity in order to ensure that the law is reformed without further delay. The next review of this judgment by the Council of Europe's Committee of Ministers, which oversees execution of ECtHR judgments, is scheduled for November 2010; campaigners should not miss this opportunity to bring outside pressure on the UK government.

25 Travellers Law Reform Project, press release, 30 January 2007.

26 United Kingdom, House of Lords, *Doherty v Birmingham City Council*, [2008] UKHL 57.

27 "Gypsy and Traveller Sites", *Hansard Commons Debates* Volume 507, Col 142 (9 March 2010), available at: <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100309/debtext/100309-002.htm#10030993000021>.

28 For more information, see: Travellers' Times, available at: www.travellerstimes.org.uk.

“To This Very Day I Fear Policemen Whenever I See Them in Town”: Implementation of the Judgment in *Jasar v Macedonia*

ZORAN GAVRILOVSKI¹

On 15 February 2007, the European Court of Human Rights (ECtHR or the Court) established for the first time a violation of Article 3 of the European Convention on Human Rights (ECHR or the Convention) by Macedonia in connection with the police ill-treatment of Mr Pejrušan Jašar,² a Macedonian national of Romani ethnic origin, and the ensuing lack of effective investigation.³ The Court later reiterated the main findings from the *Jasar* case in two subsequent rulings involving Romani victims.⁴ However, the positive ruling for Mr Jašar and the condemnation of Macedonia by Europe’s ultimate human rights court brought no change to his personal circumstances. Not even nine months had passed from the time of the Court’s judgment before he was again physically abused by police. The years following the *Jasar* judgment saw some improvement in law, but the legal changes and actions of the authorities have not reduced significantly the problem of ill-treatment of persons by law enforcement officials and have not effectively addressed the phenomenon of the latter’s impunity.⁵

The facts of the case and the ECtHR ruling

The applicant is Mr Jašar, a Romani man from Štip, Macedonia. He was in a bar on 16 April 1998, when another customer, complaining that the gambling machine was rigged, drew a firearm and fired several shots. According to Mr Jašar, several police officers came to the bar,

grabbed him by his hair and forced him into a police van. While in police custody overnight, he reported that a police officer kicked him in the head, punched him and beat him with a truncheon. The following morning, a medical report was issued immediately after Mr Jašar was released noting that he had sustained numerous injuries to his head, hand and back. In May 1998, local attorney Jordan Madzunarov, in cooperation with the European Roma Rights Centre (ERRC), filed a criminal complaint on behalf of Mr Jašar with the Public Prosecutor against an unidentified police officer; no effective steps were taken to investigate the complaint. Mr Jašar lodged a civil action for damages against the State at the same time, which was dismissed in October 1999. Having exhausted available domestic remedies, Mr Jašar, represented by Mr Madzunarov and the ERRC, filed a complaint with the ECtHR on 1 February 2001, complaining under Article 3 of the Convention that he had been subjected to acts of police brutality amounting to torture, inhuman and/or degrading treatment and that the prosecuting authority’s failure to carry out any official investigation capable of leading to the identification and punishment of the responsible police officers constituted a procedural violation of Article 3. He also complained that he did not have access to an effective remedy with respect to the prosecuting authority’s failure to investigate his allegations of ill-treatment, in violation of Article 13 of the Convention, read in conjunction with Article 3.

- 1 Zoran Gavrilovski is a Legal Consultant at the Civil Society Research Centre (CSRC), a Macedonian non-governmental organisation dedicated to the promotion and protection of human rights and rule of law. He supported the representation of Mr Jašar before the European Court of Human Rights (ECtHR) by providing a legal analysis regarding the effectiveness of available Macedonian legal remedies, which was used at the oral hearing on 19 January 2006. The author wishes to thank Anita Danka, who was responsible for the representation of the *Jasar* case before the European Court of Human Rights on behalf of ERRC between 2005 and 2008, for her contribution to this study.
- 2 The correct spelling of the applicant’s name is Pejrušan Jašar. For reference purposes, the author complies with the ECtHR’s case title: i.e. *Jasar v Macedonia*, *Jasar* case, *Jasar* judgment, etc.
- 3 ECtHR, *Jasar v The Former Yugoslav Republic of Macedonia*, Application no. 69908/01, 15 February 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=813762&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, paragraphs 46–60.
- 4 ECtHR, *Dželadinov and Others v The Former Yugoslav Republic of Macedonia*, Application no. 13252/02, 10 April 2008, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=831065&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>. ECtHR, *Sulejmanov v The Former Yugoslav Republic of Macedonia*, Application no. 69875/01, 24 April 2008, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=834430&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.
- 5 See information in the section entitled “Developments in law and practice following the *Jasar* judgment.”

The significance of the case was underscored by the fact that on 19 January 2006 the Court held an oral hearing on the admissibility and merits of the case without a related previous request from either of the parties. Much of the hearing focused on various legal remedies available in Macedonia in cases of police ill-treatment. In its admissibility decision, the Court ruled that by filing a criminal complaint and civil action to obtain damages the applicant “brought the alleged police brutality to the attention of the authorities, placing them under a duty to carry out an appropriate investigation, and instituted a court procedure able to establish the facts, attribute responsibility and award monetary redress.”⁶ Therefore Mr Jašar was not obliged to exhaust other remedies. This “precedent” conclusion prompted the admissibility decisions of two other cases which, at that time, were still pending before the Court: the *Sulejmanov* and *Dželadinov and Others* cases.⁷

The Court recalled that “where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, when read in conjunction with the State’s general duty under Article 1 of the Convention “to secure to everyone within their jurisdiction the rights and freedoms defined in [...] [the] Convention”, requires by implication that there should be an effective official investigation.”⁸ Furthermore, “such an investigation should be capable of leading to the identification and punishment of those responsible.”⁹ The Court emphasised that “it is particularly striking that the public prosecutor did not undertake any investigative measures after receiving the criminal complaint”¹⁰ and that:

the national authorities took no steps to identify who was present when the applicant was apprehended or when his injuries were received, nor is there any indication that any witnesses, police officers concerned or the doctor, who had examined the applicant, were questioned about the applicant’s injuries. Furthermore, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment. [...] In addition, the inactivity of the prosecutor prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings before the court.¹¹

Considering the absence of any investigation into Mr Jašar’s allegations of police ill-treatment while in custody, the Court found that Macedonia had acted in violation of Article 3 of the Convention and awarded financial compensation.¹²

The systemic nature of the issues addressed in the *Jašar* case

The systemic character of the problems addressed in this case had already been analysed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in a report following its 2004 visit to Macedonia. The report stressed that if such a state of affairs were to persist despite previous repeated CPT recommendations, it would be obliged to consider having to resort to Article 10.2 of the Convention

6 ECtHR, *Jašar v The Former Yugoslav Republic of Macedonia*, Application no. 69908/01, admissibility decision, 11 April 2006, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=803162&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C166DEA398649>.

7 ECtHR *Dželadinov and Others v The Former Yugoslav Republic of Macedonia*, Application no. 13252/02, admissibility decision, 6 March 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=814697&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C166DEA398649>. ECtHR, *Sulejmanov v The Former Yugoslav Republic of Macedonia*, Application no. 69875/01, admissibility decision, 18 September 2006, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=809135&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C166DEA398649>. There is a fourth case regarding the Macedonian authorities’ failure to investigate effectively the applicant’s allegations of police ill-treatment involving a non-Romani victim: ECtHR, *Trajkoski and Others v The Former Yugoslav Republic of Macedonia*, Application no. 13191/02, 7 February 2008; available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=828671&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C166DEA398649>.

8 ECtHR, *Jašar v The Former Yugoslav Republic of Macedonia*, paragraph 55.

9 *Ibid.*

10 *Ibid.*, paragraph 58.

11 *Ibid.*, paragraph 59.

12 The above description of the events and the Court’s ruling is based on: Anita Danko, “Strasbourg Court Finds Violation of Article 3 in the First Macedonian Roma Torture Case”, *Roma Rights* 1-2, (2007): 67-69, available at: <http://www.errc.org/cikk.php?cikk=2815>.

for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and make a public statement of the matter. The report stated:

Repeated examinations of the issue by visiting delegations have clearly established that, even when detained persons do indicate to an investigating judge and/or a prosecutor that they have been ill-treated, there is no guarantee that any effective investigation will be set into motion. Further, as regards internal accountability procedures, the Committee concluded that there was considerable room for improvement in the manner in which police complaints were investigated [...] no effective follow-up action has been taken in respect of most of the specific cases set out in previous reports where the Committee had found that there had been a failure to carry out an effective investigation.¹³

In its June 2003 report, the Office of the United Nations High Commissioner for Human Rights stated that despite achievements in the implementation of the 2001 Framework Peace Agreement, the level of enjoyment and respect of human rights in Macedonia has not improved significantly; it also noted that allegations of racial discrimination and police abuse of Roma continued.¹⁴

In a 2005 report Amnesty International expressed its concern regarding cases of torture and ill-treatment by the police, and the lack of indictments of the persons responsible for such violations.¹⁵

Similarly, the Skopje-based Helsinki Committee for Human Rights of the Republic of Macedonia reported in 2002 that the excessive use of force and inappropriate treatment by the police in the arrest and detention of

Roma was of specific concern. Its 2003 report stated that “torture and inhuman treatment are still everyday practice in police work and are not subject to any control, prosecution or appropriate sanctioning.”¹⁶ The most common types of human rights violations by police included physical violence against citizens during the process of arrest, while in police custody, during investigation and in the execution of other police duties. The Helsinki Committee report noted that in the most likely scenario, these cases are not investigated, nor are criminal charges brought against the perpetrators.

Advocacy action following the judgment

The standards adopted in the *Jasar* case, reiterated in subsequent rulings against Macedonia, emphasise the need for thorough implementation to avoid the occurrence of similar violations in the future. Therefore, analysis of the legal gaps between the international human rights obligations and domestic law and the examination of the practices of the State bodies seems relevant.

In particular, the lack of effective investigation in cases of alleged ill-treatment by law enforcement officials was one of the main concerns of the Court and it has been also articulated by various international human rights monitoring bodies and civil society organisations. Meanwhile a draft Law on the Public Prosecution Office was prepared and adopted in December 2007. The ERRC and the Civil Society Research Centre (CSRC) sent a joint letter to the highest Macedonian authorities to secure timely and effective response by the Public Prosecution Office (PPO).¹⁷ The provisions suggested therein were not accepted by the legislative body.¹⁸

13 Council of Europe, *Report to the Government of “the former Yugoslav Republic of Macedonia” on the visit to “the former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 12 to 19 July 2004*, CPT/Inf (2006) 36, 15 November 2006.

14 United Nations High Commissioner for Human Rights, *Europe, Central Asia and North America Region Quarterly Reports of Field Offices*, 2 June 2003, 17.

15 Amnesty International, *Europe and Central Asia: Summary of Amnesty International’s Concerns in the Region: July – December 2004* (31 August 2005), available at: <http://web.amnesty.org/library/index/engneur010022005>.

16 Helsinki Committee for Human Rights of the Republic of Macedonia, *Annual Report 2003*, available at: http://www.mhc.org.mk/eng/a_izveshtai/a_2003gi.htm, paragraphs 3.1, 4 and 6.

17 ERRC, “ERRC/CSRC Call for the Amendment of the Macedonian Draft Law on the Public Prosecution Office” press release, 6 July 2007, available at: <http://www.errc.org/cikk.php?cikk=2845>.

18 The provisions proposed by CSRC and ERRC included obligations on prosecutors to: respond to requests for information on criminal proceedings within 15 days; provide reasons for failing to submit an indictment to court or reject criminal charges if not brought within three months; and make decisions regarding the rejection or filing of criminal charges within set time periods. The CSRC and ERRC also proposed sanctions on prosecutors for inactivity within set guidelines.

On 7 October 2007, the ERRC and the CSRC sent a joint memorandum to the Committee of Ministers of the Council of Europe (CoE) regarding implementation of the *Jasar* judgment by the Macedonian State.¹⁹ The organisations recommended, *inter alia*, the following: Police officers using unnecessary or non-proportionate force should be subject to adequate sanctions that are capable of deterring police abuse;²⁰ the then draft Law on the Public Prosecution Office should guarantee effective legal remedies for individuals against the inactivity of the PPO the prosecutors' independent and impartial work and their freedom from political pressure by the executive;²¹ the Internal Control Unit of the Ministry of Interior should improve its transparency and accountability to the public, ensuring that all relevant information regarding alleged ill-treatment by law enforcement officials are examined in a thorough, timely and unbiased manner, and that the PPO is immediately notified of every case in which the conduct of police officers may be criminal in nature; free and independent²² medical examination during detention as well as immediately after release should be provided for persons taken into police custody;²³ where a person has sustained any injuries during contact with a law enforcement agent, the burden of proof concerning the necessity and proportionality of the force used should remain with the law enforcement agent/office; and the judgments of the European Court should be brought to the attention of judges, public prosecutors and other state servants and relevant experts, through their translation, publication or other means of dissemination, as well as through training.²⁴

The human rights situation of detained persons and the conduct of law enforcement officials was closely monitored by a number of international and domestic non-governmental organisations, which submitted a number of recommendations to international human rights bodies. The organisations recommended the following: improvement of the legislation for a solid legal framework to secure effective struggle against ill-treatment by law enforcement officials and their impunity; strong and clear high level political messages to the law enforcement agencies that no ill-treatment, harassment or discrimination practices will be tolerated; creation of a fully independent, impartial and transparent body to investigate complaints of alleged police abuse; full collaboration between various governmental bodies and agencies and civil society to eradicate torture and ill-treatment; adoption of appropriate legal provisions to secure independent, timely and effective performance of the duties of public prosecutors in cases of alleged ill-treatment; and training of law enforcement officials and legal practitioners to effectively deal with cases relating to ill-treatment.²⁵

Information regarding the issues addressed in the *Jasar* case was submitted to the United Nations Human Rights Committee²⁶ and the CoE Commissioner for Human Rights in connection with his country visit to Macedonia in February 2008.

Individual remedies?

The just satisfaction awarded by the ECtHR in respect of the non-pecuniary damages suffered by Mr Jašar was paid

19 The submission was based on *Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements*.

20 In 2006 the Human Rights Support Project reported that in their recorded cases of misconduct or ill-treatment by the police, the only sanction imposed was fine in the amount of 15% of the monthly salary. There was no dismissal and the Internal Control Unit filed criminal charges against the police officers in only two cases. Out of the total of 33 criminal charges the Basic PPO brought an indictment in only one case. Petar Jordanovski, *Legal analysis 2006* (November 2006), 6-7, 33.

21 The latter was/is jeopardised by the manner of election of the Public Prosecutor of the Republic of Macedonia by the Parliament on the recommendation of the Government, thereby affecting independence of lower prosecutors who are responsible to their superiors within a strong hierarchical structure, and ultimately to the Public Prosecutor of the Republic of Macedonia.

22 Upon request of the person alleging police abuse, a doctor of the person's choice should examine him/her in addition to any medical examination carried out by a doctor called by the police authorities.

23 Since a medical certificate is the basic means of evidence in cases alleging physical abuse by the police, it should be accessible for everyone. Members of the Romani community, many of whom live on social aid, do not have adequate access, if at all, to cover the costs of medical examination and certificates.

24 ERRC and CSRC, *Joint Memorandum to the Committee of Ministers of the Council of Europe*, (7 October 2007).

25 Recommendations by the World Organization Against Torture (OMCT - Cécile Trochu-Grasso and Orlane Varesano) the Civil Society Research Center (Zoran Gavrilovski) and the Organisation for Emancipation, Solidarity and Equality of Women in the Republic of Macedonia - ESE (Jasminka Friščić) in their shadow report to the Committee Against Torture (2008); also published in OMCT and ESE, *Human Rights Situation in Macedonia: Implementation of the Convention against Torture* (2009).

26 ERRC, "UN Human Rights Committee to Review Macedonia", press release, 20 March 2008, available at: <http://www.errc.org/cikk.php?cikk=2946>.

by the State in 2007.²⁷ However, even before the delivery of the judgment, on 22 February 2006, the Basic Public Prosecutor of Štip decided not to prosecute in the case which was closed as time-barred,²⁸ resulting in impunity for the perpetrators and no effective remedy for the victim as guaranteed in the Convention.

Eight and half months after the judgment was issued, Mr Jašar was again severely beaten by Macedonian police. The incident happened on 2 November 2007 around 8:30 PM when the police detained Mr Jašar in connection with the alleged involvement of his nephew, Turkmen, in a theft. Mr Jašar reported that among the police officers who beat him he was able to recognise some of those who had beaten him in 1998. Mr Jašar recalls this second incident in the following way:

On 2 November 2007, I joined my underage nephew in the police car as he was taken from home for an alleged theft [...] and his parents were not there. In the police car I was beaten by Z.R. in the presence of two other police officers after speaking in Romani with my nephew. Several minutes after the car's arrival at the Štip Police Station, a police van with seven or eight police officers arrived. In front of the police station I was beaten by no less than seven police officers. After the beating, two of them grabbed my hands while Z.R. pulled my hair; they dragged me like this towards an accordion-door, which they opened using my head. Then they put me into the office of the police commander Z.R., who started to hit my head and body. I fell down and then he started to kick me all over my head and ribs, at the same time threatening and cursing me with vulgar expressions (“monkey”, “[...] your Gypsy mother, you who sued my colleagues”).²⁹

Mr Jašar's nephew gave the following account of the events:

At that time my parents were not at home so I took my uncle, Pejrušan, with me. When we arrived in front of the police station, before entering, a police officer started to beat my uncle. He was placed in one room and beaten by them [police officers]; after a while they took him out to wash his face and again they started to beat him. They were also beating me and you can see these marks on my face.³⁰

A representative of the Association for Roma Rights Protection (ARRP), a Štip-based NGO, called an ambulance around 11:00 PM and Mr Jašar was hospitalised as he had sustained a broken rib and contusions; he was released on 6 November 2007.³¹ The medical certificate stated that the fracture of the rib amounts to a severe bodily injury.³² The NGO Čerenja expressed concerns over the disproportionate response - deploying four police vehicles and more than 20 police officers to investigate an alleged minor theft - and publicly asked the police whether there was a hidden motive for the brutal beating of Mr Jašar.³³

The Štip Police Station's Spokesperson stated that the police were performing their duty to apprehend the minor suspect and that while waiting for the suspect's parents to arrive a group of people started to obstruct the police. The Spokesperson also claimed that Mr Jašar started to attack the officers upon arrival of the second police vehicle.³⁴

On 15 November 2007, Mr Jašar filed a criminal complaint against Officer Z.R. under Article 142.2 in connection with Article 142.1 of the Criminal Code.³⁵ On 17 March 2009, the

27 Interview with Mr Jašar. Štip, Macedonia: 30 April 2010.

28 Committee of Ministers, *State of execution of 4 judgments [v Macedonia] concerning lack of effective investigation of allegations of ill-treatment by the police*, June 2010, available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

29 Interview with Mr Jašar. Štip, Macedonia: 30 April 2010.

30 Ljupčo Šatevski, “The Man from Štip who Sued in Strasbourg was Beaten Again: After the Teeth, the Police Broke Jašar's Ribs”, *Dnevnik*, 6 November 2007.

