UNIVERSITA' DEGLI STUDI DI PERUGIA

DIPARTIMENTO DI DIRITTO PUBBLICO

"L'effettività dei diritti alla luce della giurisprudenza della Corte europea dei diritti dell'uomo di Strasburgo"

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF ORŠUŠ AND OTHERS v. CROATIA

(Application no. 15766/03)

JUDGMENT

STRASBOURG

17 July 2008

Referral to the Grand Chamber

01/12/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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In the case of Oršuš and Others v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President,*
Nina Vajić,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 June 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 15766/03) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fifteen Croatian nationals of Roma origin (see Annex) on 8 May 2003. In a letter of 22 February 2007 the first applicant informed the Court of his wish to withdraw his application.

2. The applicants were represented by the European Roma Rights Center (ERRC), an international public interest law organisation with its seat in Budapest, the Croatian Helsinki Committee (CHC), a non-governmental organisation with its seat in Zagreb, and Mrs Lovorka Kušan, a lawyer practising in Ivanić-Grad. The Croatian Government ("the Government") were represented by their Agent, Mrs Š. Stažnik.

3. On 2 October 2006 the Court decided to communicate the applicants' complaints concerning alleged degrading treatment, the length of proceedings and their right to education and not to be discriminated against, as well as their complaint about the lack of an effective remedy in respect of these complaints, to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants were born between 1988 and 1994 and live respectively in Orehovica, Podturen and Trnovec. Their names and details are set out in the Annex.

5. As schoolchildren the applicants at times attended separate classes, with only Roma pupils, in primary schools in the villages of Macinec, Podturen and Orehovica. The total number of pupils in the Macinec Elementary School in 2001 was 445, 194 of whom were Roma. There were six Roma-only classes, with 142 pupils in all, while the remaining fifty-two Roma pupils attended regular (mixed) classes. The total number of pupils in the Podturen Elementary School in 2001 was 463, 47 of whom were Roma. There was one Roma-only class, with seventeen pupils, while the remaining thirty Roma pupils attended regular (mixed) classes. The total number of pupils in the Orehovica Elementary School in 2001 was 340 and 90 of them were Roma. There were two Roma-only classes, with forty-one pupils, while the remaining forty-nine Roma pupils attended regular (mixed) classes. In Croatia children are obliged to attend school until they reach the age of fifteen.

6. The Government submitted the following information in respect of the individual applicants:

The second applicant, Mirjana Oršuš, was enrolled in the first grade of elementary school in the school year 1997/98. She attended a regular class that year and the following year but in those two years she failed to go up a grade. In school years 1999/2000, 2000/2001, 2001/2002 and 2003/2004 she attended a Roma-only class. In school year 2004/2005 she passed fifth grade. In school year 2004/2005 she attended a regular (mixed) class. She was provided with additional classes of Croatian and also participated in extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen, she left school in August 2006. Her school report shows that she missed 111 classes without justification.

7. The third applicant, Gordan Oršuš, was enrolled in the first grade of elementary school in the school year 1996/1997 and passed first grade. That and the following year he attended a Roma-only class. In school year 1998/1999 and 1999/2000 he attended a regular (mixed) class. He passed second grade in school year 2000/2001. That year and the following year he attended a Roma-only class. In school year 2002/2003 he attended a regular (mixed) class and passed fourth grade. He participated in extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen he left school in October 2001. His school report showed poor attendance in fourth grade.

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8. The fourth applicant, Dejan Balog, was enrolled in the first grade of elementary school in the school year 1996/1997. The first and second year he attended a Roma-only class and the following two years a regular (mixed) class. In school years 2000/2001, 2001/2002 and 2002/2003 he attended a Roma-only class. The following year he attended a regular (mixed) class. In school year 2003/2004 he passed fourth grade. He participated in extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen, he left school in August 2006. His school report showed that he was reprimanded for poor attendance in fourth grade as he missed eighteen classes without justification.

9. The fifth applicant, Siniša Balog, was enrolled in the first grade of elementary school in 1999/2000 and passed first grade. In the school years 1999/2000 to 2002/2003 he attended a Roma-only class, after which he attended a regular (mixed) class. In the school year 2006/2007 he stayed in fifth grade for the third time. He participated in extra-curricular activities in a mixed group organised by the school. His school report showed that he was reprimanded for poor attendance in third grade, having missed seventy-nine classes without justification.

10. The sixth applicant, Manuela Kalanjoš, was enrolled in the first grade of elementary school in school year 1996/1997 and attended a Roma-only class. The following two years she attended a regular (mixed) class. In the school years 1999/2000 to 2002/2003 she attended a Roma-only class and passed fourth grade, after which she attended a regular (mixed) class. She was provided with additional classes of Croatian and also participated in extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen, she left school in August 2005. Her school report showed that she was reprimanded for poor attendance in third grade, where she missed fifteen classes without a good reason.

11. The seventh applicant, Josip Kalanjoš, was enrolled in the first grade of elementary school in 1999/2000 and attended a Roma-only class up to and including the school year 2002/2003, after which he attended a regular (mixed) class. On 22 May 2002 the Međimurje County State Administration Office ordered that he follow an adapted curriculum in his further schooling on the ground that a competent expert committee had established that he suffered from developmental difficulties. In the school year 2006/2007 he attended sixth grade. He was provided with additional classes of Croatian and also participated in extra-curricular activities in a mixed group organised by the school. His school report showed that he was reprimanded for poor attendance in third grade since he missed twenty-nine classes without justification. He was again reprimanded for poor attendance in fifth grade.

