CZECH REPUBLIC VS. EQUALITY: AN ANALYSIS OF DISCRIMINATION CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS[1]

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Abstract: *Discrimination interferes with human dignity, a value protected by human rights instruments like the European Convention on Human Rights (ECHR). Once domestic remedies are exhausted, individuals may approach the ECtHR for alleged violations of the Convention. In the Czech Republic, only 56 cases related to Article 14 (prohibiting discrimination) have been heard, with violations found in just three. This paper analyzes all relevant ECtHR decisions concerning the Czech Republic, using content analysis. Additionally, it explores the alignment between ECtHR case law and Czech domestic anti-discrimination law, aiming to fill a gap in public data and contribute to expert discussions.*

Keywords: *Discrimination, Human Rights, European Convention on Human Rights, European Court of Human Rights, Czech Republic, Article 14, Anti-Discrimination Law*

INTRODUCTION

Discrimination constitutes an infringement on human dignity, one of the fundamental pillars of a democratic legal state. However, it appears to be almost nonexistent in the Czech Republic. At least this is suggested by the number of complaints in which the European Court of Human Rights (ECtHR) has found a violation of Article 14 of the Convention. The reality, of course, is different, but throughout its entire history, the ECtHR has only found complaints in this area to be substantiated in three cases.

In this article, I will examine all 56 decisions in which applicants alleged violations of Article 14 of the Convention by the Czech Republic using content analysis methods. The introductory section will place the issue in context, including the definition of key terms. This will be followed by a chapter summarizing data on i) the areas of law in which applicants claimed violations of Article 14 of the Convention, ii) the discriminatory grounds on which applicants were allegedly discriminated against, and iii) the success or failure of their complaints. Subsequent sections will focus on specific groups of complaints that were most frequently recurring in the examined data. I will provide a detailed analysis of decisions where the applicants were successful before the ECtHR. In one of these cases, I will also address the subsequent developments related to the issue. Finally, I will attempt to evaluate the extent to which disputes before the ECtHR reflect the areas where discrimination is brought before national courts.

Currently, there is no available summary data that provides a basic overview of these decisions in the public domain. The aim of this article is to contribute such an overview to the academic discussion.

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I. PROCEEDINGS BEFORE THE ECTHR

If all domestic remedies have been exhausted, the victim of discrimination may apply to the ECtHR. For the ECtHR to consider the complaint, it is required that no more than four months have passed since the final decision.[2] The ECtHR applies a specific test to allegations of discrimination that fall within the general framework of the Convention, known as the „discrimination test".[3] This involves a series of questions; to establish discrimination, an affirmative answer to the first question and a negative answer to at least one question in the subsequent set are necessary.

1. Has there been differential treatment between individuals in analogous or relevantly similar situations, or has there been equal treatment of individuals in relevantly different situations?
2. Is there a reasonable and objective justification for the differential treatment?
   a. Does the differential treatment pursue a legitimate aim?
   b. Is there a reasonable proportionality between the means employed and the objective pursued?

Under the discrimination test, the complainant must demonstrate that he or she has been treated differently from an individual in a relevantly comparable situation, or that he or she has been treated the same way in a relevantly different situation. Differential treatment is a concept that must be examined on a case-by-case basis, but the case law of the ECtHR has, in some instances, estabilished more general principles.[4] In the area of social security, the ECtHR has, for example, determined that only individuals who were habitually resident in the country concerned (or in a country with a reciprocal agreement on pension increases) were entitled to indexation of their old-age pensions under the relevant legislation. Pensioners who were citizens of the country but habitually resident elsewhere had their pensions frozen as soon as they left the country.[5]

Finally, Member States must justify any unequal treatment by demonstrating a legitimate aim. If a Member State fails to establish a link between the legitimate aim and the unequal treatment, it breaches Article 14 of the Convention. Case law has identified specific examples of legitimate aims, such as the protection of national security, the legal certainty of completed succession proceedings, the effective implementation of policies promoting linguistic unity, and the provision of public services aimed at fostering equality of opportunity. This includes requiring all employees to act in a manner that does not discriminate against others.[6]

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[2] See Article 35 of the Convention.

[3] Council of Europe: European Court of Human Rights, Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, updated as of August 2023. In: UNHCR – The UN Refugee Agency [online]. [2024-02-17]. Avaliable at: <https://www.refworld.org/jurisprudence/caselawcomp/echr/2020/en/123532>.

