



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

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FIRST SECTION

**CASE OF SAMPANIS AND OTHERS v. GREECE**

*(Application no. 32526/05)*

JUDGMENT

STRASBOURG

5 JUNE 2008

**FINAL**

***05/09/2008***

*This judgment may be subject to editorial revision.*



**In the case of Sampanis and others v. Greece,**

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

Nina Vajić, *president*,

Christos Rozakis,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *section registrar*,

Having deliberated in private on 15 May 2008,

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

## PROCEDURE

1. The case originated in an application (no. 32526/05) against the Hellenic Republic by eleven Greek nationals, whose names are listed in the annex (“the applicants”), who referred to the Court on 11 August 2005 in accordance with Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. The applicants are represented by the Greek Helsinki Monitor, a member of the International Helsinki Foundation. The Greek Government (“the Government”) is represented by the delegates of its agent, Mr. K. Georgiadis, Adviser at the State Legal Council, and Mr. I. Bakopoulos, Legal Assistant at the State Legal Council.

3. In their applicant, the applicants alleged in particular the violation of Article 2 of Protocol No. 1 and of Article 14 of the Convention, as well as the absence of an effective remedy in domestic law.

4. On 20 February 2007, the Court decided to communicate the application to the Government. Making use of the option provided for in Article 29 § 3 of the Convention, it decided that the admissibility and merits would be examined at the same time.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are of Romani origin and live with their families on the area of Psari, near Aspropyrgos, a municipality in the western part of the Attica region.

**A. The steps taken by the applicants to register their children for the 2004-2005 school year**

6. On 24 June 2004, the Minister Delegate of Health, accompanied by the Secretary General of his ministry, visited the Roma camp in Psari. He had been informed, among other things, of the non-education of Romani children. On 2 August, the representatives of “European Roma Rights Centre” and of “Greek Helsinki Monitor” met with the Minister Delegate for National Education and Religious Affairs. Following this meeting, the Minister Delegate published a press release highlighting, among other things, the importance of integrating Romani children into the national education process.

7. The 2004-2005 school year began on 10 September 2004. On 17 September 2004, the Secretary of the Department of Education of Expatriate Greeks and Intercultural Education visited the Roma camps in Psari, in the company of two representatives of the Greek Helsinki Monitor, to register all the Romani children of schooling age. To this end, they visited the two primary schools of the municipality (the 10<sup>th</sup> and 22<sup>th</sup> primary schools of Aspropyrgos). The respective school directors encouraged Romani parents to enrol their children in primary school. The Greek Helsinki Monitor subsequently informed the competent authorities of the Ministry of Education and Religious Affairs, who gave no follow-up.

8. The applicants confirm that on 21 September 2004, they visited the premises of the Aspropyrgos primary schools, with other Romani parents, to register their children. The directors of two schools had refused to enrol their children on the grounds that they had not received instructions to this effect from the relevant ministry. They had informed the parents concerned that upon receipt of the necessary instructions, they would invite them to complete the necessary formalities. Never afterwards were the parents invited to register their children.

9. According to the document no. Φ20.3/747 delivered on 5 June 2007 by the First Bureau of Primary Education in West Attica, at the request of the State Legal Council, the applicants presented themselves to the director of the 10<sup>th</sup> primary school of Aspropyrgos to gather information on registering their children. The director reportedly showed them the documents necessary to register their children. According to the same documents, on 23 September 2004, the Departmental Director of Education of the Attica region convened an informal meeting with the competent authorities of the municipality of Aspropyrgos to address the problem of additional enrolment of students of Romani origin and the capacity of Aspropyrgos’ primary schools. On one hand, it was decided that the students who had reached the age of first schooling would be accommodated into the existing premises of the 10<sup>th</sup> and 11<sup>th</sup> primary schools in Aspropyrgos. On the other hand, the meeting considered that integration of children who had reached an age higher than that of

preliminary education into normal classes would be detrimental from a psychopedagogical point of view: the difference of age would not permit them to have an effective schooling. On this basis, the informal meeting decided to provide two additional preparatory classes in preparation for the integration of these students into ordinary classes.

10. On 13 and 18 September and on 2 October 2004, the Greek Helsinki Monitor referred to the Ombudsman of the Republic on behalf of the applicants of three applications concerning the difficulties of Romani children's access to primary education for Romani children, inviting him to intervene. On 3 January 2005, the Ombudsman replied in writing that three representatives of his cabinet had, on an unspecified date, visited the Roma camp in Psari. In his response, the Ombudsman noted that there was not, on the part of the competent services, any systematic and unjustified refusal to enrol children of Romani origin in primary education. He noted that he had already informed teachers at Aspropyrgos' primary schools that domestic legislation provided for the possibility to enrol children in primary school with the simple declaration of those bearing parental authority, provided that they submit birth certificates in due course. The Ombudsman also referred to the conclusions of several meetings with the leaders of the municipality of Aspropyrgos and, more specifically, to their intention to build a separate building from the school closest to the Roma camp to accommodate the older Romani children in view of bringing them up to standard. The Ombudsman mentioned lastly the tensions that existed between the population of Aspropyrgos, composed mainly of those repatriated from states of the former Soviet Union, and the Romani minority, as an additional element preventing the integration of Romani children into the educational environment.

11. On the 1 October 2004, the Minister Delegate for National Education and Religious Affairs asked the company responsible for operating state real estate to grant some public land with two prefabricated cells to serve as classrooms for Romani children. On an unspecified date, the Minister rejected the request.

12. According to the Government, in November and December 2004 a delegation from teachers of primary schools no. 10 and 11 visited the Roma Camp in Psari in order to inform and convince the parents and their children, who were minors, of the necessity to enrol their children in preparatory classes. This approach would be in vain, the parents concerned not having registered their children for the current school year.

13. On 13 February 2005, the Association for the Coordination of Organisations and Communities for the Human Rights of Roma in Greece (SOKARDE) addressed an official letter to the Board of Directors of Primary Education of West Attica in which it requested information about the schooling of the Roma in Aspropyrgos.

14. On 17 February 2005, the Board of Directors replied that the case had experienced delays attributable to the Ministry of the Environment: it

had been slow to resolve the issue of granting public land on which to construct rooms and prefabricated classrooms. The Board of Directors expressed its intention to make every effort to implement the enrolling of Romani children in primary school the following year.

#### **B. The registration of Romani children for the 2005-2006 school year**

15. On 24 May 2005, SOKARDE sent a letter to the Minister Delegate of National Education and Religious Affairs stressing the need to take all of the necessary measures to assure the successful schooling of Romani children for the 2005-2006 school year.

16. A letter dated 1 July 2005 to SOKARDE states that the school authorities took various steps to inform Aspropyrgos' Romani families of the necessity of enrolling their children in primary school: radio messages, advertisements on the school walls informing Roma that they could register their children between 1 and 21 June 2005 and sending letters to interested parties on this subject.

17. On 9 June 2005, at the initiative of SOKARDE, twenty-three children of Romani origin, including the children of the applicants, were enrolled in the Aspropyrgos primary school for the 2005-2006 school year. According to the Government, the number of Romani children who were enrolled was fifty-four.

#### **C. Incidents against Romani children in September and October 2005**

18. On 12 September 2005, the first day of the school year, the Romani parents, including the parents, accompanied their children to school. In front of the entrance, several non-Romani parents, most of them of Pontic origin, that is to say from the region of Pont-Euxin, on the southern shores of the Black Sea, were gathered, harassing people of Romani origin. They shouted, "There is not a single Roma child who will go to school. You will not have access here, that's all." Then, non-Romani parents blocked access to the school until Romani children were transferred to another building.