12. The eighth applicant, Biljana Oršuš, was enrolled in the first grade of elementary school in the school year 1996/1997 and in her first three school years attended a Roma-only class, after which she attended a regular

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(mixed) class for two years. On 28 December 2000 the Međimurje County State Administration Office ordered that she follow an adapted curriculum in her further schooling on the ground that a competent expert committee had established that she suffered from developmental difficulties. In school years 2001/2002 and 2002/2003 she attended a Roma-only class and in the following school year a regular (mixed) class and passed fourth grade. She was provided with additional classes of Croatian and also participated in extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen, she left school in August 2005. Her school report showed that she was reprimanded for poor attendance in third grade.

13. The ninth applicant, Smiljana Oršuš, was enrolled in the first grade of elementary school in school year 1997/1998 and attended a Roma-only class up to and including school year 2002/2003, after which she attended a mixed class. In 2006/2007 she took fifth grade for the third time. She too participated in extra-curricular activities in a mixed group organised by the school.

14. The tenth applicant, Branko Oršuš, was enrolled in the first grade of elementary school in the school year 1997/1998 and attended a mixed class for the first two years. From 1999/2000 to 2003/2004 he attended a Roma-only class, after which he attended a mixed class. In school year 2003/2004 he passed fourth grade. He was provided with additional classes of Croatian and also participated in the extra-curricular activities in a mixed group organised by the school. After reaching the age of fifteen, he left school in August 2006. His school report showed that he was reprimanded for poor attendance in third grade as he missed nineteen classes without a good reason. He was again reprimanded for poor attendance in fourth and fifth grades.

15. The eleventh applicant, Jasmin Bogdan, was enrolled in the first grade of elementary school in the school year 1997/1998. The preliminary tests carried out before his assignment to a particular class showed that he had no knowledge of the Croatian language. He scored fifteen out of ninety-seven points, or 15.5 percent. He was therefore assigned to a Roma-only class, where he stayed until August 2005 when, after reaching the age of fifteen, he left school. In the school year 2002/2003 he passed fourth grade.

16. The twelfth applicant, Josip Bogdan, was enrolled in the first grade of elementary school in 1999/2000. The preliminary tests carried out before his assignment to a particular class showed that he had no knowledge of the Croatian language. He scored eight out of ninety-seven points, or 8.25 percent. He was therefore assigned to a Roma-only class, where he stayed until August 2006 when, after reaching the age of fifteen, he left school. In school year 2004/2005 he passed second grade. He was provided with additional classes of Croatian.

17. The thirteenth applicant, Dijana Oršuš, was enrolled in the first grade of elementary school in the school year 2000/2001. The preliminary tests

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carried out before her assignment to a particular class showed that she had inadequate knowledge of the Croatian language. She scored twenty-six out of ninety-seven points, or 26.8 percent. She was therefore assigned to a Roma-only class, where she has stayed ever since. In the school year 2006/2007 she attended fourth grade. She was provided with additional classes of Croatian. Her school report showed that she was reprimanded for poor attendance in third grade.

18. The fourteenth applicant, Dejan Oršuš, was enrolled in the first grade of elementary school in school year 1999/2000. The preliminary tests carried out before his assignment to a particular class showed that he had no knowledge of the Croatian language. He scored fifteen out of ninety-seven points, or 15.5 percent. He was therefore assigned to a Roma-only class, where he stayed until 2006 when, after reaching the age of fifteen, he left school. In 2005/2006 he passed third grade. He was provided with additional classes of Croatian. His school report showed that he was reprimanded for poor attendance in third grade since he missed ninety classes without justification.

19. The fifteenth applicant, Danijela Kalanjoš, was enrolled in the first grade of elementary school in the school year 2000/2001. The preliminary tests carried out before her assignment to a particular class showed that her knowledge of the Croatian language was poor. She scored thirty-seven out of ninety-seven points, or 38.14 percent. She was therefore assigned to a Roma-only class, where she has stayed ever since. In the school year 2006/2007 she attended fourth grade. She was provided with additional classes of Croatian.

20. The second to fifteenth applicants submitted that they had been told that they had to leave school at the age of fifteen. Furthermore, the applicants submitted statistics showing that in the school year 2006/2007 sixteen percent of Roma children aged fifteen completed their elementary education, compared with ninety-one percent for the general elementary school population in the county. The drop-out rate of Roma pupils before completing elementary school was eighty-four percent, which was 9.3 times higher than for the general population. In school year 2005/2006 seventy-three Roma children were enrolled in first grade and five in eighth.

21. On 19 April 2002 the applicants brought an action under section 67 of the Administrative Disputes Act in the Čakovec Municipal Court (*Općinski sud u Čakovcu*) against the above-mentioned primary schools and the Kuršanec Primary School, the State and Međimurje County ("the defendants"). They submitted that the teaching organised in the Roma-only classes formed in those four schools was significantly reduced in volume and in scope compared to the officially prescribed curriculum. The applicants claimed that the described situation was racially discriminating and violated their right to education as well as their right to freedom from

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inhuman and degrading treatment. They requested the court to order the defendants to refrain from such conduct in the future.

22. The applicants also produced the results of a psychological study of Roma children attending Roma-only classes in Međimurje, carried out immediately before their action was lodged, showing the following:

- most children had never had a non-Roma child as a friend;
- 86.9% expressed a wish to have a non-Roma child for a friend;
- 84.5% expressed a wish to attend a mixed class;
- 89% said they felt unaccepted in the school environment;
- 92% stated that Roma and non-Roma children did not play together.

Furthermore, the report asserted that segregated education produced emotional and psychological harm in Roma children, in terms of lower self-esteem and self-respect and problems in the development of their identity. Separate classes were seen as an obstacle to creating a social network of Roma and non-Roma children.

