

CURRENT REFLECTIONS ON EU ANTI-DISCRIMINATION LAW

SEMINAR FOR UNIVERSITY PROFESSORS
AND LAW LECTURERS

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The human rights paradigm in the Roma desegregation cases before the ECtHR Developments and Challenges

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Context



Reflections stemming from the caselaw of the ECtHR discussed in the Chapter entitled *‘Limits and opportunities of desegregation litigation in education in view of European jurisprudence and related developments’* in *The Right of Roma in European Courts* to be published on 10 June 2025 by Oxford University Press

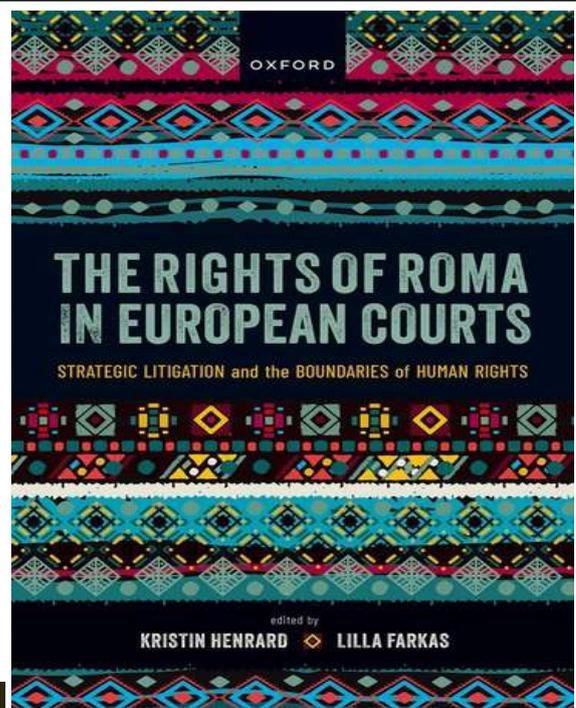


Discussed in context of doctoral thesis researching the transitioning process of Romania while acceding to the international community, as well as the post-accession and national compliance processes in combating racial discrimination, with a focus on Roma issues.



From the perspective of one litigating Roma rights at national level, judged discrimination cases with equality body, represented a European Roma led organisation, trained legal professionals in various European countries with the Council of Europe and OSCE on anti-discrimination and Roma issues.

<https://global.oup.com/academic/product/the-rights-of-roma-in-european-courts-9780198914358?cc=ro&lang=en&>



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The landscape of racial segregation in Europe

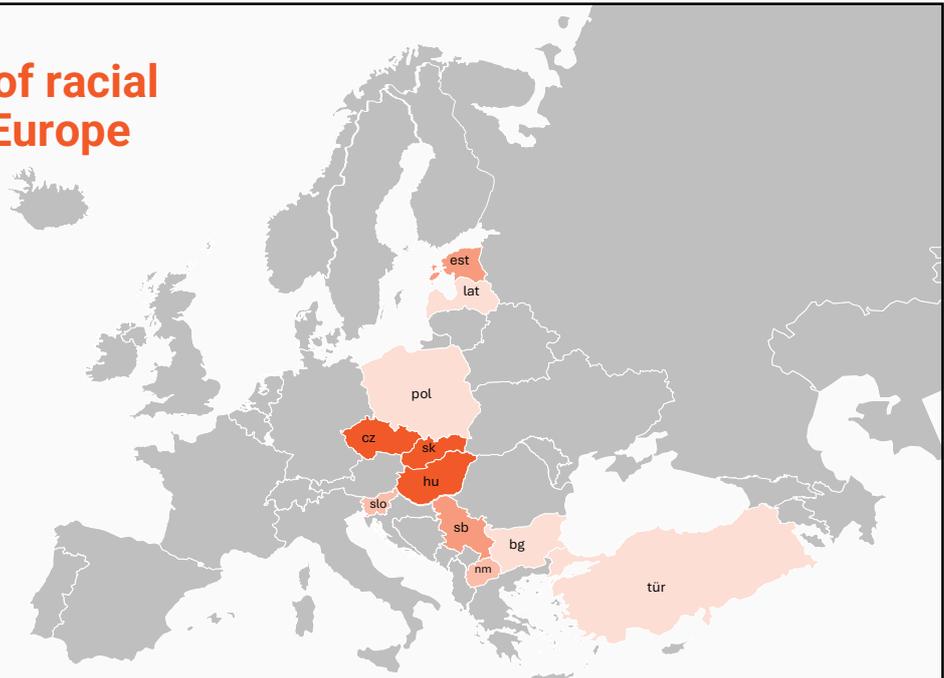
European Commission against Racism and Intolerance

