Numéro de dossier 67039/09

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

Conseil de l'Europe – *Council of Europe*
Strasbourg, France

REQUÊTE
APPLICATION

Mikhaj and Others v Russia

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,
ainsi que des articles 45 et 47 du règlement de la Court

under Article 34 of the European Convention on Human Rights
And Rules 45 and 47 of the Rules of the Court

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I. THE PARTIES

A. The Applicants

Applicant 1 – Rustam Mikhaj

1. Surname: Mikhaj

2. First name(s:) Rustam Kolaevich

Sex: Male

3. Nationality: Russian

4. Occupation: Builder

5. Date/ place of birth: 2 April 1979, USSR

6. Permanent Address: 77 Strekalovskaya Str., Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above

Applicant 2 – Yuri Mikhaj

1. Surname: Mikhaj

2. First name(s:) Yuri Rustamovich

Sex: Male

3. Nationality: Russian

4. Occupation: School pupil

5. Date/ place of birth: 16 July 1995, Russian Federation

6. Permanent Address: 77 Strekalovskaya Str., Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above

Applicant 3 – Diana Mikhaj

1. Surname: Mikhaj

2. First name(s:) Diana Rustamovna

Sex: Female

3. Nationality: Russian

4. Occupation: School pupil

5. Date/ place of birth: 16 April 2000, Russian Federation

6. Permanent Address: 77 Strekalovskaya Str., Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above

Applicant 4 – Cherniavka Mikhaj

1. Surname: Mikhaj

2. First name(s:) Cherniavka Valerievna

Sex: Female

3. Nationality: Russian

4. Occupation: Housewife

5. Date/ place of birth: 27 October 1976, USSR

6. Permanent Address: 63 Malinovaya Zaseka, Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above.

Applicant 5 – Louise Mikhaj

1. Surname: Mikhaj

2. First name(s:) Louise

Sex: Female

3. Nationality: Russian

4. Occupation: School pupil

5. Date/ place of birth: 13 April 1994, Russian Federation

6. Permanent Address: 63 Malinovaya Zaseka, Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above.

Applicant 6 – Gulnara Ranko

1. Surname: Ranko

2. First name(s:) Gulnara Sulimanovna

Sex: Female

3. Nationality: Russian

4. Occupation: Housewife

5. Date/ place of birth: 29 October 1982, USSR

6. Permanent Address: 14A Gogol Street, Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above.

Applicant 7 – Helena Ranko

1. Surname: Ranko

2. First name(s:) Helena

Sex: Female

3. Nationality: Russian

4. Occupation: School pupil

5. Date/ place of birth: 10 September 1998, Russian Federation

6. Permanent Address: 14A Gogol Street, Kosaya Gora settlement, Tula City, Russia.

7. Tel. No.: No.

8. Present address: As above.

9. Name of Representatives:

10. Occupation of Representatives:

11. Address of Representatives:

12. Tel No.

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B. The High Contracting Party

13. The Russian Federation.

C. Summary

1. This case concerns the segregation of Roma children within School No. 66 in Tula City, Russia. For several years all the Roma children have been taught in "special classes" whereas all the non-Roma children have been taught in regular classes.

2. This is a case of direct discrimination rather than merely the effect of a neutral policy. The Head of School No.66 states that in the primary school there are "special classes for children of Roma ethnicity." The Statute for School No. 66 explicitly states that the special classes are designed for "Roma children."

3. In School No. 66, almost all of the special classes are composed exclusively of Roma children, and no Roma children are allowed to attend regular classes. According to the lists of pupils for the school year 2008/09, 41 students in School No. 66 attended the four special classes, all of whom are Roma.[1] There were no Roma in the 12 regular classes in the school.

4. Children are supposed to be carefully tested before they are assigned to special classes, and the consent of their parents is required for both the testing and their placement in special classes. However, the Roma parents have not been asked to give their consent, and some were not even aware that their children were being segregated.

5. Children in special classes receive an inferior education compared to children in regular classes. Their education in the Russian language is poor. They are not taught a foreign language. They are not taught computer science or technology, all of which are essential skills in order to progress in society.

6. Until recently, it has been virtually impossible for Roma children to transfer to non-Roma classes. There are special classes only for the first five years of school. Thus, Roma children have no opportunity to attend middle or secondary school, severely limiting their life opportunities, and perpetuating their marginalisation as an ethnic group.

7. The Applicants sought to challenge this treatment before the Russian courts, arguing that it violated their right not to be subjected to discrimination, as well as their rights to be educated, their family rights and the dignity of the children. However, the courts rejected the claims as "unfounded".

8. The existence of separate classes for children with "special needs" that have, by design and in practice, only Roma students, constitutes impermissible racial discrimination and segregation, in violation of the following rights protected by the Convention:

    - *Violation of the Right to Education.* The Applicants are given a sub-standard education for only the first five years of primary school, and are denied any

[1] Ex.32: Class composition in academic year 2008/2009.

access to the secondary education that exists for other Russian children, violating the right of access to effective education protected in Article 2 of Protocol No. 1.

- *Violation of the Right to Non-Discriminatory Enjoyment of the Right to Education.* The Applicants have been subjected to discrimination in the enjoyment of the right to education on the ground of race or ethnic origin by being placed in Roma-only classes in primary school which constitutes a violation of Article 14 taken in conjunction with Article 2 of Protocol No.1.
- *Violation of the Right to Respect for Family Life*. The Applicants contend that the refusal to seek, let alone secure, parental consent for both testing of the children and their placement in special classes constitutes a violation of the right to respect for family life protected by Article 8 of the Convention.
- *Violation of the Right to Non-Discriminatory Enjoyment of the Right to Respect for Family Life.* The authorities did not bother to seek the Applicants' informed consent because they were Roma, amounting to discrimination on the basis of ethnicity in breach of Article 14 taken together with Article 8 of the Convention.
- *No Effective Remedy*. Despite the fact that the case presents clear evidence of ethnic segregation in School No. 66, the efforts made by the Applicants to seek a remedy were prevented by procedural hurdles, such that the substance was not considered. This means that no effective remedy has been provided for the Applicants at the national level in violation of Article 13 of the Convention.

II. STATEMENT OF THE FACTS

9. This case is brought by seven Applicants from three Roma families, including both parents and their children. The first family is represented by Rustam Kolaevich Mikhaj (Applicant 1), his son Yuri Mikhaj (Applicant 2), and his daughter Diana Mikhaj (Applicant 3). The second family is represented by Cherniavka Valerievna Mikhaj (Applicant 4) and her daughter Louise Mikhaj (Applicant 5). The third family is represented by Gulnara Sulimanova Ranko (Applicant 6) and her daughter Helena Ranko (Applicant 7). The facts, procedural history, evidence of discrimination, and relevant domestic law are set out in this section.

The Applicants

10. The Applicants are Russian nationals of Roma origin residing at Kosaya Gora settlement, Tula City, Russia. They have all been placed in separate classes for children with special needs, (классы компенсирующего обучения) (hereafter "special classes") in municipal comprehensive school No. 66 (Муниципальное общеобразовательное учреждение средняя общеобразовательная школа № 66 – МОУСОШ № 66) (hereafter "School No. 66"), of the Privokzalny district of Tula City.

Special Classes in Russia

11. According to Russian law—the Exemplary Statute on Classes for Children with Special Needs in Comprehensive Schools, approved by Decree No. 333 of the Russian Federation Ministry of Education dated 8 September 1992 ("the Exemplary Statute")—special classes are established for children who do not have mental disabilities, but are not prepared for school, with low level of psychological and physiological preparedness for studying.[2] This is one of several statutes which must be adopted by the administration of each comprehensive school, with whatever modifications necessary.

[2] Ex.20 : Exemplary statute on classes for children with special needs in comprehensive schools approved by Decree No. 333 of the Russian Federation Ministry of Education dated 8 September 1992 ("Exemplary Statute of the Russian Federation").

12. Special classes are established in primary (elementary) school.[3] Basic or comprehensive schools in the Russian Federation have 11 years, and are made up of a first level (primary or elementary school, years 1-4), second level (secondary school, years 5-9) and third level (general secondary school, years 10-11).

13. As stated above, the administration of each municipal comprehensive school must adopt governing statutes for the school that are based on the provisions of the legislation of the Russian Federation and the Model Statute of Comprehensive Schools.[4] Certain provisions elaborated in the federal legislation must also be included in every school's statute. In addition, internal regulations may be adopted by the school administration. These internal regulations may include statutes on special classes and circulars on their establishment and composition.

14. The goal of placing children in special classes is to promote their preparedness for schooling.[5] Children in such classes are entitled to special curative and/or corrective treatment and should also receive meals served twice a day at school and an opportunity for sleep during the day. The classrooms for all-day special classes must have space for resting.[6] The number of pupils in special classes is smaller than in regular classes and varies from 9 to 12.

School No. 66 Statute

15. The Statute on Classes for Children with Special Needs, adopted by the pedagogical council of comprehensive School No. 66 on 30 August 2006, and approved by school principal N.S. Lantsova (hereafter the "School No. 66 Statute") on 30 August 2006, is the legal basis for the functioning of special classes in School No. 66.[7]

16. Paragraph 1.2 of the School No. 66 Statute specifies: "Classes for children with special needs are a form of educational differentiation that provides prompt and

[3] *Ibid.* para. 2.3.
[4] *Ibid.*
[5] *Ibid.* para. 1 & 2.
[6] *Ibid.* para. 4.4.
[7] Ex.25: Statute for classes for children with special needs as adopted by School No. 66 ("School No. 66 Statute").

proactive support for children with learning difficulties and problems of adaptation to schooling, to Roma children'."[8]

17. The composition of the special classes in School No. 66 is explicitly defined by school principal N.S. Lantsova in her contribution to the Tula City official web-site: "… in primary school there are also special classes for children of Roma ethnicity."[9]

Assessment of Children for Placement in Special Classes

18. The Exemplary Statute provides that, for children to be placed in special classes, they must be assessed by a board consisting of school representatives and outside staff specialists. If the assessment is not done by a board constituted by the school, it may be delegated to relevant city services: for example, to the municipal psychological service, the children's rehabilitation clinic, or the psychological-pedagogical and medical advisory board.[10] The psychological and pedagogical assessment done for placement in special classes includes gathering and analysis of information on children, direct evaluation of children, and supplementary information gathering in the course of the child's first academic year. The Exemplary Statute does not specify what evaluation techniques or methods should be the basis of a decision to place a child in a special needs class.

19. Article 2.2 of the Exemplary Statute requires that "children are enrolled or transferred in special classes with parental consent." Similarly, the School No. 66 Statute requires that prior to placing children in a special class, the principal should obtain the consent of parents.[11] If the parents agree to the placement, they sign a personal permission request (заявление) and give their consent to a

[8] *Ibid*. It is understood that this should be interpreted as meaning that the special schools are provided for both (1) children with learning difficulties and problems of adaptation to schooling, and (2) Roma children.
[9] Ex. 38: Article on the Tula City website, last accessed 15 February 2010.
[10] *Ibid.* para. 2.4.
[11] Exemplary Statute of the Russian Federation, see note 2 above, at para. 2.2; 25 & para. 21; 34.

complex medical examination, and to a psychological and pedagogical assessment.[12]

20. According to the School No. 66 Statute, "[t]he psychological and pedagogical assessment of children is conducted by the VITA Health Promotion Centre for Pupils and Foster Children," an agency of the Tula Department of Education (hereafter "VITA").[13] The agreement on psychological and pedagogical assessment between School No. 66 and VITA is renewed at the beginning of every academic year.[14] Psychological and pedagogical tests for placement in special classes are conducted regularly, at the beginning and end of the academic year.[15] Assessment is conducted in a specially-equipped room. Children should be examined individually. The parents are allowed to be present during the assessment.[16] The results of the psychological and pedagogical assessment are reflected in the written records of the assessment. These records are the basis for placement in special classes.[17]

Curriculum for Special Classes

21. According to the Exemplary Statute, the duration of general education studies in the special classes should be the same as the duration of regular primary school classes.[18]

22. The educational program in the special classes should include compensatory and developmental studies inside and outside of class.[19] Specialists such as tutors, speech therapists (2 hours per week) and psychologists (2 hours per week) are mandated with the objective of promoting the children's development and/or improving their abilities.[20]

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[12] School No. 66 Statute, see note 7 above at para. 2.1; See also: Ex.39: Transcript of an interview with Elena Ivanova Kalugina, Head of VITA Health Promotion Centre for Pupils and Foster Children dated 18 February 2009 ("Transcript of Interview with VITA Head – 18 Feb. 2009").
[13] See note 11 above, at para. 2.1.
[14] Transcript of Interview with VITA Head – 18 Feb. 2009, see note 12 above.
[15] *Ibid.*
[16] *Ibid.*
[17] *Ibid.*
[18] *Ibid.* para. 2.3.
[19] *Ibid.* para. 3.1.
[20] *Ibid.* para. 3.2 & 3.3.

23. In addition, the academic curriculum that is taught in special classes is inferior to that taught in regular classes. For example, foreign languages and several other courses are not taught at all in primary school.[21] Gulnara Ranko (Applicant 6) states:

> "Until now my daughter has not learnt to read in Russian. Lena as well as other my children can speak Russian well because she has learnt it at home. In our family we speak with children both in Russian and Romani. As a result of her assignment to a special class Lena has received a substantially inferior education as compared with non-Roma children and that this has effectively deprived her of the opportunity to pursue a secondary education."[22]

24. Rustam Mikhaj (Applicant 1) states:

> "My children, unlike non-Roma children, did not study a foreign language, computer science, technology in primary school. My children had never had meals served twice a day at school, improving and medical treatment or training programs. The Russian language teaching was conducted in such a manner that they made no substantial progress."[23]

25. Another parent, Cherniavka Mikhaj (Applicant 4), states:

> "My daughter, unlike non-Roma children, did not study a foreign language or computer science in primary school."[24]

Transfer to Regular Classes

26. The Exemplary Statute states that pupils who have successfully finished their education in the special classes following the decision of psychological and pedagogical assessment board should be transferred to regular classes.[25]

27. If there is no positive change in the child's development within the first year of special classes, the student must undergo certain medical and psychological tests

[21] *Ibid.* para. 12; Ex.2: Affidavit of Cherniavka Mikhaj, at para. 11; Ex.3: Affidavit of Gulnara Ranko, at para. 14.
[22] Affidavit of Gulnara Ranko, *Ibid.*
[23] Ex.1: Affidavit of Rustam Mikhaj, at para. 12.
[24] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 11-12.
[25] *Ibid.* para. 2.8.

in accordance with the established procedure. The child's further education is then tracked into special classes or regular classes according to these test results.[26]

28. The Applicants state that, contrary to legal provisions, special classes in primary school were established solely on the basis of race/ethnicity, constituting discrimination against for Roma children.