19. On 12 October 2005, the non-Romani parents blocked access to the school again. They hung a sign: "The school will remain closed because of the Gypsy problem; Wednesday 12.10.05".

20. On 13 October, Romani children tried to access the school. They were once more confronted by a group of non-Romani parents. In particular, the president of the association showed, on camera of a television channel that had visited the scene, the medical files of children of Romani origin in order to prove that they had been inadequately vaccinated. Finally, with the assistance of the police, who had gone there, the Romani children were able to access the school.

21. As part of the judicial investigation of this incident, the police officer D.T. made a statement with the following passage: “On 13 September 2005, around 9.10, around two hundred parents of students of Greek Pontic origin protested outside schools against the schooling of children of Romani origin at the primary school (...). A confrontation was avoided thanks to the prompt intervention of the police of Aspropyrgos (...). On 15 and 16 September 2005, the association of parents organised a boycott of student participation in class. From the first day of the incidents, police were posted outside the school to secure the entry and exit of Romani students. On 10 October 2005, the association of parents blocked access to the school as a protest against the afternoon welcoming of Romani students in the same rooms which welcomed the other students in the morning. On 11 and 12 October, in the presence of police, students of Romani origin had access to classes without difficulty. On 13 October 2005, fifty to sixty non-Romani parents gathered to protest against the presence of Romani students and to encircle the school’s entrance in order to prevent access (...)”.

22. By a letter, dated 1 March 2006, the West Attica Police Board informed the Greek Helsinki Monitor that on 13, 14, 15, 16 and 19 September 2005 and on 10, 11, 12, 13, 17, 19, 21, 25, 26, 27, and 31 October 2005, police forces had been sent to the 10<sup>th</sup> and 11<sup>th</sup> primary schools in order to maintain order and to prevent illegal acts committed against Romani students.

23. As of 31 October 2005, the applicants’ children were educated in a separate building from the main primary school of Aspropyrgos and the non-Romani parents stopped blocking the school.

#### **D. The schooling of the applicants’ children**

24. Under Act No. 39/20.9.2005 of the Peripheral Council for Primary Education, three preparatory classes were created to meet the educational needs of Romani children; the classes of one took place in the morning while the other two took place after 15.30. The Peripheral Council indicated that the Romani students of all ages who were confronted with problems pertaining to their learning capacity could take special preparatory classes, the aim being to allow their integration without hindrance into ordinary classes.

25. On 25 October 2005, the applicants signed a statement written by the teachers of Aspropyrgos School expressing their wish to have their children transferred to the building separate from the primary school. The applicants allege that they had signed the statement in question under pressure from the Minister of Education, non-Romani parents, and certain leaders of the Roma community.

26. On 31 May 2007, the first applicant swore in the Elefsina District Court that he would have preferred for his students to attend regular classes

rather than special school. He clarified, however, that it was difficult for him to maintain this position when the integrity of his children was endangered by furious non-Romani residents and that the teachers indirectly encouraged him to consent to his children's schooling in the "ghetto school".

27. In the meantime, under Act No. 261/22.12.2005, the Prefect of Attica had decided that three classes of primary school No. 10 in Aspropyrgos would be accommodated in prefabricated rooms installed on land owned by the municipality of Aspropyrgos.

28. On 17 March 2006, the West Attica Primary Education Directorate sent a letter to the Ministry of National Education and Religious Affairs. She informed the Ministry that for the 2005-2006 school year, fifty-two new students of Romani origin had been enrolled in the 10<sup>th</sup> primary school of Aspropyrgos. She noted that "due to the lack of space in the main school building of the school, and with the parents' agreement, pupils of Romani origin had been accommodated in an annex located near the Roma camp".

29. On 20 June 2006, the third constituency of the West Attica Primary Education Council sent a letter to the director of the outskirts of Attica. She informed him that for the 2005-2006 school year, fifty-four students of Roma origin had been enrolled in the 10<sup>th</sup> primary school of Aspropyrgos. She stated that "preparatory classes [were] provided for the Romani students, in order to assure their adaptation to the schooling environment, given the deficiencies from which they suffered and various other reasons making it impossible for them to integrate into ordinary classes." She added that "despite the progress made by Romani students in the preparatory classes, all of these students are not yet fit to integrate into ordinary classes."

30. On 5 April 2007, prefabricated rooms of the 10<sup>th</sup> primary school were set on fire by unknown people. It appears from the file that in September 2007, the two rooms were replaced but because of infrastructure problems, they were not operational. In September 2007, a 12<sup>th</sup> primary school was created in Aspropyrgos, to which Romani children were transferred. The record shows that in October 2007, this school was not yet operational, because of the infrastructure problems. The Government alleges that the establishment of the 12<sup>th</sup> primary school in Aspropyrgos was intended only to relieve congestion at the 10<sup>th</sup> primary school.

## II. THE LAW AND THE RELEVANT DOMESTIC AND INTERNATIONAL PRACTICE

### A. The law and domestic practice

#### 1. Domestic law

31. According to Article 7 § 1 of Presidential Decree No. 201/1998,



“All pupils who have attained the legal age of schooling must be registered in the first class of primary school. Registrations take place from 1 June to 15 June of the preceding school year.”

32. Directive Φ4/350/Γ1/1028/22.8.1995 of the Ministry of National Education and Religious Affairs underlines the need “for cooperation between Romani families, heads, and school councils so that Romani children living in camps are registered in nursery and primary schools (...). The heads [of schools] must not only encourage Romani children to enrol in primary schools, but also, identify Romani children in their district and ensure their registration and attendance at classes (...)”. In addition, Directive Φ4/127/Γ1/694/1.9.1999 of the Minister of National Education and Religious Affairs and Article 7 § 8 of Presidential Decree No. 201/1998 require the competent authorities to facilitate the access of Romani children to public education.

33. The relevant articles of Legislative Decree No. 18/1989 on the “*Codification of the provisions of the laws on the Council of the State*” provide:

#### **Article 45**

##### **“Offending acts”**

“1. An action for annulment for abuse for excess of power or violation of the law is admissible only against legally binding acts of the administrative authorities and the legal entities of public law who are not susceptible to appeal before any other jurisdiction.

(...)

4. In cases where the law requires an authority to settle a particular question by enacting an enforceable act subject to the provisions of paragraph 1, the action for annulment is admissible even against the failure of that authority to enact such an act.

The authority is presumed to refuse to enact the act either when the special period of time fixed by the law expires, or after the expiry of a period of three months from the filing of the request of the administration, who is expected to issue an acknowledgment of receipt (...) indicating the day of the said deposit. The action for annulment exercised before the expiry of the aforementioned periods is inadmissible.

An action for annulment validly lodged against an implied refusal [of the administration] is also an action against the negative act that may be subsequently adopted by the administration; however, this act may also be attacked separately.”

#### **Article 52**

“( ...)

2. A committee established for the needs of the cause by the president of the Council of State or the competent section of the Council of State and composed of said president or his deputy, the reporter of the case and a councillor of State may, at the request of the author of the solution of annulment, suspend the execution of the contested act by a decision briefly reasoned and adopted in the Council Chamber (...).”

2. *The Hellenic League of Human Rights (LHDH) and the Centre for Research on Minority Groups (KEMO)*

34. The LHDH, established in 1953, is the oldest non-governmental organisation in Greece. It is a member of the International Federation of Human Rights. KEMO is a non-profit organisation established in 1996. The purpose of its activity is scientific research on minority groups and languages in Greece.

