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Bakalářská práce

**THE CZECH REPUBLIC IN FRONT OF THE EUROPEAN
COURT OF HUMAN RIGHTS: A STUDY OF RECENT CASES**

Knihovna JU - PF



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„Prohlašuji, že jsem tuto bakalářskou práci vypracovala samostatně a použila jsem pouze literaturu a internetové zdroje uvedené v bibliografii.“

.....
Katerina Osičková

ANOTACE

Tato bakalářská práce se zabývá Evropským soudem pro lidská práva, především pak studií jeho aktuálních kauz.

V úvodu práce se seznámíme s charakteristikou soudu, jeho uspořádáním a historií.

V následující části je popsán průběh všech náležitostí pro podání stížnosti k Evropskému soudu pro lidská práva.

Nejdůležitější částí této práce je studie tří stížností, jež byly podány jednotlivci proti České republice.

ANNOTATION

This bachelor thesis is concerned with the European Court of Human Rights, especially with a study of its recent cases.

At the beginning of this thesis we learn about the characterization, organisation and the history of the European Court of Human Rights.

The following part describes the progress of all steps required for lodging an application to the European Court of Human Rights.

The most important part of this thesis is the study of three applications lodged by individuals against the Czech Republic.

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INTRODUCTION

The European Court of Human Rights is an international organisation having its seat in Strasbourg. This Court is composed of number of judges equal to the number of the States of Council of Europe.

Every single individual can lodge an application to the European Court of Human Rights if he/she feels that he/she has been a victim of violation of the rights set out in the European Convention for Protection of Human Rights and Fundamental Freedoms.

Lodging an application is the last possibility for an individual to claim his/her rights. However, such an individual must have used all the remedies available in a certain State.

In this work I will try to work at three interesting applications of different types of discrimination lodged by individuals against the Czech Republic.

CHARACTERIZATION AND ORGANISATION OF THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights is an international Court having its seat in Strasbourg. This Court is composed of number of judges equal to the number of States of the Council of Europe. All these States ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms so that they are bound by this Convention. However, not all the States ratified all the Protocols. Currently the number of the States that signed the Convention is forty-five.

The European Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty which contains the rights and guarantees that the States undertook to respect. The Convention can be ratified only by the States of the Council of Europe.

The task of the European Court of Human Rights is to ensure that all the States that ratified the Convention respect its rights and guarantees. Therefore, the Court accepts the complaints and examines them. When receiving the complaints the Registry assists. The Registry is composed of lawyers from all the member States. The complaint can be lodged either by an individual (in most cases) or by the State. After examining of the complaint the Court passes a judgement which is binding.

The judges do not represent any State and the number of judges of the same nationality is not liable to any restrictions. The judges are elected by the Parliamentary Assembly of the Council of Europe. Their electoral term is for six years and there are two elections. In the first election one half of judges is elected and after three years the second half of judges is elected. The terms of office of one half of the judges are then renewed every three years.

Besides the election of judges also the President, two Vice-Presidents and two Presidents of Section are elected by the Planary Court. These are elected for a three-year-term.

The European Court of Human Rights is divided into four Sections. Two of the Sections are presided over by the Vice-Presidents, the other two Sections are presided over by the Section Presidents.

Within each Section there are Commitees of three judges and Chambers of seven members.

The last part is the Grand Chamber of the Court which is composed of seventeen judges. To these judges also the President, Vice-Presidents and Section Presidents belong.

Composition of the Court¹

(In order of precedence)

Mr Luzius WILDHABER, President	(Swiss)
Mr Christos ROZAKIS, Vice-President	(Greek)
Mr Jean-Paul COSTA, Vice-President	(French)
Sir Nicolas BRATZA, Section President	(British)
Mr Boštjan ZUPANČIČ, Section President	(Slovenian)
Mr Giovanni BONELLO	(Maltese)
Mr Lucius CAFLISCH	(Swiss)
Mr Loukis LOUCAIDES	(Cypriot)
Mr Ireneu CABRAL BARRETO	(Portuguese)
Mr Riza TÜRMEŖ	(Turkish)
Mrs Françoise TULKENS	(Belgian)
Mr Corneliu BÎRSAN	(Romanian)
Mr Peer LORENZEN	(Danish)
Mr Karel JUNGWIERT	(Czech)
Mr Volodymyr BUTKEVYCH	(Ukrainian)
Mr Josep CASADEVALL	(Andorran)
Mrs Nina VAJIĆ	(Croatian)
Mr John HEDIGAN	(Irish)
Mr Matti PELLONPÄÄ	(Finnish)
Mrs Margarita TSATSA- NIKOLOVSKA	(citizen of "The former Yugoslav Republic of Macedonia")
Mr András BAKA	(Hungarian)
Mr Rait MARUSTE	(Estonian)

Mr Kristaq TRAJA	(Albanian)
Mrs Snejana BOTOCHAROVA	(Bulgarian)
Mr Mindia UGREKHELIDZE	(Georgian)
Mr Anatoly KOVLER	(Russian)
Mr Vladimiro ZAGREBELSKY	(Italian)
Mrs Antonella MULARONI	(San Marinese)
Mrs Elisabeth STEINER	(Austrian)
Mr Stanislav PAVLOVSKI	(Moldovan)
Mr Lech GARLICKI	(Polish)
Mr Javier BORREGO BORREGO	(Spanish)
Mrs Elisabet FURA-SANDSTRÖM	(Swedish)
Mrs Alvina GYULUMYAN	(Armenian)
Mr Khanlar HAJIYEV	(Azerbaijani)
Mrs Ljiljana MIJOVIĆ	(citizen of Bosnia and Herzegovina)
Mr Dean SPIELMANN	(Luxemburger)
Mrs Renate JAEGER	(German)
Mr Egbert MYJER	(Dutch)
Mr Sverre Erik JEBENS	(Norwegian)
Mr David Thór BJÖRGVINSSON	(Icelandic)
Mrs Danutė JOČIENĖ	(Lithuanian)
Mr Ján ŠIKUTA	(Slovakian)
Mr Dragoljub POPOVIĆ	(citizen of Serbia and Montenegro)
Mrs Ineta ZIEMELE	(Latvian)
Mr Erik FRIBERGH, Registrar	(Swedish)
Mr Michael O'BOYLE, Deputy Registrar	(Irish)

¹ <http://www.echr.coe.int>

HISTORY OF THE EUROPEAN COURT OF HUMAN RIGHTS + THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in September 1953. This Convention was drawn up within the Council of Europe and was based on the Universal Declaration. The frames of the Convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms.

To enforce the obligations entered into by the Contracting States the Constitution established a new arrangement. The responsibility was given to the three established organisations:

- the European Commission of Human Rights (1954)
- the European Court of Human Rights (1959)
- and the Committee of Ministers of the Council of Europe

According to the original version of the Convention the complaints could be lodged against the Contracting State either by an individual or by other Contracting State. However, the examination of the complaint lodged by an individual was optional and it could therefore be executed only against the States that had accepted it.