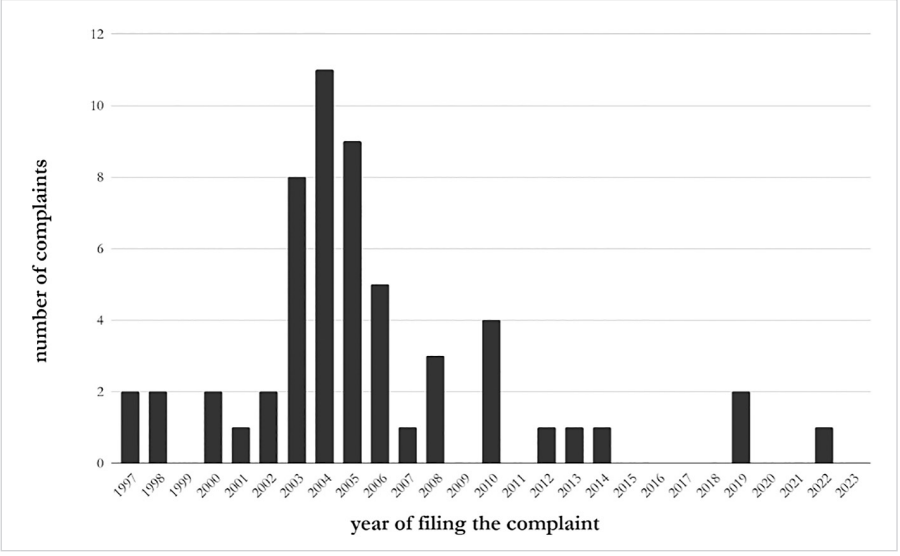
[4] One example of differential treatment was a regulation enshrined in Italian law that allowed married couples to give a joint child only the surname of the husband, not the surname of the mother (Cusan and Fazzo v. Italy, 2014).

[5] See Judgement of the ECtHR from 16 March 2010 in the case of Carson aand others v. United Kingdom, Application No. 42184/05.

[6] Judgement of the ECtHR from 16 March 2010 in the case of Carson aand others v. United Kingdom, Application No. 42184/05, para. 10.

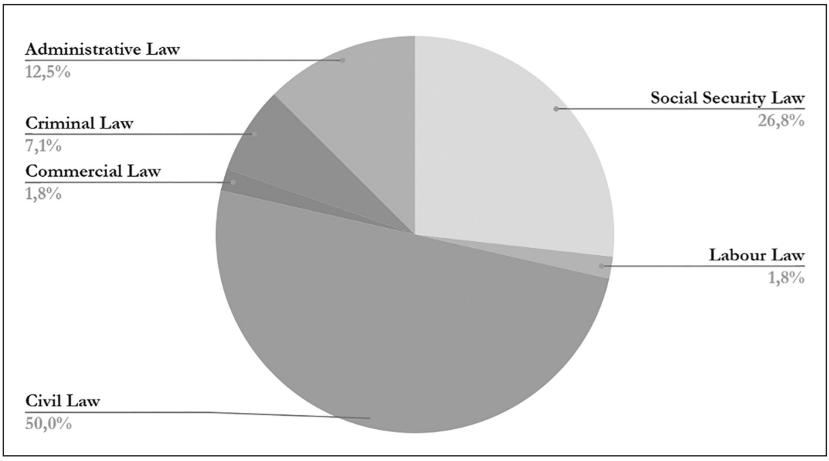
II. SUMMARY DATA

The Czech Republic has faced a total of 56 complaints reviewed by the ECtHR concerning possible violations of Article 14 of the Convention. As illustrated in the chart below, the majority of these complaints were lodged between 2003 and 2006. Notably, the adoption of the Anti-Discrimination Act (ADA) in 2009 does not appear to have affected the number of complaints alleging violations of Article 14. This may suggest a continued lack of awareness within society about judicial remedies for discrimination, even fifteen years after the introduction of ADA. Additionally, the overall time and financial burden associated with the process of taking a case to the ECtHR likely contribute to the relatively low number of complaints filed.



II.1 Fields of law

Half of all cases before the ECtHR involving allegations of a violation of Article 14 of the Convention, which prohibits discrimination, were civil cases (28 cases; 50 % of the total). More than a quater of the complaints pertained to social security law (15 cases; 26.8 % of the total). The third most common area was administrative law (7 cases; 12.5 % of the total). Additionally, there were cases in criminal law (7.1 %), commercial law (1.8 %), and labour law (1.8 %).



The vast majority of the civil law docket consisted of family law disputes (21 cases). Complaints related to property law and those concerning the regulation of controlled rents were equally represented (3 cases each). One judgment addressed health law.

In social security law cases, nearly half were complaints regarding old-age pensions (7 cases), while nearly half concerned retirement benefits (6 cases). In the context of social security, the ECtHR also addressed one case each on lump-sum compensation[7] and the transfer of arrears of social security payments following the privatisation of a state-owned enterprise.[8]

In administrative law, the most common issue involved applications to establish private schools, where the applicants alleged not only violations of the prohibition of discrimination but also breaches of the right to education under Article 2 of Protocol No. 1 of the Convention (3 cases).[9] Other complaints concerned property confiscation (2 cases), while the ECtHR addressed one case each related to building law and the registration of a religious association within the context of administrative law.

It is worth noting that even in the context of national disputes, cases involving discrimination remain relatively rare. According to the latest analysis conducted by the Public Defender of Rights, only 90 such cases were recorded between 2015 and 2019.[10] There may be several reasons for the low number of lawsuits filed by victims of discrimination.

[7] The applicant demanded a one-time compensation for the deportation of his father to the Gulag, which, although paid by the Social Security Administration from the state budget, was not a social benefit. The complaint was dismissed due to incompatibility *ratione materiae* with the provisions of the Convention. See the judgment of the ECtHR from 18 January 2011 in the case of Teš and Others v. the Czech Republic, Application no. 282/06.