> "My daughter did not wish to stop studying and consequently has repeated the 4th special class. In 2006/07 academic year the special 5th class for children of Roma ethnicity was not opened because there had been many Roma children in that year. In 2007/08, Louise successfully finished the 5th class for children with special needs in which only Roma children studied. In the beginning of 2008/09 academic year, Louise unsuccessfully tried to have an opportunity to continue the training in the 6th class with non-Roma children, but she was refused. According to my daughter, T.S. Petuhova, the teacher of School No. 66 answered my daughter's persistent requests by saying: «Go home, you are already adult. We do not have a 6th Roma class». My daughter has simply been banished from school."[27]

Lack of Access to Secondary Education

29. The lack of any special classes beyond the fifth year, together with the difficulties in transferring to regular classes and the inferior academic curriculum that is taught in special classes makes it virtually impossible for children to continue their education beyond primary school, meaning that Roma children are denied a secondary education. As stated above, teacher T.S. Petuhova told Louise Mikhaj (Applicant 5) to "go home, you are already adult. We do not have a 6th Roma class."[28]

Family of Rustam Mikhaj (Applicants 1-3)

30. Rustam Kolaevich Mikhaj (Applicant 1) is a 30-year-old builder. He is married, and his wife is a housewife. They have two children: their 14-year-old son Yuri

[26] *Ibid.* para. 2.9.
[27] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8.
[28] *Ibid.*

(Applicant 2) and their nine-year-old daughter Diana (Applicant 3). They are also responsible for an 11-year-old niece who lives with the family.

31. Yuri Rustamovich Mikhaj (Applicant 2) was born on 16 July 1995. He has gone to School No. 66 since 2002. At present he is in the 4th "G" class for children with special needs.[29]

32. Yuri Mikhaj was enrolled in the first special class at the age of six in 2002. Last year, he finished the fourth special class of primary school. At the beginning of the 2009/2010 academic year, he was refused a transfer to the fifth class. Currently, at the age of 14, he is repeating the fourth class for the third time. Thus, Yuri Mikhaj has attended special classes in primary school for eight years.[30]

33. Yuri Mikhaj dropped out of school several times but he wants to continue his education. In the beginning of the 2009/10 academic year, Rustam Mikhaj (Applicant 1) asked his son's teacher why his son was not enrolled in the fifth class. The teacher responded "I do not know - ask the principal."[31]

34. Diana Rustamovna Mikhaj (Applicant 3) was born on 16 April 2000. She has gone to School No. 66 since 2007. At present, she is in the third "G" special class.

35. Rustam Mikhaj (Applicant 1) states that his daughter and son were placed in special classes without his and his wife's consent, in direct violation of the Exemplary Statute. The psychological and pedagogical assessment of the Applicant's son and daughter were conducted without his consent in breach of School No. 66 Statute.

36. Rustam Mikhaj has entered into evidence a copy of the purported agreement between School No. 66 and himself about his child's medical examination and

[29] Affidavit of Rustam Mikhaj, see note 23 above, at para. 7. It is understood that "G" is an informal word for Roma classes.
[30] *Ibid.*
[31] *Ibid.*

psychological and pedagogical assessment, dated 20 March 2008.[32] He states that his signature on this document was not his and that the assessment of his daughter was therefore without his consent. Following a meeting with his lawyer in February 2009 and the submission of his claim to the District Court, he became aware that these assessments had taken place. Such assessments are conducted twice a year. Therefore, his daughter and son were respectively tested at least five and nine times without parental consent.

37. Rustam Mikhaj was aware that his children studied in a special class for Roma children, but he did not know that his consent for the required assessments and the placement itself was necessary:

> "The placement of my children in such classes has occurred without my consent and the consent of my spouse. Some years ago, when my son has started attending School No. 66 (my daughter was still too young), some other parents of Roma children and I asked the principal why our children were segregated in a separate class. Why did they not study with Russians and other children? The principal has answered us: 'Your children cannot study with all other children because they are different. They differ because they speak among themselves in the Romani language.'"[33]

Family of Cherniavka Mikhaj (Applicants 4 & 5)

38. Cherniavka Valerievna Mikhaj (Applicant 4) is 32 years old. She is married and is a housewife. Her spouse is a builder. They have three children: their 18-year-old son Rustam, their 14-year-old daughter Louise Mikhaj (Applicant 5), and their 13-year-old son Janush.

39. Louise Mikhaj (Applicant 5) has been attending special classes at School No. 66 since 2002. In the 2006/07 academic year, she was forced to repeat the fourth special class of primary school for a second time because there was no place in the fifth special class for Roma children because there were many Roma

[32] Ex.22: Agreement between Rustam Mikhaj (Applicant 1) and School No. 66 for testing of Diana Mikhaj (Applicant 3) in the 2008 academic year ("Testing Agreement Rustam Mikhaj and School No. 66").
[33] Affidavit of Rustam Mikhaj, see note 23 above, at para. 8.

children in that year. As she did not wish to stop studying she re-enrolled in the fourth special class.

40. In the 2007/08 academic year she attended the fifth special class, which, like all of the special classes she attended during her primary education, included only Roma students.

41. At the beginning of the 2008/09 academic year, Louise Mikhaj unsuccessfully tried to transfer to the regular sixth class, i.e. with non-Roma children, but she was refused. Louise's mother, Cherniavka Mikhaj (Applicant 4), states:

> "… the teacher of School No. 66 T.S. Petuhova has answered my daughter's persevering requests: 'Go home, you are already adult. We do not have a 6th Roma class.'"[34]

42. As she was not able to progress to the sixth class, Louise Mikhaj spent the next academic year at home, helping her mother with her siblings.

43. After Cherniavka Mikhaj (Applicant 4) challenged the existence of the special classes in court in March 2009, representatives of School No. 66's administration in September 2009 invited Louise Mikhaj (Applicant 5) back to the school, and she currently attends the fifth regular class.

44. Cherniavka Mikhaj was aware that her daughter studied in a special class for Roma children, but the placement of her daughter in special classes occurred without her consent or the consent of her husband.[35]

45. Cherniavka Mikhaj is aware that only Roma children attended the special classes. Louise Mikhaj, unlike non-Roma children in regular classes, did not study a foreign language, computer science, or other courses that are standard in the regular primary school classes. Her special classes also differed from ordinary classes in other respects: for example, with the exception of the first level special class, pupils in the first level are not subject to double-shift schooling (schooling in second shift/session - во вторую смену). Louise Mikhaj's (Applicant 5) classes included none of the benefits that one might

[34] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8.
[35] *Ibid.* para. 10.

except in a class designed for remedial students – she and other special class students did not benefit from any supplementary training or healthcare. [36]

Family of Gulnara Ranko (Applicants 6 & 7)

46. Gulnara Sulimanovna Ranko (Applicant 6) is 27 years old. She is a housewife. Her husband is a builder. They have three daughters: 11-year-old Helena (Applicant 7), eight-year-old Ganna and five-year-old Alisa.

47. Helena Ranko (Applicant 7) was born on 10 February 1998. She has attended special classes in School No. 66 since 2005. Now she is continuing her education in the fourth «G» special class. At the time of this submission, she has attended special classes at School No. 66 for 5 years, as she repeated the third class.

48. Before she lodged a complaint with the District Court of Tula in March 2009, Gulnara Ranko did not know that her daughter had been attending a special class for Roma children, as she was placed in the special class without her parents' consent. [37] However, she was aware that there were no non-Roma children in her daughter's classes. [38]

49. After the legal case was filed, representatives of the school administration approached Gulnara Ranko for the first time in 5 years and asked her to sign a document consenting for her daughter to attend the fourth special class. [39] She gave her consent, because she was not informed of her right to withhold her consent; not informed that there was any alternative to placing her child in the special class for Roma children; and not informed of the educational consequences of such a placement. [40]

50. Gulnara Ranko describes procedure of enrollment in the special class in September 2009:[41]

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[36] *Ibid.*
[37] Affidavit of Gulnara Ranko, see note 21 above, at para. 9.
[38] *Ibid.* para. 7.
[39] *Ibid.* para. 9.
[40] *Ibid.* para. 10.
[41] *Ibid.* para. 11.

"Representatives of [the] administration of [the]school came to my daughter's class and asked the children: 'Do you wish to study with all the other children, or separately?' My daughter and her Roma schoolmates expressed their willingness to study separately."

51. Helena Ranko informed her mother that she had been subjected to psychological-pedagogical testing prior to the academic year 2009/2010. Prior to this, Gulnara Ranko had not been informed of the testing by the school, or asked for her consent.

52. Gulnara Ranko (Applicant 6) states that, as a result of her daughter's assignment to special classes for children with special needs, Helena Ranko (Applicant 7) received a substantially inferior education as compared with non-Roma children and this effectively deprived her of the opportunity to pursue a secondary education. [42]

Procedural History

53. On 10 March 2009, the Applicants lodged three complaints with the Privokzalny District Court of Tula, the federal court of first instance ("District Court") claiming compensation for non-pecuniary damage incurred by violation of the right to education, interference with family life, and suffering to the children caused by discrimination, rights protected by the Constitution of the Russian Federation and the European Convention of Human Rights. All complaints were brought against the administration of School No. 66 and the Russian Ministry of Education and Science.[43]

54. The Applicants relied on Article 23 of the Russian Federation Law on the Basic Guarantees of the Rights of the Child stating that the payment of court fees is not required "when the case to be tried in court deals with protection of children's rights and legal interests." In accordance with this law, the applicants

[42] *Ibid.* para. 14.
[43] Ex.7: Complaint of 10 March 2009 filed by Rustam Kolaevich Mikhaj (Applicant 1) with the Privokzalny District Court of Tula; Ex.11: Complaint of 10 March 2009 filed by Cherniavka Valerievna Mikhaj (Applicant 4) with the Privokzalny District Court of Tula; Ex.15: Complaint of 10 March 2009 filed by Gulnara Sulmanova Ranko (Applicant 6) with the Privokzalny District Court of Tula.

did not pay court fees, and payment documents were not included with the complaints.

55. The Applicants asked the domestic court to acknowledge that:

- The existence of classes ostensibly for children with special needs but attended only by children of Roma ethnicity in School No. 66 is a manifestation of racism and discrimination on the grounds of ethnicity;
- The testing of the children ostensibly for placement in the special classes without their parents' consent is discrimination and violates the right to private and family life;
- The Russian Federation Ministry of Education and Science represented by its Departments, as well as by Federal Agencies under the Ministry, has not taken the necessary steps to protect the rights of the Applicant's children, and therefore failed to ensure implementation of state guarantees related to children's rights in the sphere of education.[44]
- According to Article 28, Para. 2.1 of the Russian Federation Law on Education, the federal educational authorities are responsible for ensuring state guarantees of citizen's rights in the sphere of education. Article 5 states that "citizens of the Russian Federation are guaranteed the right to education irrespective of … their race, ethnicity…"

56. In light of the fact that some documents proving the facts alleged could be obtained only with the help of the court because the respondent party refused to disclose them, the Applicants filed identical applications requesting the disclosure of documents.[45] An excerpt from the application of Rustam Mikhaj

[44] *Ibid.*

[45] Ex.5: Individual Appeal of the Decision of Privokzalny District Court of Tula of 23 March 2009 filed by Rustam Mikhaj (Applicant 1) with the Tula Regional Court on 21 April 2009, at para. 3 ("Rustam Mikhaj (Applicant 1) Appeal of DC Decision of 23 March 2009"); Ex.9: Individual Appeal of the Decision of the Privokzalny District Court of Tula of 24 March 2009 filed by Cherniavka Valerievna Mikhaj (Applicant 4) with the Tula Regional Court on 21 April 2009 ("Cherniavka Mikhaj (Applicant 4) Appeal of DC Decision of 24 March 2009"); Ex.13: Individual Appeal of the Decision of the Privokzalny District Court of Tula of 19 March 2009 filed by Ranko Gulnara Sulimanovna (Applicant 6) with the Tula Regional Court of 21 April 2009 ("Ranko Gulnara Sulimanovna (Applicant 6) Appeal of DC Decision of 19 March 2009").

(Applicant 1) made on behalf of his children Yuri Mikhaj (Applicant 2), and Diana Mikhaj (Applicant 3) is representative:

> "I ask the court to demand and obtain original copies of documents serving as written evidence from VITA Health Promotion Centre for Pupils and Foster Children […]. These documents are:
>
> - records of complex medical examination and psychological and pedagogical assessment of Diana Rustamovna Mikhaj, born on 16.04.2000, and Yuri Rustamovich Mikhaj, born on 16.07.1995, for the period from 2006 through 2008 and
> - original copies of agreements between the comprehensive school no. 66 and the parents of D.R. Mikhaj and Y.R. Mikhaj on complex medical examination and psychological and pedagogical assessment of the children for the given period.
>
> 3. I ask the court to demand and obtain original copies of documents serving as written evidence from the respondents of School No. 66:
>
> - decrees on establishment and organization of classes for children with special needs in school No. 66 in academic years 2006/07, 2007/08, 2008/09;
> - lists of pupils studying in special classes in school No. 66 in academic years 2006/07, 2007/08, 2008/09;
> - Statute on Classes for Children with Special Needs in school No.66 adopted by Pedagogical Council on 30 August 2006;
> - records of complex medical examination and psychological and pedagogical assessment of Diana Rustamovna Mikhaj, born on 16.04.2000, and Yuri Rustamovich Mikhaj, born on 16.07.1995, for the period from 2006 through 2008 and original copies of agreements between the comprehensive school No. 66 and the parents of D.R. Mikhaj and Y.R. Mikhaj for the stipulated period."[46]

[46] Rustam Mikhaj Appeal of DC Decision of 23 March 2009, *Ibid.* para. 3.

57. All Applicants also requested the court to join their complaints and cases. However, the court ignored all the Applicants' motions without explanation.