The process of the examination of the complaint was following: First of all, the complaint had to be found admissible or inadmissible. This was executed by the Commission. If the complaint was found admissible, both the parties were invited to a friendly settlement. If there was no settlement, the Commission wrote a report consisting of all facts and of its opinion. This report was given to the Committee of Ministers. After the report had been given to the Committee of Ministers, there was a three-month-period. Within this period the case could be brought in front of the Court for the final, binding decision. However, the individuals were not allowed to bring their case in front of the Court. If the case was not brought in front of the Court, the final decision was done by the Committee of Ministers. The Committee of Ministers decided whether there had been a violation of rights set forth in the Convention or not.

Since the Convention was drawn up, thirteen Protocols have been adopted. These Protocols have brought new rights and guarantees.

In 1980's events took an unexpected turn because the number of complaints increased rapidly. An example: The annual number of complaints at the Court had been 7 in 1981 and it was already 119 in 1997. The similar situation was also at the Commission. This showed all these institutions were under a pressure to examine all the complaints within acceptable limits. This situation called for a solution.

The solution was an adoption of Protocol No. 11 to the Convention which should simplify the arrangements so that the length of proceedings of the complaints would be shortened. On 1 November 1998 Protocol No. 11 came into force and replaced the former Protocol.

However, the number of complaints was still increasing and the situation worsened. The number of complaints increased to approximately 130%! A new solution was necessary. In November 2002 the Minister's Deputies issued the terms of reference to the Steering Committee for Human Rights (CDDH) to establish new necessary measures. These new concrete measures should ensure an examination of complaints without delay. As a result Protocol No. 14 was adopted to the Convention.



THE CZECH REPUBLIC AND THE EUROPEAN COURT OF HUMAN RIGHTS

The Czech Republic is one of the States bound by the European Convention. The Czech Republic signed the Convention on 1 January 1993. For this reason every single Czech national can lodge a complaint to the European Court of Human Rights if this person feels some of the rights set forth in the Convention have been broken and so that he/she has been a victim of a violation.

One of many amendments of Act No. 2/1969 Coll. entrusted the Ministry of Justice to represent the State in front of the European Court of Human Rights. Besides this the Government established a function of its representative and adopted also a statutes of his/her office. All activities of this Government Representative must follow the steps accepted by the Government.

The Government Representative represents the State in front of the European Court of Human Rights. He/she is the „lawyer of the State“. Currently, the Government's Representative Office consists of: Mr A. Schorm, the secretary and five specialists.

The Government's Representative Office has more tasks than only to represent the State. It also informs other Ministry of Justice's departments of jurisdiction of the Court. It expresses its opinion in new bills, especially in view of their possible clash with some of the rules of the Convention. Moreover, it gives lectures about the jurisdiction of the Court to judges, representatives and other specialists.

When can a person apply to the European Court of Human Rights?

Every person who feels he/she has been a victim of violation of his/her rights set forth in the European Convention for Protection of Human Rights and Fundamental Freedoms can apply to the European Court of Human Rights. The Convention is signed by the States of Council of Europe. However, not all the States ratified all the Protocols.

If a person feels that a certain State bound by the Convention broke some of the rights at the expense of his/her then he/she can lodge an application. The application has to be aimed only to such State that had ratified the Convention and its Protocols. This complaint has to be aimed against an act caused by one of the authorities in the certain State (bound by the Convention). Such authority can be the Parliament, the Constitutional Court, etc. Moreover, the Court can deal only with complaints against the certain State, not against an individual or private subjects (such as commercial companies).

The following list shows the rights that are protected by the European Constitution and its Protocols:

- the right to life;
- the right to a fair hearing in civil and criminal matters;
- the right to respect for private and family life;
- freedom of expression;
- freedom of thought, conscience and religion;
- the right to an effective remedy;
- the right to the peaceful enjoyment of possessions;
- and the right to vote and to stand for election.²

The next following list shows the acts prohibited by the European Convention and its Protocols:

- torture and inhuman or degrading treatment or punishment;
- arbitrary and unlawful detention;
- discrimination in the enjoyment of the rights and freedoms set out in the Convention;
- the expulsion by a State of its own nationals or its refusing them entry;
- the death penalty;
- and the collective expulsion of aliens.³

² <http://www.echr.coe.int/echr> ³ <http://www.echr.coe.int>

What are the conditions required to satisfy to lodge an application?

First of all, the person lodging an application does not have to be a national of the State against which he/she aims his/her complaint. The important thing is that the violation of the rights of this person has been caused by one of the States bound by the Convention. Of course, this person must have been personally and directly the victim of a violation of his/her rights and such a person can be either an individual or a legal entity.

Further, the person must have used all the remedies available in the certain State. This means aiming the application to the last available authority. Such authority is for example the Constitutional Court for the Czech Republic. From the date of last decision made by the last available authority the person has six months to lodge an application to the Court. After the expiration of this date the Court cannot take an interest on any application. Once the person lodges an application to the Court, this must relate to one of the rights that are set out in the Convention.

How should a person lodge an application?

First of all, the person has to lodge the application in writing, either by post or by fax. However, if the person sends his/her application by fax, he/she also has to send a copy by post. The application has to be written either in English or in French which are the official languages of the Court. An oral apply is not possible to be done. The application has to be sent to the appropriate address:

Monsieur le Greffier de la
Cour européenne des Droits de l'Homme
Conseil de l'Europe
F-67075 STRASBOURG CEDEX
FRANCIE

The applicant may also be asked to provide some additional documents or information that the Court could consider to be necessary to be added. Once the applicant has the application

to be filled, he/she has to do it carefully and has to keep all the required steps. These steps include:

- the complaints of the applicant and a brief summary of all facts
- the list of all remedies the applicant has used
- the list of all the rights that the applicant considers to be violated
- copies of all documents required so far. As the originals are not given the applicant back, the copies should be enclosed.
- the applicant's signature

The applicant can apply also via a lawyer or a representative. However, in such a case the lawyer has to be given the applicant's letter of attorney. If the applicant acts on his/her own and wants to be anonymous, he/she has to provide the Court with justifiable reasons. However, only in special cases the applicant can be given the anonymity. Although, the applicant acts on his/her own, he/she needs a lawyer once the application is notified to the Government. The great majority of applicants are, however, declared inadmissible without being notified to the Government.

After the Registry receives the applicant's complaint it notifies the applicant that his/her apply is successfully filed into the evidence. It also informs the applicant of his/her number that must be included in further correspondence. All correspondence proceeds in writing, the public hearing are more or less exceptional. It is recommended every letter should be answered promptly by the applicant.

What is the following process?

As soon as the Court receives the application, it must examine, whether the application is admissible or not. If the application consists of more than one complaint, the Court examines all of them. After that it decides whether at least one of them or all are admissible. If the Court considers it to be inadmissible, it simply dismisses the application and this decision is final and is not possible to be reversed. If the application is considered by the Court to be admissible, both parties (the applicant and the State) are asked for a friendly settlement.

However, the applicant can wait even a year before the Court can start taking an interest in his/her application.

The Court can come to different conclusions which are binding. The Committee of Ministers supervises the execution of judgements done by the Court. The Court can either takes an opinion there has not been a violation at all or it can considers the applicant to be a victim of violation of his/her rights. In such a case the applicant receives either a satisfaction or a certain sum of money.

What is the difference between the European Court of Human Rights and the European Court of Justice?