31 NGO Čerenja, “Stop for Brutal Beating of Roma by the Štip Police”, press release, 5 November 2007.

32 Medical Certificate no. 9259, 12 November 2007, issued in Štip by Dr G.B.

33 NGO Čerenja, “Stop for Brutal Beating of Roma by the Štip Police”, press release.

34 Ljupčo Šatevski, “The Man from Štip who Sued in Strasbourg was Beaten Again: After the Teeth, the Police Broke Jašar's Ribs”.

35 Article 142 of the *Criminal Code*, applicable in 2007 (Official Gazette of the Republic of Macedonia, no. 19, 30 March 2004) stated: “(1) He, who in performance of his duties, as well as he who incited by a public official or with his consent, applies force, threat or other unpermissible means or an impermissible treatment for such purposes as extracting confession or some other statement from the accused, witness, expert or other person, inflicting a severe physical or mental suffering to another person in order to punish him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him to waive of his right, or for any reason based on discrimination of any kind, shall be punished with imprisonment from one to five years. (2) If the crime from paragraph 1 resulted in a severe bodily injury or other particularly severe consequences for the injured party, the perpetrator shall be punished with imprisonment from one to ten years.”

investigating judge ordered an investigation against Officer Z.R. for the alleged crime of torture and other cruel, inhuman or degrading treatment or punishment. At the end of the investigation proceedings, the Public Prosecution Office decided not to issue an indictment; the investigating judge then informed Mr Jašar about his entitlement to take over the prosecution within eight days. On 24 October 2009, Mr Jašar's lawyer lodged a subsidiary indictment under Article 142.2 of the Criminal Code against Officer Z.R., extending it to include police officers Z.V., J.Z., N.D., M.M., P.A. and L.V. (the lawyer identified the others in the course of his inquiry). On 12 April 2010, the Štip Basic Court informed Mr Jašar that no trial could be conducted against the police officers who were not included in the investigation. The Court held that the subsidiary indictment in respect of these persons was to be a criminal complaint and asked Mr Jašar to inform the Court within 8 days whether or not he would submit new criminal complaints to the Basic Public Prosecution Office;³⁶ a criminal complaint was submitted within the stipulated time period but no hearing has been held so far.

The Ministry of Interior lodged a criminal complaint against Mr Jašar for alleged assault of law enforcement officials during the performance of their duties: In June 2008 the Basic PPO filed an indictment against Mr Jašar and the proceeding is still pending though no hearing has been held. The practice of lodging criminal complaints against victims of police abuse for alleged crimes against the police is very common in Macedonia and raises suspicions in general about a hidden aim of discouraging lawsuits by genuine victims of human rights

violations committed by police. Under-reporting of police abuse is also prevalent because the use of force is seldom investigated,³⁷ goes unpunished or results in minimum sanctions.³⁸ There are also various accounts about police intimidating witnesses, lawyers, judges, human rights defenders and others involved in the judicial process, with the intention of preventing them from taking action on human rights violations.³⁹

Mr Jašar experienced various methods of “persuasion” and harassment aiming at “convincing” him to withdraw legal proceedings against the State and the responsible police officers after the initial incident in 1998:

Following the 1998 beating, I was called by a shift-commander of the Štip Police who told me the following: “Pejrušan, let such a thing occur no more, the police officers will pay your hospital bills and the fees for the medical certificate; just don't sue them.” However, I told him that I will sue those who are responsible. Upon my departure from the Court of Appeal, the police officers threatened me in front of my family, saying “you won't remain alive.”⁴⁰

With reference to his and his family's security from ill-treatment, particularly after the judgment of the Court, Mr Jašar states: “After the judgment things did not change much: my son was beaten; this is shame! To this very day I fear policemen whenever I see them in town. While watching me, they move their heads and point their fingers toward me in a threatening manner.”⁴¹

36 Letter to Mr Jašar from Judge S.G., Štip Basic Court: 12 April 2010.

37 Council of Europe, *CPT Report on the visit to the Republic of Macedonia from 18 - 27 November 2002*, CPT/Inf (2004)29, 9 September 2004, available at: <http://www.cpt.coe.int/en/states/mkd.htm>, paragraph 29.

38 European Commission against Racism and Intolerance, *Report on “the former Yugoslav Republic of Macedonia” (fourth monitoring cycle)*, CRI(2010)19, 15 June 2010, available at: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Former_Yugoslav_Republic_Macedonia/MKD-CbC-IV-2010-019-ENG.pdf, 33.

39 For example in its report of January 2004, the UN Commission on Human Rights includes interviews indicating that “discrimination on the basis of ethnicity” as “a fundamental characteristic of many human rights violations within the former Yugoslav Republic of Macedonia” posed major challenges for NGOs in their work defending victims of ill-treatment and abuse by police. The report states that those who defend human rights are at risk and that the lack of domestic remedy for these human rights violations was cited as one of the reasons human rights defenders looked to international remedies. The report also cited the following contributing to impunity: the Ombudsman's office is not an effective remedy; lawyers defending human rights are difficult to find; the lack of accountability even when the abuses are known is a significant impediment; the complaints procedure is not transparent and encourages impunity; and the judiciary is not independent. Commission on Human Rights, *Promotion and Protection of Human Rights: Human Rights Defenders: Report submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani*, 15 January 2004, available at: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6edf364688b31535c1256e4a00380110?Opendocument>.

40 Interview with Mr Jašar, Štip, Macedonia: 30 April 2010.

41 *Ibid.*

Developments in law and practice following the *Jasar* judgment

PRACTICE

The CPT had constantly warned of the persistent failure by national authorities to address certain fundamental shortcomings in the treatment and detention conditions facing persons deprived of their liberty. Therefore in December, owing to the lack of appropriate response by the national authorities, the President of the CPT sent a letter informing the Macedonian authorities about the CPT's decision to set in motion the procedure provided for in Article 10.2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.⁴² Nevertheless, with a view to pursuing a constructive dialogue, the CPT informed the Macedonian authorities shortly afterwards about their decision to re-examine the situation on the ground before taking a formal decision with regard to Article 10.2 procedure.⁴³ Additional information was sought from the Macedonian Government and a new visit was conducted from 30 June to 3 July 2008. During the visit, the delegation received many allegations that prosecutors and judges did not act upon claims of ill-treatment when they were brought to their attention. It concluded that "it would appear that no action has been taken by the relevant authorities to ensure implementation of the Committee's recommendation" and reiterated:

whenever persons brought before a prosecutor or judge allege ill-treatment by law enforcement officials, the prosecutor/judge records the allegations in writing, immediately orders a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated.⁴⁴

Further, the CPT recommended that even in the absence of an express allegation of ill-treatment, the prosecutor or

judge should adopt a proactive approach. It recommended that guidelines should be issued relating to the treatment of imprisoned or detained persons (particularly juveniles and children)⁴⁵ to reiterate the message of zero-tolerance regarding ill-treatment of persons deprived of their liberty.

In its second periodic review of Macedonia in May 2008, the UN Committee against Torture (CAT) expressed concern over allegations of torture, or cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and the lack of prompt and effective investigations and prosecutions in this respect.⁴⁶ Moreover, it noted with concern reports of intolerance and hatred towards ethnic minorities, especially Roma, and information showing that instances of ill-treatment by law enforcement officials, especially the police, often involve persons belonging to ethnic minorities.

Therefore, it recommended that the Government should strengthen efforts to combat ill-treatment of and discrimination against ethnic minorities, in particular Roma, by ensuring strict observation of relevant existing legal and administrative measures, training and information campaigns. Regarding the role of the Public Prosecution Office, the CAT recommended the Macedonian Government should ensure the independence and the effective functioning of the Public Prosecution Office.⁴⁷

However, recent reports of State bodies, NGOs and intergovernmental bodies indicate that the situation has not improved much in practice (in spite of notable legislative developments described in the next chapter). The Ministry of Interior's Unit for Internal Control and Professional Standards (UICPS) examined cases of alleged excessive use of force by police as follows: 2007 - 61 complaints (9 identified as well-founded); 2008 - 64 complaints (4 identified as well-founded), 2009 - 79

42 Article 10.2 reads: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter." Council of Europe, *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, available at: <http://www.cpt.coe.int/en/documents/ecpt.htm>.

43 Council of Europe, *CPT Report on the visit to the former Yugoslav Republic of Macedonia from 30 June – 3 July 2008*, CPT/Inf (2008)31, 4 November 2008, available at: <http://www.cpt.coe.int/en/states/mkd.htm>, 6.5.

44 *Ibid.*, 16.33.

45 *Ibid.*, 11.16.

46 Committee against Torture, *Concluding observations of the Committee against Torture: The former Yugoslav Republic of Macedonia*, 21 May 2008, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/421/49/PDF/G0842149.pdf?OpenElement>, 16.

47 *Ibid.*, paragraphs 6 and 20.

complaints (6 identified as well-founded).⁴⁸ The Human Rights Support Project (HRSP) registered the following: 2007 - 51 cases (53% relating to excessive use of force or ill-treatment) with 57 alleged victims (12.28% Romani), 2008 - 37 cases (51.35% excessive use of force or ill-treatment) with 38 alleged victims (18.42% Romani), 2009 - 42 cases (66.66% excessive use of force or ill-treatment) with 2 NGOs and 41 persons as alleged victims (26.19% Romani). HRSP filed criminal complaints with the PPO as follows: 2007 - 11 criminal complaints (5 indictments filed by the PPO), 2008 - 4 complaints (1 indictment filed by the PPO), 2009 - 5 complaints (no indictments filed by the PPO).⁴⁹

In its 2009 report, the Helsinki Committee for Human Rights of the Republic of Macedonia reported about recent practices of ill-treatment⁵⁰ and intimidation of victims by law enforcement officials who were defendants in criminal proceedings.⁵¹ It reported that all of its submissions, including criminal complaints, in cases relating to torture have been completely ignored by the competent authorities.⁵² Admittedly, four Skopje prison officials were subjected to disciplinary sanctions (though without instigating criminal proceedings) for the ill-treatment of inmates and in one case police were convicted for “maltreatment in the performance of duties” for an incident in 2003.⁵³

In his 2008 country visit report, the Commissioner for Human Rights noted that despite improvements police violence remains a problem⁵⁴ and recognised the particular problem of Roma being subjected to ill-treatment as a result of their ethnicity.⁵⁵ In its recent report, the European Commission against Racism and Intolerance noted continuing reports of ill-treatment by police or of police

action potentially based on ethnic prejudice primarily concerning Roma and that there is still no “fully independent, impartial, effective investigation mechanism.”⁵⁶

LAWS AND STRATEGIES

The Law on the Public Prosecution Office (LPPO), enacted in December 2007,⁵⁷ states that the PPO is obliged to take steps according to the law as soon as possible, but not later than 30 days after the criminal complaint has been filed. However, the LPPO contains no provisions requiring the PPO to provide information within a reasonable period of time upon the request of persons or agencies filing the criminal complaint (charges) as to whether it has initiated an investigation, submitted an indictment to the Court or rejected the criminal complaint. Given that there is no prescribed time limit to inform the victims of the outcome, the PPO’s failure to act for unreasonably long periods might result in a prosecution being time-barred because victims can assume prosecution as subsidiary complainants (plaintiffs) only after rejection of the criminal complaint by the PPO. The inactivity of the PPO in practice resulted in the rejection of a number of criminal complaints as time-barred (including in the *Jasar* case) and contributed to impunity of law enforcement officials for serious crimes such as torture, which may have occurred partly owing to the lack of independence of the PPO. The latter issue can be well demonstrated by the answer of the former Public Prosecutor of the Republic of Macedonia (Prosecutor General) to a journalist stating that his successor’s “hands are tied because with the present organisational structure of the Public Prosecution Office he will continue to be a

48 UICPS, *Annual reports*, covering 2007, 2008 and 2009, available at: <http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=130>.

49 *Ibid.*

50 Helsinki Committee for Human Rights of the Republic of Macedonia, *Annual Report 2009*, available at: http://www.mhc.org.mk/WBStorage/Files/GODISEN_IZVESTAJ_2009_MK.pdf, 90, 115, 124, 166 and 190-191.

51 *Ibid.*, 155.

52 *Ibid.*, 82.

53 *Ibid.*, 141 and 156-157.

54 Commissioner for Human Rights, *Report by the Commissioner for Human Rights on his visit to “the former Yugoslav Republic of Macedonia” 25-29 February 2008*, 11 September 2008, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1341983&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, 12.

55 *Ibid.*, 21.

56 ECRI, *Report on “the former Yugoslav Republic of Macedonia”*, 8 and 32.

57 Official Gazette of the Republic of Macedonia, no. 150/07, 12 December 2007.

marionette in the hands of the authorities”⁵⁸ and that “until the Prosecutor has a police force under its own control, a bigger budget and control over wire-tapping, he will continue to depend on the will of the Ministry of Interior and high ranking State officials.”⁵⁹

In May 2007 a Strategy on Criminal Law Reform was adopted. In accordance with the Action Plan for Strategy Implementation, four working groups were established within the Ministry of Justice (two for criminal law and two for criminal procedure law). Between 2008 and 2010, Macedonian authorities informed the Committee of Ministers that Article 282 of the Law on Criminal Procedure (LCP) “would be amended to provide a three-month deadline within which public prosecutors must decide on complaints. Where the public prosecutor fails to decide on a complaint within the prescribed period, he or she would be obliged so to inform the applicant and the superior prosecutor.”⁶⁰ The updated draft LCP, published by the Ministry of Justice on 1 July 2010, entitles the PPO to conduct investigations with the assistance of judicial police.⁶¹

Article 275 of the 2010 draft LCP stipulates: “1. If the Public Prosecutor does not decide on the complaint within three months from the day of filing, he [or she] is obliged to immediately inform the person who filed the complaint and the superior prosecutor; and 2. Reasons for not deciding on the complaint are to be enclosed to the information from paragraph 1 of this law to the superior prosecutor.”⁶²

Amendments to the Criminal Code adopted in 2009⁶³ raised the sentence for the basic crime of torture (Article 142.1) to three to eight years and for more severe forms of torture (Article 142.2) to at least four years.⁶⁴

On 30 December 2008, the Macedonian Parliament enacted the Law on Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Degrading or Inhuman Treatment or Punishment. Article 4 stipulates that the Peoples’ Defender (the Ombudsman) is designated to act as a National Preventive Mechanism (NPM).⁶⁵ To date the NPM has not become fully operational because the Government has not yet provided funds for the functioning of the section for prevention.

International human rights law has developed an approach which takes into account the vulnerability of victims of ill-treatment as related to their membership in groups that have been subjected to pervasive and systematic discrimination over a very long period of time, such as Roma. There is a growing consensus that individuals belonging to marginalised groups are entitled to a heightened level of human rights protection.⁶⁶ The European Code of Police Ethics, for example, provides in Principle 49 that “Police investigation [...] shall be sensitive and adaptable to the special needs of persons, such as [...] minorities including ethnic minorities.”⁶⁷ As demonstrated by the aforementioned human rights monitoring reports, Roma continue to be particularly vulnerable to police abuse in Macedonia

58 In the last decades, no General Prosecutor (GP) has completed his/her term of office. The GP is usually dismissed soon after Parliamentary elections by the Parliament, the latter *de facto* being under significant influence of the executive. Only after adoption of the Law on the Council of Public Prosecutors of the Republic of Macedonia (published in Official Gazette no. 150/07, 12 December 2007) did the competence for election of other public prosecutors (basic, higher and those dealing with organised crime) transfer from the Parliament to the Council of Public Prosecutors.

59 Gordana Duvnjak, “Does Anyone Hear the Public Prosecutor?”, *Utrinski Vesnik*, 1 July 2010.

60 Macedonian authorities provided this information to the Committee of Ministers on 14 March 2008, 15 October 2008, 29 June 2009 and 5 January 2010. Committee of Ministers, *State of execution of 4 judgments [v Macedonia] concerning lack of effective investigation of allegations of ill-treatment by the police*, June 2010, available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

61 Draft *Law on Criminal Procedure*, available at: http://www.justice.gov.mk/documents/ZKP_bez_TC.pdf, Chapter XXI.1.

62 *Ibid.*, Article 275.

63 Official Gazette of the Republic of Macedonia no. 114/09, 14 September 2009.

64 The *Criminal Code* (as published in the Official Gazette of the Republic of Macedonia no. 37/96 of 23 July 1996) established imprisonment of between three months and five years under Article 142.1 and at least one year imprisonment under Article 142.2. The penalty prescribed by the 2004 Amendments to the *Criminal Code* (Official Gazette of the Republic of Macedonia no. 19/04 of 30 March 2004) established one to five year imprisonment under Article 142.1 and one to 10 years imprisonment under Article 142.2.

65 Official Gazette of the Republic of Macedonia no. 165/08, 30 December 2008.

66 Alexander H.E. Morawa, “Vulnerability as a Concept of International Human Rights Law”, *Journal of International Relations and Development* (2003): 139-155.