35. LHDH and KEMO's 2007 annual report on the state of racism and xenophobia in Greece observes a clear improvement in schooling conditions for people belonging to the Muslim and Roma minorities compared to those of the nineties. However, the report notes that the registration of Romani children in school continues to be a source of tension, intolerance, and violent reactions. This sometimes requires the placement of Romani children in schools specially created for the Roma, despite the strong commitment of the administration to avoid the segregation of minorities in the school environment. The report notes that the most serious incidents of intolerance concern the registration of Romani children in primary education.

3. *The Institute of Education for People of Greek Origin and Intercultural Education*

36. By a letter dated 2 February 2004, the Institute of Education for People of Greek Origin and Intercultural Education had informed the representative of the Greek Helsinki Monitor that eighteen schools attended only by "Gypsy children" had been operation in Greece during the 2002-2003 school year.

## **B. The sources of the Council of Europe**

1. *The Committee of Ministers*

**The Recommendation no. R (2000) 4 of the Committee of Ministers to member-states on the education of Roma children in Europe (adopted by the Committee of Ministers on 3 February 2000 at the 696<sup>th</sup> meeting of the Ministers' Deputies)**

37. The terms of this recommendation are as follows:

« The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a closer union among its members, and that this aim may be pursued in particular by adopting joint action in the field of education;

Recognising the urgent need to lay new foundations for future educational strategies for Roma / Gypsies in Europe, in particular because of the high rate of illiteracy or semi-illiteracy in this community, the extent of school failure, the low proportion of

young people completing primary school and the persistence of factors such as school absenteeism;

Noting that the problems faced by Roma / Gypsies in the field of education are largely due to the long-standing educational policies that have led either to the assimilation or segregation of Romani / Gypsy children in school on the grounds that they suffered from a "socio-cultural handicap";

Considering that the disadvantaged position of Romani / Gypsies in European societies can only be remedied if equality of opportunity in the field of education is guaranteed to Romani / Gypsy children;

Considering that the education of Romani / Gypsy children should be a priority of national policies for Roma / Gypsies;

Bearing in mind that policies to address the problems faced by Roma / Gypsies in the field of education must be comprehensive and based on the recognition that the issue of schooling of Romani / Gypsy children is linked to a set of factors and preconditions, including economic, social and cultural aspects and the fight against racism and discrimination;

Bearing in mind that educational policies for Romani / Gypsy children should be accompanied by an active policy on adult and vocational education; (...)

Recommends the governments of member states:

to respect, in the implementation of their education policy, the principles set out in the appendix to this Recommendation;

to bring this Recommendation to the attention of the competent public authorities in their respective countries, through the appropriate national channels. "

38. The relevant parts of the Annex to Recommendation No. R (2000) 4 read as follows:

*"Guiding Principles for an Education Policy for Romani/Gypsy Children in Europe"*

#### I. Structures

1. Educational policies for Romani/Gypsy children should be accompanied by the necessary means and flexible structures to reflect the diversity of the Roma/Gypsy population in Europe and to take into account Roma/Gypsy groups' itinerant or semi-itinerant way of life. In this respect, the use of a system of education at a distance, based on new communication technologies, could be considered.

2. Emphasis should be placed on better coordination at international, national, regional and local levels in order to avoid dispersion of efforts and to promote synergies.

3. Member states should, in this regard, make the Ministries of Education sensitive to the question of Romani/Gypsy children's education.

4. Pre-school education should be widely developed and made accessible to Romani/Gypsy children, in order to ensure their access to schooling and education.

5. Special attention should also be paid to better communication with and between parents by using, when appropriate, mediators from the Roma/Gypsy community who would have the opportunity to access a specific professional career. Special information and advice would be provided to parents on the necessity for education

and the support mechanisms that municipalities can offer to families. The exclusion and lack of knowledge and education (or even illiteracy) of parents also prevent children from benefiting from the education system.

6. Adequate support structures should be put in place to enable Romani/Gypsy children to benefit from equal opportunities in school, including through positive action.

7. Member states are invited to provide the necessary means to implement the aforementioned policies and measures in order to bridge the gap between Romani/Gypsy schoolchildren and those belonging to the majority population.

## II. School programmes and teaching materials

8. Educational measures for Romani/Gypsy children should be part of a wider intercultural policies and take into account the characteristics of Romanini culture and the disadvantaged position of many Roma/Gypsies in the Member States.

9. School curricula, as a whole, and teaching materials should be designed in a manner to respect the cultural identity of Romani/Gypsy children. The history and culture of the Roma should therefore be introduced in the educational materials in order to reflect the cultural identity of Romani/Gypsy children. The participation of representatives from Roma/Gypsy communities in the development of material on Roma/Gypsy history, culture, and language should be encouraged.

10. Member states should, however, ensure that these practices not lead to separate school curricula that can lead to creating separate classes.

11. Member states should equally encourage the development of educational materials based on examples of successful action in order to assist teachers in their daily work with Romani/Gypsy children.

12. In countries where the Romani language is spoken, Romani/Gypsy children should be offered the opportunity to take classes in their mother tongue.

## III. Recruitment and teacher training

13. Provision should be made for the introduction of specific education in programs preparing future teachers so that they can acquire the knowledge and training to better understand Romani/Gypsy schoolchildren. However, the education of Romani/Gypsy schoolchildren should remain an integral part of the overall education system.

14. The Roma/Gypsy community should be involved in the development of these programs and should be able to directly communicate this information to future teachers.

15. Recruitment and training of teachers from the Roma/Gypsy community should also be promoted (...)."

## 2. *The Parliamentary Assembly*

### a) **Recommendation No. 1203 (1993) on Gypsies in Europe**

39. The general comments in this recommendation include:

"One of the aims of the Council of Europe is to promote the formation of a true European cultural identity. Europe is home to many different cultures, all of which, including multiple minority cultures, contribute to its cultural diversity.

Gypsies hold a special place among minorities. Living dispersed throughout Europe, unable to claim a country for their own, they constitute a true European minority who do not correspond to the definitions applicable to national or linguistic minorities.

As a non-territorial minority, Gypsies contribute significantly to Europe's cultural diversity, in multiple respects, be it through language and music or in their artisanal activities.

Following the admission of new Member States from central and eastern Europe, the number of Gypsies living in the Council of Europe area has considerably increased.

Intolerance towards Gypsies has always existed. However, outbreaks of racial or social hatred are occurring more and more regularly and strained relations between communities have contributed to creating the deplorable situation in which the majority of Gypsies live today.

Respect for the rights of Gypsies, whether for their fundamental human rights, or their rights as a minority, is an essential condition for improving their situation.

By guaranteeing equal rights, opportunities, and treatment, and by taking steps to improve the situation of Gypsies, it will be possible to revive their language and culture, thereby enriching European cultural diversity.

It is important to guarantee to Gypsies the enjoyment of rights and liberties defined in Article 14 of the European Convention of Human Rights, as this enables them to assert their rights (...)."

40. Concerning the area of education, the recommendation states:

"existing European teacher training programs for Gypsies should be expanded;

Special attention should be paid to the education of women in general and mothers with their young children;

Gifted young Gypsies should be encouraged to study and act as intermediaries for Gypsies; (...)."

**b) Recommendation No. 1557 (2002) on the legal situation of Roma in Europe**

41. This recommendation states in particular:

"(...)

3. Today, Roma are still subject to discrimination, marginalisation and segregation. Discrimination is widespread in all areas of public and private life, including access to public service, education, employment, health services and housing, as well as to crossing borders and access to asylum procedures. Economic and social marginalisation and segregation of Roma are turning into ethnic discrimination, which generally affects the most vulnerable groups in society.