The task of the European Court of Justice is to observe the rules in interpretation and execution of foundation charters of the European Community, inclusive of secondary legal regulations. Therefore, the jurisdiction of the European Court of Justice always relates to the rights of the European Union and the European Community. An individual cannot lodge an application to the European Court of Justice. However, sometimes an exception can be accepted. If an individual or a legal entity presume that there has been a violation of their rights, they usually lodge an application to the national courts.

On the other hand, the European Court of Human Rights is an institution of Council of Europe, established to protect the rigts set out in the European Convention for Protection of Human Rights and Fundamental Freedoms. The majority of applications is lodged by individuals who feels they have been victims of violation of the rights set forth in the Convention. However, they must have used all the remedies available in the certain State.

D. H. AND OTHERS V. THE CZECH REPUBLIC

Between the years 1996 and 1999 eighteen Romany children living in Ostrava were placed to special schools. This happened either directly or after some time spent in ordinary elementary schools. The details of the applicants are set out in the Appendix (at the end of this report).

It is necessary to mention the assignment of special schools. Such schools are established for children who have learning difficulties and are not able to attend ordinary elementary schools. Therefore they are placed to such institutions. However, first of all the class teacher suggests to examine of such a child by the pedagogic-psychological children's clinic. After this process the parents must agree with the placement of their child to the special school by signing a written statement.

On 1 January 2005 a new law came into force. This Act No. 561/2004 Coll. (former Act No.29/1984 Coll.) says that almost every child can now attend an ordinary elementary school. The only exception is a child with a very serious handicap, e.g. a mentally handicapped child. It also clearly states that all the children eligible to continue their secondary education have to both successfully complete their primary education and also show they are able to satisfy all the conditions required for the secondary education.

The applicants-represented by the European Roma Rights Center (ERRC) and local counsel-entered an action against the Czech Republic for two main reason. The first reason was a racial discrimination caused by their placement to the special schools and the second one was discrimination against in enjoyment of the right on education. This case represented the first significant complaint of racial discrimination at the European Court of Human Rights.

The ERRS is an international public interest law organisation. This organisation monitors the rights of Romany children and provides legal defence in cases of human rights violation. It takes an interest in discrimination and segregation of Romany children. According to the ERRS a racial discrimination was happening widespread throughout Central and Eastern Europe, especially in the Czech Republic, Slovakia, Bulgaria, Hungary and Romania. The ERRS meant that the situation for Romany children concerning segregation in education not only persisted but somewhere even worsened. This is said to have serious consequences to

Romany generation. Many of Romany children had been raised with inferiority complex. In the ERRS opinion these children had been given neither equal life opportunities nor equal education opportunities. The reasons for it could be prejudice, mistrust towards them and deep-seated racism.

In any event, the ERRS took an opinion that segregating of these children in education based on their ethnicity should be removed with a new policy reform. Such a reform should eliminate all Romany schools as well as it should achieve some ethnical harmony or balance at schools. Not least it should give these children a compulsory first year at ordinary elementary schools as well as their continuation of education at ordinary secondary schools after a previous successful completion of studies at the ordinary elementary schools.

The ECCR prosecuted a research in the city of Ostrava that demonstrated:

- Over half of the Romany child population is schooled in remedial special schools;
- Over half of the population of remedial special schools is Romany;
- Any randomly chosen Romany child is more than 27 times more likely to be placed in schools for the mentally disabled than a similarly situated non-Romany child;
- Even where Romany children manage to avoid the trap of placement in remedial special schools, they are most often schooled in substandard and predominantly Romany urban schools.⁴

This research was used as an evidence in front of the European Court of Human Rights as well.

The case begun on 15 June 1999 when almost all applicants (except for Nr. 1, 2, 10 and 12-see Appendix) turned to the Ostrava Education Authority to reconsider outside formal appeal procedure, the decision why they were placed to the special schools. The applicants found it inappropriate because the tests measuring their intelligence capacity were according to them not only insufficient but also culturally based against Czech Romany. What is more, they stated they had not been sufficiently informed about all possible consequences resulting from

⁴ <http://www.errc.org>

their placement to such institutions. In their opinion this let the influence of racial prejudice towards them. They also said once the children are in such institutions there is only a little chance for their higher education or getting good working opportunities. The applicants stated they had been deprived from their right on education based in their race, colour and ethnicity and association with minorities as well.

However, in the presented material was showed that the applicants' parents agreed with the placement as they signed the written statements. These statements were brought by the previous class teacher of these children. Moreover, he stated the parents had had the right to appeal to the decision about placement and none of the parents had even tried to use it. After a few days all the applicants' parents received a letter from the school authorities containing all the information on the possible going over to ordinary schools from the special schools.

In addition to this all it was already known that some of the children had passed the tests making the transfer possible and attended the ordinary schools.

On 10 September 1999 the Education Authority notified all the applicants of not bringing proceedings outside the appeal procedure.

On 15 June 1999 all the applicants also lodged a constitutional appeal at the Constitutional Court. This appeal again contained complaints about discrimination, insufficient information about the consequences of placement. They claimed segregation and discrimination had reflected two totally different education systems existing in the Czech Republic. The first one was the system of ordinary schools for majority of the population. The second one was the system for minorities, especially for Romany children. In their opinion this led to the inferiority complex and the affront to their dignity. Therefore they asked the Constitutional Court to find a violation of the rights. The next demand was on total repealing of placement Romany children to the special schools.

The same as at the Ostrava Education Authority happened again. The material clearly showed the applicants' parents had agreed by signing the written statements and it also showed they had been fully informed of the situation. At the Constitutional Court was also proved that regular meetings for these children had been held where the question of their possible transfer

to ordinary elementary schools had been discussed. Some of the children had been advised trying to pass tests making the transfer possible.

However, all this was denied by the Ministry of Education. As the Ministry of Education stated there had been no discrimination at all, the parents only had had a real negative attitude to school work as such.

It is no wonder that the Constitutional Court dismissed this appeal because the appeal was manifestly ill-unfounded and had no jurisdiction. The Constitutional Court stated the applicants had had a right of appeal against the decisions to place them in the special schools and had not exercised it. The Constitutional Court noted it was not its role to assess the overall social context.

In this case also European Commission against Racism and Intolerance (ECRI) and the Czech Government took interest. The ECRI had been investigating the situation of Romany children and their placement to the special schools. As the ECRI found out, this segregation still continued and had a harmful impact to their future life or even to the rest of their life. According to the ECRI the standardised test measuring children's intelligence capacity was not compulsory and was only one of more methods serving for examination by the pedagogic-psychological children's clinic and a possible follow-up transfer to the special schools. The ECRI also found out that, although the parents had signed the written statement and so they had consented with the transfer, in fact, they had not been fully informed of all possible consequences to their children's future lives.

Things started to take a turn for the better after the ECRI notified the public the School Act came with a brand new opportunity for children attending the special schools. The School Act entered into force in January 2002. This new brand opportunity was based on a possibility for children from special schools to apply for admission to continue their studies at the ordinary secondary schools. This had not been possible so far because these children had not had sufficient knowledge. On the other hand, in the basis of its research the ECRI observed that a number of Romany children attending ordinary elementary schools rose. Although, as the ECRI noted, the situation concerning the secondary and tertiary level of education was still the same and outdated.