23. The defendants each submitted replies to the arguments put forward by the applicants, claiming that there was no discrimination of Roma children and that pupils enrolled in school were all treated equally. They submitted that all pupils were enrolled in school after a committee (composed of a doctor, a psychologist, a pedagogue, a social pedagogue and a teacher) had given an opinion that the candidates were physically and mentally ready to attend school. The classes within a school were formed depending on the needs of the class, the number of pupils etc. In particular, it was important that classes were formed in such a way that they enabled all pupils to study in a stimulating environment.

24. Furthermore, the defendants submitted that pupils of Roma origin were grouped together not because of their ethnic origin, but rather because they often did not speak Croatian well and it took more exercises and repetitions for them to master the subjects taught. Finally, they claimed that Roma pupils received the same quality of education as other students as the scope of their curriculum did not differ from that prescribed by law.

25. On 26 September 2002 the Čakovec Municipal Court dismissed the applicants' action, accepting the defendants' argument that the reason why most Roma pupils were placed in separate classes was that they were not fluent in Croatian. Consequently, the court held that this was not unlawful and that the applicants had failed to substantiate their allegations concerning racial discrimination. Lastly, the court concluded that the applicants had failed to prove the alleged difference in the curriculum of the Roma-only classes.

26. On 17 October 2002 the applicants appealed against the first-instance judgment, claiming that it was arbitrary and contradictory.

27. On 14 November 2002 the Čakovec County Court (*Županijski sud u Čakovcu*) dismissed the applicants' appeal, upholding the reasoning of the first-instance judgment.

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28. Subsequently, on 19 December 2002, the applicants lodged a complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*) under section 62 of the Constitutional Court Act. In their constitutional complaint the applicants reiterated their earlier arguments, relying on the relevant provisions of the Constitution and of the Convention.

29. On 3 November 2003 the applicants' lawyer lodged an application with the Constitutional Court to expedite the proceedings. On 7 February 2007 the Constitutional Court dismissed the applicants' complaint in its decision no. U-III- 3138/2002, published in the Official Gazette no. 22 of 26 February 2007). The relevant parts of the decision read as follows:

> "The first-instance court established in the impugned judgment that the criteria for formation of classes in the defendant elementary schools had been knowledge of the Croatian language and not the pupils' ethnic origin. The [first-instance] court considered that the complainants had failed to prove their assertion that they had been placed in their classes on the basis of their racial and ethnic origin. The [first-instance] court stressed that the complainants relied exclusively on the Report on the activities of the Ombudsman in the year 2000. However, the Ombudsman said in his evidence that the part of the Report referring to the education of Roma had been injudicious because all the relevant facts had not been established.
>
> The first-instance court relied on section 27 paragraph 1 of the Elementary Education Act ... which provides that teaching in elementary schools is in the Croatian language and Latin script, and considered lack of knowledge of the Croatian language as an objective impediment in complying with the requirements of the school curriculum, which also transpires from the conclusion of a study carried out for the needs of the Croatian Helsinki Committee. The [first-instance] court found: 'pupils enrolling in the first year of elementary schools have to know the Croatian language so that they are able to follow the teaching, if the purpose of elementary education is to be fulfilled. It is therefore logical that classes with children who do not know the Croatian language require additional efforts and commitment of teachers, in particular to teach them the Croatian language.'
>
> The first-instance court found that the defendants had not acted against the law in that they had not changed the composition of classes once established, as only in exceptional situations was the transfer of pupils from one class to another allowed. The [first-instance] court considered that this practice respected the completeness of a class and its unity in the upper grades.
>
> The [first-instance] court considered that classes should be formed so as to create favourable conditions for an equal approach to all pupils according to the prescribed curriculum and programme, which could be achieved only where a class consisted of a permanent group of pupils of approximately the same age and knowledge.
>
> Furthermore, the [first-instance] court found that the complainants had failed to prove their assertion that ... they had a curriculum of significantly smaller volume than the one prescribed for the elementary schools by the Ministry of Education and Sport on 16 June 1999. The [first-instance] court found that the above assertion of the complainants relied on the Ombudsman's report. However, the Ombudsman said in his testimony that he did not know how the fact that in Roma-only classes the teaching followed a so-called special programme had been established.

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The [first-instance] court established that teaching in the complainants' respective classes and the parallel ones followed the same curriculum, according to the submitted school curriculum. Only in the Krušanec Elementary School were there some deviations from the school curriculum, but the [first-instance] court found those deviations permissible since they had occurred ... at the beginning of the school year owing to low attendance.

After having established that the complainants had not been placed in their classes according to their racial and ethnic origin and that the curriculum had been the same in all parallel classes, the first-instance court dismissed the complainants' action.

...

The reasoning of the first-instance judgment ... shows that the defendant elementary schools replied to the complainants' allegations as follows:

'The [defendant schools] enrolled in the first year those children found psycho-physically fit to attend elementary school by a committee composed of a physician, a psychologist, a school counsellor (*pedagog*), a defectologist and a teacher. They did not enrol Croatian children or Roma children as such, but children found by the said committee to be psychologically and physically fit to be enrolled in elementary school. (...) The defendant elementary schools maintain that the first obstacle for Roma children in psychological tests is their lack of knowledge of the Croatian language in terms of both expression and comprehension. As to the emotional aspect of maturity, these children mostly have difficulty channelling their emotions. In terms of social maturity, children of Roma origin do not have the basic hygienic skills of washing, dressing, tying or buttoning, and a lot of time is needed before they achieve these skills. (...) It is therefore difficult to plan class structures with sufficient motivation for all children, which is one of the obligations of elementary schools. There are classes composed of pupils not requiring additional schooling to follow the teaching programme and classes composed of pupils who require supplementary work and assistance from teachers in order to acquire the necessary [skills] they lack owing to social deprivation. ...'