[8] Judgement of the EctHR from 16 October 2007 in the case of Sýkora v. the Czech Republic, Application No. 14635/02.

[9] Judgement of the ECtHR from 16 March 2010 in the case of Private Elementary School Cesta k úspěchu in Prague, Ltd., and Civic Association Škola dětem v. the Czech Republic, Application No. 8314/10.

[10] Public Defender of Rights. Decision-making of Czech Courts on Discrimination Disputes 2015–2019. Research by the Public Defender of Rights, 2020. In: *Ombudsman* [online]. [2025-04-21]. Available at: <https://www.ochrance.cz/uploads-import/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf>.

Affected individuals may be unaware of their rights, may be reluctant to undergo a physically, psychologically, and financially demanding – and often lengthy – judicial process, or may consider alternative forms of protection against discrimination to be more effective (For example, in the field of labour law, this could involve leaving the job or submitting a complaint to the Labour Inspectorate). In the context of data on national discrimination disputes, it is evident that local courts predominantly handle private law claims. The majority of discrimination lawsuits are filed in the area of work and employment (60 % of all discrimination cases).[11] The next most frequent category of claims concerns access to housing or access to goods and services.

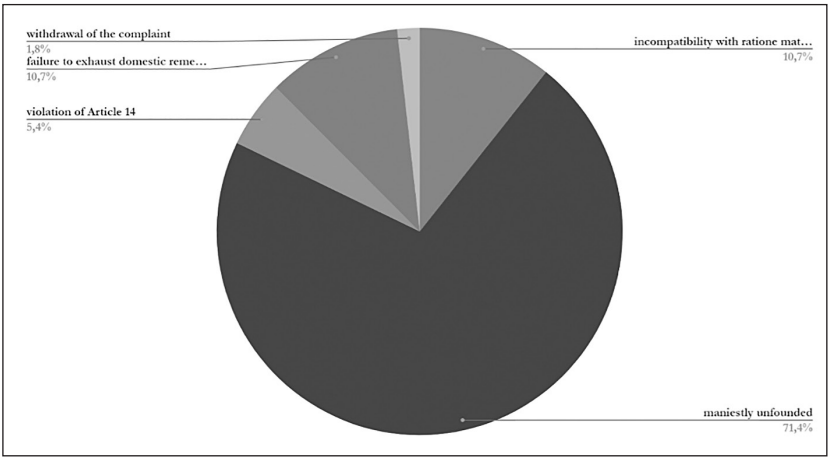
II.2 Grounds of Discrimination

The majority of applicants alleged discrimination by the Czech Republic on the basis of their gender. The second most common ground for discrimination was the residual category of "other status" (35.7 %). The third most represented ground of discrimination was nationality (12.5 %). The remaining complaints (expressed as percentages) were based on discrimination due to disability (7.1 %), race and ethnic origin (3.6 %), religious belief (1.8 %), and age (1.8 %).

II.3 (In)Success of Complaints

Almost all complaints were deemed inadmissible by the ECtHR (94.6 %). Most commonly, the Court found complaints under Article 14 to be manifestly unfounded (71.4 %). Among the remaining inadmissible complaints, there was a nearly equal distribution between inadmissibility due to non-exhaustion of domestic remedies (10.7 %) and incompatibility with the ratione materiae of the Convention (10.7 %). In one case, the applicant withdrew the complaint of a violation of Article 14 during the proceedings, so the ECtHR did not address it at all. Only in three cases (5.4 % of the total) did the ECtHR find a violation of Article 14, one of which was determined only after referral to the Grand Chamber.[12]

[11] Ibid.
[12] See the case of D. H. and Others v. the Czech Republic below for more details.



The results mentioned above pertain only to the allegation of a violation of Article 14 of the Convention. In five decisions, the ECtHR found a violation of another article, but the complaint related to a violation of Article 14 was deemed inadmissible either due to being manifestly unfounded[13]or for non-exhaustion of domestic remedies.

III. SELECTED DISCRIMINATION CASES

In the following chapter, I will focus on selected groups of discrimination disputes before the ECtHR. More than a quarter of these cases were complaints related to social security law. However, these primarily concerned reactions to the Military Service Act enacted in 1999. Since the disputes pertained specifically to the response of the new regulation to the situation of professional soldiers at that time, I will not delve further into these cases as they no longer have significant relevance. I will briefly summarize the most pivotal case in this area.

ECtHR first identified discrimination by the Czech Republic in a case related to social security law concerning retirement benefits for a former military judge[14]. After the abolition of military courts, the judge agreed to be reassigned to a civilian court, which, under the then-current legal framework, resulted in the loss of his entitlement to retirement benefits. The ECtHR found that there was no proven distinction between the applicant and the comparator individuals that would justify the differential treatment. The fact that one former military judge, who was reassigned to a civilian court and thus lost his right to retirement benefits, was treated differently from another former military judge with comparable qualifications who continued to receive benefits on a similar position, was deemed unacceptable by the Court.