Decisions of the District Court of Tula

58. On 19 March 2009, federal judge A.V. Sonina of the Privokzalny District Court of Tula ("District Court") decided not to adjudicate on the merits of the claim lodged by Ranko Gulnara (Applicant 6) with respect to her daughter Helena Ranko (Applicant 7).[47] The District Court held that the claim did not contain any specification of violated rights and legal interests, the Applicant's demands, the facts serving as a basis for the Applicant's demands, or proof of such facts. The District Court also noted the absence of proof of payment of the court fee. Finally, the District Court stated that documents submitted to court did not contain proof of the family relationship between the Applicant and her child.[48]

59. On 23 March 2009, federal judge N.V. Potapova of the District Court decided not to adjudicate on the merits of the claim lodged by Rustam Mikhaj (Applicant 1) on behalf of his children Yuri Mikhaj (Applicant 2) and Diana Mikhaj (Applicant 3).[49] The reasoning and the conclusion repeated in relevant parts the decision of federal judge A.V. Sonina.[50]

60. On 24 March 2009, federal Judge V.S. Glushkova of the Privokzalny District Court of Tula decided not to adjudicate on the merits of the claim lodged by Cherniavka Mikhaj (Applicant 4) on behalf of her daughter Louise Mikhaj (Applicant 5).[51] The reasoning and the conclusion repeated the relevant parts of the decisions of Judge Potapova and Judge Sonina.[52]

[47] Ex.14: Decision of the Privokzalny District Court of Tula of 19 March 2009.
[48] *Ibid.*
[49] Ex.6: Decision of the Privokzalny District Court of Tula federal judge N.V Potapova of 23 March 2009.
[50] *Ibid.*
[51] Ex.10: Decision of the Privokzalny District Court of Tula federal judge VS. Glushkova of 24 March 2009.
[52] *Ibid.*

Appeal to the Tula Regional Court

61. On 21 April 2009, identical appeals were filed to the Tula Regional Court – the federal court of second instance ("Regional Court").[53] The Applicants indicated that the District Court's refusal to adjudicate on the merits of the case was ill-founded, arbitrary, and inconsistent. The Applicants submitted that the District Court's decision was unlawful because Article 23 of the Russian Federation Act on Basic Children's Rights Guarantees provides that a court fee should not be charged when a case concerns children's rights and interests (see para. 54 above). They submitted that the District court's ruling was arbitrary because the Court abused judicial discretion by declining to consider the merits of the claim and concentrating on formal requirements of the Code of Civil Procedure of the Russian Federation. If the District Court of Tula had granted the Applicants' document request, the information uncovered would have supplied the evidence that the Court alleged to be lacking. Finally, the Applicants claimed that the District Court's decision was specious and inconsistent to the extent that it relied upon an assertion that there was no proof of the family relationship between the Applicants and their children because a statement of the parental relationship should have been sufficient and, in any case, further evidence to validate the relationship could have been presented. Further to article 374 of the Code of Civil Procedure, the applicants asked the Regional Court to fully nullify the decision of the District Court due to its refusal to adjudicate the application for discovery of evidence and to refer the case back to the District Court for a new trial.

62. Another key submission in the Applicants' appeal to the Tula Regional Court was that judgments of the European Court of Human Rights are binding on the government of the Russian Federation and its national level judges. In this respect, the Applicants referred to and emphasized the similarities between their cases and the decision of the Grand Chamber in *D.H. and Others v. the Czech Republic*.

[53] Rustam Mikhaj (Applicant 1) Appeal of DC Decision of 23 March 2009, see note 45 above; Cherniavka Mikhaj (Applicant 4) Appeal of DC Decision of 24 March 2009, see note 45 above; Ranko Gulnara Sulimanovna (Applicant 6) Appeal of DC Decision of 19 March 2009, see note 45 above.

63. On 18 June 2009, the Civil Chamber of the Regional Court dismissed the Applicants' appeals and upheld the decision of the lower court. [54] The Regional Court did not address the applicants' submissions related the District Court's failure to consider their application for discovery of evidence. The Regional Court held that refusal of the District Court to decide upon the application did not affect the legitimacy of its decision since the reasons for which the Applicants needed the help of the Court to obtain the evidence had not been specified.[55]

64. The Regional Court did, however, affirm the Applicants' submissions that, contrary to the District Court's decision, they were not required to pay court fees. The Regional Court cited Article 23 of the Russian Federation Act on basic children's rights guarantees and excluded the portion of the District Court's judgments related to fees.[56]

65. The decision of the Regional Court was final, subject only to a supervisory review, an extraordinary remedy, the use of which depends on the discretionary powers of the President of the Civil Chamber of the Supreme Court and the Deputy Prosecutor General.

Independent Evidence of Discrimination in Russian Schools

66. Roma in the Russian Federation are still subjected to discrimination, marginalisation, and segregation. Discrimination is widespread in every field of public and personal life, including access to public places, education, employment, health services, and housing. This discrimination reinforces social and economic marginalisation by depriving Roma of opportunities to become educated, obtain and hold well-paying jobs, and escape the cycle of poverty and social marginalization.

[54] Ex.4 : Final Decision of the Tula Regional Court Case No. 33-1988; Ex.8: Final Decision of the Tula Regional Court Case No. 33-1986; Ex.12: Final Decision of the Tula Regional Court Case No. 33-1987.
[55] *Ibid.*
[56] *Ibid.*

67. In addition to the evidence presented in this case, independent sources document the fact that Roma children are victims of systemic discrimination in Russian schools.

United Nations Committee on the Elimination of Racial Discrimination (CERD)

68. In 2008, the Committee on the Elimination of Racial Discrimination noted with concern reports about segregation of children belonging to ethnic minorities, in particular Roma, in special classes.[57] The Committee recommended that the Russian Federation carefully review the criteria by which children are assigned to special classes and take effective measures to ensure that ethnic minority children, including Roma, are fully integrated into the general education system.[58] The Committee recommended that the Russian Federation adopt a national plan of action, including special measures for the promotion of access by Roma to education among other rights in accordance with general recommendation 27 (2000) on discrimination against Roma, and allocate sufficient resources for the effective implementation of that plan.[59] On a more general level, the Committee expressed concern over the lack of a federal government programme addressing the social and economic marginalization of the Roma.[60]

69. On 12 August 2008, a group of leading Russian NGOs released an alternative report on Russian compliance with the International Convention on the Elimination of All Forms of Racial Discrimination.[61] They recommended that the Russian authorities take measures for the integration, social, and legal support of Roma, through adopting special plans of action.[62] A special chapter of the report concerned the right to education and training, specifically

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[57] Ex.33: Excerpt from Report of the Committee on the Elimination of Racial Discrimination on its 72nd (18 February-7 March 2008) and 73rd Session (28 July-15 August 2008) – Consideration of the Report of the Russian Federation, at para. 377. Available at: http://www.unhcr.org/refworld/docid/496485482.html.
[58] *Ibid.*
[59] *Ibid.*
[60] *Ibid.* para. 364.
[61] Ex.34: Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination: Russian NGO's Alternative Report. Available at: http://xeno.sova-center.ru/6BA2468/6BB4254/B8954EB.
[62] *Ibid.*

recommending a review of the curricula and teaching methods in order to eliminate negative stereotyping in respect of ethnic minorities and the prejudice and racist attitudes that flow from such inappropriate classroom messages.[63]

European Commission against Racism and Intolerance (ECRI)

70. The European Commission against Racism and Intolerance (ECRI) adopted its Report on the Russian Federation on 16 December 2005.[64] ECRI was particularly concerned by the possibility that separate classes solely for Roma children exist alongside classes for non-Roma children in some schools. The Russian authorities explained that separate classes are created only for children with a poor command of Russian, in order to provide remedial language instruction. ECRI expressed the view that the situation needs to be carefully monitored in order to ensure that education in the classes set aside for Roma children is not of poorer quality than for other students.[65] ECRI strongly encouraged Russian authorities to conduct an in-depth investigation into ethnic segregation in schools and to take appropriate measures to correct the situation.[66] ECRI also recommended that the Russian authorities should facilitate Roma children's access to education, provide programs to promote Roma culture, and should take general measures to improve the social and economic conditions of Roma.[67]

Memorial Report

71. In 2009, the Saint-Petersburg non-governmental organization Memorial produced a report on discrimination against Roma in Russian schools,[68] The report identifies a state wide problem of segregation of Roma students through creating segregated "special schools," or "special classes" within existing

[63] *Ibid.* para. 343.
[64] Ex.35: The European Commission against Racism and Intolerance (ECRI). Third report on the Russian Federation adopted on 16 December 2005. ECRI(2006)21. Available at: http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/RUS-CbC-III-2006-21-ENG.pdf.
[65] *Ibid.* para. 72.
[66] *Ibid.* para. 74.
[67] *Ibid.* para. 98.
[68] Ex.36. The Anti-Discrimination Center (ADC) "Memorial" of St. Petersburg Report of 2009 '*Problem of discrimination and violation of Roma children at Russian schools.*' Available at: http://www.memorial.spb.ru/catalog/?p=546 (Memorial Report 2009).

schools. These schools and classes operate either under general educational programs or under programs for children with learning disabilities. The Curriculum is almost never enhanced by additional teaching in either Russian language or the students' native language.'[69]

72. The Memorial Report indicates that there are a number of schools where the division of classes into "Roma" and "not Roma" is not based on reliable testing but is instead achieved by strict ethnic segregation. The methods used to identify Roma children for special instruction are not reliable. The "experts" responsible for the testing do not know the Roma language and the children being tested speak poor Russian. Parents believe the assessments are inaccurate because poor results are frequently caused by cultural and linguistic communication differences between the evaluators and the children. In particular, the officials responsible for conducting the evaluations often hold biased beliefs about the intellectual capabilities of Roma children. Non-Roma children at many schools are not tested at all and remain in regular classes while Roma children are always assessed and frequently assigned to special classes.[70]

73. The report also documents that pedagogical results in regular and special classes are always strikingly different, indicating that children in Roma classrooms receive inferior educations. The children from special "Roma" classes receive education of a lesser quality, they are often not ready for transition to secondary education like High School, and are often deprived of the opportunity to study certain subjects (for example, a foreign language). In some schools, Roma children are simply placed in a sigle separate class without consideration of their age or the number of years that they spent at school. The children are often not allowed to go to other classes, onto different floors of the school, or to the public spaces.'[71]

Commissioner for Human Rights of the Council of Europe

74. The Commissioner for Human Rights of the Council of Europe released a report concerning discrimination in Europe that identified segregation of Roma in

[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*

education as a problem and made several policy recommendations. The report indicates that Roma children lack access to education of the same quality enjoyed by other children as a result of discriminatory segregation.[72] Roma children are frequently placed in special classes based on their ethnicity and without reliable psychological or pedagogical assessment to justify their placement. These children follow a comparatively inferior curriculum, which diminishes their opportunities for further education and employment. The placement of Roma children in special classes also stigmatizes them by labelling them as less intelligent on the basis of their ethnicity. The report also notes that segregated education denies both Roma and non-Roma children the chance to learn to live as equal citizens. Roma children experience exclusion at their point of entry into society, perpetuating a cycle of marginalization at a critical point. Because of the negative effects of segregation on Roma children and on society as a whole, the Commissioner recommended that Member States should make significant resources available for de-segregation. If remediation is a real need among any population of students, the Commissioner noted that, instead of segregation, significant emphasis should placed on measures such as preschool and in-school educational and linguistic support and the provision of school assistants. In the event of "special" classification of any student, the Commissioner recommended that appropriate testing must be reliably administered to ensure that a placement meets the objective needs of a child.

[72] Ex.37: Final Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, On the Human Rights Situation of the Roma, Sinti and Travellers in Europe. 15 February 2006. CommDH(2006)1. Available at: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=320815&SecMode=1&DocId=941416&Usage=2.

III. RELEVANT DOMESTIC LAW

Constitution of the Russian Federation

75. The Constitution of the Russian Federation of 12 December 1993 provides as follows:

"*Article 19*

1. All people shall be equal before the law and court.

2. The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, ethnicity, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.

Article 21

1. Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation.

2. No one shall be subject to torture, violence or other severe or humiliating treatment or punishment. No one may be subject to medical, scientific and other experiments without voluntary consent.

Article 23

1. Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of honour and good name.

Article 43

1. Everyone shall have the right to education.

2. Guarantees shall be provided for general access to and free pre-school, secondary and high vocational education in state or municipal educational establishments and at enterprises.

3. Everyone shall have the right to receive on a competitive basis a free higher education in a state or municipal educational establishment and at an enterprise.

4. The basic general education shall be free of charge. Parents or persons in law parents shall enable their children to receive a basic general education.

5. The Russian Federation shall establish federal state educational standards and support various forms of education and self-education.

Article 46

1. Everyone shall be guaranteed judicial protection of his rights and freedoms.

2. Decisions and actions (or inaction) of bodies of state authority and local self-government, public associations and officials may be appealed against in court.

3. Everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted.

Article 53

Everyone shall have the right for a state compensation for damages caused by unlawful actions (inaction) of bodies of state authority and their officials."

Russian Federation Law "On Education"

76. The Russian Federation Law "On Education", No. 3266-1 of 10 July, 1992 as amended on 17 July, 2009 No. 148 provides as follows:

Article 5.The State Guarantees of the Rights of Citizens of the Russian Federation in the Sphere of Education

Citizens of the Russian Federation are guaranteed the opportunity to receive education irrespective of their sex, race, ethnicity, language, social origin, place of residence, attitude toward religion, personal convictions,

membership in public organizations (associations), age, health status, property status, official status, criminal record.

Article 28. The Competence of the Russian Federation in the Educational Sphere

The Russian Federation, through its Federal bodies of the State power and education administration bodies shall be responsible in the educational sphere for:

2.1) ensuring of the state guarantees of the rights of citizens in the field of education;

Russian Federation on "On the Basic Guarantees of the Rights of the Child."

77. The Russian Federation Law "On the Basic Guarantees of the Rights of the Child" No. 124 of 24 July 1998 as amended on 3 June 2009 No. 118 in the relevant part provides:

"*Article 23 Judicial dispute resolution with reference to the present federal law*

1. Parents (their substitutes) and persons responsible for such measures as education, upbringing, development, health care, social care and social service, assistance in child's social adaptation, social rehabilitation and (or) other measures with his participation are entitled to lodge a complaint with the court for compensation of damages incurred to his health and property and also compensation of moral damages in accordance with legislation of the Russian Federation.

2. The state [court filing] fee is not charged when the case is to be tried in court deals with protection of children's rights and legal interests."

