



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

SECOND SECTION

CASE OF ELMAZOVA AND OTHERS v. NORTH MACEDONIA

(Applications nos. 11811/20 and 13550/20)

JUDGMENT

Art 14 (+ Art 2 P1) • Right to education • Discrimination of Roma pupils on account of their segregation in two State-run primary schools attended predominantly by Roma children and with Roma-only classes respectively • State's failure to take desegregation measures to correct applicants' factual inequality and to avoid perpetuation of discrimination resulting from their over-representation in one of the district's school • Segregation in both schools not objectively and reasonably justified by legitimate aim Art 46 • Execution of judgment • Respondent State required to take individual measures to end the segregation of Roma pupils in the two State-run primary schools

STRASBOURG

13 December 2022

FINAL

13/03/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Elmazova and Others v. North Macedonia,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Saadet Yüksel,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 11811/20 and 13550/20) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 28 February and 6 March 2020 by eighty-seven Macedonians/citizens of the Republic of North Macedonia of Roma origin, children and their parents (“the applicants”);

the decision to give notice to the Government of North Macedonia (“the Government”) of the complaints under Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention and to declare the remainder of the applications inadmissible;

the President’s decision under Rule 47 § 4 of the Rules of Court not to have the names of the child applicants disclosed;

the parties’ observations;

Having deliberated in private on 22 November 2022,

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

INTRODUCTION

1. The case concerns alleged segregation of Roma pupils in two State-run primary schools in Bitola and Shtip, in that, as regards the former, they were placed in a school alleged to be Roma-only, and as regards the latter, they were placed in Roma-only classes. The applicants complained of a violation of their rights under Article 1 of Protocol No. 12 to the Convention and Article 14 of the Convention.

THE FACTS

2. The applicants were born between 1958 and 2013 and live in Bitola and Shtip. Their names and details are set out in the appendix. The applicants were represented before the Court by the European Roma Rights Centre (ERRC) based in Brussels, Belgium and Ms S. Bojkovska, a lawyer practising in Skopje, North Macedonia.

3. The Government were represented by their Agent, Ms D. Djonova.
4. The facts of the case may be summarised as follows.

I. APPLICATION NO. 11811/20

5. The application concerns alleged segregation of Roma pupils in a State-run primary school, G.S., in Bitola in the 2018/19 academic year. The applicants reside in Bair, a residential district in Bitola. G.S. and T.A., another State-run primary school located 600 metres from G.S., belong to the same catchment area defined by the Municipality of Bitola (decision dated 29 October 2009). In accordance with the applicable legislation (see paragraphs 22 and 23 below), each residential district had a designated State-funded primary school which was obliged to admit the children who resided in its catchment area (a school of compulsory admission). Nevertheless, parents were free to request that their children be admitted to another public school of their choice, in the same or different catchment area, for which consent by the admitting school was required.

A. Proceedings before the Constitutional Court

6. On 12 November 2018 a group of Roma individuals, who were parents and pupils in G.S., including nineteen of the applicants, represented by Mr S. Bojkovska (see paragraph 2 above), lodged a constitutional complaint with the Constitutional Court alleging discriminatory practice and segregation in the enjoyment of their right to education. They alleged that Roma children from Bair were enrolled in G.S., unlike pupils of Macedonian ethnic origin from the same or the neighbouring catchment area, who were enrolled in T.A. The latter allowed transfers from G.S. of pupils of Macedonian ethnic origin, but did not allow transfers of Roma pupils. In the 2018/2019 academic year, there were seven Roma pupils in T.A., and five pupils of Macedonian ethnic origin in G.S. The implementation in practice of the municipality's decision regarding the schools' catchment area (see paragraph 5 above) led to the segregation of Roma in G.S. Over 80% of all pupils in that school, known as the "Romani or Gypsy school", were Roma. The claimants referred to the relevant information noted by the National Ombudsman in 2015 (see paragraph 37 below) and to a 2016 joint report by two non-governmental organisations (one of which was ERRC), which confirmed the Ombudsman's findings. The claimants further alleged that Roma pupils in G.S. had received inferior education in comparison with pupils in T.A. (fewer courses, less-skilled teachers, inadequate resources). The alleged segregation prevented any interaction between children of different ethnic communities, social inclusion and integration of Roma into the multi-ethnic society in the respondent State. The claimants requested that the court establish the existence of a discriminatory practice and order the

schools in question, the Ministry of Education and the Municipality of Bitola to refrain from such a practice in future. The alleged segregation has been taking place since the 2011/12 academic year.

7. On the basis of the material referred to by the applicants and the information obtained from the Ministry of the Interior and both schools in question (G.S. and T.A.), the Constitutional Court, on 18 September 2019, established the following facts: 83.5% of pupils in G.S. were Roma (of 584 pupils in G.S., 488 were Roma, 85 ethnic Macedonians and 11 others) and 95.1% of pupils in T.A. were ethnic Macedonians (of 589 pupils, 560 were ethnic Macedonians, 15 pupils were Roma (or 2.54%) and 13 others). In the 2018/19 academic year, of 145 pupils eligible to enrol in the first grade (42 ethnic Macedonians and 103 Roma) in the relevant catchment area, five ethnic Macedonian pupils and 63 Roma pupils were enrolled in G.S., while six Roma pupils were enrolled in the first grade in T.A. In the same academic year, ethnic Macedonian pupils were placed together in a single class at each grade (with the exception of the last two grades (the VIII and IX years)). Between 2016 and 2019, 58 requests for transfer to T.A. were submitted from other catchment areas, of which three requests were submitted by Roma (the remaining requests were submitted by ethnic Macedonians). The school confirmed that all requests for transfer to T.A. had been granted.