<https://www.coe.int/en/web/european-commission-against-racism-and-intolerance>

Segregation of Roma children in special education

2000 – 2010 – 2015 – 2022

2 nd , 3 rd , 4 th , 5 th , 6 th	■	Czechia, Slovakia, Hungary
1 st , 2 nd , 3 rd	■	Serbia
3 rd , 4 th , 5 th	■	Estonia
2 nd , 3 rd	■	Slovenia
4 th , 5 th	■	North Macedonia
4 th	■	Türkiye, Bulgaria
5 th	■	Latvia, Poland



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The landscape of racial segregation in Europe

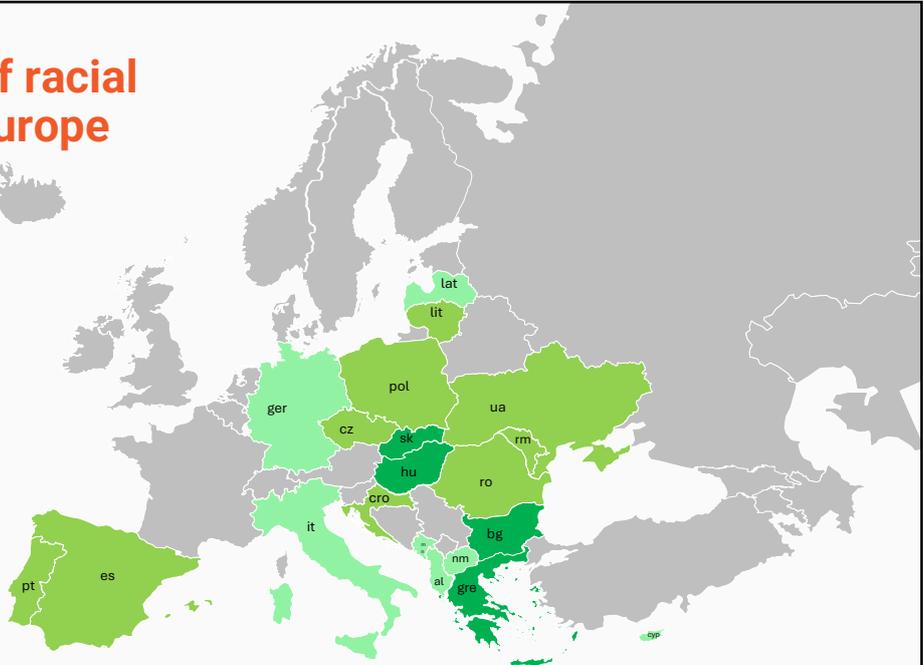
European Commission against Racism and Intolerance

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Segregation of Roma children in separate buildings, classes, or schools induced by enrolment requirement

2000 – 2010 – 2015 – 2022

2 nd , 3 rd , 5 th , 6 th	■	Bulgaria
3 rd , 4 th , 5 th , 6 th	■	Greece
2 nd , 4 th , 5 th , 6 th	■	Hungary, Slovakia
3 rd , 4 th , 5 th	■	Croatia, Portugal, Romania, Russia, Ukraine
4 th , 5 th , 6 th	■	Czechia
2 nd , 3 rd , 4 th	■	Lithuania, Poland, Spain
3 rd , 4 th	■	Italy, Republic Moldova
5 th , 6 th	■	Albania, Cyprus, Germany
1 st , 2 nd	■	Montenegro
3 rd , 6 th	■	North Macedonia
3 rd	■	Denmark



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Litigating segregation before the European Court of Human Rights

European Court of Human Rights

<https://hudoc.echr.coe.int/eng>

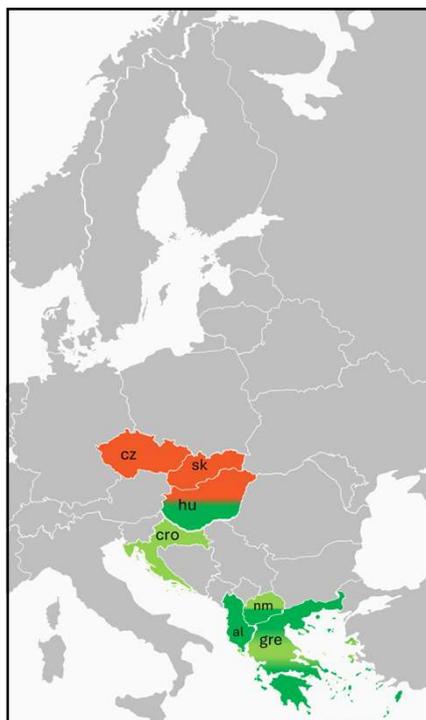
Segregation of Roma children in education

