

# **CROATIA**

SUBMISSION TO THE  
COMMITTEE OF MINISTERS  
OF THE COUNCIL OF  
EUROPE ON ORŠUŠ AND  
OTHERS V. CROATIA  
(APPLICATION NO.  
15766/03)

**AMNESTY**  
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**Amnesty International Publications**

First published in 2011 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: EUR 64/007/2011  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# INTRODUCTION

This briefing is submitted in accordance to Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements with a view to assisting the Committee of Ministers in its evaluation of the general measures taken to date by the Croatian government to fulfil their legal obligations in relation to the Grand Chamber's judgment in the case of *Oršuš and Others v. Croatia*.

This briefing takes into account developments which have taken place since March 2010 and in particular the Action Plan which was communicated to the Committee of Ministers on 16 December 2010 on the implementation of the judgment adopted by the government of the Republic of Croatia.<sup>1</sup>

Amnesty International is concerned that despite some steps undertaken by the Croatian government, the measures developed by the authorities are insufficient to address the causes of discrimination of Romani pupils in the education system of Croatia, as identified in the Grand Chamber's judgment of *Oršuš and Others v. Croatia*.

# THE CASE

The case concerned discrimination against Roma pupils who were placed in Roma-only classes, based on their inadequate command of the Croatian language. The children were placed in Roma-only classes in two primary schools in Medimurje County between 1996 and 2007.

The government of Croatia claimed that they were placed in Roma-only classes based on their, allegedly, poor command of the Croatian language. However, the Grand Chamber of the Court found that the placement of children in separate classes based on their command of the Croatian language amounted to discrimination on the basis of ethnicity as the government failed to show that this measure had an objective and reasonable justification.

The Grand Chamber ruled that the action by the Croatian government was in violation of Article 14 taken together with Article 2 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms.

# CONCERNS OF THE EUROPEAN COURT OF HUMAN RIGHTS

The Grand Chamber stressed the following issues which contributed to discrimination against Romani pupils:

1. Assessment test prior to the placement in Roma-only classes

The Court found that the assessment tests which were supposed to determine the placement of children in Roma-only classes, instead of assessing their language skills as the government claimed checked only their general psycho-physical conditions. No thorough assessment of the language skills of the pupils was conducted.<sup>2</sup>

The Court also noted that Croatian law did not provide for separate classes for children lacking proficiency in the Croatian language.<sup>3</sup>

2. Curriculum in Roma only-classes

The Court expressed its concern that the educational needs of the children were not addressed once they were placed in Roma-only classes as the curriculum taught in those Roma-only classes was significantly reduced and that it had 30 per cent less content comparing to the curriculum of mainstream classes.<sup>4</sup>

3. Monitoring progress and possibility of transfer

The Court observed that, once assigned to Roma-only classes, the applicants were not provided with any specific programme to address their alleged linguistic insufficiencies.<sup>5</sup> It considered that the lack of a prescribed and transparent procedure to monitor the pupils' progress in learning Croatian left much room for arbitrariness concerning their possible transfer to mixed classes.<sup>6</sup>

4. Involvement and consent of parents

The Court observed that the fact that the parents of the pupils did not request their transfer to mixed classes or did not raise objections to the placement of their children in Roma-only classes cannot be used to justify the action of the authorities. In doing so, the Court referred to its judgment in the case of *D.H and Others v. the Czech Republic* where it stated:

"[...] 203. In the circumstances of the present case, the Court is not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent. [...]"

And further:

"[...] 204. In view of the fundamental importance of the prohibition of racial discrimination [...] no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest [...]"<sup>7</sup>

The Court also considered that additional measures were needed to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties encountered in following the school curriculum, including active and structured involvement of the relevant social services.<sup>8</sup>

# INADEQUATE RESPONSE BY THE AUTHORITIES TO THE CONCERNS RAISED BY THE EUROPEAN COURT OF HUMAN RIGHTS

Amnesty International is concerned that the response of the authorities to implement the judgment of the Grand Chamber in the case has been inadequate. The organization believes that the Action Plan developed by the authorities to address the main causes of discrimination against Romani pupils in Croatia, as established by the Grand Chamber, fails to effectively address the issues identified by the Court (see above).

