



Hungary must develop a policy to put a stop to segregation in education

In today's **Chamber judgment**¹ in the case of [Szolcsán v. Hungary](#) (application no. 24408/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, taken in conjunction with Article 2 of Protocol No. 1 (right to education).

The case concerned the applicant's education in a primary school that was almost exclusively attended by Roma children. His request to be transferred to another school in a neighbouring town was rejected because he did not live in the school's catchment area. However, he claims that about one quarter of that school's pupils lived in the same town as him, which was within easy distance as it was five minutes away on public transport. He alleges that the curriculum taught at the school he attended was poor and that he was deprived of a proper education.

The Court found that the fact that his school was almost exclusively attended by Roma children amounted to segregation. It reiterated that the education of Roma children in segregated classes or schools without taking adequate measures to correct inequalities was incompatible with the State's duty not to discriminate based on race or ethnicity.

The Court held under **Article 46 (binding force and implementation)** that the Hungarian State had to adopt measures not only to end the segregation of Roma pupils at that particular school but to ensure the development of a policy to put a stop to segregation in education, as recommended by the Fifth Report on Hungary of the [European Commission against Racism and Intolerance](#) (ECRI).

Principal facts

The applicant, Imre Szolcsán, is a Hungarian national of Roma ethnicity who was born in 2005 and lives in Piliscsaba (Hungary).

In the 2013/14 school year, the applicant was enrolled in Year One of the Jókai Mór primary school – the only ordinary curriculum State school in Piliscsaba. Only four pupils were enrolled in Year One for that school year. The other two schools in the town were schools teaching specific curricula: a German-run school and a school run by the Catholic Church.

The Jókai Mór primary school was almost exclusively attended by Roma children, although it seems that Roma made up only about 4% of the total population of the town. According to the applicant, the curriculum taught at the school was poor; education data from 2013 indicated that fewer than 10% of pupils taught there went on to a secondary grammar school.

In July 2014 a request by his mother for him to be transferred to another public primary school – which she felt was better equipped to deal with his mild learning disability (a hearing impairment) – in a neighbouring town was rejected because he did not live in that school's catchment area. However, he claims that about one quarter of the school's pupils lived in Piliscsaba, which was easily accessible as

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.

it was only five minutes away on public transport. A subsequent appeal to the Pilisvörösvár educational authority was rejected.

A request for judicial review was then lodged in 2015 – under the complaint that he was being subjected to segregated education – but the relevant Administrative and Labour Court held that the location of the school had been the decisive factor in refusing his transfer, and the request was dismissed. A subsequent petition for review by the *Kúria* (the Supreme Court of Hungary) was also dismissed with the finding that the right to have a choice of schooling did not create the right of admission to a specific school.

In December 2015 the applicant, arguing that he had the right to discrimination-free education, lodged a constitutional complaint, but the Constitutional Court, acting in its plenary composition of eleven judges, refused it, holding that it did not raise an issue of constitutionality.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) and Article 2 of Protocol No. 1 (right to education) of the European Convention, the applicant complained that he had been discriminated against in his right to education on account of his Roma ethnicity.

The application was lodged with the European Court of Human Rights on 20 April 2016.

Third-party intervener submissions were received from the Rosa Parks Foundation.

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

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the reason given by the headmaster of the school for refusing Imre Szolcsán's enrolment request was that he did not live in the school's catchment area. On appeal, the educational authority maintained that a transfer was not in his best interests, as it would be "burdensome" for him to have to travel there each day. The same argument was mentioned by both courts reviewing the case, despite his mother's explanations that the travel only involved a short bus ride and was not a problem. On the other hand, the Court noted that other children from the same town as him attended that primary school and, while it did not know whether any of them were of Roma ethnicity, it observed that they had been able to enrol there. Nevertheless, in the absence of any concrete evidence or statistical data, the Court was unable to come to a firm conclusion on whether or not the applicant's request for transfer to another school had been refused as a result of his Roma ethnicity.

However, even in the absence of any discriminatory intent on the part of the State authorities, the Court considered that no objective and reasonable justification had been given for the difference in treatment which the applicant had been subjected to from 2013-20 when attending primary school.

In particular, it noted that his allegation that the school was almost exclusively attended by Roma pupils, despite Roma constituting less than 4% of residents in the catchment area, had not been disputed by the parties, nor had his allegation that the curriculum taught there was of poor quality.

Furthermore, the Court did not agree with the *Kúria*'s finding that the fact that the Jókai Mór school was almost exclusively attended by Roma children merely reflected the presence of Roma children in the school's catchment area and did not amount to segregation. Such a conclusion was not supported by the actual population figures nor by the ethnic landscape of residents within the catchment area.

In addition, although the Government maintained that he could have enrolled at either of the other two primary schools in Piliscsaba, namely the Catholic school or the German minority school, the Court noted that it was not certain that those schools would have had to accept him; indeed, correspondence between the headmaster of the German minority school and the applicant's mother refuted that. Moreover, the Government had not contested her assertion that those two schools were ill-equipped to accommodate a child with a hearing impairment.

The Court has already found violations of the right to education free from discrimination in several cases concerning Roma pupils in various contexts and in different Contracting States. Some of those cases concerned practices of systematic placing of Roma pupils in separate schools or classes, while others focussed on the failure of the domestic authorities to implement measures to address the over-representation of Roma pupils in schools. Education of Roma children in segregated classes or schools without taking adequate measures to correct inequalities was incompatible with the State's duty not to discriminate on the basis of race or ethnicity.

The Court concluded that the applicant had been educated in segregated conditions and that the State had a duty to take steps to correct that inequality and avoid the perpetuation and discrimination that resulted from the over-representation of Roma pupils at the school. There had accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 to the Convention.

[Article 46 \(binding force and implementation\)](#)

The Court reiterated that society living together free from racial segregation was a fundamental value of democratic societies and that a means to achieve that was through inclusive education.

The Court considered that the Hungarian State had to adopt measures not only to end the segregation of Roma pupils at the Jókai Mór school but to ensure the development of a policy to put a stop to segregation in education, as recommended by the Report on Hungary of the [European Commission against Racism and Intolerance](#) (ECRI), adopted on 19 March 2015 and published on 9 June 2015.

[Just satisfaction \(Article 41\)](#)

The Court held that Hungary was to pay the applicant 7,000 euros (EUR) in respect of non-pecuniary damage, and EUR 4,537.50 in respect of costs and expenses.

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.