COUNCIL OF EUROPE

EUROPEAN COURT OF HUMAN RIGHTS

TWELFTH SECTION

DECISION ON ADMISSIBILITY

In respect of petition no. 57325/00
presented by D.H. and others
against the Czech Republic

The European Court of Human Rights (twelfth section), convening on 1 March 2005 as a chamber composed of:

Messrs. J.-P. COSTA, *president*
A.B. BAKA,
I. CABRAL BARRETO,
K. JUNGWIERT,
V. BUTKEVYCH,
Mmmes. A. MULARONI,
D. JOČIENÉ, *judges*
and Mme. S. DOLLÉ, *section registrar*

Having regard to the request mentioned above and introduced to the court on 18 April 2000,
Having regard to the observations submitted by the respondent government and to those presented in response thereto by the applicants,
Having regard to the observations presented orally by the parties at the hearing held on 1 March 2005,
And having deliberated in respect of the above, hereby decides as follows:

THE FACTS

The relevant information regarding the applicants is contained in the annex.
All the applicants are represented before the Court by the European Roma Rights Centre seated in Budapest, by Lord Lester of Herne Hill QC, lawyer, by M. J. Goldston, member of the bar of New York, and by D. Strupek, lawyer and member of the Czech bar.
The respondent government is represented by its agent, V.A. Schorm.

A. The circumstances of the case

The facts of the case, as presented by the parties and as may be deduced from the official documents attached to the request, may be summarised as follows.
Between 1996 and 1999, the applicants were placed, directly or after a certain time spent in various primary schools (*zakladni skoly*), in special schools (*zvlastni skoly*) in Ostrava. These constitute a category of specialised schools (*specialni skoly*) and are intended for children with intellectual deficiencies – those that cannot be taught in "regular" primary schools or specialised primary schools. Under the law, this placement is effected by virtue of a decision of the director of the school, based on the results of a test of the intellectual capacity of the

child administered by a psycho-pedagogic assessment and advisory centre, and is subject to the consent of a parent or the legal guardian of the child.

The file records show that the parents of the applicants had agreed – in fact, expressly demanded – that their children be placed in a special school. The appropriate written decision was made by the directors of the schools concerned, and was communicated to the parents of the applicants. This contained an instruction related to the possibility of lodging an appeal, a possibility that none of the interested parties took up.

Moreover, the applicants received, on 29 June 1999, a letter from the school authorities informing them about the possibility of transferring the children from special schools to primary schools. It appears that four of them (nos. 5, 6, 11 and 16) passed the requisite aptitude tests and have since then been attending regular schools.

In the procedure related to the various petitions mentioned below, the applicants were represented by a lawyer, acting under a power of attorney signed by their parents.

1. Petition for re-examination outside the appeal procedure

On 15 June 1999, the applicants, with the exception of those mentioned in the annex under nos. 1, 2, 10 and 12, submitted to the schools office (*Skolsky urad*) a demand for the re-examination outside the appeal procedure (*prezkoumani mimo advolaci rizeni*) of the administrative decisions pertaining to their placement in the special schools. The applicants affirmed that their intellectual capacities had not been tested in a reliable manner and that their representatives had not been adequately informed of the consequences of their consent to placement in special schools, and they therefore requested an annulment of the decisions objected to, citing the fact that these decisions had not satisfied the requirements of the law, and undermined their right to education without discrimination.

On 10 September 1999, the schools office informed the applicants that since the decisions to which they had taken offence were in conformity with the legislation, the conditions required for initiating a procedure outside the appeal process were not in place in the case concerned.

2. Constitutional remedy

On 15 June 1999, the applicants referred to in the annex under nos. 1-12 raised a constitutional objection, complaining in particular of having been submitted to a form of *de facto* discrimination resulting from the general functioning of the system of special education. In this regard, they were invoking, among others, articles 3 and 14 of the Convention and article 2 of Protocol no. 1. While admitting to not having lodged an appeal against the decisions regarding their placement in special schools, the applicants argued that they had not been adequately informed of the consequences of such a placement, and asserted (with regard to the condition of exhaustion of domestic remedy) that this was a matter of an ongoing and general violation of rights, and that what was at stake here in terms of their petition was something that far exceeded their own individual interests.

In their petition, the applicants emphasised that their placement in special schools had been conducted in accordance with an established practice of application of the relevant legal provisions, an application that would result in *de facto* racial segregation and discrimination, consisting of the existence of two autonomous school systems for the members of the different racial groups, namely, special schools for Roma and "regular" primary schools for the majority population. This difference in treatment was not, in their opinion, based on any objective and rational justification, but constituted degrading treatment and deprived them of their right to education (due to the inferior nature of the curriculum followed in the special

schools, and the impossibility of returning to a primary school and of pursuing studies in a secondary school other than an apprenticeship centre). Considering themselves victims of a lack of education and of an assault on their dignity, the applicants asked the Constitutional Court (*Ústavni soud*) to recognise the violation of rights that they claimed to have been subjected to, to nullify the decisions regarding their placement in special schools, to prohibit the respondents (the special schools involved, the schools office of Ostrava and the Ministry of Education) from persisting in the violation of their rights, and to order them to restore the *status quo ante* by way of compensatory schooling offered to the applicants.

In their statements submitted to the Constitutional Court, the special schools concerned emphasised that all the applicants had been enrolled based on the recommendation of a psycho-pedagogic assessment and advisory centre, and with the consent of their guardians, and that these latter had been duly notified of the relevant decisions, against which none had appealed. According to the schools, the applicants' guardians had been informed of the differences between the programme of the special schools and that of the primary schools, and the ongoing appraisal of the pupils (with a view to their eventual transfer to a primary school) had been the subject of regular teachers' meetings. It was noted, moreover, that certain applicants (namely, those mentioned in the annex under nos. 5-11) had been informed about the possibility of transfer to a primary school.

The schools office had remarked in its statement that the special schools were endowed with their own legal personality, that the decisions objected to had contained an instruction as to the possibility of lodging an appeal, and that the applicants had never contacted the school inspection authorities.

The Ministry of Education contested that there had been any discrimination, and referred instead to the somewhat negative attitude of the parents of the Roma children with respect to school work. It asserted that the placement of each pupil in a special school had been preceded by a thorough assessment of their intellectual capacity, and that the consent of the parents had been of decisive importance. It noted, moreover, that there were no less than eighteen teaching assistants of Roma origin in the schools of Ostrava.