In addition to this, the Czech Republic admitted the Czech Romany were exposed to discrimination to a certain extent but noted it was preparing to introduce new legislation containing effective anti-discrimination tools and certain measures that should help to improve the situation in education system for minorities, especially for Romany children. As it was found out, in spite of having an average intellect some Romany children had been placed to the special schools. In addition to this cca 80% of all children in such institutions were Romany children. Therefore new measures were necessary to help radically change their situation. This Act No. 561/2004 Coll. entered into force on 1 January 2005 (see the page 17).

The next important document that came into force during this case-on 17 February-was Decree No. 73/2005 Coll. on specialised schools (former Decree No. 127/1997 Coll.). This Decree clearly describes not only the various institutions for children suffering from mental disability (such as special schools, auxiliary schools, etc.) but it also describes all the steps in proceeding leading to a possible placement of a child to such institutions.

The applicants alleged that they had been discriminated against in the enjoyment of their right to education on the basis of their race, colour and ethnicity. They relied on Article 14 of the Convention, taken together with Article 2 of Protocol No. 1, which provide:

Article 14⁵

“The enjoyment of the rights and freedoms set forth in the Convention shall be secured without 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.”

Article 2 of Protocol No.1⁶

“No person shall be denied the right to 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.”⁴

⁵ <http://www.echr.coe.int> ⁶ <http://www.echr.coe.int>

The Government made an objection to the applicants' complaints under Article 14, taken together with Article 2 of Protocol No. 1. As the Government noted they had had a right of appeal and none of them had exercised it. According to the Government they had had more means how to act to prevent themselves from the affront of dignity like for example turning to the schools inspectorate. However, no attempt had been made by them.

In 2000 the applicants turned to the European Court of Human Rights. They alleged their placement to the special schools contravened the European Convention for Protection of Human Rights and Fundamental Freedoms. They noted they had been discriminated against in the enjoyment of their right to education based on their race, colour, ethnicity and an association with minorities. Above that they further said the test measuring the intelligence capacity had been culturally based against the Czech Romany and the proceedings about the placement to such institutions had made racial prejudice towards them possible. They also insisted on their opinion that the rule existing in the Czech Republic and requiring the exhaustion of domestic remedies should not apply in their case as the consequences could expose them to a further violation of their rights.

On 1 March 2005 the European Court of Human Rights declared the application-the issue relating to the exhaustion of domestic remedies that brought questions closely connected to the merits of the case partly admissible. However, it also decided to join the Czech Government's preliminary objection to the applicants' complaints under Article 14, taken together with Article 2 of Protocol No. 1. These complaints were based on a number of serious arrangements, such as the arrangement whereby the Roma children were placed to the special schools and what difficulties it brought-e.g. problems in achieving access to be transferred to ordinary schools. About these arrangements also some institutions, including Council of Europe bodies expressed concern. However, the European Court of Human Rights explained its decision that, like the Czech Constitutional Court it was not its role to assess the overall social context.

The applicants were represented in front of the European Court of Human Rights as follows: by the ERRC (having its seat in Budapest), by Lord Lester of Herne Hill, Q.C, Mr J.Goldston, of the New York Bar and Mr D.Stupek (the Czech lawyer). The Government was represented by Mr V.A. Schorm.

To the final judgement in the case of D.H. and others v. the Czech Republic met the European Court of Human Rights on 7 February in Strasbourg. The European Court of Human Rights (Second Section), sitting as a Chamber was composed as follows:

Mr J.P. COSTA, President,

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V.BUTKEVYCH,

Ms A. MULARONI,

Ms D. DOČIENÉ,

And Mrs S. DOLLÉ, Section Registrar.⁷

On 7 February 2006, by a vote of six to one, the European Court of Human Rights came to a judgement that the applicants had not sustained their claims. The applicants had not proven the violation of their rights under Article 14 of the European Convention, taken together with Article 2 of Protocol No. 1.

The Court noted that the applicants' argument about insufficient information on the placement of the children to the special schools as follows: it had been only the parents' responsibility to ensure what education their children would achieve, what circumstances such placement would bring and what other educational opportunities the Czech Republic would offer. As far as the placement of children to the special schools is concerned, the Court remarked it had not been executed on children's origin but on the disabilities of the children. The Court considered the placement to be appropriate and irreversible. Although the Court admitted the situation concernig the education for Romany children is not perfect in the Czech Republic and the applicants' parents may have received incomplete information, the Court clearly expressed that from the evidence brought in front of the Court had not resulted the placement executed had not been based on racial prejudice, on discrimination.

⁷ <http://www.echr.coe.int>

For these reasons the Court found no violation of Article 14 of the Convention, taken together with Article 2 of Protocol No. 1 and added there was no need to re-examine the Government's preliminary objection. It was done by six votes to one.

The quotation of the Registrar President, Mr J.-P. Costa is to be found in the Appendix 2.

Quote of some persons included in this case:

Judge Cabral Barreto said: "To my great regret, I am unable to agree with the majority's finding that there has been no violation of Article 14 of the Convention, taken together with Article 2 of Protocol No. 1. I come to entirely the opposite conclusion."

Judge Cabral Barreto said: "As the Government expressly recognised in their report lodged on 1 April 1999 under Article 25 § 1 of the Framework Convention for the Protection of National Minorities, which is cited at paragraph 26 of the judgment, that at the time (which coincides with the relevant period in the instant case): "Romany children with average or above-average intellect [we]re often placed in such schools on the basis of results of psychological tests (this happen[ed] always with the consent of the parents). These tests [we]re conceived for the majority population and do not take Romany specifics into consideration".

Dimitrina Petrova, Executive Director of the European Roma Rights Centre, said: "This is a sad day for Roma and for the struggle against discrimination. The reality on the ground is unchanged. Systematic racial segregation in the Czech schools continues to deprive thousands of Roma children of quality education. Since the European Convention on Human Rights is a living instrument according to the Strasbourg Court, we will work to ensure that our clients' commitment to equality be vindicated in future judgements."

James A. Goldston, Executive Director of the Open Society Justice Initiative and counsel in this case, observed: "The judgment's narrow conception of discrimination is at odds with developments in much of Europe and the world. The Strasbourg Court has missed a golden opportunity to advance the cause of human rights."

