KEY THEME[1]
Article 2 Protocol No. 1
Discrimination in access to education

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Introduction

The right to education under Article 2 of Protocol No. 1 guarantees a right of access to educational institutions existing at a given time (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, 1968, § 4 ("The Law")). Where a State applies different treatment in the implementation of its obligations under Article 2 of Protocol No. 1, an issue may arise under Article 14 of the Convention.

Principles drawn from the current case-law

Discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations, and that a difference of treatment is devoid of any "objective and reasonable justification" where it does not pursue a "legitimate aim" or there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (*Oršuš and Others v. Croatia* [GC], 2010, § 156; *Çam v. Turkey*, 2016, § 54; *Enver Şahin v. Turkey*, 2018, § 54). However, Article 14 of the Convention does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (*D.H. and Others v. the Czech Republic* [GC], 2007, § 175; *G.L. v. Italy*, 2020, § 52).

The Court has underlined that in a democratic society, the right to education is indispensable to the furtherance of human rights and plays a fundamental role, and that education is one of the most important public services in a modern State. At the same time, the Court has acknowledged that education is an activity that is complex to organise and expensive to run, whereas the resources that the authorities can devote to it are necessarily finite. In deciding how to regulate access to education, a State must strike a balance between, on the one hand, the educational needs of those under its jurisdiction and, on the other, its limited capacity to accommodate them (*Ponomaryovi v. Bulgaria*, 2011, § 55; *G.L. v. Italy*, 2020, § 49).

While Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of ethnic origin as compatible with the Convention (*Oršuš and Others v. Croatia* [GC], 2010, § 149). A general policy or measure which is apparently neutral but has disproportionately prejudicial effects on persons or groups of persons who are identifiable only on the basis of an ethnic criterion, may be considered discriminatory notwithstanding that it is not specifically aimed at that group (*ibid.*, § 150).

[1] Prepared by the Registry. It does not bind the Court.

The Court has found that the placement of children in separate classes may in certain circumstances be considered to pursue the legitimate aim of adapting the education system to the specific needs of the children. However, when such a measure disproportionately or even exclusively affects members of a specific ethnic group, appropriate safeguards have to be put in place (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 205-206; *Oršuš and Others v. Croatia* [GC], 2010, § 157).

In particular, the Court has stressed on the need to take into account the status of the Roma in the protection of their rights, reiterating that as a result of their history they are a specific type of disadvantaged and vulnerable minority (*D.H. and Others v. the Czech Republic* [GC], 2007, § 182; *Oršuš and Others v. Croatia* [GC], 2010, § 147; *Salay v. Slovakia*, 2025, § 83). In taking steps to achieve the social and educational integration of the Roma, States must ensure that these are attended by safeguards that would ensure sufficient regard to their special needs as members of a disadvantaged group (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 205-207; *Oršuš and Others v. Croatia* [GC], 2010, §§ 180-182; *Salay v. Slovakia*, 2025, § 113).

The Court has noted the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education, which are enshrined in many international texts. It further emphasised that those international instruments had recognised inclusive education as the most appropriate means of guaranteeing the aforementioned fundamental principles, as such education is geared to promoting equal opportunities for all, including persons with disabilities. Inclusive education indubitably forms part of the States' international responsibility in this sphere (*Enver Şahin v. Turkey*, 2018, § 55; *G.L. v. Italy*, 2020, § 53).

Moreover, the protection of persons with disabilities includes an obligation for States to ensure "reasonable accommodation" to allow persons with disabilities the opportunity to fully realise their rights, and a failure to do so amounts to discrimination (*Çam v. Turkey*, 2016, §§ 65-67; *Enver Şahin v. Turkey*, 2018, § 60; *G.L. v. Italy*, 2020, § 62; *S. v. the Czech Republic*, 2024, § 41). In particular, the Court noted that Article 14 required reasonable accommodation, rather than all possible adjustments which could be made to alleviate the disparities resulting from someone's disability, regardless of their costs or the practicalities involved (*T.H. v. Bulgaria*, 2023, § 122). It has considered that "reasonable accommodation" may take a variety of forms, whether physical or non-physical, educational or organisational, in terms of the architectural accessibility of school buildings, teacher training, curricular adaptation or appropriate facilities; such definition, however, being in principle placed on the national authorities, and not the Court (*Çam v. Turkey*, 2016, § 66; *Enver Şahin v. Turkey*, 2018, § 61; *G.L. v. Italy*, 2020, § 63; *S. v. the Czech Republic*, 2024, § 52).