In their final statement, the applicants observed that there was nothing in their school records to support the assertion that there had been regular monitoring of their progress with a view to their possible transfer to a primary school, that the reports from the psycho-pedagogic assessment centres did not contain any information on the tests used, and that the recommendations to place them in special schools had been based on ill-founded reasoning such as their inadequate mastery of the Czech language, the overly tolerant attitude of their parents, a maladjusted social environment, and so on. At the same time, they emphasised that their lack of education made any transfer to a primary school in effect impossible, and stated that social or cultural differences were no justification for the alleged difference in treatment.

On 20 October 1999, the Constitutional Court rejected the petition of the applicants, partly due to the manifest lack of any grounds for the petition, and partly by reason of its incompetence to examine the allegations. It nonetheless invited the relevant administrative authorities to study the claims of the applicants in a thorough and effective manner.

As to the complaint concerning the alleged violation of rights of the applicants due to their placement in special schools, the Constitutional Court observed that only five of the decisions had been specifically targeted by the petition, and considered, therefore, that it was not competent to rule on the cases of the applicants that had not disputed the respective decisions.

As for the five applicants (mentioned in the annex under nos. 1, 2, 3, 5 and 9) who had disputed the decisions regarding their placement in special schools, the Constitutional Court decided to disregard the fact that they had not lodged an appeal against the decisions, considering that the petition effectively went beyond their own immediate interests.

According to the Court, there was no evidence from the file, however, that the relevant legal provisions had been interpreted or applied in an unconstitutional manner, given that the decisions in question had been made by the competent directors, based on the recommendations of centres of educational psychology and with the consent of the applicant's guardians.

a) As regards the complaints based on the alleged inadequacy of educational monitoring and racial discrimination, the Constitutional Court noted that it was not for it to assess the overall social context, and observed that the applicants had not provided concrete evidence in support of their allegations. It noted, furthermore, that the decisions to place the applicants in special schools were subject to appeal, and that none of the parties concerned had lodged such an appeal. As for the objection regarding the lack of information related to the consequences of placement in special schools, the Court considered that the applicants' guardians could have obtained such information by way of due co-operation with the schools, and that it did not emerge from the case file that they had been interested in securing an eventual transfer to primary schools. This part of the request was therefore judged to be manifestly unfounded.

B. Relevant domestic law

Act no. 29/1984 (known as the "act on schools"), superseded by act no. 561/2004, which entered into forced on 1 January 2005

Before 18 February 2000, article 19 paragraph 1 stated that any pupils could be admitted to study at secondary schools who had successfully completed their schooling in a primary school (*základni skola*).

Pursuant to amendment no. 19/2000, which entered into force on 18 February 2000, those pupils could be admitted to study at secondary schools who had completed their compulsory schooling and who had proved during the course of the admission procedure that they met the conditions for admission as set for the chosen form of education or training.

Under the provisions of article 31 paragraph 1, special schools (*zvlástni skoly*) were intended for children with mental deficiencies such that prevented them from receiving the education provided by a regular primary school or by a specialised primary school (*speciálni základni skola*) intended for children with sensory impairment, or for sick or handicapped children.

Decree no 127/1997 on specialised schools

According to article 2 paragraph 4, the following institutions are intended for children or pupils with a mental handicap: specialised nursery schools (*speciálni materská skola*), special schools, auxiliary schools (*pomocná skola*), apprenticeship centres (*odborné uciliste*) and practical schools (*praktická skola*).

Pursuant to article 6 paragraph 2, if evidence presents itself during the course of the child's or the pupil's schooling of a change in the character of his or her handicap or if the specialised school is no longer appropriate in terms of the degree of the handicap, the director of the school attended by the child is obliged, after consulting with the pupil's guardian, to suggest a transfer of the pupil to another specialised school or to a conventional school.

Article 7 stipulates that the decision on the enrolment or the transfer of children and pupils in, *inter alia*, special schools, is to be made by the director of the school, subject to the consent of the parent or legal guardian of the child or pupil. The director may receive suggestions from the parent or guardian, from the school attended by the pupil, from the psycho-pedagogic assessment and advisory centre, from a healthcare institution, from the

authorities involved with the family and the child, or from a social care centre, etc. The psycho-pedagogic assessment and advisory centre gathers all the documents required for the decision, and makes a recommendation to the director as to the type of school it deems appropriate.

C. Legal sources of the Council of Europe

1. European Commission against Racism and Intolerance (ECRI)

a) Report on the Czech Republic published in September of 1997

In its section dealing with political and with training and educational aspects, the report notes that public opinion sometimes evinces what appears to be a negative attitude towards certain groups, in particular, the Roma/gypsy community, and suggests that supplementary measures be taken in order to increase awareness among the public of matters of racism and intolerance, and to develop an attitude of tolerance towards all groups within society. The report adds that it is essential that special measures be taken with respect to the education and training of members of minority groups, in particular members of the Roma/gypsy community.

b) Report on the Czech Republic published in June of 2004

On the matter of access of Roma children to education, the ECRI fears that Roma children continue to be placed in special schools, which not only perpetuates their separation from ordinary society, but also places them in an extremely disadvantaged position for the rest of their lives. It notes that the test-based type evaluation of the mental aptitude of children, designed by the Czech Ministry of Education, is not compulsory and only represents one of many means and methods recommended to the official psychological assessment centres. As regards the other element necessary for the placing of a child in a special school, namely, the consent of a parent or legal guardian, the ECRI observes that the parents taking such decisions do not always have information regarding the negative long-term consequences that sending their children to these schools may have, which is often presented to them as an opportunity for their children to receive special attention and to mix with other Roma children. The ECRI also learned that ordinary schools would have refused to enter into contact with Roma parents.

One also notes the entry into force, in January 2000, of the act on schools, which provides the possibility for graduates of special schools to ask that they be admitted to secondary schools. According to a range of sources, that, however, is very much a theoretical possibility, since the special schools do not provide the children with the knowledge required for them to pursue a course of secondary education. No measure, it said, was in force to allow these pupils to pursue supplementary schooling that might enable them to reach a level of preparation sufficient for them to be integrated into an ordinary institution of secondary education.