8. On the basis of the above statistics, the court concluded that “children in the Bair district attend two ethnically divided schools”. However, the court held that the statistical information regarding the ethnic composition of classes in both schools was not sufficient to establish segregation. It held that it was beyond its competence to assess the overall social context, and the applicants had not presented any facts or evidence (such as requests for transfer or refusal decisions) to support their alleged inability to enrol in T.A., and, accordingly, their status as victims of racial discrimination on the basis of their Roma origin. The constitutional complaint contained general allegations of segregation and discriminatory treatment, without there being any concrete evidence that any claimant had not been allowed to transfer to T.A. The parents had voluntarily enrolled their children in G.S. and none of them had requested a transfer to T.A. Alleged oral attempts in this regard had not been supported with any written material. In the absence of any evidence that the claimants had been subjected to different treatment in the enjoyment of the right to education in comparison with parents and pupils of Macedonian ethnic origin whose requests for transfer to T.A. had been accepted, the Constitutional Court rejected (*отфрла*) the constitutional complaint under Rule 52 of the Rules of Procedure of the Constitutional Court (see paragraph 28 below; decision *V.бп.132/2018* of 18 September 2019, decided by a majority, and notified to the claimants’ lawyer on 12 December 2019). In a joint dissenting opinion, Judges S.M., O.K. and N.A. held that the claimants had submitted sufficient evidence to demonstrate the difference in treatment in G.S. and T.A. in the enjoyment of their right to education.

B. Other information

9. In the 2020/2021 academic year, of 93 first-grade pupils enrolled in G.S., 80 pupils were Roma. In 2021/2022, all 77 first-grade pupils were Roma.

10. On 4 February 2022 the ERRC lodged with the Commission for Prevention and Protection against Discrimination (a State body set up under the Discrimination Act, “the Commission”) a complaint of the segregation of Roma pupils in G.S. in the 2021/2022 academic year. On 13 April 2022 the Commission issued an opinion in which it found indirect discrimination on account of ethnic segregation to be a systemic problem in the educational process stemming from the Primary Education Act. The Commission issued a recommendation that the relevant national and local authorities, and the administration of the schools concerned, ensure stricter and more consistent application of decisions on catchment area that would reduce Roma segregation. That recommendation is to be implemented within six months under threat of minor-offence proceedings being instituted in respect of the responsible persons.

II. APPLICATION NO. 13550/20

11. The child applicants attend the public primary school G.D. in Shtip.

A. Proceedings before the Constitutional Court

12. In submissions dated 30 October 2018, and supplemented on 14 and 19 December 2018, a group of Roma individuals, including thirty-three applicants, represented by Ms S. Bojkovska, complained to the Constitutional Court that they had been victims of segregation and discrimination in the enjoyment of their right to education in respect of G.D. They claimed that in the 2017/2018 and 2018/2019 academic years, there were three first-grade classes, of which two were mixed and one was Roma-only (each composed of eighteen pupils). They complained that they were excluded from regular education and, hence, did not have the same opportunities as non-Roma pupils regarding their future education, employment and integration into society. In support, the claimants referred to the Ombudsman’s reports (see paragraphs 35 and 37 below) and restated the consequences of the alleged segregation (see paragraph 6 above). They requested that the Constitutional Court acknowledge the segregation, and ban the relevant national, local and school authorities from continuing to take further measures that would lead to discrimination, namely the segregation of Roma in terms of their right to education.

13. On 25 September 2019 the Constitutional Court delivered a decision, by a majority, which ran to over thirty pages, rejecting the claimants’

constitutional complaint under Rule 52 of the Rules of the Constitutional Court. It established that during the period under consideration there had been fewer pupils of Macedonian ethnic origin in G.D. as they had enrolled in other schools in other catchment areas. In the 2017/2018 academic year, fifty-one pupils of Macedonian ethnic origin who were within G.D.'s catchment area enrolled in four out-of-catchment-area schools. In addition, a large Roma community resided in the catchment area to which G.D. belonged. G.D. confirmed that that situation prevented it from ensuring the balanced placement of pupils in terms of their ethnicity, sex and social status. G.D. took certain practical steps (home visits, distribution of flyers, meetings with parents and the relevant authorities) to encourage the enrolment of non-Roma first-grade pupils in that school, as well as to redistribute Roma pupils in the existing classes within the school (the latter action was not supported by the parents of pupils from the mixed classes, mainly non-Roma), which were to no avail. In June 2016 it sought in vain that the municipality ensure strict implementation of its decisions regarding school catchment areas so that the transfer of out-of-catchment non-Roma pupils would be granted only in exceptional circumstances. In addition, it was suggested that Roma pupils be given easier access to other schools from different catchment areas and provided with free transportation. On the basis of information obtained from G.D., the Constitutional Court established that in 2017/2018, 64% of all first-grade pupils in G.D. were Roma, and in 2018/2019, 67% were Roma. It further confirmed the above figures (see paragraph 14 above) regarding the ethnic origin of the first-grade pupils in G.D. and their placement in classes in the above-mentioned years (the only exception being that in 2017/2018 there was one non-Roma student in the alleged Roma-only class). In the two mixed first-grade classes in the 2017/2018 academic year, there were 31 and 32 pupils respectively, whereas in the 2018/2019 academic year, there were 25 and 27 pupils. The court further concluded that there was no evidence that Roma pupils in the "segregated" classes had been treated differently in comparison with pupils in the mixed classes, namely that they had obtained an inferior education. According to the court, "the allegations of segregation ... must be supported with relevant facts and evidence that would make the claim of different treatment ... at least plausible", and found no such evidence in the present case. "Instead of concrete facts and evidence for the alleged violation, in each individual case, the focus of the complaint was put on a general situation and problem, namely segregation in schools". For the court, "the ethnic composition of the classes in question, d[id] not mean, in itself, automatic discrimination ... the fact that in the 'segregated' classes there were no pupils of Macedonian ethnic origin ..., taken alone, [wa]s insufficient for the court to examine the merits of the complaint ... namely, to reach an objective conclusion [that there was] segregation".

14. Lastly, the court noted that the constitutional complaint was premature given its subsidiary nature that required prior exhaustion of the available

ordinary remedies, namely a civil claim for discrimination under the Discrimination Act before the courts of general jurisdiction (decision U.br. 131/2018, notified to the claimants' lawyer on 18 December 2019).

B. Other relevant information

15. In the 2020/2021 academic year, of 87 first-grade pupils enrolled in G.D., 57 were Roma, 26 were ethnic Macedonians and four were Turkish. In 2021/2022, of 78 first-grade pupils, 63 were Roma, 14 were ethnic Macedonians and one was Turkish. They were divided into four classes, of which two classes were Roma-only.

