

THE CZECH REPUBLIC

OBSERVATIONS OF THE GOVERNMENT ON THE APPLICANTS'  
REQUEST FOR THE REFERRAL OF THEIR CASE TO THE COURT'S  
GRAND CHAMBER

**D. H. and others v. the CZECH REPUBLIC**  
*(No. 57325/00)*

PRAGUE

13 OCTOBER 2006

1. In its letter of 18 July 2006 the European Court of Human Rights (“the Court”) invited the Government of the Czech Republic (“the Government”) to express their opinion on the applicants’ request for the referral of their case to the Court’s Grand Chamber in connection with the judgment of the Chamber of the Court’s Second Section of 7 February 2006.

2. In assessing the merits of the application the Court dealt with the issue of whether there was a violation of the prohibition of discrimination, taken together with the right to education (Article 14 of the Convention taken together with Article 2 of Protocol No. 1 to the Convention). On 7 February 2006 the Chamber of the Court’s Second Section decided, by six votes to one, that the Czech Republic had not violated the applicants’ rights provided for in the Convention and the Protocols thereto. On 3 July 2006 the Court granted the applicants’ motion for a referral of their case to the Court’s Grand Chamber. A public hearing of the Court’s Grand Chamber was scheduled for 17 January 2007.

## AS TO THE FACTS

3. Eighteen Roma children from the Ostrava region filed the application; they were not happy with the fact that in 1996 to 1999 they were placed in special schools, either directly or they were transferred after a period in an ordinary primary [= elementary] school. Parents consented to, and in some instances expressly requested, their children’s placement in a special school; a written administrative decision was issued by the head teacher of the school and the decision contained instructions on the right to appeal, a right which none of the parents exercised. The applicants were also offered a transfer to a primary school after passing aptitude tests; some of them then actually began to attend primary schools.

4. In June 1999 some of the applicants asked the Ostrava Education Authority to reconsider, outside the formal appeal procedure, the administrative decisions to place them in special schools; however, the Education Authority dismissed the request. Twelve out of eighteen applicants then lodged a constitutional appeal, which the Constitutional Court dismissed in October 1999, partly on the ground that it was manifestly unfounded and partly on the ground that it had no jurisdiction to hear it; it dismissed the appeal after having invited the competent authorities to actually consider the applicants’ proposals. The Constitutional Court especially did not accept the applicants’ arguments arising from the overall social context and unsubstantiated by specific evidence.

## THE SECOND SECTION'S JUDGMENT

5. The Chamber of the Court's Second Section emphasised, similarly as previously the Constitutional Court, that it is not its task to assess the overall social context; its task is to examine the individual applications before it and to establish whether the reason for the applicants' placement in special schools was their ethnic or racial origin.

6. The Court took into account the Government's defence that *inter alia* referred to the fact that the applicants' parents had consented to and in some instances expressly requested their children's placement in a special school. Parents of some of the applicants even refused their children's transfer to a primary school upon a suggestion made by the special school, at which they were achieving good results. The written administrative decision on the placement in a special school was issued by the head teachers of the relevant schools on the basis of the conclusions of the applicants' examinations at pedagogical-psychological advice centres ("advice centre") and it was served on the applicants' parents. It contained instructions on the right to appeal, a right which none of those concerned exercised.

7. Those of the applicants whose parents expressed their wish for the children to attend an ordinary primary school were transferred to a primary school despite their failure in the psychological tests and special-pedagogical examinations. Contrary to the applicants' assertions, the Court noted that their placement in special schools had not been irreversible, as evidenced by the cases of some applicants who had been transferred back to primary schools.

8. In the Court's view, the Government have nevertheless succeeded in establishing that the system of special schools was not introduced solely to cater for Roma children. Therefore these are not schools for Roma, as the applicants asserted. The Court further held that the rules governing the placement in special schools did not refer to ethnic origin. In this connection the applicants failed to refute conclusions of psychological opinions carried out by qualified professionals of advice centres that supported their placement in the special schools.

9. In compliance with the Government's arguments the Court also referred to the passivity of the parents, who failed to take any action, despite receiving a clear written administrative decision informing them of their children's placement in a special school. The Court noted that it was the parents' responsibility, as part of their natural duty to ensure that their children receive an education, to find out about the educational opportunities offered by the State, to make sure they knew how to make an appropriate challenge to the administrative decision ordering the placement in a particular school if it was issued without their consent.

10. In its judgment the Court accepted that it is not easy to choose such a system of education that would balance the various competing interests. It noted that there did not appear to be an ideal solution. However, it reiterated that the State could not be prohibited from setting up different types of school for children with various educational needs.

11. Nevertheless, the Court partly criticised the current educational system. It noted that the statistics submitted by the applicants disclosed figures about the general situation in the Czech Republic concerning the education of Roma children that were worrying. Several organisations, including Council of Europe bodies, expressed concern about the arrangements whereby Roma children are placed in special schools and drew attention to the difficulties they have in gaining access to ordinary primary schools. However, given the circumstances the Court did not conclude that the measures concerning the applicants had been discriminatory. Although the applicants may have lacked sufficient information on the national education system, the evidence they submitted to the Court, however, does not lead to the conclusion that the applicants were placed in special schools on the basis of their race. Therefore there was no violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 to the Convention.