The ECRI has received very positive feedback regarding what are known as “zero level” classes (i.e. preparatory courses) at the preschool stage, which are enabling an increase in the number of Roma children attending ordinary schools. On the other hand, it expresses its concern about a new tendency that maintains the segregated system of education in a new guise, namely, special classes in ordinary schools. In this regard, a certain number of parties concerned fear that the new bill on schools permits a segregation of Roma that is even more marked, by putting in place a new category of special programmes for the “socially disadvantaged”.

Finally, the ECRI notes that in spite of the initiatives taken by the Ministry of Education (with regard to teaching assistants in schools, training programmes for teachers, revision of the primary school curriculum, etc.), the problem of low participation by Roma in secondary and advanced education persists.

2. Reports submitted by the Czech Republic under article 25 § 1 of the Framework Convention for the Protection of National Minorities

a) Report submitted on 1 April 1999

This document reveals that in the area of education, the Government has adopted measures aimed at assuring favourable conditions to children from socially and culturally disadvantaged backgrounds, in particular, to the Roma community, through launching preparatory classes in elementary and specialised schools. The report notes that "Roma children endowed with average or superior intelligence are often placed in specialised schools intended for children with learning difficulties, based on psychological tests (always administered subject to the consent of the parents). These tests are designed with the majority population in mind, and do not take into account the particularities of Roma. The tests are currently being redesigned". Thus, some 80-90% of the pupils at certain specialised schools are Roma children.

b) Report submitted on 2 July 2004

Acknowledging that Roma are exposed to discrimination and to social exclusion, the Czech Republic is preparing to introduce anti-discriminatory measures in the framework of the incorporation of the European directive on equal treatment – thus, a new law should be adopted in 2004[1].

On the subject of the education of Roma, the report refers to numerous positive interventions by the State aimed at changing the prevailing situation in which Roma children find themselves, and notes that the Government regards as untenable the practice of placing large numbers of these children in special schools. The necessity of these interventions lies not only in the socio-cultural handicap to which Roma children are subjected, but in the nature of the entire system of education, which in its current state does not adequately reflect cultural differences. In this context, the bill on schools should serve to bring about changes in the system of special education (transforming "special schools" into "special primary schools"), so as to provide the children with assistance aimed at helping them overcome the disadvantages stemming from their socio-cultural environment. What are particularly needed are preparatory classes, individual programmes for pupils of special schools, measures related to preschool education, creation of posts for Roma assistants, and specialised programmes designed for teachers. Given that one of the main problems encountered by Roma pupils is their weak knowledge of the Czech language, the Ministry of Education regards the best solution (and the only viable one) to be the putting in place of a preschool stage of preparatory classes aimed at children from disadvantaged socio-cultural backgrounds.

The report also cites several projects and programmes being implemented in this area on national level (Support for the Integration of Roma, Programme for the Integration of Roma/Reform of Multicultural Education, and Reintegration into Primary Schools of Roma Pupils Graduating from Special Schools).

[1] This act, no. 561/2004, passed on 24 September 2004, entered into force on 1 January 2005.

COMPLAINTS

1. With reference to article 14 together with article 2 of Protocol no. 1, the applicants allege that they have been discriminated against in the enjoyment of their right to education by reason of their race and colour, the fact of their belonging to a national minority, and their ethnic origin. Given that an inordinately high number of Roma pupils are placed in special schools whose educational standards are substantially inferior to that of primary schools, they regard theirs as a case of differentiated treatment, and one that has no objective or rational justification.

2. Citing article 3 of the Convention, the applicants complain of being victims of degrading treatment consisting of a segregation based (at least in part) on their racial origin, which resulted in their placement in special schools designed for children with mental deficiencies.

3. Citing article 2 of Protocol no. 1 separately, the applicants complain of having been deprived of the right to education, and allege that the State has not respected the right of their parents to have this education provided in a manner that conforms with their philosophical convictions.

4. Finally, citing article 6 of the Convention, the applicants maintain that the competent authorities have failed to adequately substantiate the decisions that led to their being placed in special schools, and that these decisions did not adhere to the requisite procedural safeguards.

THE LAW

1. On the preliminary objections raised by the Government

1.1. The government first invites the Court to declare the request inadmissible in the case of the four applicants referred to in the annex under nos. 5, 6, 11 and 16, who, having been transferred to regular primary schools after passing the appropriate examinations, should have ceased to be victims in the meaning ascribed to it under article 34 of the Convention. Indeed, it considers that by virtue of their placement in regular schools, which bears witness to the good will as much as to the capacity of the State to respond to a concrete demand in respect of the matter in point, the said applicants have obtained redress of the alleged offending circumstances brought before the Court, as well as compensation for any moral prejudice that may have existed.

As for the complaint of the applicants that is based on the alleged impossibility, after having attended a special school, of pursuing their studies in a secondary school other than an apprenticeship centre, the Government maintains that on account of a legislative amendment implemented by act no. 19/2000, the applicants have obtained satisfaction in this regard. Moreover, with the exception of applicant no. 3, none of the individuals concerned have yet completed their primary schooling and it is therefore impossible to speculate about their chances of being admitted to a secondary school.

On their part, the applicants assert that even those among them who currently attend a primary school (which they say is no longer the case for applicant no. 11) have retained their status as victims. According to them, there has been no remedy with respect to the negative effects produced, for the applicants concerned, by their initial placement in special schools and the segregation that resulted from it: at all events, the breach of the Convention had not been recognised by the national authorities. As for act no. 19/2000, it would not provide any redress, since the pupils from special schools remain excluded

from certain types of secondary school, such as the "gymnasia", with a curriculum of six or eight years. Moreover, only a tiny percentage of these pupils are really in a position to pursue their studies in secondary school.

At the same time, the applicants consider that the Court does indeed have the competence to examine their complaints by reason of "general interest", since their case "in effect concerns the legislation of the respondent State, and its legal system or legal practices" (*Kofler v. Italy*, no. 8261/178, report of the Commission of 9 October 1982, Decisions and Reports 30, p. 5).

The Court reminds those present of the jurisprudence of the organs of the Convention, pursuant to which "a measure taken by a public authority that eliminates or mitigates the effect of the act or the omission in question does not remove the status of victim from such a person in a way that would be the case were the national authorities to recognise, either explicitly or in substance, and then remedy, the breach of the Convention" (*Nsona v. The Netherlands*, judgement of 28 November 1996, *Compendium of Judgements and Decisions* 1996-V, § 106).

