suppliers to treat each person as an individual, not as a member of a group. The individual should not be assumed to hold the characteristics which the supplier associates with the group, whether or not most members of the group do indeed have such characteristics, a process sometimes referred to as stereotyping. Even if, for example, most women are less strong than most men, it must not be assumed that the individual woman who has applied for the job does not have the strength to do it. Nor, for that matter, should it be assumed that an individual man does have that strength. If strength is a qualification, all applicants should be required to demonstrate that they qualify.

75. The complaint in this case is of direct discrimination against the Roma. Indirect discrimination arises where an employer or supplier treats everyone in the same way, but he applies to them all a requirement or condition which members of one sex or racial group are much less likely to be able to meet than members of another: for example, a test of heavy lifting which men would be much more likely to pass than women. This is only unlawful if the requirement is one which cannot be justified independently of the sex or race of those involved; in the example given, this would depend upon whether the job did or did not require heavy lifting. But it is the requirement or condition that may be justified, not the discrimination. This sort of justification should not be confused with the possibility that there may be an objective justification for discriminatory treatment which would otherwise fall foul of article 14 of the European Convention on Human Rights.

76. Discrimination law has always applied to public authority providers of employment, education and housing, and other services, as long as these services are of a similar kind to those which may be supplied by private persons. But a majority of this House held, in *R v. Entry Clearance Officer, Bombay, Ex p Amin* [1983] 2 AC 818, that it did not apply to acts done on behalf of the Crown which were of an entirely different kind from any act that would ever be done by a private person, in that case to the application of immigration controls. This is still the case for sex discrimination, but the race discrimination law was changed in response to the Macpherson Report into the Stephen Lawrence case. It is now unlawful for a public authority to discriminate on racial grounds in carrying out any of its functions. There are, however, a few exceptions and qualifications, one of which [insofar as it relates to the carrying out of immigration and nationality functions] is relevant to this case ...

78. The effect [of the said exception] is to exempt an immigration officer from the requirement not to discriminate if he was acting under a relevant authorisation, that is a requirement or express authorisation given by a Minister of the Crown acting personally (or by the law itself, but that does not arise here). Shortly before the Prague operation began on 18 July 2001, the Minister had made the Race Relations (Immigration and Asylum) (No 2) Authorisation 2001, which came into force in April 2001, at the same time as the 2000 Act amendments. [This Authorisation allowed for the screening of people of Roma origin.] ...

80. When these proceedings were begun on 18 October 2001, the claimants assumed that the immigration officers in Prague were operating under this Authorisation. The claim form therefore attacked the validity of the Authorisation. However, it is and has always been the respondents' case that the Authorisation did not apply to the Prague operation. Their case is not that the officers were discriminating lawfully but that they were not discriminating at all. Burton J accepted that they were not. Some individual differences in treatment were explicable, not by ethnic difference, but by more suspicious behaviour. There were too few instances of inexplicable differences in treatment to justify a general conclusion. The difference between the proportion

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