APPENDIX

LIST OF APPLICANTS

1. Ms D.H. is a Czech national of Roma origin who was born in 1989 and lives in Ostrava-Přívoz;
2. Ms S.H. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava-Přívoz;
3. Mr L.B. is a Czech national of Roma origin who was born in 1985 and lives in Ostrava-Fifejdy;
4. Mr M.P. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava-Přívoz;
5. Mr J.M. is a Czech national of Roma origin who was born in 1988 and lives in Ostrava-Radvanice;
6. Ms N.P. is a Czech national of Roma origin who was born in 1989 and lives in Ostrava;
7. Ms D.B. is a Czech national of Roma origin who was born in 1988 and lives in Ostrava-Heřmanice;
8. Ms A.B. is a Czech national of Roma origin who was born in 1989 and lives in Ostrava-Heřmanice;
9. Mr R.S. is a Czech national of Roma origin who was born in 1985 and lives in Ostrava-Kunčičky;
10. Ms K.R. is a Czech national of Roma origin who was born in 1989 and lives in Ostrava-Mariánské Hory;
11. Ms Z.V. is a Czech national of Roma origin who was born in 1990 and lives in Ostrava-Hrušov;
12. Ms H.K. is a Czech national of Roma origin who was born in 1990 and lives in Ostrava-Vítkovice;
13. Mr P.D. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava;
14. Ms M.P. is a Czech national of roma origin who was born in 1990 and lives in Ostava-Hrušov;
15. Ms D.M. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava-Hrušov;
16. Ms M.B. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava

17. Ms K.D. is a Czech national of Roma origin who was born in 1991 and lives in Ostrava-Hrušov;
18. Ms V.Š. is a Czech national of Roma origin who was born in 1990 and lives in Ostrava-Vítkovice;⁸

⁸ <http://www.echr.coe.int>

ZEHNALOVÁ AND ZEHNAL V. THE CZECH REPUBLIC

On 7 December 1994 the applicants, Mrs Jitka Zehnalová and Mr Otto Zehnal, turned to the Přerov Municipal Authorities. They claimed that some public objects in Přerov had not met the technical conditions appointed with the Act No. 53/1985 Coll. and the Act No. 53/1976 Coll. on territorial planning and building regulations. Both the applicants lived in Přerov and many public buildings had not been equipped with necessary equipment making an entrance for the physically handicapped persons possible. It is necessary to remark that the applicant, Mrs Jitka Zehnalová, is a physically handicapped person. Therefore they both turned to the Přerov Municipal Authority and also wrote a letter to the Přerov District Authorities.

On 19 December 1994 the Chairman of the Přerov District Authorities wrote a letter, in which he informed Mrs Zehnalová and Mr Zehnal that proceedings about the scrutiny of 219 decision of the house inspection had been initiated.

Moreover, the applicants were informed by the Přerov Mayor that the Přerov Council had established a commission that would inform the institutions of physically handicapped persons in order to achieve essential measures to improve their situation.

However, as the District Authority was slow to do the scrutiny of that 219 decisions of the house inspection, the applicants turned to the Ministry of Economy to do so for the District Authorities.

However, the Ministry of Economy informed them that the scrutiny would be executed by the Přerov District Authorities.

Although no term had been determined and some of the mentioned obstacles disappeared in the course of time, the applicants stated it had not been done under the pressure of the authorities.

On the contrary, the Government objected that the Přerov District Authorities had taken an interest in all the 219 decisions of the house inspection but it was not possible to improve the

situation of the buildings so quickly. The Government also noted some of the arrangements had been executed in such buildings where possible.

On 21 November 1995 the applicants turned to the Ostrava Regional Court. They asked the Court for not paying the court costs and also requested a lawyer to work out complaints so that the Court could scrutinize some of the decisions of the house inspection.

However, on 7 February 1996 the Regional Court dismissed their complaints.

Mrs Zehnalová and Mr Zehnal turned therefore to the Supreme Court on 12 February 1996. Again, they requested the lawyer and no payment of the court costs. They suggested that the discrimination of physically handicapped persons should end.

However, the Supreme Court rejected their requirements and notified the applicants that they could not have appealed against the decision of the District Authorities. This happened on 29 April 1996.

Therefore, on 23 July 1996 the applicants turned to the Constitutional Court and claimed that some places in Přerov (such as the post, swimming pool, cinemas or the Regional Court) had not been accessible to physically handicapped persons. They said it had been inconsistent with the Act No. 53/1985 Coll. about the access to public buildings for persons with limited capability of movement.

They also required a review of decisions of the District Authorities and the Supreme Court. Both these institutions had refused the requirement of the applicants about an exemption from paying for the court costs. They considered it to be a breach of Article 6 of the European Convention.

Article 6 of the European Convention provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public

order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice“.⁹

However, on 10 March 1997 the Constitutional Court dismissed their complaint. According to the Court there had been no breach of constitutional laws or any other legal regulations or international contracts. The Court therefore dismissed the breach of Article 6 of the European Convention.

IN FRONT OF THE EUROPEAN COURT OF HUMAN RIGHTS + ITS DECISIONS

On 17 February 1997 Mrs Zehnalová and Mr Zehnal turned to the European Court of Human Rights. Again, they claimed that in Přerov there had been lots of places whose entrance had not been adjusted to Mrs Zehnalová and to persons with limited capability of movement generally. According to them the authorities had had no interest in solution of this problem at all.

The applicants also stated there had been a discrimination and a violation of their rights. Moreover, as they had not been provided with a lawyer because the authorities had prohibited this, Articles 1, 6, 8 and 14 had been breached.

Article 8 of the European Convention provides:

1. “Everyone has the right to respect for his private and family life, his home and his correspondence“.
2. “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others“.¹⁰

⁹ <http://www.echr.coe.int> ¹⁰ <http://www.echr.coe.int>

The applicant, Mrs Zehnalová, said she had not been able to live a normal private life and work because the State had not met its duties. These duties had been based on a control of construction of public buildings. On 16 April 1994 the State had adopted an amendment to the Building Act (Act No. 43/1994 Coll.) and its task is among others to ensure an adequate access to public buildings not only for physically handicapped persons but also for elderly people, etc.

The Government, however, considered the applicants' claims to be untrue and unsubstantiated and also noted this Act No. 43/1994 Coll. was related only to the buildings built after this amendment had been adopted.

In addition to this, the Government stated the applicants had not said how this situation had intervened in their private lives and that they had not specified the number of buildings. According to the Government the complaint had been so lengthy that it had been impossible to find a direct connection between the lives of the applicants and the measures for improvement of deficiencies of public buildings.

According to the Government the applicants' complaints had made possible to scrutinize only 38 particular buildings (of total 220). The Government claimed that the District Authorities had investigated all the applicants' complaints and informed them of the results. In 22 cases the District Authorities found out there had been a breach of decisions of the house inspection. In 184 cases the complaints could not be discussed because they had not been lodged in the 3-year- term from the issue of the decision of the house inspection. In 8 cases there had been a cancellation of the scrutiny because the complaints had not been well-founded. In the last 6 cases the District Authority had agreed with the applicants and had cancelled the decisions of the house inspection.

The Government admitted the situation in Přerov was not perfect for physically handicapped persons. However, this had not meant the breach of Article 8 of the Convention because the right for the private and family life had a different sense than the applicants thought.

Against this background the Government disputed the breach of Article 8 and Article 14 of the Convention. The Government found Articles 8 inadmissible.

On the contrary, Mrs Zehnalová and Mr Zehnal claimed they required the scrutiny of 220 buildings. According to the applicants in 15 cases there had been found no documents about

the construction, in 23 cases the District Authority had been slow to do the scrutiny until the term had expired, etc. The applicants said that as a result of this the majority of public buildings (at least 150-such as the police station, the Customs Office, the District Authority, etc.) were still inaccessible persons with limited capability of movement. Therefore, Mrs Zehnalová claimed this really had interfered in her private life because she had been forced to assistance from others, especially from her husband.

The applicants claimed Article 8 of the Convention was admissible because Mrs Zehnalová wanted to live an independent and active private life (in spite of her handicap) and this was one of the purposes of the Convention and its Article 8.

The European Court of Human Rights pointed out Article 8 of the Convention was inadmissible in such cases where the direct connection between the private life of the applicant and the measures required from the State was impossible to find.