16. Following a complaint of September 2021 by the ERRC, on 3 February 2022 the Commission issued an opinion finding indirect discrimination on account of ethnic segregation to be a systemic problem in the educational process stemming from the Primary Education Act. Noting that there was a "conscious separation of non-Roma from Roma children", the Commission held that "the context can have far-reaching consequences not only for children of Roma ethnicity, but also for non-Roma children, because the lack of opportunity for children of different cultural and ethnic backgrounds to integrate and learn about each other in the future can lead to intolerance and discrimination from the side of the 'stronger' or more numerous group". The Commission also issued a general recommendation that the relevant national and local authorities and the administration of the schools concerned should ensure a stricter and more consistent application of the decisions on catchment areas that would reduce Roma segregation. As stated by the Government, the implementation of the recommendations was still ongoing.

III. CIVIL ACTION ALLEGING GENERAL DISCRIMINATION AGAINST ROMA CHILDREN IN EDUCATION

17. On 28 January and 12 April 2021, the Helsinki Committee for Human Rights in Skopje lodged a civil action for damages against several State and local authorities, including the Municipalities of Bitola and Shtip, seeking that the Skopje Court of First Instance establish that there had been "segregation of Roma children in the process of education". The claimant referred to numerous reports by domestic and foreign non-governmental organisations, as well as by international bodies, issued since 2009 which noted the situation of Roma in the respondent State. It also noted relevant facts, judicial decisions and reports concerning the alleged discrimination and segregation in G.S. and G.D. No information was submitted about whether there had been any decision on the claimant's claim.

DOMESTIC LAW AND PRACTICE

I. CONSTITUTION OF 1991

18. Article 108 of the Constitution provides that the Constitutional Court safeguards constitutionality and legality. Under Article 110, the Constitutional Court reviews the constitutionality and legality of laws and other regulations, and protects the human rights and freedoms enumerated in that Article (including the right not to be discriminated against). Article 112 provides that, *inter alia*, it can repeal (*укине*) or annul (*попишти*) a law or regulation if it is not in conformity with the Constitution or laws.

II. PRIMARY EDUCATION ACT

19. Section 4 of the Act, as in force at the relevant time, specified that primary education was mandatory and lasted nine years.

20. Section 19 provided that a decision founding a primary school specified, *inter alia*, the school's catchment area.

21. Section 41 provided that the number of pupils per class should be between twenty-four and thirty-four pupils. A class with fewer pupils could also be formed, with the consent of the founder of the school and the relevant Ministry.

22. Under section 46(3)-(5), a school was required to admit children from its catchment area. It could accept children from other catchment areas if there were available places. The founder of the school was to determine its catchment area.

23. Section 50(1) and (2) provided that the parent or guardian could enrol the child in the primary school in the area where he or she lived or had a permanent residence. The parent or the guardian could enrol the child in another primary school in the same or different area with the consent of the admitting school.

III. DISCRIMINATION ACT OF 2010

24. The Act, as in force at the relevant time, defined and proscribed any form of direct or indirect discrimination (sections 3 and 6). It also entitled victims of discrimination to seek before the civil courts of general jurisdiction, under the rules of the Civil Proceedings Act, a judicial acknowledgement of the alleged discrimination, the ban of any further harmful action and the award of compensation (sections 34-41).

25. Section 12 of the Discrimination Act of 2020 defines, for the first time, segregation as a physical separation of a person or group of persons on a discriminatory basis without a legitimate or objectively justified aim. The

Act also provides for court protection under similar rules to those specified in the 2010 Act (sections 32-40).

IV. RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT

26. Rule 12 of the Rules of Procedure provides that anyone can lodge an application challenging the constitutionality or legality of a law or a regulation.

27. Under Rule 51, everyone who considers that his or her right or freedom has been violated by a final individual decision or an action can seek protection before the Constitutional Court.

28. Under Rule 52, a constitutional complaint for the protection of human rights and freedoms must state the reasons for the protection sought, the impugned acts or actions, the facts and evidence in support of the complaint, and any other relevant information.

29. Under Rule 56, if the Constitutional Court finds a violation of a human right or freedom, it can declare the individual decision in question null and void or it can ban the action which caused the violation.

30. The enforcement of final individual decisions adopted on the basis of a law or regulation that the court has declared null and void is not permitted, and if the enforcement has already started, it will be discontinued (Rule 80). Rule 81 provides that every person whose right is violated by a final individual decision based on a law or regulation declared null and void by the Constitutional Court is entitled to seek that, *inter alia*, the body which has jurisdiction declare the final individual decision in question null and void.

V. DOMESTIC JUDICIAL PRACTICE

31. By a decision of 30 January 2013, the Constitutional Court decided not to initiate a procedure for review of the constitutionality of section 50(2) of the Primary Education Act in part regarding “the consent of the admitting school”. On 6 March 2013 the court declared unconstitutional part of a municipality decision on the catchment area of a school which introduced new admission criteria (one-year residence and proof of ownership), in addition to the criteria specified in section 50 of the Primary Education Act (decision *U.br. 158/2012*).

32. By a decision of 27 June 2018, the Constitutional Court accepted a constitutional complaint lodged by two physical persons and found that they were discriminated against in the enjoyment of their freedom of expression on the basis of their political affiliation (decision *U.br. 116/2017*).

33. The Government submitted copies of three judgments of 2017 in which the civil courts allowed claims lodged under the Discrimination Act to claimants who had been prevented from leaving the territory of the

respondent State and awarded them non-pecuniary damages on that ground (judgments *P4.br.34/17*; *P4.br.40/17* and *P4.br.55/17*).

INTERNATIONAL MATERIALS

I. EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

A. European Commission against Racism and Intolerance General Policy Recommendation No. 13 on combating antigypsyism and discrimination against Roma, adopted on 24 June 2011 and amended on 1 December 2020, Strasbourg 2020

34. The relevant parts of the ECRI General Policy Recommendation No.13 read as follows:

“Recommends that the governments of member states:

...

d. take urgent measures, including legal and political ones, to put an end to the segregation at school which Roma children are subjected to, and integrate them into schools attended by pupils from the majority population;

...”

OTHER MATERIALS

I. REPORTS OF THE NATIONAL OMBUDSMAN

A. Ombudsman’s annual report for 2011

35. The relevant parts of the National Ombudsman’s annual report for 2011 read as follows:

“... Unfortunately, in the State there is still segregation of Roma pupils who, at certain schools, are separated from other pupils in special classes, and the principle of regional enrolment in the educational process is not respected for these children. For example, in certain municipalities in which the Roma ethnic community is in the majority, such as Bitola and Shtip, Roma children enrol only in certain schools, regardless of whether the school belongs to the region in which their home is located ...”