67 Committee of Ministers, *The European Code of Police Ethics*, Recommendation Rec(2001)10.

and international human rights monitoring bodies have repeatedly urged the State to increase efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma.⁶⁸ However, Macedonia's Code of Police Ethics contains no provision providing for special protection to account for the particular vulnerability of Roma.⁶⁹

INSTITUTIONAL DEVELOPMENTS

In 2007 the Agent of the Government for Proceedings before the European Court for Human Rights (Government Agent) reported that “general measures involve translation and distribution of judgments to the authorities involved, to experts and general public, and analysis of the implemented legislation which is considered to have generated the violation.”⁷⁰ However, the Government Agent emphasised its inability to secure implementation of measures expected from the Government, apart from translation and dissemination of the ECtHR judgments. It reiterated findings included in earlier reports that problems relating to execution of judgments arise because of the undefined system of execution of judgments, as well as the lack of authorisation and institutional capacities and opportunities of the Government Agent⁷¹ to propose and order appropriate activities or undertakings by various administrative and judicial bodies and to determine the dynamics of their activities. The Government Agent indicated a need for further institutional development of its position and for the establishment of an inter-ministerial body to analyse ECtHR judgments and propose appropriate measures for their execution.⁷² Despite these recommendations, the Inter-Ministerial Body for Human Rights, established in 2006, has not involved the Government Agent as a member;

nor has it been entitled to analyse the Court's judgments or design action plans for their execution.⁷³

In 2009 a Bureau for Representation before the European Court was established through the Law on Representation of the Republic of Macedonia before the European Court of Human Rights.⁷⁴

The 2009 Law on Execution of Judgments of the European Court of Human Rights envisages the establishment of an Inter-Ministerial Commission for Execution of European Court Judgments, composed of officials governing the Ministries of Justice (chairman), Interior, Foreign Affairs, Labour and Social Policy, Finance, Education, Health, Transport and Communications and Local Self-Government, as well as the President of the Judicial Council, the President of the Supreme Court, the President of the Council of Public Prosecutors, the Prosecutor General and the Government Agent.⁷⁵ The Inter-Ministerial Commission analyses European Court judgments and the grounds which resulted in the finding of violation(s); recommends general measures for the purpose of remedying the violation(s) and preventing the occurrence of future violations; submits proposals for legislative improvement for the protection of human rights; monitors the execution of the ECtHR judgments, provides for the exchange of information and data in the field of execution of the European Court's judgments; monitors the existing system of judgment execution; and proposes measures for its improvement.⁷⁶ The Law stipulates that general measures encompass: changes and amendments of laws and by-laws that caused the violation and their implementation; changes in the behaviour of the competent subjects; providing legal expertise on legal provisions; improving the knowledge of judges, public prosecutors and other

68 Committee against Torture, *Concluding observations of 5 May 1999*, 106-107; CAT, *Concluding Observations 2008*, 20.

69 Official Gazette of the Republic of Macedonia no. 72/07.

70 Agent of the Government for Proceedings before the European Court for Human Rights (Government Agent), *Information with Annual Report on the Work of the Government Agent and Analysis of Cases and Proceedings Versus the Republic of Macedonia Before the European Court of Human Rights for 2007*, Skopje, April 2008, 16-17.

71 In 2006, a Section for Support of the Work of the Government Agent was established within the Ministry of Justice's Sector for International Legal Aid.

72 Government Agent, *Report for 2007*, 19-20; Government Agent, *Information on the State of Cases Versus the Republic of Macedonia Before the European Court of Human Rights for 2008*, Skopje, April 2009, 22-23.

73 Government Agent, *Report for 2007*, 20.

74 Official Gazette of the Republic of Macedonia no. 67/09, 29 May 2009, 11-13.

75 *Ibid.*, 16-19

76 *Ibid.*, Article 11.

legal professionals; and other determined measures capable of preventing violations of the Convention, removing drawbacks of a systematic nature and providing compensation to victims of violations, subject to monitoring by the Committee of Ministers.⁷⁷

Conclusion

During a visit to Macedonia of the Council of Europe's Department for the Execution of Judgments of the European Court (the Department) on 13-14 March 2008, its representatives indicated that the *Jasar* case is the most complex of the adjudicated police violence cases against Macedonia indicating systematic *lacunae* in the legislation and practice of the Public Prosecution Office and the Ministry of Interior regarding criminal complaints filed against Ministry officials.⁷⁸ A Deputy Prosecutor General is reported to have stated that the *Jasar* case was considered while drafting the new Law on the Public Prosecution Office to avoid the occurrence of similar problems and failures in future. However, the official described the *Jasar* case as "a time-barred case, resulting from individual proceedings of the then Basic Public Prosecutor of Štip who is no longer exercising this duty, rather than resulting from a systemic problem."⁷⁹

The Court has held many times that individual and general measures must put an end to the violation established and to remedy as much as possible the consequences of those violations, providing that such measures are compatible with the conclusions in the Court's judgments.⁸⁰ Based on the report of Macedonia's Government Agent:

individual measures taken with an aim of providing redress on domestic level for the violation of the applicant's rights which gave rise to the complaint before the European Court [...] most often mean a possibility for acceleration of proceedings before domestic courts

or administrative bodies, Prosecution offices or other State authorities, repetition or reopening of proceedings before domestic courts and so on, depending on the violation established by the judgment.⁸¹

General measures are intended to prevent similar violations from happening in the future.

As to the individual measures in Mr Jašar's case, it appears that the PPO rejected the criminal complaint lodged by Mr Jašar back in 1998 as time-barred,⁸² apparently considering it under the less severe form of the offence "torture".⁸³ Therefore no effective individual measure for substantial execution of the *Jasar* judgment was possible, notably by reopening investigation proceedings.

Article 418.1(7) of the Law on Criminal Procedure provides for the possibility of reopening criminal proceedings within 30 days from the date that the ECtHR judgment becomes final; however, the law says nothing about cases in which there was a lack of effective procedure. Nevertheless the Government's commitment to allow judicial review of already completed proceedings following ECtHR judgments leads to the conclusion that the authorities should open or reopen the investigation which was not effective since in such cases conducting an investigation is a prerequisite for consequent judicial examination. Therefore, an important way of complying with judgments in which a procedural violation of Article 3 is established owing to lack of effective investigation would be to instigate and complete an effective criminal procedure capable of identifying and – where appropriate – sanctioning the perpetrators.

The Court has held that Article 13 of the Convention:

guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of

77 *Ibid.*, Article 27.

78 Government Agent, *Information on the Visit of the Department for Execution of Judgments of the European Court of Human Rights*, undated, 4.

79 *Ibid.*, 8.

80 ECtHR, *Sejdovic v. Italy*, Application no. 56581/00, 1 March 2006, 119.

81 Government Agent, *Report for 2007*, pp. 16-17.

82 Committee of Ministers, *State of execution of 4 judgments [v Macedonia] concerning lack of effective investigation of allegations of ill-treatment by the police*, June 2010, available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/Current_en.asp.

83 *Criminal Code*, 23 July 1996, Articles 107 and 142.

this article is thus to require the provisions of a domestic remedy to allow the competent national authorities both to deal with the substance of the relevant complaint and to grant appropriate relief.⁸⁴

In Macedonia, the only legal remedy capable of providing effective and adequate redress for victims of ill-treatment is a criminal procedure before a court. However, as described above, victims are still vulnerable to the possible inactivity of the Public Prosecutor, which seriously undermines its effectiveness.

In its 2009 report, the Government Agent reported particular problems regarding the implementation of the judgments where a violation of the right to effective investigation was established. In particular, the Ministry of Interior apparently abandoned a plans for an external oversight mechanism in favour of internal oversight, which does not assure an effective mechanism of external control over law enforcement bodies.⁸⁵

As described above, Macedonia has not yet entirely fulfilled its obligations under Article 46 of the Convention in connection with the *Jasar* judgment. Macedonia has undertaken a series of noteworthy legislative and practical measures to improve the efficiency of the criminal

justice system and to improve the process of execution of ECtHR judgments. Yet some challenges remain. The State must secure independent domestic monitoring of police conduct by creating a fully independent body for such purpose with involvement of the civil society. Prerequisites for more independent and efficient work of the PPO in cases of alleged police misconduct should be strengthened by: providing the PPO with an independent budget and possibly changing the manner of electing the General Prosecutor, enacting and properly implementing legal provisions guaranteeing the PPO's efficient involvement in investigations and vigorous follow-up its work by superiors. As Macedonia currently holds the Chairmanship of the Council of Europe, there is a special opportunity for the State to demonstrate its commitment to uphold the fundamental rights enshrined in the European Convention by fully implementing the judgment in the *Jasar* case and other rulings of the European Court. In particular, at the September 2010 meeting of the Deputies of the Committee of Ministers the State should provide updated, comprehensive and accurate information regarding *actual* progress in the fight against ill-treatment by and impunity of law-enforcement officials, supported by statistical information on the number of cases reported, processed, and their conclusion, with particular reference to cases affecting vulnerable groups such as Roma.

84 ECtHR, *Aksoy v. Turkey*, Application no. 21987/93, 18 December 1996, Paragraph 95.

85 Government Agent, *Report for 2009*, 18.

Reflections of a Former European Court of Human Rights Judge on his Experiences as a Judge

LOUKIS G. LOUCAIDES¹

The limitations of human institutions

When I was appointed to be a judge of the European Court of Human Rights (ECtHR or the Court) in 1998 I had already served as a Member of the European Commission of Human Rights for nine years and had the experience of a long career in Cyprus as a lawyer and as a Deputy Attorney-General. With this background I was well acquainted with the problems of the administration of justice and I knew the imperfections of human justice and the forces – personal convictions, inherited instincts, traditional beliefs, education, etc. - which, though not recognised, tug at human beings and give everyone his or her own outlook on life. As aptly put by the great American judge Benjamin Cardozo, “There is in each of us a stream of tendency whether you choose to call it philosophy or not which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals.”²

Even though I was well aware of the shortcomings, deficiencies and limitations of human judicial institutions, despite the genuine idealistic objectives which led to their creation, upon my appointment as a judge of the ECtHR I was thrilled by the idea that I would be one of the jurists who would contribute to the building of a body of jurisprudence that would give protection to individual human rights vis-à-vis the omnipotent States of Europe. I was particularly enthused with the idea that an individual could at last secure effective international legal protection of his or her rights under the European Convention on Human Rights (ECHR or the Convention) through a court of law.

The appearance of problems

Shortly after my appointment, I began to realise that the ECtHR was suffering from the same problems that proved to have seriously handicapped the success and

effectiveness of other international institutions that were created to serve the ideals of mankind. In saying this, I do not wish to minimise or underestimate the importance of the positive potential of the Court.

Soon after the Court started functioning in 1998 I became conscious of the practical impossibility of a single European Court of Human Rights having the capacity to deal effectively with the enormous number of prospective applications coming from countries with a collective total population of almost a billion individuals. This problem of work load would increase as lawyers in each of the European countries that were subject to the jurisdiction of the Court became well acquainted with the system. Seeing this storm coming from afar, I took the initiative to summon a meeting of the Court to direct the attention of my colleagues to the need for taking timely action to deal with this problem.

The meeting did not give any serious consideration to the issue in question. Nor were any such considerations - let alone a solution - given in the following years. Every now and then in gatherings or meetings members of the Court discussed the necessity of safeguarding at all costs the right of individual application. At the same time, they underestimated the danger - so long as no radical changes to the system were made - of flooding the Court with thousands of applications; something that would inevitably lead to depriving the applicants of a prompt or even a proper examination of their cases and, in the end, possibly, to a collapse of the system.

The selection of judges

As the Court entered the stage of working at “full steam” other problems became evident. The procedure of selecting and appointing judges was quite defective. Lawyers who had no training or even a background acquaintance with human rights and/or did not have essential or adequate

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2 Benjamin Nathan Cardozo, *The Nature of the Judicial Process* (Yale University Press, 1921), 12.

knowledge of one, and on some occasions of both, official working languages of the Court, namely English and French, became members of the Court with self-evident negative consequences. The case documents presented to judges were written in either English or French. That meant that if a judge could not understand the two languages he or she could not participate in, let alone contribute to, the consideration and conclusion of the case. The same applies by analogy to the inadequate knowledge of concepts and principles of human rights.³

Moreover, according to the Convention itself, “The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.”⁴ These qualifications are required for good reason. Judges with high standards of legal training, knowledge and integrity are *sine qua non* for a court of human rights that is expected to set the standards of human rights behaviour by States, to deal with and solve subtle legal issues in applying such rights and to have the courage and efficiency to find States responsible for violating human rights; sometimes in sensitive areas of State interests including in the political, strategic, social, ethical and moral spheres.

The lack of proper criteria

I verified that the procedures followed in the selection of Court judges were not such as to lead to the desired result. In the national systems, the selection of the candidates was not, in general, carried out according to any prescribed correct procedure. There were countries in which the selection was made on the basis of criteria such as the friendly relations of the candidate with influential

political personalities or the affiliation of the person proposed with the political party in power. It was therefore obvious that the States concerned did not aim to propose the most qualified candidate. And when it came to candidate selection by the competent organs as listed in the Convention, the following procedure was followed: the judges were elected by a sub-Committee of the Council of Europe’s Parliamentary Assembly. This sub-Committee consisted of 18 members chaired by a politician; many of the members had no legal qualifications. They chose candidates from lists of three drawn up by the 47 Member Governments in a manner which was totally opaque.⁵ The result was that not all members of the Court had the required competence. This leads me to another disappointing feature concerning the examination of the cases brought before the Court.

The preparation of cases by the Registry

When a case was filed, it was assigned to a lawyer who was a member of the Registry; at the same time a judge Rapporteur was appointed to supervise the preparation of the case and the solution proposed. In general, the substantial work - studying the application, the documents attached to it, preparing the report and suggesting the solution - was done by the member of the Registry. The extent of intervention, supervision and work of the judge Rapporteur depended on the personality, diligence and industry of the particular judge. Not all the judges had such qualities. The result was that the view of the member of the Registry frequently prevailed; he or she gave the direction to the solution of the case; i.e. whether the case should be declared admissible or inadmissible, whether it should be communicated and whether a violation should be found.

- 3 In the Report of Lord Woolf of December 2005 it is suggested that “A mandatory induction course should be provided to the judges immediately after they arrive in Strasbourg, covering a broad range of subjects, from the Convention system and core principles [...]” and that “As deliberation in Chamber is in either French or English, judges with insufficient knowledge of these languages [...] may be unable to contribute fully to deliberations, and thus to the final judgment [...] the Court should provide language training, where necessary, for new judges. When new judges are appointed, their language proficiency should be assessed, and supplemented, if necessary, with intensive training.” The Right Honourable The Lord Woolf et al., *Review of the Working Methods of the European Court of Human Rights*, December 2005, available at: <http://www.echr.coe.int/NR/rdonlyres/40C335A9-F951-401F-9FC2-241CDB8A9D9A/0/LORDWOOLFREVIEWONWORKINGMETHODS.pdf>, 62-64. These unfortunate proposals boil down to accepting that judges who are not qualified in terms of the necessary legal knowledge and the official languages may participate in the judicial process - the examination of cases, the deliberations and judgment – so long as they get lessons to become qualified in the future.
- 4 Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 21, available at: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf.
- 5 Lord Hoffmann, “The Universality of Human Rights” (Judicial Studies Board Annual Lecture, 19 March 2009), available at: http://www.google.com/url?sa=t&source=web&cd=1&ved=0CBIQFjAA&url=http%3A%2F%2Fwww.jsboard.co.uk%2Fdownloads%2FHoffmann_2009_JSB_Annual_Lecture_Universality_of_Human_Rights.doc&ei=cKwXTLuSOcuOOKCzrJcL&usq=AFQjCNGmMghObZC6Kp7yHH7Kc_hABDGbMg.

Of course, the judge Rapporteur proposed to the Section or the Grand Chamber the solution to the case assigned to him. Judges generally based their input on the explanations of the member of the Registry concerned. But, if the judge did not study the case file in depth, he or she had only a general idea of the case and his or her elaboration was based on the report of the Registry member. The report, without the supporting documentation, was distributed to other judges participating in the examination of the case. Further problems must have been faced by those judges who were not in a position to understand the language of the report. On occasion, I realised that certain judges did not understand the matters at hand and did not express a coherent or even a relevant opinion, or any opinion at all about the case. The deliberations were limited by a tight schedule and the established practice which expected judges to show restraint and avoid speaking about the case for a second time.



The judges of the European Court of Human Rights including Judge Loucaides.

PHOTO CREDIT: LOUKIS G. LOUCAIDES

Moreover, the generally followed procedure was that no subsequent deliberations took place apart from a meeting for the examination of the draft judgment prepared on the basis of the original provisional vote after the first deliberation. This situation led to limited discussion of cases by the judges and to only a cursory judicial review of the matters at issue. A drafting committee of judges carried out the drafting of the judgment on the basis of a proposed draft prepared by the Registry.

Under these circumstances, I found the whole system to be inadequate, bearing in mind in this respect the rather unsatisfactory qualifications and behaviour of a substantial number of members of the Court and the influential role of the members of the Registry who, although themselves were not judges, could formulate and direct the judicial fate of cases as explained above.

The role of the Registry

In fact, the Registry has had a very decisive role in the work of the Court. Suffice it to say that instead of preparing a full report for judges, Registry members could remit cases to committees of three judges for their summary dismissal on the basis of a judge's general approval of a determinative suggestion of the fonctionnaire concerned. This meant that only a brief statement of the facts and an even briefer explanation regarding the reasons for the case's dismissal was given, such as "non-exhaustion", "fourth instance" (examination would have amounted to a review on appeal from the national court) or "the

application does not satisfy the requirements of the Convention." The committee cases formed a bundle of 100 or so reports (generally of one page) which were examined, quickly perused and dealt with to a great extent superficially at meetings held by the sections about once a week. This suited the members of the Registry - some of whom

were not particularly efficient and diligent - who were dealing with cases because they could be credited for disposing of a substantial number of cases without putting in any significant amount of work into them, even though many deserved extensive study and preparation leading to a full report for decision by a chamber of judges.

The "Bureau"

When speaking about the shortcomings in the organisation and work of the Court, reference must be made to the so-called "Bureau" of the Court; this is composed of the Section Presidents and presided over by the President of the Court. This organ is not included in the Convention and there is no specific authorisation for its creation in any of the Court's rules.

Nevertheless, in the Rules of the Court we find a provision for the “Bureau” (rule 9A), the task of which:

shall be to assist the President in carrying out his/her function in directing the work and administration of the Court. To this end the President may submit to the Bureau any administrative or extrajudicial matter which falls within his/her competence. The Bureau shall also facilitate co-ordination between the Court’s Sections.⁶

The Convention does not speak of any institutionalised “assistance” to the President or of any “facilitation” of co-ordination between the Court’s Sections by any prescribed organ. The rule proceeds to provide that “the Bureau” (as distinct from the President) “may report on any matter to the Plenary.” It is therefore obvious that the rules, by providing for the existence of a “Bureau”, were not even confined to the establishment of a procedural arrangement but they introduced a separate collective organ that had nothing to do with the structure of the Court organs according to the Convention.