4. Roma constitute a special group, minority for twofold reason: ethnically minority, they also very often belong to the socially disadvantaged strata of society (...).

15. The Council of Europe can and must play an important role in improving the legal status of Roma, the level of equality they enjoy, and their living conditions. The Assembly calls on Member States to fulfil the following six general conditions, which are necessary to improve the situation of the Roma in Europe: (...)

c) guarantee equality of treatment of the Roma minority as an ethnic or national minority group or in the fields of education, employment, housing, health and public services. Member States should pay special attention:

(...)

ii. to give Roma the opportunity to integrate into all educational structures, from kindergarten to university;

iii. to develop positive measures to recruit Roma in public services of direct interest to Roma communities, such as primary and secondary schools, social welfare centres, local primary health care centres and local governments;

iv. to eliminate any practice tending towards school segregation of Romani children, in particular the practice of referring them to schools or classes reserved for students with mental disabilities;

d) to develop and implement positive action and preferential treatment for the socially disadvantaged classes, including the Roma, as a socially disadvantaged community, in the fields of education, employment, and housing (...);

e) to take specific measures and to create special institutions for the protection of Romani language, culture, traditions and identity; (...)

ii. to encourage Romani parents to send their children to primary and secondary school, and institutions of higher education and to correctly inform them of the importance of education; (...)

v. recruit Romani teachers, especially in areas where the Roma population is considerable;

f) to combat racism, xenophobia, and intolerance, and to ensure non-discriminatory treatment towards Roma on local, regional, national and international levels: (...)

vi. to pay particular attention to phenomena of discrimination against the Roma, particularly in the fields of education and employment; (...)."

### 3. *The European Commission against Racism and Intolerance (ECRI)*

#### a) **ECRI's General Policy Recommendation No. 3: Combating racism and intolerance against Roma / Gypsies (adopted by ECRI on 6 March 1998)**

42. The relevant portions of this recommendation read as follows:

"The European Commission against Racism and Intolerance:

(...)

Recalling that the fight against racism, xenophobia, anti-Semitism and intolerance is an integral part of the protection and promotion of human rights, and that these rights are universal and indivisible, and are the rights of all human beings, without distinction of any kind;

Stressing that the fight against racism, xenophobia, anti-Semitism and intolerance is aimed above all at protecting the rights of vulnerable members of society;

Convinced that any action against racism and discrimination should begin from the point of view of the victim and seek to improve his or her situation;

Noting that Roma/Gypsies throughout Europe today suffer from persistent prejudices against them, are victims of racism deeply rooted in society, are the target

of demonstrations, sometimes violent, of racism and intolerance, and that their human rights are regularly violated are threatened;

Noting further that the persistent prejudices towards Roma/Gypsies drive discrimination against them in many areas of social and economic life, and that this discrimination significantly fuels the process of social exclusion from which Roma and Gypsy people suffer;

Convinced that the promotion of the principle of tolerance is a guarantee of the maintenance of open and pluralistic societies, making peaceful coexistence possible;

Recommends to the governments of the member states the following:

(...)

– To ensure that discrimination as such as well as discriminatory practices are combatted by means of adequate legislation and to ensure that specific provisions are included in civil law, in particular in the areas of employment, housing and education;

(...)

– To fight vigorously all forms of school segregation of Roma and Gypsy children and to ensure effectively equal access to education; (...).”

**b) ECRI’s General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination (Adopted by ECRI on 13 December 2002)**

43. For the purposes of this recommendation, the following definitions apply:

“a) “racism” the belief that grounds such as race, colour, language, religion, nationality or ethnic or national origin justifies contempt towards a person or group of people, or the idea of one’s superiority or of a group of people

b) “direct racial discrimination” means any difference of treatment based on grounds such as race, colour, language, religion, nationality or national or ethnic origin, which lacks reasonable or objective justification. A difference of treatment lacks reasonable and objective justification if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim pursued.

c) “indirect racial discrimination” means the case where an apparently neutral factor such as a provision, criterion or practice cannot be so easily respected by persons belonging to a group distinguished by grounds such as race, colour, language, religion, nationality or national or ethnic origin, or disadvantages these persons, unless this factor has an objective and reasonable justification. This is so if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the intended purpose.

44. In the explanatory memorandum to this recommendation, it is noted (point 8) that the definitions of these concepts of direct and indirect discrimination contained in paragraph 1(b) and 9c) of the recommendation are based on those contained in Council Directive 2000/43/EC of the Council on the implementation of the principle of equal treatment between

persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, as well as the case-law of the European Court of Human Rights.

**c) ECRI's report on Greece made public on 8 June 2004**

45. ECRI recalls in its report from 8 June 2004 that in its previous report it had drawn the attention of Greek authorities to the situation of the Roma, in particular to the problems of eviction from their homes and of discrimination in access to public services and underlined the importance of overcoming local resistant to initiatives in favour of Roma.

46. After having expressed its concern, ECRI considers in its report from 8 June 2004 that, since the adoption of its second report on Greece, the situation of Roma in Greece has not fundamentally changed and that in general they experience the same difficulties – including discrimination – in housing, employment, education, and access to public services.

*4. The Commissioner for Human Rights*

**The final report by Mr Alvaro Gil-Robles on the human rights situation of Roma, Sinti and Travelers in Europe (dated 15 February 2006)**

47. In the third part of this report, dedicated to discrimination within education, the Commissioner observes that if a significant number of Romani children do not have access to quality education equal to that offered to other children, it is also because of discriminatory practices and prejudices. In this respect, he notes that segregation within the education system is a common characteristic of many member States of the Council of Europe. In some countries, there are isolated schools in isolated camps, in others special classes for Romani children in ordinary schools, or a clear overrepresentation of Romani children in classes for children with special needs. It is frequent that Romani children are placed in classes for children with special needs, without adequate psychological or pedagogical evaluation, the real criteria being their ethnicity. Placement in special schools or classes means that these children often have a less ambitious curriculum than those in normal classes, which reduces their educational prospects and hence their chances of finding a job at a later stage. Automatic placement of Romani children in classes for children with special needs specifically reinforces social stigma by labelling Romani children as less intelligent and less capable. At the same time, segregated education deprives Romani children and non-Romani children of the opportunity to know each other and to learn to live as equal citizens. It excludes Romani children from normal society from a very early age, increasing the risk of them being caught in the vicious cycle of marginalisation.

48. In conclusion, the Commissioner makes a number of recommendations in the area of education. According to him, when



segregation in education still exists in one form or another, it must be replaced by an ordinary integrated education and, if necessary, prohibited by legislation. Adequate resources should be allocated to pre-school education, language training, and the training of school assistants to ensure the success of desegregation efforts. Then, an adequate assessment should be made before placing children in special classes, so that the only criteria for placement are the objective needs of the child and not his or her ethnicity.”

## THE LAW

### I. ON THE ADMISSIBILITY OF THE APPLICATION

49. On principle, the Government plead the inadmissibility of the complaint for failure to exhaust domestic remedies. In particular, it claims that in virtue of Article 45 § 4 of Legislative Decree No. 18/1989, the applicants had the opportunity to appeal to the Administrative Court of Appeal against the for an action for annulment against the omission of the administration to register their children. In addition, the Government plead that the applicants could, on the basis of Article 52 § 2 cited above, add to their action for annulment a request for the suspension of the alleged omission of the administration.

50. The Court considers that said exception is closely linked to the substance of the applicants’ grievance on the grounds of Article 13 of the Convention and decides to attach it to the merits.