B. Ombudsman’s annual report for 2012

36. The relevant parts of the Ombudsman’s annual report for 2012 read as follows:

“... The Ombudsman emphasises the need for active measures and promotional policies as regards the Roma community and Roma children, as they are the target of the most intense negative stereotypes and social distancing from other children. Unfortunately, the Republic of Macedonia still sees cases of segregation of Roma

pupils, as some schools separate these children from other pupils and place them in special classes, and for these children the regionalisation of the enrolment process does not apply ... The flexibility in interpreting the legislation leads to a situation where a region of mixed ethnicity includes schools of only one ethnicity.

... Precisely this flexible interpretation of the regionalisation process has led to the fact that in the Municipality of Bitola, in a school which is normally attended by Roma and Macedonian children, in the 2012/2013 academic year only a dozen Macedonian children enrolled in the school because of the overwhelming presence of Roma children. The Ombudsman has indicated the consequences of this situation and requests that the municipality administration takes measures to prevent these occurrences, since they can have a negative effect and jeopardize the existence of the school in this type of environment ...”

C. Information on the situation of enrolment and placement of first-grade Roma pupils in mixed classes in the 2014/2015 academic year, October 2015

37. As noted by the Ombudsman, in the 2014/2015 academic year 73 of 86 first-grade pupils in G.S. were Roma. There were three Roma-only classes, with 68 pupils, while the remaining five Roma pupils were placed in a mixed class. Both G.S. and G.D. were listed among the schools in which first-grade pupils were not enrolled in accordance with the relevant decisions on catchment area. The refusal of parents of Macedonian ethnic origin to enrol their children because both schools were attended by Roma pupils was mentioned as the main reason for non-compliance with the decision on catchment area. The Ombudsman recommended that the relevant authorities take measures to ensure the balanced placement of Roma pupils in mixed classes and implementation of the catchment decisions in a manner that would “reduce segregation of Roma pupils”.

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

39. The applicants complained of segregation in primary schools G.S. and G.D. in Bitola and Shtip without any objective and reasonable justification. They complained about the placement of child applicants in G.S., as a Roma-only school, and in Roma-only classes, as regards G.D. The applicants relied on Article 1 of Protocol No. 12 to the Convention and Article 14 of the

Convention. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], no. 37685/10, § 124, 20 March 2018, and *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013), considers that the complaint should be analysed under Article 14, to be taken in conjunction with Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *X and Y v. North Macedonia*, no. 173/17, § 64, 5 November 2020, and *Memedov v. North Macedonia* [Committee], no. 31016/17, § 32, 24 June 2021). The relevant provisions read as follows:

Article 14

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

Article 2 of Protocol No. 1

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

A. Admissibility

1. The parties' submissions

(a) The Government

40. In their observations of 17 January 2022, the Government submitted that the applicants could not claim to be victims of a violation of their rights within the meaning of Article 34 of the Convention since their complaints concerned a general situation in education and they had failed to present concrete evidence that they had been directly affected by the situation complained of. In any event, victim status could not be recognised either in respect of the child applicants F.G. (applicant no. 12) and A.K. (applicant no. 13) (application no. 11811/20) or A.M. (applicant no. 24) and R.M. (applicant no. 28) (application no. 13550/20) who had been placed in mixed classes, or in respect of the adult applicants.

41. They further argued that the remedy used by the applicants was not adequate and offered no prospect of success for their grievances since the applicants had presented no concrete evidence for the violation complained of (regarding application no. 11811/20, there was no evidence that the child applicants had not been allowed to enrol in other public schools). The applicants, who were represented by a lawyer, must have known that their complaint could not be examined on the merits. For those reasons, the Constitutional Court's decisions did not interrupt the running of the

six-month time-limit, which could be regarded to have started to run on 30 January 2013, the date on which the Constitutional Court had found section 50(2) of the Primary Education Act compatible with the Constitution (see paragraph 31 above).

42. Furthermore, since the situation complained of by the applicants, including the relevant decisions on catchment area, did not result from an individual action taken by a public authority, but from the legislation, the applicants should have asked the Constitutional Court to review, instead, the constitutionality and/or legality of the relevant regulatory framework. The applicants had also failed to seek judicial protection under the Discrimination Act and had applied directly to the Constitutional Court notwithstanding that the latter remedy was of a subsidiary nature and presupposed prior exhaustion of ordinary remedies, as found by the Constitutional Court regarding application no. 13550/20 (see paragraph 14 above). Although both remedies were readily available and offered a reasonable prospect of success, the civil avenue of redress was more effective and expedient in that it provided the applicants with the possibility of obtaining compensation if successful, which was not the case with the constitutional complaint, which, if successful, would have to be followed by a separate compensation claim before the civil courts. Judicial practice supported the effectiveness of the civil avenue of redress (see paragraph 33 above). The objection of non-exhaustion applied *a fortiori* to the applicants who had not participated in the proceedings before the Constitutional Court.

43. In a document dated 7 April 2022 containing their additional observations and comments on the applicants' claims for just satisfaction, the Government referred to the civil action lodged by the Helsinki Committee (see paragraph 17 above), which, according to them, rendered the applications premature.

(b) The applicants

44. The applicants contested the Government's arguments. The Government's objection regarding their victim status was untenable as they had made a *prima facie* case of discrimination before the Constitutional Court. The segregation complained of affected all the child applicants, including the four applicants referred to by the Government who had attended mixed classes. The adult applicants were to be regarded as victims of discrimination in relation to the admission of their children and the formation of classes in the schools in question.

45. They further submitted that the constitutional complaint was an effective remedy for the allegations complained of (see paragraph 32 above) and it should be taken into account for the calculation of the six-month time-limit. An application for the review of constitutionality or legality was not appropriate in the circumstances as it could not tackle the issue of the selective application of the relevant regulatory framework in practice, which

was the gist of their grievances. The civil action under the Discrimination Act was an alternative avenue of redress that pursued the same objective as the constitutional complaint. For that reason, they were not required to make use of it.

46. The applicants who had not been a party to the proceedings before the Constitutional Court were to be exempted from the exhaustion requirement and could be regarded as victims of the alleged violation as their individual situation was not different from that of the applicants who had applied to that court. In this connection, the applicants argued that the constitutional complaint could be regarded as public interest litigation and therefore a means of exhausting domestic remedies.