The European Court of Human Rights considered the rights that the applicants claimed to be too lengthy and indefinite because the applicants had not been more specific about the mentioned obstacles. They also had not provided the Court with convincing evidence about interference in their private lives. Because of the great number of public buildings (inaccessible to physically handicapped persons) the Court was also skeptical about using of all of them by the applicant.

Moreover, the Court mentioned that the situation in Přerov had been improved. For these reasons the Court found Article 8 of the Convention inadmissible.

As far as the Article 14 of the Convention is concerned, it provides:

Article 14¹¹

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without 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.”

¹¹ <http://www.echr.coe.int>

Mrs Zehnalová insisted that she had been a victim of discrimination although the Government dismissed this claim.

As Article 14 is not independent and Article 8 had been found inadmissible the result of the Court was a dismissal of this claim.

Further, the applicants claimed there had been a breach of Article 3 of the Convention. They felt they had been discriminated and treated in humiliating way because of the handicap of the applicant, Mrs Zehnalová.

Article 3¹²:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment“

The Court stated the applicants had not provided it with convincing evidence of humiliating treatment and its serious and lasting impacts. Therefore the Court dismissed this complaints based on Article 3.

As far as the Article 6 was concerned, the applicants complained they had not been given a lawyer to represent them and conduct their defence. For this reason they stated there had been a breach of Article 6.

The Court notified the applicants that they had asked the national courts and authorities. However, in the Czech Republic no one can be given such a right. It is no wonder that the Court had again rejected this claim.

According to Mrs Zehnalová and Mr Zehnal, the next was a breach of Article 13 of the Convention.

Article 13¹³

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority not with standing that the violation has been committed by persons acting in an official capacity.“

¹² <http://www.echr.coe.int> ¹³ <http://www.echr.coe.int>

The applicants claimed that had happened because they had had no effective national measures for improvement towards a breach of the Convention at their disposal.

The Court noted the points of this complaint had been either unacceptable or unsubstantiated so that it rejected this complaint as well.

The last complaint was about a violation of the rights based on Article 1 of the Convention.

Article 1¹⁴:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”

The Court stated Article 1 of the Convention was a general regulation that could not be broken independently and therefore the complaint had to be dismissed inadmissible.

THE FINAL DECISION

For all the above mentioned reasons on 14 May 2002 the European Court of Human Rights decided with the majority of votes that all the complaints lodged by Mrs Zehnalová and Mr Otto Zehnal against the Czech Republic were inadmissible.

The European Court of Human Rights (Second Section), sitting as a Chamber was composed of following judges:

J.-P. COSTA, President Registrar;

L. LOUCAIDES;

C. BIRSAN;

K. JUNGWIERT;

V. BUTKEVYCZ;

W. THOMASSEN;

M. UGREKHELIDZE¹⁵.

¹⁴ <http://www.echr.coe.int> ¹⁵ <http://www.echr.coe.int>

HAVLÍČKOVÁ V. THE CZECH REPUBLIC

The applicant, Mrs Věra Havlíčková, is a Czech national and lives in Frýdlant in the Czech Republic. The applicant was divorced on 27 June 1988.

The applicant entered an action against the Liberec District Court on 21 November 1988 because she required a separation of the matrimonial property.

Therefore, the Liberec District Court held two hearings. The first one was held on 13 January 1989 and the second one was held one month later, on 13 February 1989. The District Court also designated two experts whose task was to evaluate jewellery, antiques and real estate. Until the experts came to a decision some hearings were held.

On 15 March 1992 the Court notified the applicant that a new expert would examine the antiques and jewellery. The expert's report of the examination was brought in front of the District Court on 6 September 1993.

However, this case was transmitted to another judge of the Liberec District Court.

The following process included other hearings. Within of the month May of the year 1999 two oral hearings were held where both the parties expressed a wish to a friendly settlement. The second hearing was therefore adjourned indefinitely.

On 7 February 2002 another oral hearing should be held because the parties had not informed the Court about the possibility of the friendly settlement. However, this hearing was adjourned for the purpose of evaluating the antiques and jewellery. The Court also called on the applicant to provide it with the address of the witness whose examination she had suggested.

The following process included the Court's designation of the next expert in order to evaluate the antiques and jewellery. This expert delivered his report of the evaluation to the Court on February 2003.

Although on 21 April 2003 the next hearing was held, the applicant was absent for the reason of a stay in the United States of America. Therefore, the hearing had to be adjourned indefinitely. When the applicant came back from the United States, she informed her lawyer

of it and suggested a friendly settlement could be held. However, on 3 September 2003 the applicant notified the Court of the fact that the dispute between both parties was still going on. After a few days the applicant informed the Court of her stay abroad until the end of the year.

For this reason, a new hearing was held on 18 May 2004. The defendant raised objection of bias of the judge. The Ústí nad Labem Regional Court did not admit the objection and decided to transmit the case to the District Court.

As the applicant was ill, the next hearing in November 2004 had to be adjourned. The hearing in January 2005 was also adjourned because the parties were not able to reach an agreement about the jewellery and antiques. As the applicant claimed some of the antiques had been stolen in 1995, the Court requested reports from the Police Office and the Czech Insurance.

The applicant claimed Article 6 of the Convention was broken because the length of the proceedings had been incompatible with the reasonable time requirement set out in this Article of the Convention..

Article 6 of the European Convention provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.¹⁶

However, the Government rejected this claim and stated that the decisive period has not ended yet. The Government claimed the decisive period only began on March 1992 when the Czech Republic recognized the rights of lodging complaints by individuals. In fact, the proceedings of this case in front of the first instance court have still continued.

¹⁶ <http://www.echr.coe.int>

Meanwhile, on 27 August 2003 the applicant lodged an application against the Czech Republic to the European Court of Human Rights. She was represented by Mr V. Pak, the Czech lawyer.

As the European Court of Human Rights stated the application was not manifestly ill-founded, it found it admissible.

The Government claimed this case was too complicated to be resolved quickly and therefore it had to designate several experts to evaluate the jewellery and antiques. New witnesses had been called because the applicant was not able to identify some items of the evaluated property. Moreover, according to the Government the applicant and her ex-husband were not able to reach an agreement to a friendly settlement and also on identity of the jewellery and antiques.

Mrs Havlíčková did not agree with the Government's opinion and claimed there had been a violation of Article 6 of the Convention.

The Court admitted that this case was complicated because all the facts had to be collected. However, the Court took an opinion that this alone could not justify the length of the proceedings. The Court also stated this case begun in November 1988 and was still continuing. According to the Court the Government knew of delays and therefore the Court admitted the violation of Article 6 of the Convention.

The applicant also noted that the value of the property was about CZK 400 000 in 1988 and since then it doubled. The Government stated such a claim should be dismissed.

The Court decided that the applicant must have sustained some moral damage so that only satisfaction would be insufficient. Therefore it decided the applicant to be awarded EUR 10,000.

On 14 February 2006 the European Court of Human Rights decided with the majority of votes that the complaint lodged by Mr Věra Havlíčková against the Czech republic was

admissible. It admitted there has been a violation of Article of the Convention and stated the applicant was awarded EUR 10,000.