[13] For example, the judgment of the ECtHR from 21 June 2006 in the case of Dostál v. the Czech Republic, Application No. 26739/04. In this case, the ECtHR found a violation of Article 6 of the Convention (right to a fair trial).
[14] Judgement of the ECtHR from 26 November 2000 in the case of Bucheň v. the Czech Republic, Application No. 36541/97.

In five other cases concerning retirement benefits for career soldiers, the ECtHR found reasonable and objective justification for the differential treatment. The individuals compared by the applicants had legitimate reasons for differing treatment due to the increased interest in compensating them for their service to the state.

III.1 Discrimination against fathers

Of all the complaints, nearly two-fifths (38.2 %) involved cases where applicants alleged gender discrimination within family law disputes. The applicants therefore associated their claims of a violation of Article 14 with allegations of a violation of Article 8 of the Convention, which protects the right to family life. The key factual circumstances in most of these cases were similar in several respects. Briefly, the issue was that, following a divorce or separation of the parents, the court, in the context of custody proceedings, awarded sole custody of the child to the mother. Subsequently, for various reasons, the mother did not permit the father to have contact with the child. The fathers, who were the applicants, challenged this through domestic law by seeking interim measures to temporarily adjust the arrangements concerning the minor child and later through enforcement of the court's decisions.

After exhausting all domestic remedies, the applicants alleged gender discrimination in the context of domestic courts favoring mothers in custody disputes. Some applicants referred to statistical data at the time indicating that children were awarded to mothers in 89.9 % of cases. Fathers, in such instances, acquire a right to contact, and the applicants repeatedly argued that fathers face more difficulties in exercising this right.

However, the ECtHR placed the cited statistics within a broader context beyond what the applicants presented. "These figures, in particular, do not reveal which parent actually requested custody. In this regard, the government cites a partial local survey conducted in 1999 by one of the district courts, which shows that while only 16 % of fathers requested custody of their children, 34 % of those who did succeeded, and in 23 % of cases, children were awarded to shared or joint custody."[15] The ECtHR refers to contemporary research data, which concluded that more than four-fifths of fathers do not even seek sole custody through the courts, significantly weakening the applicants' argument.

In this context, no connection can be seen between the fact that the cases involved fathers (men) and the adverse decisions made by domestic courts regarding their proposals related to their right to contact with their minor children. Therefore, the ECtHR concluded in all family law cases that the applicants failed to demonstrate that the procedures of the domestic courts were influenced by their gender. On the contrary, the Court was convinced that Czech courts were guided solely by factors such as the family situation and the behavior of the parents and the child.

[15] Judgement of the ECtHR from 29 November 2005 in the case of Kříž v. the Czech Republic, Application No. 26634/03, para. 15.

III.2 Segregation of Romani children

The ECtHR has long regarded racial discrimination as particularly reprehensible. Due to its dangerous consequences, it demands exceptional vigilance and decisive action from authorities.[16] In our context, the ECtHR has addressed the issue of the segregation of Romani students in relation to racial discrimination. Although the decision is nearly seventeen years old, its enforcement and the entire issue remain highly relevant.

The case of *D. H. and Others v. the Czech Republic*[17] was the second case in which the ECtHR found a violation of Article 14 of the Convention by the Czech Republic. The complaint was filed by eighteen Romani children regarding their placement or reassignment to special schools designed for children with such intellectual deficiencies that they could not successfully be educated in mainstream or special schools.[18] Placement decisions were made by the school principal based on the results of an assessment by a pedagogical-psychological counseling center, which was intended to evaluate the child's intellectual abilities. The decision had to be approved by at least one parent or legal guardian.

Before the Constitutional Court, the applicants argued that although they did not appeal against the placement of their children in special schools, this was due to insufficient information about the consequences of such placement. The applicants emphasized that the relevant legal norms effectively lead to racial segregation and discrimination, as there are two separate educational systems: special schools for Romani children and "regular" primary schools for the majority population. They contended that this differential treatment lacks any objective and reasonable justification and constitutes degrading treatment that denies them their right to education. The Constitutional Court concluded that it was not within its purview to assess the overall social context and that the applicants had not sufficiently substantiated their claims of racial discrimination with evidence. Therefore, the court rejected this part of the complaint as manifestly unfounded.

Before the ECtHR, the applicants alleged a violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1, which protects the right to education. Additionally, they claimed, referring to Article 3 of the Convention, that they had been subjected to degrading treatment because they were segregated based on their racial origin by being placed in special schools designated for mentally disabled children. The ECtHR concluded that Article 14 of the Convention had not been violated, stating that "the legal framework governing the placement of children in special schools is not based on the ethnic origin of the students but rather aims to align the educational system with the needs, abilities, or deficiencies of the children."[19] Although the ECtHR acknowledged that the situation regarding the education of Romani children "is not perfect," it stated that it

[16] FREDMAN, Sandra, KODÍČKOVÁ, Tereza, KÜHN, Zdeněk. *Antidiscrimination Law*. Prague: Multicultural Center Prague, 2007.

[17] Judgement of the ECtHR from 1 March 2005 (Grand Chamber judgment of 13 November 2007) in the case of D. H. and Others v. the Czech Republic, Application no. 57325/00.