The reasoning of the same judgment cites the testimony of M.P.-P., a school counsellor and psychologist in the Mačinec Elementary School, given on 12 December 2001 ...:

'Before enrolment the committee questions the children in order to establish whether they possess the skills necessary for attending school. Classes are usually formed according to the Gauss curve, so that the majority in a given class are average pupils and a minority below or above average. ... However, in a situation where 70% of the population does not speak Croatian, a different approach is adopted so as to form classes with only pupils who do not speak Croatian, because in those classes a teacher's first task is to teach the children the language.'

The above shows that the allocation of pupils to classes is based on the skills and needs of each individual child. The approach is individualised and carried out in keeping with professional and pedagogical standards. Thus, the Constitutional Court finds the applied approach correct since only qualified experts, in particular in the fields of pedagogy, school psychology and defectology, are responsible for assigning individual children to the appropriate classes.

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The Constitutional Court has no reason to question the findings and expert opinions of the competent committees, composed of physicians, psychologists, school counsellors (*pedagog*), defectologists and teachers, which in the instant case found that the complainants should be placed in separate classes.

None of the facts submitted to the Constitutional Court leads to the conclusion that the placement of the complainants in separate classes was motivated by or based on their racial or ethnic origin.

The Constitutional Court finds that their placement pursued the legitimate aim of necessary adjustment of the elementary educational system to the skills and needs of the complainants, where the decisive factor was their lack of knowledge or inadequate knowledge of Croatian, the language used to teach in schools.

The separate classes were not established for the purpose of racial segregation in enrolment in the first year of elementary school but as a means of providing children with supplementary tuition in the Croatian language and eliminating the consequences of prior social deprivation.

It is of particular importance to stress that the statistical data on the number of Roma children in separate classes in the school-year 2001-2002 ... are not in themselves sufficient to indicate that the defendants' practice was discriminatory (see also the European Court of Human Rights judgments *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 154, and *D.H. and Others v. the Czech Republic*, § 46).

Moreover, the complainants themselves maintain in their constitutional complaint that in the school-year 2001-2002 40.93% of Roma children in Međimurje County were placed in regular classes, which tends to support the Constitutional Court's conclusion that there is no reason to challenge the correct practice of the defendant elementary schools and expert committees.

...

In their constitutional complaint the complainants further point out that: 'Even if lack of knowledge of the Croatian language on enrolment in the first year was a problem, the same could not be said of the complainants' enrolment in upper grades.' They therefore consider that their rights were violated by the courts' findings that it had been justified to maintain separate [Roma-only] classes in the upper grades in order to preserve the stability of the wholeness of a given class. The complainants submit that the stability of a class should not have been placed above their constitutional rights, multiculturalism and national equality.

In that regard the Constitutional Court accepts the complainants' arguments.

While the Constitutional Court considers correct and acceptable the courts' findings that lack of knowledge of the Croatian language represents an objective obstacle justifying the formation of separate classes for children who do not speak Croatian at all or speak it badly when they start school, ... bearing in mind the particular circumstance of the present case, it cannot accept the following conclusion of the first-instance court:

'Furthermore, the wholeness and unity of a class is respected in the upper grades. Therefore, transfer of children from one class to another occurs only exceptionally

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and in justified cases (...) because a class is a homogeneous whole and transferring children from one class to another would produce stress. (...) The continuity of a group is a precondition for the development of a class collective ...'

Accordingly, the Constitutional Court cannot accept the following view of the appellate court:

'The classes are formed when the children enter the first year of their schooling, not every year, and their composition changes only exceptionally. They become a settled whole which makes for work of a higher quality and it is not pedagogically justified to change them. Therefore this court, like the first-instance court, concludes that maintaining established classes did not amount to an unlawful act.'

The above views of the courts would have been acceptable had they referred to the usual situations concerning the assignment of pupils to upper grade classes in elementary schools where no objective need for special measures exists, such as forming separate classes for children with inadequate command of Croatian.

Considering the circumstances of the present case, the Constitutional Court finds that it is in principle objectively and reasonably justified to maintain separate classes in the upper grades of elementary school only for pupils who have not attained the level of Croatian necessary for them to follow the school curriculum of regular classes properly. ...

However, there is no objective or reasonable justification for not transferring to a regular class a pupil who has attained proficiency in Croatian in the lower grades of elementary school and successfully mastered the prescribed school curriculum.

...

Keeping such a pupil in a separate class against his or her will ... for reasons unrelated to his or her needs and skills would be unacceptable from the constitutional point of view with regard to the right of equality before the law, guaranteed under Section 14 paragraph 2 of the Constitution.

...

... a constitutional complaint is a particular constitutional instrument for the protection of a legal subject whose human right or fundamental freedom guaranteed under the Constitution has been infringed in an individual act of a State or public body which determined his or her rights and obligations.

The present constitutional complaint concerns impugned judgments referring to the school year 2001/2002. However, not a single complainant alleges that in that school year he or she was a pupil in a separate [Roma-only] upper-grade class or was personally affected or concerned by the contested practice ...

Although it does not concern the individual legal position of any of the complainants ..., in respect of the complainants' general complaint about the maintaining of Roma-only classes in the upper grades of elementary school the Constitutional Court has addressed the following question:

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- was the continued existence of Roma-only classes in the upper grades of elementary school ... caused by the defendants' intent to discriminate those pupils on the basis of their racial or ethnic origin?

... none of the facts submitted to the Constitutional Court leads to the conclusion that the defendants' ... practice was aimed at discrimination of the Roma pupils on the basis of their racial or ethnic origin.

...

