



Key human rights judgments give Balkan states necessary push to end discrimination against Roma pupils

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Abstract: The European Court of Human Rights recently delivered two important judgments ruling that overrepresentation of Roma pupils in schools in North Macedonia and Albania was prejudicial, subtly lowering the threshold for finding this type of segregation discriminatory.

Discrimination, including on the ground of ethnicity, is prohibited in many international as well as national legal instruments, however the battle to eradicate it is far from over. Bias against Roma has been widely reported by international bodies, civil society and even national institutions over the years, raising awareness of the problems members of this community face in different aspects of life. However, despite numerous reports, programmes and initiatives – the level of discrimination against

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Roma remains high. In 2022 the European Court of Human Rights (ECtHR) ruled in two cases that Roma pupils had been discriminated against on account of their schooling in predominantly Roma schools and in Roma-only classes. In [X and others v Albania](#) and [Elmazova and others v North Macedonia](#), the ECtHR condemned segregation in the schools at question, taking a crucial step toward guaranteeing equality for all in education and emphasizing the state's positive obligation to undertake measures to prevent any type of segregation.

Was the situation unknown or tacitly ignored?

[X and others](#) concerned Naim Frasheri elementary school, where for seven years - 2012-2019 - Roma and Egyptian pupils accounted for 89-100 percent of pupils. Similarly, in GS, one of the schools in [Elmazova](#), in the academic year 2018/2019, 83.5 percent of the pupils were Roma, while in a nearby school, in the same catchment area, 95.1 percent of the pupils were Macedonians, due to the high number of transfers from GS. The trend worsened such that all first grade pupils enrolled in GS in the academic year 2021/2022 were of Roma origin. In GD, the second school in [Elmazova](#), 64 percent of all first-grade pupils were Roma in 2017/2018 and 67 percent in 2018/2019. In each of those years, there were three first grade classes, of which two were mixed and one Roma-only. Additionally, in 2017/18 there was uneven distribution of the pupils in mixed (31 and 32 pupils in the two classes) and Roma-only (18 pupils) classes, despite a minimum legal threshold of 24 pupils. Moreover, the national authorities noted these issues on several occasions yet no adequate measures were taken. In North Macedonia, the National Ombudsman has addressed Roma segregation in reports for more than 10 years, including in the [latest](#), noting the large disproportion between Roma and non-Roma pupils in GS and GD, due to the non-compliance of the regulatory framework on admission and transfer of pupils, owing to opposition from non-Roma parents. GD acknowledged the existence of segregation and took measures to address the problem, however, these failed due to opposition from the parents of non-Roma children. The Ombudsman has called upon the relevant institution to undertake adequate measures to overcome the segregation of Roma pupils – but to no avail so far. In 2022, the Commission for Prevention and Protection of Discrimination also issued [opinions](#) and a [general recommendation](#) condemning segregation in these schools as indirect discrimination indicating a systematic problem in the education process yet it has still not been addressed.

Similarly, the Commissioner against Discrimination in Albania held that the Roma and Egyptian pupils in Naim Frasheri school were suffering indirect discrimination on account of their overrepresentation in the school. The Ministry for Education took some measures, however, these proved insufficient to tackle the issue.

The problem of discrimination against and segregation of Roma in these schools, but also in others, has also been raised in the EU Reports for Albania and North Macedonia, as well as the European Commission against Racism and Intolerance ([ECRI](#)) Reports. Therefore, it cannot be concluded that the relevant institutions were unaware of this long-standing issue. Rather, it appears they lacked the will to take serious steps to overcome it, instead sweeping the problem under the rug in order to appease non-Roma parents.

Liability despite lack of intent

The ECtHR emphasised that as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority, therefore they require special protection. The Court further stated that special consideration should be given to their needs and their different lifestyles both within the relevant regulatory framework and in reaching decisions in particular cases.

It also reiterated that the coexistence of members of society free from racial segregation is a fundamental value of democratic societies and that inclusive education is the most appropriate means of guaranteeing key principles of universality and non-discrimination in the exercise of the right to education. In its previous case law the Court has established discrimination as treating differently, without an objective and reasonable justification, persons in relevantly similar situations. However, in some circumstances, the European Convention of Human Rights ([ECHR](#)) permits member states to treat certain groups differently in order to correct 'factual inequalities' between them, acknowledging there might be discrimination if no attempt is made to correct inequality through different treatment. In the two cases discussed in this blog, the ECtHR held that discrimination potentially contrary to the Convention may result from a *de facto* situation and does not necessarily require discriminatory intent. The Court emphasised member states' positive obligation to take steps to correct the applicants' factual inequality and avoid perpetuation of discrimination that resulted from overrepresentation of Roma pupils in these schools, thereby breaking their circle of marginalisation and allowing them to live as equal citizens from the early stages of their life. The Court noted that the authorities in North Macedonia failed to take appropriate desegregation measures, notwithstanding repeated recommendations by the National Ombudsman in this regard. Meanwhile, in the Albanian case, the Court emphasised the undue delay in implementing appropriate desegregation measures and that there was no objective and reasonable justification for this, especially given the time sensitivity with regard to the education of young children. In view of all this, the Court concluded that even in the absence

of any discriminatory intent on the part of the states in these two cases, there was still discrimination due to segregation of Roma children.

Is this the needed push?

Under the [ECHR](#), member states are obliged to undertake appropriate measures to put an end to the violation found by the Court and to redress the effects as far as possible. What makes these judgments noteworthy is the Court's direct statement of this obligation and its suggestions of the most appropriate measures for its execution. The Court called on the states to take measures as recommended by the ECRI, the National Commission for Prevention and Protection against Discrimination, the Ombudsman in the case of North Macedonia and as ordered by the Commissioner in that of Albania.

States now face a human rights responsibility and a socially important opportunity to finally address and overcome segregation under the international obligation to execute the ECtHR judgments, especially bearing in mind that the issue goes further than just these three schools. Hopefully, this will be the necessary push to finally tackle this long-lasting issue and secure the enjoyment of the right to education without discrimination. The complexity of the issue requires a wide set of measures, undertaken by several state institutions to work with the Roma and non-Roma communities, particularly to address the opposition of the non-Roma members, but also to ensure proper education of the Roma children. Overcoming this will significantly contribute to the development of the overall society, teaching both the parents and the children of Roma and non-Roma communities of the importance of respecting human rights and diversity, as well as ensuring proper education for all children.