Yet during my time the “Bureau” examined and provided solutions to problems and matters concerning the administration of the Court’s work. Although it lacks any legal basis in the Convention its decisions have a *de facto* binding effect. It does not account in a transparent and open way to the other judges. Nonetheless, it behaves as the highest administrative authority of the Court. I personally had most disappointing experiences concerning the decisions and behaviour of this organ which failed to deal with or respond to serious matters raised by me in writing concerning irregularities regarding procedural problems in certain cases pending before the Sections.⁷

Matters affecting the interests of States

Another issue - perhaps the most important - regarding the work of the Court was its reluctance to find violations in sensitive matters affecting the interests of the respondent States. Without implying in any way a lack of integrity on the part of judges, I must say that I formed the belief, on the basis of cases, that the majority of the judges were reluctant to find violations in cases that would present serious problems to a State’s financial capabilities, to the general legal or governmental system or to the political objectives of the respondent State. This reluctance could only be overcome in cases where a general consensus or a forceful opinion or reaction was formed and consolidated amongst the Council of Europe’s Member States in such way as to prevail over the particular serious State interests at issue. This last factor explains judgments such as those which were against the moral traditions of the respondent States, such as judgments overturning the prohibition of homosexuality.

I provide below certain illustrations of case law supporting my conclusion regarding the tendency of the Court not to harm serious interests of respondent States.

Jurisprudence showing a certain reluctance of the Court

Examples of such cases include *Chapman v The United Kingdom*,⁸ *Bankovic v Belgium and 16 Other Contracting States*⁹ (which I have criticised elsewhere¹⁰), *Stec and Others v The United Kingdom*,¹¹ *Hatton and Others v The United Kingdom*,¹² *H.M. v Switzerland*¹³ and *Xenides-Arestis v Turkey*.¹⁴

6 European Court of Human Rights (ECtHR), *Rules of the Court*, 1 June 2010, available at: http://www.echr.coe.int/NR/rdoonlyres/6AC1A02E-9A3C-4E06-94EF-E0BD377731DA/0/RulesOfCourt_June2010.pdf.

7 The Bureau continues to function in the same way to this day.

8 ECtHR, *Chapman v The United Kingdom*, Application no. 27238/95, 18 January 2002.

9 ECtHR, *Bankovic v Belgium and 16 Other Contracting States*, Application no. 52207/99, 12 December 2001.

10 Loukis J. Loucaides, “Determining the Extra-territorial Effect of the European Convention: Facts, Jurisprudence and the Bankovic Case”, *European Human Rights Law Review*, Issue 4 (2006); reprinted in Loukis J. Loucaides, *The European Convention on Human Rights: Collected Essays*, (Martinus Nijhoff, 2007).

11 ECtHR, *Stec and Others v The United Kingdom*, Application nos. 65731/01 and 65900/01, 12 April 2006.

12 ECtHR, *Hatton and Others v The United Kingdom*, Application no. 36022/97, 8 July 2003.

13 ECtHR, *H.M. v Switzerland*, Application no. 39187/98, 26 February 2002.

14 ECtHR, *Xenides-Arestis v Turkey*, Application no. 46347/99, 12 July 2005.

THE CHAPMAN CASE

Chapman v The United Kingdom concerned a complaint by a Gypsy woman alleging that:

planning and enforcement measures taken against her in respect of her occupation of her land in her caravans violated her right to respect for her home and her private and family life [...]; that these [measures] also disclosed an interference with the peaceful enjoyment of her possessions [...]; and that she had no effective access to court to challenge the decisions taken by the planning authorities [...] She further complained that she was subjected to discrimination as a Gypsy contrary to Article 14 of the Convention.¹⁵

The question of discrimination had a predominant place in the case. Adjusting planning controls concerning the use of land to the Gypsy way of life was strongly and constantly opposed by British authorities and the British public.¹⁶ In 1996 in *Buckley v The United Kingdom* which concerned a Gypsy applicant, the Court had already adopted an approach in favour of a “wide margin of appreciation” on the part of the authorities in the area of planning controls.¹⁷ This avoided the need to give the appropriate weight to the fact that Gypsies had more limited housing options open to them due to their lifestyle and that they had special requirements that outweighed the slim public interest in the application of public controls in their case. In other words, the Court failed to grasp the gist of the just claims of the Gypsy minority which, like other minorities, was entitled in terms of human rights to the respect and protection of the traditional specificities shaping their identity. Eight years later, the Court failed again in *Chapman* to extend protection to the particular characteristics of their lifestyle with respect to similar complaints by a Gypsy applicant. The Court stated that Article 8 of the Convention does not impose a positive obligation on the State to make available to the Gypsy community an

adequate number of suitably equipped sites and that it would be slow to grant protection to those who, in defiance of the law, established their home on an environmentally protected site. As rightly observed by dissenters:

There is an emerging consensus amongst the Member States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle not only for the purpose of safeguarding the interests of the minorities themselves but also in order to preserve a cultural diversity of value to the whole community. This consensus includes a recognition that the protection of the rights of minorities, such as Gypsies, requires not only that Contracting States refrain from policies or practices which discriminate against them but also that, where necessary, they should take positive steps to improve their situation through, for example, legislation or specific programmes.¹⁸

The first cases concerning the difficulties facing Gypsies were confined principally to applications against the United Kingdom concerning the inflexible British planning controls. With the entry of Central and Eastern European countries into the Convention System - States with large Romani and other minority populations - the approach of the Court changed direction to a more protective approach regarding the rights of these minorities.

This change was, I believe, due to the force of the other point of view of persons affected by inflexible judgments such as *Buckley* and *Chapman*, supported now by a wider consensus and a larger, more dynamic group of persons, organisations and institutions (those involved in litigation and those that are not) as well as by repeated recommendations by the Council of Europe’s Committee of Ministers and Parliamentary Assembly.¹⁹

This is illustrated by the recent judgments *D.H. and Others v The Czech Republic*²⁰ and *Oršuš and Others v Croatia*.²¹ In both

15 ECtHR, *Chapman v The United Kingdom*, Application no. 27238/95, 18 January 2002, paragraph 3.

16 See, for example, the facts in Application no 11862/85.

17 ECtHR, *Buckley v The United Kingdom*, Application no. 20348/92, 25 September 1996.

18 ECtHR, *Chapman v The United Kingdom*, Application no. 27238/95, 18 January 2002. Joint Dissenting Opinion of Judges Pastor Ridruejo, Bonello, Tulkens, Straznicka, Lorenzen, Fishbach and Casadevall, paragraph 3.

19 Dean Spielmann, “La question des Tsiganes et la jurisprudence de la Cour européenne des Droits de l’Homme”, *Annuaire International Des Droits de l’Homme*. p.122.

20 ECtHR, *D.H. and Others v The Czech Republic*, Application no. 57325/00, 13 November 2007.

21 ECtHR, *Oršuš and Others v Croatia*, Application no. 15766/03, 16 March 2010.

cases, the Court found violations of Article 14 (prohibition of discrimination) read in conjunction with Article 2 of Protocol No.1 (right to education) in respect of the Romani applicants.

I must, however, add that the general practice of the Court of avoiding the examination of a complaint for violation of the prohibition of discrimination under Article 14 in cases where a violation of another Convention Article is found works as a brake that impedes the protection of minority rights whenever it appears that the violation found could be due to the fact that the victim belonged to a minority group such as Roma. In this respect, I endorse the dissenting opinion of Jean-Paul Costa in *Cyprus v Turkey*, in which he disagreed with the majority that no violation of the prohibition of discrimination under Article 14 was found in respect of the Greek-Cypriot and the Turkish-Cypriot Romani communities living in the Turkish occupied part of Cyprus. In his opinion he rightly stated that “As a matter of general principle the prohibition on discrimination contained in Article 14 does not appear to me to be made redundant by a mere finding that a right guaranteed by the Convention has been violated.”²²

In any event with the adoption of Protocol 12 to the Convention which provides for the prohibition of discrimination as an independent right, unconnected with other rights safeguarded by the Convention, the legal protection of minorities can be more effective.²³ Although it entered into force in 2005, the first case in which the Court found a violation of Article 1 of Protocol 12 was *Sedjić and Finci v Bosnia and Herzegovina*. This case is important in three respects: 1) the protection of equal treatment was applied to individuals in respect of a right under national law - namely that the right to stand for election to the Presidency of the respondent State which does not fall within the rights safeguarded under the Convention; 2) the applicants were members of minorities - one was a member of the Romani community and the other was a member of the Jewish community; and 3) the violations found were intertwined with the constitutional arrangements made to achieve peace between the three belligerent ethnic groups in the State in question. The Court, unaffected by the political exigencies, acted in line with the principle of prohibition of discrimination under Protocol 12. In fact the viola-

tions were so obvious that any other course would have led to a complete collapse of the system. Even in his dissenting opinion, Judge Bonello admitted that “there is nothing as obvious as finding damnable those provisions in constitutional set-up that prevent Roma and Jews for standing for election. So far, an open and shut violation [...]”²⁴

THE *BANKOVIC* CASE

*Bankovic v Belgium and 16 Other Contracting States*²⁵ concerned whether the bombing by States party to the European Convention on Human Rights of a territory of a country which was not party to the Convention entailed responsibility under the Convention. I think that the answer should have been a straight-forward finding of violation, thus avoiding the absurdity of allowing States to adhere to human rights standards imposed by the Convention within their territory but to act with impunity outside their boundaries. However such a finding would have had enormous negative consequences on the strategic and political activities of the States concerned. The Court declared the application inadmissible using a most unconvincing reason regarding the notion of “jurisdiction”.

THE *STEC* CASE

The case of *Stec and Others v The United Kingdom* concerned differential treatment between men and women in the United Kingdom’s State pension scheme. The Court, by 16 votes to one (the author of this article), although finding that this treatment - in the form of different pensionable ages - amounted at some stage to unequal treatment on the grounds of sex, tried to justify this discrimination by saying that:

Having begun the move towards equality, moreover, the Court does not consider it unreasonable of the government to carry out a thorough process of consultation and review, nor can Parliament be blamed for deciding in 1995 to introduce the reform slowly and in stages. Given the extremely far-reaching and

22 ECtHR, *Cyprus v Turkey*, Application no 25781/94, 10 May 2001. Partly Dissenting Opinion of Judge Costa, paragraph 3.

23 The Protocol was adopted on 4 November 2000 and entered into force on 1 April 2005. As of February 2010, it has 17 Member States and 20 signatories (from 47 CoE Member States).

24 ECtHR, *Sedjić and Finci v Bosnia and Herzegovina*, Application nos. 27996/06 and 34836/06, 22 December 2009. Dissenting Opinion of Judge Bonello.

25 ECtHR, *Bankovic, Stojadinovic, Stoimenovski, Joksimovic and Sukovic v Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom*, Application no. 52007/99, 12 December 2001.

serious implications, for women *and for the economy in general*, these are matters which clearly fall within the State's margin of appreciation (emphasis added).²⁶

With respect to my own reaction as a dissenter, I refer only to one sentence of my opinion:

First, I consider that new social legislation, however well-balanced it may be, cannot be invoked under the doctrine of the margin of appreciation as an excuse for not having acted in due time to avoid an instance of discrimination clearly lacking reasonable and objective justification.²⁷

I may have been right or wrong in my opinion. But I think that the point that I made above about the reluctance of the Court to find a violation that has serious negative effects on the respondent State's vital interests is illustrated clearly.

THE HATTON CASE

Similar considerations apply to *Hatton and Others v The United Kingdom*. In that case the applicants complained that the Government policy on night flights at Heathrow airport introduced in 1993 violated their rights under Article 8 of the Convention. The third Section found in favour of the applicants. However, the Grand Chamber found no violation and in this respect invoked the following:

As to the economic interests which conflict with the desirability of limiting or halting night flights in pursuance of the above aims, the Court considers it reasonable to assume that those flights contribute at least to a certain extent to the general economy. The Government have produced to the Court reports on the results of a series of inquiries on the economic value of night flights, carried out both before and after the 1993 Scheme. Even though there are no specific indications about the economic cost of eliminating specific night flights, it is possible to infer from those studies that there is a link between flight connections in general and night flights.²⁸

In this respect, it is useful to refer to the dissenting opinion of five members of the Court who stated the following:

The Grand Chamber's judgment in the present case, in so far as it concludes, contrary to the Chamber's judgment of 2 October 2001, that there was no violation of Article 8, seems to us to deviate from the above developments in the case-law and even to take a step backwards. *It gives precedence to economic considerations over basic health conditions* in qualifying the applicants' "sensitivity to noise" as that of a small minority of people" (emphasis added).²⁹

THE H.M. CASE

H.M. v Switzerland concerned the placement of elderly persons in nursing homes against their will in accordance with Articles 397a *et seq.* of the Swiss Civil Code, which enabled the withdrawal of liberty on grounds of welfare assistance. The majority followed the proposal of the President of the Chamber, the Swiss judge, Mr Wildhaber. Judge Wildhaber supported the view that the placement of the elderly applicant in a nursing home against her will did not amount to a deprivation of liberty considering the fact that the placement was a responsible measure taken by the competent authorities in the applicant's own interest. I disagreed and stated that whether a measure amounts to a deprivation of liberty does not depend on whether it is intended to serve or actually serves the interests of the person concerned. In my opinion, the deprivation fell outside the deprivations of liberty permitted under Article 5 of the Convention and was therefore not accompanied by the safeguards against arbitrariness provided by the same Article. As an example of such arbitrariness, I referred to the possibility of elderly people being deprived of their liberty at the behest of scheming relatives seeking to make personal gain from their compulsory removal of these people to institutions "for their own good".

THE XENIDES-ARESTIS CASE

Xenides-Arestis v Turkey is a typical example of the Court sending a signal of its unwillingness to continue dealing

26 ECtHR, *Stec and Others v The United Kingdom*, Application nos. 65731/01 and 65900/01, 12 April 2006, paragraph 65.

27 ECtHR, *Stec and Others v The United Kingdom*, Application nos. 65731/01 and 65900/01, 12 April 2006. Dissenting Opinion of Judge Loucaides.

28 ECtHR, *Hatton and Others v The United Kingdom*, Application no. 36022/97, 8 July 2003. Grand Chamber, paragraph 126.

29 ECtHR, *Hatton and Others v The United Kingdom*, Application no. 36022/97, 8 July 2003. Grand Chamber Joint Dissenting Opinion of Judges Costa, Ress, Turmen, Zupancic and Steiner, paragraph 5.

with repetitive cases involving ongoing violations, where such cases present a real threat to the respondent Government's strong, persistent and long term political objectives and were simultaneously becoming a nuisance to the Court. To indicate its unwillingness to be involved, the Court invoked the need for the applicants to exhaust new "domestic" remedies proposed by the respondent State - albeit illegal and ineffective - thus giving to the Court the opportunity to wash its hands of the case.

Like other Greek Cypriots who were displaced from their homes and properties by the Turkish forces which invaded Cyprus in 1974, the applicant was deprived of her property by the respondent Government. The Court had previously found Turkey responsible for continuing violations in similar cases.³⁰ No question of exhaustion of domestic remedies arose in the past because the Court found that there was an "administrative practice" regarding the confiscation of Greek Cypriot properties in the Turkish-occupied area and there existed no effective remedy. These cases were a real headache for Turkey and it kept trying to divert them away from the jurisdiction of the Court.

With the help of some circles of the Council of Europe, administrative and diplomatic, along with the understanding of the President of the Court, Judge Wildhaber, and others, Turkey established a "Compensation Commission" in the occupied area to deal with complaints similar to those of the applicant as a way out of its problem. This scheme was encouraged by the Court. The result in the case of *Xenides-Arestis* was that *without any proper examination of its legality and effectiveness*, the section dealing with the case commented favourably on the "law" of the occupied territory of Cyprus that provided the "remedy" in question. The relevant judgment stated:

30 Including: ECtHR, *Loizidou v Turkey* 1996-VI, Application no. 15318/89; ECtHR, *Cyprus v Turkey*, Application no. 25781/94, 10 May 2001; and ECtHR, *Demades v Turkey*, Application no. 16219/90, 31 July 2003 and 22 April 2008.

31 ECtHR, *Xenides-Arestis v Turkey*, Application no. 46347/99, 12 July 2005, paragraph 37. In its decision on admissibility the Court stated: "The Court considers that the respondent State must introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment in relation to the present applicant as well as in respect of all similar applications pending before it, in accordance with the principles for the protection of the rights laid down in Article 8 of the Convention and Article 1 of Protocol No. 1 and in line with its admissibility decision of 14 March 2005."

32 *Demopoulos and Others*, decided on 1 March 2010. This Decision was purely political in formulation, reasoning and effect. By way of illustration, the Court found *inter alia* that the title to property, with the passage of time, may be emptied of any practical consequences and that an occupying power cannot be asked to ensure that the owners in question obtain access to and possession of their properties if others have in the meantime gotten possession of these properties - regardless of whether such possession was illegal because the present users are settlers from Turkey or other trespassers. Moreover the Court attributed responsibility to victims of violations for the non-solution of the political problem which, according to the Court, was a factor in the violations in question, even though in actual fact the cause of the violations was the continuing illegal Turkish occupation and Turkey's policy of dividing Cyprus into an area populated and administered by a majority of Turkish Cypriots and another area populated and administered by a majority of Greeks Cypriots.

33 ECtHR, *Göktaş v France*, Application no. 33402/96, 2 July 2002.

The Court *welcomes* the steps taken by the Government in an effort to provide redress for the violations of the applicant's Convention rights as well in respect of all similar applications pending before it. The Court notes that the new compensation and restitution mechanism, *in principle, has taken care of the requirements of the decision of the Court on admissibility of 14 March 2005 and the judgment on the merits of 22 December 2005* (emphasis added).³¹

The section concluded that, in view of the advanced stage of the proceeding in the case under consideration (the application had been declared admissible), it was not possible to apply the non-exhaustion ground. However, the case established the foundation for the rejection of subsequent similar applications which, according to the Court, should have been examined by the "Commission" in the Turkish-occupied area of Cyprus despite the many well-founded legal objections to such recourse.³²

Reluctance to find unfair judgments of national courts

During my term of office as a judge I also experienced a consistent general attitude of the Court toward not finding a violation of the right to a fair trial on the ground of unfair national court judgments. The Court was concentrating on the procedural safeguards of a trial and it has established a practice of not interfering with the result of a trial on the ground that such an interference would transform the Court into a court of "fourth instance". I had the opportunity to criticise this practice both in an article I authored and in my dissenting opinion in the case *Göktaş v France*³³ in which I stated:

I believe that the right to a fair trial is not confined to procedural safeguards but extends also to the final judicial determination itself of the case. Indeed it would have been absurd for the Convention to secure proper procedures for the determination of a right or a criminal charge and at the same time leave the litigant or the accused unprotected as far as the result of such a determination is concerned. Such approach would allow a fair procedure to end up in an evidently unjustified or unfair result.³⁴

As far as I know the Court has in only one case interfered with the finding of a national court on the ground of unfairness. This is the case of *Dulaurans v France*³⁵ where a finding of the French Court of Cassation, which left one of the claims of the applicant undecided, was considered by the Court to be manifestly wrong. The decision was a step in the right direction. Nevertheless, it was exceptional and it was – wrongly – criticised by circles of the Court of

Cassation on the ground that the European Court of Human Rights overstepped the limits of its competence and interfered with the judicial competence of national courts.