It is true that in this case, after having been placed in special schools, certain of the applicants were transferred to regular schools. However, such a step does not, in the eyes of the Court, suffice to erase the consequences of the applicants' having attended, for a substantial period of time, a school that could not fully match their abilities. Moreover, it does not appear that the aim of the transfer had been to put an end to and redress any kind of breach of the Convention: it constituted neither an abrogation of the measures that had led to the placement of the applicants in special schools nor a form of compensation for these measures. In fact, far from recognising an infringement of the rights of the applicants, the Government maintains before the Court that there had been no breach of the Convention (see, *mutatis mutandis*, *Nsona v. The Netherlands*, mentioned above, § 107).

Consequently, the Court rejects the objection based on the purported absence of the status of victim.

1.2. Secondly, the Government advances an objection on the grounds of non-exhaustion of the domestic channels of recourse, asserting that the applicants have not explored all the available means of recourse in order to remedy their situation. While acknowledging that the general anti-discrimination law has not yet been passed by the Czech Parliament, it maintains that, at any event, this law will only complete and perfect the prohibition of discrimination that is already enshrined in the national legislation, namely, in the Charter of Fundamental Rights and Freedoms, the Civil Code and the Labour Code.

The Government notes, firstly, that the applicants did not take advantage of the opportunity available for appealing the decisions that led to their placement in special schools and, secondly, that six of them (nos. 13-18) did not formulate an appeal on constitutional grounds, and moreover, only five of the applicants (nos. 1, 2, 3, 5 and 9) that did register a complaint on these grounds specifically attacked the decisions regarding their placement in special schools. In addition, the applicants made no attempt to protect their dignity by way legal action aimed at the protection of their personality rights based on the Civil Code, and their parents did not refer the matter to the school inspection authorities or to the Ministry of Education.

On their side, the applicants maintain, firstly, that no available recourse exists in the Czech Republic that is effective and sufficient with respect to their complaint pertaining to racial discrimination in education, since the State has not yet seen fit to introduce legislation that is suitably anti-discriminatory in intent. As regards constitutional recourse in particular, that an attempt at such recourse would ultimately be ineffectual is clear

from the reasoning adopted by the Constitutional Court and from its refusal to accord importance to the general practice referred to by the applicants. One should not, therefore, blame those who did not pursue this path for not having done so. As concerns the failure to lodge an administrative appeal, at the time the opportunity existed for doing so, the parents of the applicants would not have had access to the necessary information. Indeed, even the Constitutional Court had chosen to ignore this alleged omission. Action in defence of personality rights cannot, in and of itself, be a means of contesting administrative decisions taken that are equivalent in force to a legal ruling, and the Government has allegedly not presented any evidence to prove that doing so might be effective.

What is more, even assuming the existence of an effective form of recourse, the applicants consider it would be futile to exercise such recourse in an environment in which an administrative practice exists that makes racism possible or that actually encourages it, such as they claim is the case with respect to the system of special schools in the Czech Republic. At the same time, they allege that the requirement of exhaustion should not apply in circumstances such as those of the case in point, where the strict application of this rule exposes them to a new violation of their rights.

The applicants argue further that article 35 should be applied with certain flexibility and without excessive rigidity, by taking into account the legal and political context in which the forms of recourse envisaged would be played out, as well as the personal circumstances of the applicants. In this regard, they draw the Court's attention to the racial hatred and to the number of acts of violence perpetrated in the Czech Republic against Roma, as well as to the inadequate nature of the punishments imposed in cases of penal infractions motivated by racism and xenophobia.

Lastly, the applicants maintain that they have pursued every channel of recourse that they found to be available to them and that held out any chance of success, namely, the petition for re-examination outside the appeals procedure and the petition on constitutional grounds, without, however, obtaining a redress of any kind. If there are indeed only five applicants who specifically demanded an annulment of the decisions regarding placement in special schools, this is because, as far as the others are concerned, these decisions had been made more than one year before the launch of the said recourse and could no longer, therefore, be attacked.

The Court is of the opinion that the question of knowing whether the requirement of exhaustion of domestic remedy has been satisfied in this case masks a certain complexity, linked notably to the allegations of the applicants concerning an alleged administrative practice of discrimination and to the broader context of racial prejudice. It considers, therefore, that this preliminary objection raised by the Government should be reserved for final judgement at a later date, together with the complaint based on article 14 combined with article 2 of Protocol no. 1.

With regard to its decision to declare inadmissible – for the reasons set out below – the complaints concerning the breach of articles 3 and 6 of the Convention and of article 2 of Protocol no. 1, the Court does not consider it necessary to examine whether the condition of exhaustion of domestic remedy has been satisfied with respect to these complaints.

2. *On the complaint based on article 14 of the Convention together with article 2 of Protocol no. 1*

By maintaining that they have been discriminated against in the enjoyment of their right to education by reason of their race, colour, the fact of their belonging to a national minority,

and their ethnic origin, the applicants are invoking article 14 of the Convention together with article 2 of Protocol no. 1, which reads as follows:

Article 14 of the Convention

"The enjoyment of the rights and liberties recognised by (...) Convention is to be ensured with no distinction whatsoever, based in particular on sex, race, colour, language, religion, political or any other opinions, national or social origin, the fact of being part of a national minority, wealth, birth, or any other situation."

Article 2 of Protocol no. 1

"No-one may be refused the right to education. The State, in the exercise of the functions it assumes in the area of education and instruction, shall respect the right of parents to have this education and training provided in a manner that conforms to their religious and philosophical convictions."

The applicants assert that Roma children are subjected, in the area of education, to treatment that is different from that reserved for non-Roma children. The difference in treatment consists in the fact that the applicants, placed in special schools, benefit from an education that is substantially inferior to that dispensed by primary schools.

The applicants maintain that their placement in special schools does not meet the standards of the Convention and that with respect to the case in point there exists no "racially neutral" explanation as to the statistical disproportions concerning the number of Roma children placed in special schools, disproportions that are due rather to the many years of racial segregation and to the persistence of prejudices against Roma. They dispute the notion that the disproportionately high number of Roma children attending special schools can be explained by the results of tests of mental aptitude administered by centres of psycho-pedagogic assessment, tests that are adapted to the Czech language and cultural environment, a fact that disadvantages Roma children and leads to erroneous conclusions being drawn from the results, since most of these children do not suffer from mental deficiencies. Moreover, the administering of these tests and the interpretation of their results are not subject to any standard regulatory procedures, a fact that leaves a significant margin for subjective judgement on the part of the psychologists (who are not Roma), and exposes the results to the distorting influence of racial prejudice and cultural insensitivity.

