



Segregation in breach of the Convention found in two Macedonian schools

In today's **Chamber judgment**¹ in the case of [Elmazova and Others v. North Macedonia](#) (application nos. 11811/20 and 13550/20) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 2 of Protocol No. 1 (right to education).

The case concerned alleged segregation between pupils of Roma and Macedonian ethnicity, who were predominantly placed in different schools in the cities of Bitola that belonged to the same catchment area, and allegedly in different classes in Shtip.

The Court found in particular that even though there may not have been any discriminatory intent on the part of the State, the *de facto* situation – primary school pupils of Roma ethnicity being filtered into different schools and classes from ethnic Macedonians – had had no objective justification and so had amounted to educational segregation.

The Court considered that measures had to be taken to ensure the end of the segregation of Roma pupils in the schools in this case under **Article 46 (binding force and execution of judgments)**. (see [Q&A](#))

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicants are 87 Macedonians/citizens of the Republic of North Macedonia of Roma origin who were born between 1958 and 2013. They are pupils in two State-run primary schools in Bitola and Shtip (North Macedonia) and their parents.

The two applications concerned alleged segregation in the primary school in Bitola (no. 11811/20) and that in Shtip (no. 13550/20). According to the applicants during the 2018-19 academic year those from Bitola were allegedly denied access to the neighbouring school of their choice, or in some cases transferred. Effectively this led to there being a Roma school, with 80% of the Roma pupils enrolled in that "Gypsy school" (*Циганско училиште*), and a non-Roma school. Within the former school, ethnic Macedonians were allegedly placed in separate classes. The applicants alleged that this had led to the children getting an inferior education.

Concerning Shtip, during the academic years from 2017-19 the child applicants were allegedly placed in Roma-only classes separate from their non-Roma schoolmates. Many ethnic Macedonians were given transfers to other schools. The applicants argued that this exclusion from regular education meant their children did not have the same opportunities as non-Roma pupils regarding their future education, employment and integration into society.

The applicants in both applications lodged constitutional complaints with the Constitutional Court. With regard to Bitola the court established, among other things, that 83.5% of pupils in one school

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

were Roma (488 Roma, 85 ethnic Macedonians and 11 others) and in the other 95.1% of pupils were ethnic Macedonians (560 ethnic Macedonians, 15 Roma and 13 others). It held that the “children in the ... district attend[ed] two ethnically divided schools”. However, the court did not find it established that that situation was a result of segregation as it observed no specific evidence that would lead to that conclusion regarding the applicants and so dismissed the complaint.

As regards the school in Shtip, the relevant constitutional complaint was rejected. The Constitutional Court referred, in particular, to the overall percentages of the main ethnic groups in the area and held that “allegations of segregation ... must be supported with relevant facts and evidence that would make the claim ... at least plausible”. The applicants instead “focussed on the 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 ethnicity ..., 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”. It also held that the constitutional complaint was premature.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination) and Article 14 (prohibition of discrimination), the applicants complained of segregation in the relevant primary schools in Bitola and Shtip without any objective and reasonable justification.

The applications were lodged with the European Court of Human Rights on 28 February and 6 March 2020.

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

Arntfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Egidijus Kūris (Lithuania),
Saadet Yüksel (Türkiye),
Lorraine Schembri Orland (Malta),
Diana Sârcu (the Republic of Moldova),
Davor Derenčinović (Croatia),

and also Dorothee von Arnim, *Deputy Section Registrar*.

Decision of the Court

The Court reiterated that discrimination potentially contrary to the Convention could result from a *de facto* situation. The absence of any discriminatory intent on the part of the State could not be considered as objectively justified. It added that the Roma needed special protection owing to their vulnerable position in society that came from their turbulent history.

The Court noted the stark differences in the student bodies of the two schools as regards ethnicity, and the separation of ethnic Macedonian pupils in the majority Roma school in Bitola. Those differences could not be justified by the Government’s arguments concerning the catchment area. The applicants in question could not be held responsible for having failed to seek a transfer to another school.

As regards the school in Shtip, the Court noted that in three classes in the school year at issue, two had been mixed and one Roma-only. It could not conclude that there had been a general policy to segregate the classes in that school. However, as established by the Constitutional Court, there had been a significant departure of pupils of Macedonian ethnicity, which the Government had not disproved had been a result of the refusal of parents of non-Roma pupils to enrol their children

there. Although the school acknowledged the issue, none of the solutions it had suggested had come to fruition owing in the main to the opposition of non-Roma parents. The problematic situation thus remained.

Even in the absence of any discriminatory intent on the part of the State, the Court had to conclude that the segregation of children in these two schools during the period in question had had no objective justification. There had therefore been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that North Macedonia was to pay each of the applicant households 1,200 euros (EUR) in respect of non-pecuniary damage.

Binding force and execution of judgments (Article 46)

The Court reiterated the importance of a society free from racial segregation and that inclusive education was the most appropriate means of guaranteeing the fundamental principles of universality and non-discrimination in the exercise of the right to education.

For those reasons, the Court considered that measures had to be taken to ensure the end of the segregation of Roma pupils in the schools in this case.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.