51. The Court considers furthermore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it faces no other ground of admissibility. It should therefore be declared admissible.

### II. ON THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

52. The applicants complain that no remedy in domestic law was available to them through which they could have raised their grievances drawn from Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1. They invoke Article 13 of the Convention, which reads as follows:

“Anyone whose rights and freedoms recognised in the (...) Convention have been violated, has the right to an effective remedy before a national authority, even if the violation was committed by persons acting in their official duties.”

53. The Government holds that Article 13 of the Convention has not been violated. Referring to its argument elaborated in the context of its

objection to the admissibility of the application, it asserts that the applicants could have brought an action for annulment before the administrative courts under Articles 45 and 52 of Legislative Decree No. 18/1989, against the tacit refusal of the administration to register their children at the Aspropyrgos primary school.

54. The applicants claim that they had no remedy available to provide them with adequate redress for the violation in question. They claim to have made use of the legal means for the prompt registration of their children at the primary school since they have addressed, through the intermediary of the Greek Helsinki Monitor, to the competent minister and Ombudsman of the Republic. They consider that a referral to the administrative courts would not have ensured the prompt schooling of their children for the 2004-2005 school year, given the delay by these courts in dealing with the appeals before them. Lastly, the applicants note that their grievance is mainly aimed at the racist segregation of their children in schools. They argue on this point that no appeal before the administrative courts could have been effective given that, according to domestic law, the segregation of Romani children in the school setting is acceptable. On this point, they refer to the letter from the Institute of Education of People of Greek Origin and Intercultural Education dated 2 February 2004, according to which eighteen schools attended only by “gypsy children” had functioned in Greek territory during the 2002-2003 school year (see paragraph 36 above).

55. The Court recalls that Article 13 of the Convention guarantees the existence in domestic law of a remedy for grievances that may be considered “defensible” under the Convention. Such an appeal must enable the competent national authority to know the content of the complaint based on the Convention and to offer the appropriate remedy, even if the contracting States enjoy a certain margin of judgment as to the manner of complying with the obligations of this provision.

56. In addition, the Court notes that the rule of exhaustion of domestic remedies, stated in Article 35 § 1 of the Convention, is based on the assumption, incorporated in Article 13, with which it has close affinities, that the domestic order provides an effective remedy, in practice as well as in law, for the alleged violation (*Kudła v. Poland* [GC], No. 30210/96, § 152, ECHR 2000-XI; *Hassan and Tchaouch v. Bulgaria* [GC], no. 30985/96, §§ 96-98, ECHR 2000-XI). The Court recalls that in virtue of the rule of exhaustion of domestic remedies the applicant must, before referring to the Court, have given to the responsible State, using judicial resources that may be considered effective and sufficient by national legislation, the ability to remedy the alleged violations by domestic means (see, *inter alia*, *Fressoz and Roire v. France* [GC], No. 29183/95, § 37, ECHR 1999-I).

57. Article 35 § 1 of the Convention prescribes the exhaustion only of remedies that are available, adequate, and relate to incriminating violations. They must exist to a sufficient degree of certainty not only in theory but

also in practice, without which they lack the necessary effectiveness and accessibility; it is incumbent upon the respondent State to show that these requirements are met (see, *inter alia*, *Dalia v. France*, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 87, § 38). Lastly, someone who has made an appeal that is of a nature to directly remedy – and not indirectly – the situation at hand is not obligated to exhaust other potentially open but improbably effective measures (*Manoussakis and Others v. Greece*, judgment of 26 September 1996, Reports 1996-IV, § 33).

58. In this case, the Court notes that the Government has not provided any case law to demonstrate that the use of the remedies mentioned above could have led to the annulment of the alleged omission by the administration to register the children in school. However, it is for the State which alleges non-exhaustion of domestic remedies to establish the existence of effective and sufficient remedies (*Soto Sanchez v. Spain*, no. 66990/01, § 34, 25 November 2003). In light of this, it is for the Court to dismiss the Government's objection based on non-exhaustion of domestic remedies. In addition, in view of the fact that the Government has not mentioned any other remedy that they applicants could have exercised in order to obtain the redress of the alleged violation of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1, the Court concludes that the State has failed to fulfil its obligations under Article 13 of the Convention.

59. Accordingly, there has been a violation of that provision.

### III. ON THE ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 AND ARTICLE 14 OF THE CONVENTION

60. The applicants complain that the non-enrolment of their Romani children for the 2004-2005 school year is due to inertia and to the competent authorities' omissions. In addition, they see discrimination based on race and ethnicity in the fact that their children have had to attend special preparatory classes, held in separate rooms in the main building of the primary school of Aspropyrgos, where the other children from a comparable situation are welcomed. They invoke, in this respect, Articles 2 of Protocol No. 1 and 14 of the Convention, which read as follows:

#### **Article 14 of the Convention**

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

**Article 2 of Protocol No. 1.**

“No one can be denied the right to education. The State, in the exercise of its functions in the field of education and teaching, shall respect the right of parents to provide such education and instruction in accordance with their religious and philosophical convictions.”

**A. The parties’ submissions**

61. The Government affirms that the educational authorities of Aspropyrgos have done everything possible to register the Romani children living in the Psari camp in primary school. It notes that in November and December 2004, a delegation of Aspropyrgos’ primary school teachers visited the Roma living in the Psari camp to convince them to enrol their children in school. It adds that when the applicants went to the director of the 10<sup>th</sup> primary school of Aspropyrgos, they did not have the required documents for enrolment. Finally, it notes that for the 2004-2005 school year and previous years, Romani children had been enrolled at the 10<sup>th</sup> primary school of Aspropyrgos.

62. As for the creation of special preparatory classes, the Government points out that they did not pursue segregative purposes in any way. He asserts that these classes had been only intended for students of an age older than that of primary school enrolment. According to the Government, the objective of these classes was mainly to teach the students reading and writing so that they could be subsequently integrated into ordinary classes. These classes initially took place in the afternoon at the premises of the 10<sup>th</sup> primary school of Aspropyrgos, because of a lack of space in the morning, before being transferred to prefabricated rooms installed near the Romani camp in Psari. The Government submitted an undated and unsigned document, titled “Report on the scholarly life and educational activity in the school complex for Romani children in Gorytsa Park”. According to this report, during their enrolment and their schooling in preparatory classes, the students concerned had been subjected to assessment tests which had shown that 90% of them had weaknesses in writing and reading the Greek language. In addition, the Government notes that the applicants had been informed of the creation of these preparatory classes and that they had given their consent. Finally, it notes that it has been planned that for the 2007-2008 school year, the preparatory classes will be held in a new building intended to be built in the school complex of the 10<sup>th</sup> primary school of Aspropyrgos to accommodate a new primary school.

63. The applicants refer to the Ministry of National Education’s directives in virtue of which the administration is required to facilitate the enrolment of Romani children in school. They maintain that according to domestic law every person who fails to enrol their child at school incurs criminal responsibility. They allege that the failure to bring criminal proceedings against them in the present case only confirms the indifference

of the educational authorities regarding the registration of Romani children in primary school.

64. Regarding the schooling of Romani children in separate preparatory classes, the applicants refer in particular to the incidents created by the parents' association of Aspropyrgos primary school students at the beginning of the 2005-2006 school year. These incidents are based on racism, which explains the segregative attitudes of the competent authorities. As for the steps taken by the school authorities during the summer of 2005 to register Romani students in primary school, the applicants claim that these were inappropriate: the Roma would not have had electrical facilities in their camp to listen to the radio, they would be illiterate, and finally, the postal service would not serve their camp.