In its remarks, the Government notes that it is incumbent upon the applicant to prove that there is a difference in treatment, but that in the present case, the applicants have failed to submit any evidence that might prove "beyond a reasonable doubt" that the actions of the national authorities were motivated by the racial origin of the applicants. Consequently, and considering that the very first phrase of article 2 of Protocol no. 1 includes the concept of non-discrimination, the Government proposes that the Court examine the entirety of the case solely on the basis of the said provision.

The Government for its part contests the allegation that the Czech State is not taking effective measures to combat racial hatred, and maintains that the special schools were never conceived as schools created specifically for Roma children.

In the case in point, the decision to place the applicants in special schools was not arbitrary, nor was it founded on their ethnic origin, since it was made after a standard procedure had been followed, was based on legitimate reasons stated by the legislation and was approved by the parents. In fact, no decision of the authorities mentions the Roma origins of the applicants. The placement was in all cases preceded by a psychological examination, administered by experts and agreed to by the parents of the applicants, which placed the emphasis on the detection of true mental capacities and personality traits. The Government maintains, with the relevant records supporting it, that with the exception of the ninth applicant placed in a special school, notably for reasons stemming from the socio-cultural

milieu from which he came and his behavioural problems, the said examination revealed a certain mental retardation in the case of each of the applicants. Moreover, the Government expressed during the hearing its astonishment at the fact that the applicants' guardians, who today contest the reliability of the diagnostic tools used in the case in point, did not request a re-testing of the applicants at other centres and did not raise the matter of the alleged inconsistencies at the time of the examination.

For their part, the applicants emphasise the obligation of the State to eliminate racially motivated abuse and the discrimination perpetrated by private persons. Since a patent inequality of treatment is at the heart of their case, they demand that the Court also examine the request from the perspective of article 14 of the Convention.

Referring to the jurisprudence of the Court (*Antchova and others v. Bulgaria*, nos. 43577/98 and 43579/98, § 167, CEDH 2004) and of other international bodies, they assert that discrimination does not require a particular intent to harm, and that it can by no means be ruled out that a measure be judged discriminatory on the basis of elements of proof related to its impact (effects that are disproportionately prejudicial to a particular group), even if the measure is not aimed specifically at that group. Consequently, it does not befall them to demonstrate that the Government intended to promote their segregation on the basis of their ethnicity, nor to provide proof "beyond all reasonable doubt", a standard that is applicable rather in matters of a criminal nature than to matters of human rights.

The interested parties maintain, in fact, that if *prima facie* discrimination is established by the applicants (with the help, for example, of convincing statistics), that is, revealed in the reports of the international organisations, as is the case here, the burden of proof is transferred to the respondent Government, which must prove that the difference in treatment is justified. In this regard, the applicants refer those present to the opinion of the Court, according to which, in certain circumstances, "it is, in truth, appropriate to consider that the burden of proof should fall upon the authorities, who must provide a satisfactory and convincing explanation" (*Anguelova v. Bulgaria*, no. 38361/97, § 111, CEDH 2002-IV). Insofar as a reasonable and objective justification should not, according to them, repose in an insufficient grasp of the Czech language, a difference in socio-economic status, nor in the consent of the parents and the children concerned, the national authorities have not succeeded in furnishing such an explanation. Moreover, even supposing that the placement of the applicants in special schools had had a legitimate objective, something they fervently dispute, such a measure should not, by any means, be regarded as proportional to this objective.

The applicants state, lastly, that they are not asking for any special form of education. However, if the State has decided that special schools are intended for children with intellectual deficiencies, it must ensure that decisions to place pupils in these schools are not tainted by discrimination.

The observations of the third parties involved, namely, the non-governmental organisations Human Rights Watch and Interights, focus on the concept of "indirect discrimination", a notion that encompasses cases where a discriminatory or disproportionate effect stemming from racially neutral statutory provisions or from a general policy or measure exists, as well as on the problem of burden of proof in these situations. In this context, the third parties involved refer, among others, to the anti-discriminatory directives passed by the European Communities, and invite the Court to establish a legal framework for the prohibition of indirect discrimination within the Council of Europe.

The Court considers, in light of the totality of the arguments presented by the parties, that this complaint poses serious questions of fact and of law, which cannot be resolved at this stage of examination of the request, but necessitate a further examination of the substance of the case. It follows that this complaint should not be declared manifestly unfounded in the meaning ascribed this term under article 35, paragraph 3 of the Convention.

3. On the complaint based on the alleged violation of article 3 of the Convention

The applicants consider that their segregation, based (at least in part) on their racial origin, in special schools, where they receive instruction that is inferior to that provided by primary schools, constitutes a degrading treatment prohibited under article 3 of the Convention, which reads as follows:

> "No-one may be submitted to torture, nor to inhuman or degrading punishment or treatment."

They assert that the placement in special schools of a disproportionately high number of Roma children[2] is indicative of a deliberate and illegal policy of racial segregation that cannot be objectively and reasonably justified, and that constitutes degrading treatment (*Asians of East Africa v. the United Kingdom*, no. 4403/70-4530/70, report of the Commission of 14 December 1973, DR 78-B, p. 5).

In this particular case, the applicants say they suffered psychological and emotional injury as a result of being stigmatised as "stupid" or "retarded", something that led to a lack of confidence and to feelings of humiliation and inferiority. Moreover, they claim to have been deprived of a multicultural educational environment.

The Government maintains, firstly, that article 3 does not apply to the present case, since the facts alleged by the applicants do not constitute a form of degrading treatment as they have failed to establish even a minimum of *objectivity* in respect of gravity: the fact that the applicants themselves perceive their situation as constituting degrading treatment does not in itself suffice. It also notes that to be a *victim* of such an intervention, the party concerned must find himself in a situation in which he has no reasonable alternative but to submit to the negative consequences of such a disposition. There are no grounds for arguing that the applicants have not been attending the special schools voluntarily, and at the same time, their parents have done nothing to save them from this purportedly degrading treatment. In the opinion of the Government, the argument of the applicants to the effect that the practice of placing Roma in special schools has been around for a long time contradicts the purported existence of a concrete and immediate attack on their own rights and well-being. As for the alleged lack of a multicultural education, this particular aspect should be examined purely from the angle of the right to education.