Resolution "On Approval of the Model Statute of Comprehensive School"

78. The Resolution of the Government of the Russian Federation "On Approval of the Model Statute of Comprehensive School" No. 196 of 19 March 2001 as amended on 10 March 2009 No. 216 in the relevant part provides:

"29. Special classes (классы компенсирующего обучения) can be opened in comprehensive schools by agreement with the founder and after taking into account interests of parents (legal guardians of children). "

Exemplary Statute on Classes for Children with Special Needs

79. The Exemplary statute on classes for children with special needs in comprehensive schools approved by Decree No. 333 of the Russian Federation Ministry of Education dated 8 September 1992 at the relevant part states:

I. General provisions

Class (classes) for children with special needs (further special classes) are created in comprehensive schools according to the Law of the Russian Federation «On Education». […]

The main indication for placement of children in special classes is inadequate level of preparedness for schooling, which is expressed in low level of psychological (including common personal immaturity (infantility) and psychophysiological preconditions for schooling […]

Children who have no deviations in development (delays of mental development, intellectual backwardness, lacks of physical development, including the expressed speech infringements, etc.) are enrolled in the special classes. […]

II. The organization and functioning of special classes […]

2.2. Children are enrolled or transferred in special classes with parental consent (legal guardians of the children)…

2.3. Special classes are established, as a rule, at primary school (on a step of the initial general education)… Duration of special classes studies is to correspond to the duration provided for regular classes studies.

2.4. Selection of children for the special classes is carried out on the basis of psychological and pedagogical assessment by a psychological and pedagogical board of experts and made out by its decision…

2.7 […] The organization of a nap, meals served twice a day, necessary special curative and corrective treatment is needed. The pupils of special classes who master general education programs can be transferred to regular classes with the basic general educational programs according to the decision of a psychological and pedagogical board of experts.

2.9. In the absence of positive dynamics of development in special classes pupils are to undergo certain medical and psychological tests in accordance with the established procedure on the basis of which the mode of the child's further education is to be selected. The given differentiation of pupils shall take place within their first year of studies.

School No. 66 Statute

80. The Statute on Classes for Children with Special Needs, adopted by the pedagogical council of comprehensive School No. 66 on 30 August 2006, and approved by school principal N.S. Lantsova (hereafter the "School No. 66 Statute") on 30 August 2006, is the legal basis for the functioning of special classes in School No. 66.[73]

81. Paragraph 1.2 of the School No. 66 Statute states:

"Classes for children with special needs are a form of educational differentiation that provides prompt and proactive support for children with learning difficulties and problems of adaptation to schooling, to Roma children'."

[73] School No. 66 Statute, see note 7 above.

IV. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION

82. The Applicants complain of numerous violations of the Convention in the way that the children are segregated into special classes for Roma-only.

83. *Violation of the Right to Education.* The Applicants are given a sub-standard primary education and are denied any access to the secondary education that exists for other Russian children, violating the right of access to effective education protected in Article 2 of Protocol No. 1.

84. *Violation of the Right to Non-Discriminatory Enjoyment of the Right to Education.* The Applicants have been subjected to discrimination in the enjoyment of the right to education on the ground of race or ethnic origin by being placed in Roma-only classes in primary school which constitutes a violation of Article 14 taken in conjunction with Article 2 of Protocol No.1.

85. *Violation of the Right to Respect for Family Life.* The Applicants contend that the circumvention of parental consent for both testing of the children and their placement in special classes constitutes a violation of the right to respect for family life protected by Article 8 of the Convention.

86. *Violation of the Right to Non-Discriminatory Enjoyment of the Right to Respect for Family Life.* The authorities did not bother to seek the Applicants' informed consent because they were Roma, amounting to discrimination on the basis of ethnicity in breach of Article 14 taken together with Article 8 of the Convention.

87. *No Effective Remedy.* Despite the fact that the case presents clear evidence of ethnic segregation in School No. 66, the efforts made by the Applicants to seek a remedy were prevented by procedural hurdles, such that the substance was not considered. This means that no effective remedy has been provided for the Applicants at the national level in violation of Article 13 of the Convention.

RIGHT TO EDUCATION

88. The Roma children at School No. 66 are given a sub-standard primary education, are denied education beyond the fifth class, and are completely

denied any access to secondary education – because they are Roma. This violates the right to education protected in Article 2 of the First Protocol.

A. Relevant Legal Standards

89. Protocol 1, Article 2 of the ECHR provides that "[n]o person shall be deprived of the right to education . . ." There are a number of elements that can be implied to this right through the case law of the Court.

90. *Access to existing educational institutions.* The Court has held that the right to education extends to such educational institutions as the State chooses to provide or allow. Thus in the *Belgian Language Education* case the Court found that, while the State need not establish or subsidize education of any particular type or level, the first sentence of Article 2 "guarantees . . . a right of access to educational institutions existing at a given time."[74] The Court echoed this principle more recently in *Orsus and Others v Croatia,* holding that States must "guarantee to anyone within their jurisdiction access to educational institutions existing at a given time."[75]

91. *Access all existing levels of education.* The Court has rejected a restrictive interpretation of the right to education that would confine it to the primary level. In *Leyla Sahin v Turkey*, the Court held that, "[i]n a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 . . . would not be consistent with the aim or purpose of that provision."[76] In that case, the Court extended Article 2 to all levels of education provided or permitted by the State, including primary, secondary, and higher education: "[w]hile the first sentence of Article 2 essentially establishes access to primary and secondary education, there is no watertight division separating higher education from other forms of education."[77]

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[74] *Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in* Belgium *v Belgium*, ECtHR Judgment of 12 July 1968, at section I(B) para. 3 ("*Use of Languages in Education in Belgium").*
[75] *Orsus and Others v Croatia*, ECtHR Judgment of 17 July 2008, at para. 57.
[76] *Leyla Sahin v Turkey*, ECtHR (GC) Judgment of 10 November 2005, at para. 136.
[77] *Ibid.* para. 137.

92. *Provision of effective education.* Access constitutes only a part of the right to education. The Court has held that the education must be "effective" in substance, such that the beneficiary has "the possibility of drawing profit from the education received, that is to say, the right to obtain . . . official recognition of the studies which he has completed."[78] Moreover, an effective education implies not only the right to access adequate and appropriate schooling for the children; parents must also enjoy the right to "enlighten and advise their children, to exercise with regard to natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical conviction."[79]

93. *Language of Instruction*. An effective education further implies the right "to be educated in the national language or in one of the national languages, as the case may be."[80] In *Cyprus v Turkey*, schooling in northern Cyprus had been provided with Greek as the language of instruction at the primary school level for Greek minority children, but secondary schooling was only provided for them in Turkish. The Court found that, because school authorities had assumed the responsibility for the provision of Greek-language primary education, their "failure . . . to make continuing provision for it at the secondary level must be considered in effect to be a denial of the substance of the right at issue."[81]

94. The treatment of the applicants at School No.66 violates the right to education because (A) they were given a sub-standard primary education and (B) they are denied access to secondary education.

B. Inadequate Curriculum in Primary Education

95. Once assigned to the special classes at School No. 66 the children are forced to follow a curriculum that is markedly inferior to that utilized in regular classes.

96. The evidence outlined above demonstrates the sub-standard education that the Roma children received. Rustam Mikhaj (Applicant 1) states that his children

[78] "*Use of Languages in Education in Belgium" v Belgium,* see note 74 above*,* at section I(B) para. 3-4; *Orsus and Others v Croatia*, see note 75 above, at para. 57.
[79] *Orsus and Others v Croatia, Ibid*., at para. 61; see also: *Valsamis v Greece*, ECtHR Judgment of 18 December 1996, at para. 31.
[80] *Use of Languages in Education in Belgium*, see note 74 above, at section I(B) para. 5.
[81] *Cyprus v Turkey*, ECtHR (GC) Judgment of 10 May 2001, at para. 278.

received poor education in the Russian language, and that, in contrast to children in regular classes, they were not taught a foreign language, computer science or technology (see paragraph 24 above). Cherniavka Mikhaj (Applicant 4) makes the same point with regard to her daughter Louise (see paragraph 25 above). Gulnara Ranko (Applicant 6) states that her daughter was not taught to read in Russian, even though she is able to speak it at home (see paragraph 29 above).

97. The inferior curriculum taught to the Roma children in School No. 66 means that they did not receive an effective education and were not able to profit from their schooling, causing them substantial disadvantage for the rest of their lives as they are ill-prepared to enter the workforce. They are given poor tuition in the Russian language, which is essential for any job in Russia. Skills in computer science and technology are required in the modern day workplace. Secondary language skills are often necessary even for entry level jobs in an increasingly globalized and digital world. In contrast to other students in the school, Roma students were denied access to education in these areas. The children have been socially limited due to their isolation from contact and co-education with pupils of other ethnicities.

C. No access to Secondary Education

98. The authorities failed to provide secondary education for Roma children in Kosaya Gora. As the children are confined to the special classes which finish after five years, and there is little or no possibility of transfer to regular classes, they are effectively prevented from attending any school after fifth year, in violation of the right of access to existing education.

99. The teaching staff at School No. 66 made clear their view that education for Roma was only for the first five years of school, as when Louise Mikhaj (Applicant 5) asked to continue to the sixth year of school she was told "Go home, you are already adult. We do not have a 6th Roma class."[82] As a result of this denial, she had to leave school for one year (see paragraph 41 above), and was only able to return to school following the commencement of legal proceedings (see paragraph 43 above). Yuri Mikhaj (Applicant 2) has spent

[82] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8.

eight years at primary school, but at the age of 14 is prevented from transferring to regular classes in the secondary school (see paragraph 32 above). Unsurprisingly, with no prospect of a secondary education he has frequently failed to attend school (see paragraph 33 above). Similarly, Helena Ranko (Applicant 7) has attending special classes at primary school for five years and given her limited education has little prospect of being able to attend secondary school (see paragraph 48 above).

100. Thus, Roma children are systematically denied access to education beyond the fifth year. Without a secondary school education, access to higher education is all but impossible.

RIGHT TO EDUCATION WITH ARTICLE 14

101. The segregation of the children into Roma-only primary school classes discriminates against them in their right to education, in violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol 1.

102. The school's governing statute bluntly states that it has separate classes for Roma; this policy is also proclaimed on the school's website. This is direct discrimination on the basis of ethnicity, for which there can be no justification.

A. Relevant Legal Standards

103. Article 2 of Protocol 1 provides that "[n]o person shall be denied the right to education." Article 14 states that:

> "the enjoyment of rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as . . . race, colour . . . national or social origin, association with a national minority . . . or other status."

104. *Difference in treatment.* The Court's case-law establishes that "discrimination" means treating differently, without an objective and reasonable justification,

persons in relevantly similar situations.[83] Article 14 prohibits, within the ambit of the rights and freedoms guaranteed by the Convention, "discriminatory treatment having as its basis or reason a personal characteristic ("status") by which persons or groups of persons are distinguishable from each other."[84] A difference in treatment is discriminatory if "it has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised.[85]

105. *Ethnic Discrimination.* Discrimination on the grounds of a person's ethnic origin is a form of racial discrimination—a "particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction."[86] Authorities must therefore use all available means to fight racism, and thereby reinforce "democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment."[87] The Court has also held that difference in treatment which is based "exclusively or to a decisive extent on a person's ethnic origin" cannot be justified in a "contemporary democratic society built on the principles of pluralism and respect for different cultures."[88]

106. *Direct Discrimination.* Where the difference in treatment is based on race, colour or ethnic origin, there is no possibility of justifying the discrimination. The Court has held that "no difference in treatment that is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of

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[83] *D.H. and Others v The Czech Republic*, ECtHR (GC) Judgment of 13 November 2007, at para. 175; *Willis v the United Kingdom*, ECtHR Judgment of 11 June 2002, at para. 48; *Okpisz v Germany*, ECtHR Judgment of 25 October 2005, at para. 33.
[84] *Kjeldsen, Busk, Madsen and Pedersen v Denmark*, ECtHR Judgment of 7 December 1976, at para. 56 (stating that Article 14 prohibits discrimination within the ambit of the rights guaranteed by the Convention).
[85] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 196; see also *Larkos v Cyprus*, ECtHR (GC) Judgment of 18 February 1999, at para. 29; *Stec and Others v the United Kingdom*, ECtHR Judgment of 12 April 2006, at para. 51.
[86] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 176.
[87] *Ibid*. *See* also: *Nachova and Others v Bulgaria*, ECtHR (GC) Judgment of 6 July 2005, at para. 145; *Timishev v Russia*, ECtHR Judgment of 13 December 2005, at para. 56.
[88] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 176; See also: *Timishev v Russia*, *Ibid.*, at para. 58.

pluralism and respect for different cultures."[89] In *D.H. and Others*, the Court made reference to the decision in *R. v. Immigration Officer at Prague Airport and another,* ex parte *European Roma Rights Centre and others*, where the House of Lords unanimously held that British immigration officers working at Prague Airport had discriminated against Roma wishing to travel to Great Britain, as the officers had "on racial grounds treated them less favourably than other people travelling to the same destination."[90] The House of Lords held that once direct discrimination of this sort has been revealed, "that is that . . . [s]ave for some very limited exceptions, there is no defence of objective justification."[91]

107. *Indirect discrimination.* The Court's jurisprudence also provides that indirect discrimination constitutes discrimination, and "may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group."[92] In the context of education, this will apply when a practice of allocating students to special needs school is ostensibly based on a neutral policy, which results in a "disproportionate number of Roma children . . . being placed in special schools without justification, and whether such children were thereby placed at a significant disadvantage."[93]

108. *Burden of Proof.* The Court has held that, once the applicant has made a *prima facie* case of difference in treatment, the burden of proof shifts to the Government to justify such treatment.[94] Furthermore, in making out a *prima facie* case of difference in treatment, such applicants should face "no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment."[95] The Court may then in its discretion reach conclusions and draw

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[89] *Ibid.* para. 176 (citing *Timishev* at para. 58)
[90] *Ibid.* para. 105-106.
[91] *Regina v. Immigration Officer at Prague Airport and another,* ex parte *European Roma Rights Centre and others*, 9 December 2004, [2004] UKHL 55, at para. 74.
[92] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 180.
[93] *Ibid.* para. 185.
[94] *Ibid.* para. 189; *Timishev v Russia*, see note 87 above, at para. 57; See also: *Chassagnou and Others v France*, ECtHR (GC) Judgment of 29 April 1999, at para. 91-92.
[95] *D.H. and Others v The Czech* Republic, see note 83 above, at para. 178; see also: *Nachova and Others v Bulgaria*, ECtHR see note 87 above, at para. 147.

inferences that are supported by the free evaluation of all evidence. Proof of difference in treatment "may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact." Furthermore, the level of persuasion necessary to reach a conclusion of differential treatment and the subsequent burden shift depend upon "the specificity of the facts, the nature of the allegation made and the Convention right at stake."[96]

109. *Statistics.* In *D.H. and Others v. the Czech Republic*, statistical data was obtained through questionnaires that were sent out to the head teachers of the primary schools in the town of Ostrava. The answers indicated that 56% of all the students in special needs classes in the town were Roma, while Roma only represented 2.26% of the total number of pupils attending primary school in the town.[97] While 1.8% of the non-Roma pupils were placed in special schools, the proportion of Roma pupils was 50%.[98] The Grand Chamber held that these statistics established a rebuttable presumption of indirect discrimination, such that the burden of proof shifted to the government.[99]

B. Difference in treatment

110. Roma children in School No. 66 are treated differently from non-Roma children in a number of ways:

- *Segregated Education.* The evidence of the Applicants together with statistics from the school demonstrate that there have been segregated classes for Roma for many years.
- *Inferior Curriculum.* Roma in the segregated classes follow an inferior curriculum.
- *No Transfer.* It is virtually impossible for Roma to transfer to ordinary classes.

