REMOVING ARBITRARY HANDICAPS: PROTECTING THE RIGHT TO EDUCATION IN HORVÁTH AND KISS v. HUNGARY

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Abstract: On January 29, 2013, in Horváth and Kiss v. Hungary, the European Court of Human Rights held that educational testing in Hungary violated the European Convention on Human Rights. The court found that the tests used in Hungary had a disproportionate effect on the Roma population and that the state has a positive obligation to remedy such practices. This Comment argues that the imposition of positive obligations on states to provide safeguards for disadvantaged groups, like the Roma, is an effective method to correct a troubled history of racial segregation in public schools. This Comment also argues that without such obligations on the part of states, disadvantaged children face the threat of losing a fair and real right to education.

INTRODUCTION

In January 2013, the European Court of Human Rights (ECtHR) issued an opinion that not only affected the lives of the two applicants, but also the standing of current discriminatory educational systems throughout Europe.1 In Horváth and Kiss v. Hungary, the ECtHR held that educational testing conducted by the government of Hungary had a disproportionately prejudicial effect on the Roma community, and that the state failed to provide guarantees to avoid misdiagnosis of children.2 The opinion is a victory for those who have been denied equal education rights due to socio-cultural factors.3

Part I of this Comment explains the testing practices in Hungary, the story of Horváth and Kiss, and how it came to the attention of the ECtHR. Part II discusses the arguments made by both parties before the ECtHR and the legal context in which the court made its final ruling. Part III explores the impact of the decision on discriminatory educational practices and its potential effect in remedying those situations. Finally, this Comment concludes that the court’s decision is a triumph for Roma who have been mistreated at the

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2 Id. ¶ 128.

3 See id. ¶¶ 30, 128.
hands of their own governments. The court’s decision in Horváth is a rebuke to governments, telling them that they cannot ignore the conditions of minorities in their respective states, but must act to rectify inequalities.

I. BACKGROUND

The Hungarian education system evaluates schoolchildren on the basis of their cognitive abilities, and then assigns them to schools appropriate for their capabilities. Children start their education with one year of pre-primary education in pre-school. To be admitted to elementary school, students must receive a declaration of school-readiness. Generally, pre-school institutions certify school-readiness based on observations of each student’s maturity. In cases where teachers are faced with a student whom they find problematic, however, they may ask for assistance from an expert and rehabilitation committee. Students are sent to one of four types of schools based on the results of the expert committee: general secondary education schools; vocational secondary education schools; vocational training schools; or special education schools. Whereas students enrolled in the first two types of schools may go on to universities after graduation, students enrolled in the vocational training schools or special education schools do not have access to universities, because they are not given the prerequisite tests for higher education.

Roma students are disproportionately represented in specialized schools. The Roma are a recognized minority group in Hungary, composing approximately 8–10 percent of the population. Studies have shown that a

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5 Id. at 2.
6 Id.
7 See id.
8 Id.
9 See id. at 2, 15.
10 See COUNTRY REPORT ON EDUCATION, supra note 4, at 2, 16.
11 See id. at 15–16. It is important to note that the experience of the Roma in Hungary is not unique, but only one example of the prevalent discrimination they face across Central and Eastern Europe. See UNICEF, The Right of Roma Children to Education: Position Paper 2 (2011), available at http://www.unicef.org/ceecis/UNICEF_ROE_Roma_Position_Paper_Web.pdf. According to UNICEF, “Many Roma children are tracked to ‘special’ schools and classroom for children with disabilities simply because of their language differences.” Id. The study conducted by UNICEF posits that the poor educational outcomes within the Roma population is a result of the stigma and discrimination associated with the Roma and the lack of institutions providing services to support their development. See id. at 17.
12 Michael Kimmelman, In Hungary, Roma Get Art Show, Not a Hug, N.Y. TIMES, Feb. 6, 2008, at E1; see ROZA VAJDA & CSABA DUPCSIK, EDUMIGROM: ETHNIC DIFFERENCES IN
great majority of Roma children are placed in vocational training schools or special education schools, raising concerns not about the disability of the children, but the functioning of the educational institutions. One study found that, at a national level, one out of five Roma children are declared mentally disabled. The case of *Horváth and Kiss* involves two Roma children who went through this testing process and claimed that they were wrongly diagnosed as mentally disabled.

**A. Diagnoses of Mental Disability Through Testing**

István Horváth and András Kiss, both of Roma origin, were born in Nyíregyháza, Hungary in 1994 and 1992, respectively. Through various testing procedures, the government diagnosed both children as having mental disabilities and as a result, placed them in a remedial school created for children with such disabilities.