2. The Court's assessment

(a) The applicants' victim status

47. The relevant Convention principles regarding the victim status of an applicant have been summarised in *Vallianatos and Others v. Greece* ([GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

48. The Government contested the victim status of the applicants because their grievances were of a general nature and they had failed to make a *prima facie* case that they had been directly affected by the situation complained of. The Court considers that this objection goes to the very heart of the applicants' complaints under Article 14 taken in conjunction with Article 2 of Protocol No.1, and that it would be more appropriately examined at the merits stage.

49. As regards the Government's objection pertaining to the victim status of the child applicants who were allocated to mixed classes in G.S. and G.D., the Court considers it decisive whether their situation can be regarded as similar to the situation of the remaining minor applicants in terms of the allegations raised (see *Lavida and Others v. Greece*, no. 7973/10, § 51, 30 May 2013).

50. In so far it concerns the child applicants nos. 12 and 13 (application no. 11811/20), it is to be noted that their case concerns alleged discrimination against Roma on account of their placement in G.S., alleged to be a Roma-only school, irrespective of the ethnic composition of classes. Accordingly, the fact that these child applicants were placed in mixed classes in G.S. does not render their situation substantially different from the other Roma child applicants in G.S. For these reasons, the Court considers that the child applicants in question can claim to be victims of the alleged violation.

51. The same cannot be said for the child applicants nos. 24 and 28 (application no. 13550/20) who were allocated to mixed classes in G.D. Having regard to the fact that their complaint concerns the placement of Roma pupils in Roma-only classes in G.D., these applicants cannot be regarded as victims within the meaning of Article 34 of the Convention.

Accordingly, their complaints must be declared inadmissible for being incompatible *ratione personae* with the provisions of the Convention for the purposes of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

52. Lastly, the Court considers that the adult applicants, who are the parents of the minor pupils, many of whom participated in the proceedings before the Constitutional Court in their own name and on behalf of their minor children, are entitled to ensure their children's education in line with their own philosophical convictions and have a legitimate personal interest in seeing the situation complained of brought to an end. Accordingly, they can also claim to be victims of the alleged discrimination (*ibid.*, § 51, and *X and Others v. Albania*, nos. 73548/17 and 45521/19, 31 May 2022). Given that the victim status of the child applicants and their parents are intrinsically linked, the complaints of the applicants M. Parlapanova and A. Memedova (applicants nos. 32 and 27), who are the parents of applicants nos. 24 and 28, respectively, must also be declared inadmissible for being incompatible *ratione personae* with the provisions of the Convention for the purposes of Article 35 § 3 (a) and be rejected in accordance with Article 35 § 4.

(b) Non-exhaustion of domestic remedies and compliance with the six-month rule

53. The relevant Convention principles regarding the close interplay between the exhaustion of domestic remedies and the six-month period have been summarised in *Jeronovičs v. Latvia* ([GC], no. 44898/10, § 75, ECHR 2016) and *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, § 136, ECHR 2012). The relevant Convention principles regarding non-exhaustion have been summarised in the Court's judgment in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). Furthermore, the Court reiterates that in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance. In other words, when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010, and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

54. Turning to the present case, the Court notes that fifty-two applicants lodged a constitutional complaint with the Constitutional Court seeking that the latter establish that there had been segregation, namely discrimination on account of their Roma origin in the enjoyment of the right to education in respect of G.S. and G.D. It is well-established case-law of the Court that the Constitutional Court has full jurisdiction, under Article 110 § 3 of the Constitution, to deal with alleged violations of the rights and freedoms under Article 14 of the Convention (see *Sulejmanov v. the former Yugoslav*

18 September 2006; *Vraniskoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 37973/05, 26 May 2009; and *Sijakova and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 67914/01, 6 March 2003). Whereas the Government have not contested the effectiveness of this remedy, as such, they nevertheless argued that, in the circumstances, it would have been more appropriate if the applicants had brought proceedings for constitutional review of the relevant legislation or had used the civil avenue of redress under the Discrimination Act. The Court will examine these objections in turn.

55. Having regard to the applicable rules on constitutional review (see paragraphs 26 and 30 above), it is not in doubt that any physical person could seek a constitutional review of a legal instrument and that such an application could, if successful and under certain circumstances, enable those directly affected to vindicate individual rights and freedoms stemming from the legislation that the Constitutional Court declared unconstitutional or unlawful. However, the applicants argued that their grievances were not a result of the legislation, as such, but of the manner in which it had been implemented in practice (see paragraphs 6 and 45 above). Indeed, in their complaints to the Constitutional Court they neither identified relevant legislation nor submitted arguments that a particular statutory provision or decision of the local authorities had not been in compliance with the Constitution or laws. The Ombudsman's uncontested findings at the time also pointed to the interpretation and application in practice of the rules on admission and transfer of pupils (see paragraphs 35-37 above). Furthermore, it is to be noted that the Constitutional Court had already found that section 50 (in part) of the Primary Education Act, which served as a legal basis for the transfer of pupils between the schools, was in compliance with the Constitution (see paragraph 31 above). There is nothing to suggest that the Constitutional Court would have decided differently if the applicants had sought a fresh constitutional review of that provision. In addition, it has not been argued that the relevant decisions regarding the schools' catchment area in the present case contained rules other than those provided for in the relevant laws (unlike the impugned decision on catchment area that the Constitutional Court declared unlawful, see paragraph 31 above) or were otherwise clearly unconstitutional or unlawful, which would render an application under Rule 12 of the Rules of the Constitutional Court likely to be successful.

56. In such circumstances, the Court does not consider that an application for constitutional review under Rule 12 of the Rules of the Constitutional Court would have been more appropriate for the applicants' complaints or that their failure to avail themselves of that remedy was tantamount to non-exhaustion.

57. As regards the civil avenue of redress under the Discrimination Act, the Government seem to have expressed a preference for that remedy over

the constitutional complaint, on one hand, and argued that it had to be used prior to the constitutional complaint, on the other hand.

