

Summary of cases

DH and others v. Czech Republic

This case was brought to the European Court of Human Rights (ECtHR) in 2000 on behalf of 18 Roma children from the town of Ostrava in the Czech Republic. The European Roma Rights Centre represented the children, and on appeal before the ECtHR several NGOs, including Step by Step International, submitted amicus curiae briefs in support of the applicants.

The children alleged that their assignment to “special schools” for children with learning disabilities contravened their right to education without discrimination. Tests used to assess their mental ability were culturally biased against Czech Roma, and placement procedures allowed for the influence of racial prejudice on the part of educational authorities.

Statistical evidence compiled by the ERRC from Czech officials and authorities was presented to the ECtHR to demonstrate that school selection processes frequently discriminated on the basis of race. For example, a Romani child in Ostrava was 27 times more likely to be placed in schools for the learning disabled than a similarly situated non-Romani child. In fact, in the Ostrava region, more than half the population of Roma children were confined to “special schools” and the channeling of Roma children to special schools for the mentally disabled was almost automatic. As a result, the Czech school system was de facto segregated, with most Roma children attending separate schools from those of neighboring non-minority children.

On 13 November 2007, the European Court of Human Rights Grand Chamber ruled that this practice and the Czech law on which it was founded amounted to racial discrimination against Roma children with regards to the right to education (amounting to a violation of ECHR art. 14 read in conjunction with art. 2 of Protocol 1). The court awarded symbolic damages of €4,000 per child. While the proceedings were still going on, the Czech Republic amended its law on public education and officially abolished the special schools three years ago. However, Roma activists argue that the situation on the ground is fundamentally unchanged and that Roma children still lack equal access to quality education in mainstream schools.

Summary based in part on information and language provided by the Guardian via CRIN: <http://www.crin.org/Law/instrument.asp?InstID=1176>.

The full judgment is available on the UNHCR’s Refworld page:

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=473aca052&page=search>

Serrano Cruz sisters v. El Salvador

This case was brought before the Interamerican Court of Human Rights (IACHR) against El Salvador on behalf of Ernestina and Erlinda Serrano Cruz, who were just seven and three years old when they were abducted by soldiers of the Salvadorian armed forces. The two sisters were taken away by soldiers on June 2, 1982, during a major military operation in the department of Chalatenango during El Salvador’s long civil war. The case of the Serrano sisters was not unique in the context of this war as forcefully disappeared children were commonly

given a new identity and adopted away, often along with a transfer of money. After the war ended in 1992, the truth and reconciliation commission was tasked with reuniting these children with their parents, but other matters were being prioritized and no remedy was made available.

In 1999, the case was presented to the Interamerican Commission on Human Rights, with the Centre for Justice and International Law (CEJIL) and Pro-Búsqueda representing the victims. The Committee accepted the victims' argument and recommended that El Salvador make efforts to reunite the sisters with their family, but El Salvador never reported on any steps taken to follow these recommendations.

As an effective remedy was not achieved, the case was brought to the IACHR by the Committee. Unfortunately, because El Salvador had not accepted the jurisdiction of the court regarding events that took place prior to June 1995; the court could not consider the facts of the disappearances even though they amounted to a clear violation of human rights. . Despite the fact that the court could not consider the allegations of forced disappearances and other violations arising from the abduction of the children, however, the IACHR found that El Salvador had violated not only the right to recourse to a court of law and the right to be heard (American Convention arts. 8(1) and 25) with regards to the family of the sisters, but also the right to humane treatment of the mother and siblings of the sisters (art. 5) by continually refusing to investigate the claims of forced disappearances.

Notably, the reparations phase of this judgment is of particular interest and demonstrates well the wide scope of reparations available within the Interamerican System.

Summary based in part on information and language provided by Equipo Nizkor <http://www.derechos.org/nizkor/salvador/doc/serrano.html>.

The full judgment is available on CRIN:

http://www.crin.org/docs/FileManager/IAC_El_SalvadorForced%20disappearance.doc

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria

In 1996, the Social and Economic Rights Action Centre (SERAC) brought a case against Nigeria to the African Commission on Human and Peoples' Rights alleging that the military government had, through its business relationship with Shell Petroleum Development Corporation (SPDC), exploited oil reserves in Ogoniland with no regard for the health or environment of the Ogoni People.

This exploitation had resulted in extensive pollution of the local habitat, seriously affecting the food production of the area. It has also resulted in serious short and long-term health consequences for the Ogoni, yet no safeguards or additional provisions for healthcare have been made. Furthermore, a second claim alleged that the Nigerian state used its armed forces to effect violent reprisals against Ogoni protestors challenging the oil company's practices.

The Commission found, in a 2001 decision on the merits, that Nigeria had violated many of the rights enshrined in the African Charter on Human and Peoples' Rights (Arts. 2, 4, 14, 16, 18(1), 21 and 24) and appealed to the state of Nigeria to cease its attacks on the Ogoni people, undertake effective investigations into the human rights violations detailed in the case, assure reparations for the victims, and put safeguards in place safeguards to prevent future violations.

Summary based on information and language provided by ESCR-Net, where full judgment text is available: http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=404115

People's Union for Civil Liberties v. Union of India & Others

Starvation deaths had occurred in the state of Rajasthan, despite excess grain being kept for official times of famine, and various schemes throughout India for food distribution were also not functioning. In 2001, the People's Union for Civil Liberties (PUCL) petitioned the court for enforcement of both the food schemes and the Famine Code, a code permitting the release of grain stocks in times of famine. They grounded their arguments on the right to food, deriving it from the right to life. Over two years, various interim orders were made by the court were made over two years, but with meager implementation by the national and state governments.

In 2003, the court issued a strong judgment, which found the right to life was imperiled due to the failure of the schemes. The Court noted that paradox of food being available in granaries but that the poor were starving and it refused to hear arguments concerning the non-availability of resources given the severity of the situation. The court ordered that: the Famine Code be implemented for three months; grain allocation for the food for work scheme be doubled and financial support for schemes be increased; ration shop licensees must stay open and provide the grain to families below the poverty line at the set price; publicity be given to the rights of families below the poverty line to grain; and State governments should progressively implement the mid-day meal scheme in schools.

The mid-day meals programme had a very profound effect on the ability of children to enjoy the right to food, the right to life and also to make the right to education an actual possibility for many impoverished children who were reliant on free school mid-day meals in order to be able to attend school. The programme had essentially closed down in most of the states of India but, as a result of the litigation, it was reinstated in many states.

This was a public interest litigation campaign and the Petitioners represented millions of Indians though none of them appeared in court - indeed many were not even aware that there was a case in Supreme Court on their behalf. In the Indian system, public impact litigation cases are not actually closed when sentenced, but remain pending with the Supreme Court essentially keeping a continuous watch over the situation.

Summary based on information and language provided by ESCR-Net, where further documents case documents are available:

http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=401033