

## OPEN SOCIETY JUSTICE INITIATIVE

### **The Implementation of the EU Charter of Fundamental Rights Two Years After the Lisbon Treaty's Entry Into Force**

#### **LIBE Committee Hearing, Brussels**

**November 10, 2011**

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My name is Tracey Gurd and I'm with the Open Society Justice Initiative—a global human rights law reform organization. We're pleased the Committee has chosen to hold this hearing today and we welcome the opportunity to share our work with you and strategize on ways to ensure the Charter on Fundamental Rights is implemented and respected.

My organization litigates public interest cases at national, regional and international levels. Today I want to focus on two European cases where, together with the European Roma Rights Center, we have worked to defend Roma rights in the areas of education and housing. In the Czech Republic we fought—and won—a case before the European Court of Human Rights on the practice of shunting Romani children into “special” schools on the basis of their ethnicity. In Italy, we are fighting the repeated evictions and expulsion of Roma from the country.

Both of these cases demonstrate how the ideals underpinning the Charter of Fundamental Rights, and indeed the European Union itself -- of equality, inclusion, tolerance and respect -- are in danger. Our two cases are indicative of broader trends throughout Europe which require the Parliament's urgent attention. As the Euro crisis deepens, and xenophobia is on the rise -- Roma across the continent are feeling the brunt of hostile public opinion and adverse government policy. In this time of insecurity and volatility, we encourage the European Parliament to make clear that its determination to combat discrimination against the poorest and most vulnerable will not waiver. In doing so, the Parliament cannot simply rely on the fact that the Charter of Fundamental Rights exists. As legal advocates, we unfortunately know all too well that the revolutionary promise of the law—as a tool to right social wrongs, as a means of promoting the greater ideals upon which Europe has been built—has its limitations. The main message today is this: The Charter requires other forms of support—particularly political reinforcement and pressure — to ensure that its fundamental rights are actually realized in practice. Today I will use our two cases to demonstrate how the Parliament could help ensure the rights in the Charter become meaningful in practice.

## **A. The Czech Republic: Segregation of Romani School Children**

First, I will turn to our work in the Czech Republic. In 1999 My Executive Director took a case to the European Court of Human Rights on behalf of 18 school children in the Czech Republic. At that time, statistics showed that Romani children were 27 times more likely to be channeled into schools for children with mental disabilities, segregated from their classmates in mainstream schools, and taught a limited curriculum. Once they were placed in these schools, it was almost impossible to get out, and the substandard education they received severely limited their job opportunities and chances in life.

Eight years later, in 2007, we won the case. The European Court's Grand Chamber decided that the Czech government illegally discriminated against Romani children on the basis of their ethnicity, breaching their right to education and the guarantee they would be free from discrimination. It ordered the Czech government to pay compensation to the individual plaintiffs, and institute general measures to end ethnic discrimination and redress its effects on Romani children across Czech Republic.

Yet today, the Czech Republic is nowhere near satisfying this legal requirement. For the vast majority of Romani children, the promise of inclusive education is a fairy tale. As the European Commissioner for Human Rights, Thomas Hammarberg – who was here with us today – reminded us in his March report on the Czech Republic, Romani children are still 12 times more likely nationwide – and some places, still 27 times more likely – than their non-Roma peers to attend ‘practical schools’ (or former special schools). In other words, in some regions, the statistics remain exactly the same as they were back in 1999 when we first took the case to court.

That said, the Czech government has undertaken some efforts – at least on paper -- to implement the DH decision. It developed a national action plan for inclusive education – however its implementation has effectively stalled. It has passed administrative decrees ostensibly prohibiting segregation on the basis of ethnicity but they are insufficient. The main structural barriers to equality – specifically the lack of systemic support for Romani children to succeed in mainstream education – remain untackled. Plans to spend EU structural funds on inclusive education projects have not been publicly revealed, making it difficult to determine whether they would meet genuine needs. And while the government adopted a broad inclusion strategy last month – including on education – it remains unfunded and non-binding on any government department.