The complainants further complain of a violation of their right to education on the ground that the teaching organised in those classes was more reduced in volume and in scope than the Curriculum for Elementary Schools adopted by the Ministry of Education and Sport on 16 June 1999. They consider that 'their placement in Roma-only classes with an inferior curriculum stigmatises them as being different, stupid, intellectually inferior and children who need to be separated from normal children in order not to be a bad influence on them. Owing to their significantly reduced and simplified school curriculum their prospects of higher education or enrolment in high schools as well as their employment options or chances of advancement are slimmer (...)'

After considering the entire case-file, the Constitutional Court has found that the above allegations are unfounded. The case-file, including the first-instance judgment ..., shows that the allegations of an inferior curriculum in Roma-only classes are not accurate. The Constitutional Court has no reason to question the facts as established by the competent court.

The possible difference in curricula between parallel classes for objective reasons (for example the low attendance at the Krušanec Elementary School where in the first term of school year 2001/2002 the pupils in classes 1c,, 1d, 2b and 2c missed 4,702 lessons in total, 4,170 of which were missed for no justified reason) does not contravene the requirement that the curriculum be the same in all parallel classes.

The Constitutional Court is obliged to point out that neither the Constitution nor the Convention guarantees any specific requirements concerning school curricula or their implementation. First and foremost the Constitution and the Convention guarantee a right of access to educational institutions existing in a given State, as well as an effective right to education, in other words that every person has an equal right to obtain official recognition of the studies which he or she has completed (a similar view was expressed by the European Court of Human Rights in a case relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium, § B4). ...

... the Constitutional Court finds the evidence submitted in the present proceedings insufficient to show beyond doubt that the complainants had to follow a school curriculum of lesser scope. ...

Thus, the Constitutional Court considers the complainants' assertion about being stigmatised as a subjective value judgment, without reasonable justification. The Constitutional Court finds no factual support for the complainants' assertion that the source of their stigmatisation was an allegedly reduced curriculum owing to which their prospects for further education were lower, and dismisses that assertion as arbitrary. The competent bodies of the Republic of Croatia recognise a completed

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degree of education to everyone, irrespective of his or her racial or ethnic origin. In that respect everyone is equal before the law, with equal chances of advancement according to their abilities.”

II. RELEVANT DOMESTIC LAW

30. The relevant provisions of the Constitution read as follows:

Article 14

“Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law.”

31. The relevant part of section 62 of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette no. 49/2002, of 3 May 2002; “the Constitutional Court Act”) reads as follows:

Section 62

“1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his or her rights and obligations, or about suspicion or accusation for a criminal act, has violated his or her human rights or fundamental freedoms, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right)...

2. If another legal remedy exists against the violation of the constitutional right [complained of], the constitutional complaint may be lodged only after that remedy has been exhausted.

3. In matters in which an administrative action or, in civil and non-contentious proceedings, an appeal on points of law are allowed, remedies are exhausted only after the decision on these legal remedies has been given.”

32. Section 67 of the Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 53/1991, 9/92 and 77/92) provides for special proceedings for the protection of constitutional rights and freedoms from unlawful acts of public officials, specifically that an action can be brought if the following conditions are met: (a) an unlawful action has already taken place, (b) such action is the work of a government official/body/agency or another legal entity, (c) the action resulted in a violation of one or more of the plaintiff's constitutional rights, and (d) the Croatian legal system does not provide for any other avenue of redress.

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THE LAW

I. THE FIRST APPLICANT

33. The Court notes that by a letter of 22 February 2007 the first applicant expressed the wish to withdraw his application. Thus the Court considers that the applicant may be regarded as no longer intending to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of his case. In view of the above, it is appropriate to continue the examination of the application only in so far as submitted by the remaining applicants.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained that their placement in separate classes based on race represented inhuman and degrading treatment in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

35. The Government argued that the fact that the applicants had at times attended Roma-only class could not in itself represent inhuman or degrading treatment and that therefore, the necessary level of severity for the treatment in question to fall under the scope of Article 3 of the Convention had not been attained.

36. The applicants maintained that as a result of their placement in Roma-only classes they had to endure severe educational, psychological and emotional harm materialised in the creation of two separate school systems for different racial groups which resulted in their stigmatisation, feelings of alienation and lack of self-esteem as well as in denial of the benefits of a multi-cultural educational environment. This situation lasted for a prolonged period of time since the applicants had been segregated for a number of years of their elementary schooling. Furthermore, they maintained that their racial segregation as such had amounted to degrading treatment, in particular in view of their tender age and vulnerable position as members of a particularly disadvantaged minority group. The applicants further relied on the results of a psychological study conducted in the Međimurje County which showed the gravely negative psychological effect of segregated education of Roma children (see paragraph 22 above). Lastly, they pointed

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out that the notion of inhuman and degrading treatment did not require intent.

37. The Court recalls that Article 3 of the Convention must be regarded as one of the most fundamental provisions of the Convention and as enshrining core values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, p. 34, § 88). In contrast to the other provisions in the Convention, it is cast in absolute terms, without exception or proviso, or the possibility of derogation under Article 15 of the Convention. As regards the types of "treatment" which fall within the scope of Article 3 of the Convention, the Court's case-law refers to "ill-treatment" that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering (see *Ireland v. the United Kingdom*, cited above, p. 66, § 167, and *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX). Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see amongst recent authorities, *Price v. the United Kingdom*, no. 33394/96, §§ 24-30, ECHR 2001-VII, and *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII). Although the public character of a sanction or treatment may be regarded as a relevant element, it is sufficient if the victim is humiliated in his or her own eyes (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 120, ECHR 1999-VI).

38. The Court does not in principle exclude that treatment based on prejudice against an ethnic minority may fall within the ambit of Article 3. In particular, the feelings of inferiority or humiliation triggered by discriminatory segregation based on race in the field of education could, in the exceptional circumstances of an individual pupil, amount to treatment contrary to the guarantees of Article 3 of the Convention.