## THE APPLICANTS' REQUEST FOR REFERRAL OF THE CASE TO THE GRAND CHAMBER

12. In their request of 5 May 2006 for referral of the case to the Court's Grand Chamber the applicants assert that their case raises a serious question affecting the interpretation and application of the Convention, specifically the interpretation and application of the concept of discrimination. They further believe that the issue in question does not concern only Roma people, but all endangered minorities in Europe. They refer to the attitude of the Court, which initially considered hearing the case before the Grand Chamber and it thus, in the applicants' opinion, acknowledged that the case raises a serious question affecting the interpretation and application of the Convention. They are finally basing their arguments on the concurring opinion of Judge J.-P. Costa who said that the Court's Grand Chamber is better placed to depart from the Court's case law.

13. The applicants criticise the Court's attitude so far to the concept of discrimination especially because, as they assert, there exists evidence that Roma people are treated differently without any objective or justifiable reason. The applicants also criticise the Court's allegedly narrow view of the issue of the parents' consent to the placement of their children in special schools. Finally, they are not satisfied with the attitude of the Court, which refused to consider in detail the pedagogical-psychological diagnostics and psychological testing at advice centres.

14. The applicants believe that it is their case that is a suitable opportunity for the Court's Grand Chamber to clarify the interpretation and application of Article 14 of the Convention in the domain of racial discrimination arising in various parts of public life, including education. They believe that keeping the present restricting concept of the term "discrimination" within the meaning of Article 14 of the Convention would mean that this provision would only protect rights that are illusory and not real and specific.

15. Below, the Government shall express their opinion on the individual aspects of the request for referral of the case to the Court's Grand Chamber.

## AS TO THE LAW

### ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

16. The applicants assert that in their case, there was a violation of the prohibition of discrimination, taken together with the right to education (Article 14 of the Convention taken together with Article 2 of Protocol No. 1 to the Convention).

17. Article 2 of Protocol No. 1 to the Convention reads as follows:

"No person shall be denied the right of education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

18. Article 14 of the Convention reads as follows:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without any discrimination on any ground such as sex, race, colour, language, religion political or other opinion, national or social origin, association with a national minority, property, birth or other status."

19. The Government, referring to their opinions already submitted to the Court and to the substantiation set forth below, continue to be convinced that there was no violation of the prohibition of discrimination, taken together with the right to education.

#### **(i) On the applicants' assertions regarding the interpretation and application of Article 14 of the Convention**

20. The applicants primarily criticise the approach of the Court, which did not deal with the concept of indirect discrimination in assessing the merits of the application; the applicants, as well as the non-governmental organisations intervening in the case, referred to the above concept.

21. The applicants are not content that, on one hand, the Court has confirmed that if a certain general policy or measure has disproportionately harmful effects on a particular group one cannot rule out the possibility that it could be found to be discriminatory even if it did not target specifically that group, and, on the other hand, it required the applicants' to prove the discriminatory intent of the national authorities.

22. Referring to, for example, the European Commission's documents against racism and intolerance, the practices of some member states of the Council of Europe, the attitude of the European Court of Justice or the international law, the applicants ask the Court, given the current absence of the Court's unambiguous case law, to pronounce a clear opinion on the concept of indirect discrimination in the domain of Article 14 of the Convention.

23. In this respect the Government fully refer to their Observations on the admissibility and merits of the application of 15 March 2004, as well as to the opinion presented during the public hearing on the admissibility and merits of the application that took place on 1 March 2005. The Government continue to insist on their opinion that race, colour or association with a national minority did not and does not play a determining role in the case of the applicants' education. There is no specific evidence of any different treatment of the applicants on the basis of the above discrimination criteria.

24. The applicants further believe that the Court incorrectly interpreted the principles already embodied in the Court's case law<sup>1</sup>, since it only considered the issue of "a legitimate aim" without explicitly expressing its opinion on the "reasonable relationship of proportionality" between the means used by the Government and the aim pursued; in § 49 of the judgment the Court only noted that the rules governing children's placement in special schools do not refer to the pupils' ethnic origin, but pursue the legitimate aim of respect for educational needs of pupil (aptitudes, skills and specifics) within the education system. The applicants assert that the Court did not assess the fact that the children's placement in special schools virtually disqualifies them from having success in studies at secondary schools or universities, which is in absolute disagreement with the aim pursued.

25. The Government insist that the rules governing the children's placement in special schools, and the practical application thereof, do not refer to the applicants' ethnic origin. The files on the individual applicants, which the Government has submitted to the Court, lead to an indubitable conclusion that the applicants' placement or transfer to special schools was not based on the applicants' ethnic origin, but on the results of psychological tests carried out at advice centres; the applicants in no way raised any doubts about these results at that time. The applicants' argument that despite the Court's holding that the rules governing the children's placement in special schools do not refer to their ethnic origin while their ethnic origin is mentioned in some documents concerning them, is unconvincing. A mere reference to the applicants' Roma origin does not lead to the conclusion that it was the Roma origin that was the reason for their placement in special schools. After all, none of the administrative decisions on the placement

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<sup>1</sup> E.g., the judgments in the cases of *The Belgian language case* of 23 July 1968 and *Willis v. the United Kingdom* of 11 October 2002 that hold that a difference of treatment is discriminatory if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

in a special school is substantiated by the applicants' ethnic origin, but they only refer to the results of pedagogical-psychological testing at advice centres.