The good news is that some international bodies have recognized the urgency of the issue and called for rapid change. They know that every year that goes by without action will see yet another group of children channeled into dead-end futures. In June 2011, the Committee of Ministers of the Council of Europe – which oversees the implementation of the European Court's judgments -- registered its “concern” that “considerable progress remains to be achieved on the ground” in addressing persistent discrimination against Roma children. Its worries were echoed by two UN treaty bodies in the last few months – the UN Committee on the Rights of the Child and the UN Committee on the Elimination of Racial Discrimination – which both called for an end to segregated schooling for

Romani children. We hope this Committee will consider adding its voice – and its considerable political pressure -- in calling for change.

### **B. Italy: Challenging the Roma Database**

Now, turning to Italy and an issue about which we know this Committee shares our concerns: the nomad camps, emergency decrees and the Roma evictions.

Just to recap the problem: In May 2008, the Italian government adopted the “Nomad Emergency Decrees”. These emergency laws granted to the prefects of Rome, Milan and Naples exceptional powers to adopt measures targeted essentially at Roma and other marginalized groups living in so-called nomad camps. These powers include the ability to monitor camps, conduct a census of people (including minors) in those camps; expel those with irregular status; clear “camps for nomads” and open new “camps for nomads”.

As part of the census process, the Italian government created a database containing information only about Roma for the express purpose, among others, of dismantling Roma camps and expelling Roma from the country. Despite our specific requests, the prefects have never provided information on the procedures that are available to Roma people to access or modify personal data collected during the census -- nor have they released information on the extent to which the purported objectives for which the census was carried out have been achieved. So far individual applications to delete the data collected for the census have been rejected.

Despite concerns raised by this Committee, ourselves and others, the emergency decrees are still in place three and a half years later. In his September 2011 report on Italy, Commissioner Hammarberg recommended that Italy undertake a “shift in focus,” from forcible evictions and expulsions to social inclusion and anti-discrimination of Roma and Sinti communities.

We agree with Commissioner Hammarberg’s conclusions and as part of an effort to help ensure such a shift takes place, we along with partner NGOs, have sought to persuade the European Commission to open infringement proceedings and consider referring Italy to the Luxembourg Court for clear violations of European Law. We have argued that the measures violated three areas of EU law, specifically the

- *Data Protection Directive*
- *Race Equality Directive*, and
- *Citizen’s Directive* on freedom of movement

A further briefing – and request for the opening of infringement proceedings -- will be delivered to the European Commission later this month.

These two examples, then, of our work in Czech Republic and Italy have at their core rights that are protected under the Charter: the right to education, to be free from discrimination, respect for private and family life; and the protection of personal data.

This is the moment where the Committee can draw upon its considerable political power to help make the promise of the Charter a reality. Specifically, we ask that the Committee considers:

**For the Czech Republic:**

- Asking the Czech government, in parliamentary questions, for two specific things:
  - an update on the implementation of the DH case, including fresh statistics disaggregated by ethnicity, gender and disability in mainstream and practical schools AND
- Secondly, for detailed information about how EU structural funds are being spent for the purpose of inclusive education, and whether all funds allocated for inclusive education will be spent effectively in this current cycle
- Asking the European Commission about what it has done to monitor the use of EU structural funds for inclusive education projects in the Czech Republic to ensure the DH judgment requirements are being met.

**For Italy:**

- Issue a public statement supporting our request to the European Commission to initiate infringement proceedings against Italy;
- Asking, in parliamentary questions, for three things:
  - the discontinuation of the Nomad Emergency Decrees
  - deletion of the personal data collected through the Nomad census
  - and finally for a serious commitment from Italian authorities to provide alternative, non-segregated housing and social integration programs for the thousands of Roma evicted during the state of emergency.

**More generally, we hope the Committee will take this opportunity to consider:**

Working with the Decade of Roma Inclusion to identify ways that it and the Roma Platform can work more closely together to address, in particular, the serious violations of Charter rights that Roma are increasingly experiencing across Europe and for whom the promise of the Lisbon Treaty is still far from being realized.

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