The European Court of Human Rights (Second Section), sitting as a Chamber was composed of following persons:

Mr J.-P. COSTA, *President*,

Mr I. CABRAL BARRETO,

Mr K. JUNGWIERT,

Mr V. BUTKEVYCH,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*.¹⁷

¹⁷ <http://www.echr.coe.int>

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CONCLUSION

In the first part of my work I investigated the European Court of Human Rights and found out it has great importance because it is the applicant's last possibility to claim his/her rights (in a case of their violation). The applicant sometimes achieves certain satisfaction only when he/she claims at this Court.

In my work I dealt with three cases that I found not only very interesting but also understandable.

The first case I chose concerned with the Romany children matter. This matter is still up-to-date and delicate not only in the Czech Republic but also in other countries. As I found out the segregation of Romany Children at schools resulted in their next "segregation" in their future lives. For this reason many Romany children have been raised with inferiority complex and with a little chance of integration to the lives of majority which is sad.

In the following part of my work I dealt with a case whose applicant was a physically handicapped person. This case clearly shows that the State still cannot take care of physically handicapped sufficiently so that they could feel to be fully-fledged persons. Although this case was won by the Czech Republic, it shows an entrance to lots of buildings is still inaccessible for persons with a certain physical handicap. Such places are for example cinemas, posts or various shops.

At the end I would like to mention that the European Court of Human Rights has its important task and already helped lots of people by admitting their claims and it will help many other people in the future as well.

SHRNUTÍ

V první části své práce jsem se zabývala problematikou Evropského soudu pro lidská práva a zjistila jsem, že má své opodstatnění, neboť dává jedinci ještě poslední možnost, aby se dovolal svých práv, pokud byly porušeny. Někdy se totiž jedinec dočká určité satisfakce až u tohoto soudu.

Ve své práci jsem se zabývala třemi případy, které jsem považovala jednak za velmi zajímavé a pak také za srozumitelné.

První případ, který jsem si zvolila, se týkal romské problematiky, která je nejen v České republice, ale i jinde ve světě, stále aktuálním a citlivým tématem. Dozvěděla jsem se, že segregace romských dětí ve školách vyústí v jejich další „odtržení“ od společnosti v jejich budoucím životě. Na základě toho dospívá mnoho romských dětí s pocitem méněcennosti a mizivé šance na začlenění do života většiny, což je smutné.

V další části své práce jsem se zabývala případem, kdy žadatelka byla fyzicky postiženou osobou. Tento případ jasně ukazuje, že stát se stále ještě nedokáže (či neumí?) postarat o fyzicky postižené osoby tak, aby se mohli cítit jako plnohodnotní občané. Ačkoliv tento spor vyhrála Česká republika, bylo na tomto případě jasně ukázáno, že pro lidi s nějakým fyzickým postižením je vstup do spousty budov stále nepřístupný. Takovými místy jsou například kina, pošty či různé obchody.

Závěrem bych chtěla říci, že Evropský soud pro lidská práva má svou opodstatnělou funkci, neboť již pomohl mnoha lidem tím, že se zde domohli svého práva a ještě spoustě lidem v budoucnosti k tomuto pomůže.

APPENDIX 1

THE OPINION OF JUDGE COSTA

1. "I voted with the majority in this case and therefore found that the Czech Republic had not violated the applicants' rights under Article 14 of the Convention, taken together with Article 2 of Protocol No. 1. I came to that conclusion only after some hesitation and would add that I find some of the arguments in the dissenting opinion of my colleague Judge Cabral Barreto very strong."

2. "Generally speaking, the situation of the Roma in the States of Central Europe, where they are much more numerous than elsewhere, undoubtedly poses problems. Whatever efforts the Governments – strongly encouraged by Council of Europe and European Union institutions – and, it seems to me, the Czech Government in particular make to improve the situation, progress is slow and difficult. The Court had occasion to note that the Roma/gypsy community is subjected, for instance, to violence and discrimination in Slovakia (see *Çonka v. Belgium*, application no. 51564/99, admissibility decision of 13 March 2001). More recently, in the case of *Nachova and Others v. Bulgaria*, the Court found that there were grounds for suspecting that racist attitudes were at the origin of violence that had resulted in the deaths of the two victims, of Roma origin. For this reason, it found a violation of Article 14, taken together with Article 2 (in so far as it lays down procedural obligations), as the authorities had not taken all possible measures to establish whether discriminatory conduct may have played a role in the events (see the Grand Chamber judgment of 5 July 2005, to be published in the Reports of Decisions and Judgments). We must therefore be extremely vigilant. Indeed, it is noted in paragraph 53 of the judgment that the general situation in the Czech Republic concerning the education of Roma children is by no means perfect. That is quite clear."

3. "However, cases should always be examined from the perspective of the individual application. In the present case, the Court had to determine whether the decision to place or retain the 18 applicants in "special schools" was a result of "racist" attitudes. Were they victims of systematic segregation and, therefore, discrimination based on "race" or (more specifically) their association with a national minority, contrary to Article 14, or not?"

4. "It is here, obviously, that the doubt arises and the difficulty lies. The danger is that, under cover of psychological or intellectual tests, virtually an entire, socially disadvantaged, section of the school population finds itself condemned to low level schools, with little opportunity to mix with children

of other origins and without any hope of securing an education that will permit them to progress. There have been occasions in the past in which “tests” were used in some countries with the aim and ultimately the effect of exclude certain categories from universal suffrage. The situation that arose with the right to vote could also arise with the right to education.”

5. “However, it was barely contested in the instant case that the tests were carried out professionally and objectively. Nor was it disputed that the children’s parents consented to their enrolment in special schools. The Court also observed, in paragraph 50, that in at least two instances, the lack of such consent resulted in the pupils concerned being transferred to an “ordinary” primary school. Lastly, although “the statistics reveal worrying figures” (§ 53), the special schools did not cater solely for children of Roma origin. The evidence therefore tends to support the arguments of the Government of the respondent State.”

6. “However, I nevertheless remained hesitant, as the very principle of these special schools is a cause for concern. They have become the subject of debate in many countries, a debate that is highly complex. When the system of the single lower secondary-education school (*collège*) was set up in France it had, and still has to this day, fervent supporters and resolute opponents. The establishment from 1982 onwards of “priority education areas” has to some extent succeeded in correcting, through positive discrimination in the allocation of resources, inequalities of opportunity suffered by pupils living in disadvantaged areas, whose parents are more likely to be suffering from a lack of culture or resources, or from unemployment, it also being noted that in these areas many young people of immigrant extraction do not have French as their native language.”