[96] *Ibid.*
[97] *Ibid.* para. 190.
[98] *Ibid.*
[99] *Ibid.* para. 189 & 195.

- *No Secondary Education.* Roma are not able to enter secondary education at all.

1. Segregated Education

111. The establishment and maintenance of segregated, ethnically-defined classes for the applicant's children over many years amounts to a discriminatory difference of treatment based on Roma ethnicity, i.e. direct discrimination. This is demonstrated by evidence from the school itself, the evidence of the applicants and the statistical facts.

112. The governing statute of the school explicitly refers to this difference in treatment for Roma. The Statute on Classes for Children with Special Needs approved by school principal Ms. N.S. Lantsova on 30 August 2006 explicitly states:

> "Classes for children with special needs are a form of educational differentiation that provides prompt and active support to children with learning difficulties and problems of adaptation to schooling, to Roma children."[100]

113. In addition, the school declares its policy of segregation on its website, which states that "…primary school special classes are established for children of Roma ethnicity…"[101]

114. The statistical evidence demonstrates that this policy is applied in practice. In total, there are 16 classes in the primary school, made up of 12 regular classes and 4 Roma classes. In the 12 regular classes, there are pupils of different nationalities but no Roma children. In the 2008/2009 academic year, the 4 separate "special needs" classes in School No. 66 contained only Roma children. According to the lists of pupils for that year, 41 pupils of the school attended the special classes, all of whom were of Roma ethnicity.[102]

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[100] School No. 66 Statute, see note 7 above, at clause 1.2.
[101] Article on the Tula City Web-Site, see note 9 above.
[102] Class composition in academic year 2008/2009, see note 1 above (data from the Decree on establishment and organization of special classes in comprehensive School No. 66 in 2008/2009 academic year No. 226/1-a of 1 September 2008 reveals that all 11 pupils enrolled in the 1st special class have Roma origin, ten Roma children in the second special class, nine

115. Circulars on the establishment and organization of the first special classes in School No. 66 provide clear evidence that only Roma students are enrolled in special classes, as their ethnicity is made clear either by their surname or by the fact that their address is that of a Roma family:

- In the 2008/2009 academic year, Circular No. 226/1-a of 1 September 2008 reveals that all 11 pupils enrolled in the first special class are from Roma families;[103]
- In the 2007/2008 academic year, Circular No. 205 of 1 September 2007 reveals that all 12 pupils enrolled in the first special class are from Roma families;[104]
- In 2006/2007 academic year, Circular No. 18-9 of 1 September 2006 reveals that all 11 pupils enrolled in the first special class are from Roma families.[105]

116. The segregation continues throughout the further years of special classes, as demonstrated in the class lists for those years.

- In the 2008/2009 academic year, 41 pupils attended special classes in elementary school and all of them were Roma children (100%).[106]
- In the 2007/2008 academic year, 41 pupils attended special classes in elementary school and 40 of them were Roma children (97.56 %).[107]
- In the 2006/2007 academic year, 46 pupils attended special classes in elementary school and 45 of them were Roma (97.83%).[108]
- In the 2001/2002 academic year, 50 pupils attended special classes in elementary school and all of them were Roma children (100%).[109]

Roma children are in the third special class, and eleven Roma children are in the fourth special class).

[103] Ex.28: Circular on establishment and organization of special classes in School No. 66 of 1 September 2008 ("School No. 66 special classes circular of 2008")

[104] Ex.27 : Circular on establishment and organization of special classes in School No. 66 of 1 September 2007 ("School No. 66 special classes circular of 2007")

[105] Ex.26 : Circular on establishment and organization of special classes in School No. 66 of 1 September 2006 ("School No. 66 special classes circular of 2006")

[106] Class Composition in Academic Year 2008/2009, see note 1 above.

[107] Ex.31: Class Composition in Academic Year 2007/2008.

[108] Ex.30: Class Composition in Academic Year 2006/2007.

117. Cherniavka Mikhaj (Applicant 4) testifies that, in the beginning of the 2008/2009 academic year, her child attempted to continue her education into the 6th class with non-Roma children but was turned away. Her affidavit states:

> "According to my daughter, T.S. Petuhova, the teacher of School No. 66 answered my daughter's persistent requests by saying: «Go home, you are already adult. We do not have a 6th Roma class». My daughter has simply been banished from school….I know that only Roma children studied in special classes…I do not know any case when for five years while Louise had studied in primary school that there was a non-Roma child in her class."[110]

2. Inferior Curriculum

118. Roma children in the segregated classes are taught according to an inferior and inadequate curriculum, a further discriminatory difference in treatment that is not justified. As argued in paragraphs 95 to 97 above, the children received an education that was inadequate and that was not equivalent to that of non-Roma children. The inferior curriculum was not based on any proper assessment but was imposed solely because of their ethnicity. The lack of any proper remedial element to the curriculum demonstrates that it was not in furtherance of any legitimate aim.

119. In finding a discriminatory violation of the right to education in the *D.H. and others* case, one of the factors that was relevant for the Court was the fact that the children were placed in schools where "a more basic curriculum was followed than in ordinary schools" such that they received an education which made the situation worse.[111]

120. In the instant case, the special class curriculum, contrary to its educational and remedial aim, produced an inferior education, depriving the children of any possibility of improving their abilities and knowledge. As outlined in paragraph

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[109] Ex.21: Record of psychological, medical and pedagogical assessment of fifty 1st special class Roma pupils for the period from 1 November 2001 to 30 January 2002 conducted by VITA Health Promotion Centre for Pupils and Foster Children dated 18 February 2002.
[110] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8, 11, 14.
[111] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 107.

95 above, several subjects were not taught at all in the classes for Roma children, namely, foreign languages, computer science and technology, even though they were taught in regular classes. The parents are fully aware that the curriculum taught to their children is inferior to that taught to non-Roma children. As Gulnara Ranko (Applicant 6) states:

> "As a result of her assignment to a special class Helena has received a substantially inferior education as compared with non-Roma children." [112]

3. Limited Possibility of Transfer to Regular Classes

121. Roma children are not effectively able to transfer to regular classes in the school, a further discriminatory difference in treatment that is not justified. Under the Exemplary Statute, special classes should only be for the first year in order to integrate children into regular classes. Here, Roma children were kept in special classes and often required to repeat years, rather than being allowed to transfer to regular classes.

122. The Exemplary Statute requires that children are assessed during their first year in order to assess how their future education will take place, i.e. to allow eventual transfer of children to mainstream classes:

> "if there is no positive dynamics in the child's development in a special school/class, the child is to undergo certain medical and psychological tests in accordance with the established procedure on the basis of which the mode of the child's further education is to be selected. The given differentiation of pupils shall take place within their first year of studies." (at para. 2.9)

123. At School No. 66, the continuing assessment provided by the state to determine whether children with special needs could transfer to ordinary classes was inadequate to enable the students to achieve that goal. Assessments were carried out by VITA twice a year, and the children could be transferred to ordinary classes after the assessment held at the beginning of each academic year. However, no children were transferred to regular classes. While the psychological, medical and pedagogical assessment was undertaken as required

[112] Affidavit of Gulnara Ranko, see note 21 above, at para. 14.

by the Exemplary Statute,[113] the response from the school administration to the assessment results conducted by VITA was to place children in the same class.

124. In the 2007/2008 school year, four pupils of 1st year "G" and one pupil of 4th year "V" attended their classes for the second time. In the 2008/2009 school year one pupil of 1st year "G", two pupils of 2nd year "G", one pupil of 3rd year "G" (Helena Ranko – Applicant 7), and three pupils of 4th year "G" attended their classes for the second time.[114] Thus, Helena Ranko has attended the 3rd year special class twice, in both the 2007/2008 and 2008/2009 academic years.

125. The Applicants were faced with a choice between repeated attendance of a special class of the same level or leaving the school. Only Roma students were subjected to this regime of testing with no opportunity for advancement. Gulnara Ranko (Applicant 6) states:

> "I do not believe that if I have asked that my daughter studied in a class with non-Roma children the school administration would permit it. I know that Louise Mikhaj, a Roma girl, very much wished to study in a non-Roma class but the school administration didn't permit this."[115]

126. In 2006/07, academic year the daughter of Louise Mikhaj (Applicant 5) was forced to repeat the same 4th class of primary school for a second time because the special 5th class for children of a Roma ethnicity was not opened because there had been many Roma children in that year. Therefore in 2008/2009 she refused and left school (see paragraph 43 above). Only after the commencement of legal proceedings was she finally permitted to transfer into the regular fifth class (see paragraph 43 above).

4. No Access to Education beyond the Fifth Year

[113] Ex.24: Record of complex psychological, medical and pedagogical assessment no. 3 of 2nd "G" class for children with special needs and Helena Arturovna Ranko (Applicant 7) dated 23 April 2007 ("Record of assessment of Helena Ranko (Applicant 7) and 2nd class Roma children 23 April 2007")

[114] Class composition in academic year 2006/2007, see note 108 above; Class composition in academic year 2007/2008, see note 107 above; Class composition in academic year 2008/2009, see note 1 above.

[115] Affidavit of Gulnara Ranko, see note 21 above, at para. 15.

127. Roma children in the segregated classes are not able to pursue education after the fifth year, a further discriminatory difference in treatment that is not justified. School No. 66 does not have any special classes after the fifth year, and so Roma children must leave after primary school.

128. For a limited period in 2007/2008 a secondary special class after the fifth year was offered. However, in the 2008/2009 academic year, the special classes in secondary school were not provided for Roma children and none were transferred to regular classes. One child who wished to attend secondary school was denied enrollment because "there was no class for Roma."[116]

129. The son of Rustam Mikhaj (Applicant 1), Yuri Mikhaj (Applicant 2), has studied in elementary school special classes (first year through fourth year) for eight years, having attended the fourth class three times. Rustam Mikhaj (Applicant 1) states:

> "In the beginning of 2009/10 academic year I have asked his teacher why my son has not been enrolled in the 5th class? 'I do not know,' she answered, 'ask the principal'."[117]

130. The situation is similar with Cherniavka Mikhaj (Applicant 4). Her daughter Louise Mikhaj (Applicant 5) attended primary school for eight years, repeating the 4th class in 2005/2006 and 2006/2007, and the 5th class in 2007/2008 and 2009/2010. In the 2008/2009 academic year, she had to leave school because there was no "special" 6th class for Roma, and the school administration refused to transfer her to an ordinary class in secondary school. Cherniavka Mikhaj states:

> "My daughter did not wish to stop studying and consequently has repeated the 4th special class. In 2007/08 Louise successfully finished the 5th class for children with special needs in which only Roma children studied. In the beginning of 2008/09 academic year, Louise unsuccessfully tried to have an opportunity to continue the training in the sixth class with non-Roma children, but she was refused. According to my daughter, T.S. Petuhova, the

[116] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8.
[117] Affidavit of Rustam Mikhaj, see note 23 above, at para. 7.

teacher of School No. 66 answered my daughter's persistent requests by saying: «Go home, you are already adult. We do not have a 6th Roma class». My daughter has simply been banished from school." [118]

131. The inferior education that the children receive in the special classes mean that they would have great difficulty at secondary school, even if it were provided. Gulnara Ranko (Applicant 6) states:

> "As a result of her assignment to a special class Helena has received a substantially inferior education as compared with non-Roma children and that this has effectively deprived her of the opportunity to pursue a secondary education." [119]

C. Harm Caused to the Children as a Result of Discrimination

132. As a result of this differential treatment, the children have suffered, and continue to suffer, serious harm, in terms of (i) psychological and emotional stigma, and (ii) severely limited educational opportunity and resulting life chances.

133. In the case of *DH and Others v. Czech Republic,* the Court considered that the failure to provide safeguards that would ensure that the State took into account their special needs as members of a disadvantaged class meant that the children were "isolated from pupils from the wider population", preventing them from joining regular classes and limiting their opportunities later in life:

> "As a result, they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. Indeed, the Government have implicitly admitted that job opportunities are more limited for pupils from special schools."[120]

134. Cherniavka Mikhaj describes the impact of the discrimination on her daughter, including the fact that she has not been able to mix with children of other ethnicities:

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[118] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 8.
[119] Affidavit of Gulnara Ranko, see note 21 above, at para. 14.
[120] *D.H. and Others v The Czech* Republic, note 83 above, at para. 207.

