

DISSENTING OPINION OF JUDGE JUNGWIERT

(Translation)

1. I strongly disagree with the majority's finding in the present case of a violation of Article 14 of the Convention, read in conjunction with Article 2 of Protocol No. 1.

3. As regards the historical context, the data presented in the judgment (paragraphs 14 to 16) provides information that is inaccurate, inadequate and of a very general nature. The facts as presented in the judgment do not permit the slightest comparison to be made between Roma communities in Europe with respect, *inter alia*, to such matters as demographic evolution or levels of school attendance.

4. I will endeavour to supply some facts and figures to make up for this lack of information.

I should perhaps begin with the awful truth that, so far as the current territory of the Czech Republic is concerned, we are not talking about an “attempted” extermination of the Roma by the Nazis (see paragraph 13) but about their almost total annihilation. Of the nearly 7,000 Roma who were living in the country at the start of the war, scarcely 600 survived.

The situation is thus very different from that in other countries: the Czech Roma, almost all of whom were exterminated, were replaced from 1945 onwards by successive waves of new arrivals in their tens of thousands, mainly from Slovakia, Hungary and Romania. The vast majority of this new population were not only illiterate and completely uprooted, they did not speak the Czech language. The same is not true of other countries on whose territory the Roma have – in principle – been living for decades and even centuries and have attained a degree of familiarity with the environment and language.

5. An important question that needs to be asked is what is the position in Europe and what standards or minimum requirements have to be met?

The question of the schooling and education of Roma children has for almost 30 years been the subject of analysis and, on the initiative of the Council of Europe, proposals by the European Commission and other institutions. The judgment contains more than 25 pages (paragraphs 54 to 107) of citations from Council of Europe texts, Community law and practice, UN materials and other sources. However, the majority of the recommendations, reports and other documents it cites are relatively vague, largely theoretical and, most important of all, were published **after** the period with which the instant case is concerned (1996-1999 – see paragraph 19 of the judgment).

7. In the twelve countries that formed the European Union in 1989 it is acknowledged that between 250,000 and 300,000 children had never attended school. It is an inescapable fact that the trend since then has tended to confirm this diagnosis. There is nothing to suggest an improvement in the situation in this sphere, especially with the enlargement of the European Union. The population of the Roma community is estimated (by the same source) at 400,000 in Slovakia, 600,000 in Hungary, 750,000 in Bulgaria and 2,100,000 in Romania. In total, there are more than 4,000,000 Roma children in Europe, **more than 2,000,000 of whom will, in all probability, never attend school in their lifetimes.**

8. I am determined to bring this terrible and largely concealed truth out into the open, as I consider it shameful that such a situation should exist in Europe in the 21st century. What has caused this alarming silence?

9. Statistical data on the former Czechoslovakia indicates that in 1960 some 30% of Roma had never attended school. This figure has fallen and was only 10% in 1970.

12. I fully accept that while much has been done to help certain categories of pupil acquire a basic knowledge, the situation regarding the education of Roma children in the Czech Republic is far from ideal and leaves room for improvement.

Nevertheless, a closer examination of the situation leads me to ask but one question: which country in Europe has done more, or indeed as much, in this sphere?

DISSENTING OPINION OF JUDGE BORREGO BORREGO

(Translation)

1. I am somewhat saddened by the judgment in the present case.

...

5. ...the Court states at the start of paragraph 182: "*The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority*". Is it the Court's role to be doing this?

7. This, then, is the Court's new role: to become a second ECRI (European Commission against Racism and Intolerance) and dispense with an examination of the individual applications, for example the situation of applicants nos. 9, 10, 11, 16 and 17, in complete contrast to the procedure followed by the Chamber in paragraphs 49 and 50 of its judgment.

8. At the hearing on 17 January 2007 the representatives (from London and New York) of the applicant children (from Ostrava) confined themselves in their oral submissions to an account of the discrimination which they say the Roma are subjected to in Europe.

9. None of the applicant children or the parents of those applicants who were still minors were present at the hearing. The individual circumstances of the applicants and their parents were forgotten. Since Rule 36 § 4 of the Rules of Court states that representatives act on behalf of the applicants, I put a very simple question to the two British and American representatives – had they met the minor applicants and/or their parents? And had they been to Ostrava? I did not receive an answer.

10. I still have the same impression: the hearing room of the Grand Chamber had become an ivory tower, divorced from the life and problems of the minor applicants and their parents, a place where those in attendance could display their superiority over the absentees.

12. I consider the stance taken by the Grand Chamber with respect to the parents of the minor applicants to be extremely preoccupying and, since it concerned all the Roma parents, one that is quite frankly, unacceptable. It represents a major deviation from the norm and reflects a sentiment of superiority that ought to be inconceivable in a court of human rights and strikes at the human dignity of the Roma parents.

14. The Grand Chamber then proceeds to compound its negative appraisal of the Roma parents: "*The Grand Chamber considers that, even assuming the conditions referred to in paragraph 201 above were satisfied, no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest...*" (paragraph 204).

I find this particularly disquieting. The Grand Chamber asserts that **all** parents of Roma children, "even assuming" them to be capable of giving informed consent, are unable to choose their children's school. Such a view can lead to the awful experiences with which we are only too familiar of children being "abducted" from their parents when the latter belong to a particular social group because certain "well-intentioned" people feel constrained to impose their conception of life on all. An example of the sad human tradition of fighting racism through racism.

16. How cynical: the parents of the applicant minors are not qualified to bring up their children, even though they are qualified to sign an authority in favour of British and North American representatives whom they do not even know!