

ERRRC litigation in Croatia

Orsus and others v. Croatia

The European Court judgment and its
implementation process

Orsus and others v. Croatia

- The case lodged by ERRC concerns indirect discrimination against Roma children in that their placement in Roma-only classes in two primary schools in Međimurje County between 1996 and 2007 based on their inadequate command of the Croatian language lacked objective and reasonable justification
- (violation of Article 14 taken together with Article 2 of Protocol No. 1).

Orsus and others v. Croatia

- *Language is not a pretext for segregation:* The Court for the first time held that separation due to language is not allowed unless such measures can be objectively justified by a legitimate aim;
- *State obligation to take positive measures:* The Court stressed the obligation of the State to undertake appropriate positive measures to assist pupils in attaining necessary language skills and reduce high drop out rates in shortest time possible; and
- *Integrated education:* If and when appropriate, special language lessons should be a means to fast-track pupils into fully integrated mainstream education

Committee of Ministers

- At the 1128th meeting (December 2011) the Committee invited the Croatian authorities to provide information on a number of outstanding questions concerning **poor school attendance and high drop-out rate** of Roma pupils, as well as excessive length of proceedings before the Constitutional Court.

Discrimination against Roma children in primary schools

(a) Initial placement in separate classes

- the European Court found that Croatian **law did not provide a clear and specific legal basis for placing children lacking adequate command** of the Croatian language in separate classes. In addition, the **tests used** to decide whether to assign pupils to Roma-only classes **had not been specifically designed** to test their command of that language (§§158–160 of the judgment).
- The Primary and Secondary School Education Act was amended in July 2010, in particular, that schools are under an obligation to provide special assistance to children with insufficient command of the Croatian language

Assessment of children command of language

- **A panel of experts** is in charge of preliminary assessment of the aptitude of each child prior to his or her enrolment in school.
- Experts will verify the command of the Croatian language by way of standard tests specifically designed for this purpose and approved by the Ministry of Education.
- **The National Centre** for External Evaluation of Education and the **Education Agency**, both independent bodies, **will supervise the testing** procedure.
- The panel of experts will make proposals on the basis of test results and determine the appropriate assistance to be given. **The panel will then submit its proposal to the regional education authority.** The proposal will also indicate the form of the assistance required and the curriculum tailored in accordance with the child's specific needs.
- The **regional education authority will make a final decision** on the child's placement as well as on the assistance to be given and the curriculum to be followed in each individual case.
- **The decision of the regional authority may be appealed to the second-instance commission** of the Ministry of Education. This decision can also be challenged in administrative proceedings.

(b) Curriculum

- In its judgment the Court found that in Roma-only classes, children followed an “adequate curriculum” but it was not clear what exactly that included. This **curriculum was also reduced by 30% in volume** and scope as compared with that taught in other classes. In addition, **this reduction had no legal basis**. Once assigned to Roma-only classes, the **applicants were not provided with any specific programme to address their alleged linguistic insufficiencies** (§§165-166 of the judgment)
- July 2010, the Minister of Education adopted the National Framework Curriculum for Pre-School Upbringing, General and Vocational Education.
- The new curriculum aims to enable the creation of a specific curriculum for children with inadequate command of the Croatian language who should be provided with additional language and other classes, including individual monitoring.

Curriculum and transferring

- The specific curriculum for children with inadequate command of Croatian will **introduce two different methods of assisting children** with inadequate language command.
- **Children whose command of the Croatian language does not allow them effectively to follow** any classes will attend classes predominantly aimed at learning Croatian (“bridge model”). Children who follow this model will attend complementary language classes at the beginning of the school day. They will then attend mainstream classes for the rest of the day. The authorities indicated that this model would consequently abolish any possibility of segregating pupils with inadequate command of Croatian into separate classes.
- On the other hand, **children with better command of the Croatian language** will be given additional lessons. The number of these classes will be determined on a case-by-case basis for each child depending on his/her specific individual needs.

Further measures

- January 2011, the Ministry of Education set up a task-force to monitor the implementation of the programme for learning Croatian in respect of Roma minority.
- The Ministry of Education will prepare a special reference book for teachers that will be used in the education of children with inadequate language command.
- The Croatian authorities also recruited 25 teaching assistants of Roma origin in a number of primary schools in order to ensure special assistance to Roma children

(c) Transfer and monitoring procedure

- **The lack of a prescribed and transparent procedure to monitor progress** in learning Croatian left much room for arbitrariness concerning pupils' transfer to mixed classes (§175 of the judgment). **No programme had been established to address the special needs of Roma children** lacking language skills that would include **a time-frame** for various phases of acquisition of the necessary language skills and allow their immediate and automatic transfer to mixed classes as soon as adequate language proficiency had been attained (§173 of the judgment)
- the National Framework Curriculum will introduce individual monitoring of Roma pupils with inadequate command of Croatian. Teachers will be required to provide a detailed report on the language progress once per month. A special team of experts will monitor their progress

(d) Poor school attendance and high drop-out rate

- The Court noted that the **drop-out rate of Roma pupils in Međimurje County was as high as 84%**. Additional measures were therefore needed to **among the Roma raise awareness of the importance of education** population and to **assist those with any difficulties** encountered in following the school curriculum, including active and structured involvement of the relevant social services (§177 of the judgment).
- the Croatian authorities informed the Committee of Ministers that a set of measures was envisaged to raise awareness of the importance of education among the Roma population and to assist those with difficulties to follow the curriculum.
- These measures included active and structured involvement of the social services.
- Special measures would be taken to provide education and training to Roma teaching assistants who should help raise awareness of the Roma population of the importance of education

Impact

- CR Government reported that In January and July 2011, all Roma children in Croatia have been enrolled in kindergartens/nursery schools since September 2010 in order to acquire adequate command of the Croatian language prior to entering a primary school.
- The government is co-financing all the costs of attending kindergartens/nursery schools for Roma children.
- In Međimurje County, the government is providing two meals and transportation for Roma children attending kindergartens/nursery schools.
- The Croatian authorities provided special assistance in learning Croatian to 865 Roma children, including to 342 Roma children in Međimurje in the school year 2010/2011.
- The number of Roma children attending primary schools quadrupled in the period 2006-2010 from 1 013 to 4 186.

Committee of Ministers

- At the 1136th meeting (6-8 March 2012) the CoE Deputies noted that the Croatian authorities have taken a number of measures to address the problem of poor school attendance and the high drop-out rate of Roma children;
- Decided to continue their supervision of this case under the standard procedure with a view to **assessing the impact of the measures that are currently being taken by the Croatian authorities, including the concrete results obtained in abolishing “Roma-only” classes at a later stage.**