Moreover, the Government says it is not in a position to comment on the statistics presented by the applicants, since the law on the rights of persons belonging to national minorities prohibits the public authorities from compiling such a data base. It does note, however, that the region of Ostrava, in which the applicants live, is atypical due to its extremely problematic social situation and the high concentration of Roma in its population.

The Government then states that the applicants have not proved that their placement in special schools was based on their race and was accompanied by an intention to effect their segregation. From the point of view of the effectiveness of education, it is, in its view, natural, or at least possible, to group pupils with similar educational needs in the same type of school. As far as the applicants themselves are concerned, their placement in special schools revealed itself to be the best choice in light of the results of the relevant examinations, and this was approved, and sometimes actually requested, by the parents.

With regard to the intensive efforts of the Czech State in the area of education of Roma children, which testify to a just equilibrium between the interests of the applicants and those

[2] According to statistical data obtained by the applicants, 1.8% of children in Ostrava who are not Roma attend special schools, in contrast to 50.3% of Roma children. The percentage of Roma children in the special schools attended by the applicants varies between 57.89% and 95.26%.

of society at large, it cannot, according to the Government, be asserted that the State has not respected the obligations (whether positive or negative) to which it is subject under the provision of article 3.

As for the applicants, they continue to maintain that the offending segregation, which is a particularly severe form of racial discrimination, does indeed meet the minimum level of gravity required by the Court, and they perceive this segregation as an affront to human dignity. There effectively exists in the Czech Republic, they maintain, two school systems, namely, special schools for Roma pupils and primary schools for the others. In this regard, they note that as members of a highly disadvantaged minority, they are particularly vulnerable when faced with treatment such as this, which clearly contravenes article 3.

They also assert that intent is not necessary in order for the treatment in question to qualify as degrading and inhuman. This, they say, follows from reasoning adopted by the Commission in the case of *Asians of East Africa v. The United Kingdom* (previously cited), which was subsequently confirmed by the Court in its ruling in the *Cyprus v. Turkey* case ([GC], no. 25781/94, § 306, CEDH 2001-IV). Pursuant to this precedent, a particular importance must be attached to discrimination that is based on race, and the public imposition on a group of persons of a particular regulatory system that is based on race can, in certain circumstances, constitute a special form of assault on human dignity. Such discrimination is, moreover, contradictory to internationally accepted law. The question of whether the purpose of the treatment was to humiliate or debase the victim is a factor further to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (*Peers v. Greece*, no. 28524/95, § 74, CEDH 2001-III).

The applicants reiterated that in a case of *prima facie* discrimination, it is incumbent upon the respondent State to provide an adequate and satisfactory explanation, and in the absence of such explanation, the Court should state that the difference in treatment is based, in this case, on race. In this regard, they consider the statistical data that they submitted as convincing and incontestable.

Finally, the fact that the segregation in Czech schools has been operating for a long time adds, according to the applicants, to the seriousness of this practice and to the injury that has resulted from it, and demonstrates that the competent authorities sanction, or at the very least, tolerate it.

As regards the types of "treatment" falling under article 3 of the Convention, the jurisprudence of the Court speaks of "ill-treatment" that reaches a minimum degree of gravity and involves actual corporal lesions or intense physical or psychological suffering (*V. v. The United Kingdom* [GC], no. 24888/94, § 71, CEDH 1999-IX). A treatment may qualify as degrading and thus also fall under the prohibition provision of article 3 if it humiliates or debases a person, if it is indicative of a lack of respect for his or her personal dignity, that is, diminishes it, or if it arouses feelings of fear, anguish or inferiority in the person that are capable of breaking the victim's moral or physical resistance (*Valasinas V. Lithuania*, no. 44558/98, § 117, CEDH 2001-VIII, *Pretty v. The United Kingdom*, no. 2346/02, § 52, CEDH 2002-III). The public nature of the punishment or the treatment may constitute a relevant element, but it is quite sufficient for the victim to be humiliated in his or her own eyes, even if he or she is not perceived as such in the eyes of others (*Smith and Grady v. The United Kingdom*, nos. 33985/96 and 33986/96, § 120, CEDH 1999-VI; *Conka and others v. Belgium* (Dec.), no. 51564/99, 13 March 2001).

The Court does not rule out the possibility that a treatment based on prejudice on the part of the majority population towards a national minority may fall under the scope of article 3. In particular, the feelings of inferiority or humiliation caused by a discriminatory segregation in the area of education could, in exceptional circumstances – when a pupil is placed, by reason

of his or her race, in a school whose level is below that of his or her mental capacities – come under the effect of this provision.

In the case in point, the Court notes, however, that the applicants have not produced any items of sufficiently concrete proof to support their contention that the treatment objected to did indeed reach the threshold of gravity required by the provision referred to. In fact, they have restricted themselves to describing a practice supposedly general in the Czech Republic, and the risk that they might be stigmatised in their lives as a result is based in large measure on conjecture.

If the difference in treatment complained of presents, in the eyes of the Court, aspects that the applicants may perceive as distressing or unjust, it does not, at the same time, appear to denote any disdain or lack of respect for the personality of the applicants and was at no time intended to humiliate or debase them.

Consequently, after having deliberated on the relevant facts based on the evidence brought before it, the Court does not consider it as having been established that the applicants have been submitted to ill-treatment of a level of gravity sufficient to qualify as a breach of article 3 of the Convention.

It follows that this complaint must be rejected as manifestly unfounded, pursuant to article 35 paragraphs 3 and 4 of the Convention.

4. On the complaint based on the alleged violation of article 2 of Protocol no. 1 taken in isolation

Putting to one side their complaint based on alleged racial segregation and discrimination, the applicants maintain that, due to the fact that they were placed in schools intended for children with mental deficiencies, they have been deprived of their right to instruction, and that the State has not respected the right of their parents to the effect that this education and schooling be provided in a manner that conforms to their philosophic convictions, that is to say, that it be provided in a multicultural environment and without discrimination. They invoke, in this regard, article 2 of Protocol no. 1, which reads as follows:

> "No-one may be refused the right to education. The State, in the exercise of the functions it assumes in the area of education and instruction, shall respect the right of parents to have this education and training provided for in a manner that conforms to their religious and philosophical convictions."