> "My daughter has been limited by frameworks of a special class for many years, isolated from dialogue, co-education with coevals of other nationalities. I am very much concerned that in 2006/07 the administration of school has not wanted to open a class for Roma children or to take them in classes in which Russian children attended."[121]

135. The parents also testify to the fact that the inferior education that their children received at School No. 66 has effected their chances in life. As Gulnara Ranko states:

> "As a result of her assignment to a special class Helena has received a substantially inferior education as compared with non-Roma children and that this has effectively deprived her of the opportunity to pursue a secondary education."[122]

D. Insufficient Justification

136. As outlined above, the segregation of School No. 66 is as a result of direct discrimination against Roma, for which there can be no objective justification. However, even assuming a defence of objective justification were in theory cognizable, there is no objective justification in fact for the differential and invidious treatment to which the children have been subjected: (1) the assessments that were undertaken in order to make the decision as to which classes the children should attend lacked any scientific or pedagogical basis; (2) the virtually absolute nature of the segregation demonstrates that the only reason for the different treatment is racial animus; (3) the absence of any remedial measures in the special classes so as to facilitate the transfer of the children to regular classes indicates the lack of any legitimate aim; (4) other evidence of discrimination in education in Russian supports the evidence that the difference in treatment is discriminatory, rather than a result of any proper policy; and (5) even if the parents of the children at issue had consented to the children's assignment to special classes after being properly informed of their rights and of

[121] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 13.
[122] Affidavit of Gulnara Ranko, see note 21 above, at para. 14.

the consequences of such consent – which the applicants vigorously dispute – parents may not consent to the discriminatory treatment of their children.

1. Inadequate and Discriminatory Testing

137. The School No.66 Statute claims that the purpose of the special classes is to provide support for children with "learning difficulties." However, the lack of a proper system to test the children prior to placement in the special classes demonstrates that this purported justification is not legitimate. At School No.66, some Roma were placed in special classes without ever having been tested, and some after only perfunctory testing. In addition, as no non-Roma were ever tested, the special classes could only ever become Roma-only.

138. The question of the adequacy of testing was considered by the Grand Chamber in the *D.H. and Others* case. The Court concluded that the tests proffered by the government of the Czech Republic were not capable of constituting objective and reasonable justification for the purposes of Article 14. The Court took into account the fact that ECRI has expressed concerns that the testing was often "quasi-automatic" and was not fair, such that the true abilities of each child were not "properly evaluated."[123] The Grand Chamber concluded:

> "The Court considers that, at the very least, there is a danger that the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them. In these circumstances, the tests in question cannot serve as justification for the impugned difference in treatment" (at para. 201).

139. The tests employed – in arbitrary and partial fashion – in School No. 66 are no more reliable than those at issue in *DH and Others*. The Exemplary Statute and School No. 66 Statute require that the authorities test children prior to their placement in special classes (see paragraphs 18 to 20 above). The Exemplary Statute indicates that special classes are for children with learning difficulties and problems of adaptation to schooling. The School No. 66 Statute identifies the Roma ethnic group as a specific target for such policies, and the website entry suggests that they are the only target for the policy.

[123] *D.H. and Others v The Czech* Republic, see note 83 above, at para. 200.

140. On 18 February 2009, the legal representative of the Applicants spoke to Ms. Kalugina, Head of VITA Health Promotion Centre for Pupils and Foster Children, and requested the relevant records and agreements relating to the psychological, medical and pedagogical assessments performed on Yuri Mikhaj (Applicant 2), Louise Mikhaj (Applicant 5), and Helena Ranko (Applicant 7). Ms. Kalugina was able to submit only one agreement between Rustam Mikhaj (Applicant 1) and VITA concerning the psychological, medical and pedagogical assessment of his daughter Diana Mikhaj (Applicant 3), which was dated 2008.[124] As outlined in paragraph 36 above, Rustam Mikhaj states that the signature on the document is not his.

141. Until 2009, Gulnara Ranko (Applicant 6) did not know that her daughter had ever been tested, because she does not remember it and was never informed of it.[125] Ms. Ranko states that "[o]nly this academic year the daughter has told me that she was tested by the commission."[126]

142. In addition, as outlined in paragraphs 166 to 173 below, the testing was carried out without the consent of the parents.

2. Statistics

143. The absolute nature of the segregation shown by the statistical evidence demonstrates that any justification is not legitimate: it cannot be the case that in Kosaya Gora, all Roma have learning difficulties, and no non-Roma have such problems.

144. The Court has considered the use of statistics to demonstrate discrimination. Following a review of recent practices by the Court in cases involving gender discrimination and of other bodies such as the European Union, the Court concluded:

> "In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be

[124] Testing Agreement between Rustam Mikhaj and School No. 66, see note 32 above.
[125] Affidavit of Gulnara Ranko, see note 21 above, at para. 12.
[126] *Ibid.* at para. 13.

sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence"[127]

145. In the instant case, which involves direct discrimination against Roma as a matter of express school policy, statistics merely reinforce the explicit textual command of the school statute and website. As outlined in paragraphs 114 to 116 above, in the 2008/2009 academic year all of the children attending the special classes were Roma, and there were no non-Roma in the regular classes, meaning that the segregation was absolute. For the two previous years there had been one non-Roma in the special classes, amounting to almost absolute segregation.

146. The statistical evidence demonstrates that School No. 66 is wholly segregated. It cannot be the case that only Roma require special needs education.

3. Absence of Remedial Education

147. The fact that the segregated classes for Roma failed to provide the additional teaching and support that would be necessary in order to promote the development and abilities of the children so as to facilitate their transfer to ordinary classes demonstrates the lack of a legitimate aim for the difference in treatment.

148. The curriculum did not contain some of the elements of remedial education prescribed in the Exemplary Statute, such as the intervention of specialists, additional meals, and time set aside for day sleeps. [128] Rustam Mikhaj (Applicant 1) states:

"My children had never had meals served twice a day at school, improving and medical treatment or training programs. The Russian language teaching was conducted in such a manner that they made no substantial progress."[129]

149. In addition, Cherniavka Mikhaj (Applicant 4) states:

[127] *D.H. and Others v The Czech Republic*, see note 83 above, at para. 188.
[128] Exemplary Statute of the Russian Federation, see note 2 above, at para. 3.1, 3.2 & 4.4.
[129] Affidavit of Rustam Mikhaj, see note 23 above, at para. 12.

"…first-graders are not subject to double-shift schooling (schooling in second shift/session) anywhere (во вторую смену), but my daughter studied. Pupils in such classes do not get any treatment, additional meals or day sleep, no special curative or corrective measures are taken." [130]

150. The fact that School No. 66 did not provide any of the remedial measures required by the statute demonstrates that there was never any real intention to attempt to integrate the Roma children into the regular classes.

4. Discriminatory Motives of the School Authorities

151. The discriminatory motives of the school administration are highlighted in the applicants' affidavits which consistently indicate that the justification given for establishing special needs classes is quite simply that Roma children are "socially and culturally" handicapped. This difference in treatment has been continuing for generations. Rustam Mikhaj (Applicant 1) who is himself a former student states the following:

"I am illiterate in spite of the fact that I have graduated from School No. 66. Roma classes have existed at this school always, I studied in such class. I am offended that my children study in such class, therefore I have decided to go to the court for the sake of them."[131]

152. Numerous reports by international organizations and non-government organizations demonstrate that there is discrimination against Roma in Russia, lending support to the evidence of the applicants of discriminatory intention. The reports referred to in paragraphs 66 to 74 above from the Council of Europe, the United Nations and NGOs all point to the fact that there is a particular problem with racism against Roma in Russia, and particularly in education.

153. The UN Committee on the Elimination of Racial Discrimination specially referred to concerns with regard to the criteria by which Roma are assigned to special classes (at para.377) and expresses their concern as to the absence of any program to address the marginalization of Roma (at para. 364). The European

[130] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 12.
[131] Affidavit of Rustam Mikhaj, see note 23 above, at para. 14.

Commission against Racism and Intolerance (ECRI) had considered the problem of segregated classes for Roma in a different part of Russia in 2005, and the risk of Roma receiving an education of poorer quality compared to that for non-Roma (at para.72). The Commissioner for Human Rights of the Council of Europe in a report from February 2006 identified segregation, an inferior curriculum, lack of adequate assessment and marginalization as all being problems inherent in education in Russia. More recently, the NGO Memorial of St Petersburg has report on the ongoing problems of segregation, referring to poor assessments of children due to the fact that teachers do not speak the Roma language, poor curricula and a lack of transfer to secondary schools (see paragraph 72 above).

5. Parents Cannot Consent to Discriminatory Treatment

154. Even if the parents of the children at issue had consented to the children's assignment to special classes after being properly informed of their rights and of the consequences of such consent – which the applicants vigorously dispute – parents may not consent to the discriminatory treatment of their children.

155. The lack of consent given by the parents is outlined in the arguments with regard to Article 8 made below. Those arguments together with those made under Article 8 with Article 14 are relied upon under Article 2 of Protocol 1 together with Article 14 in order to demonstrate that there was no effective consent and thus no proper justification for the difference in treatment. Specifically, the Court in *D.H. and Others v. Czech Republic* made clear that "In view of the fundamental importance of the prohibition of racial discrimination . . . 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."[132]

E. Roma as a Vulnerable Group

156. This case involves the ill-treatment of Roma, which the Court has held are a particularly vulnerable group, and ethnic discrimination, which affords only a very narrow margin of appreciation to the government and which should be subjected to close scrutiny.

[132] *D.H. and Others v the Czech* Republic, see note 83 above, at para. 204.

157. The State Party has failed to give the special consideration that is necessary in order to protect the Roma as a particularly vulnerable group in Europe. The Court has held it will afford special consideration to the needs and lifestyle of members of the Roma ethnic group, "both in the relevant regulatory framework and in reaching decisions in particular cases,"[133] due to the fact that "as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority."[134] The Court has also noted an emerging international consensus that recognizes the special needs of minorities as well as the obligation to "protect their security, identity and lifestyle ... not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community."[135]

158. See also the particular need for caution when obtaining consent from a vulnerable group such as Roma, outlined in paragraph 162 below.

ARTICLE 8

159. The testing of the children and their placement in special classes took place without the effective consent of their parents, in violation of Article 8. Some parents were never consulted, while others were given inadequate information to make an informed decision. For all the applicants, the process fell short of the standards required to respect family life.

A. Scope of Article 8

160. The Court has recognised that the denial of the rights of parents to consent to decisions that affect their children might in certain circumstances raise an issue under Article 8 of the Convention, because of the impact of such a denial on the family life of the parents concerned. In the context of taking children into care, the Court held in *W. v. the United Kingdom*, that when making decisions that concern children the authorities must "include the views and interests of the

[133] *Ibid.* para. 18. *See also*: *Chapman v the United Kingdom*, ECtHR (GC) Judgment of 18 January 2001, at para. 96; *Connors v the United Kingdom*, ECtHR Judgment of 27 May 2004, at para. 84.
[134] *D.H. and Others v The Czech* Republic, see note 83 above, at para. 182.
[135] *Chapman v the United Kingdom*, see note 133 above, at para. 93-94.

natural parents"[136] so that the views and interests of parents are "made known to and duly taken into account by the local authority and that they are able to exercise in due time any remedies available to them."[137]

161. The Court considered that regular contacts between the responsible public authorities and the parents "provide an appropriate channel for the communication of the [parent's] views to the authority"[138] so that the involvement is "sufficient to provide them with the requisite protection of their interests."[139]

162. The Court has held that the consent must be informed, and that the vulnerable social situation of Roma must be taken into account when judging whether than consent was informed. Any waiver of a right guaranteed by the Convention, if even permissible, "must be established in an unequivocal manner, and be given in full knowledge of the facts, that is to say on the basis of informed consent and without constraint."[140] In *D.H. and Others v. Czech Republic*, the status of the parents as members of the disadvantaged Roma community, as well as their own history of inadequate education, rendered them incapable of "weighing up all the aspects of the situation and the consequences of giving consent."[141] The authorities appeared "not to have taken any measures to ensure that the Roma parents received all the information they needed to make an informed decision or were aware of the consequences that giving their consent would have for their children's futures."[142] The parents who provided nominal consent in that case faced "a choice between ordinary classes that were ill-equipped to cater for their children's social and cultural differences and in which their children risked isolation and ostracism; and special classes where the all of the pupils were Roma."[143]

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[136] *W. v the United* Kingdom, ECtHR Judgment of 8 July 1987, at para. 63.
[137] *Ibid.* para. 63.
[138] *Ibid.* para. 64.
[139] *Ibid.*
[140] *D.H. and Others v. Czech Republic*, see note 83 above, at para. 202 (citing *Pfeifer and Plankl v. Austria*, ECtHR Judgment of 25 February 1992, at paras. 37-38, and *Deweer v. Belgium*, ECtHR Judgment of 27 February 1980, at para. 51)
[141] *Ibid.* para. 203.
[142] *Ibid*.
[143] *Ibid*.

163. The UN Committee on the Elimination of Discrimination against Women has also recently emphasized the importance of informed consent in cases involving Roma. In *A.S. v Hungary*, a Hungarian woman of Roma origin who, while undergoing surgery related to a miscarriage, was asked by public hospital officials to sign a statement of consent to a caesarian section. The statement contained a barely legible note using the Latin word for sterilization, such that the victim discovered that she had agreed to sterilization only after the completion of the procedure. The Committee found that States commit a violation of basic human rights of women when they fail to provide health information on reproductive procedures and to ensure the right to full and informed consent to those procedures.[144]

164. The Court has considered that the right to education protected in Article 2 of the First Protocol should be interpreted with other rights, including Article 8. In *Kjeldsen, Busk Madssen and Pedersen v Denmark*, the Court held that, since the provisions of the Convention must be read as a whole, "the two sentences of Article 2 must be read not only in the light of each other but also, in particular, or Articles 8, 9 and 10", on private and family life, religion, and expression respectively.[145]

B. Interference with Article 8

165. The school authorities interfered with the Article 8 rights of the Applicants by (1) failing to seek, let alone secure, effective parental consent for the testing of the children for placement in special classes, and (2) failing to seek, let alone secure, effective parental consent for the actual placement of the children in those classes.