In 2001, Horváth’s nursery school concluded that his mental and social abilities were lower than normal for his age and requested that he be examined for a mental disability. The Expert and Rehabilitation Panel of Szabolcs-Szatmár-Bereg County (the expert panel) conducted three types of IQ tests on Horváth. His results ranged from an IQ of 64 to 67 to 83 on the different tests. Unlike the World Health Organization, which places the border value between sound intellectual ability and mild mental ability at an IQ of 70, the Hungarian expert panels use an IQ of 86 as their border value. On the basis of these results and the expert panel’s observation of his behavior and abilities, the expert panel diagnosed Horváth with “mild mental disability.” Consequently, Horváth attended a remedial school, the Göllesz Viktor Remedial Primary and Vocational School. Even before the examination took place, however, the expert panel informed Horváth’s parents that he
would be placed in a remedial school and asked the parents to sign the expert panel’s opinion.24

Throughout his education in remedial school, Horváth was examined multiple times by the expert panel.25 From 2005 to 2007, Horváth’s IQ results ranged from 61 to 71.26 In 2007, the expert panel found that Horváth had “better knowledge than his test score reflected,” was “integrated in his school system,” was “able to study individually,” had “no impediment in speech and only needed some reassurance.”27 Nevertheless, the expert panel upheld his placement in remedial school and again diagnosed him with mild mental disability and special education needs, without explaining the disparities in his scores.28

Kiss, on the other hand, started his elementary education in a mainstream school.29 The local pedagogical advisory service evaluating Kiss found that he had learning difficulties “deriving from his disadvantaged social and cultural background.”30 Nevertheless, they decided that he should be educated in a mainstream school under a special program.31

After three and a half months, the school requested expert diagnosis of Kiss based on his performance to date in the year.32 The school claimed that he had “poor results, was often tired, his attention was volatile and his vocabulary poor.”33 At that time, his IQ measured 73.34 A few months later, the expert panel conducted two more IQ tests.35 His results ranged from an IQ of 63 to 83.36 Relying on these results, the expert panel diagnosed Kiss with “mild mental disability” and decided that he should be placed in a remedial school.37 Although Kiss’s parents objected to their son’s new placement, they were not informed of their right to appeal the panel’s decision.38

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24 Id. ¶ 19. In fact, according to Horváth’s father, the expert panel did not provide any information about the procedure or his rights to appeal. Horváth and Kiss v. Hungary, App. No. 11146/11, Eur. Ct. H.R., Application Submitted by the Applicants, ¶ 10 (Feb. 11, 2011) (on file with author) [hereinafter Application].
26 Id. ¶¶ 21, 22.
27 Id. ¶ 22.
28 See id. ¶¶ 17, 22.
29 Id. ¶ 25.
30 Id.
31 Id.
32 Id.
33 Id.
34 Id.
35 Id. ¶ 26.
36 Id.
37 Id.
38 Id. ¶ 27.
Kiss was placed in the Göllesz Viktor Remedial Primary and Vocational School.  

Like Horváth, Kiss was re-assessed by the expert panel twice between 2002 and 2005. The expert panel found that although Kiss achieved good results at school, his analytical thinking was underdeveloped. The expert panel concluded that he needed to continue his education at the remedial school.

B. Review by Independent Experts

In 2005, both Horváth and Kiss attended a summer camp where independent experts tested 61 children with “special educational needs.” Horváth scored an IQ of 83 during this testing. The experts noted that this was under average, but that it did not correspond to a “mentally disabled” score. Although their testing also revealed that he had an immature nervous system, they concluded that this did not make Horváth unfit for a mainstream class. Kiss’s IQ score was 90. Other tests also revealed that Kiss suffered from immaturity of the nervous system and dyslexia, but that he was sound of mind and could be educated in a school with a normal curriculum.

The experts further noted that Roma children could perform better on these diagnostic tests if they had not been designed for children belonging to the ethnic majority. They added that intelligence tests had a close correlation with school qualification; thus, education in a remedial school might significantly influence the results of intelligence tests.

C. Horváth and Kiss Bring Claims Alleging Discrimination

In 2006, Horváth and Kiss filed a joint suit for damages in the Szabolcs-Szatmár-Beregi County Regional Court, claiming that the expert panel discriminated against them and misdiagnosed them as being “mildly mentally disabled” on the basis of their ethnicity, social and economic background. They alleged that those actions resulted in their placement in special schools.