26. The applicants base their thinking on the fact that as the result of their placement in special schools they are prevented from continuing their studies at a secondary school or university. As regards the applicants who completed their obligatory school attendance at the time of the effective date of the previous School Act the Government consider this assertion to be untrue. It applied in general that graduates from a special school could continue to study at a secondary school. None of the applicants presented evidence that he/she (unsuccessfully) made an effort at continuing to study at a secondary school and that the reason for the (would be) failure was the education deficit caused by prior education at a special school. In actual fact, the Government have no information that any of the applicants has filed an application to study at a secondary school. On the contrary, the Government have information (for details please see below, in the part of the Observations concerning the applicants' further fate) that after completing their primary education a number of the applicants gave up on any further studies (applicant No. 4, applicant No. 7, applicant No. 8, applicant No. 10 and applicant No. 17), or terminated their education early (applicant No. 3 did not even begin to study for an unknown reason, applicant No. 5 terminated enrolment upon his own request, applicant No. 9 studied for one month only, and applicant No. 12 terminated her enrolment after five days due to lack of interest in the subject).

As regards the applicants who completed their obligatory school attendance after the effective date of the New School Act the Government firstly note that at present, secondary schools provide also the formerly existing vocational training programmes; in the past, secondary schools were categorised into the following types: comprehensive school, secondary vocational school, secondary vocational training centre, vocational training centre, etc. In the past, vocational training programmes differed from study programmes in respect of the level of education in which they resulted: a vocational training programme was completed by passing a final examination, and the pupil acquired 'secondary vocational education', while a study programme was completed by a General Certificate of Secondary Education and the student acquired 'complete secondary (vocational) education'. The situation today is as follows: studies are categorised into educational programmes that result in the acquiring of 'secondary education', 'secondary education with a Vocational Certificate of Education', or 'secondary education with a General Certificate of Secondary Education'. It is not clear to the Government what exactly the applicants have on their minds when they think that they cannot continue their studies at a secondary school. As the text below suggests, some of the applicants enrolled at a secondary school (vocational programmes) in the current academic year. Only the test of time will prove whether they are genuinely interested in these studies and complete them. If the applicants perhaps think that they stand no chance of succeeding in an educational programme leading to the acquiring of secondary education with a General Certificate of Secondary Education (only these educational programmes make it

possible to further continue studies at the university level), the Government reiterate that none of the applicants have submitted evidence of making (even unsuccessful) efforts to continue studies in an educational programme resulting in the acquiring of secondary education with a General Certificate of Secondary Education and that the cause of their (potential) lack of success was an educational deficit based on previous education at a special school.

Nevertheless, a pupil does not have to begin to study at a secondary school immediately after completing a primary or special school; graduates from special schools can complete their missing education of a primary school in supplementary courses before starting education at a secondary school. The assertion that after completing obligatory school attendance the applicants cannot go on studying remains a mere assertion, which is, however, refuted by the applicants' actual actions after completing their obligatory school attendance. The information ascertained rather proves that with certain exceptions, the applicants are not interested in further education. The Government are irreversibly convinced that the applicants themselves have blocked the way to their further education by their lack of interest, and do not accept that by completing obligatory school attendance the applicants' further education was prevented. A number of courses aimed at completing education were available also in the given time; also the job centres offer a variety of services (see below). Education and jobs consultancy (*kariérové poradenství*) is provided to all pupils during their school attendance; it helps to a pupil to choose his further education or profession. The Government see no causal nexus between the current situation of some of the applicants, which is probably often unpropitious, and the applicants' placement in special schools. The State is not to be blamed; rather the passivity of the applicants, who do not make any effort at changing the situation.

The Government admit that chances of being successful in finding employment of particularly those applicants who have only elementary education are diminishing with time; nevertheless, this fact occurs regardless of their ethnic origin, since it is common in the case of persons with only elementary education.

In this respect the Government consider the applicants' assertions to be self-serving, unsubstantiated by any specific evidence, and in clear conflict with the information submitted to the Court by the Government.

27. It is possible to respond similarly as above to the applicants' objection that the Government did not submit any satisfactory explanation as regards the large number of Roma in special schools. The Government have admitted that many Roma were placed in special schools and that situation in the sphere of education of the Roma was not ideal. On the other hand, the Government proved in the applicants' case that special schools were not schools established for the Roma community; ethnic origin was not a reason for placement in a special school. Placement in a special school was only possible after prior special-pedagogical and psychological diagnostics at school advisory centres and with the informed consent of the child's statutory representative. If the applicants assert to the contrary, they do so without submitting any specific evidence.



28. As regards the fact that the Court refused to consider in detail the pedagogical-psychological diagnostics at advice centres in the individual cases, the Government reiterate that this diagnostics is administered by experienced professionals with university education. The Government has submitted to the Court the files concerning the individual applicants, in which there are copies of the documents contained in the files of advice centres. In these documents one can find all the relevant information about the diagnostics and following psychological testing, including, for example, the types of diagnostic tools used. Documents recording the process of diagnostic and interventional work (*diagnostická a intervenční práce*) with children are in the files (filled out questionnaires, drawings, etc.). Records of psychologists' interviews with the children's parents are also in the files. The Government repeatedly emphasise that none of the applicants challenged, at relevant time, neither the process of psychological testing nor its results; at present, the assertion that during the testing the psychologists took a subjective approach appears to be self-serving and unsubstantiated by evidence. It is not clear why the psychologists should exert efforts to place the children in special schools at any cost. At present it is only hardly conceivable how the Court should assess in detail the process of psychological examination including the applicants' psychological testing, or provide for re-testing. A choice of psychodiagnostic tools (tests) depends also on pupil's age that has changed significantly. Therefore, re-testing would not show rightness or incorrectness of the records. After the many years that have elapsed since the applicants' placement in special schools we can, at most, only speculate on the credibility of result processing at advice centres.