As for the alleged refusal of the right to instruction, the Government reaffirms that the placement of the applicants in special schools was not arbitrary, but was based on legitimate reasons set forth in the relevant legislation. It notes that in the area of compulsory schooling, pupils are recommended, in accordance with their individual attributes and after due consultation with their parents, a course of instruction that is appropriate to their intellect. As regards Roma children, their lack of preparation for school is often due to a disadvantaged socio-cultural environment. However, as soon as this deficiency is compensated – with the help of preparatory or supplementary classes providing appropriate systematic instruction, or through the help of special schools – they can be transferred to primary schools. The strategy of improving the educational level of Roma children also includes intervention by Roma teaching assistants, the elaboration of alternative educational programmes specifically designed for Roma pupils, the suitable adaptation of tests of intellectual aptitude, and the adoption of a new law on schools.

As regards the placement of a child in a special school, such a step is always preceded by a psychological examination administered in a specialist centre, for which the consent of the parents is required. This examination, designed to establish the educational needs of the child, his or her mental aptitude and a pedagogic prognosis, is conducted with the help of several

tests chosen on the basis of the child's age and the purpose of the examination, and include, for example, methods of projection that ensure the child is not placed at a disadvantage due to an insufficient knowledge of the Czech language. It also includes a meeting with the parents of the child. The results are evaluated by specialist experts. The Government reminds those present that this examination revealed in all the applicants a certain degree of mental retardation, without these conclusions being contested at the time by the parents.

Furthermore, the directors of the specialised schools are under an obligation to inform the pupils' representatives with regard to the possibilities and the preconditions for transfer to regular schools, a move that can be initiated by a request from the parents that the child be re-diagnosed, although it should be noted that such a re-examination is often recommended by the centres themselves. Regular monitoring of the pupils is also carried out through teachers' meetings held at the school.

Given that the special schools serve to concentrate pupils with similar needs, and employ teachers who possess the specific competencies required, the applicants were thus clearly offered the most appropriate and most effective education available to them, though different from that dispensed by regular schools. The Government emphasises that thanks to the existing system, the vast majority of Roma children are literate and have had a complete elementary education. At the hearing, the Government stressed the practical concept behind this education as well as the individualised approach of, and the special care provided by, the teachers in the special schools. Moreover, the objectives of the curricula of both the primary schools and special schools are the same: to teach children the "three Rs" of reading, writing and arithmetic, and to give them an understanding of their place in the natural order and in society.

As for the applicants' claim that they can no longer hope to go to primary school, the government observes that a suggestion to this effect was made to them, but that very few among them took up the opportunity. As far as pursuing studies at secondary school is concerned, facilitated by act no. 19/2000, the Government notes that primary schools, such as the one in Ostrova that is attended by several of the applicants, organised supplementary courses aimed at ex-pupils of special schools, but points out the lack of demand for such courses on the part of Roma children. Moreover, only three of the applicants (nos. 3, 5 and 9) have actually completed their compulsory schooling.

As regards the second sentence of article 2 of Protocol no. 1, the Government maintains that the applicants have not proven how exactly the education provided in special schools does not respect the philosophical convictions of their parents and how their placement in this type of school differed from what they would have wished. Indeed, in stark contrast to this claim, the records clearly show that the parents had consented to the placement of the applicants in special schools, and that in some cases they had positively desired it. Emphasising that the State can only assume its obligation if the said philosophical convictions are expressed, the Government asserts that the State cannot be held responsible for an indifferent and passive attitude of the parents.

The Government concludes that through their request, the applicants are attempting to transfer to the State all responsibility for their education, and that the placement of Roma in special schools relates primarily to social and cultural problems. In its view, article 2 of Protocol no. 1 does not guarantee the right to be placed in a certain type of school, and should not be interpreted as establishing the right of pupils who do not possess the requisite level of intellect to be placed in a school that is intended for children without a mental handicap. Moreover, all that any school does is to offer instruction; the question of knowing whether a child is capable of taking advantage of this offer is not one that rests solely with the State.

The applicants have drawn attention to the supposedly inferior level of education provided by special schools. They assert that by reason of this deficit in instruction, it is

virtually impossible for them to return to regular schools and to acquire a secondary education other than in a centre of apprenticeship. In this context, the applicants draw attention to the inadequate nature of the tests used by the centres of psycho-pedagogic assessment, and to the importance of "informed consent". They conclude by saying that education is one of the primary responsibilities of the State, and therefore it cannot, in this case, absolve itself of its responsibility by simply referring to the problems encountered by the applicants.

The Court reminds those present that, as also indicated by its overall structure, article 2 of Protocol no. 1 forms a whole whose tone is firmly set by its first sentence. By forbidding themselves to refuse the right to education, the contracting States guarantee to everyone falling within their jurisdiction a right of access to the school institutions that exist at a given time, as well as the possibility of attaining, through official recognition of the studies completed, a benefit from the studies pursued. On this fundamental right to education is grafted the right stated by the second sentence of this provision. It is by discharging their natural duty towards their children, which includes, as a matter of priority, assuring them of appropriate education and schooling, that parents are able to demand that the State respect their religious and philosophical convictions. Their right corresponds, therefore, to a responsibility that is closely tied to the enjoyment of the exercise of the right to education (*Kjeldsen, Busk Madsen and Pedersen V. Denmark*, judgement of 7 December 1976, series A no. 23, § 52).

The defining and the management of the school curricula fall, in principle, under the purview of the contracting States. This, in turn, revolves largely around the matter of assuring opportunity, a matter about which the Court is not in a position to pronounce, and the solution to which may legitimately vary from country to country and from one period to the next (*Valsamis v. Greece*, judgement of 18 December 1996, *Recueil* 1996-VI, § 28). The Court has, moreover, judged that "although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position" (*Young, James and Webster v. The United Kingdom*, judgement of 13 August 1981, series A no. 44, § 63; *Efstratiou v. Greece*, judgement of 18 December 1996, Recueil 1996-VI, § 28).

In the present case, the Court states from the outset that the applicants have not been deprived of the right to go to school and to receive an education. It is true that the psycho-pedagogic experts judged that their intellectual deficiencies were such as to prevent them from pursuing the course offered in primary schools, and recommended that they be placed in special schools. This placement was made based on the decision of the director of the school concerned and with the consent of the applicants' parents. Nevertheless, insofar as the special schools possess qualified teachers who use special methods and have classes comprising fewer pupils than those in regular schools, it cannot, in the Court's opinion, be asserted that these institutions provide instruction of inferior quality. Moreover, the applicants have in no way demonstrated that the level of instruction provided by the special schools is actually so low as to represent a denial of the right to education.