65. The applicants allege the contradictory nature of the Government's arguments that the constitution of preparatory classes for Romani students was dictated by objective reasons. In particular, they state that if the morning classes never took place, it is so that Romani students do not go to the other class. They consider that it would have been possible for their children to attend morning classes, given the limited number of students (from eight to twelve) who attended afternoon class in the main building of the school. In addition, the applicants hold that the special school did not actually work to prepare the Romani students to integrate, since none of these students subsequently joined ordinary classes. The applicants note on this point that today none of the Romani students attend an ordinary or preparatory class; on the other hand, the preparatory classes are abolished, and Romani students have been transferred to the 12<sup>th</sup> primary school of Aspropyrgos, a newly created establishment which is not yet operational.

## **B. The Findings of the Court**

### *1. General Principles*

#### **a) On Article 2 of Protocol No. 1**

66. The Court recalls that Article 2 of Protocol 1 implies the right of the State to establish obligatory schooling, whether in public schools or through quality private lessons, and that the verification and application of educational standards is an integral part of this right (*Family H v. United Kingdom*, No. 10233/83, Commission Decision of 6 March 1984, Decisions and Reports (DR) 37, page 109). In addition, the Court more recently underlined the importance of children's schooling in primary schools, not only to acquire knowledge but also to integrate children into society. The Court has also recognised the usefulness of the system of compulsory schooling to avoid the emergence of a society of two entities with different philosophical convictions (*Konrad and others v. Germany* (dec.), no. 35504/030, 11 September 2006). In light of this, the Court underlines the

particular importance, in systems where school attendance in public or private schools is obligatory, of school enrolment for all school-aged children, which is all the more important for children belonging to minority groups.

**b) On Article 14 of the Convention**

67. The Court reiterates that discrimination consists of a difference in treatment, without objective and reasonable justification, between people in comparable situations (*Willis v. United Kingdom*, no. 36042/97, § 48, UCHR 2002-IV). Contracting States enjoy a certain margin of discretion in determining whether and to what extent differences between otherwise similar situations justify differences in treatment (*Gaygusuz v. Austria*, judgment of 16 September 1996, reports 1996-IV, § 42), but it is for the Court to make a final ruling on compliance with the requirements of the Convention.

68. Article 14 does not forbid a member State from treating groups differently to correct “factual inequalities” between them; in fact, in certain circumstances, it is the absence of differential treatment to correct an inequality which may, in the absence of an objective and reasonable justification, result in a violation of the provision in question (*Thlimmenos v. Greece* [GC], no. 34369/97, § 44, UCHR 2000-IV; *D.H. and others v. Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-...). The Court also accepts that a policy or general measure may be considered discriminatory if it has disproportionate adverse effects on a group of people, even if it did not specifically concern this group (*Hugh Jordan v. United Kingdom*, no. 24746/94, § 154, 4 May 2001; *Hoogendijk v. Netherlands* (dec.), no. 58461/00, 6 January 2005), and that discrimination potentially contrary to the Convention could result from a factual situation (*Zarb Adami v. Malta*, no. 17209/02, § 76, ECHR 2006-...).

69. Discrimination based especially on one’s ethnicity constitutes a form of racial discrimination. This is a particularly condemnable discrimination which, in view of its dangerous consequences, requires special vigilance and a vigorous response on the part of the authorities. Therefore, they have an obligation to employ all the means at their disposal to fight racism, thus reinforcing democracy’s conceptions of society, perceiving diversity not as a threat but as a wealth (*Natchova and others v. Bulgaria* [GC], nos. 4377/98, § 145, ECHR 2005-...; *Timichev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-...). The Court has also considered that, in democratic society based on principles of pluralism and respect for different cultures, no difference in treatment based exclusively or in part on one’s ethnic origin could be objectively justified (*Timichev*, cited above, § 58; *D.H. and Others v. Czech Republic*, cited above, § 176).

70. In that which concerns the burden of the proof of the matter, the Court has judged that, when an applicant has established a difference in

treatment, it is incumbent upon the Government to demonstrate that this difference in treatment was justified (see, for example, *Chassagnou and others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, ECHR 1999-III; *Timichev*, cited above, § 57).

71. As for factors which may constitute such a *prima facie* case and hence to shift the burden of proof to the respondent State, the Court noted (*Natchova and others*, cited above, § 147) that, in the course of the proceedings before it, there was no procedural obstacle to the admissibility of evidence nor any predefined formula applicable to their assessment. In effect, the Court adopts the conclusions that, in its opinion, are supported by an independent evaluation of all of the evidence, including the inferences which it can draw from the facts and observations of the parties. In accordance with the settled case law of the Court, the evidence may thus result from a body of indications or presumptions which are not refuted, sufficiently serious, precise, and consistent. Moreover, the degree of conviction necessary to reach a particular conclusion and, in this respect, the distribution of the burden of proof, are inextricably linked to the specificity of the facts, the nature of the formulated claim and to conventional law in question (*D.H. and Others v. Czech Republic*, cited above, § 178).

72. Finally, it is evident from the Court's case-law that the vulnerability of Roma/Gypsies implies the need to pay special attention to their needs and their specific way of life, both in the regulatory framework under consideration and in the decision-making process of this particular case (*Chapman v. the United Kingdom* [GC], no. 27238/95, § 96, ECHR 2001-I; *Connors v. the United Kingdom*, no. 66746/01, § 84, 27 May 2004). The Court notes that, because of their vicissitudes and their perpetual uprooting, the Roma constitute a disadvantage and vulnerable minority of a particular character (see also the general observations of Parliamentary Assembly Recommendation no. 1203 (1993) on Gypsies in Europe, paragraph 39 above, and point 4 of its Recommendation No. 1557 (2002) on the legal situation of Roma in Europe, paragraph 41 above). They therefore need special protection. As evidenced by the activities of many Greek and European bodies, including the recommendations of the Council of Europe bodies (paragraphs 34-48 above), this protection extends equally to the area of education. The present affair thus deserves special attention, especially since at the time of the Court's referral the persons concerned were minors for whom the right to education was of the utmost importance (*D.H. and Others v. the Czech Republic*, cited above, § 182).

73. In addition, the Court has already observed that an international consensus is emerging among contracting States of the Council of Europe to recognise the particular needs of minorities and the obligation to protect their security, their identity and their way of life, not only to protect the interests of minorities themselves but also to preserve cultural diversity which benefits all of society as a whole (*Chapman v. the United Kingdom*, cited above, §§ 93-94).

## *2. Application of the aforementioned principles to the present case*

74. The Court observes at the outset that it finds itself confronted with divergent versions of certain facts, notably on the character of the visit to the premises of the primary schools of Aspropyrgos on 21 September 2004 by the parents of Romani children. The applicants allege that the purpose of this visit was the registration of their children, while the Government asserts that the applicants wished only to obtain information about registration for their minor children. In addition, the parties disagree, in particular, on the visit of a delegation of teachers to the Psari camp in November and December 2004, on the criteria for selecting children for preparatory schools, and on the current situation regarding the schooling of Romani students.

75. The Court recalls that it remains free to make its own assessment in light of the body of facts at its disposal (*Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 24, § 32). It notes also that even if several facts remain uncertain, there is sufficient evidence from the documents submitted by the parties to assess the case.

76. In this case, the applicants hold that their children suffered, without objective and reasonable justification, a less favourable treatment than that accorded to non-Roma in a comparable situation, and that this situation constitutes discrimination contrary to the Convention. The Court will therefore first consider whether or not the facts of the case give rise to the presumption of discrimination. If so, it will then investigate whether the alleged discrimination is based on a reasonable and objective basis.