Concluding remarks

Subject to all of the above, I must, in fairness, state that the Court through many cases has established a commendable jurisprudence in the field of human rights, doing justice to victims of oppressive or unfair behaviour by States. It remains to be seen whether in the light of the problems set out above the Court will in the future fulfil its task judicially, effectively and consistently, without fear or favour. Many of us entertain some doubts, but we all wish that things will improve. The Court has some excellent fearless judges and it enjoys the support of all those who really care about the protection of human rights.

34 Loukis J. Loucaides, “Questions of Fair Trial under the European Convention on Human Rights”, *Human Rights Law Review*, Volume 3, No. 1; reprinted in Loukis J. Loucaides, *The European Convention on Human Rights: Collected Essays*, (Martinus Nijhoff, 2007).

35 ECtHR, *Dulaurans v France*, Application no. 34553/97, 15 March 2003.

ERRC Advocacy at the Second European Roma Summit

OSTALINDA MAYA OVALLE¹

We must admit that, despite our best efforts, the situation of many Roma seems to have deteriorated over the years. That is simply not acceptable. Too many Roma are still victims of racism, discrimination and social exclusion. Too many Roma children are still on the streets instead of going to school. Too many Roma are still denied a fair chance on the labour market. Too many Roma women are still victims of violence and exploitation.²

These were the words of Commissioner Viviane Reding at the II European Roma Summit organised on 8-9 April 2010 in Córdoba, Spain. Despite the European Commission's commitment to taking on this problem, the adoption of an EU Framework Strategy on Roma Inclusion is still nowhere on the horizon although this is one of the loudest demands of key civil society actors.

The Summit took place under the title "Promoting policies in favour of the Roma population." It was organised by the Spanish Presidency of the EU Council through the Spanish Ministry of Health and Social Policy. The event was planned to coincide with International Roma Day to acknowledge that "Roma are an integral part of the history and civilisation of Europe."³ This event followed the first EU Roma Summit, held in Brussels on 16 September 2008.

Key speakers at the event included European Commission Vice-President Reding (Justice, Fundamental Rights and Citizenship) and Commissioner Laszlo Andor (Employment,

Social Affairs and Inclusion). The European Parliament was represented by Livia Járóka and other Members of the European Parliament. The Spanish Government was represented by the Spanish Minister for Health and Social Policy, Trinidad Jiménez García-Herrera, and the Minister for Equality, Bibiana Aído Almagro. Ministers and Secretaries of State from several countries including Belgium, France, Finland, Hungary, Macedonia, Bosnia Herzegovina and Serbia were in attendance. Keynote speakers included George Soros, Chair of the Open Society Institute, and World Bank Director Theodore Ahlers. The event was also attended by approximately 400 Romani and non-Romani civil society actors.

The plenary sessions of the Cordoba Summit focused on assessing European and national policies related to Roma and on health issues; parallel sessions were built around the 10 Common Basic Principles on Roma Inclusion.⁴

The Summit provided an opportunity to highlight Roma issues to media representatives and relevant policy makers. Several NGOs and agencies jumped to make their voices heard. The ERRC produced its *Factsheet: Summit-to-Summit Roma Rights Record* in English, Spanish and Romani.⁵ It contained a record of over 45 violent attacks across different European countries, as well as information on other key issues such as the increasing activity of extremist political parties and politicians, the continuation of school and housing segregation and the practice of coercive sterilisation of Romani women.

- 1 Ostalinda Maya Ovalle is the ERRC Coordinator of Research and Advocacy. Ms Ovalle attended in the Summit, delivering a presentation during the session "Gender, inequalities and discrimination," and participated in a connected roundtable organised by the EU Agency for Fundamental Rights.
- 2 Viviane Reding, "The need for convivencia: European values and non-discrimination at the heart of Europe's Roma strategy" (keynote speech, Second European Roma Summit, Córdoba, 8 April 2010), available at: <http://ec.europa.eu/social/BlobServlet?docId=4935&langId=en>.
- 3 European Commission (EC), *Second Roma Summit*, available at: <http://ec.europa.eu/social/main.jsp?catId=88&langId=en&eventsId=234&furtherEvents=yes>.
- 4 *Report on the II Roma Summit, Spanish Presidency of the European Union 2010: Promoting Policies in Favour of the Roma Population*, available at: <http://ec.europa.eu/social/images/icons/lang/en.gif>. Four roundtables were held around the following principles:
 - Principle No. Two: "Explicit but not exclusive targeting". Segregation versus integration. Specific projects with Roma versus general projects.
 - Principle No. Five: "Awareness of the gender dimension". Gender, inequalities and discrimination.
 - Principle No. Seven: "Use of Community instruments". How can EU instruments be more effective at the local level.
 - Principle No. Nine: "Involvement of civil society". Attracting civil society towards Roma causes.
- 5 ERRC, "Factsheet: Summit-to-Summit Roma Rights Record", press release, 8 April 2010, available at: <http://www.errc.org/cikk.php?cikk=3573>.

Since 2008, in the Czech Republic, Hungary and Italy, anti-Romani violence has remained a serious and even an increasing problem; Roma in other countries have also been affected. In **Hungary**, the ERRC registered reports of at least 45 violent attacks against Roma including 9 fatalities since 2008. [...] In the **Czech Republic**, at least 7 attacks against Roma were reported.

Excerpt from: ERRC, *Factsheet: Summit-to-Summit Roma Rights Record*.

The European Union’s Agency of Fundamental Rights (FRA) organised a two-day roundtable preceding the Summit with Romani and Traveller women activists.⁶ The FRA also held a press conference to which the ERRC was invited as a speaker. The European Roma Policy Coalition (ERPC) issued three statements prior to and following the Summit, stressing that the Summit should avoid a declarative character and focus on strategic policy commitments.⁷

Perhaps the effectiveness of such actions was reduced by the level of political participation, which was disappointing in comparison with the previous Summit. While the Brussels Summit boasted the presence of the President of the European Commission José Manuel Barroso, the most prominent speakers featuring on the agenda of the Cordoba Summit were European Commissioners. Furthermore, the event did not draw the expected level of attention from the international media; in fact the overwhelming majority of the journalists that attended the event were from national and local media outlets and this was reflected in the limited media coverage that the Summit received.

Despite these shortcomings, the ERRC used the opportunity to reach out to key actors, participating in meetings with new EU Commissioner for Employment,

Social Affairs and Inclusion Andor and new European Commission Vice-President Reding. During these meetings, the ERRC urged the Commissioners to encourage the collection of data disaggregated by ethnicity, to take steps to condition EU funding on compliance with fundamental rights norms and to take steps to address fundamental rights violations like segregation of schools. Furthermore, the ERRC was invited to speak at the roundtable on gender issues and used the opportunity to highlight the need for authorities to address human rights violations as a result of racist violence as well as violence within Romani communities. The ERRC further stated that when it comes to intra-community violence, references to Romani culture do not serve as an adequate pretext for a lack of intervention by respective authorities in cases where the rights of children and women are violated.⁸

The expectations of the EU were reflected in two documents issued coinciding with the Summit: the Joint Statement issued by the Trio Presidency and the Communication from the European Commission. The former can be summarised as promoting: mainstreaming of Roma issues in European and national policies; the design of a road map of the Integrated Platform on Roma Inclusion; and increased accessibility of Roma to EU funds.⁹ In line with this, the EC Communication urged “Member States to take action to ensure that interventions financed by Structural Funds promote equal opportunities and tackle segregation” and called for “[g]reater cooperation between national, European and international players.”¹⁰ Unfortunately, both are silent on the adoption of an EU Framework Strategy on Roma Inclusion.

Although such conclusions are generally positive, they do not seem to go far enough if contrasted with the expectations expressed by civil society: an end to all forms

6 Participants of the roundtable agreed on a common set of key points on the occasion of the Summit. *Romani and Travellers Women Position Paper Resulting from the FRA Roundtable with Romani and Travellers Women Activists: “On a Road to Equality”*, 6-7 April 2010, available at: http://fra.europa.eu/fraWebsite/attachments/RT_roma_summit_key_messages.pdf.

7 ERPC, “ERPC Declares Expectations from the 2nd European Roma Summit”, press release, 11 February 2010, available at: http://www.romadecade.org/erpc_declares_expectations_from_the_2nd_european_roma_summit; ERPC, “Second EU Roma Summit – ERPC Joint Statement”, press release, 30 March 2010, available at: <http://www.statewatch.org/news/2010/apr/eu-roma-coalition-joint-statement.pdf>.

8 Ostalinda Maya Ovalle, “Presentation by the ERRC on Gender Issues on the Occasion of the II EU Roma Summit” (lecture, Second European Roma Summit, Córdoba, 8 April 2010), available at: <http://www.2010contralapobreza.msps.es/actoPresentacion/Roma/Ostalinda-En.pdf>.

9 “Joint Statement by the Trio Presidency (Spain, Belgium, Hungary) on the Occasion of the Second Roma Summit”, available at: <http://ec.europa.eu/social/BlobServlet?docId=4846&langId=en>.

10 European Commission, *Communication from the European Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: The social and economic integration of the Roma in Europe*, 7 April 2010.

of discrimination with a specific emphasis on “education (particularly segregation), housing (particularly forced evictions and sub-standard living conditions), employment (particularly low employment rate) and health care system (coercive sterilisation and lack of adequate coverage).”¹¹ However, there are indications that the gap in expectations is being bridged in certain areas. For example, during her speech and the meeting held with civil society actors, Commissioner Reding made clear that the Commission will not tolerate segregation or discrimination and suggested that the Commission was willing to support efforts to end segregation in schools. The ERRC has started to advocate for conditionality of EU funds on respect for fundamental rights and for obligations to be placed on the EU Member States to ensure that ethnic disaggregated data is collected as a way to ensure that adequate policies to improve the situation of Roma can be designed and monitored.

The Summit appears to have provided impetus for the strongest conclusions of the Council of the European Union on Roma to date. Following the Employment, Social Policy, Health and Consumer Affairs Council meeting in Luxembourg on 7 June 2010, the Council issued *Council conclusions on advancing Roma Inclusion*.¹² In these conclusions, the Council called on the European Commission and the Member States:

28. To make progress towards a specific road map for the Platform, in order to provide a mid-term framework of stakeholder actions and expected outputs and to reinforce horizontal cooperation between the Member States and civil society in matters related to Roma by taking such matters into account within the existing Open Method of Coordination; the aims set out in the road map should include coordination and creating synergies between existing parallel policy processes and gathering in-depth information on national policies having an impact on Roma inclusion; it should also prioritise issues within different fields of action and define central points/axes, in accordance with Common Basic Principles 116 and 417, focusing especially on education, housing, health-care, and equal access to employment; [...]
30. To participate actively in the Platform, so as to guarantee its effective functioning, management and continuity; [...]
33. To take full advantage of the opportunities offered by the amendment of Article 7 of Regulation 1080/2006/EC by initiating appropriate integrated actions for the support of Roma communities in both rural and urban areas, with a view to the improvement of housing conditions and desegregation.

11 ERPC, “ERPC Declares Expectations from the 2nd European Roma Summit.”

12 Council of the European Union, *Council conclusions on advancing Roma Inclusion*, Luxembourg, 7 June 2010, available at: http://www.eu2010.es/export/sites/presidencia/comun/descargas/agenda/agenda_junio/jun07_romani.pdf.

European Court Denounces Segregated Education Again: *Oršuš and Others v Croatia*

IDAVER MEMEDOV¹

Since 2007, the European Court of Human Rights (ECtHR or the Court) has condemned discrimination against Romani children in access to education in three different cases (*D.H. and Others v The Czech Republic*;² *Sampanis and Others v Greece*³ and *Oršuš and Others v Croatia*).⁴ These three cases demonstrate that discrimination against Romani children in education is a widespread phenomenon in Europe which occurs in different ways but has the same outcome: Romani children are deprived of their fundamental right to education on an equal footing with other children.

In its first judgment, *D.H. and Others v The Czech Republic* from November 2007, the ECtHR ruled that segregating Romani students in special schools is a form of unlawful discrimination that violates their right to education. At the same time the ECtHR noted that the Czech Republic is not alone in this practice and that discriminatory barriers to education for Romani children are present in a number of European countries. The ECtHR made it clear that this kind of practice cannot be tolerated anymore in Europe. Less than one year after this groundbreaking judgment, in June 2008 the ECtHR reiterated the principles established in this case in the *Sampanis and Others v Greece* judgment. The ECtHR unanimously found a violation against Greece for effectively denying education to Romani children over a certain period of time and for the subsequent placement of the children in an annex to the local primary school, attended only by Roma and located five kilometres from the primary school. In the *Sampanis* judgment, the ECtHR went further and pointed out that integration in schools is a fundamental element for integration into society as a whole.

However, *Oršuš and Others v Croatia* demonstrated that the pretext of States for segregating Romani children seems never to end. The ECtHR Grand Chamber judgment of

March 2010 reverses a unanimous ECtHR Chamber judgment from 2008 and held that, in this case, the segregation of Romani children into separate classes ostensibly based on language is unlawful discrimination, in violation of the European Convention on Human Rights (ECHR).

The facts of the case

The *Oršuš* case involved 14 children attending mainstream primary schools in three different Croatian villages (Macinec, Podturen and Orehovica in Medjmurje county) who were placed in segregated Roma-only classes due to alleged language difficulties. In December 2004, the applicants, represented by the European Roma Rights Centre (ERRC) and Mrs Lovorka Kusan, a Croatian lawyer, had exhausted available domestic remedies and submitted an application to the ECtHR in which they alleged that the length of proceeding before the national authorities had been excessive (Article 6.1 of the ECHR), that they had no effective remedy (Article 13), that they had been denied the right to education (Article 2 of Protocol No 1) and the right to freedom from inhuman and degrading treatment (Article 3), and that they had been discriminated against in the enjoyment of the right to education based on their ethnic origin (Article 14).

The applicants alleged that their placement in the Roma-only classes stemmed from a blatant practice of discrimination based on their ethnicity by the schools concerned, reinforced by the pervasive anti-Romani sentiment of the local non-Romani community. The evidence presented to the Court, based on data provided by the Medjmurje County Office of Education, Culture, Information, Sport

1 Idaver Memedov is an ERRC Lawyer.

2 European Court of Human Rights (ECtHR), *D.H. and Others v The Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=825443&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

3 ECtHR, *Sampanis and Others v Greece*, Application no. 32526/05, 5 June 2008, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=836273&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

4 ECtHR, *Oršuš and Others v Croatia*, Application No. 15766/03, 16 March 2010, available at: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=864619&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

and Technical Culture, indicated that in the school year 2000/2001 there was a total student population in the county's primary schools of 4,577 of whom 865 pupils (18%) were Romani. Even though the Romani pupils made up only a small number of the total primary school population at the county level, the majority of them - 59.07% - ended up in the segregated classes only for Roma. In the school year 2001/2002, based on official Government statistics, in the primary schools in Macinec and Kuršanec as many as 83.33% and 88.49% of all Romani students, respectively, attended separate classes only for Roma.

The applicants further claimed that the school curriculum in the Roma-only classes was significantly reduced as compared to the officially prescribed teaching plan, which resulted in a lower quality education. A psychological study of Romani children who attended Roma-only classes in their region was submitted which reported that segregated education produced emotional and psychological harm in Romani children, both in terms of self-esteem and development of their identity. Moreover, the evidence from both parties suggests that there is poor attendance and a high drop-out rate amongst Romani children.

In July 2008, the Chamber of the ECtHR found no violation of Article 3 (prohibition against inhuman and degrading treatment) or Article 2 of Protocol No 1 (right to education) in connection with Article 14 (non-discrimination), or of Article 13 (effective domestic remedy). However, the Court did find a violation of Article 6.1 related to the excessive length of the proceedings brought by the applicants. Considering the importance of the issues raised in this case, on 18 October the applicants requested that the case be referred to the Grand Chamber. The request was accepted in December 2009 and a hearing in front of the Grand Chamber took place on 1 April 2010.

The applicants' arguments

In their submission to the Grand Chamber, the ERRC and partners argued that the segregation of the applicants in Roma-only classes deprived them of their right to receive an education and their right not to be discriminated against. The ERRC submission highlighted that the Croatian Government failed to demonstrate any consistent and rational explanation for forming Roma-only classes and that the method used by the school authorities, allegedly to improve the language skills

of the Romani children, had been inadequate. Namely, the schools did not introduce any special programme to address the language difficulties of the applicants; rather, they provided them with a sub-standard curriculum.

Moreover, the ERRC argued that the applicants had not taken part in any extracurricular activities in ethnically mixed groups organised by the school during their education and that if mixed extra-curricular activities had taken place, they would not have provided an adequate substitute for classroom integration. The ERRC claimed that the best way to improve the applicants' language abilities would have been to place them in classes with other children who spoke Croatian; an approach that is recommended by various experts within the Council of Europe, European Union and United Nations.

In addition, the ERRC stressed that there had been no clear, accessible and foreseeable procedures regarding the placement of Romani children in separate classes; neither upon their enrolment nor at a later stage in their education. The ERRC contended that the test employed as a part of the enrolment procedure was not designed to assess the child's knowledge of Croatian language but to determine the child's psycho-physiological readiness.

Furthermore, the ERRC claimed that apart from the general grading system, there had not been any adequate testing and assessment procedure that would enable the teachers to assess the applicants' educational level and aptitude upon enrolment in primary school, or provide a means of ultimately transferring them to integrated classes. As a result, the decision to transfer the Romani children into integrated classes was subject to individual assessment by the classroom teacher without any standards. In relation to the poor school attendance and high drop-out rate among Romani children, the ERRC claimed that the school authorities did not take any specific measures to remedy this apart from sanctions against parents and pupils.

The Government's arguments

The Croatian Government claimed that none of the applicants were denied the right to education since all of them enrolled in school at the age of seven and attended school until the age of 15, after which time schooling is no longer mandatory according to Croatian legislation. However, the

Government admitted that the applicants spent most of their school time in Roma-only classes; not “special” classes. In its view these classes were created only in schools where the number of Romani pupils was significant and only for those Romani children who lacked adequate knowledge of Croatian language. Moreover, the Government admitted that it was possible that the curriculum in Roma-only classes was reduced by up to 30% in relation to the regular, full curriculum. It argued that this was permissible under relevant domestic laws and that such a possibility had not been reserved for Roma-only classes but was applied in respect of all primary school classes in Croatia, depending on the particular situation in a given class.