39. In the present case the Court finds, however, that the applicants have not presented sufficient evidence that there existed a prevalent prejudice against them to attain the level of suffering necessary to fall within the ambit of Article 3 of the Convention. Their arguments, relying on a practice in four schools and the risk that they would be stigmatised, remained of a general nature and in the realm of speculation. The placement of the individual applicants in Roma-only classes for a certain period during their education in elementary schools does not reveal any sign of an intent to humiliate or debase them or any lack of respect for their human dignity. The Court notes also that the second to tenth applicants attended both Roma-only and mixed classes, while in respect of the remaining five applicants, who attended Roma-only classes all the time, no evidence was presented showing that it had such an adverse effect on them as to constitute inhuman

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or degrading treatment. Furthermore, the Court notes that most of the applicants attended extra-curricular activities in a mixed group organised by the schools. The fact that such activities were available to all pupils showed that the schools made an effort to provide an opportunity for Roma and non-Roma pupils to socialise outside the classroom. Therefore, having examined the relevant facts presented before it, the Court considers that it has not been established that the applicants were submitted to ill-treatment attaining the necessary level of severity to fall within the scope of Article 3 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

40. The applicants further complained about the length of the proceedings. They relied on Article 6 § 1 of the Convention which, insofar as relevant reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

Applicability of Article 6 to the present case

41. The Court notes that according to the principles enunciated in its case-law (see, *inter alia*, *Pudas v. Sweden*, judgment of 27 October 1987, Series A no. 125-A, p. 14, § 31), a dispute over a "right" which can be said at least on arguable grounds to be recognised under domestic law must be genuine and serious; it may relate not only to the actual existence of the right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question. Furthermore, whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right – and not only its legal classification – under the domestic law of the State concerned (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 89). Accordingly, in ascertaining whether the present case concerns the determination of a civil right, only the character of the right at issue is of relevance (see *König v. Germany*, cited above, § 90).

42. In the present case, the Court notes that the proceedings before the domestic courts concerned the applicants' allegations of infringement of their right not to be discriminated against in the sphere of education, their

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right to education and their right not to be subjected to inhuman and degrading treatment. The applicants raised their complaints before the regular civil courts and in the constitutional court and their complaints were examined on the merits.

43. The Court recalls that it has already found Article 6 applicable in cases concerning a person's right not to be discriminated on grounds of religious belief or political opinion (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, pp. 1656 and 1657, §§ 61 and 62, and *Devlin v. the United Kingdom*, no. 29545/95, § 23, 30 October 2001). The Court sees no reason to take a different approach to cases concerning, *inter alia*, alleged discrimination on grounds of race. Furthermore, the applicants' right not to be discriminated against on the basis of race was clearly guaranteed under Article 14 § 1 of the Constitution and, as such, enforceable before regular civil courts in the national legal system (see, *mutatis mutandis*, *Tserkva Sela Sosulivka v. Ukraine*, no. 37878/02, § 42, 28 February 2008, and *Gülmez v. Turkey*, no. 16330/02, § 29, 20 May 2008).

In view of the above, the Court finds that Article 6 is applicable in the instant case.

44. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The applicants complained that the length of proceedings, and in particular those before the Constitutional Court, had exceeded the reasonable time requirement.

46. The Government contested that argument, stressing the special role of the Constitutional Court and the fact that it had to address complex constitutional issues in the applicants' case.

47. The Court reiterates that the reasonableness of the length of these proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicants' conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1172-73, § 48, and *Gast and Popp v. Germany*, no 29357/95, § 70, ECHR 2000). In this connection the Court notes that the proceedings commenced on 19 April 2002 and ended with the Constitutional Court's decision of 7 February 2007. While the case was speedily decided by the

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trial and appellate court, where the proceedings lasted for some seven months, the same cannot be said of the length of proceedings before the Constitutional Court, which lasted for four years, one month and eighteen days.

48. Although the Court accepts that its role of guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms, the Court finds that a period exceeding four years to decide on the applicants' case and in particular in view of what was at stake for the applicants, namely their right to education, appears excessive.

49. Accordingly, the Court considers that in the present case there has been a violation of Article 6 § 1 of the Convention on account of the length of proceedings before the Constitutional Court.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicants further complained that they had no effective remedy in respect of their Convention complaints. They relied on Article 13 of the Convention which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."...

51. The Government contested that argument.

52. The Court notes that the applicants were able to bring a civil action against the State before the regular courts which decided the case on the merits. They were further able to challenge the first-instance judgment before an appellate court and the Constitutional Court. The latter addressed all issues that are now being examined before the Court. The Court further reiterates that the effectiveness of a given remedy does not depend on an applicant's success in the proceedings at issue. In these circumstances the Court finds that the present complaint does not disclose any appearance of a violation of Article 13 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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V. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION, TAKEN ALONE OR IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

53. The applicants complained that they had been denied their right to education and discriminated against in this respect. They relied on Article 2 of Protocol No. 1 and Article 14 of the Convention, which read as follows:

Article 2 of Protocol No. 1 (right to education)

"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."

Article 14 – Prohibition of discrimination

"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."

A. Admissibility

54. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

55. The applicants maintained that Roma children were treated differently in the educational sphere to children who were not of Roma origin. The difference in treatment consisted in their being placed in separate classes solely owing to their ethnic origin. They argued that they had stood lower chances of higher education since the education they had received in elementary school was based on a curriculum up to thirty percent smaller than that provided in regular classes. Since they had stayed in Roma-only classes for many years of their initial education, it had been impossible for them to compensate for what they had initially missed. They further contended that they had not been provided with individualised assessment of their knowledge of the Croatian language upon their initial enrolment in an elementary school. Although they had not sought a

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particular form of education, once the school authorities had decided that they lacked adequate knowledge of the Croatian language, they had an obligation to ensure that these needs had been properly addressed.

