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Recent Case Law of the European Court of Human Rights Concerning the Protection of Minorities (August 2006-December 2007)

I. Introduction

The present article is an overview of the Court's jurisprudence that touched upon minority issues and was delivered within the period under examination. It is important to note that the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not contain any specific minority rights provisions, unlike Article 27 of the International Covenant on Civil and Political Rights. It does, however, guarantee individual rights, the effective protection of which is essential for the preservation of the distinctiveness and development of minority groups. It also prohibits in its Article 14 any form of discrimination in the enjoyment of the rights and freedoms recognized in the Convention on grounds that include discrimination on the basis of association with a national minority. The definition of minorities falls outside the scope of this article. However, it is noted that the cases referred to will deal with issues concerning groups and, primarily, their members that have experienced discrimination by the state or its citizens because of their ethnic, national, racial, religious or linguistic characteristics or ancestry.

I will examine first the issue of equality of opportunity in education which, in my view, deserves to be the starting point of this overview, given the importance of the Grand Chamber's pronouncements on the issue of indirect discrimination. I will proceed to examine relevant developments concerning a member state's obligation to

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Leto Cariolou

unmask discriminatory motives in criminal activities. The subsequent sections of the article will deal with the protection of religious minorities and the right to freedom of association of minority members.

II. Equality of Opportunity in Education

The most important judgment concerning minority issues that was delivered by the Court within the set period was the Grand Chamber’s judgment in *D.H. and Others v. the Czech Republic*. The applicants, who were of Roma origin, complained that they had been placed in schools intended to deal with the special needs of children with mental deficiencies because of a practice that had resulted in racial segregation and discrimination. They submitted that, effectively, there had been two educational systems in the Czech Republic: the ordinary schools that were fit for the majority of the population; and the special schools that ended up being composed mainly of Roma. In the view of the applicants, such difference in treatment was not based on any objective and reasonable justification, amounted to degrading treatment and had deprived them of the right to education, given that the curriculum followed in special schools was inferior and restricted their ability to pursue secondary education other than vocational training.

The placements in such schools had been based on the children’s performance in tests to measure their intellectual capacity, which were carried out by educational psychology centres. According to the applicants, the centres’ recommendations for placements in special schools were based on grounds such as an insufficient command of the Czech language, an over-tolerant attitude on the part of the parents or an ill-adapted social environment. The applicants’ parents had indicated their consent to the placement by signing a form to this effect. Indeed, in some instances, parents had expressly requested their child’s placement in a special school.

According to data submitted by the applicants, 56% of the total number of pupils placed in special schools in their region were Roma. Conversely, Roma represented only 2.26% of the pupils of ordinary primary schools. These findings were further supported by data provided by the European Monitoring Centre for Racism and Xenophobia, which stated that more than half of Roma children in the Czech Republic attended special schools. The Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) observed in October 2005 that, according to unofficial estimates, Roma represented up to 70% of pupils enrolled in special schools. The Czech Republic had admitted in a report dated April 1999 that the psychological tests “[were] conceived for the majority population and [did] not take Romani specifics into consideration”.

In its second report on the Czech Republic of 2005, the ACFC observed that “revision of the psychological tests used […] has not had a marked impact. According to unofficial estimates, Roma account for up to 70% of pupils in the [special] schools, and this—having regard to the percentage of Roma in the population—raises doubts

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