According to the Government, the applicants had been assigned to Roma-only classes on the basis of their insufficient knowledge of the Croatian language to address their special needs, in accordance with Section 2 of the Primary Education Act that stipulates: “the purpose of the primary education is to ensure the continuing development of each pupil as a spiritual, physical, moral, intellectual and social being, according to his or her capabilities and affinities.” Moreover the Government argued that this could only be achieved in an environment where the majority of children had same basic knowledge of Croatian language.

In relation to the assessment of the applicants’ progress, the Government argued that it had been undertaken as part of the regular evaluation process applicable to all pupils in Croatia, highlighting that the progress of the applicants had been very slow and some of them had to repeat a grade two or three times. The Government also contended that some procedural safeguards had been put in place. These included the option for parents to challenge the teacher’s assessment and for each pupil to complain about the marks given by the teachers: it noted that in the case of the applicants none of them complained about the assessment of their knowledge or their placement in a Roma-only class.

In addition, the Government submitted school records to demonstrate that schools undertake a number of measures to prevent the poor school attendance and high-drop-out rates among Romani children. These included teachers encouraging pupils to attend school, regular parent-teacher meetings and individual meetings with parents and teachers

and Romani assistants employed by the schools to serve as mediators between parents and teachers. However, the Government stressed that the applicants’ parents ignored the invitations to both the regular and the individual meetings.

Finally, the Government argued that all Romani children, regardless of their placement in Roma-only classes, were integrated with other children during their schooling since they shared the same school facilities and the schools organised extracurricular activities including a celebration of International Roma Day and visits to Romani settlements.

The Grand Chamber decision

In its assessment of the case, the Grand Chamber of the ECtHR reaffirmed that while deciding on a case which involves Roma, it is crucial to take into consideration the specific position of the Romani population, which as a result of its history had become a disadvantaged and vulnerable group and therefore required special protection, including in the sphere of education. Moreover the Grand Chamber pointed out that this case deserves even further particular attention since the applicants “were minor children for whom the right to education was of paramount importance.”⁵

The Grand Chamber emphasised that even though there was no general policy of placing Romani children in Roma-only classes, the reality was that only Romani children had been placed in such classes. Thus, the practice in question represents a difference in treatment, which amounts to indirect discrimination. The State therefore has to demonstrate that this practice is “objectively justified by a legitimate aim and that the means of achieving that aim were appropriate, necessary and proportionate.”⁶

According to the Grand Chamber the temporary placement of children in a separated class due to inadequate command of the language does not automatically constitute a violation of Article 14 (prohibition of discrimination), if such placement would pursue the legitimate aim of adapting the education system to the special needs of the children. Nevertheless, when this type of measure disproportionately affects or only affects members of a specific ethnic group, as in the *Oršuš* case, the State has to put in place special safeguards at each stage of the implementation of such measures.

5 *Ibid.*, paragraph 147.

6 *Ibid.*, paragraph 155.

In its assessment of the safeguards that the Croatian Government put in place, the Grand Chamber concluded that Croatian law did not provide a clear and specific legal basis for placing children insufficiently proficient in Croatian language in separate classes and that this practice had not been commonly employed to address the language difficulties of children. Moreover, the test applied to decide whether to place children in Roma-only classes was not designed to assess the child's knowledge of the Croatian language but instead tested their general psycho-physical condition. The Grand Chamber also stressed that with respect to some of the applicants there were serious inconsistencies in addressing their language problems.

In relation to the curriculum taught in the Roma-only classes, the Grand Chamber concluded that the Government had not demonstrated how the reduction of the curriculum by 30% would address the applicants' alleged lack of Croatian language proficiency. In addition, it highlighted that since there was no special programme to address the alleged inadequate language competency of the children, there was no reason to place Romani children in separate classes which followed the same curriculum. Additional Croatian classes had been offered to the individuals, but this was not satisfactory as three of the applicants had never received language classes and others had only received them in their first or third grades.

Considering the transfer from Roma-only to mixed classes, the Grand Chamber found that there were not clear and transparent criteria, as a result of which the applicants spent a substantial period of their education in Roma-only classes; some spent their entire education in Roma-only classes. The Grand Chamber found that no monitoring procedure was in place and that the Government failed to provide any individual reports about the applicants' progress in learning the language. In the Court's view this kind of reporting is crucial to ensure objectivity and is very important for addressing other problems that the children may have faced. Thus, the Court concluded that the lack of transparent and clear criteria or a monitoring procedure left a lot of space for arbitrary treatment.

The Grand Chamber, recognising that the Government cannot be the only one responsible for poor school attendance and high-drop-out rate among Romani children, pointed to the failure of the Government to implement positive measures to raise awareness of the importance of educa-

tion among Roma. As regards the failure of the applicants' parents to challenge the decision to place their children in Roma-only classes, the Grand Chamber recalled the judgment in *D.H. and Others v The Czech Republic* and held that, as Romani parents, they were themselves at a disadvantage and may also have been poorly educated. This meant that they may have been unable to weigh the consequences of giving their consent to the segregation of their children. In any case, the Court asserted that there could be no waiver of the right not to be subjected to racial discrimination as this would be counter to the public interest.

Concluding that the Croatian Government failed to put in place adequate safeguards which would ensure a reasonable relationship of proportionality between the means used and the legitimate aim to be achieved, the Grand Chamber found that the segregation of the children in this case based on alleged language difficulties was not objective or reasonable and thus the Croatian Government violated Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol 1 (the right to education).

What happens after the judgment?

The ECtHR judgment in the *Oršić* case is a big victory for the Roma rights movement and the right to quality education on equal terms for Roma and other marginalised groups. This judgment uncovered one more pretext provided by a European State for segregating Romani children in education and reinforced the fact that the ECHR requires the integration of Romani children into mainstream education. However, the Grand Chamber of the ECtHR failed to address the allegation of the applicants that their placement in separate classes based on race represented inhuman and degrading treatment in violation of Article 3 in conjunction with Article 14 of the ECHR, since their placement in Roma-only classes caused severe educational, psychological and emotional harm which resulted in their stigmatisation, feelings of alienation and lack of self-esteem as well as in denial of the benefits of a multi-cultural educational environment. This situation lasted for a prolonged period of time - the applicants were segregated throughout their primary education - and the Government failed to provide evidence that the treatment in question was not based on racial or ethnic discrimination or that it had taken sufficient measures to move the children into integrated classes.

Nevertheless, the judgment in itself has limited meaning for Romani children if the Croatian Government does not stop the practice of segregation of these children. The implementation process of the two previous judgments of the ECtHR (*D.H. and Others v The Czech Republic* and *Sampanis and Others v Greece*) does not inspire much optimism that this will happen very soon.

This sad expectation was confirmed during the ERRC's last visit to Medjmurje County in June 2010. The situation in the schools remains the same; the majority of Romani children continue to attend Roma-only classes. The ERRC even identified one more school in the village of Podturen where Romani children are attending Roma-only classes. The situation for applicants in the *Oršuš* case themselves is little improved and they have been reportedly threatened with the possibility of having their social benefits cut because of their damages award.

The only positive development was an initiative coming from the directors of the primary schools at the heart of the case which asked Medjmurje county authorities and the Ministry of Education to introduce three-year, free

of charge pre-school programmes for Romani children to help these children to overcome language barriers before beginning their primary education. For the time being, this positive proposal remains without a response from the relevant authorities. With this initiative, the school directors have in fact admitted that the practice of placing Romani children in segregated classes is not the solution for the alleged language difficulties of these children. To bring real changes which will make the promise of the *Oršuš* judgment a reality for Romani children, prompt action by the Croatian authorities is needed. In practice this will mean: enforcing the prohibition of the segregation of Romani children in Roma-only classes or any other form of segregation; introducing free integrated pre-school education for Romani children to address language needs and enable them to compete on an equal footing with other children; and active engagement of the school authorities and social worker with Romani parents and the Romani community. By undertaking these measures the Croatian Government will not only fulfil its obligations deriving from the *Oršuš* judgment, international human rights treaties and the Croatian Constitution, but it will invest in a better future.

A Short Re-Introduction to the ERRC's Human Rights Education Work

ANCA SANDESCU¹

I recently started working at the ERRC as the Human Rights Trainer and I coordinate the ERRC's human rights education work. Many of my friends were intrigued by what human rights education is and what the ERRC is doing in this field. So, dear friends and readers, here is a short overview of Human Rights Education.

To start the discussion about human rights education we must have a broad overview of what human rights education is. While there is no universally accepted definition of human rights education, the United Nations (UN) has offered a valid working definition as a conclusion of its Decade for Human Rights Education (1995–2004). This definition was adopted by many governments and NGOs around the world. Human rights education is:

[t]raining, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed at:

- (a) The strengthening of respect for human rights and fundamental freedoms;
- (b) The full development of the human personality and the sense of its dignity;
- (c) The promotion of understanding, respect, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- (d) The enabling of all persons to participate effectively in a free society;
- (e) The furtherance of the activities of the United Nations for the maintenance of peace.²

To make a long and still developing story short, human rights education is basically teaching *about*, *from* and *for* human rights.³ The teaching takes place in both formal and informal environments and aims to empower and

motivate individuals to act in accordance with their own human rights and to defend the rights of others. Human rights education can be summarised in a three-fold metaphor: education for the *head-heart-hands*.

Teaching *about* human rights: Education for the *head* refers to formal educational components such as the philosophy behind the concepts, the history of human rights and the various types of human rights. It also addresses what a human right entails, the content of a right and the existing national, regional and international mechanisms set up for protecting human rights and confronting violations of rights.

Learning *from* human rights: Education for the *heart* encompasses the system of values, principles, attitudes and behaviours that highlight the universal and interdependent dimensions of human rights. This approach deals with the moral/ethical component of human rights and appeals, among others, to human emotions and rationality. Moreover, it aims to develop a framework of respect and equality between all human beings and to enforce and develop values and attitudes that acknowledge human rights for all.

Teaching *for* human rights: Education for the *hands* puts knowledge and ethics into practice. The goal is learning how to use human rights tools and the acquired skills in everyday activism. It empowers people to move towards a concrete human rights paradigm. This aspect of human rights education is designed to put words and ideas into action, thereby encouraging a greater respect for human rights and a greater willingness to act in defence of human rights.

The ERRC's human rights education programme is focused on strengthening respect for the human rights of Roma – in a way that empowers Romani people and narrows the gap in opportunities between persons of Romani

1 Anca Sandescu is the ERRC Human Rights Trainer.

2 United Nations, *Plan of Action: World Programme for Human Rights Education*, 2006, available at: <http://www2.ohchr.org/english/about/publications/docs/wphre.pdf>.

3 C. Lohrenscheit, "A Human Rights Based Approach to Education", *Menschenrechte und Bildung*, ed. P.G. Kirchsclaeger & T. Kirchsclaeger, Internationales Menschenrechtsforum Luzern (2006): 141-150.

origin and persons of other ethnicities. To achieve this, the ERRC implements two main initiatives:

- A Romani internship programme, which highlights our commitment to medium and long-term onsite training, shaped by a curriculum that imparts the requisite base of skills and knowledge for success in the labour market; and
- Thematic human rights courses, including biannual 10-day Roma Rights Summer Schools, which provide intense practice-oriented training that not only introduces the human rights concepts but also imparts useful tools and skills essential for human rights activism.

The Romani internship programme is designed as a journey of discovery, empowerment, learning, sharing, growing and personal reflection. It is an opportunity for young Roma to follow a tailor-made programme that builds their capacity to engage fully and confidently in human rights work. The internship aims to empower Romani activists, to develop their knowledge and skills and to provide them with a living example of Roma rights activism within our organisation. Our interns have continued their careers both internationally as well as through local grassroots work in their communities. The majority remain active and engaged with the Roma rights movement.

The first Summer School of 2010 will take place in Budapest from 25 July through 4 August. It will bring together around twenty young Romani individuals from all over Europe. These young people will be exposed to the human rights paradigm from a practitioner's perspective and will be

encouraged to put into practice the acquired human rights education skills in a peer-to-peer, informal educational environment. Many of the participants have in the past or are still undergraduate students; we see many of them following human rights/social sciences-oriented career tracks and often welcome them back in our internship programme. The ERRC has also employed past trainees and interns.

The three-fold methodology of *head-heart-hands* typifies the way the ERRC Human Rights Education work is developed. It employs three motivational parts within a human being (logic, emotions, practicality), enhancing the effectiveness of our efforts to get young Romani activists immersed in the Roma rights field. In this way, young Roma will acquire human rights knowledge, values, skills and tools as applied to the Romani people. Moreover, they can serve as competent ambassadors and teachers of these values within their own communities.

As Khan underlines:

If education empowers people to become active citizens of their own country, human rights education empowers them to take up the challenges of global citizenship, by teaching them about global values. It is not just a question of learning skills and acquiring abilities. Human rights education teaches you to take action, and it empowers you to defend your rights and the rights of others.⁴

This, my friends, is the ERRC's human rights education in practice!

4 I. Khan, "Education as a Foundation for Human Rights Practice", *Menschenrechte und Bildung*, ed. P.G. Kirchsclaeger & T. Kirchsclaeger, Internationales Menschenrechtsforum Luzern (2006): 35-41.

My Journey to Meet the ERRC

ISABELA MIHALACHE¹

“No, you are not Gypsy! You are a Romanianised Gypsy!”² This was one of the most common categorisations my fellow Romanians bestowed upon me in my early years. It meant I was a Gypsy who had gained Romanian attributes. “Gypsies” were, and unfortunately remain, a category of people wrested of the human dimension of their identity, stripped of any social attributions. It was bad to be a Gypsy in Romania in the 1980s: many times I carried the burden of being “discovered.” At that time, it was difficult for me to make and keep friends because soon I would discover that the children who liked me hated Gypsies. The time would always come when I had to decide whether or not to share my identity. I was always very scared of the reactions of my friends and their parents. When I was exposed to negative comments about Roma, I would decide not to share my identity. I did not hate them for this; I was just disappointed and upset that society could not accept me and Roma in general because of our ethnicity. I never imagined at that time that a movement would start to challenge stereotypes and fight racism against Roma.

When I was in fourth grade, one of my uncles was brutally killed by some other Roma. My family and I went to the funeral and I knew that my classmates saw me walking in the funeral procession. When I returned to school, everybody knew I was Romani. I watched for the reaction in their eyes and the way they spoke to me. I could feel the way they were looking at me and could sense the “Gypsy” comments on their lips but in the end they did not say anything; either because their parents advised them not to or because I was the best in my class and I was always helping colleagues with homework and schoolwork. To tell me I was Gypsy would contradict their stereotypes that Gypsies were only thieves, beggars, bad people, etc. As time passed, my ethnicity mattered less and less to my classmates and they were open with me as an individual.



ERRC Deputy Director Isabela Mihalache

PHOTO CREDIT: ERRC

This experience helped my classmates look more deeply at what it means to be a Gypsy, confronting what they were told with what they experienced first hand. They become more conscious about their language: their comments about Roma were neutral or positive and more objective. If somebody outside the class spoke badly about me in any way, they would stand up to defend me.

During one of my summer vacations to visit relatives when I was in primary school, the police came to our house at a very early hour when everybody was still sleeping because the neighbours had complained about noise. The police took all the men and my mother to the police station, without allowing them to fully dress. They were returned after a few hours, having been interrogated and identified. My family did not make a big deal out of it: it was one of those things that happens to you (as a Romani person) that you do not do anything about. They seemed to be happy that nothing serious had happened. I often heard similar stories and worse in the 1980s: cases in which Roma were shot dead by police for theft and for which the police suffered no consequences.

The extent of abuse and violence against Roma grew, one might say proportionately, with the “freedom” appearing in society at large. This culminated in the 1990s following the collapse of Communism; a time when entire Romani communities were destroyed or burned to the ground by ethnic Romanians and Hungarians who also tried to kill Roma. One of my uncles lost his house in a pogrom and fled the country with his wife and child. My family had to take refuge in a neighbour’s apartment when a mob attacked Romani houses in our town. I was so scared and revolted! I felt that people had been nice to us earlier because they did not have a choice. The minute they seized power they showed their

¹ Isabela Mihalache is the ERRC Deputy Director.

² I use the word “Gypsy” when referring to the way I was named, portrayed and perceived. In contrast, I use the word “Roma” when referring to myself and to Roma as a group of people in the way I and other Roma describe themselves.

true colours, which meant killing people: my people. After the violence stopped, it took me a while to be close with some of my non-Romani friends again because I could not trust them or their parents.

In university I learned about the tools that I could use to fight discrimination. I was initially sceptical that Roma could be influential in developing policy but I soon got engaged in NGO work. In my first year of university, I started working to support the development of Romani language tools closely linked to what I was studying; by the time I finished university I moved on to focus on Roma policy development.

I observed a critical mass of Romani people fighting for recognition of Roma as an ethnic or national minority group. I learned that Roma were subjected to the same kind of discrimination, marginalisation and segregation all over Europe and that groups were advocating for the rights of millions of Roma throughout Europe. The more I learned about the situation of Romani people across Europe and got engaged with other young Romani people in human rights work, the more determined I was to make an important contribution to the advancement of the situation of Romani men and women and help improve the treatment of Roma.

In my professional career, I experienced the difficulties of influencing political decisions in favour of Roma. I have felt that Roma civil society lacks common priorities and strategies. There are only a limited number of Romani activists and NGOs working from a rights-based perspective: Romani Criss has been active since 1993 and has developed a network of human rights monitors active across Romania but their work has not been matched by other national Romani human rights organisations in Europe. The actions of Romani activists and organisations are often ad-hoc and poorly supported by other international organisations and institutions. Roma rights violations are

widespread, while knowledge about human rights remains poor among Romani organisations and almost non-existent in Romani communities.

At the international level, rights-based responses have been articulated in the work of some international organisations and intergovernmental institutions. Some of these have worked more closely with Romani NGOs and individuals to elaborate policy demands, investing in building the capacity of Romani individuals to take up human rights and policy development work. For six years, I worked with the Open Society Institute and contributed to a process that empowers Romani individuals to help their local communities. While there I also developed my knowledge of the rights situation of Roma throughout Europe and contributed to the advancement of Roma rights at various political levels. Moving into the ERRC, I now have the opportunity to work more firmly from a rights perspective and address systemic rights violations through strategic litigation.