1. Lack of Consent for Testing.

166. The failure of the school authorities to seek or obtain effective parental consent before testing the children constitutes an interference with the right to respect

[144] *A.S. v Hungary,* UN Committee on the Elimination of Discrimination Against Women, Views of 29 August 2006. Available at: http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf.
[145] *Kjeldsen, Busk Madssen and Pedersen v Denmark*, ECtHR Judgment of 7 December 1976, at para. 52.

for their family life. Rustam Mikhaj (Applicant 1) states: "I am assured that the fake of my signature and any testing of my children without the parents' consent break my rights and the rights of my children. Nobody can test my children without my consent."[146] Cherniavka Mikhaj (Applicant 4) states: "I know from the daughter that she was subjected to assessment without my consent and the consent of the husband."[147] Gulnara Ranko (Applicant 6) states:

> "I know from my lawyer that there are documents (reports of the commissions), confirming that my daughter was subjected to psychological-pedagogical assessment which was conducted without my consent and the consent of the husband. But until this year I haven't believed that my daughter had ever been tested, because she does not remember it and never informed me about . . . I understood that my rights and the rights of my daughter were broken. I am sure that any testing of my child should be conducted only if I agree with it."[148]

167. Given that the children have been in special classes for several years and that school officials conduct assessments twice a year, the children have been tested multiple times, some not less than 9 times. Rustam Mikhaj indicates:

> "Taking into account that the assessment has been carried out twice during each academic year my daughter has been subjected to such assessment 5 times, and my son not less than 9 times."[149]

2. Lack of Consent for Placement in Special Classes

168. The failure of the school authorities to obtain effective parental consent before placing the children in special classes constitutes an additional interference with the right to respect for their family life. Some of the parents did not provide any consent. Cherniavka Mikhaj (Applicant 4) states: "I knew that my daughter studied all these years in a special class for Roma children. The placement of

[146] Affidavit of Rustam Mikhaj, see note 23 above, at para. 10.
[147] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 10.
[148] Affidavit of Gulnara Ranko, see note 21 above, at para. 12 & 16.
[149] Affidavit of Rustam Mikhaj, see note 23 above, at para. 9. Testing Agreement Rustam Mikhaj and School No. 66, see note 32 above (a copy of the agreement purported to be between Comprehensive School No. 66 and himself concerning his child's complex medical examination and psychological and pedagogical assessment, dated 20 March 2008).

my daughter in such classes has occurred without my consent and the consent of my husband."[150]

169. Gulnara Ranko (Applicant 6) states that she was not consulted by the school for the first four years of her child's education: "Until lodging my complaint with the court I have never known that my daughter had been attending a special class."[151] However, when they did consult here, they failed to give her any of the information that was necessary for her to give her informed consent:

> "The placement of my daughter in a special class for Roma children has occurred without my consent and the consent of my husband. Only after my appeal . . . administration of school have addressed to me for the first time for 5 years so that I have signed any document that my daughter will study in the 4th Roma class … In this connection I must say that I had never properly been informed of my right to withhold my consent, of any alternatives to placement my child in a special "Roma" class or of the risks and consequences of such a placement."[152]

170. Specifically, the school authorities failed to properly inform them of important questions such as the nature of the special classes, the necessity of their consent, their right to withhold consent, alternatives to placement of their children in the special classes, and the risks and consequences of placement in the special classes.

171. In this case, parental participation in the decision-making process would have been possible and meaningful, but the authorities failed to maintain regular contacts with the parents so as to provide an appropriate channel for the communication of the [parent's] views to the authority. The school authorities had the ability to trace and contact the parents - none of the parents had either a physical or mental disability that posed an obstacle to their participation. According to Rustam Mikhaj (Applicant 1) the authorities indicated that, even should such lines of communication exist, they would prove useless:

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[150] Affidavit of Cherniavka Mikhaj, see note 21 above, at para. 10.
[151] Affidavit of Gulnara Ranko, see note 21 above, at para. 7.
[152] Affidavit of Gulnara Ranko, see note 21 above, at para. 9-10.

"I consider that knowing about illiteracy of the majority of Roma, the authorities have broken our rights for many years. Many of representatives of the authorities have been assured that nobody from us will ever protect our rights."[153]

172. Indeed, the lack of any attempt by the school officials to obtain effective parental consent strongly indicates that those officials had some awareness of the illegality of placing all Roma children in a separate class.

173. Gulnara Ranko (Applicant 6) testifies that she knew from her lawyer that there are documents (reports of the commissions of experts), confirming that her daughter was subjected to psychological-pedagogical testing, which was conducted without her consent and the consent of the husband.[154]

C. No Justification for the Interference

174. No justification exists for the Russian school authorities' interference with the Applicants' right to respect for family life. The Court has held that an interference with the right to respect for family life entails a violation of Article 8 unless the interference was in accordance with the law, was for a legitimate aim, and was necessary in a democratic society.[155]

1. In Accordance with the Law

175. The testing and placement of the children into special classes were not in accordance with domestic law. In addition, the relevant domestic standards lack the quality of law to be sufficiently foreseeable to satisfy the Convention.

176. In order to be "in accordance with the law" the interference must have some basis in domestic law,[156] must be accessible to the individual concerned, and its

[153] Affidavit of Rustam Mikhaj, see note 23 above, at para. 11.
[154] Record of assessment of Helena Ranko (Applicant 7) and 2nd class Roma children 23 April 2007, see note 113 above
[155] *Gillow v United Kingdom*, ECtHR Judgment of 24 November 1986, at para. 55 (holding that the decisions by the Housing Authority to refuse the applicants permanent and temporary licenses to occupy their residence, as well as the conviction and fining of the applicants for unlicensed occupation of the residence, constituted interferences with the exercise of applicants' right to respect for their "home" which were disproportionate to the legitimate aim pursued).
[156] *Malone v United Kingdom,* ECtHR Judgment of 26 March 1987, at para. 66; see also: *Silver and Others v United Kingdom*, ECtHR Judgment of 25 March 1983, at para. 87-88.

consequences must be foreseeable.[157] In assessing whether the criterion of foreseeability is satisfied, the Court should take into account whether the individual concerned has been sufficiently notified of any additional instructions or administrative practices which do not have the status of substantive law.[158] Furthermore, where the implementation of the law consists of measures not open to scrutiny by the individuals concerned or by the public at large, the substantive law itself must indicate with sufficient clarity the scope of any discretion conferred on the competent authority, taking into account the legitimate aim of the measure in question, so as to give the individual adequate protection against arbitrary interference.[159]

177. In this case, the interference was in violation of domestic law. Firstly, the interference contravened the principles laid out in the Exemplary Statute, which specifies that school authorities may place children in special classes only after obtaining the consent of the children's parents,[160] and secondly, the interference violated the School No. 66 Statute, which states that children should be placed in special classes on the basis of the personal permission of the children's parents or legal representatives.[161]

178. The authorities tested the children for placement in special classes and placed the children in special classes without effective parental consent, in direct violation of the above laws, and failed to inform the parents of the administrative process, so that they had adequate protection against any arbitrary interference with their right to effective consent. Thus the interference by was not in accordance with the law.

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[157] *Leander v Sweden,* ECtHR Judgment of 26 March 1987, at para. 50-51. See also: *Sunday Times v United Kingdom,* ECtHR Judgment of 26 April 1979, at para. 49 ("Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail").
[158] *Leander v Sweden, Ibid.*, at para. 50-51. See also *Silver and Others v United Kingdom*, see note 156 above, at para. 88-89.
[159] *Ibid.* See also: *Malone v United Kingdom,* see note 156 above, at para. 68.
[160] Exemplary Statute of the Russian Federation, see note 2 above, at para. 2.2.
[161] School No. 66 Statute, see note 7 above.

2. Legitimate Aim

179. The authorities have not advanced any justification for failing to obtain the consent of the parents, and any justification would have to be substantial given the nature of the interference with Article 8.

180. In cases involving children, the Court has held that a "fair balance must be struck between the interests of the child and those of the parent" and that in doing so "particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent."[162] The Court has emphasized that the deprivation of parental rights should "only be applied in exceptional circumstances and could only be justified if . . . motivated by an overriding requirement pertaining to the child's best interests."[163]

181. None of the circumstances listed under Article 8(2) apply to this case. Denying the parents their right to effective consent regarding decisions that impact their children's education contravenes the legitimate aim of securing the best interests of the child. In this case, the best interests of the child align with those of the parents, and the provision of effective consent would pose no threat to the children's health and development. The school authorities' actions in segregating their children poses a threat to the children's health and development, and that such a threat could have been countered had the parents been provided with effective consent.

182. The interference by Russian school authorities with the Applicants' right to respect for family life was not justified because such interference lacked a legitimate aim under Article 8.

3. Necessary in a Democratic Society

183. The testing was not necessary in a democratic society due to the fact that it was of such poor quality as to be worthless for the purpose of assessing the needs of

[162] *Elsholz v Germany,* ECtHR Judgment of 13 July 2000, at para. 50; *see* also: *Olsson v Sweden*, ECtHR Judgment of 27 November 1992, at para. 90.
[163] *Ibid*.

the children, particularly when a vulnerable community such as Roma are involved.

184. In *D.H. and Others v. the Czech Republic*, the Court recognized that the academic testing that targeted Roma children in that case contained inherent dangers, including that "the tests were biased and that the results were not analysed in the light of the particularities and special characteristics of the Roma children who sat them. In these circumstances, the tests in question cannot serve as justification for the impugned difference in treatment."[164]

185. According to the Report of the Anti-Discrimination Centre of St. Petersburg (the "Memorial Report"), both the assessment methodology and the assessment results are of dubious quality.[165] For example, the expert evaluators and the subject Roma children could barely communicate with one another: the evaluators do not speak Romani, and the Roma children are not fluent in Russian. In addition, the Memorial Report confirms that the school teachers stereotype Roma children as having a below-average ability to master the standard school program. The report cites this as an explanation for why school authorities always place Roma children in special classes and often do so without assessment.

186. Thus the interference by Russian school authorities with the Applicants' right to respect for family life was not justified because such interference was not necessary in a democratic society.

ARTICLE 8 WITH ARTICLE 14

187. The Russian school authorities' unjustified interference with the Applicants' Article 8 right to respect to family life constitutes a violation of the prohibition of discrimination under Article 14 of the Convention. The School No. 66 Statute contains a clear requirement to obtain the consent of parents for testing and placement in special classes, but the authorities failed to do so. Only Roma parents and children were treated in this way.

Application of Article 14

[164] *D.H. and Others v the Czech Republic*, see note 83 above, at para. 201.
[165] Memorial Report 2009, see note 68 above.

188. The legal scope of Article 14 is set out in paragraphs 103 to 109 above, and the same issues are relied upon in the consideration of the discriminatory way in which the Court failed to consider the need for the consent of the parents.

189. There is an additional duty to treat differently those who are different, in order to correct "factual inequalities" between them, and in some circumstances "a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article."[166] Here, the duty to obtain the consent of the parents arises not only from the right to respect for family life in Article 8, but also as a result of the duty to treat Roma parents differently.

190. The Applicants have made a *prima facie* showing of difference in treatment. As outlined throughout this application, the authorities adopted the School No. 66 Statute which created the special needs classes in question for "children with learning difficulties and problems of adaptation to schooling, to Roma children."[167] The evidence demonstrates that only Roma children attend these classes, that no Roma children may attend the ordinary classes at the school, and that any testing or assessment conducted for placement in these special classes was conducted solely on Roma children.

191. In light of these circumstances, only parents of Roma descent had an interest in the right to effective consent for the testing and placement of their children in special classes. Therefore, the school authorities' discriminatory and differential treatment of the parents in not providing them with effective consent was based solely on their status as members of the Roma ethnic group. The burden must therefore shift to the Russian State to justify such treatment.

192. From the evidence it appears that there has been no attempt by the authorities to attempt to correct "factual inequalities" between Roma and non-Roma children, but that the effect of their intervention and the ongoing segregation has in fact been to exacerbate those inequalities. Despite their status as members of a vulnerable group requiring special consideration, the actions taken by the

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[166] *Ibid.* See also *"Case relating to certain aspects of the laws on the use of languages in education in Belgium" v.* Belgium, ECtHR Judgment of 23 July 1968, at para. 10; *Thlimmenos v. Greece*, ECtHR (GC) Judgment of 4 April 2000, at para. 44; *Stec and Others v. the United Kingdom*, ECtHR (GC) Judgment of 12 April 2006, at para. 51.
[167] School No. 66 Statute, see note 7 above.

authorities in this case hindered rather than helped the education and development of Roma children, and thereby rendered the need for effective parental consent all the more crucial. Thus, the authorities had no objective and reasonable justification for subjecting Applicant parents to the discriminatory and differential denial of effective consent.

193. Nor may the State justify its actions with regard to the parents who provided nominal consent for the placement of their children in special classes. These parents assert that such consent was not informed, and therefore amounted to an interference with their rights as parents. These parents faced a dilemma similar to their counterparts in *D.H. and Others v. Czech Republic*: their status as members of a disadvantaged community and poor education rendered them incapable of "weighing up all the aspects of the situation and the consequences of giving consent."[168] As in that case, the authorities in question here "appear not to have taken any measures to ensure that the Roma parents received all the information they needed to make an informed decision or were aware of the consequences that giving their consent would have for their children's futures."[169] In both cases, the parents who provided nominal consent faced "a choice between ordinary classes that were ill-equipped to cater for their children's social and cultural differences and in which their children risked isolation and ostracism; and special classes where all of the pupils were Roma."[170]

194. The Court has established that the waiver of a right guaranteed by the Convention, if even permissible, "must be established in an unequivocal manner, and be given in full knowledge of the facts, that is to say on the basis of informed consent and without constraint."[171] In *D.H. and Others v. Czech Republic,* the Grand Chamber went even further, stating: "In view of the fundamental importance of the prohibition of racial discrimination . . . no waiver

[168] *D.H. and Others v Czech Republic*, see note 83 above, at para. 203.
[169] *Ibid*.
[170] *Ibid*.
[171] *Ibid* para. 202 (citing *Pfeifer and Plankl v Austria*, ECtHR Judgment of 25 February 1992, at paras. 37-38 & *Deweer v Belgium*, ECtHR Judgment of 27 February 1980, at para. 51).

of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest."[172]

LACK OF AN EFFECTIVE REMEDY: ARTICLE 13

195. The Applicants have been unable to obtain a remedy for their claims. Although in principle they had a remedy in law, it was not effective in practice as the complaints were not dealt with in substance. Here, the Applicants presented a complaint demonstrating a serious human rights violation, namely, an entirely segregated school. However, the courts avoided any consideration of the substance of this significant claim.