[18] Section 31(1) of the Act No. 29/1984 Coll., the School Act.

[19] Judgment of the ECtHR (Grand Chamber) from 13 November 2007 in the case of D. H. and Others v. the Czech Republic, Application no. 57325/00, para. 125.

did not have sufficient evidence to show that the placement or retention of the applicants in special schools was a result of racial bias.

The Grand Chamber of the ECtHR eventually found that the applicants had been indirectly discriminated against by being placed in schools for children with intellectual disabilities, where the curriculum was at a lower level than that of regular schools, and where the applicants were isolated from students of the majority population. As a result, they received an education that further exacerbated their difficulties and jeopardized their subsequent personal development, instead of helping them address their real issues, integrate into mainstream schools, and develop skills that would facilitate their lives among the majority population.[20] The applicants ultimately received a finding of discrimination and equal access to education, along with compensation of 4,000 euros (for each applicant) for non-pecuniary damages.[21]

Despite the fact that nearly seventeen years have passed since the decision was issued, the issue of the segregation of Romani students and the case of *D. H. and Others v. the Czech Republic* remain highly relevant. It is the only Czech case subject to enhanced supervision by the Committee of Ministers of the Council of Europe. Under this supervision, the Czech Republic submits annual reports on the implementation of the judgment. In December 2023, the Czech Republic presented an action plan[22] to the Committee of Ministers, with an oral hearing scheduled for March 2024. The aim of implementing the judgment is to reduce the number of Romani children in ethnically segregated schools.

Although some measures have been adopted over the years to improve the education of Romani children, available data indicate that they continue to be segregated. According to qualified estimates,[23] Romani students constitute approximately 30.4 % of the pupils in schools under Sect ion 16(9) of the Education Act (schools for students with mild intellectual disabilities).[24] Since 2014, when qualified estimates began, the proportion of Romani students in these schools has not decreased by more than five percent. Additionally, recent years have seen an increase in the number of schools where more than 50 % of the students are Romani, as well as schools where over 90 % of the students are Romani. [25]

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[20] Ibid., para. 207.

[21] The judgment also transcends the Czech Republic in that the Grand Chamber, for the first time, addressed the concept of indirect discrimination and the burden of proof associated with it. Due to the limited scope of this paper, this aspect is not discussed in detail.

[22] See the Action Plan for the Execution of the Judgment in the case of D. H. and Others v. the Czech Republic, dated 21 December 2023. In: *msp.gov.cz* [online]. [2025-04-21]. Available at: <https://justice.cz/documents/12681/3594730/Příloha+č.+1_D.H.+a+ostatní_Akční+plán_2023-12-21.pdf/7600f5b5-8a39-4371-886e--eb5b10ae6f08>.

[23] Qualified estimates are based on the annual survey of the number of Roma children in all elementary schools registered in the school and educational facility registry. These are estimates provided by school principals and may therefore not represent precise data.

[24] Report on the Execution of the Judgment in the Case of D. H. and Others v. Czech Republic, dated June 3, 2022, p. 10. In: *msp.gov.cz* [online]. [2025-04-21]. Available at: <https://justice.cz/documents/12681/3594730/Příloha+č.+9_D.H.+a+ostatni_zpráva+o+výkonu+2022.pdf/bb8c408e-b85e-4cdd-8155-ad73b3f72215>.

[25] Public Defender of Rights. Implementation of the Right to Equal Treatment and Protection Against Discrimination, 2023, p. 10. In: *Ombudsman* [online]. [2025-04-21]. Available at: <https://www.ochrance.cz/uploads--import/ESO/Monitorovací%20zpráva%2055-2023-final.pdf>.

Despite the measures adopted as part of the inclusive reform of Czech education to address issues affecting Romani students,[26] the situation regarding segregation can still be considered unfavorable. It is important to recognize the difference between intellectual disabilities and social disadvantage, a distinction emphasized by analyses examining the causes behind the proportion of Romani students in special schools.[27]

One might question why more cases concerning the segregation of Romani students have not reached the ECtHR. A possible reason could be the complexity of the process, which requires exhausting all domestic remedies before approaching the ECtHR. In this context, segregated students may have already left primary school by the time the case is considered, which could reduce their motivation to pursue legal action. Even the applicants in the case of *D. H. and Others* had already completed primary school when the decision on their discrimination was made; however, they were represented by non-governmental organizations that aimed to use the case as a catalyst for necessary systemic changes.[28]

Despite the challenges associated with filing complaints to the ECtHR, the decision discussed in this chapter has also served as inspiration for other applicants. In 2022, a settlement was reached in the case of *Suchý v. Czech Republic*, which was filed in 2016 and similarly concerned the placement of a Romani student in a special school. The applicant referred to the case of *D. H. and Others*, although the period of his segregation occurred eleven years before the *D. H. and Others* case.[29]

The Constitutional Court rejected his complaint, even though it clearly referred to the test for indirect discrimination established by the ECtHR's jurisprudence. The issue was also addressed by the Office of the Public Defender of Rights, which identified the principal's attempt to limit the number of Romani students admitted to the first grade of primary school.[30]

The issue of the segregation of Romani students is not unique to the Czech Republic. Over the years, the ECtHR has examined similar cases in countries such as Hungary[31] and Croatia.[32] The most recent case, from May 2022, saw the ECtHR identify a violation of the prohibition of discrimination under Article 1 of Protocol No. 12 to the Convention

[26] For example, entitlement-based support measures, which include a range of primarily pedagogical procedures aimed at supporting the education of students with specific needs (such as those arising from the student's unpreparedness for school, different living conditions, and a different cultural environment from which the student enters education). See Appendix No. 1 to Decree No. 27/2016 Coll., on the Education of Students with Special Educational Needs and Gifted Students.