58. As to the former argument, the Court notes that under the law of the respondent State both avenues of redress – the civil action and the constitutional complaint – could lead to a finding of discrimination. Furthermore, both the civil courts and the Constitutional Court have the power to deliver decisions that are binding and enforceable on public and private entities and to order anti-discrimination measures. Lastly, both remedies, if successful, can lead to an award of damages. That such an award cannot be made directly in the context of the constitutional complaint, but rather in separate civil proceedings (see paragraph 42 above), does not render the constitutional complaint ineffective, and that fact alone cannot be held against the applicants in respect of the free choice they had made from the available remedies. In such circumstances, the Court considers that both remedies pursue essentially the same objective and the civil-law remedy would not add anything beyond what the constitutional complaint offered in respect of the applicants' complaints.

59. As to the latter argument (successive use of remedies; see paragraph 56 above), the Court notes that in decision *Y.öp.132/2018* dated 18 September 2019, the Constitutional Court made no reference to the alleged requirement that the applicants should have made use of the civil avenue of redress before they applied to the Constitutional Court (see paragraph 8 above). According to the Court's case-law, it would be unduly formalistic to require the applicants to exercise a remedy which even the highest court of the country concerned had not obliged them to use (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 118, ECHR 2007-IV). It is true that the Constitutional Court mentioned that requirement in its decision *U.br. 131/2018* of 25 September 2019 (see paragraph 14 above). However, neither the Constitutional Court nor the Government explained this discrepancy in the two decisions which were delivered at close time intervals. Furthermore, in both decisions the Constitutional Court rejected the constitutional complaints for lack of concrete evidence that the claimants were directly affected by the situation complained of. That conclusion followed a lengthy examination of the admitted evidence and establishment of the relevant facts. In addition, the rejection was based on Rule 52 of the Rules of the Constitutional Court, which contained no provision regarding non-exhaustion (see, *mutatis mutandis*, *Voggenreiter v. Germany* (dec.), no. 47169/99, 28 November 2002). Lastly, it is to be noted that the Government did not submit any examples of the Constitutional Court applying the same approach in its case-law pre-dating (see paragraph 32 above), and more importantly, post-dating its decision *U.br. 131/2018* of 25 September 2019.

60. In such circumstances, although the suggested approach cannot be regarded, in principle, unreasonable in view of the machinery within which

the domestic legal remedies operate and the superior position of the Constitutional Court in the judiciary of the respondent State, the Court does not consider that it can apply in the present case.

61. As to the Government's objection, raised for the first time on 7 April 2022, regarding the proceedings brought by the Helsinki Committee in January 2021 (see paragraphs 17 and 43 above), as a public interest litigation (see *Kósa v. Hungary* (dec.) no. 53461/15, 21 November 2017, unlike the applicants' arguments in paragraph 46 above), the Court finds that, for the reasons stated in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 52-54, 15 December 2016), which likewise apply to the present case, the Government are estopped from relying on those grounds, which were not raised in their initial non-exhaustion plea of 17 January 2022 (see paragraph 40 above).

62. Accordingly, the Court concludes that the applicants who pursued the constitutional avenue of redress did what was reasonably expected of them and thus complied with the requirements of Article 35 § 1 of the Convention.

63. Lastly, the Court sees no reason to believe that the Constitutional Court would have decided otherwise if the remaining applicants, whose situation was similar to that of the participating applicants, had applied to the Constitutional Court under Rule 51 of the Rules of the Constitutional Court. It therefore considers that in the particular circumstances of the case, also taking into account the nature of the complaints pertaining to an alleged practice of Roma segregation in the schools in question, the fact that some applicants did not use this remedy cannot be regarded as a failure on their part to exhaust the domestic remedies (see, *mutatis mutandis*, *Vasilkoski and Others v. the former Yugoslav Republic of Macedonia*, no. 28169/08, § 46, 28 October 2010).

64. The Government's objections of non-exhaustion of domestic remedies and non-compliance with the six-month rule must therefore be rejected.

(c) Conclusion

65. No other ground for declaring them inadmissible having been established, the remaining applicants' (see paragraphs 51 and 52 above) complaints under Article 14 taken in conjunction with Article 2 of Protocol No. 1 of the Convention must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicants

66. The applicants submitted that the available statistics, on their own, shifted the burden of proof onto the Government, who had failed to show that there was no discrimination. The decisions of non-Roma parents to send their children to other schools (known as “white flight”) could not be a justification for school segregation. Even if the catchment area had a large percentage of Roma families, the authorities had a positive obligation to take steps to prevent school segregation. Furthermore, segregated schools amounted to discrimination even in the absence of a discriminatory intent on the part of the State. The figures concerning the 2021/2022 academic year demonstrated that Roma segregation continued, which according to the applicants was to be regarded as evidence of “anti-Gypsyism”.

(b) The Government

67. The Government submitted that the schools in question were regular public primary schools in which the curriculum followed was identical to that in all such schools. The graduates of those schools had the same opportunities to continue secondary education as the graduates of any other school. The applicants had not presented any evidence that their education in the schools in question had put them in a disadvantageous position *vis-à-vis* other pupils in a comparable situation. That the majority of pupils in the schools were Roma was due to the fact that the schools fell within the catchment area predominantly inhabited by Roma. Roma pupils were neither placed in special classes where they obtained an inferior education nor were they treated differently from pupils of other ethnic origins. The pupils' ethnic origin played no role in the formation of classes or the transfer of pupils to other schools. The applicants, although entitled under the law, had not attempted to change their situation, namely by enrolling in other schools (regarding G.S., earlier examples showed that such a transfer had not been prevented by the parents of non-Roma children in the admitting school) or seeking the redistribution of pupils in the classes concerned. The State could not be held responsible for the applicants' failure to seek a transfer to another school and for the lawful choice of the pupils who had sought such a transfer.

2. *The Court's consideration*

68. The relevant Convention principles regarding alleged discrimination of Roma in the enjoyment of their right to education have been outlined in *D.H. and Others v. the Czech Republic* ([GC], no. 57325/00, §§ 175-81, ECHR 2007-IV) and *Oršuš and Others v. Croatia* ([GC], no. 15766/03,

§§ 144 and 146-48, ECHR 2010 and further summarised in *Lavida and Others*, cited above, §§ 60-63 and 72). In particular, it is reiterated that discrimination potentially contrary to the Convention may result from a *de facto* situation. The absence of any discriminatory intent on the part of the State cannot be considered as objectively justified.

69. Furthermore, it is reiterated that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Horváth and Kiss v. Hungary*, no. 11146/11, § 102, 29 January 2013).