29. The applicants ask the Court to clearly express its opinion on the evidence that is relevant for their assertions in the domain of Article 14 of the Convention. Their criticisms are directed towards the Court's opinion that the statistics are not by themselves sufficient to disclose a practice that could be classified as discriminatory. They rebuke the Court that in other cases submitted to it, it has noted that although statistics are not by themselves automatically sufficient to prove discrimination, they may, especially in a situation when they are not disputed, lead to a *prima facie* conclusion requiring the Government to furnish an objective explanation of the different treatment. They assert that in some cases the statistics are the only possible way of proving indirect discrimination. In their opinion, the Court's Grand Chamber should clarify the role of statistics as evidence in the domain of Article 14 of the Convention and to accord them certain weight.

30. Furthermore, the applicants are convinced that in their case not only statistical data is available to the Court, but also many independent institutions' conclusions on the discrimination of Roma children at schools.

31. The Government are aware of the judgment in the case of *Adami v. Malta* of 20 June 2006, in which the Court held that there was a violation of the prohibition of discrimination, taken together with Article 4 § 3(d) of the Convention, and this was found on the basis of statistics submitted by the parties

to the proceedings, from which it was evident that *the civic obligation of jury service had been placed predominantly on males* (§ 78 of the judgment). Nevertheless, the Government would remark that the *Adami v. Malta* case can in no respect be compared with the applicants' case. Firstly, the circumstances of the *Adami* case are substantially less complex as to the facts and as to the law than the circumstances concerning the applicants. Moreover, although in its judgment of 7 February 2006 concerning the applicants the Court held that these statistics disclosed figures that were worrying, under the circumstances of the case it did not find that the treatment by the State was discriminatory. The Government cannot but agree with the Court's opinion that it is necessary to consider the applicants' case in its entire context, emphasising the need to review the cases of the individual applicants.

The applicants base their accusations on statistical summaries of the numbers of Roma children in special and primary schools, which lack any informative value without an assessment of the socio-cultural environment from which the Roma people come and of their family background and attitude to education. The Government are not saying that special schools were not attended by many Roma children, but the Government resolutely dismiss the assertion that Roma children were placed in special schools on the basis of different criteria than non-Roma children.

32. The applicants are not content with the Court's conclusion in § 47 of the judgment; the Court agreed with its existing case law and held that the State has a certain margin of appreciation in the education sphere. However, the applicants believe that the margin of appreciation cannot justify segregation of a group of people into a specific type of school; it must be perceived in the light of the specific circumstances of the case, while cases of racial discrimination must attract great attention. They assert that the margin of appreciation should be narrower in the cases of racial or ethnic discrimination and they invite the Court to define it more precisely.

33. The Government believe that Article 2 of Protocol No. 1 leaves the organisation and rules governing education in the hands of the State, while the State's actions in the sphere of education depend on the needs of the society and individuals and should strike a fair balance between the society's public interest and respect for fundamental human rights. However, the final decision on whether the rights provided for in the Convention were observed rests with the Court. The Government continue to be of the opinion that they adopted positive measures aimed at compensating for the applicants' handicap, since they required a special form of education due to their specificities, while the Government did not exceed the margin of appreciation in the sphere of education as set by the Convention.

34. The Government consider it to be necessary to express their opinion also on the applicants' assertion that the Court incorrectly interpreted the reliability of psychological tests and the parents' informed consent to the placement in special schools.

35. In its judgment of 7 February 2006 the Court noted that the applicants' legal counsels did not succeed in refuting the experts' of advice centres findings that the applicants' intellectual abilities were such as to prevent them from following the ordinary primary school curriculum. The applicants remark on this that there are a number of pieces of evidence that prove that the reasons for placement in special schools were, for example, truancy, improper behaviour, and others, and this was despite the fact that domestic legal regulations stipulated that special schools were intended for children with learning disabilities. Moreover, according to the applicants the Court incorrectly concluded that the applicants had not challenged that in the present case the psychological tests had been administered by qualified experts of advice centres. Referring to the content of the application submitted to the Court, the applicants assert to the contrary.

36. The Government are aware that in their application, the applicants focused in detail on issues of psychological testing at advice centres, referring to the statements of various experts and to several studies. The Government thoroughly addressed the issue of pedagogical-psychological diagnostics and testing at advice centres in their Observations on the admissibility and merits of the application. They reiterate that the statements of various experts, which the applicants put together and attached to their application, only express these people's personal opinions. The Government have already noted in the past that sometimes people expressed their opinions on things in which they lacked expertise. Furthermore, some of them are now protesting against the self-serving distortion of their statements. The Government reiterate that there could be rare situations where the reason for placement in a special school was on the borderline between learning disabilities and the socio-culturally disadvantaged environment. Among the eighteen cases, this apparently happened in one case only, that of the ninth applicant. Otherwise, the pedagogical-psychological diagnostics and the testing at advice centres proved learning disabilities in the case of all applicants.