### **a) The existence in the present case of evidence justifying a presumption of discrimination**

77. The Court notes at the outset that the parties confirm that the applicants' children missed the 2004-2005 school year and that preparatory classes were created within the 10<sup>th</sup> primary school of Aspropyrgos, but that, on the other hand, they disagree as to the competent authorities' intentions relating to the acts or omissions attributed to them. The applicants allege that the authorities continued to segregate Romani children, while the Government asserts that their purpose was to facilitate the integration of Romani children into ordinary classes at the Aspropyrgos primary school.

78. The Court has already recognised the difficulties which the applicants may have in proving the existence of discriminatory treatment (*Natchova and others*, cited above §§ 147 and 157). To guarantee to the concerned persons an effective protection of their rights, less stringent rules of evidence are required in the case of an allegation of indirect discrimination.

79. If a refutable presumption of discrimination with respect to the effect of a measure or practice is thus established by the applicants alleging an act of discrimination, it is then incumbent upon the defendant State to refute



this presumption by demonstrating that the difference in question is not discriminatory (see, *mutatis mutandis*, *Natchova and others*, cited above, § 157). In fact, with regard in particular to the specific nature of the facts and the nature of allegations made in this type of case (*ibid.*, § 147), it would be in practice extremely difficult for the interested parties to prove indirect discrimination without such a reversal of the burden of proof.

80. In the present case, the Court notes that the creation of the three preparatory classes in question was only foreseen in 2005, when the local authorities found themselves confronted with the question of the schooling of Romani children residing in the Psari camp. In particular, it is clear from the document No. Φ20.3/747 submitted by the 1<sup>st</sup> Office of Primary Education of West Attica on 5 June 2007 that the Departmental Director of Education in the region of Attica convened an informal meeting of the competent authorities of the municipality of Aspropyrgos to deal with the additional enrolment of Romani students. The Government has given no example, prior to the facts of the case, of the creation of special classes within primary schools of Aspropyrgos, even though other children of Romani origin were enrolled in the past.

81. In addition, the Court notes that the parties agree on the composition of the preparatory classes: in fact, these were attended exclusively by students of Romani origin. The Court does not lose sight in this respect that the creation of preparatory classes and, *a fortiori*, of schools designed exclusively for the schooling of Romani children was at least tolerated by domestic law: by a letter on 2 February 2004, the Institute of Education of Greek People and of Intercultural Education informed the representative of the Greek Helsinki Monitor that twenty-eight schools attended exclusively by “Gypsy children” had been operational on Greek territory during the 2002-2003 school year (paragraph 36 above).

82. The Court considers it also necessary to refer to the historical context of the case, and in particular to the racist incidents which took place in front of the 10<sup>th</sup> primary school of Aspropyrgos in September and October 2005. It acknowledges that these incidents cannot be attributed to state authorities, since they were organised, as regrettable as it may be, by private individuals, namely some of the parents of non-Romani students of the 10<sup>th</sup> primary school of Aspropyrgos. The Court can only note on this point that police forces were dispatched several times to primary schools of Aspropyrgos in order to maintain order and to avoid the commission of illegal acts against the Romani students. Nonetheless, this does not preclude the assumption that the aforementioned incidents affected the concerned authorities’ subsequent decision to place the Romani student in pre-fabricated rooms constituting an annex to the 10<sup>th</sup> Aspropyrgos primary school.

83. In these circumstances, the evidence presented by the applicants and those in the file of the case can be considered sufficiently reliable and revealing to give rise to a strong presumption of discrimination. It is thus

necessary to reverse the burden of proof and to place it upon the Government, which must demonstrate that this difference in treatment was the result of objective factors not linked to the ethnicity of the people concerned.

**b) On the existence of an objective and reasonable justification**

84. The Court reiterates that a distinction is discriminatory if it “lacks objective and reasonable justification”, that is, if it does not pursue a “legitimate aim” or if there is no “reasonable relationship of proportionality” between the means employed and the end pursued (see, among many others, *Larkos v. Cyprus* [GC], no. 29515/95, § 29 ECHR 1999-I; *Stec and others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-VI). In case of a difference of treatment based on race, colour, or ethnicity, the concept of objective and reasonable justification must be interpreted in a manner as strict as possible (*D.H. and others v. the Czech Republic*, cited above, § 196).

85. The Court notes first of all that the applicants complain of the school authorities’ refusal to enrol their students for the 2004-2005 school year. It observes that it does not appear from the evidence from the file that the applicants had endured an explicit refusal on the part of the authorities of the 10<sup>th</sup> primary school of Aspropyrgos to enrol their children. It refers notably to the report of the Ombudsman of the Republic stating that there was not, on the part of the competent services, a general and unjustified refusal to enrol the Romani children in the primary schools. It further notes that if the parties agree on the fact that on 21 September 2004 the applicants went to see the director of the 10<sup>th</sup> primary school of Aspropyrgos, they disagree on the question of the aim of this meeting: the applicants allege that the point of their visit was the registration of their children, while the Government asserts that the applicants wished simply to obtain information on this subject.

86. The Court considers that, even to admit that the applicants had simply sought information on the conditions of registering their children in primary school, it is indisputable that they explicitly manifested to the competent school authority their wish to school their children. Given the vulnerability of the Roma, which implies the necessity to pay special attention to their needs (paragraphs 42 and 72 above), and the fact that Article 14 requires in certain circumstances differential treatment to correct inequality the competent authorities should have recognised the particularity of the case and facilitated the registration of children of Romani origin, even in the case where some of the required administrative documents were missing. The Court notes on this point that Greek law recognises the particularity of the situation of Roma, by facilitating the procedure of enrolling their children in school (see paragraph 32 above). Moreover, as confirmed by the Ombudsman of the Republic, domestic legislation

provides for the possibility of enrolling students in primary school on a simple declaration of those who exercise parental authority, provided that they provide birth certificates in due course.

87. This weighty obligation on the school authorities of Aspropyrgos was all the more obvious as they were aware of the problem of schooling children living in the Psari camp and the necessity to proceed with their enrolment in primary school: the interview of the applicants with the director of the 10<sup>th</sup> primary school of Aspropyrgos which took place on 21 September 2004 had been preceded, in August 2004, by a press release from the Minister of Education which emphasised the importance of integrating Romani children in the process of national education, and, on 10 September 2004, by a visit by the Secretary of the Department of Greek and Intercultural Education, accompanied by two representatives from the Greek Helsinki Monitor, to the Romani camps in Psari with the aim of ensuring the enrolment of all the Romani children of schooling age. The Government does not dispute on this point that the Greek Helsinki Monitor had subsequently informed the competent authorities of the Minister of Education in Religious Affairs, without them acting on this case.

88. With regard to special classes operating within the 10<sup>th</sup> primary school of Aspropyrgos, the Court notes first of all a certain inconsistency with regard to the criteria which, according to the Government, are supposed to govern the selection of students to be assigned to preparatory classes. According to the letter from the 1<sup>st</sup> Office of Primary Education of West Attica dated 5 June 2007, facing the additional enrolment of students of Romani origin for the 2005-2006 school year, it was age that was used to determine the students who had to attend special classes. However, in its letter of 17 March 2006, the Directorate of Primary Education of West Attica informed the Ministry of National Education and Religious Affairs that the new students of Romani origin had been welcomed into an Annex of the 10<sup>th</sup> Aspropyrgos Primary School due to a lack of space in the main building of the school. Finally, in its letter of 20 June 2006, the 3<sup>rd</sup> district of the Educational Council for Primary Education of Attica declared explicitly to have used the criteria of Romani origin of the interested “with a view to assure their adaptation to the school environment, taking into account the deficiencies they suffer and diverse other reasons rendering their integration into ordinary classes impossible.” (paragraph 29 above).