70. The present case concerns the alleged segregation of Roma pupils in two public primary schools, namely G.S. and G.D., based on similar, yet different, factual situations. As noted above (see paragraphs 5, 12, 50 and 51 above), application no. 11811/20 concerns the 2018/2019 academic year and the placement of Roma pupils in G.S., alleged to be a Roma-only school, and application no. 13550/20 pertains to the placement of Roma first-grade pupils in Roma-only classes in G.D. in 2017/2018 and 2018/2019. In the absence of sufficient evidence, the Court cannot but conclude that both schools and all classes, irrespective of their ethnic composition, offered a program that was the same as, or at least similar to, that of other public primary schools, which allowed, at the end of the cycle, a transition to secondary school (see *Lavida and Others*, cited above, § 65).

71. As regards G.S., there is no doubt, as is apparent from the facts of the case and the arguments of the parties, that it was a school predominantly attended by Roma children (see *X and Others*, cited above, § 3). During the period under consideration, 83.5% of pupils in G.S. were Roma. The ethnic Macedonian pupils in each grade who attended the school were mainly placed together in one class. In contrast, T.A. was almost exclusively attended by ethnic Macedonians who represented 95.1% of all the pupils (2.54% were Roma pupils). Furthermore, of 145 pupils eligible to enrol in the first grade in both schools, five ethnic Macedonian pupils and 63 Roma pupils were enrolled in G.S., whereas six Roma pupils were enrolled in the first grade in T.A. On the basis of the above figures, the Constitutional Court concluded that “the children in the Bair district attend[ed] two ethnically divided schools” (see paragraph 8 above).

72. The Ombudsman also noted that there was a large disproportion between Roma and non-Roma placements in G.S. in the preceding academic years. He also upheld the applicants’ arguments that the main reason for the disproportionate placement of Roma pupils in G.S. was the manner in which the regulatory framework on admission and transfer of pupils was applied in practice, owing to the opposition of non-Roma parents to enrolling their

children in G.S. (see paragraphs 36 and 37 above). The Government did not contest those findings.

73. As regards the Government's argument that the above-mentioned situation was a result of the fact that most of the residents in the Bair district, where G.S. was located, were Roma, the Court considers that the ethnic structure of residents within the catchment area cannot, in the circumstances, be sufficient to objectively justify the segregation of Roma in G.S. The Court observes that the ethnic composition of pupils in T.A. was totally different from G.S., notwithstanding the fact that T.A. was located at a distance of 600 metres from G.S. and belonged to the same catchment area.

74. Furthermore, the Court does not consider that the applicants were to be held responsible for the situation complained of because of their failure to seek a transfer to other schools. Firstly, their choice to enrol in G.S., as the school of their compulsory admission, was in compliance with the principal rule on enrolment of pupils under sections 46 and 50 of the Primary Education Act (see paragraphs 22 and 23 above). Secondly, and more importantly, it is primarily for the State to take positive effective measures to correct the applicants' factual inequality and avoid the perpetuation of the discrimination that resulted from their over-representation in G.S., thereby breaking the circle of marginalisation and allowing them to live as equal citizens from the early stages of their life (see *X and Others v. Albania*, cited above, § 84, and *Horváth and Kiss*, cited above, § 116). No explanation was provided as to why no measure has been taken to correct the imbalance in the ethnic composition of the two schools in question, or to redistrict the school district map, or why no other appropriate desegregating measure has been taken, notwithstanding the repeated recommendations by the Ombudsman in this regard. The Court observes that the situation complained of continued in the years following the period under consideration, and worsened in 2021/2022 when the first-grade pupils enrolled in G.S. were exclusively Roma (see paragraph 9 above).

75. As regards G.D., the facts show that in the 2017/2018 academic year, Roma pupils accounted for 64% of all first-grade pupils, and in the 2018/2019 year they accounted for 67%. In each academic year under consideration, there were three first-grade classes, of which two were mixed and one was Roma-only. Accordingly, it cannot be said that it was a general policy to automatically place Roma pupils in separate classes in the school at issue (see *Oršuš and Others*, cited above, § 152).

76. It is not in doubt (see paragraphs 13 and 66 above) that the above figures were partly a result of the fact that a large Roma community resided in the catchment area to which G.D. belonged. However, as established by the Constitutional Court, there was a significant departure of pupils of Macedonian ethnic origin belonging to G.D.'s catchment area (see paragraph 13 above). The Government have not disproved that such a practice was due to the refusal of parents of non-Roma pupils to enrol their children in G.D.

because of the large presence of Roma pupils, which, as noted by the Ombudsman, had been the main reason for the situation complained of in the previous academic years (see paragraph 37 above). Furthermore, the uneven distribution of first-grade pupils in the 2017/2018 academic year in mixed (31 and 32 pupils in the two classes) and Roma-only (18 pupils) classes is noteworthy, the latter class having fewer pupils than the minimum threshold set by law (24 pupils, see paragraph 21 above).

77. The Court notes that the school acknowledged the existence of segregation and took certain measures to tackle the problem. However, all its attempts and suggestions, including the redistribution of pupils in the classes, did not materialise mainly because of the opposition shown by the parents of non-Roma children (see paragraph 13 above). The Court observes that the situation complained of continues at present (see paragraph 15 above).

78. In view of the foregoing, and even in the absence of any discriminatory intent on the part of the State, the Court considers that the segregation of Roma children in G.S. and G.D. during the period under consideration cannot be considered as objectively and reasonably justified by a legitimate aim.

79. Accordingly, it dismisses the remainder of the Government's preliminary objection (see paragraph 48 above) and considers that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

80. Article 41 of the Convention provides:

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

1. Damage

81. The applicants claimed 4,500 euros (EUR) each in respect of non-pecuniary damage for the suffering endured as a result of the alleged violation.

82. The Government contested the applicants' claims as excessive.

83. The Court considers that the remaining applicants (see paragraphs 51 and 52 above) undoubtedly suffered non-pecuniary damage – in particular because of the frustration due to the discrimination of which they were victims – and that the finding of a violation of the Convention does not constitute sufficient reparation in this respect. Having regard to the temporal scope of the case defined in paragraph 70 above and ruling on an equitable

basis, it awards each of the applicants' household (parents and their minor children) 1,200 EUR for non-pecuniary damage, plus any tax that may be chargeable.

