

# **A HANDBOOK ON EUROPEAN NON-DISCRIMINATION LAW: LAUNCH EVENT**

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Mr. President, Ladies and gentlemen, it is a pleasure to be here before you today to launch the Handbook on European Non-Discrimination Law. I would like to thank the Court for the excellent collaboration that we have enjoyed during the production of the handbook, and for hosting this event.

Allow me to begin by recounting a true story. In 1999, a group of Roma parents lodged an appeal before the Czech Constitutional Court concerning the decision of the Ostrava Education Authority to send their children to special schools, which were designed for children with learning difficulties. According to some estimates, at the time up to 70% of pupils enrolled in special schools were Roma. The decision to send these Roma children there was based on a test that supposedly measured their intellectual capacity.

The parents argued that in practice the assessments were designed with children from the majority population in mind. And so Roma children were inherently more likely to perform badly. They argued that this resulted in de facto or indirect discrimination.

The Constitutional Court dismissed the appeal, in part on grounds that it was manifestly unfounded. In 2007 – eight years later – the Grand Chamber of the European Court of Human Rights made a finding that discrimination had in fact occurred. As you may have realised, this was the landmark case of *D.H*

*and Others v. the Czech Republic*, which went some way towards clarifying the meaning and application of indirect discrimination as a legal concept, as well as confirming the important role that statistical evidence can play.

And here is my question to you: what had happened if the lawyers and the judges involved in the case before the national courts, and the Education Authority's legal advisers had had a better knowledge of discrimination law? Could it have made a positive difference to those children? Could the denial of their right to education – and the right to education of many others – have been avoided?

I am convinced that yes - it would have made a difference. And that is one of the reasons why the European Court of Human Rights and the European Union Agency for Fundamental Rights have worked together to produce this Handbook, that we are jointly presenting today. The handbook is a practical tool to help in the implementation of rights at the national level – because, after all, this is where rights are actually enforced.

The national human rights architecture is the first recourse for victims. Judges, lawyers, national human rights institutions, equality bodies, legal advice centres, trade unions and NGOs who support litigants need to have a good grasp of this complicated area of law so that it is applied properly. Resolving disputes at the level closest to the litigants has several advantages – it is less costly, less timely and less distressing for the parties. But also, when disputes that *could* be resolved nationally move up to the European level, they risk placing further pressure on an already over-stretched Court, and they risk drawing out justice for longer than necessary.

The Fundamental Rights Agency has the task of advising the EU institutions and Member States on human rights issues, on the basis of the research and

evidence it collects. Another of its tasks is to raise awareness about fundamental rights in Europe.

The Council of Europe is an indispensable partner in this regard and the Handbook is the fruit of a growing collaboration between the Agency and the European Court of Human Rights. The European Court of Human Rights, has played an extremely important role in the development of the law in this area, influencing the evolution of EU law and of the national law of the member states of the Council of Europe.

The Agency also works with other bodies within the Council of Europe - such as the Commissioner for Human Rights on the issue of homophobia and transphobia, and the European Commission against Racism and Intolerance on racial discrimination, for example in our work with the Roma.

The usability of the Handbook is an important practical issue. This is why we have taken the very practical step of ensuring that over the course of 2011 it will become available in 21 of the EU's official languages as well as Croatian. There will also be web space dedicated to the handbook where it can be downloaded and where additional resources will be available. Part of the purpose of today's sessions is to give you the opportunity to express your views on its strengths and weaknesses. Did we get it right? As the law develops there will be opportunities to update the Handbook and your feedback would be valued on this. At the same time, your views will also be used to guide our upcoming work. We are intending to begin work in 2012 on another joint project, initiated by the European Court of Human rights, to produce a handbook on asylum law. Here we hope that we may have the opportunity to work with the Court of Justice of the European Union.

We believe that one of the strengths of the current Handbook is its innovative approach to non-discrimination law. Rather than treating Convention Law and

EU Law totally separately, it deals with them as overlapping systems with shared concepts that draw on each other. Of course there are differences between the two legal systems, but as a practical matter, many situations are such that practitioners can – and should – rely on both sources of law.

In this sense the Handbook is also forward-looking in anticipating the progressive convergence of EU Law and Convention Law. The Convention already holds privileged status in EU Law as the source of inspiration for the ‘general principles’ and the rights guaranteed in the Convention also feature in the EU Charter of Fundamental Rights, which is now legally binding. If we look to the accession of the EU to the Convention, then it is clear that the two systems are becoming increasingly interlinked.

Ladies and gentlemen, I present this handbook to you as the first of many practical tools that can help to deliver quicker and more effective access to justice for victims. And as decision makers and their legal advisers become better acquainted with non-discrimination law, we can avoid and prevent the kind of lengthy and costly court battles that faced the Roma children and their parents, whose story I began with.

Thank you for your attention.