89. The Court deduces from that which precedes this that the competent authorities have not relied on a single and clear criterion from which to choose the students to be assigned to preparatory classes. It notes in particular that in their letters from 17 March and 20 June 2006 the school authorities invoke exclusively criteria directly referring to the ethnic origin of the persons concerned. Moreover, it finds that even the application of the criteria of age mentioned in the letter of 5 June 2007 would not be likely to remove the discriminatory character reserved for the children in question. In fact, the Government makes no mention in its observation of adequate tests

to which the children concerned would have been subjected in order to assess their aptitudes or possible learning difficulties (see *D.H. and others v. the Czech Republic*, cited above, §§ 199-201).

90. The Government has submitted an unsigned, undated document pertaining to school life and educational activity in preparatory classes according to which the students of preparatory classes had been subjected to evaluation tests which had demonstrated that 90% among them showed weaknesses in writing and reading the Greek language. The Court notes, however, that the students concerned had been submitted to these tests after just having been distributed in preparatory classes, namely “at the time of their registration and their schooling”. Moreover, the Government gives no details as to the content of these tests and does not rely on any expert opinion to prove their adequacy (see on this point, *D.H. and others v. the Czech Republic*, cited above, § 200).

91. In addition, the Court notes that the stated purpose of the preparatory classes was that the concerned students would be brought up to the standard level in order to integrate into ordinary classes. However, the Government does not cite a single example of a student who, after having been placed in a preparatory class – there had been more than fifty – would, after the end of two school years, be integrated into ordinary classes of the 10<sup>th</sup> primary school of Aspropyrgos. In addition, there are no assessment tests to which the Romani students should have been periodically submitted to enable schools to assess, on the basis of objective data and not on approximative evaluations, their aptitude to integrate into ordinary classes.

92. The Court considers it necessary to emphasise the importance of establishing an adequate system of evaluating the aptitudes of children presenting shortcomings in learning in view of bringing them up to par. When the students concerned belong to an ethnic minority, as in the case in question, such a system is necessary, before all, to guarantee their potential placement in special classes on the basis of non-discriminatory criteria. In this case, and given the racist incidents provoked by parents of non-Romani students of Aspropyrgos, the introduction of such a system would also have given rise to the applicants’ and their children’s feeling that their placement in preparatory classes was not inspired by segregative motivations. While admitting that it is not for it to decide on this question of a psychopedagogical nature, the Court considers that this would have particularly contributed to the unhindered integration of students of Romani origin not only in ordinary classes but into local society.

93. With regard to the parental consent granted by the applicants, the Court notes that the Government implies that given a difference of treatment having been established in this case, such consent would imply the acceptance of this difference, even if it discriminated, that is, the renunciation to the right to not be subject to discrimination. However, the Court’s case-law requires that the renunciation of a right guaranteed by the Convention – to the extent that it is lawful – is unequivocally established

that it must be made knowingly, that is, on the basis of informed consent (*Pfeifer and Plankl v. Austria*, judgment of 25 February 1992, Series A no. 227, pp. 16-17, §§ 37-38), and without constraint (*Deweert v. Belgium*, judgment of 27 February 1980, Series A no. 35, § 51).

94. In the circumstances of the case, the Court is not convinced that the applicants, as members of a disadvantaged community often without education, were able to assess all the aspects of the situation and the consequences of their consent. It seems, in addition, clear that at least some of the applicants found themselves on this occasion confronted by a dilemma. As the first applicant indicated in his testimony under oath of 31 May 2007 before the Elsefina Peace Court, he had to choose between the schooling of his children in ordinary classes, with the risk that their integrity would be placed in peril by “furious” non-Romani people, or their education in the “ghetto school.”

95. Recalling the fundamental importance of the prohibition of racial discrimination (*Natchova and others*, cited above, § 145; *Timichev*, precited, § 56), the Court considers that one cannot admit the possibility of renouncing the right to not be the object of such discrimination. In fact, such a renunciation would run up against a significant public interest (see *D.H. and others v. Czech Republic*, cited above, § 204).

96. In certain conditions and in view of the considerations listed above, the Court is not convinced that the contested difference in treatment between Romani children and other non-Romani children is based on an objective and reasonable justification and there exists a reasonable relationship of proportionality between the means employed and the aim in sight. In particular, it considers that, despite the authorities’ willingness to provide schooling for the Romani children, the arrangements for registering the children in question at school and their assignment in special preparatory classes – hosted in an annex to the main building of the school – has definitively resulted in discrimination.

97. Accordingly, there has been in this case a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 in respect of each of the applicants.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. According to Article 41 of the Convention,

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

### **A. Damages**

99. The applicants claim a lump sum of 180,000 euros (EUR) for non-pecuniary damage.

100. The Government claims that the finding of a violation would in itself constitute sufficient just satisfaction. In addition, it considers that the sum awarded to the applicants should not exceed EUR 10,000.

101. The Court considers that the applicants have suffered non-pecuniary damage, in particular because of the humiliation and the frustration caused to them by the discrimination suffered by their children. This moral injury is not sufficiently compensated by the findings of violation of the convention. However, the Court considers the amount sought by the applicants to be excessive. Making its judgment on an equitable basis, it considers that it is appropriate to award each of them EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that sum.

### **B. Costs and expenses**

102. The applicants also demand, in support of the invoice, EUR 2,000 for the costs and expenses incurred before the domestic courts and the Court.

103. The Government asserts that there is not a causal link between the costs and expenses incurred in the domestic proceedings and the alleged violations of the Convention.

104. According the Court's case-law, an applicant can obtain reimbursement of their costs and expenses only in so far as their reality, their necessity, and the reasonableness of their rate are established. Taking into account the reasonableness of the amount claimed and the fact that an invoice was produced, the Court accepts this claim in its entirety and jointly awards the applicants EUR 2,000 as such, plus any amount that may be due as taxes on this amount.

### **C. Default interest**

105. The Court considers it appropriate to model the rate of default interest on the interest rate on the European Central Bank's marginal lending facility plus three percentage points.

**FOR THESE REASONS, THE COURT UNANIMOUSLY,**

1. *Affirms* the Government's objection to non-exhaustion of domestic remedies and *rejects* it;

2. *Declares* the application admissible
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds* that there has been a violation of the Convention in conjunction with Article 2 of Protocol No. 1;
5. *Holds*
  - (a) that the respondent State is to pay to each of the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) for non-pecuniary damage and EUR 2,000 (two thousand euros) to the applicants jointly for costs and expenses, plus any tax that may be chargeable to them by way of tax on such sums;
  - (b) from the expiry of that period until payment, such amounts shall be increased by simple interest at a rate equal to that of the marginal lending facility of the European Central Bank applicable during that period, increased by three percentage points;
6. *Rejects* the claim for just satisfaction for the remainder.

Done in French, then communicated in writing on 5 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of the Court.

Søren Nielsen  
Registrar

Nina Vajić  
President

**List of applicants:**

1. Spiridon SAMPANIS
2. Vassiliki MOURATI
3. Athanasios SAMPANIS
4. Maria KARAGOUNI
5. Nikolaos VELIOS
6. Maria KARAHALIOU
7. Vassiliki KOURAKI
8. Eleni LIAKOPOULOU
9. Sotirios SAMPANIS
10. Ekaterini KARAHALIOU
11. Andreas SAINIS