Year	Case	Execution
2006, 2007 [GC]	D.H. and Others	Pending
2008	Sampanis and Others	Closed
2008, 2010 [GC]	Orsus and Others	Closed
2010	Horvath and Vadaszi	-
2012	Sampani and Others	Closed
2013	Horvath and Kiss	Pending
2013	Lavida and Others	Closed
2017	Amanda Kosa	-
2022	X and Others	Pending
2022	Suchy	-
2022	Elmazova and Others	Pending
2023	Szolcsan	Pending
2023	Avdiu and Others	-
2025	Salay	Starting

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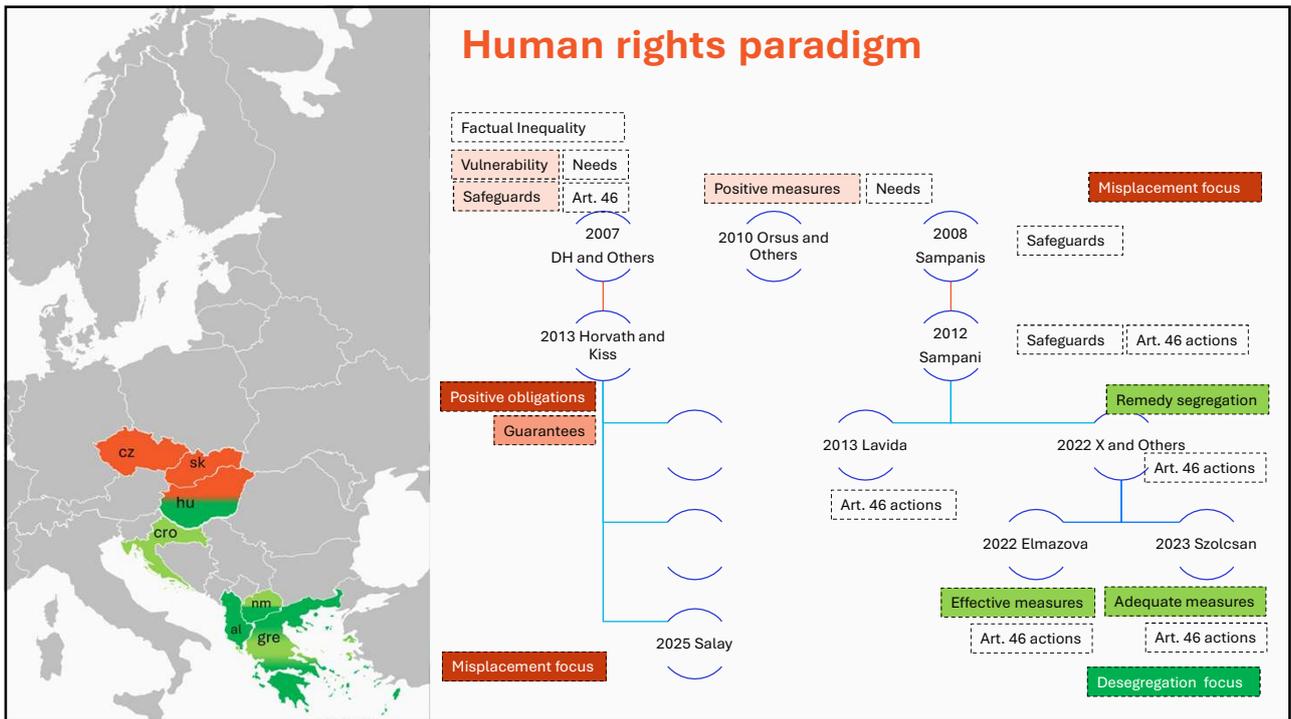
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Factors triggering segregation

Year	Case	Setting
2006, 2007 [GC]	D.H. and Others, no. 57325/00	Placement system special education, testing, degree of hostility
2008	Sampanis and Others, no. 32526/05	Administrative enrolment requirements, documentation, age, degree of hostility
2008, 2010 [GC]	Orsus and Others, no. 15766/03	Enrolment, lack of language command, degree of hostility
2012	Sampani and Others, no. 59608/09	Administrative enrolment requirements, degree of hostility
2013	Horvath and Kiss, no. 11146/11	Placement system special education, testing requirements
2013	Lavida and Others, no. 7973/10	Catchment area rules and transfer, degree of hostility
2022	X and Others, nos. 73548/17, 45521/19	Catchment area rules and transfer
2022	Elmazova and Others, nos. 11811/20, 13550/20	Catchment area rules, transfer, degree of hostility
2023	Szolcsan, no. 24408/16	Catchment area rules, transfer
2023	Avdiu and Others, no. 49516/17	Catchment area rules and transfer
2025	Salay, no. 29359/22	Placement system, testing requirements, special classes