Although one organisation cannot litigate for 20 million Roma in Europe, strategic litigation – a legal challenge preceded, accompanied and followed by advocacy and research – can be a sustainable approach to facilitating access to civil and political, economic and social rights. I am more and more convinced that the lack of political will of governments can be countered only through a tough and straightforward rights approach: one which includes strategic litigation. Negotiation and campaigning for policy development will bring change if reluctant governments are compelled to take action. The ERRC is unique in that it combines these approaches. For Roma to be able to exercise their rights fully, we need more Romani organisations using the tools of litigation. While I am at the ERRC, I want to explore ways to make this happen and hope that future generations of Romani children will have better opportunities to define their own destinies and feel proud of who they are.

Karta vaš Fundamentalno Čačipena

E Europakere manuša kerindoj pašeder unuja maškar pende, line decizija te ulaven maškar pende lačheder avutnipe bazirime upral khetanutne moljaripa.

Leindoj ani godži peskere etikane barvalipa, i Unija si kerdini upral e biulavipaskere thaj univerzalno molja kotar e manuškano baripe, slobodija, jekhipe thaj solidariteto; thaj si bazirime upral e demokracijakere principija thaj upral e kanunija/zakonura/. Čhivela e individual ano vilo peskere aktivetondar kolesar so kerela manušipe ande Unija thaj kerela than vaš slobodija, sikuriteto thaj čačipe.

I Uonija ikerela dži pe zuraripe kodole khetanutne moljaripendar thaj respekto pe dži pe javeripa/diverziteteto/ kulturendar thaj tradicijendar maškar e Europakere manuša thaj nacionalno identiteti e Themengoro, olengere autoritetija pe nacionalno, regionalno thaj lokalno nivelura; so kotar javer rig, promovirinela thaj balansirinela zuraripe thaj sigurinela tromalo/slobodne/phiribe e manušengo, servisongo thaj kapitalesko.

Pali kodo so si vakerdino, khamela pest e zurarel pes o protektiribe e fundamentalno hakajengo/čačipenengo/, džaindoj pali e pharuvipa ando thema, socijalno progreso thaj tehnologijakoro džaipe majangle, kodolesar so, kodola hakaja ka oven majbut dikhline thaj čačune ande kodi Čarta.

Kodi Čarta reaffirmirinela, leindoj ani godži e Komunikakiri thaj e Unijaki zor, sar vi e principon vaš khetanipa thaj hakaja save so rezultrinena katar e konstitucijengere tradicije thaj e internacionalno obligacije khetanutne vaš e Thema Membrura, i Phangli vorba katar e Europaki Unija, Europaki Konvencija vaš Protektiribe e Manušengere Hakajengo thaj e Fundamentalno Slobodijengo, i Socijalno Čarta adoptirme/lendine/ kotar e Europako Konsilo thaj katar e Europaki Kris vaš Čačipa thaj kotar e Europaki Kris vaš Manušukane Hakaja.

Kadale hakajengo/čačipenengo lejbe rodel vi responsabiliteto mamuj e javera manuša/personene/, mamuj manuškani komuniteta thaj e avutne generacije.

Kodoleske, i Unija prendžarela e hakajen, slobodijen thaj e principon so ka oven vakerdine majtele ando kodo teksto.

ŠERO I BARIPE/DIGNITETO/

Artiklo 1

MANUŠIKANO BARIPE

O manuškano baripe/digniteto/ si vužo. Musaj te ovel respektirimo thaj protektirimo/arakhlo/.

Artiklo 2

HAKAJ PE DŽIVDIPE

- Sakone jekhe manuše isi hakaj pe dživdipe.
- Khonik naštit e ovel krisisardo meribasar vaj te ovel egzekutirimo.

Artiklo 3

HAKAJ VAŠ E MANUŠENGO INTEGRITETO

- Sakone jekhe manušes isi hakaj vaš respekti vaš leskoro fizikano thaj mentalno integriteto.
- Ande medicinako thaj biologijako umal, kodo musaj te respektirinel pes specifikane ano:
 - tromale/slobodne/ informiriba e manušengo, džaindoj pali e procedure fundirime upral o kanuni/zakono/,
 - činavibe ko praktike save teljarena e manušen, specifikane pe kodola praktike save so selektirinea manušen/personen/,
 - činavibe pe kodo e manušesko badani/trupo/ telo/ te ovel haing vaš finansijako profitiribe,
 - činavibe ko reprodukcijako kloniribe pe manuša.

Artiklo 4

ČHINAVIBE E TORTURAKO THAJ MANUŠENGO DEGRADIRIBE VAJ DUKHAVIBE

Khonik naštit e ovel subjekto pe tortura vaj pe namanušikano vaj degradiribasko tretmano.

Artiklo 5

ČHINAVIBE KO BUTIKERIBE ZORASAR

- Khonik naštít e ikerel pes sar robo vaj servanto.
- Khonik našti zorasar te čhivel pest e kerel buči teli zor thaj presija.
- Manušengoro kino-bikinibe naj dendo.

**ŠERO II
SLOBODIJE**

Artiklo 6

HAKAJ PE SLOBODIJA THAJ SIGURITETO

Sakone jekh manušes isi hakaj pe slobodija thaj siguriteto.

Artiklo 7

RESPEKTI PE PRIVATNO THAJ FAMILIJAKO DŽIVDIPEN

Sakone jekhe manušes isi hakaj vaš respekti pe lesko privatno thaj familijako dživdipe, kher thaj komunikacije.

Artiklo 8

PROTEKTIRIBE PE PERSONALNO INFORMACIJE

- Sakone jekhe manuše isi hakaj pe protektiribe an peskere personalno informacije vaš korkore peske.
- Gasave informacije khamela pest e oven procesirime fer thaj numa vaš spcificirime buča thaj upral funda sar so phenela o kanuni/zakono/. Sakone jekhe manušes isi hakaj te avel dži peskere informacije thaj te khonik javer ma te dikhel olen.
- Kodi procedura musaj/khamela pes/ te ovel kontrolirime kotar korkorutno/independent/ autoriteto.

Artiklo 9

HAKAJ VAŠ PHRANDIBE THAJ KERIBE FAMILIJA

O hakaj vaš phrandibe thaj keribe familija trubuj te ovel garantirme sar so phenena e nacionalno kanunija/zakonura/ vaš kodo hakaj/čačipe/.

Artiklo 10

SLOBODIJA PE GINDIPE, SAMA THAJ RELIGIJA

- Sakone jekhe manušes isi slobodija pe gindipe, sama thaj religija. Kodo hakaj lela an pest vi e slobodija manuš te

pharugel peski religija, korkoro vaj khetane e manušencar katar peskiri komuniteta thaj te šaj phutardes, ja palem privatno te prakticirinel peskiri pakhiv, religija thaj praktika.

- Kodo hakaj sip rendžardo vi kotar e nacionalno kanunija vaš kodole hakajengoro prakticiribe.

Artiklo 11

SLOBODIJA PE EKSPRESIJA THAJ INFORMACIJA

- Sakone jekhe isi hakaj vaš slobodija pe ekspresija. Kodo hakaj khamela pes te lel an peste vi o šajipe sako te ikerel pesko gindipe thaj te resel informacija thaj ideje, bizi te kerel pes interfencija katar e publikane autoritete thaj bizi granice.
- I slobodija thaj e mediumengoro pluralizmo khamela pes te oven respektirime.

Artiklo 12

SLOBODIJA PE KHETANIPA THAJ ASOCIACIJE

- Sakone jekhe isi hakaj te šaj te khedel pe ko khetanipa thaj si ole slobodija te kerel asociacije pe sa e nivelura, pe politika, kino-bikinipe, civilno butja, save so lena thaj sikavena e hakaja vaš sako jekh te kerel thaj te ovel kotor tare kino-bikinipaskere unije pe protektiribe ano interesija
- E politikane partije ko Unijakoro nivelu anena dži pe kodo te šaj e manušengiri politikani voja te ovel sikavdini ani Unija.

Artiklo 13

SLOBODIJA ARTO THAJ DŽANIBE

E arteskere thaj e džanibaskere rodipa khamela pest e oven slobodne/tromale/. E akademijaki slobodija trubuj te ovel respektirime.

Artiklo 14

HAKAJ PE EDUCIRIBE/EDUKACIJA/

- Sakone jekhe manuše isi hakaj pe educiribe thaj šajipe te lel majodorutno sikljovipe thaj treningo.
- Kodo hakaj lela an pest vi e hakaja e manuša te šaj te len vi majodorutni edukacija.
- Si slobodija te keren pes edukacijakere khidipena džaindoj pali e demokratijakere principura thaj e dadengere thaj e dajengere hakaja te sigurinen kaj lengere čhavore ka len sikljovibe thaj edukacija, džaindoj pali lengere religijakere, filozofijakere thaj pedagogijakere pakjaiba, save so trubuj

te oven respektirime, džaindoj pali e kanunija/zakonura/ save so dena gasavi slobodija thaj hakaja.

Artiklo 15

SLOBODIJA TE LEL PES PROFESIJA THAJ HAKAJ PE KERIBE BUTI

- Sakone jekhe manuše isi hakaj te kerel buti thaj slobodno/tromale/ te lel peski profesija.
- Sako jekhe manuše katar e Unija isi hakaj te rodel peske buti thaj te kerel save vi te ovel servisija pe savo vi te ovel Them Membro.
- Manuša katar e trinto thema si autorizirime te keren buti pe Themengere teritorije, sar so isi hakaj thaj šajipen e manušen kotar e Unija.

Artiklo 16

SLOBODIJA TE KEREL PES BIZNISO

Si slobodija te kerel pes bizniso sar so phenela e Komunitakoro kanuni/zakono/ thaj e nacionalno kanunija thaj praktike.

Artiklo 17

HAKAJ PE BARVALIPE

- Sakone jekhe manuše isi hakaj te kerel peskoro barvalipe. Khonik našti olestar te lel kodo barvalipe vaj mangin, ten a phehela javareder o publikano interesi thaj o kanuni. O hakaj pe barvalipe šaj te ovel regulirimo kanunesar, so trubuj te kerel pes vaš e generalno interesija.
- Vi o intelektualno barvalipe/mangin/ khamela pest e ovel protektirimo.

Artiklo 18

HAKAJ PE AZILO

O hakaj vaš azilo khamela pest e ovel respektirimo džaindoj pali e Ženevaki Konvencija kotar o 28-to juli 1951 berš thaj o Protokolo kotar 31-to januaro 1967 berš vaš e našle manušengoro statusi, džaindoj pali e Kontraktija kerdine katar e Europakere Komunitetija.

Artiklo 19

PROTEKTIRIBE KANA KERELA PES RELOKACIJA VAJ EKSTRADIKCIJA

- I kolektivno ekspulzija/paldiipe/ si činavdi kanunesar/zakonesar/.

- Nijekh manuš našti te ovel dislocirimo, paldimo, vaj ekstradiktirimo ko Them kote so isi seriozno risiko kaj vov, vaj voj ka ovel mudardine, ka keren upri lende toritura vaj bi manuškano tretmano, torurtura vaj bilačhpe.

**ŠERO III
JEKHIPE**

Artiklo 20

JEKHIPE ANGLAL O KANUNI

Sako manuš si jekha-jekha anglal o kanuni.

Artiklo 21

NA-DISKRIMINIRIBE

- Sako jekha diskriminacija fundirime/bazirime/ upral kodo si vareko muš vaj džuvli, isi ole/ola/ javareder rasa, koloro, etniciteto vaj socijalno palpalutnipe, genetikano palpalipe, javareder čhib, religija vaj pakhiv, politikano vaj javareder gindipe, si manuš kotar javareder minoriteto, si le barvalipe, bilačhipe vaj javareder seksualno orientacija, si činavdo.
- Ano pervazoja/fremija/ kotar e Phangli vorba kerdini kotar e europakere Komunitetija thaj kotar e Europaki Unija thaj bizi stereotipura mamuj kodola phangle vorbi/kontraktija/, savi vi te ovel diskriminacija si činavdi.

Artiklo 22

KULTURAKO, RELIGIJAKO THAJ LINGVISTIKIANO JAVERIPE

I Unija khamela pest e respektirinel o javeripa pe kultura, religija vaj lingvistika.

Artiklo 23

JEKHIPE MAŠKAR E MURŠA THAJ E DŽUVLJA

O jekhipe maškar e murša thaj e džuvlja musaj te sigurinel pes ko sa areje, leindoj kate vi o arakhibe buči thaj o pokimos.

E jekhipaskoro principi trubuj/khamela pe/ te hačarel pes vi kana den apes varesave provizije vaš e džuvlja save so nane lačes reprezentirime.

Artiklo 24

E ČHAVENGERE HAKAJA

- E čhaven kamela pest e oven hakaja vaš olengoro protektiribe thaj lejbe sama pe lende. E čhavore musaj

te sikaven peskere gindipena tromales thaj slobodno. Olengere gindipena trubuj te len pes ki sama.

- Ko sa e akcije so si phangle e čhavorencar thaj save si kerdine kotar e publikane autoritetija vaj kotar e privatnikane institucije, e čhavorengere interesija musaj te oven primarno.
- Sakone jekhe čhave trubuj te ovel hakaj pe regularno funda/baza/ thaj personalno relacije vi direktno kontaktija vi e dadesar vi e dajasar, thaj na numa kana kodo si mamuj e čhaveskor interesi.

Artiklo 25

E PHURENGERE HAKAJA

I Unija prendžarela thaj respektirinela e hakajen so si e phure manušen vaš kodo te dživdinen peskoro dživdipe dignitetosar thaj šajipasar te participirinen ko socijalno thaj kulurakoro dživdipe.

Artiklo 26

INTEGRIRIBE E MANUŠENGO SO ISI OLEN DISABILITETI

I Unija prendžarela thaj respektirinela e hakajen vaš e manuša saven so isi varesavo disabiliteti te šaj te len beneficije thaj te sigurinel pes olengoro korkorutnipe/independence/, socijalno thaj profesionalno integracija thaj participacija ko komunakoro dživdipe.

ŠERO IV SOLIDARITETO

Artiklo 27

E BUČARNE MANUŠENGO HAKAJ PE INFORMIRIBE THAJ KONSULTACIJE PE LENGI BUČI

E bučarne manuša vaj lengere reprezentantura musaj, ko sa e nivelura, te oven informirime thaj konsultirime, adžaresar so phenela e Komunitetoskoro kanuni thaj e nacionalno kanunija thaj praktike.

Artiklo 28

HAKAJ PE KOLEKTIVNO PHANGLI VORBA THAJ AKCIJA

Vi e bučarne vi kodola so dena olenge buči, vaj olengere respektivno organizacijen, isi hakaj, sar so phenela e Komunakoro kanuni thaj e nacionalno kanunija thaj

praktike, te keren negocijacije thaj te phanden vorba/kontrakto/ pe sa e nivelura, thaj kana isi konflikto katar e interesija, te definirinen pes olengere interesija, leindoј kate vi e hakaje vaš štrajko.

Artiklo 29

HAKAJ VAŠ ARAKHIBASKERE SEVISIJA

Sakone jekhe manuše isi hakaj pe arakhibaskere servisija.

Artiklo 30

PROTEKCIJA VAŠ PALDIPE BUČATAR NISOSKE

Sako jekhe bučarne manuše isi hakaj te ovel protektirimo kotar paldipe bučatar, džaindoј pali e Komunakere kanunija thaj pali e nacionalno kanunija thaj praktike.

Artiklo 31

FER THAJ LAČHE BUTIKERIBASKERE KONDICIJE

- Sakone jekhe bučarne manuše isi hakaj pe butikeribaskere kondicije save so ka respektirinen oleskoro, olakoro sastipe, siguriteto thaj digniteto.
- Sakone jekhe bučarne manuše isi hakaj vaš limitirbe ko maksimum bučakere ori/časura/, ki diveskiri thaj kurkeskiri pauza thaj pro berš pokimo dajanibe/ferija/.

Artiklo 32

PROHIBIRIBE KO ČHAVORIKANO BUTIKERIBE THAJ PROTEKTIRIBE E TERNE MANUŠEN KOTAR BUTI

Našti te len pes čhavore ki buti. Minimum berša te šaj e terne te keren buti si e berša kana e terne agorena pengeri škola thaj šaj te kerel pes eksepcija numa pe varesave egzemplija. E terne manušenge save so šaj te keren buti khamela pes te keren pes lačhe butikeribaskere kondicije thaj te oven protektirime kotar ekonomikani eksploatacija, te ovel garantirimo olengoro siguriteto, sastipe, vi mentalno vi fizikano, etikano thaj socijalno zuraripe thaj te del pes olenge buti pali lengiri edukacija.

Artiklo 33

FAMILIJAKO THAJ PROFESIONALNO DŽIVDIPE

- I familija trubuj te ovel legalno, ekonomikano thaj socijalno protektiribe.
- Te ikerel pes e familijako thaj o profesionalno dživdipe, sako jekhe manuše trubuj te ovel hakaj te ovel protektirimo kotar paldipe bučatar thaj hakaj

te ovel ole pokimi bijanimaski ferija kana I bučarni džuvlji bijanela, vaj kana kerela čhaveskiri adopcija.

Artiklo 34

SOCIJALNO SIGURITETO THAJ SOCIJALNO ASISTENCIJA

- I Unija prendžarela thaj respektirinela e socijalno siguri-paskere beneficijen thaj e socijalno servison save so dena protektiribe vaš e bučarne manuša kana e džuvlja bijane-na, kana si e bučara nasvale, kana isi industrijaki bibaht/ aksidentija/, kana e bučarne phurjovena thaj kana e bučarne ka hasaren pengiri bučI, agjare, sar so phenela vi e Komunakere thaj e nacionalno kanunija thaj praktike.
- Sako jekh manuš savo so trajil/dživel/bešel/ ani Europ-kai Unija thaj sako jekh savo so šaj legalno te phirel trujal e Europaki Unija, šaj te lel socijalno siguriteto džaindoj pali e Komunakoro thaj e nacionalno kani thaj praktike.
- Mangipasar te marel pes mamuj i socijalno ekskluzija thaj o čorolipe, i Unija prendžarela thaj respektirinela o hakaj pe socijalno thaj kherengiri asistencija thaj te sigurinel egzistencija kodolenge saven so nane but resursija, sar so phenena e Komunitakoro thaj nacionalno kanunija thaj praktike.

Artiklo 35

SASTIPASKI SAMA

Sakone jekhe isi hakaj te avel dži pe preventivno sastipaski sama thaj hakaj vaš e beneficija katar e medicinako tretmano teli e kondicije kaerdine kotar e nacionalno kanunija thaj praktike. Učo nivelu katar e manušengi sastipaski protekcija trubuj te ovel sigurimi thaj implementirimi ko sa e Unijakere politike thaj aktivitetija.