[27] Analysis of the Causes for the Higher Proportion of Romani Students Educated According to the Framework Educational Program for Basic Education in Classes Established Under Section 16(9) of the School Act, and Proposal of a Set of Measures for the Field of Education and Other Relevant Areas. In: *edu.cz* [online]. [2025-04-21]. Available at: <https://www.edu.cz/wp-content/uploads/2023/04/Final_Vyzkumna_zprava_§_16_9_MSMT_PAQ_STEM.pdf>.

[28] The applicant was represented before the ECtHR by the European Roma Rights Centre (ERRC).

[29] The applicant Suchý was placed in a special school in 1985, while the applicants in the case of D. H. and Others were segregated between 1996 and 1999.

[30] Public Defender of Rights, Opinion from 16 April 2015, File No. 5202/2014/VOP.

[31] Judgment of the ECtHR from 29 January 2013 in the case of Horváth and Kiss v. Hungary, Application no. 11146/11.

[32] Judgment of the ECtHR from 9 July 2013 in the case of Oršuš and Others v. Croatia, Application no. 15766/03.

due to the failure to implement timely and effective desegregation measures in a primary school.[33]

It can be summarized that, despite changes in legal regulations, no reform has fundamentally altered the issue, and discriminatory practices against Romani students remain evident. In addition to placement in schools for students with special needs, there is also the issue of placement in regular primary schools but with the creation of separate classes for Romani children.[34] Although national courts in some cases are now more precise in defining what constitutes racial segregation,[35] the ctual situation remains far from favorable.

III.3 Different Retirement Age

In the field of social security law, a notable case concerned the different retirement ages for men and women. Equality of participation in social security systems is implied by the neutral formulation of conditions;[36] however, debate continues regarding whether past formulations were indeed neutral. For context, Directive 2006/54/EC, on the implementation of the principle of equal opportunities and equal treatment for men and women in employment and occupation, cites the establishment of different retirement ages as an example of discrimination.[37] Nonetheless, Czech lawmakers utilized the exception provided in Article 7(1)(a) of Directive 79/7/EEC, on the progressive implementation of the principle of equal treatment for men and women in the field of social security, which allows member states to exclude the determination of retirement age from the scope of the directive for the purposes of providing old-age pensions.

In the well-known case of *Andrle v. Czech Republic*, the issue concerned a situation where the applicant was granted sole custody of two minor children following a divorce. Subsequently, the Czech Social Security Administration denied his application for an

[33] The applicants were Albanian members of the Roma and Egyptian ethnic groups who attended a primary school. The government decided to provide food packages to students of their ethnicity in order to increase school attendance within these communities, which resulted in the school being attended almost exclusively by members of the mentioned ethnic groups. Following a directive from the Commissioner for Protection from Discrimination, the government announced that it would merge the school with nearby schools. Because Albania did not merge the schools in a timely manner, the European Court of Human Rights ruled in favor of the applicants. See Judgment of the ECtHR from 31 May 2022 in the case of X and Others v. Albania, Applications Nos. 73548/17 and 45521/19.

[34] TOMŠEJ, Jakub. *Country report non-discrimination: transposition and implementation at national level of Council Directives 2000/43 and 2000/78*. Luxembourg: Publications Office of the European Union, 2023. In: *Publications Office of the European Union* [online]. [2024-03-15]. Available at: <https://op.europa.eu/en/publication-detail/-/publication/df7c02a5-619d-11ee-9220-01aa75ed71a1/language-en>.

[35] In 2022, the Supreme Court annulled a ruling by the Regional Court in Ostrava, which had found that the local school and its founder did not discriminate against Romani students. The Supreme Court deemed segregation unacceptable, defining it as the „separation or division of members of a particular group characterized by racial or ethnic criteria if the actual outcome of such treatment is not supported by a legitimate aim, and if a legitimate aim is pursued, the means used to achieve it are not suitable and necessary, or even if they are, they disproportionately infringe on the legitimate interests of the disadvantaged (segregated) individuals. See Ruling of the Supreme Court from 5 May 2022, case No. 25 Cdo 473/2021.

[36] KOLDINSKÁ, Kristina. *Gender a sociální právo: rovnost mezi muži a ženami v sociálněprávních souvislostech*. Praha: C. H. Beck, 2010, p. 171.

