EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENT
SAMPANIS AND OTHERS v. GREECE

The European Court of Human Rights has today notified in writing its Chamber judgment[1] in the case of ***Sampanis and Others v. Greece*** (application no. 32526/05).

The Court held unanimously that there had been

- **a violation of Article 14** (prohibition of discrimination) of the Convention in conjunction with **Article 2 of Protocol No. 1** (right to education), on account of a failure to provide schooling for the applicants' children and of their subsequent placement in special classes because of their Roma origin;
- **a violation of Article 13** (right to an effective remedy) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each of the applicants 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The 11 applicants are all Greek nationals of Roma origin living at the Psari authorised residential site near Aspropyrgos (Greece).

The case concerns the authorities' failure to provide schooling for the applicants' children during the 2004-2005 school year and their subsequent placement in special classes, in an annexe to the main Aspropyrgos primary school building, a measure which the applicants claimed was related to their Roma origin.

On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enrol their minor children. Their action followed a press release issued in August 2004 by the Minister for Education in which he had stressed the importance of integrating Roma children into the national education system. There had also been, on 10 September 2004, a visit by the State Secretary for the education of persons of Greek origin and intercultural education, accompanied by two Greek Helsinki Monitor

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

representatives, to the Roma camps in Psari, for the purpose of ensuring enrolment of all school-age Roma children.

According to the applicants, the headteachers of two schools had refused to enrol their children on the ground that they had not received any instructions on this matter from the competent ministry. The headteachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enrol their children.

The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the headmistress of the tenth primary school of Aspropyrgos had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary school teachers from Aspropyrgos had visited the Psari Roma camp to inform and persuade the parents of minor children of the need to enrol them, but that action had been unsuccessful as the parents concerned had not enrolled their children for the current school year.

An informal meeting of the competent authorities was convened by the Director of Education for the Attica administrative district on 23 September 2004 in order to find a solution to the problem of overcrowding in the primary schools of Aspropyrgos to cater for further enrolments of Roma children. It was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes.

On 9 June 2005, on the initiative of the Association for coordination of organisations and communities for human rights of Roma in Greece (SOKARDE), 23 children of Roma origin, including the applicants' children, were enrolled for the school year 2005-2006. According to the Government, the number of children came to 54.

In September and October 2005, from the first day of the school year, non-Roma parents protested about the admission to primary school of Roma children and blockaded the school, demanding that the Roma children be transferred to another building. The police had to intervene several times to maintain order and prevent illegal acts being committed against pupils of Roma origin.

On 25 October 2005 the applicants signed, according to them under pressure, a statement drafted by primary school teachers to the effect that they wanted their children to be transferred to a building separate from the school. Thus, from 31 October 2005, the applicants' children were given classes in another building and the blockade of the school was lifted.

Three preparatory classes were housed in prefabricated classrooms on land belonging to the municipality of Aspropyrgos. Following a fire in April 2007, the Roma children were transferred to a new primary school set up in Aspropyrgos in September 2007. However, on account of infrastructure problems, that school was not yet operational in October 2007.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 11 August 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatian), ***President***,
Christos **Rozakis** (Greek),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian),
Giorgio **Malinverni** (Swiss),
George **Nicolaou** (Cypriot), ***judges***,

and also Søren **Nielsen**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

The applicants, relying on Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol No. 1 (right to education) and Article 13 (right to an effective remedy), complained that their children had suffered discrimination in the enjoyment of their right to education on account of their Roma origin.

Decision of the Court

Article 14 taken together with Article 2 of Protocol No. 1

The applicants argued that their children had been subjected, without any objective or reasonable justification, to treatment that was less favourable than that given to non-Roma children in a comparable situation and that this situation constituted discrimination contrary to the Convention.

Existence of evidence justifying a presumption of discrimination
The Court observed that it was not in dispute between the parties that the applicants' children had missed the school year 2004-2005 and that preparatory classes had been set up inside one of the primary schools in Aspropyrgos.

The Court noted that the creation of the three preparatory classes in question had not been planned until 2005, when the local authorities had had to address the question of schooling for Roma children living in the Psari camp. The Government had not given any example prior to the facts of the case of special classes being created inside primary schools in Aspropyrgos, even though other Roma children had been enrolled there in the past.

In addition, as regards the composition of the preparatory classes, the Court noted that they were attended exclusively by Roma children.

The Court noted that even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the

[1] This summary by the Registry does not bind the Court.

Greek authorities, it could nevertheless be presumed that those incidents influenced the decision to place pupils of Roma origin in an annexe to the primary school.

The Court considered that the evidence adduced by the applicants and other evidence in the case file could be regarded as sufficiently reliable and revealing to create a strong presumption of discrimination and that it was therefore for the Government to show that this difference in treatment was the result of objective factors, unrelated to the ethnic origin of the persons concerned.

Existence of objective and reasonable justification

The Court observed that the material in the case file did not show that the applicants had met with an explicit refusal, on the part of the Aspropyrgos primary school authorities, to enrol their children for the school year 2004-2005.

The Court considered, however, that even supposing that the applicants had simply sought to obtain information on the conditions of enrolment of their children at primary school, there was no doubt that they had explicitly expressed to the competent school authority their wish to enrol their children. Given the Roma community's vulnerability, which made it necessary to pay particular attention to their needs, and considering that Article 14 required in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognised the particularity of the case and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available. The Court noted in this respect that Greek law recognised the specific nature of the Roma community's situation, by facilitating the school enrolment procedure for their children. In addition, domestic legislation provided for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, provided birth certificates were then produced in due course.

This obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enrol them at primary school.

As regards the special classes, the Court considered that the competent authorities had not adopted a single, clear criterion in choosing which children to place in the preparatory classes. The Government had not shown that any suitable tests were ever given to the children concerned in order to assess their capacities or potential learning difficulties.

In addition, the Court noted that the declared objective of the preparatory classes was for the pupils concerned to attain the right level so that they could enter ordinary classes in due course. However, the Government had not cited any examples of pupils who, after being placed in a preparatory class – and there were over 50 of them – for two school years, were then admitted to the ordinary classes of the Aspropyrgos primary school. Moreover, the Government did not mention any assessment tests that Roma children should have been periodically required to sit in order for the school authorities to assess, on the basis of objective data rather than approximate appraisal, their capacity to follow ordinary classes.

The Court stressed the importance of introducing a suitable system for assessing the capacities of children with learning needs, to monitor their progress, especially in the case of children from ethnic minorities, to provide for possible placement in special classes on the basis of non-discriminatory criteria. In addition, in view of the racist incidents provoked by

the parents of non-Roma children, the setting-up of such a system would have given the applicants the feeling that their children had not been placed in preparatory classes for reasons of segregation. The Court, whilst admitting that it was not its role to rule on this issue of educational psychology, considered that this would have been of particular help in the integration of Roma pupils, not only into ordinary classes but into local society as a whole.

Moreover, the Court was not satisfied that the applicants, as members of an underprivileged and often uneducated community, had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building.

Reiterating the fundamental importance of the prohibition of racial discrimination, the Court considered that the possibility that someone could waive their right not to be the victim of such discrimination was unacceptable. Such a waiver would be incompatible with an important public interest.

The Court concluded that, in spite of the authorities' willingness to educate Roma children, the conditions of school enrolment for those children and their placement in special preparatory classes – in an annexe to the main school building – ultimately resulted in discrimination against them. Accordingly, there had been a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 in respect of each of the applicants.

Article 13

The Court found that the Greek Government had not adduced evidence of any effective remedy that the applicants could have used in order to secure redress for the alleged violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1. Accordingly, there had been a violation of Article 13.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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