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Judicial borrowing of standards at national level

Supreme Court rulings

<https://www.equalitylaw.eu/legal-developments>

Rulings addressing school segregation of Roma children

Supreme Court rulings	
Judgment of the Supreme Court (14 February 2020) no 80.	Bulgaria
Judgment of the Supreme Court (5 May 2022) no 25Cdo 473/2021.	Czechia
Judgment of the Supreme Court (12 May 2020) no Pfv.IV.21.556/2019/22 (4 October 2017) no Pfv.IV. 20085/2017.	Hungary
Judgment of the Supreme Court (2 February 2022) no 580/2022, (20 February 2020) no 1015/2020.	Romania
Judgment of the Supreme Court (12 July 2023) no 5Cdo/220/2022, (28 March 2023) no 4Cdo/112/2021, (15 December 2022) no 5Cdo/102/2020	Slovakia
Equality body decisions	
X and Others; Avdiu and Others v Albania; Elmazova and Others	Albania North Macedonia

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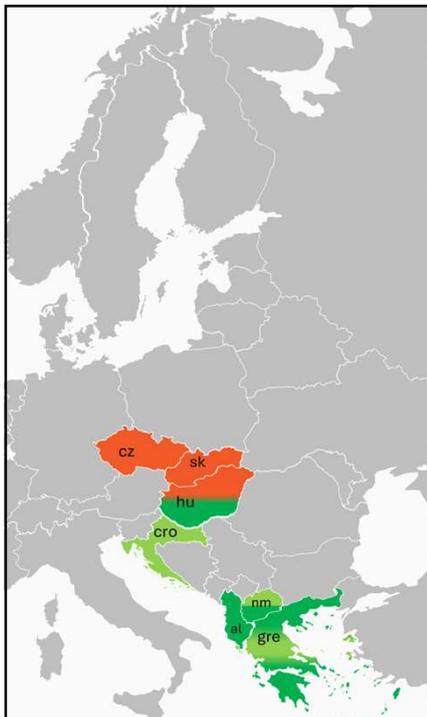
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What brings Salay into the overall landscape

Case	Inequality	Vulnerability/Roma situation	Protection and safeguards	Risks and factual inequality	Deficiencies
D.H and Others	Failure to attempt to correct inequality may give rise to a breach of Art. 14 (§.175)	Vulnerable position of Roma: special consideration to needs, in the relevant regulatory framework and in reaching decisions in particular cases (§.181)	Provide special protection in the sphere of education (§.182)	Danger of bias tests (§.201) Separate schooling; more basic curriculum; pupils isolated (§.207)	Schooling arrangements not attended by adequate safeguards to consider special needs (§.207)
Horvath and Kiss	Failure to attempt to correct inequality may give rise to a breach of Art. 14 (§.101)	Their vulnerable position means that special consideration should be given to their needs (§.102)	Specific positive obligations to avoid the perpetuation of discrimination allegedly neutral tests (§.116) Necessary safeguards follow from the positive obligations of State given history of discrimination (§.119) Undue a history of racial segregation in special schools (§.127)	Danger culturally biased tests (§.121) Separate schooling; more basic curriculum; pupils isolated (§.127) High risk of discriminatory misdiagnosis and misplacement (§.121)	Schooling arrangements not attended by adequate safeguards to consider special needs (§.127) Failure to provide guarantees to avoid misdiagnosis misplacement (§.128)
Salay	Failure to attempt to correct inequality may give rise to a breach of Art. 14 (§.83)	Their vulnerable position means that special consideration should be given to their needs (§.83)	Structural deficiencies call for implementation of positive measures: assist children in following curriculum, active and structured involvement social services (§.83) Undue a history of racial segregation in special education (§.124)	Danger of culturally biased tests (§.107) More basic curriculum (§.114) High risk of discriminatory misdiagnosis and inappropriate placement (§.107)	Schooling not attended by adequate safeguards to consider special needs of Roma pupils (§.113) Failure to provide guarantees to avoid misdiagnosis and misplacement (§.115)