On the outset, Amnesty International observes that the Action Plan has failed to set specific timelines for the implementation of most of the activities. It has also failed to address several issues raised in the judgment of the Grand Chamber.

- For example, the Action Plan adopted by the government fails to address the lack of involvement of Roma pupils' parents as well as their consent to place children in Roma-only classes (para 177 and 178 of the judgment).

- Similarly, the Action Plan lacks an explanation on how the authorities plan to ensure that Romani pupils are not taught a reduced curriculum. Amnesty International recalls that the Court established that pupils in Roma-only classes were taught a curriculum which was reduced by 30 per cent (para 163 and 165 of the judgment).

- Further, Amnesty International observes that in their response to the Committee of Ministers the authorities stated that 'The Act on Upbringing and Education in Primary and Secondary School' had been amended and that it entered into force on 24 July 2010.<sup>9</sup> The amendment stipulated the schools' obligation to provide special assistance to children who lack adequate command of the Croatian language. The amendment enabled the state authorities to undertake "*through different bylaws concrete measures to assist children with lack or insufficient knowledge of Croatian language to acquire that knowledge and to be integrated in mixed classes as soon as possible.*"

Amnesty International welcomes this amendment. However, we note that the provision of special assistance to children who lack knowledge of Croatian was already an obligation under the existing legislation prior to this amendment, and therefore, does not create any new obligations.

Amnesty International is concerned that without a set of specific bylaws, which are yet to be adopted, the amendment will not address the issues identified by the Court. Moreover, the authorities have failed to specify what particular "concrete

measures” are being considered to assist children with insufficient command of the Croatian language.

■ The Court observed that the assessment on the placement of Roma pupils in special classes was not conducted based on their command of Croatian and that there was no system to monitor the progress of pupils in acquiring the sufficient command of the language. (paras. 159, 160, 165, 166, 175).

In response to the above, according to the Action Plan the authorities intend to form panels composed of a “school doctor, expert (psychologist, pedagogist or similar), class teacher and a Croatian language teacher and/or language specialist” tasked with conducting assessments of all children before enrolling them to primary school.

Amnesty International is concerned that a number of the professions listed to sit on the assessment panel do not have suitable qualifications to assess command of the Croatian language. Such assessment should be concluded by independent experts specialised in conducting such assessments (linguists) operating under clear standards, in order to reduce the potential for placements made on the bases of non-linguistic considerations, including racial prejudice. Parents of pupils or Roma representatives should also be included in the process and an appeal procedure should also be defined. Monitoring of the progress in acquiring a sufficient level of Croatian should be conducted in a similar way. There must be transparent and clear criteria to provide for the transfer of any children placed in special classes to mixed classes within the shortest possible time.

In June 2010 the Commissioner for Human Rights of the Council of Europe reported that “de facto segregation” of Roma pupils persisted in some schools in the country. In light of this reality, it is particularly important that if, and to the extent that special schools for Roma children are necessary and proportional to ensure that Roma children can receive education in Croatian language, the measures taken by the government to implement the judgment of the Court must be designed as carefully as possible to prevent racial segregation. Such measures should include appropriate safeguards to prevent educators segregating Roma children as a result of potential pressures from certain non-Roma parents.

## RECOMMENDATIONS

Amnesty International calls on the authorities to:

1. Amend the Action Plan and address the issues identified by the Grand Chamber, including by ensuring that Roma children are not taught a reduced curriculum in comparison to other children, ensuring the genuine participation of Roma parents in any decisions to place their children in special classes, and ensuring their informed consent to any such placement.
2. Set specific timelines, targets, objectives and budgetary allocations to fully implement the judgment of the Grand Chamber.



3. Conduct independent and professional assessments of pupils' language skills by qualified experts before enrolling pupils to primary school. Such system should include a possibility of an appeal procedure and provide for the genuine participation Roma parents or Roma representatives.
4. Establish an effective system of monitoring progress of Roma pupils placed in special classes in acquiring sufficient knowledge of the Croatian language and establish transparent and clear criteria that provide for their transfer to mixed classes within the shortest possible time.