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39 Id.
40 See id. ¶ 29.
41 Id.
42 Id.
43 Id. ¶ 31.
44 Id. ¶ 32.
45 Id.
46 Id.
47 Id. ¶ 33.
48 Id.
49 Id. ¶ 34.
50 Id.
51 Id. ¶¶ 35–36.
despite having normal abilities.\textsuperscript{52} The action was directed against the expert panel, the \textit{Szabolcs-Szatmár-Bereg} County Council (County Council), and the Göllesz Viktor Remedial Primary and Vocational School.\textsuperscript{53} They requested the court to establish a violation of the principle of equal treatment amounting to a violation of their personality rights under section 76 of the Civil Code, and section 77(3) of the Public Education Act.\textsuperscript{54}

The Regional Court found that the defendants’ handling of the applicants’ education violated their rights to equal treatment and education.\textsuperscript{55} The court explained that expert panels must individualize each case and decide according to the needs and circumstances of each individual child.\textsuperscript{56} In this case, the court found that this individualization was very much lacking.\textsuperscript{57} In addition, the court found that the County Council failed to ensure “effective control” over the expert panel.\textsuperscript{58} Therefore, the court ordered the parties to jointly and severally pay 1,000,000 Hungarian Forints (HUF) in damages to each applicant.\textsuperscript{59}

The Remedial School and the County Council appealed to the Debrecen Court of Appeal, and successfully reversed the judgment of the lower court.\textsuperscript{60} The Debrecen Court accepted the Remedial School’s defense that it only followed the expert panel’s decision.\textsuperscript{61} In regards to the County Council, the court explained that although a better diagnostic system was needed to prevent misdiagnosis, the applicants had not suffered from any discrimination because the lack of appropriate diagnostic tools had no connection to their ethnic origin.\textsuperscript{62}

The applicants appealed to the Hungarian Supreme Court (Supreme Court), claiming that the Court of Appeal wrongly concluded that there was no connection between the lack of appropriate testing and their ethnic origin.\textsuperscript{63} They argued that the systemic errors of the diagnostic system resulted in a disproportionately high number of Roma children diagnosed as having mental disabilities.\textsuperscript{64} The Court upheld the judgment, finding that the conduct of the Remedial School and the County Council had not violated the applicants’ right
to equal treatment, “either in terms of direct or indirect discrimination.”65 The Court, however, allowed for the judgment of the first court to stand in regards to the expert panel and the County Council under the general rules of tort liability, not as a violation of their personality rights.66 The Supreme Court recommended the applicants to establish a violation of their human rights before the ECtHR.67

II. DISCUSSION

As a signatory to the European Convention on Human Rights (the Convention),68 Hungary is responsible for protecting the fundamental rights set forth in the Convention.69 The ECtHR is responsible for responding to claims that allege a state’s failure to comply with its obligations under the Convention.70 Because the Supreme Court found that evaluating the diagnosis system exceeded its competence, it referred the applicants to the ECtHR.71 Thus, Horváth and Kiss filed their lawsuit in the ECtHR, arguing that their education in remedial school represented ethnic discrimination in the enjoyment of their right to education, in violation of Article 2 of Protocol No. 1 read in conjunction with Article 14 of the European Convention on Human Rights.72

A. Article 2 of Protocol No. 1

The basis of the applicants’ claim rests on understanding the right enshrined in Article 2 of Protocol No. 1 of the Convention.73 It states, “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”74 Although this Arti-

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65 Id. ¶ 51.
66 Id. ¶ 54.
67 Id. ¶ 53.
69 See id. art. 1.
71 Application, supra note 24, ¶ 65. In order to be able to reach the ECtHR, applicants must exhaust all domestic remedies. PRACTICAL GUIDE ON ADMISSIBILITY CRITERIA, supra note 70, at 15. This was a point of contention between the two parties in this case. However, the court ruled in favor of the applicants, stating that the applicants took all the necessary domestic actions and in fact, according to the Supreme Court, the applicants could not find redress under national law. See Horváth v. Hungary, App. No. 11146/11, Eur. Ct. H.R. ¶¶ 81, 86 (2013).
72 Horváth, App. No. 11146/11, ¶ 77.
73 See id. ¶ 3.
cle guarantees the right of education within contracting states, the ECtHR has
generally given states a wide margin of freedom to determine practices and
rules in compliance with the article. 75 Because the right is expressed in nega-
tive, rather than positive terms, it has generally been believed to have weak
implications. 76 The Article requires that individuals be guaranteed access to
existing educational institutions, but it does not set forth a guarantee of a par-
ticular kind or quality of education. 77