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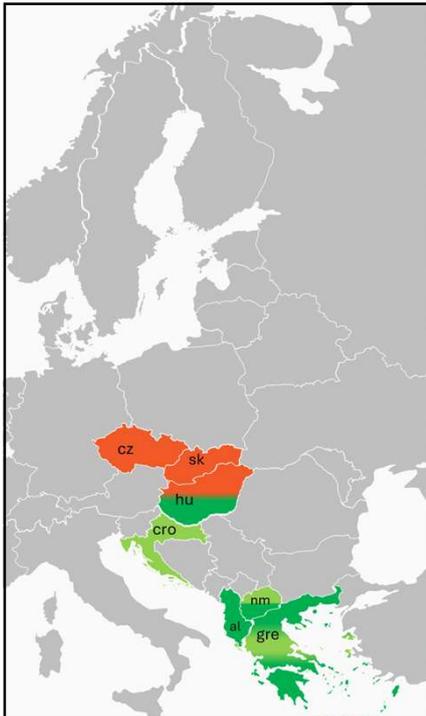


What brings Salay into the overall landscape

Year	Case	Article 46 actions	Execution
2006, 2007 [GC]	D.H. and Others	End discrimination	Pending
2008	Sampanis and Others		Closed
2008, 2010 [GC]	Orsus and Others		Closed
2012	Sampani and Others	End discrimination. Ensure school enrolment	Closed
2013	Horvath and Kiss		Pending
2013	Lavida and Others	Eliminate obstacles to ensure adequate recovery	Closed
2022	X and Others	Take measures to end discrimination	Pending
2022	Elmazova and Others	Take measures to end segregation	Pending
2023	Szolcsan	Take measures to end segregation, adopt policy against segregation	Pending
2025	Salay		Starting

- Recognition of discriminatory practices
- Recalls standards in DH and Horvath and Kiss as well as Orsus and Lavida
- Relies on vulnerability approach
- Finds a prima facie case of indirect discrimination
- Finds that the relevant legislation in practice had a prejudicial effect on the Roma community
- Overemphasis on misplacement and testing
- Question on legitimacy of testing and intersectionality with special education for children with intellectual disabilities (see Horvath and Kiss)
- Question on expected policy reforms considering previous stance on segregation in the context of Art. 46 of the Convention (Lavida, X, Elmazova and Szolcsan)
- Attention to be placed on the execution process and reported reforms in DH and Horvath and Kiss

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Brief reflections

- The ECtHR has recognised the progressive development of state positive obligations to combat the segregation of Roma children in schools.
- There is a need for systematic desegregation policies, rather than case-by-case interventions.
- ECtHR case law has played a catalytic role in prompting courts and national authorities to recognise the structural nature of segregation.
- Supreme courts have begun to make use of ECtHR standards and integrate desegregation mandates.
- Salay: need for a systematic approach to addressing the complexities of segregation, and need for long-term structural interventions.

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Q & A

Thank you for your time and attention!

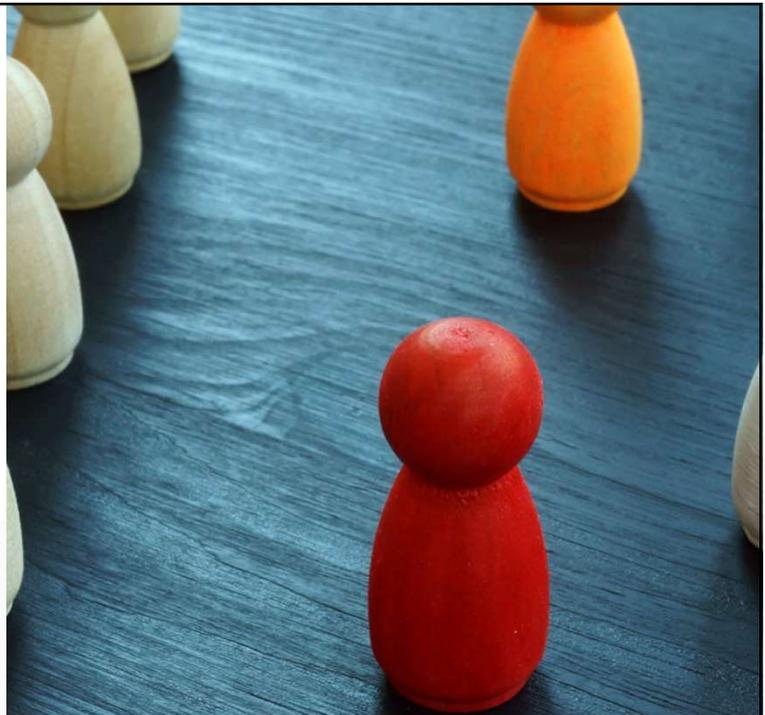
Feel free to ask any questions or share your thoughts!

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