Artiklo 36

AVIPE/AKSESO/ DŽI PE GENERALNO EKONOMIKANO INTERESO

I Unija prendžarela thaj respektirinela o avibe dži pe servisija ko generalno ekonomikano interesu sar so vakerdino ano nacionalno kanunija thaj praktike, džaindoj pali e Phangle vorbi ki Europaki Komunita, te šaj te promovirinel pes i socijalno thaj teritorijalno kohezija e Unijaki.

Artiklo 37

TRUJALIPASKO PROTEKTIRIBE

Učo nivelu kotar e trujalipaskoro protektiribe thaj bajraripe ko leskoro kvaliteti musaj te ovel integririmo ande Unijakere

politike thaj sigurime, džaindoj pali e principija vaš e trujalipaskoro zoralipe.

Artiklo 38

PROTEKTIRIBE E MANUŠENGO SO KINENA

Unijakere politike trubuj te sigurinen učo nivelu ko akala manušengoro protektiribe.

ŠERO V CIVILNIKANE HAKAJA

Artiklo 39

HAKAJ TE ALUSAREL PEST HAJ TE OVEL PES KANDIDATI VAŠ ALUSARIBA KO EUROPAKO PARLAMENTI

- Sakone manuše ki Unija isi hakaj te alusarel thaj te ovel kandidati ko alusariba vaš e Europako Parlamenti ko Thema Mambrura kote so e manuša dživdinena thaj teli jekh kondicija sar sa e manuša kotar kodo Them.
- E membrura ko Europako Parlamenti trubuj te oven alusarde/elektirime/ direktono thaj pe tromale/slobodno/ alusariba.

Artiklo 40

HAKAJ TE ALUSAREL PEST HAJ TE OVEL PES KANDIDATI ANO KOMUNAKERE ELEKCIJE

Sako jekhe manuše Unijatar isi hakaj te alusarel thaj te ovel kandidati ko komunakere elekcije ko Thema Membrura kote so o manuš dživdinela, teli kondicije sar manuša so dživdinen ko adava Them.

Artiklo 41

HAKAJ VAŠ LAČHI ADMINSTRACIJA

- Sakone persona isi hakaj vaš laho adminstriribe ko lengere buč fer thaj vaš harni vrama ande sa e institucije ki Unija.
- Kodo hakaj lela:
 - o hakaj sakone personako te ovoel šundo, vaš sa e buč so afektirinena adale persona;
 - hakaj sakone personako te ovel ola aksesu an olako vaj olesko fajlo, thaj te respektirinela pes o legitimno interesu ko profesionalno thaj biznesesko sikreto;
 - obligacija e administracijaki te del eksplanacija vaš olakere decizije.
- Sakone jekhe persona isi hakaj i Komuna te lel sama vaš peskere manuša sar so phenena e generalno principija ko kanunija e Themeskere.

- Sakone jekhe persona isi hakaj te skrinisarel e istitucijenge ani Unija ko jekh kotar e čhibja thaj musaj te lel lil palpale pe kodi čhib.

Artiklo 42

HAKAJ VAŠ AVIBE DŽI KODOKUMENTIJA

Sako manuš Unijatar, thaj sako jekh naturalno thaj legalno persona isi hakaj te ovel ole registririmo ofisi ko Thema Membrura, isi olen hakaj vaš avibe dži ko Europakere Parlamenteskere, Konsileskere thaj Komisijakere dokumentija.

Artiklo 43

OMBUDSMANI

Sako manuše ki Unija thaj sako jekhe naturalno vaj legalno persona save so isi registririme ofisija ko Thema Membrura, isi olen hakaj te referirinen dži ko Ombudsmani e Unijakoro vaš savo te ovel bilačhipe kotar e administracija ko lakere aktivitetija ko Komunakereinstitucije thaj dži ko Čačipaski Kris thaj Krist kotar Avgo Instanca.

Artiklo 44

HAKAJ VAŠ PETICIJA

Sako jekhe manuše ki Unija thaj sako jekhe naturalno vaj legalno persona save nisi registrirme ofisija ko Thema Membrura, isi olen hakaj te skrinasaren peticija dži ko Europako Parlamenti.

Artiklo 45

SLOBODIJA ANO PHIRIBE THAJ REZIDENTIRIBE

- Sakone manuše katar e Unija isi hakaj te phirel thaj te ačhol pe varesavo them slobodno ki sasti teritorija katar e Thema Membrura.
- I slobodija ko phiribe thaj rezidentiribe šaj te ovel dendino sar so phenena e kanunija ko Europakere Komunitetija ki sasti teritorija kotar e Thema Membrura.

Artiklo 46

DIPLOMATIKANO THAJ KONZULARNO PROTEKTIRIBE

Sako jekh manuš ki Unija šaj, ki teritorija kotar triton theme kote so e Thema Membrura nane reprezentirimi, isi hakaj vaš protektiribe kotar e diplomatikane thaj konzularno autoritetija e Themengere, teli sa e kondicije sa nacionalno manuša kotar e Thema Membrura.

ŠERO VI ČAČIPE

Artiklo 47

HAKAJ VAŠ EFEKTIVNO THAJ LAČHO FER KRISARIBE

Sako jekh, kaskere hakaja thaj slobodije si garantirime kanunesar ki Unija thaj kerdine varesavi bibaht, isi olen hakaj vaš fer krisaribe sar so phenena e kondicije save si skrinisarde teleder ko teksti an kodo Artiklo.

Sakone jekhe manuše isi hakaj vaš fer thaj phutardo ašunibe ki harni vrama thaj krisaribe kotar korkorutno/independentno/tribunalo sar so phenela o kanuni. Sakone jekhe manuše isi hakaj te den ole godi/advajzo/ thaj te ovel reprezentirimo.

Legalno ažutipe šaj te del pes odolenge save so naj but resursija te šaj adale manuše te ovel fer krisaribe thaj efektivno avibe dži ko čačipe.

Artiklo 48

E DOŠAKORO SIKAVIPE THAJ HAKAJ VAŠ ARAKHIBE

- Sako jekh savo so krisarela pes nane te ovel došalo sa džikote na sikavela pes leski doš džaindoj pali e kanunija.
- Respektiribe e hakajengo vaš e manuša save krisarena pes musaj te ovel garantirimo.

Artiklo 49

PRINCIPIJA KO LEGALITETO THAJ PROPORCIONALITETI KO KRIMINALNO DOŠASRIBE THAJ PHANGLIPE

- Khanikaske naštit e ophenel pes kaj si došalo pe vareso so si karakterizirimo sar kriminalno aktiviteti telo o nacionalno thaj internacionalno kanuni/zakono/, pe vrama kana kodo aktiviteti si kerdino. Našti vi te keren pes varesave penalija ki vrama kodo aktiviteti si kerdino sa džikote e manuša save si došakerde na ikljovena anglal e kris.
- Kodo Artikle naj stereotipura vaš e krisaribe vaj došalipe mamuj khanikaste sa džikote kodi doš naj prendžardini kotar e nacijengere komunitetija.
- O došaribe thaj e penalija naštit e oven disproportionalno.

Artiklo 50

HAKAJ E MANUŠA MA TE OVEN DOŠAKERDE DUVAR ANDE KRIMINALNO PROCEDURE VAŠ JKEH KRIMINALNO KERIBE

Khonik našti te ovel penaltirimo vaj krisisardo duvar ande kriminalno procedura vaš vareso so aba si kerdino thaj agordino ande sasti Unijaki teritorija, sar so phenel o kanuni.

ŠERO VII GENERALNO PROVIZIJE

Artiklo 51

ŠAJIPE

- E provizije kodole Šerestar si adresirime pe Unijakere institucije, džainodj pali e principija thaj e Thema Membrura numa kana si implementirime pe Unijakoro kanuni. Kodoleske khamela pest e respektirinen pes e hakaja, te obzervirinen pes e principija thaj te promovirinel pes o apliciribe sar so phenena e respektirime zora.
- Kodo Šero na sikavela nesavi nevi zor vaš e Komunitetija vaj vaš e Unija, thaj na modificirinel i zor so si definirimi an kodo lil.

Artiklo 52

ŠAJIPE PE GARANTIRIME HAKAJA

- Savo te ovel limitiribe ano hakaja thaj slobodije prendžardine katar kodi Čarta musaj te oven dendine kotar o kanuni thaj te oven respektiriim sa kodoal hakaja thaj slobodije. Subjekto vaš e principija proporcionaliteto, limitiriba, šaj kotar javer rig te resen e generalno intereson save sip rendžarde kotar e Unija.
- E hakaja prendžardine an kodi Čarta si bazirime upral e Komunitetongere Kontraktija thaj e Lila katar e Europa-ki Unija thaj trubuj te oven dendine teli sa e kondicije thaj limitiriba so si definirime an kodola Kanunija.

- Dži akak an kodi Čarta sis a e hakaja save so korespondirinenena e hakajencar garantirime kotar e Konvencija vaš Protektriribe e Manušikane Hakajengo thaj Fundamentalno Slobodijengo, thaj sar so si skrinisardo an kodi Konvencija. Kodi provizija naštit e preventirinel e Unijakere³ kanunen te den vi buteder kotar kodi phendini protekcija.

Artiklo 53

PROTEKCIJAKO NIVELO

Khančik an kodo Šero našti te ovel interpretirimo sar restriktivno vaj javereder kotar kodo so afektirinel e manušikane hakajen thaj e fundamentalno slobodijen, kotar e Unijakoro kanuni thaj internacionalno kanunija thaj kotar e internacionalno aranžamentoncar pe save so i Unija, e Komunitetija vaj sa e Thema Membrura, leindoj kate vi e Europakere Konvencija vaš Protektriribe e Manušikane Hakajengo thaj Fundamentalno Slobodijento, thaj e konstitucije kotar e Thmea Membrura.

Artiklo 54

PROHIBIRIBE KO KADALE HAKAJENGO ČHINAVIBE

Khančik an kodo Šero naštit e interpretirinel pes sar impliriribe save te ovel hakajesko thaj savo vi te ovelperformiribe aktengo vaj destrukcijako kotar savo vi te ovel hakaj vakerdino an kodo lil, ja palem te limitirinen pes save vi te oven hakaja.

Chronicles

ERRC CAMPAIGNING, CONFERENCES, MEETINGS AND TRAININGS

- 11 JANUARY:** Submitted additional comments to government's observations in *Koky and Others v Slovakia* (case pending with the ECtHR).
- 24-25 JANUARY:** Carried out case-related field research and participated in a local government meeting on Romani housing issues: Tulcea, Romania.
- 27 JANUARY:** Met the Czech NGO Life Together: Budapest, Hungary.
- 28-31 JANUARY:** Held an ERRC staff retreat: Baaden, Austria.
- 31 JANUARY:** Met with Amnesty International to discuss violent attacks against Roma in Hungary: Budapest, Hungary.
- 11 FEBRUARY:** Hosted a training workshop for ERRC staff members on trafficking in human beings: Budapest, Hungary.
- 12-13 FEBRUARY:** Hosted a training workshop for field researchers on trafficking in human beings within a project entitled "Trafficking Romani youth and women in Eastern and Central Europe: Analysing the effectiveness of national laws and policies in prevention and victim support" and supported by the European Commission: Budapest, Hungary.
- 14 FEBRUARY-1 MARCH:** Conducted field research and met Romani and non-Romani human rights organisations and activists: Moscow, St. Petersburg and Rostov-on-Don, Russia.
- 25 FEBRUARY:** Participated in the Central European University's annual NGO fair: Budapest, Hungary.
- 25 FEBRUARY:** Discussed the segregated education of Romani children in Slovakia with the Roma Education Fund: Budapest, Hungary.
- 1 MARCH:** With the Roma Education Fund, co-hosted a European Commission conference on "Activities to Improve the Impact of Policies, Programmes, and Projects Aimed at the Social Inclusion and Non-Discrimination of Roma People in the EU": Budapest, Hungary.
- 2 MARCH:** Met representatives of the Greek Helsinki Monitor to discuss education litigation in Greece: Budapest, Hungary.
- 3-4 MARCH:** Conducted a field visit to prepare for the European Court judgment in *Orsúš and Others v Croatia* to meet the applicants and their lawyer, the Human Rights Centre in Zagreb, the only Romani MP and Romani organisations: Croatia.
- 4 MARCH:** Co-hosted a workshop with the Bulgarian Helsinki Committee and the Bulgarian Committee for Protection against Discrimination to discuss implementation of European Committee of Social Rights decisions concerning Bulgaria with the Bulgarian government, civil society and Committee representatives: Sofia, Bulgaria.
- 6-7 MARCH:** Made a presentation at a meeting of Turkish Romani NGOs: Ankara, Turkey.
- 8-9 MARCH:** Participated in the European Academy of Law training programme on EU Law on Equality between Men and Women: Trier, Germany.
- 8-9 MARCH:** Participated in a communications training programme offered by OSI: Budapest, Hungary.
- 9 MARCH:** Attended a conference entitled "Legal and institutional conditions for combating prostitution and trafficking for the purpose of sexual exploitation – Hungarian and international experiences": Budapest, Hungary.
- 9 MARCH:** Met local Romani NGOs: İzmir, Turkey.
- 11-12 MARCH:** Conducted a field visit to the Czech Republic to meet the *D.H.* applicants, local lawyers, NGOs, and the Groups of Women Harmed by Coerced Sterilisation: Ostrava, Czech Republic.
- 14 MARCH:** Attended the Roma Meeting organised by Turkish government to announce the government's future policies to improve the situation of Roma: Istanbul, Turkey.
- 16 MARCH:** Met public officials to discuss the Turkish government's new approach to Roma: Ankara, Turkey.

- 17 MARCH:** Hosted a press conference concerning the positive decision in *Oršuš and Others v Croatia*: Zagreb, Croatia.
- 18-19 MARCH:** Participated in an OSI seminar on the Lisbon Treaty's impact on human rights: Budapest, Hungary.
- 23-24 MARCH:** Attended a conference on Combating Extremism: Bratislava, Slovakia.
- 25-27 MARCH:** Conducted housing and education research with Amnesty International and Amnesty Slovakia, meeting local partners and lawyers: Slovakia.
- 29 MARCH-1 APRIL:** Conducted field research within the framework of the project entitled "Understanding employment and decent work challenges in Turkey – the situation of Roma in Turkey", on behalf of the European Commission: Çorlu, Turkey.
- 6-7 APRIL:** Participated a roundtable of the European Union's Agency of Fundamental Rights (FRA) "On a road to equality" targeting Romani and Traveller women activists: Cordoba, Spain.
- 8 APRIL:** Delivered a presentation on ERRC successes in Spain and Portugal: Lisbon, Portugal.
- 8-9 APRIL:** Participated in the II EU Roma Summit; gave a presentation on gender issues during the roundtable on awareness of the gender dimension: Cordoba, Spain.
- 9 APRIL:** Participated in an FRA press conference: Cordoba, Spain.
- 9 APRIL:** Participated in a roundtable meeting of the Coalition Together to School: Prague, Czech Republic.
- 14-5 APRIL:** Convened a meeting of project partners and consultants to finalise legal and policy research methodology within an EC-supported project entitled "Protecting the Rights of Romani Children in the Child Protection System in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia": Budapest, Hungary.
- 19-23 APRIL:** Conducted a field visit to conduct housing research, accompany local researchers and meet local partners, with support from the UN Democracy Fund: Albania.
- 19-23 APRIL:** Conducted field research on violations of the housing rights of Roma, with support from the UN Democracy Fund: Romania.
- 22-23 APRIL:** Discussed ERRC monitoring of police response to violence against Roma at a conference entitled "Forgotten Victims": Prague, Czech Republic.
- 26-30 APRIL:** Conducted field research on violations of the housing rights of Roma, with support from the UN Democracy Fund: Montenegro.
- 3-4 MAY:** Convened a meeting of project partners and consultants to finalise field research methodology within an EC-supported project entitled "Protecting the Rights of Romani Children in the Child Protection System in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia": Budapest, Hungary.
- 6 MAY:** Participated a FEANSTA conference entitled "Housing Rights: from Theory to Practice": Barcelona, Spain.
- 17 MAY:** Lectured on the European Court of Human Rights at the Central European University: Budapest, Hungary.
- 18-28 MAY:** Conducted field research on human rights issues affecting Roma, Ashkali and Egyptian communities: Kosovo.
- 19 MAY:** Conducted a field visit to meet domestic lawyers, Amnesty International Slovakia, Romani community activists and community NGOs to discuss housing issues in the Plavetsky Stvrtok Romani community: Bratislava, Slovakia.
- 24-26 MAY:** Went on mission to visit the Greek Helsinki Monitor and monitor progress of education related actions: Athens, Greece.
- 24-28 MAY:** Conducted field research on violations of the housing rights of Roma, with support from the UN Democracy Fund: Bosnia and Herzegovina.
- 25 MAY:** Briefed Slovak journalists to discuss ERRC activities and Roma issues: Bratislava, Slovakia.
- 26 MAY:** Attended a meeting of the Slovak NGO Coalition For Equality in Education: Bratislava, Slovakia.
- 26 MAY:** Participated in an OSF Bratislava working group meeting concerning the development of a school desegregation manual: Bratislava, Slovakia.
- 30 MAY:** Discussed implementation of *D.H. and Others v The Czech Republic* with representatives of the Czech Ministry of Education attended an OSJI meeting with

Romani activists to discuss grassroots mobilisation against school segregation: Prague, Czech Republic.

7-9 JUNE: Conducted field research to monitor implementation of *Oršuš and Others v Croatia*: Croatia.

16-18 JUNE: Delivered a lecture at a conference on the “Legal Status of Roma and Sinti in Italy”: Milan, Italy.

17 JUNE: Participated in the 3rd EU Roma Platform meeting: Brussels, Belgium.

25 JUNE: Provided input during the Europe Commission’s annual international NGO consultation on the accession progress reports: Brussels, Belgium.

EUROPEAN ROMA RIGHTS CENTRE

The European Roma Rights Centre (ERRC) is an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development and training of Romani activists. The ERRC has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.

The ERRC has been the recipient of numerous awards for its efforts to advance human rights respect of Roma: in 2010, the Silver Rose Award of SOLIDAR; in 2009, the Justice Prize of the Peter and Patricia Gruber Foundation; in 2007, the Max van der Stoep Award given by the High Commissioner on National Minorities and the Dutch Foreign Ministry; and in 2001, the Geuzenpenning Award (the Geuzen medal of honour) by Her Royal Highness Princess Margriet of the Netherlands.

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The ERRC was founded by Mr Ferenc Kőszeg.

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CHALLENGING DISCRIMINATION PROMOTING EQUALITY