[37] See Article 9(1)(f) of Directive 2006/54/EC, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

old-age pension on the grounds that he had not reached the retirement age specified in Section 32 of the Pension Insurance Act,[38] which reduced the retirement age for women based on the number of children they had raised. The Constitutional Court addressed the constitutionality of this provision and determined that it did not conflict with the Charter of Fundamental Rights and Freedoms. The Court reasoned that abolishing the provision would "remove a certain benefit granted to women-mothers, without providing fathers the same advantages within the framework of 'equalization'." [39]

In the *Andrle* case, the Constitutional Court concluded that "addressing the unequal status of men and women within the pension insurance system cannot be achieved without a comprehensive and wisely timed adjustment of the entire pension system, taking into account socially acceptable and economically viable criteria, which should be established as part of a broader pension system reform."[40] The argument that it is necessary to wait for a pension system reform seems less appropriate, given that thirteen years have passed since the decision without its realization, and it remains uncertain when and in what form such a reform will occur.

In a different ruling, the Constitutional Court concluded that while it is within the state's prerogative to provide fewer benefits to one group of individuals compared to another as part of its functions, it must do so in a non-arbitrary manner.[41] This case involved the annulment of Section 5(1)(r) of the Pension Insurance Act, which allowed for the consideration of the period spent caring for a child as an insurance period for men, but only if they submitted an application for pension insurance within two years after the end of the child care period (whereas no such administrative requirement was imposed on women).

In the *Andrle* case, the ECtHR supported the Constitutional Court's argument that the differentiated retirement age based on the number of children raised aimed to address the factual inequality between men and women. "Given the specific circumstances of the case, this approach can therefore still be considered objectively and reasonably justified, until the need for special treatment of women ceases due to social and economic changes."[42] In this context, the ECtHR viewed the differential treatment of men and women as objectively and reasonably justified and thus found no violation of Article 14 of the Convention.

The ECtHR had previously rejected gender stereotypes in its rulings, particularly concerning unequal treatment related to parental leave. In the case of *Konstantin Markin v. Russia,*[43] the applicant was unable to take parental leave from his military service, during

[38] According to the then-current wording of Section 32(1) of the Pension Insurance Act, the retirement age for men was 60 years, while for women it was 53 years if they had raised at least five children; 54 years if they had raised three or four children; 55 years if they had raised two children; 56 years if they had raised one child; or 57 years if the insured person reached this age by December 31, 1995.

[39] Judgement of the Constitutional Court of the Czech Republic from 16 October 2007, File No. Pl. ÚS 53/04, published under No. 341/2007 Coll.

[40] See Order of the Constitutional Court of the Czech Republic from 30 October 2008, File No. II. ÚS 2365/08.

[41] See Ruling ot the Constitutional Court of the Czech Republic from 6 June 2006, File No. Pl. ÚS 42/04.

[42] Judgment of the ECtHR from 17 February 2011, in the case of Andrle v. Czech Republic, Application No. 6268/08, para. 60.

[43] Judgement of the ECtHR from 22 March 2012, in the case of Konstantin Markin v. Russia, Application No. 30078/06.

which he wished to care for his three children. The ECtHR found a violation of Article 14 of the Convention and clearly deemed the regulation discriminatory on the grounds of sex. The Court stated:

"(…) Reference to traditional gender roles in society cannot justify excluding men, including soldiers, from the right to parental leave. The Court agrees with the Senate that gender stereotypes, such as the perception of women as primary caregivers and men as primary breadwinners, cannot, on their own, be considered a sufficient justification for differential treatment, just as similar stereotypes based on race, origin, skin color, or sexual orientation cannot."[44]

In the case of *Andrle v. Czech Republic*, the ECtHR noted that parental leave, as addressed in *Konstantin Markin v. Russia*, is a short-term measure, unlike the pension system, which affects individuals throughout their lives. The Court observed that changes to parental leave policies in the Markin case did not "alter the fragile balance of the pension system and do not have significant financial implications (…) as might be the case with the pension system."[45]

Similarly, the ECtHR addressed parental leave issues in *Petrovic v. Austria*,[46] where it also found a violation of, among other provisions, Article 14 of the Convention. In this judgment, the Court considered the evolving societal trend towards a more balanced distribution of child-rearing responsibilities between women and men.

The impact of child-rearing on pension benefits was indeed significant during the relevant period. This raises the question of whether, given that pensions affect individuals throughout their lives, it might be preferable to avoid reinforcing gender stereotypes. Legal developments are progressively moving towards a unified retirement age, where the number of children raised will no longer be a factor (or will be recognized in a different manner, accessible to both men and women).[47]

III.4 Judicial Review of Pre-trial Detention for Minors

In the history of cases where the ECtHR has found discrimination by the Czech Republic, the third such case occurred in 2022.[48] This case involved a seventeen-year-old applicant who was prosecuted for offenses including robbery, grievous bodily harm, and subsequently an attempt of murder. After spending four months in pretrial detention, he applied for release, as the three-month period for an automatic review had elapsed under section 72(1) of the Criminal Procedure Code. However, the District Court rejected his request, arguing that the provision of the Criminal Procedure Code did not apply to him because section 47(1) of the Juvenile Justice Act stipulates that for particularly serious

[44] Ibid., para. 143.