37. As regards the parents' consent to the applicants' education in special schools the applicants assert that under the Convention on the Rights of the Child the Government are responsible for non-discriminatory education. A child cannot be denied his/her right to education due to his/her parents' behaviour or preferences. Moreover, the historic context that justifies the behaviour of the Roma community, which does not have sufficient information about education, must be taken into account; in some other respect the Court has noted that special attention should be devoted to the needs and different life of the Roma people. The applicants quote the Court's case law that stipulates under what circumstances one can waive a right provided for in the Convention. They ask the Court to hold that one cannot waive the right to equality.

38. The Government do not agree with the applicants' opinion. The first sentence of Article 2 of Protocol No. 1 to the Convention provides for the right to education to everyone. This right includes especially the right of access to existing educational institutions and to recognition of the acquired qualification. The

second sentence guarantees to children the right for the State to respect, in relation to education, the parents' religious and philosophical convictions. Therefore the Convention emphasises the parents' role in the education of their children.

39. In the applicants' opinion the Court's conclusion that the applicants' parents had taken no action although they had received a clear written administrative decision on their children's placement in a special school, is incorrect. The applicants allegedly exerted great efforts aimed at changing the situation in which they found themselves. In this connection they refer to the fact that their counsel's written request for access to school files was not granted.

40. In this respect the Government cannot but reiterate that apart from filing a constitutional appeal and submitting an application to the Court the applicants' parents mostly did not do anything to spare their children, who were allegedly facing discrimination due to their special school attendance, this treatment. In general it can be said that their attitude towards education is rather passive, and they do not show any efforts aimed at changing their current situation. Moreover, some of the applicants were brought up in institutional child development establishments. As regards the prevention of access to school files, it is still not clear to the Government why the applicants' parents themselves did not ask for an opportunity to inspect the school files. Had they done so, access would certainly not have been denied them. The Government add that the applicant's parents had at any time during the applicant's education at special school possibility to ask for pupil's transfer to "ordinary" primary school.

41. Finally, the applicants challenge the Court's conclusion that the cases of some of them show that placement in special schools was not irreversible. They note that it took their great efforts to make the transfer happen, which only confirms the actual impossibility of transfer.

42. The Government would note as regards this issue that the children's parents, as the Government has emphasised many times, did not obstruct the children's placement in special schools and sometimes they even initiated it. From the files no evidence follows that would prove the parents' activity aimed at promoting their allegedly different conviction.

**(ii) On the applicants' assertions as regards their further fate**

43. The applicants refer to the fact that more than seven years ago they challenged their placement in special schools as unlawful and contrary to the Convention. The current shortage of (job) opportunities is allegedly a consequence of the unequal access to education, which they had to face.

44. In the request for referral of the case to the Court's Grand Chamber the applicants' further fate is described as at March 2006. The Government consider it to be suitable to furnish the Court with the current information available about the applicants, which illustrates their attitude to education and to success on the labour market. This information was gathered from the school files and files of the Ostrava Job Centre ("the Job Centre").

45. Before addressing the individual applicants' cases the Government would note that the Ostrava region is a region afflicted by a high rate of unemployment. In general it is true that young people with primary education belong to the group of job applicants who can be placed on the labour market only with difficulties. These are young people who are 15 to 18 years old, and who did not complete, or did not even start, their vocational training. The offer of vacancies for these job applicants has been very limited over the long term, regardless of their ethnic origin. Despite it there is a possibility of completion of qualification; however, the job applicant's activity is a condition *sine qua non*. In this context the Government present to the Court the results of a research realised by The Educational and Psychological Counselling Institute (*Institut pedagogicko-psychologického poradenství*) showing that a help of the state, in the given case in a form of education and jobs consultancy (see above), battle with many difficulties (Appendix No. 1).<sup>2</sup>

46. As regards the applicants, they registered at the Job Centre as juveniles who did not begin their vocational training or terminated it early. The Job Centre did devote and still devotes increased care to these applicants.

47. The Job Centre offers to these job applicants various counselling services, counselling motivation programmes and also retraining courses in order to increase their employability. In Ostrava, these services include facilitation of contact with the Information Counselling Centre for Vocation Selection and Change ("the Information Counselling Centre") that gathers information about study programmes and vocational training programmes at secondary schools in Ostrava. Another service is arranging contact with the Centre for Unemployed Youth (former Centre for Work Rehabilitation), through which young people can check their basic working skills and have the opportunity to participate in social and educational programmes. At the same time they have the opportunity to check their prerequisites for subsequent retraining. Besides that, the Job Centre also provides for participation in the counselling motivation programmes that are intended for job applicants interested in retraining courses, whose vocation is not clear-cut. They offer to job applicants the opportunity to familiarise themselves in practice with professions and fields of additional retraining courses, which are selected with regard to the requirements of the labour market in the region. These include support activities in crafts and services. Finally, retraining courses are intended for applicants who want to obtain new a qualification or extend their current qualification as a job applicant.