2. *Costs and expenses*

84. The applicants also claimed EUR 2,250 corresponding to the legal fees for the applicants' legal representation in the proceedings before the Constitutional Court. A retainer between the ERRC and the lawyer who represented the applicants before that court was submitted in support. The applicants also claimed EUR 3,600 for the costs and expenses incurred before the Court, which corresponds to thirty hours of legal work by three lawyers of the ERRC (EUR 120 per hour), based on a tariff list applicable in Belgium (the head office of the ERRC).

85. The Government contested the applicants' claims under this head as excessive and not reasonable as to quantum. Furthermore, there was nothing to indicate that the applicants had paid or been obliged to pay the costs and expenses claimed.

86. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress (see *Popovski v. the former Yugoslav Republic of Macedonia*, no. 12316/07, § 102, 31 October 2013). In the present case, regard being had to the above criteria and the absence of any supporting documents showing that it is incumbent on the applicants to pay any of the costs and expenses claimed, the Court rejects the claims under all heads.

B. Article 46 of the Convention

87. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.”

88. The Court reiterates that, by virtue of Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that where the Court finds a breach in a judgment it imposes a legal obligation on the respondent State, whether or not the

applicant has requested just satisfaction, to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress the effects as far as possible. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46, provided that such means are compatible with the conclusions and the spirit of the Court's judgment (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 221, 20 September 2018, and *X and Others v. Albania*, cited above, § 96).

89. It further reiterates that the coexistence of members of society free from racial segregation is a fundamental value of democratic societies (see, *mutatis mutandis*, *Vona v. Hungary*, no. 35943/10, § 57, ECHR 2013) and that inclusive education is the most appropriate means of guaranteeing the fundamental principles of universality and non-discrimination in the exercise of the right to education (see *Çam v. Turkey*, no. 51500/08, § 64, 23 February 2016). Having regard to these principles, the Court considers that measures to be taken in the context of the present case must ensure the end of the segregation of Roma pupils in G.S. and G.D., as recommended by the European Commission against Racism and Intolerance, the national Commission for Prevention and Protection against Discrimination, and the Ombudsman (see paragraphs 10, 16, 34, 36 and 37 above).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Decides* to join to the merits the preliminary objection concerning the applicants' victim status and dismisses it;
3. *Declares* the complaints of the child applicants A.M. and R.M. (applicants nos. 24 and 28, application no. 13550/20) and their parents M. Parlapanova and A. Memedova (applicants nos. 32 and 27), respectively, inadmissible and the remainder of the applications admissible;
4. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay to each of the applicants' households, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,200 (one thousand two hundred euros), plus any tax that may

- be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President

APPENDIX

A. Application no. 11811/20

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Seriha ELMAZOVA	1975	Macedonian/ citizen of the Republic of North Macedonia	Bitola
2.	Ferdit ARSLANOSKI	1983		
3.	U. A.	2011		
4.	Bajram ARSLANOVSKI	1983		
5.	D. A.	2010		
6.	Elvedina ASANOVSKA	1982		
7.	Mukerem BAJRAMOVA	1975		
8.	SH. D.	2007		
9.	F. E.	2010		
10.	R. E.	2007		
11.	Nurije ELMAZOVA	1984		
12.	F. G.	2009		
13.	A. K.	2012		
14.	DJ. K.	2012		
15.	Denis KANANOVSKI	1985		
16.	Ergjun KANANOVSKI	1984		
17.	Ujar KERIM	1993		
18.	V. K.	2012		
19.	Muslina KERIMOVSKA	1982		
20.	B. K.	2013		
21.	DZ. L.	2009		

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No.	Applicant's Name	Year of birth	Nationality	Place of residence
22.	A. M.	2007		
23.	Ferdi MEMEDOV	1983		
24.	Alen MUSA	1989		
25.	D. M.	2011		
26.	Ferdi MUSA	1984		
27.	M. M.	2012		
28.	S. M.	2011		
29.	S. M.	2013		
30.	S. M.	2006		
31.	T. M.	2007		
32.	Djulieta MUSOVSKA	1991		
33.	N. M.	2012		
34.	Nailj MUSOVSKI	1990		
35.	S. M.	2009		
36.	O. R.	2006		
37.	Barije RAMOVA	1974		
38.	M. R.	2009		
39.	Memet RUSHIDOV	1976		
40.	Semavi RUSTEMOV	1979		
41.	S. R.	2010		
42.	A. R.	2013		
43.	E. R.	2013		
44.	Nevzat RUSTEMOVSKI	1968		
45.	Nerguze VESELOVA	1974		

B. Application no. 13550/20

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Divan JASHAROV	1990	Macedonian/ citizen of the Republic of North Macedonia	Shtip
2.	Deira BAJRAM	1988		
3.	Z. B.	2011		
4.	Ahmed DEMIROV	1966		
5.	A. D.	2012		
6.	Sedatin DEMIROV	1986		
7.	T. D.	2010		
8.	Esma DEMIROVA	1988		
9.	S. D.	2011		
10.	Kjemal DESTANOV	1961		
11.	S. D.	2011		
12.	Ali Djevat DJELADINOV	1992		
13.	I. DJ.	2011		
14.	Bilent DURMISHEV	1977		
15.	Djengiz DURMISHEV	1993		
16.	E. D	2010		
17.	E. D.	2010		
18.	CH. H.	2012		
19.	G. I.	2011		
20.	Mehridjan IDRIZOVA	1981		
21.	Semihan JASHAROV	1992		
22.	GJ. J.	2011		
23.	A. M.	2012		

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No.	Applicant's Name	Year of birth	Nationality	Place of residence
24.	A. M.	2011		
25.	DJ. M.	2012		
26.	M. M.	2012		
27.	Adile MEMEDOVA	1958		
28.	R. M.	2011		
29.	Senada MEMEDOVA	1997		
30.	R. O.	2011		
31.	Bahara OSMANOVA	1990		
32.	Meri PARLAPANOVA	1985		
33.	F. SH.	2011		
34.	Redjep SHAKIROV	1988		
35.	A. S.	2011		
36.	B. V.	2011		
37.	Elsijan VELIEVA	1994		
38.	Gjuljsan VELIEVA	1987		
39.	F. V.	2011		
40.	L. V.	2011		
41.	Mustafa VELIOV	1961		
42.	Shejnus VELIOV	1981		