# NOTES

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<sup>1</sup> The Action Plan is available under the following web address:

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DH-DD\(2011\)53&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DH-DD(2011)53&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)

<sup>2</sup> The pertinent part of the judgment reads, para 159: “[...] the tests applied for deciding whether to assign pupils to Roma-only classes are not specifically designed to test the children’s command of the Croatian language. Where the State authorities opt to place children in a separate class on the ground that the children lack an adequate command of the Croatian language, the testing of such children should be specifically designed to assess their knowledge of the language. In its Opinion on Croatia, adopted on 6 April 2001, the Advisory Committee of the Framework Convention for the Protection of National Minorities stressed that “placing children in separate classes should take place only when it is absolutely necessary and always on the basis of consistent, objective and comprehensive tests” (see paragraph 68 above).

Para 160: “In the present case no specific testing of the applicants’ command of the Croatian language took place. The testing of the applicants who attended Macinec Primary School (the eleventh to fifteenth applicants) was designed to test the children’s general psycho-physical condition, not their knowledge of the Croatian language in particular. As regards the applicants who attended the Podturen Primary School (the second to tenth applicants), the Government have not shown that they were ever effectively tested in this respect [...]”

<sup>3</sup> The relevant part of the judgment reads:

“158. The Court first notes that there existed no clear and specific legal basis for placing children lacking an adequate command of the Croatian language in separate classes. The laws relied on by the Government, namely, the Primary Education Act and the Rules on the Number of Pupils in Regular and Multi-Grade Classes, did not provide for separate classes for children lacking proficiency in the Croatian language. The Government have not shown that this practice has been applied in respect of any other pupils lacking an adequate command of the Croatian language in any other part of Croatia, and not only in respect of Roma children in several schools in Međimurje County, including the two schools in question. Consequently, the impugned measures can hardly be seen as part of a common and general practice designed to address the problems of children who lack an adequate command of the Croatian language.”

<sup>4</sup> The pertinent part of the judgment reads:

“163. [...] The Government also admitted that the curriculum in Roma-only classes might have been reduced by up to 30% compared with the full standard curriculum, such a reduction being permissible under national laws and not reserved for Roma-only classes but accepted and allowed in respect of any primary school class in Croatia, depending on the abilities of the pupils in a given class [...].

165. As regards the fact that the curriculum taught in Roma-only classes might have been reduced by 30%, the Court first notes that the Government have not indicated the exact legal basis for such a reduction. Secondly, and more importantly, they have not shown how the mere fact of a possible reduction of the curriculum could be considered an appropriate way to address the applicants’ alleged

lack of proficiency in Croatian. Since, as indicated by the Government, teaching in the schools in question was in Croatian only, the State in addition had the obligation to take appropriate positive measures to assist the applicants in acquiring the necessary language skills in the shortest time possible, notably by means of special language lessons, so that they could be quickly integrated into mixed classes”.

<sup>5</sup> Para 165-166 and especially: “once assigned to Roma-only classes, were not provided with any specific programme in order to address their alleged linguistic insufficiencies. Nor have the Government shown the existence of any written instructions or guidelines concerning the programme to be followed by pupils assigned to Roma-only classes”.

<sup>6</sup> Para 175. “Yet the applicants in the present case each spent a substantial period of their education in Roma-only classes. The eleventh to fifteenth applicants spent all eight years of their schooling in a Roma-only class, while the second to tenth applicants attended at times both Roma-only and mixed classes. However, no particular monitoring procedure was in place. Although some of the applicants at times attended mixed classes, the Government failed to show that any individual reports were drawn up in respect of each applicant and his or her progress in learning Croatian. Such reports appear necessary in order to ensure objectivity as well as to identify problem areas which could then be addressed, if needed, with additional measures. The lack of a prescribed and transparent monitoring procedure left a lot of room for arbitrariness.”

<sup>7</sup> Para 178.

<sup>8</sup> Para 177.

<sup>9</sup> DH-DD(2011)53E. Action plan / action report - Communication from Croatia concerning the case of Oršuš and others against Croatia (Application No. 15766/03) p. 2. Available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=DH-DD%282011%2953&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

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