48. The following can be said as regards the individual applicants.

<sup>2</sup> The results of the research show an evident fact that it is very difficult to persuade Roma pupils about benefits of education at a secondary school. Roma pupils say that their parents have the biggest influence on them when choosing education (however, the majority of family members does not work, finds a job with difficulty, does not have enough financial resources etc). On the other hand, teachers pose cooperation with Roma parents on the last place. In addition, Roma pupils easily give up their ideas of education. The research proved great difference between values of majority (non Roma) community and Roma community. While majority community prefers education, traveling and professional career, Roma community prefers family life.

49. Applicant No. 1 D. H. completed her obligatory school attendance in the school year 2005/2006 in a special school educational programme (under Section 185, subsection 1 of Act No. 561/2004 – hereinafter the “New School Act”<sup>3</sup>). In September 2006 she began to study in the first year at the Public Catering Secondary School in Ostrava, vocational training programme cooking.

50. Applicant No. 2 S. H. is in the ninth grade of the Primary School on Ibsenova Street, a special school educational programme.

51. Applicant No. 3 L. B. left, of his own will, the Construction and Woodworking Secondary School in Ostrava, specialisation upholstery (he never appeared in the school for studies). Since then he has been registered with the Job Centre six times.

The first time he was registered was in the period from 25 October to 12 November 2001; the applicant did not show any interest in further studies and the Job Centre informed him about the offer of retraining courses. He was excluded from the register of job applicants for frustrating co-operation.

The second time he was registered was in the period from 6 March to 19 November 2002. The applicant was considering the possibility of further studies and he was informed about the Information Counselling Centre’s services. In the end, he did not enrol for further studies. He was informed about the offer of retraining courses; he showed no interest in them. On 20 November 2002 he was to be placed in the Centre for Work Rehabilitation, but he did not appear at the Job Centre anymore. He was excluded from the register of job applicants for frustrating co-operation.

The third time he was registered was in the period from 19 March to 20 May 2003. At that time the applicant was not considering further studies. He was only considering the possibility of participating in retraining courses. On 21 May 2003 he was to be placed in the Centre for Unemployed Youth, but he did not come to the Job Centre anymore. He was excluded from the register of job applicants for frustrating co-operation.

The fourth time he was registered was in the period from 24 September 2003 to 2 February 2005. The applicant was informed about the offer of counselling motivation programmes and retraining courses. In the period from 3 June to 9 July 2004 he completed a motivation course aimed at craftwork. He was excluded from the register of job applicants for frustrating co-operation.

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<sup>3</sup> Under Section 185, subsection 1 of the New School Act schools shall proceed in accordance with Framework Educational Programmes commencing from 1 September following not more than two years from the date of issuance of such Programmes, effective from the first grade and also from the sixth grade of primary education under Section 46, subsection 2, and from the seventh grade of primary education under Section 46, subsection 3. The validity of teaching and study documents from the first grade up, issued in accordance with current legal regulations, shall terminate on such date; until then these teaching and study documents shall apply in the cases of admission to education, and its process and completion.

The fifth time he was registered was in the period from 3 August 2005 to 29 January 2006. The applicant was informed about the offer of counselling motivation programmes and retraining courses; he showed no interest. He was excluded from the register of job applicants for frustrating co-operation.

The sixth time he was registered was in the period starting from 31 July 2006. The applicant came to the Job Centre only once, when he registered himself. On 16 August 2006 he was excluded from the register of job applicants for frustrating co-operation.

Copies of the relevant documents from the Job Centre's file constitute Appendix No. 2.

52. Applicant No. 4 M. P. completed his obligatory school attendance in the school year 2005/2006 at the Primary School in Ibsenova Street in a special school educational programme. He filed no application for further studies; this is supported by a written consent of his statutory representative.

The applicant has been registered with the Job Centre since 14 September 2006. The Job Centre is offering its services to him now.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 3.

53. Applicant No. 5 J. M. completed his obligatory school attendance in the school year 2003/2004 at the Primary School in Vrchlického Street in a primary school educational programme. In the school year 2004/2005 he enrolled in the first year at the Havířov Secondary School of Crafts and Services, vocational training programme painting and varnishing. He left the school on 8 November 2005 upon his own request, and this is supported by a written consent of his statutory representative.

The applicant has been registered with the Job Centre since 23 November 2005. He has shown no interest in further studies. The Job Centre offered to him the opportunity to be placed in the Centre for Unemployed Youth and informed him about the offer of counselling motivation programmes and retraining courses; the applicant has shown no interest.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 4.

54. Applicant No. 6 N. P. completed her obligatory school attendance in the school year 2005/2006 at the Přemysl Pittr Parochial Primary School in an ordinary school educational programme (under Section 185, subsection 1 of the New School Act). In September 2006 she began to study in the first year at the Public Catering Secondary School in Ostrava, vocational training programme cooking.

55. Applicant No. 7 D. B. completed her obligatory school attendance in the school year 2004/2005 in a special school educational programme. She filed no application for further studies; the applicants' parents did not come to class meetings.

She was registered as a job applicant in the period from 7 September 2005 to 21 June 2006. In the registration she noted that she was interested in further studies in the specialisation chef-waiter. The Job Centre informed her about the services of the Information Counselling Centre. However, the applicant then decided not to send an application and she did not mention any reason for doing so. She was informed about the offer of counselling motivation programmes and retraining courses; she showed no interest. On 22 June 2006 she failed to appear at the Job Centre without giving any serious reason, and therefore was excluded from the register of job applicants.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 5.