7. “Yet in spite of all this, should the education policy of the Czech Republic be judged so severely? In particular, should the applicants themselves be regarded as victims of a violation of the Convention in those schools? It seems to me to be difficult to go that far without to some extent distorting the facts and the evidence or departing from the case-law (something which, under the Convention, the Grand Chamber is better placed than a Chamber to do). The Court cited (§ 47) the *Valsamis v. Greece* judgment of 18 December 1996, Reports 1996-VI, in which it was pointed out that the States’ educational choices were more a question of expediency than of legitimacy under the Convention. As for positive discrimination – which, in the present case, would have entailed increased resources for special schools to avoid the risk of their becoming, if not educational “ghettos”, then at least “dead ends” where pupils remain until they reach the minimum school-leaving age, it seems to me that up till now this Court has refused to consider it a State obligation (see, with respect to

Article 8, *Chapman v. the United Kingdom*, judgment of 18 January 2001 [Grand Chamber], ECHR 2001-1). On this point, the judgments cited by Judge Cabral Barreto (*Thlimmenos v. Greece* and *Posti and Rahko v. Finland*) do not, in my view, entail any criticism of States that fail to engage in positive discrimination (nor does he suggest that they do).“

8. “In conclusion, while I regret that I have not been able to agree with all the points made by my colleague in his dissenting opinion, I believe that the Chamber judgment is well-founded. I therefore have overcome my hesitations and voted accordingly.“

APPENDIX 2

Monsieur le Greffier de la
Cour européenne des Droits de l'Homme
Conseil de l'Europe
F 67075 STRASBOURG CEDEX
FRANCIE

EUROPEAN COURT OF HUMAN RIGHTS EVROPSKÝ SOUD PRO LIDSKÁ PRÁVA

Council of Europe, Strasbourg, France
Rada Evropy, Štrasburk, Francie

APPLICATION STÍŽNOST

*under Article 34 of the European Convention on Human Rights
and Rules 45 and 47 of the Rules of Court*
podaná podle článku 34 Evropské úmluvy o lidských právech
a podle článku 45 a 47 Jednacího řádu Soudu

I - THE PARTIES / STRANY

A. THE APPLICANT / STĚŽOVATEL

1. *Surname* Příjmení

.....

2. *First name(s)* Jméno

.....

Sex: male/female

Pohlaví: mužské/ženské

3. *Nationality* Státní příslušnost

.....

4. Occupation Povolání

.....

5. Date and place of birth Datum a místo narození

.....
...

6. Permanent address Trvalé bydliště

.....
...

7. Tel. N°/Tel. č.

.....
...

8. Present address (if different from 6.) Současná adresa (pokud je jiná než v bodě 6.)

.....
...

9. Name of representative* Příjmení a jméno zástupce*

.....
...

A form of authority signed by the applicant should be submitted if a representative is appointed.

Pokud je stěžovatel zastoupen, připojte plnou moc podepsanou stěžovatelem.

10. Occupation of representative Povolání zástupce

.....
...

11. Address of representative Adresa zástupce

.....
...

12. Tel. N°/Tel. č.

.....

Fax N°/Fax č.

.....

B.

THE HIGH CONTRACTING PARTY

VYSOKÁ SMLUVNÍ STRANA

(Fill in the name of the State(s) against which the application is directed)

(Uved'te stát, proti kterému je Vaše stížnost podána)

13.

Czech Republic / Česká republika

II -

**STATEMENT OF THE FACTS
POPIS SKUTEČNOSTÍ**

14.

III -

**STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR
PROTOCOLS
AND OF RELEVANT ARGUMENTS
UVEDENÍ NAMÍTANÝCH PORUŠENÍ ÚMLUVY A/NEBO PROTOKOLU/-Ů A
PŘÍSLUŠNÝCH ARGUMENTŮ**

15.

IV -

**STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION
PROHLÁŠENÍ VE SMYSLU ČLÁNKU 35 ODS. 1 ÚMLUVY**

(See Part IV of the Explanatory Note. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

16.

Final decision (date, court or authority and nature of decision)

Konečné rozhodnutí (datum a druh rozhodnutí, soud nebo jiný vydávající orgán)

17.

Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

Další rozhodnutí (chronologický seznam s uvedením data, soudu nebo jiného orgánu a druhu rozhodnutí)

18.

Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

Máte, případně měli jste k dispozici jiný prostředek nápravy, který jste nevyčerpali? Pokud ano, vysvětlíte, proč jste jej nevyužili.

V -

STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION

POPIS PŘEDMĚTU STÍŽNOSTI A UVEDENÍ PŘEDBĚŽNÝCH NÁROKŮ NA SPRAVEDLIVÉ ZADOSTIUCINĚNÍ

19.

VI -

**STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS
PROHLÁŠENÍ O ŘÍZENÍ PŘED JINÝMI MEZINÁRODNÍMI INSTITUCEMI**

20.

Have you submitted the above complaints to any other procedure of international investigation or settlement? If so, give full details.

Předložili jste výše uvedenou stížnost jiné mezinárodní vyšetřovací nebo smírní instituci? Pokud ano, uveďte podrobnosti.

VII -

LIST OF DOCUMENTS

SEZNAM PŘÍLOH

(NEZASÍLEJTE ORIGINÁLY DOKUMENTŮ, POUZE JEJICH KOPIE)

(Připojte kopie všech rozhodnutí zmíněných v Části IV a VI tohoto formuláře. Pokud kopie nemáte a nemůžete si je obstarat, vysvětlíte proč. Tyto dokumenty Vám nebudou vráceny.)

21.

LIST OF ADDITIONAL DOCUMENTS
SEZNAM DOPLŇUJÍCÍCH PŘÍLOH

VIII –
DECLARATION AND SIGNATURE
PROHLÁŠENÍ A PODPIS

22.

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Prohlašuji podle mého nejlepšího vědomí a svědomí, že všechny informace uvedené v tomto formuláři jsou pravdivé.

Place / Místo

Date / Datum

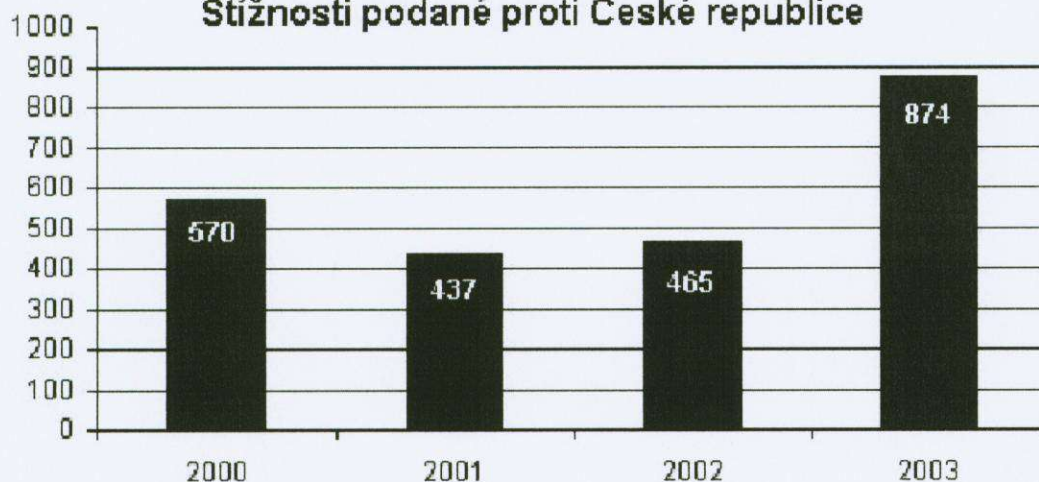
(Signature of the applicant or of the representative)

(Podpis stěžovatele nebo zástupce)

APPENDIX 3

Graf č. 1

Stížnosti podané proti České republice



Graf č. 2

Vládě komunikované stížnosti od 1/1/1993 do 31/12/2003
(celkem 113 stížností)

