

- [Courseware \(/courses/LouvainX/Louv2.01x/1T2014/courseware\)](/courses/LouvainX/Louv2.01x/1T2014/courseware) [Course Info \(/courses/LouvainX/Louv2.01x/1T2014/info\)](/courses/LouvainX/Louv2.01x/1T2014/info)
- [Discussion \(/courses/LouvainX/Louv2.01x/1T2014/discussion/forum\)](/courses/LouvainX/Louv2.01x/1T2014/discussion/forum) [Wiki \(/courses/LouvainX/Louv2.01x/1T2014/course\\_wiki\)](/courses/LouvainX/Louv2.01x/1T2014/course_wiki)
- [Progress \(/courses/LouvainX/Louv2.01x/1T2014/progress\)](/courses/LouvainX/Louv2.01x/1T2014/progress)
- [Reading Materials \(/courses/LouvainX/Louv2.01x/1T2014/pdfbook/0/\)](/courses/LouvainX/Louv2.01x/1T2014/pdfbook/0/)
- [Syllabus \(/courses/LouvainX/Louv2.01x/1T2014/3517b9300b554b118f11224b8c05eb10/\)](/courses/LouvainX/Louv2.01x/1T2014/3517b9300b554b118f11224b8c05eb10/)

Page: 7 of 14

= + 100%

589 Range of States' obligations

Court of Hong Kong]. The object of the legislation is to ensure that each person is treated as an individual and not assumed to be like other members of the group. As Laws LJ observed, at para 108: 'The mistake that might arise in relation to stereotyping would be a supposition that the stereotype is only vicious if it is untrue. But that cannot be right. If it were, it would imply that direct discrimination can be justified ...'

83. As we have seen, the legislation draws a clear distinction between direct and indirect discrimination and makes no reference at all to justification in relation to direct discrimination. Nor, strictly, does it allow indirect discrimination to be justified. It accepts that a requirement or condition may be justified independently of its discriminatory effect.

84. The question for us, therefore, is whether the factual premise is made out. The appellants mount essentially the same argument before us as they did before both Burton J and the Court of Appeal. But, greatly to their credit, the respondents have made a further search and produced further evidence which casts a rather different light upon the case than was cast by their evidence in the courts below.

85. The appellants' case is, first, that the Prague operation carried with it a very high risk of racial discrimination. Its avowed object was to prevent people travelling from the Czech Republic to this country in order to seek asylum or otherwise overstay the limits of their leave to be here. The vast majority of those who have done this in the past are Roma. Many Roma have good reason to want to leave. For some, this may amount to persecution within the meaning of the Refugee Convention. The operation was targeting all potential asylum seekers, with or without a good claim. The object was not only to prevent the would-be travellers at the airport. It was also to deter others from even getting that far. Given the high degree of congruence between the object of the exercise and a particular ethnic group, which was recognised in public statements by the Czech Prime Minister and his deputy, the risk that the operation would be carried out in a racially discriminatory manner was very high.

86. That risk was exacerbated by the very existence of the Authorisation. This sanctioned discriminatory treatment of the very ethnic group to which the vast majority of the people against whom the Prague operation was targeted belonged. The evidence is that the immigration authorities responsible for the operation did not intend the officers in Prague to act on the Authorisation: its main object was to speed up processing at ports of entry to the United Kingdom when particular problems arose. So there was no instruction to the Prague officers to implement it. Nor do the records of individual cases give any indication that the officers thought that they were operating it. But the Authorisation was annexed to the Immigration Directorate's Instructions, chapter 1, section 11 of which is headed 'Race Relations (General)'. This seeks to explain the effect of this Authorisation, dealing with discrimination on grounds of ethnic or national origin, and an earlier one, which authorised discrimination on grounds of nationality if there was statistical or intelligence information of breach of immigration laws by persons of that nationality. Having set out the various ways in which officers might discriminate under either Authorisation, it contains the following passage about the later one with which we are concerned: 'The fact that a passenger belongs to one of these ethnic or national groups will be sufficient to justify discrimination – without reference to additional statistical or intelligence information – if an immigration officer considers such discrimination is warranted.'

87. This is under the heading of 'Examination of passengers', which relates to people arriving at UK ports of entry; but under the heading 'Persons wishing to travel to the UK' the following

Help



anywhere in the world, wherever there is Internet access. EdX's free online MOOCs are interactive and subjects include computer science, public health, and more. [EdX on Facebook](#) | [EdX on Twitter](#) | [EdX on YouTube](#)



<https://courses.edx.org/courses/LouvainX/edXOnline>



(<https://plus.google.com/108235383044095082735/posts>)



(<http://youtube.com/user/edxonline>)

© 2014 edX, some rights reserved.

[Terms of Service and Honor Code](#) - [Privacy Policy \(https://www.edx.org/edx-privacy-policy\)](https://www.edx.org/edx-privacy-policy)

Help