56. Applicant No. 8 A. B. completed her obligatory school attendance in the school year 2004/2005 in a special school educational programme. She filed no application for further studies; the applicants' parents did not come to class meetings.

She has been registered as a job applicant since 7 September 2005. From the beginning of her registration she kept saying that she was interested in further studies in the specialisation chef-waiter. The Job Centre informed her about the services of the Information Counselling Centre; the applicant did not make use of this service. Subsequently she decided not to file an application; she did not mention any reason. She was informed about the offer of counselling motivation programmes and retraining courses. In the periods from 20 April to 30 June 2006 and from 16 August to 4 September 2006 she was placed in the Centre for Unemployed Youth; she stopped attending on health grounds. During her last visit to the Job Centre she noted that for the time being she was not interested in retraining courses.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 6.

57. After completing obligatory school attendance in the school year 2000/2001 applicant No. 9 R. S. began to study at the Construction and Woodworking Secondary School, where he studied the specialisation of carpenter for one month only. Since then he has been registered with the Job Centre six times.

The first time he was registered was in the period from 22 October to 11 November 2001; the Job Centre informed him about the services of the Information Counselling Centre. He was excluded from the register of job applicants for frustrating co-operation.

The second time he was registered was in the period from 12 February to 23 July 2002. At the beginning of his registration he noted that he was interested in further studies and a retraining course. In the period from 7 May 2002 to 5 June 2002 he was placed in the Centre for Work Rehabilitation. From 6 June 2002 he stopped coming to the Centre without any reason. He was excluded from the register of job applicants for frustrating co-operation.



The third time he was registered was in the period from 24 October 2002 to 18 February 2003. The applicant showed no interest in further studies. He was excluded from the register of job applicants for frustrating co-operation.

On 24 March to 24 June 2003 the applicant was in custody.

The fourth time he was registered was in the period from 28 July to 1 September 2003. The applicant was informed of the Job Centre's counselling services. He was excluded from the register upon his own request due to the fact that he was serving his sentence in prison (from 1 September 2003 to 1 February 2004).

The fifth time he was registered was in the period from 2 February 2004 to 9 January 2005. The applicant was informed about the programme of group counselling at the Job Centre (training as regards the techniques aimed at finding employment); he did not make use of this service. He was excluded from the register because he was serving his sentence (from 8 July 2004 to 8 May 2006).

Finally, he has been registered for the sixth time since 10 May 2006. He was informed about the offer of counselling motivation programmes and retraining courses. He has not indicated yet whether he is interested in these programmes.

Copies of the relevant documents from the Job Centre's file constitute Appendix No. 7.

58. Applicant No. 10 K. R. completed her obligatory school attendance in the school year 2004/2005 at the Primary School in Karasova Street in a special school educational programme. She was pregnant (first child) during her school attendance. She did not file an application for further studies.

She has been registered with the Job Centre since 19 October 2005. At the time of her registration with the Job Centre she was pregnant again (second child). She was not considering further studies. After delivering, she continued to be registered as a job applicant. The Job Centre offered her the opportunity to be placed in the Centre for Unemployed Youth and informed her of the offer of counselling motivation programmes and retraining courses. The applicant showed no interest in any of the offers.

Copy of the relevant document from the Job Centre's file constitutes Appendix No. 8.

59. Applicant No. 11 Z. V. completed her obligatory school attendance in the school year 2005/2006 at the Přemysl Pittr Parochial Primary School in a special school educational programme. In September 2006 she began to study in the first year at the Construction and Wood-working Secondary School in Ostrava, specialisation upholstery.

60. Applicant No. 12 H. K. completed her obligatory school attendance in the school year 2004/2005 at the Primary School in Halasova Street in a special school educational programme. In September 2005 she began to study in the first year at the Vocational and Specialised Secondary School in Klimkovice, vocational training programme dressmaking. She left the school as early as

5 September 2005 upon her own request. Her reason for doing so was lack of interest in the subject.

She has been registered as a job applicant since 3 October 2005. At the beginning of her registration she was deciding whether to continue her studies at the secondary school. The Job Centre informed her about the services of the Information Counselling Centre. She then noted that she was not interested in further studies, and she did not mention any reason. The Job Centre then offered her an opportunity to be placed in the Centre for Unemployed Youth and informed her about the offer of counselling motivation programmes and retraining courses. In the period from 16 January to 14 April 2006 she was placed in the Centre for Unemployed Youth. After terminating her attendance at the Centre she decided that she was no longer interested in the courses.

On 5 October 2006 she said that she is interested in an advisory motivation programme aimed at services. She was invited to a presentation of this programme.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 9.

61. Applicant No. 13 P. D. is in the ninth grade of the Primary School on Ibsenova Street, a special school educational programme.

62. Applicant No. 14 M. P. completed her obligatory school attendance in the school year 2005/2006 at the Primary School on Ibsenova Street in a special school educational programme. In September 2006 she began to study in the first year at the Public Catering Secondary School in Ostrava, vocational training programme cooking.

63. Applicant No. 15 D. M. completed her obligatory school attendance in the school year 2005/2006 at the Primary School in Vrbno pod Pradědem (institutional upbringing was ordered and she was placed in a children's home) in a special school educational programme. In September 2006 she began to study in the first year at the Agriculture and Services Secondary School in Albrechtice, vocational training programme confectionary making.