[45] Judgment of the ECtHR from 17 February 2011, in the case of Andrle v. Czech Republic, Application No. 6268/08, para. 59.

[46] Judgement of the ECtHR from 27 March 1998 in the case of Petrovic v. Austria, Application No. 20458/92.

[47] From January 1, 2023, a new measure known as the "parental care bonus" (section 34a of the Pension Insurance Act) is in effect. This financial amount increases the percentage of the calculated pension for each child raised. The parental care bonus can also be granted to men if they prove they were more involved in raising the child than the woman.

[48] Judgement of the ECtHR from 20 June 2024 in the case of Spišák v. Czech Republic, Application No. 13968/22.

offenses, the review period for juvenile detention may be doubled. Given that the Juvenile Justice Act is lex specialis relative to the Criminal Procedure Code, the national courts deemed the applicant's arguments irrelevant, and the Constitutional Court dismissed his complaint as manifestly unfounded.[49]

The Constitutional Court, however, concluded that the court that decided on the applicant's detention lacked territorial jurisdiction (as it was not the court in the applicant's place of residence). Consequently, the applicant successfully claimed compensation for material damage but was unsuccessful in his claim for satisfaction for non-pecuniary harm.[50]

The applicant before the ECtHR alleged age discrimination with reference to Article 5(1) of the Convention, which protects the right to liberty and security, arguing that his treatment was discriminatory due to his status as a minor. The ECtHR compared the applicant's situation with that of an adult in pre-trial detention for a comparable offense and concluded that he was treated less favorably. While adults have an automatic review of their detention every three months, minors are subject to a doubled interval. Although the ECtHR acknowledged the government's argument that the overall detention regime for minors is more favorable (particularly in efforts to ensure that detention is as brief as possible for minors),[51] it found that the procedural guarantees for detention review constituted a violation of the Convention. The differential treatment was not justified by the legislative goal of the Juvenile Justice Act, which is the protection of the special vulnerability of minors.

In addition to recognizing the discrimination, the ECtHR awarded the applicant compensation for non-pecuniary damage amounting to 6,000 euros (over 150,000 CZK) and reimbursement of legal costs amounting to 5,000 euros (over 125,000 CZK).

CONCLUSION

According to the ECtHR, the Czech Republic has violated Article 14 of the Convention prohibiting discrimination in only three out of fifty-six cases. The majority of complaints were deemed inadmissible due to manifestly unfounded claims, while a smaller percentage were dismissed for incompatibility with the ratione materiae of the Convention or for failure to exhaust domestic remedies.

The majority of complaints arose from civil and family law matters, where male applicants alleged discrimination based on gender, arguing that domestic courts favored mothers in custody disputes. The ECtHR did not accept this argument, referencing statistical data from that time which contradicted the claim. The Court supported the domestic courts' approach of making decisions based on the circumstances and the best interests of the child, regardless of the gender of the parent seeking to challenge restrictions on contact through interim measures and enforcement of decisions.

[49] Ruling of the Constitutional Court from 20 July 2021, No. IV. ÚS 677/21.

[50] The District Court for Prague 2 dismissed the claim for compensation for non-pecuniary damage, arguing that the applicant was compensated in another way by having the entire duration of pre-trial detention counted towards the imposed sentence of imprisonment.

[51] See para. 77 of the cited judgement.

The EctHR first identified discrimination by the Czech Republic in a case concerning social security law, specifically relating to pensions for a former military judge. This case differed from other complaints about military pensions in that no differences were established between the applicant and the individuals compared to justify the disparate treatment.

The second instance where the ECtHR found a violation of Article 14 of the Convention by the Czech Republic involved the issue of segregation of Roma students, a determination made by the Grand Chamber. Although nearly seventeen years have passed since the ruling, the issue of Roma student segregation remains pertinent, as does the implementation of the landmark judgment in *D. H. and Others v. Czech Republic*. The action plan for implementing the judgment includes measures aimed at reducing the number of Roma students in special needs schools. It is concerning that, even after such a long time and with the monitoring of implementation by the Committee of Ministers, statistics still show a worsening trend.

Most recently, the ECtHR found the Czech Republic in violation of discrimination in the case of *Spišák*. The court examined the differing intervals for reviewing the duration of pre-trial detention for adults and juveniles. Specifically, the special law allowed for the detention of juveniles for up to six months without a review of the necessity of detention, while adults were subject to review every three months. The ECtHR concluded that this constituted age discrimination and a violation of Article 14 in conjunction with Article 5 of the Convention.

Case law from the ECtHR regarding discrimination somewhat diverges from the issues addressed by national courts in the Czech Republic. While Czech domestic law primarily deals with discrimination disputes related to the scope of anti-discrimination legislation and private law claims – such as employment, access to housing, or access to goods and services – the situation in the context of the ECtHR is different. It appears that the Convention's framework often results in the ECtHR focusing predominantly on issues related to access to education and, occasionally, social security. Many areas crucial to member states might therefore not reach the ECtHR, potentially hindering positive developments in these fields. It raises the question of how the situation might differ if the Czech Republic had ratified Protocol No. 12 to the Convention, which was designed to overcome the accessory nature of Article 14 of the Convention.