196. The lack of an effective remedy for the violations alleged above constitutes a violation of Article 13 of the Convention read in conjunction with Article 2 of Protocol No. 1 alone and with Article 14, and of Article 8 alone and with Article 14. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

197. Where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress.[173] The Court has recognized that the effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief.[174] The remedy required by Article 13 must be "effective" in practice as well as in law; in particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.[175]

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[172] *Ibid*. at para. 204.
[173] *Klass and others judgment v Germany*, ECtHR Judgment of 6 Sept. 1978, at para. 64; *Silver and Others v the United Kingdom*, see note 156 above, at para. 113.
[174] *Cobzaru v Romania*, ECtHR Judgment of 26 July 2007, at para. 80.
[175] *Tekdağ v Turkey*, ECtHR Judgment of 15 January 2005, at para. 95; *Ibid. Cobzaru v Romania*, at para. 80

198. As explained in paragraphs 53 to 60 above, the Applicants initiated civil proceedings before the District court of Tula claiming compensation for non-pecuniary damage incurred by violation of the right to education, interference with family life and abasement of children's national dignity. The complaints were filed at the same time, on 10 March 2009, with identical claims and equal compensation demand.[176] All the Applicants enclosed identical applications for the disclosure of evidence from VITA. Although the three applications were decided by three different judges on three different dates, they contained the same language, the same reasoning, and the same decision.

199. All the judges relied on the formal requirements of the Code of Civil Procedure of the Russian Federation to avoid dealing with the substance of the cases. However, these formal requirements would have been satisfied if the applications for disclosure had been considered. Even without the requested documents, the evidence of the segregation given by the parents and from the school reports was sufficient to demonstrate a *prima facie* case of discrimination.

200. The technical argument the District Court of Tula that the Court fee had not been paid was rejected by the Tula Regional Court which found that no such requirement was necessary (see paragraph 64 above). However, the Tula Regional Court failed to consider the case on the merits, reiterating the circular decision of the lower Court that there was no case because there was no evidence, and that the court would not order the disclosure of that evidence because there was no case (see paragraph 63 above).

201. The evidence contained in the statements of the Applicants demonstrates the "arguable complaint" of discrimination which under Article 13 should have entitled the Applicants to have their complaint heard before a Court. However, the courts' refusal to address the merits of the complaints deprived the applicants of an effective remedy.

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[176] Complaint of 10 March 2009 filed by Rustam Kolaevich Mikhaj (Applicant 1) with the Privokzalny District Court of Tula, see note 43 above; Complaint of 10 March 2009 filed by Cherniavka Valerievna Mikhaj (Applicant 4) with the Privokzalny District Court of Tula, see note 43 above; Complaint of 10 March 2009 filed by Gulnara Sulmanova Ranko (Applicant 6) with the Privokzalny District Court of Tula, see note 43 above.

202. As this application makes clear, the Applicants have put forward claims which are far more than "arguable" that they suffered violations of several rights in the Convention. Nonetheless, they were prevented from obtaining a remedy by the conduct of the national authorities.

V. STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

1. Adoption of the Right to File an Individual Petition

203. The Government of the Russian Federation ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 5 May 1998, thereby recognizing the authority of the European Court to accept applications from individuals concerning alleged violations of the provisions of the European Convention by agencies and authorities of the Russian government pursuant to Article 34 of the European Convention.

2. Victim Status

204. All the Applicants are direct victims of violations of several articles of the European Convention on Human Rights, within the meaning of Article 34 of the Convention.

3. Exhaustion of Domestic Remedies

205. The Applicants have exhausted domestic remedies through their appeals to the Civil Chamber of the Tula Regional court. As outlined in paragraphs 61 to 65 above, their individual cases were consolidated for the appeal hearing. Subsequently, the decision of the Tula Regional court (Civil Chamber), Cassational Ruling, Case No. 33-1988 issued on 18 June 2009 dismissing the appeals was the final decision.

206. The only further appeal that was possible would have supervisory proceedings, which under Russian Law constitute extraordinary remedies, the use of which depends on the discretionary powers of the President of the Civil Chamber of the Supreme Court and the Deputy Prosecutor General, and do not, therefore,

constitute effective remedies within the meaning of Article 35 § 1 of the Convention. See, among others, *Tumilovich v. Russia.*[177]

VI. STATEMENT OF THE OBJECT OF THE APPLICATION

207. The Applicants seek a declaration from the Court that they suffered violations of Protocol No. 1, Article 2, taken alone and together with Article 14; Article 8 taken alone and with Article 14; and all of the above taken with Article 13. The Applicants will also seek just satisfaction under Article 41 (pecuniary and non-pecuniary damages, plus legal costs and expenses) as well as general measures to dismantle the discriminatory system.

208. The Applicants will submit detailed claims in connection with their claims for just compensation at a later date.

VII. STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

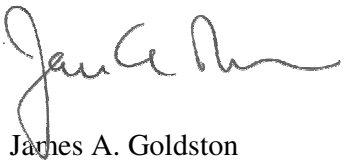
209. The Applicants affirm that they have submitted no complaint to any other international procedure of investigation or settlement concerning the incidents which have given rise to this application.

VIII. LIST OF DOCUMENTS

210. See attached Index of Exhibits.

IX. DECLARATION AND SIGNATURE

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



James A. Goldston
Open Society Justice Initiative

Vladimir Luzin
Anti-Discrimination Centre Memorial

New York and St-Petersburg, 16 February 2010

[177] *Tumilovich v. Russia,* ECtHR Admissibility Decision, 22 June 1999.

LIST OF DOCUMENTS – EXHIBITS

Affidavits

Ex.1 Affidavit of Rustam Kolaevich Mikhaj (Russian and English)

Ex.2 Affidavit of Cherniavka Valerievna Mikhaj (Russian and English)

Ex.3 Affidavit of Gulnara Sulimanovna Ranko (Russian and English)

Court Documents Concerning Exhaustion of Domestic Remedies

Applicant 1, Applicant 2, Applicant 3

Ex.4 Final decision of the Tula Regional Court (Civil Chamber), Cassational Ruling, Case No. 33-1988 issued on 18 June 2009 dismissing the individual appeal of 21 April 2009 (Russian)

Ex.5 Individual appeal of the Decision of the Privokzalny District Court of Tula of 23 March 2009 filed by Rustam Mikhaj (Applicant 1) with the Tula Regional court on 21 April 2009. The Applicant stated that the decision was manifestly unlawful and required immediate cancellation due to refusal to adjudicate on the merits of the case on both illegal and absolutely formal grounds without taking account of the motion filed (Russian and English)

Ex.6 Decision of the Privokzalny District Court of Tula, federal judge N.V. Potapova dated 23 March 2009. The judge held that the complaint did not contain any specification of violated interests; no document confirming payment of the court fee was submitted; documents before the court did not contain proofs of family relationship between the Applicant and his children (Russian)

Ex.7 Complaint of 10 March 2009 filed by Rustam Mikhaj (Applicant 1) with the Privokzalny District Court of Tula for compensation for non-pecuniary damage incurred by violation of the right to education, interference into family life and suffering caused to the child by discrimination, because of race/ethnic discrimination by the administration of School No. 66 and the Russian Ministry of the Education and Science (Russian)

Applicant 4, Applicant 5

Ex.8 Final decision of the Tula Regional Court (Civil Chamber), Cassational Ruling, Case No. 33-1986 issued on 18 June 2009 dismissing the individual appeal of 21 April 2009 (Russian)

Ex.9 Individual appeal of the Decision of the Privokzalny district court of Tula of 24 March 2009 filed by Cherniavka Valerievna Mikhaj (Applicant 4) with the Tula Regional Court on 21 April 2009. The Applicant stated that the decision was manifestly unlawful and required immediate cancellation of the decision of the judge V.S. Glushkova who refused to adjudicate on the merits of the case on both illegal and absolutely formal grounds without taking account of the motion filed (Russian)

Ex.10 Decision of the Privokzalny District Court of Tula, federal judge V.S. Glushkova, dated 24 March 2009. The judge held that the complaint did not

contain any specification of violated interests; no document confirming payment of the court fee was submitted; documents submitted to court did not contain proof of a family relationship between the Applicant and her daughter (Russian)

Ex.11 Complaint of 10 March 2009 filed by Cherniavka Valerievna Mikhaj with the Privokzalny District Court of Tula for compensation for non-pecuniary damage incurred by violation of the right to education, interference into family life and suffering caused to the child by discrimination, because of race/ethnic discrimination by the administration of School No. 66 and the Russian Ministry of the Education and Science (Russian)

Applicant 6, Applicant 7

Ex.12 Final decision of the Tula Regional Court (Civil Chamber), Cassational Ruling, Case No. 33-1987 issued on 18 June 2009 dismissing the individual appeal of 21 April 2009 (Russian)

Ex.13 Individual appeal of the Decision of the Privokzalny District Court of Tula of 19 March 2009 filed by Gulnara Sulimanovna Ranko (Applicant 6) with the Tula Regional Court on 21 April 2009. The Applicant stated that the decision was manifestly unlawful and required immediate cancellation of the decision of the judge A.V. Sonina, who refused to adjudicate on the merits of the case on both illegal and absolutely formal grounds without taking account of the motion filed (Russian)

Ex.14 Decision of the Privokzalny district court of Tula, federal judge A.V. Sonina, dated 19 March 2009. The judge held that the complaint did not contain any specification of violated interests; no document confirming payment of the court fee was submitted; documents before the court did not contain proofs of family relationship between the Applicant and her daughter (Russian)

Ex.15 Complaint of 10 March 2009 filed by Gulnara Sulimanovna Ranko (Applicant 6) with the Privokzalny District Court of Tula for compensation for non-pecuniary damage incurred by violation of the right to education, interference into family life, and suffering caused to the child by discrimination, because of race/ethnic discrimination against administration of School No. 66 and the Russian Ministry of the Education and Science (Russian)

Birth Certificates

Ex.16 Birth certificate of Diana Rustamovna Mikhaj (Applicant 3) no. 655738 issued on 8 December 2006 (Russian)

Ex.17 Birth certificate of Yuri Rustamovich Mikhaj (Applicant 2) no. 699857 issued on 5 August 2008 (Russian)

Ex.18 Birth certificate of Louise Vladimirovna Mikhaj (Applicant 5) no. 586994 issued on 25 May 2004 (Russian)

Ex.19 Birth certificate of Helena Arturovna Ranko (Applicant 7) no. 624865 issued on 22 November 2005 (Russian)

Relevant domestic law

Ex.20 Exemplary statute on classes for children with special needs in comprehensive

schools approved by Decree No. 333 of the Russian Federation Ministry of Education dated 8 September 1992 (Russian)

Official Papers relating to assessment of Applicants' children

Ex.21 Record of psychological, medical and pedagogical assessment of fifty 1st special class Roma pupils for the period from 1 November 2001 to 30 January 2002 conducted by VITA Health Promotion Centre for Pupils and Foster Children dated 18 February 2002 (Russian)

Ex.22 Agreement between Rustam Kolaevich Mikhaj (Applicant 1) signed on 20 March 2008 and comprehensive school no. 66, signed by VITA Health Promotion Centre for Pupils and Foster Children representative E.I. Kalugina on 10 April 2008 on complex psychological, medical and pedagogical assessment of Diana Rustamovna Mikhaj (Applicant 3) in 2008 academic year (Russian)

Ex.23 Record of complex psychological, medical and pedagogical assessment no. 6 of 3rd "V" class for children with special needs and Yuri Rustamovich Mikhaj (Applicant 2) dated 24 April 2007 (Russian)

Ex.24 Record of complex psychological, medical and pedagogical assessment no. 3 of 2nd "G" class for children with special needs and Helena Arturovna Ranko (Applicant 7) dated 23 April 2007 (Russian)

Documents concerning enrolment of Roma children in special classes

Ex.25 Statute on classes for children with special needs adopted by pedagogical council of municipal comprehensive School No. 66 on 30 August 2006 and approved by principal Lantsova N.S. on 30 August 2006 (Russian)

Ex.26 Circular on establishment and organization of special classes in comprehensive school no. 66 in academic year 2006/2007 No. 189 of 1 September 2006 adopted by principal Lantsova N.S. (Russian)

Ex.27 Circular on establishment and organization of special classes in comprehensive School No. 66 in academic year 2007/2008 No. 205 of 1 September 2007 adopted by principal Lantsova N.S. (Russian)

Ex.28 Circular on establishment and organization of special classes in comprehensive school no. 66 in academic year 2008/2009 No. 226/1-a of 1 September 2008 adopted by principal Lantsova N.S. (Russian)

Ex.29 Extract from municipal comprehensive School No. 66 Circular register on composition and organization of classes (2 pages) (Russian)

Ex.30 Class composition in academic year 2006/2007: 11 pupils have attended 1st "G" class, 12 pupils – 2 "G" class, 9 pupils – 3 "V" class, 14 pupils – 4 "G" class, all of Roma ethnicity except 1 pupil (Kadaev Pavel Petrovich) in 4 "G" class (Russian)

Ex.31 Class composition in academic year 2007/2008: 12 pupils have studied in 1st "G" class, 9 – in 2 "G" class, 9 – in 3 "G" class, 11 – in 4 "V" all of Roma ethnicity except 1 pupil (Kadaev Pavel Petrovich) l in 4 "V" class (Russian)

Ex.32 Class composition in academic year 2008/2009: 11 pupils have studied in 1st

"G" class, 10 – in 2nd "G" class, 9 – in 3rd "G" class, 11 – in 4th "G" all of Roma ethnicity (Russian)

Independent evidence of discrimination of Roma children

Ex.33 Excerpt from Report of the Committee on the Elimination of Racial Discrimination on its 72nd (18 February-7 March 2008) and 73rd Session (28 July-15 August 2008) (English) – Consideration of the Report of the Russian Federation. Available at: Available at: http://www.unhcr.org/refworld/docid/496485482.html.

Ex.34 Compliance of the Russian Federation with the Convention on the Elimination of All Forms of Racial Discrimination: Russian NGOs' Alternative Report of 12 August 2008 (English)

Ex.35 The European Commission against Racism and Intolerance (ECRI). Third report on the Russian Federation adopted on 16 December 2005. ECRI(2006)21. (English)

Ex.36 The Anti-Discrimination Centre (ADC) «Memorial» of St. Petersburg Report of 2009 '*Problem of discrimination and violation of the rights of Roma children at Russian schools'* (English)

Ex.37 Final Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, On the human rights situation of the Roma, Sinti and Travellers in Europe. Strasbourg, 15 February 2006. CommDH(2006)1 (English)

Other Evidence

Ex.38 Article available at the Tula City web site quoting principal N.S. Lantsova: "in the primary school there are also special classes for children of Roma ethnicity" (Russian) http://www.tula.rodgor.ru/site/releases/school/21117/

Ex.39 Transcript of an interview with Elena Ivanovna Kalugina, Head of VITA Health Promotion Centre for Pupils and Foster Children dated 18 February 2009 (Russian)