64. Applicant No. 16 M. B. completed her obligatory school attendance in the school year 2005/2006 at the Přemysl Pittr Parochial Primary School in a special school educational programme. In September 2006 she began to study in the first year at the Public Catering Secondary School in Ostrava, vocational training programme cooking.

65. Applicant No. 17 K. D. completed her obligatory school attendance in the school year 2005/2006 at the Primary School in Na Vizině Street in a special school educational programme. She did not file any application for further studies.

She has been registered as a job applicant since 1 September 2006. She did not come to a planned meeting to the Job Centre and that is why the Job Centre has not offered its services to her yet.

Copies of the relevant documents from the school file and the Job Centre's file constitute Appendix No. 10.

66. Applicant No. 18 V. Š. completed her obligatory school attendance in the school year 2005/2006 at the Primary School at Svatý Kopeček in Olomouc (institutional upbringing was ordered and she was placed in a children's home) in a special school educational programme. In September 2006 she started to study in the first year at the Trade and Services Secondary Vocational School in Olomouc, vocational training programme shop assistant.

**(iii) On the changes in education in connection with the passing of the New School Act**

67. In the conclusion the Government will furnish the Court with brief information about significant changes in the current school system, which came about in connection with the passing of the New School Act. The previously existing types of primary schools have been unified, and also educational programmes have been standardised (for elementary education a single Framework Educational Programme has been issued, with an appendix for pupils with minor mental defects). Unlike the previous legislation, the New School Act does not envisage an independent, separate system of specialised schools, with the exception of assistant schools, which are newly designated as 'specialised primary schools' intended for pupils with heavy mental disorders, autism and combined [mental and physical] defects; children, pupils and students with disabilities are individually integrated, wherever possible and desirable, into conventional schools; however, schools may set up separate classes in which these persons are educated with the help of, in particular, such educational techniques and methods which are adjusted to their needs; or, entire schools specialised in educating these persons may be set up. What up to now have been 'special schools' may continue to be established as separate institutions, but they are now primary schools that will provide education under a modified educational programme for elementary education. As the Court was already informed, in the area of elementary education the names of schools were unified and school educational programmes were prepared. In compliance with the New School Act names of all former special schools were changed to "primary school". At schools the so-called school boards were established; these boards enable the parents and representatives of the school founder to influence the school's educational process. On the basis of a framework educational programme, these schools are starting to prepare school educational programmes that will be adjusted to fit the specific educational conditions of each of them. For details the Government would refer to the statements already submitted to the Court.

68. Schools at which socially disadvantaged pupils are educated have used the opportunity to establish the post of a teacher's assistant. The newly established profession of a teacher's assistant is used especially in educational programmes for pupils with special educational needs, including socially disadvantaged pupils. It is desirable for the teacher's assistant to know well the environment from which the pupils usually come. The teacher's assistant from the Roma community

environment forms a connecting link between the school, family, and, in some cases, other experts. In the Moravskoslezský Region there are 68 teacher's assistants at 39 schools and they help to integrate pupils into the educational process. In the school year 2005/2006, 23 preparatory classes for socially disadvantaged children and children with postponed school attendance were established at 18 primary schools. Out of these 18 schools two are former special schools and at two other schools pupils are educated under in the primary school and special school programmes.

69. In the Moravskoslezský Region the option of integrating pupils with minor mental disabilities, who are educated in the special school programme, into conventional primary schools has been considered since 2004. The most suitable process for doing so seems to be that of group integration of handicapped pupils into a group of pupils without disabilities. The first verification of pupils' group integration was carried out by closing down one school, a special school at that time, and integrating its handicapped pupils into two primary schools on 1 September 2004. This activity has been evaluated as positive.

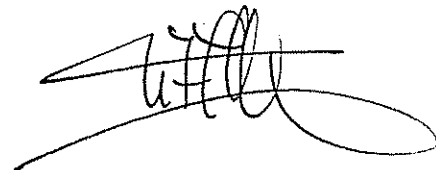
70. The Moravskoslezský Region supports the integration of Roma pupils into majority school groups. Activities in this field are described in more detail in Appendix No. 11 (Moravskoslezský Region's conceptual plans). These include the Programme for Supporting the Activities of Ethnic Minorities' Members, Programme for the Integration of the Roma Community, and a project of the Centre for Minorities' Integration. The Moravskoslezský Region also initiates training of educationalists in the issues of a specific approach to the education of Roma pupils and improvement of professional qualifications of the teacher's assistants.

#### **(iv) Conclusion**

71. The Government ask the Court to carefully consider the cases of the individual applicants and their access to education, although the Government are aware that it needs to be done in the overall context.

## CONCLUSION

72. The Government propose to the Court to hold that there was no violation of the prohibition of discrimination, taken together with the right to education.



Vít A. Schorm  
Agent of the Government

Appendices:

1. Research of the Educational and Psychological Counselling Institute
2. Documents concerning applicant No. 3
3. Documents concerning applicant No. 4
4. Documents concerning applicant No. 5
5. Documents concerning applicant No. 7
6. Documents concerning applicant No. 8
7. Documents concerning applicant No. 9
8. Document concerning applicant No. 10
9. Documents concerning applicant No. 12
10. Documents concerning applicant No. 17
11. The Moravskoslezský Region's conceptual plans