It is evident from the allegations of the Government that the authorities wish to permit pupils with similar needs to benefit from a form of schooling that is tailored to their abilities, to help them in surmounting their handicap, whatever that may be, and to thus acquire basic knowledge. According to the Court, these are considerations of an educational and cultural order that are general in character and that do not involve a crossing of the limits of what a democratic State may legitimately conceive of as in the public interest. With regard to the room for judgement that States have in matters of education, one cannot contend that they should be prohibited from creating different schools for different pupils or from putting in place special courses of instruction in response to special needs; such a prohibition could,

contrary to its intention, actually lead to further discrimination towards handicapped children. On this point, the Court cites the opinion of the Commission expressed in the case of *P.D. and L.D. v. The United Kingdom* (no. 14135/88, decision of the Commission of 2 October 1989, DR 62, p. 292), according to which “considerable latitude should be left to the competent authorities as to deciding on the best possible use of resources that are allocated to them in the interest of handicapped children in general. Although these authorities are obliged wherever possible to take account of the convictions of the parents, it cannot seriously be held that the second sentence of article 2 imposes an obligation to the effect that a child suffering from grave mental retardation be admitted to a general school (at the cost of having to reinforce the teaching staff) rather than placing that child in a specialised school.”

As regards the possibility of a transfer to primary schools and the pursuit of secondary studies, the Court must note that the applicants have at no time alleged that they did not have access to tests of aptitude that would have allowed them to be transferred to primary schools or to be admitted to the supplementary courses referred to by the Government. The Court has no choice, therefore, but to subscribe to the argument of the Government which states that the applicants did not take sufficient advantage of the offer that existed.

As for the question of the respect or otherwise of the second sentence of article 2 of Protocol no. 1, the Court notes that it is the right of parents “to enlighten and advise their children, to exercise towards them the natural function of educators, and to point them in a direction that conforms with their own religious or philosophical convictions” (see, *mutatis mutandis*, *Valsamis v. Greece*, cited earlier, § 31). It observes that in this case, nothing allows it to conclude that the parents of the applicants have exercised the said functions in a manner conforming to the convictions that they have referred to – without much elaboration – before the Court, or that they have enabled the national authorities to familiarise themselves with these convictions. This complaint is not, moreover, included in their petition on constitutional grounds submitted on 15 June 1999.

In light of the entirety of the considerations mentioned above, the Court does not see anything that might be said to have offended the convictions of the applicants’ parents in the sense that is prohibited by the second sentence of article 2 of Protocol no. 1, and considers that the Czech authorities have respected the right of the applicants to receive an education that is as effective as possible.

It follows that this complaint must be rejected as manifestly unfounded, pursuant to article 35, paragraphs 3 and 4, of the Convention.

5. *On the complaint based on the alleged violation of article 6, paragraph 1 of the Convention*

Finally, the applicants invoke article 6, paragraph 1 of the Convention, the relevant part of which reads as follows:

> “All persons have the right to have their case heard fairly (…) by a tribunal (…), which shall decide (…) on disputes regarding the person’s civil rights and obligations (…).”

The violation of this provision results, according to them, from the fact that the competent authorities have not justified in an appropriate manner the decisions which led to the applicants’ being placed in special schools and which were not made in keeping with procedural safeguards that might have allowed an avoidance or correction of these purportedly erroneous decisions. Thus they target in particular the methodology of the tests used by the psychological assessment centres, tests that are chosen at the discretion of the psychologists, as well as the means of obtaining the consent of the parents to the placement of

the applicants in special schools, since the applicants maintain that their parents were not informed of the consequences of such consent.

The Court states that article 6 paragraph 1 implies, notably, responsibility on the part of the domestic tribunal; in particular, an obligation to conduct an effective examination of the means, arguments and offers of proof provided by the parties involved, while retaining the right to evaluate the relevance of these in terms of the decision to be made. This provision obliges the tribunals to justify their decisions in an adequate manner, but it should not be understood as calling for a detailed response to each argument advanced. The weight of the obligation to justify a decision can vary according to the nature of the decision, and the question of whether a tribunal has failed in its obligation to justify its decision can only be settled in light of the circumstances of each case (*Jokela v. Finland*, no. 28856/95, § 72, CEDH 2002-IV).

The Court observes that, far from raising the problem of access to a tribunal or questioning the equity of the legal procedure, the applicants focus instead on contesting the cursory justification for the decisions taken by the directors of the special schools and the methodology of the tests of their mental capacities.

Even if we assume that article 6 is applicable to the case in point, and insofar as it is competent to fully appreciate the allegations formulated, the Court does not perceive in them any indication of a violation of the guarantees enshrined in this provision. It observes, notably, that the national legislation authorised the directors of the special schools to adopt such decisions, that these were set down in writing, contained an instruction with respect to the possibility of making an appeal, and were communicated to the parents or legal guardians of the applicants. These decisions were based on results of examinations administered in specialised centres. The said results must have been known by the parents, since it was they who had accompanied their children to the centres and had met with the psychologist, or they could certainly have enquired about the results. At no point, however, did they object to the methodology of the tests used. As far as parental consent to the placement in special schools is concerned, the file records show that such consent was obtained for each of the applicants who currently attends a special school, and that this consent was at no time revoked. With regard to matters pertaining to article 6, paragraph 1 of the Convention, the Court is not competent to venture beyond this statement.

It follows that this complaint must be rejected as manifestly unfounded, pursuant to article 35, paragraphs 3 and 4, of the Convention.

For these reasons, the Court:

Rejects, unanimously, the preliminary objection based on the loss of the status of victim;

Decides, by a majority, to postpone a decision regarding the preliminary objection pertaining to non-exhaustion of domestic remedies pending further exploration of the complaint based on article 14 of the Convention combined with article 2 of Protocol no. 1;

Declares, unanimously, admissible, while reserving final judgement subject to consideration of all available evidence, the complaint of the applicants based on article 14 of the Convention combined with article 2 of Protocol no. 1;

Declares, by a majority, all other aspects of the request to be inadmissible.

S. DOLLÉ	J.-P. COSTA
Registrar	President