56. The Government argued that the only reason why the applicants had been placed in Roma-only classes had been their inadequate knowledge of the Croatian language. In the instant case the decisions to place the applicants in separate classes were neither arbitrary nor based on the applicants' ethnic origin, as the proper procedure had been followed and the decisions were based on legitimate statutory grounds. None of the authorities' decisions mentioned the applicants' Roma origin or had, at the time of the applicants' placement in Roma-only classes, been opposed by the applicants' parents. Placements of that type were in all cases preceded by a psychological examination by an expert team aimed at establishing the level of each child's command of the Croatian language and level of personal development. Furthermore, most classes in all three schools in question had been mixed. The curriculum for the Roma-only classes had been identical to the one in regular classes. Most of the applicants had attended a Roma-only class for a limited period of time.

2. *The Court's assessment*

Article 2 of Protocol No. 1 taken alone

i. General principles

57. The Court reiterates that the very structure of Article 2 of Protocol No. 1 constitutes a whole that is dominated by its first sentence. By binding themselves not to deny the right to education the Contracting States guarantee to anyone within their jurisdiction a right of access to educational institutions existing at a given time and the possibility of drawing, by official recognition of the studies which he or she has completed, profit from the education received. The setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, p. 26, § 51). The education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development (see *Campbell and Cosans v. the United Kingdom*, judgment of 25 February 1982, Series A no. 48, pp. 14 and 15, § 33).

58. The right to education is principally concerned with primary and secondary schooling and for this right to be effective the education provided

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must be adequate and appropriate. The Court has also held 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 (see *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, Series A no. 44, p. 25, § 63, and *Efstratiou v. Greece*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2358 and 2359, § 28).

ii. Application of the aforementioned principles to the instant case

59. In the case at issue the Court notes firstly that the applicants were not deprived of the right to attend school and receive an education. Furthermore, the Court notes that in the proceedings before the domestic courts it was established that the curriculum followed in separate Roma-only classes in the Podturen Elementary School and the Macinec Elementary School, the schools the applicants in the present case attended, was equal to the curriculum followed in parallel classes in the same schools. The Court notes that the applicants in their submissions to the Court have failed to show sufficient evidence supporting their assertion that the curriculum they followed was up to thirty per cent smaller than that provided in regular classes. Therefore, it cannot be said that the applicants received an education of lower quality than the other pupils in the same school.

60. The Court notes further that transfer from a Roma-only to a mixed class was a regular practice. Thus, the second to tenth applicants attended both Roma-only and mixed classes, while the eleventh to fifteenth applicants attended Roma-only classes. However, the Court notes that there is no indication that these applicants or their parents ever asked for the transfer of any of them to a mixed class, or objected to their placement in a Roma-only class. Furthermore, at the material time the eleventh to fifteenth applicants were still attending lower grades of elementary school, where the question of transfer to a mixed class appears premature in view of the ground for their initial placement in a Roma-only class, namely their insufficient command of the Croatian language.

61. As to the second sentence of Article 2 of Protocol No. 1, the Court notes that it concerns the right of the parents "to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions" (see, *mutatis mutandis*, *Valsamis v. Greece*, judgment of 18 December 1996, *Reports* 1996-VI, pp. 2324 and 2325, § 31). The Court observes that in the present case there is nothing to indicate that the applicants' parents were in any manner deprived of any such right or that they at any stage in the domestic proceedings complained in that respect.

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62. In view of the above considerations, the Court finds that the domestic authorities have provided the applicants with an adequate and sufficient education. There has accordingly been no violation of Article 2 of Protocol No. 1 in the present case.

Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1

i. General principles

63. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV, and *Okpisz v. Germany*, no. 59140/00, § 33, 25 October 2005). However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see *"Case relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits)*, judgment of 23 July 1968, Series A no. 6, § 10; *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-...). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 154, 4 May 2001; and *Hoogendijk v. the Netherlands* (dec.), no. 58461/00, 6 January 2005), and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *Zarb Adami v. Malta*, no. 17209/02, § 76, ECHR 2006-...).

64. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified (see, among other authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III, and *Timishev*, cited above, § 57).

ii. Application of the aforementioned principles to the instant case

65. Although *prima facie* it might appear that the present case is akin to the case of *D.H. and Others v. the Czech Republic*, a more detailed analysis shows that it is not so. First and foremost, as to the nature of the impugned practice, while the Court found that in the Czech Republic Roma children were placed in schools for the mentally challenged, as being of lower intellectual capacity, in Croatia Roma children found to lack sufficient or even basic knowledge of the Croatian language are placed in separate classes upon their enrolment in regular elementary school. It is obvious that

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these two measures differ significantly in their nature and severity. In the Court's view placing a disproportionate percentage of children belonging to a specific ethnic minority in schools for the mentally retarded bears no comparison with placing Roma children in separate classes on the ground that they lack adequate knowledge of the Croatian language. The Croatian authorities, by keeping Roma children in ordinary schools, made the change from a separate class to a regular class more flexible, despite it not being a matter of clearly set procedures and standards but obviously subject to individual assessment by a class teacher. While such a practice could not totally exclude any form of arbitrariness, and it would be preferable to have clearly set standards and procedures to operate the transfers from a Roma-only to a mixed class, it nevertheless allowed for a change from a separate class to a regular class without formalities. In the Court's view it presents some positive aspects in relation to the applicants' rights under Article 14 of the Convention when compared to the practice analysed in the case of *D.H. and Others*, since the majority of the applicants in the present case attended both Roma-only and mixed classes.