Noteworthy examples

Ethnic origin:

- *D.H. and Others v. the Czech Republic* [GC], 2007 – concerning the disproportionate number of Roma children placed in special schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population (§§ 196-210; violation of Article 14 in conjunction with Article 2 of Protocol No. 1). This is the first judgment where the Court found a violation of Article 14 in relation to racial discrimination in education;
- *Sampanis and Others v. Greece*, 2008 – concerning the inability of Roma children to access school before being assigned to special classrooms in an annex to the main primary school buildings (§§ 83-96; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Oršuš and Others v. Croatia* [GC], 2010 – concerning the placement of Roma children in Roma-only classes for substantial periods of time, sometimes even during their entire primary schooling, where an adapted curriculum was followed owing to their alleged poor

command of the Croatian language (§§ 158-185; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);

- *Horváth and Kiss v. Hungary*, 2013 – concerning the placement of Roma children in a remedial school for children with special educational needs during their primary education (§§ 109-129; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Elmazova and Others v. North Macedonia*, 2022 – concerning the segregation of Roma pupils in two State-run primary schools attended predominantly by Roma children and with Roma-only classes respectively (§§ 68-78; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Szolcsán v. Hungary*, 2023 – concerning the segregation of Roma pupil in a State-run primary school attended almost exclusively by Roma children (§§ 52-59; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Salay v. Slovakia*, 2025 – concerning the *de facto* permanent placement of Roma children in special classes for children with mild intellectual disabilities, without adequate safeguards to ensure consideration of their special needs (§§ 96-117; violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Persons with disabilities:

- *Çam v. Turkey*, 2016 – concerning the refusal to enrol a blind student at the Turkish Music Academy due to the lack of appropriate infrastructures to admit students with such a disability. The relevant domestic authorities had at no stage attempted to identify the applicant's needs or to explain how her blindness could have impeded her access to a musical education, nor considered physical adaptations in order to meet any special educational needs arising from the applicant's blindness (§§ 68-69; violation of Article 14 in conjunction with Article 2 of Protocol No. 1). The judgment reflects the importance which the Court attaches to international law developments when it comes to issues submitted to its consideration and its willingness to read the scope of Convention rights in the light of such developments;
- *Enver Şahin v. Turkey*, 2018 – concerning the rejection of a disabled student's request for the university to carry out necessary alterations and work to make the teaching premises accessible. The national educational authorities, in only offering human assistance as an alternative due to the lack of funding available, had failed to conduct an individual assessment of the disabled student's needs and not given consideration to its potential effects on his security, dignity and autonomy, in disregard of the applicant's need to live as independently and autonomously as possible (§§ 62-68; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *G.L. v. Italy*, 2020 – concerning a child suffering from non-verbal autism who was not able to receive specialised assistance, which prevented her from continuing to attend primary school in conditions equivalent to those enjoyed by non-disabled pupils. The national authorities had never considered the possibility that the lack of resources could be compensated for by a reduction in the overall provision of education when distributed equally between non-disabled and disabled pupils, so that any budgetary restrictions had an equivalent impact on the provision of education for disabled and non-disabled pupils alike (§§ 68-72; violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *T.H. v. Bulgaria*, 2023 – concerning the primary school's response to aggressive and disruptive behaviour of child diagnosed with hyperkinetic and scholastic-skills disorder. It could not be said that the head teacher and the applicant's teacher had turned a blind eye to his disability and his resulting special needs. They made a series of reasonable adjustments for him and in devising these adjustments, they had been engaged in a

difficult balancing act between his interests and those of his classmates, including their safety, well-being, and effective education (§§ 118-123; no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);

- *S. v. the Czech Republic*, 2024 – concerning the issue as to whether the primary school which the applicant, suffering from an autistic disorder, attended during the first year of his schooling was diligent enough in addressing his educational needs. In a situation where the applicant's parents did not display due cooperation and supportive measures were adopted by the school once the applicant's educational needs had been identified, the school could not be blamed for not having secured him equivalent conditions, as far as possible, to those enjoyed by other children (§§ 45-54; no violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Administrative status and nationality:

- *Ponomaryovi v. Bulgaria*, 2011 – concerning the requirement for two pupils to pay fees for their secondary education on account of their nationality and immigration status, whereas aliens with a permanent residence permit had been entitled to primary and secondary education free of charge. The Court emphasised the ever-increasing role of secondary education in personal development and the social and professional integration in a "knowledge-based" society (§§ 56-63; violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Genetic features:

- *Moraru v. Romania*, 2022 – concerning the lack of objective and reasonable justification for refusal to allow a woman whose height and weight were below the limits set by a ministerial order of the Ministry of National Defence at the time for candidates to sit an entrance examination to study military medicine (§§ 42-58; violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Language:

- *Valiullina and Others v. Latvia*, 2023 – concerning legislative amendments increasing the proportion of subjects taught in public schools in the State language, that is Latvian, and thus reducing the use of Russian as the language of instruction (§§ 145-215; no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Džibuti and Others v. Latvia*, 2023 – concerning legislative amendments increasing the proportion of subjects taught in private schools in the State language, that is Latvian, and thus reducing the use of Russian as the language of instruction (§§ 131-151; no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Djeri and Others v. Latvia*, 2024 – concerning legislative amendments increasing the use of the State language, that is Latvian, in compulsory second stage of public and private pre-school education (children aged five to seven), and thus reducing the use of Russian as the language of instruction (§§ 131-151, 166-167; no violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Recap of general principles

- For a recapitulation of general principles concerning discrimination in access to education in the context of disability, see *G.L. v. Italy*, 2020, §§ 49-54;
- For a recapitulation of general principles concerning discrimination in access to education in the context of ethnic origin, see *Horváth and Kiss v. Hungary*, 2013, §§ 101-108.

Further references

Case-law guides:

- Guide on Article 2 of Protocol No. 1 – Right to education
- Guide on Article 14 and Article 1 of Protocol No. 12 to the Convention – Prohibition of discrimination

Other key themes:

- Admission criteria and entrance examinations

KEY CASE-LAW REFERENCES

Leading cases:

- *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, Series A no. 6 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, ECHR 2007 IV (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Oršuš and Others v. Croatia* [GC], no. 15766/03, ECHR 2010 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Çam v. Turkey*, no. 51500/08, 23 February 2016 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

Other cases:

- *Sampanis and Others v. Greece*, no. 32526/05, 5 June 2008 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Kalkanlı v. Turkey* (dec.), no. 2600/04, 13 January 2009 (inadmissible – manifestly ill-founded);
- *Ponomaryovi v. Bulgaria*, no. 5335/05, ECHR 2011 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Horváth and Kiss v. Hungary*, no. 11146/11, 29 January 2013 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Lavida and Others v. Greece*, no. 7973/10, 30 May 2013 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Sanlisoy v. Turkey* (dec.), no. 77023/12, 8 November 2016 (inadmissible – manifestly ill-founded);
- *Enver Şahin v. Turkey*, no. 23065/12, 30 January 2018 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Dupin v. France* (dec.), no. 2282/17, 18 December 2018 (Article 2 of Protocol No. 1: inadmissible – manifestly ill-founded; Article 14 in conjunction with Article 2 of Protocol No. 1: inadmissible – non-exhaustion of domestic remedies);
- *G.L. v. Italy*, no. 59751/15, 10 September 2020 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Moraru v. Romania*, no. 64480/19, 8 November 2022 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Elmazova and Others v. North Macedonia*, nos. 11811/20 and 13550/20, 13 December 2022 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Szolcsán v. Hungary*, no. 24408/16, 30 March 2023 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *T.H. v. Bulgaria*, no. 46519/20, 11 April 2023 (no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, 14 September 2023 (no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Džibuti and Others v. Latvia*, nos. 225/20 and 2 others, 16 November 2023 (no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);

- *Djeri and Others v. Latvia*, nos. 50942/20 and 2 others, 18 July 2023 (no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *S. v. the Czech Republic*, no. 37614/22, 7 November 2024 (no violation of Article 14 in conjunction with Article 2 of Protocol No. 1);
- *Salay v. Slovakia*, no. 29359/22, 27 February 2025 (violation of Article 14 in conjunction with Article 2 of Protocol No. 1).