



No discrimination by Romania against ethnic Hungarian pupils in arrangements for final school exams

In today's **Chamber judgment**¹ in the case of [Ádám and Others v. Romania](#) (application nos. 81114/17 and five others) the European Court of Human Rights held, by **five votes to two**, that there had been:

no violation of Article 1 of Protocol No. 12 (general prohibition on discrimination) to the European Convention on Human Rights.

The case concerned complaints by the applicants about discrimination against them as members of the Hungarian minority in the taking of final school exams — they had to take more exams than ethnic Romanians (two Hungarian tests) over the same number of days, and the Romanian exams had been difficult for them as non-native speakers.

The Court found in particular that the importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it in the baccalaureate was not called into question in the case.

Nor was it its role to decide on what subjects should be tested or in what order, which came within States' discretion ("margin of appreciation"). Furthermore, the extra tests the applicants had had to take had been a result of their own choice to study in their mother tongue. Neither the content of the curriculum nor the scheduling of the exams had caused a violation of the applicants' rights.

Principal facts

The applicants are six Romanian nationals, Katalin-Ibolya Ádám, born in 1995 (application no. 81114/17); Krisztián Petres, born in 1999 (no. 49716/18); Ernő Bakos, born in 1999 (no. 50913/18); Norbert Ambrus, born in 1998 (no. 52370/18); Csaba-Lajos Forika, born in 1999 (no. 54444/18); and Csaba Maxem, born in 1998 (no. 54475/18).

They are ethnic Hungarians and undertook their education in their mother tongue. In order to receive their baccalaureate (school-leaving) qualification they had to sit exams to test their Romanian and their Hungarian, having to take two more exams than ethnic Romanians.

They all failed their baccalaureate because they did not pass the exams in Romanian language and literature (Ms Ádám, Mr Petres, Mr Bakos, Mr Forika and Mr Maxem) or Hungarian language and literature (Mr Ambrus). They retook the exams but failed again, although they obtained the required grades in the other exams in the baccalaureate.

The Ministry of Education sets the timetable for the baccalaureate at the beginning of each school year. The written exams are organised over consecutive days: pupils sitting the additional exams in their mother tongue have three consecutive days of written examinations, whereas pupils not sitting such tests have a day of rest in between.

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.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 12 (general prohibition of discrimination) to the European Convention on Human Rights, the applicants complained that they had been discriminated against because of the way in which the bacalaureate was organised, as in the same short time period they had had to take two additional exams in the bacalaureate compared to their Romanian peers. Moreover, the exams they had had to sit in Romanian language and literature had been very difficult for them.

The applications were lodged with the European Court of Human Rights on various dates in 2017 and 2018.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),

and also Andrea Tamietti, *Section Registrar*.

Decision of the Court

The Court joined the applications and by a majority of four votes to three declared them admissible.

The applicants reiterated that they had not only complained about the time allowed for rest and preparation between exams, but also about the fact that the tests they had had to sit in Romanian language and literature had been very difficult.

They were not questioning the usefulness *per se* of learning Romanian or being tested on it in final exams, however, testing their knowledge on an equal footing with native speakers was, in their view, a clear case of discrimination. Indeed, according to them, the Romanian language and literature exams were difficult, even for native speakers of that language.

The Government argued, among other things, that pupils could choose their language of instruction and there was no obligation for an ethnic Hungarian to go to a school where the teaching was in that language. The treatment that the applicants had complained of did not amount to discrimination.

The Court held that the case-law standards it had developed on the protection afforded by Article 14 (prohibition of discrimination) were applicable to cases brought under Article 1 of Protocol No. 12.

Among other things, it noted that for the purposes of Article 14, a difference in treatment was discriminatory if it “has no objective and reasonable justification”, that is, if it did not pursue a “legitimate aim” or there was no “reasonable relationship of proportionality” between the means employed and the aim sought to be realised.

It considered that its role was not to replace the State in deciding what subjects would be tested in the bacalaureate or the order and pace of the exams. A certain amount of discretion (“margin of appreciation”) had to be left to the national authorities, who were in principle better placed than an international court to evaluate local needs and conditions.

Nor was the importance for members of a national minority to study the official language of the State and the corresponding need to assess their command of it in the bacalaureate called into question in the case.

It took note of an emerging international consensus among the Contracting States of the Council of Europe to recognise the special needs of minorities and an obligation to protect their security, identity and lifestyle. It also reviewed the various measures taken by Romania in the field of education of minorities.

While there had been setbacks in implementing such measures, the Court could not conclude that the content of the curriculum itself imposed an excessive burden on the applicants for the purposes of Article 1 of Protocol No. 12 to the Convention.

Looking at the sequence of the exams, the Court observed that pupils in the applicants' situation had to pass two more exams than pupils studying in Romanian. However, that was an inevitable consequence of their own choice to be educated in Hungarian. Indeed, there was no obligation by law for minority pupils to study in their mother tongue.

Furthermore, the timetable for the exams was set at the beginning of each school year and did not seem to differ significantly from one year to another, meaning that pupils concerned had sufficient time to prepare both academically and mentally for the exams. Nor could it find that the schedule of the baccalaureate, viewed as a whole, imposed an excessive burden on the applicants, or that they had had on average significantly less time to rest than their Romanian peers.

It found that the same conclusion remained valid when the alleged imbalance was regarded exclusively from the standpoint of the exams that the applicants had to take over consecutive days, unlike their Romanian peers, who had a day of rest in between. Given the particular circumstances, the Court was not convinced that the inconvenience suffered by the applicants was so significant as to reach the threshold of Article 1 of Protocol No. 12 to the Convention.

The Court also took note of statistics provided by the Government which showed that there had been similar success rates in the final baccalaureate exams for all pupils from 2013 to 2018.

The Court found no evidence to conclude that the applicants had been deprived in practice of a real choice to receive education in their mother tongue or that the State had an agenda of forced assimilation, as argued by the applicants. Nor had the consequences for the applicants of the choice of language of study and the authorities' organisation of education in a minority language and baccalaureate exams placed them in a different situation that was sufficiently significant for the purposes of Article 1 of Protocol No. 12 to the Convention.

There had accordingly been no violation of Article 1 of Protocol No. 12 to the Convention.

Separate opinion and statement of dissent

Judges Kjølbros, Ranzoni and Schukking expressed a joint partly dissenting opinion, and Judges Motoc and Paczolay expressed a statement of dissent. The opinion and statement are annexed to the judgment.

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.