66. Furthermore, while in its *D.H. and Others* judgment the Court found that the difference in treatment was based on race, which required the strictest scrutiny, in the present case the difference in treatment was based on adequacy of language skills. This ground, however, allows for a wider margin of appreciation. Unlike in the Czech Republic, where the placing of Roma children in schools for the mentally challenged was found to be a nationwide practice and where about seventy percent of Roma children attended such schools (see *D.H. and Others*, cited above, § 18.), in Croatia the placing of Roma children in separate classes is a method utilised in a very small number of elementary schools, namely, four, in a single region, owing to the high representation of Roma pupils in those schools.

67. The data submitted for the year 2001 show that in the Macinec Elementary School forty-three percent of pupils were Roma and seventy-three percent of those attended a Roma-only class. In the Podturen Elementary School ten percent of pupils were Roma and thirty-six percent of those Roma pupils attended a Roma-only class. In the Orehovica Elementary School twenty-six percent of pupils were Roma and forty-six percent of them attended a Roma-Only class. These statistics show that out of three of the elementary schools in question, only in the Macinec Elementary School did a majority of Roma pupils attend a Roma-only class, while in the two remaining schools the percentage was below fifty percent, which shows that it was not a general policy in these schools to automatically place Roma pupils in separate classes. The Government submitted that the tests taken had shown that a majority of Roma children in these communities lacked adequate knowledge of the Croatian language. The Court accepts that this problem had to be addressed by the relevant State authorities. In this connection the Court also notes that the applicants

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have never contested that at the time of their enrolment in the elementary school they did not have a sufficient command of the Croatian language in order to follow the lessons in that language.

68. The Court wishes to reiterate with regard to the States' margin of appreciation in the sphere of education that the States cannot be prohibited from setting up separate classes or different types of school for children with difficulties, or implementing special educational programmes to respond to special needs. The Court finds it satisfying that the authorities invested themselves in addressing that sensitive and important issue, and that the placement of the applicants in separate classes was a positive measure designed to assist them in acquiring knowledge necessary for them to follow the school curriculum. Thus the Court considers that the initial placement of the applicants in separate classes was based on their lack of knowledge of the Croatian language and not their race or ethnic origin, and was justified for the purposes of both Article 14 of the Convention and Article 2 of Protocol No. 1.

69. It follows that the different practice applied to Roma children on the ground of their insufficient knowledge of the Croatian language did not amount to a violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1.

VI. THE ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE FAIRNESS OF THE PROCEEDINGS

70. Lastly, the applicants complained under Article 6 of the Convention that the domestic proceedings had been unfair in that the courts had wrongfully assessed the evidence presented to them and that their judgments had not been reasoned.

71. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of Article 6 of the Convention. It follows that this complaint is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

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VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. Each applicant claimed 22,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government deemed the applicants' claim for just satisfaction unsubstantiated and unfounded.

75. The Court notes that it has found that the length of proceedings before the Constitutional Court was excessive, contrary to Article 6 § 1 of the Convention. In these circumstances the Court considers that the applicants must have sustained non-pecuniary damage. Ruling on an equitable basis and having regard to the awards made in comparable cases, it awards each applicant EUR 1,300 under that head plus any tax that may be chargeable on that amount.

B. Costs and expenses

76. The applicants also claimed EUR 20,316.50 for the costs and expenses incurred before the Court.

77. The Government deemed the amount claimed excessive.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court reiterates that legal costs are only recoverable to the extent that they relate to the violation that has been found (*Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). In the present case, that means the violation of Article 6 § 1 of the Convention on account of the length of proceedings before the Constitutional Court. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to make a joint award to all the applicants of EUR 2,000 for costs and expenses plus any tax that may be chargeable to the applicants.

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C. Default interest

79. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to discontinue the examination of the application in so far as it concerns the first applicant;

2. *Declares* the complaints concerning the applicants' right to education and their right not to be discriminated against as well as their complaint about the length of proceedings admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 of the Convention as regards the complaint about the length of proceedings before the Constitutional Court;

4. *Holds* that there has been no violation of Article 2 of Protocol No. 1 to the Convention taken alone or in conjunction with Article 14 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts which are to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,300 (thousand three hundred euros) to each applicant in respect of non-pecuniary damage plus any tax that may be chargeable to the applicants;
      (ii) EUR 2,000 (two thousand euros) to the applicants jointly in respect of costs and expenses plus any tax that may be chargeable to the applicants;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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Done in English, and notified in writing on 17 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Christos ROZAKIS
Registrar	President

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A N N E X

LIST OF THE APPLICANTS

	NAME	DATE OF BIRTH	RESIDENCE
1.	Stjepan Oršuš	22 December 1991	Orehovica
2.	Mirjana Oršuš	30 September 1990	Podturen
3.	Gordan Oršuš	16 June 1988	Podturen
4.	Dejan Balog	10 November 1990	Podturen
5.	Siniša Balog	25 January 1993	Podturen
6.	Manuela Kalanjoš	12 February 1990	Podturen
7.	Josip Oršuš	25 February 1993	Podturen
8.	BiljanaOršuš	20 April 1990	Podturen
9.	Smiljana Oršuš	6 April 1992	Podturen
10.	Branko Oršuš	10 March 1990	Podturen
11.	Jasmina Bogdan	11 May 1990	Trnovec
12.	Josip Bogdan	13 September 1991	Trnovec
13.	Dijana Oršuš	20 January 1994	Trnovec
14.	Dejan Oršuš	2 August 1991	Trnovec
15.	Danijela Kalanjoš	7 October 1993	Trnovec

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