B. Article 14 of the European Convention on Human Rights

The applicants link the right to education with Article 14 of the Conven-
tion in order to show the discriminatory basis of the educational practices in
Hungary. 78 Article 14 states, “The enjoyment of rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or oth-
er status.” 79 Article 14 complaints can only be invoked by attaching it to one
of the other rights protected by the Convention. 80 This non-discrimination
clause has been growing in importance over the past decade and has been
applied to cases alleging indirect indiscrimination, segregation, and violence
inspired by racism. 81

C. The Parties’ Arguments on the Merits

The applicants argued that their placement into special schools was part
of a decades-long pattern in the Hungarian educational system that uniquely
burdened the Roma population. 82 They argued that the tests used for place-
ment had been culturally biased and knowledge-based, thus favoring the ma-
jority, and putting Roma children at a disadvantage. 83 The basis for this ar-

75 Horváth, App. No. 11146/11, ¶ 103; see also Leyla Şahin v. Turkey, 2005-XI Eur. Ct. H.R. 173, 177, 195 (2005) (holding that even though the right of education in Article 2 applies to higher education, a Turkish law banning students wearing the Islamic headscarf from attending universi-
ties did not violate the right enshrined in the Article).
77 Id.
80 Janneke Gerards, The Discrimination Grounds of Article 14 of the European Convention
that Roma students received discriminatory treatment in their schooling).
82 Horváth, App. No. 11146/11, ¶¶ 90, 91.
83 Id. ¶ 92.
argument was that the population samples used for the various tests ran the risk of representing only those participating in the sample and were biased against those not included. Thus, because the samples included children living in the cities and not the countryside (where most Roma live), the tests were biased towards the majority’s children. In addition, the applicants asserted that it was a violation for the expert panels to use IQ scores higher than the WHO standards to determine mental disability. Given that both applicants scored above the WHO standards in at least one of the IQ tests, the applicants asserted that they were never mentally disabled. Therefore, they argued, the government wrongly and unlawfully labeled Horváth and Kiss as mentally disabled, and deprived them of their right to education.

In addition, the applicants drew similarities to the court’s 2007 decision in *D.H. and Others v. the Czech Republic*. In that case, the ECtHR established that the “turbulent history and constant uprooting” of the Roma made them a disadvantaged and vulnerable minority. Even more importantly, *D.H. and Others* represented a triumphant success for the Roma, because the court found that the disproportionate placement of Roma children in specialized schools for mentally disabled children was a discriminatory practice. The applicants’ claimed the same type of discriminatory practice is proven here through the use of statistical evidence.

The government, in response, denied the allegations of the applicants that they had been treated differently from non-Roma children. They asserted that the use of standardized tests to determine learning abilities is more meaningful than tailored tests for Roma children because the children need to be assessed in how they will fit in a mainstream school, not a Roma school. Therefore, the only meaningful test is one that measures the capability of Roma children to perform in schools with the mainstream population. Even so, the government maintained that the standardized tests are not ethnically motivated and that pedagogical tests supplement the IQ tests to determine the ef-

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85 Id. ¶¶ 64, 71.
86 Horváth, App. No. 11146/11, ¶ 93.
87 Reply to Government, supra note 84, ¶ 97.
88 See id. ¶ 97.
91 See id. at 310.
92 Reply to Government, supra note 84, ¶ 130.
93 Horváth, App. No. 11146/11, ¶ 94.
94 Id. ¶ 95.
95 See id. ¶ 95.
fects of socio-cultural effects. They explained the disproportionate representation of Roma children in special education schools by contending that the Roma population is disproportionately deprived of beneficial effects of modernization in mental health development. They argued, however, that this lack of social development is not a part of the right to education.

D. The Court’s Holding

1. General Principles

First, Article 14 does not prohibit a member state from treating different groups differently in order to correct “factual inequalities.” In fact, a state’s failure to correct inequality through different treatment may in itself be a breach of the article. Second, the court accepted that the Roma have become a specific type of disadvantaged class and are a vulnerable minority due to their history. Therefore, the court found that the Roma people require special protection.

The ECtHR posits that the language in Article 2 of Protocol No. 1, stating that “the State shall respect,” implies a positive obligation on the part of the state. Thus, in the context of the right to education, member states must implement positive measures which assist citizens with difficulties they may encounter in the school curriculum. This may include additional steps in social services to provide equal opportunities in schools.

In response to assertions that the tests are neutral, the ECtHR found that even neutral tests can be discriminatory when they are seen to have disproportionate effects on particular groups. In the educational context, it is not necessary to prove discriminatory intent. In addition, when the applicant establishes a rebuttable presumption that the practice is discriminatory, potentially through statistical evidence, the burden of proof shifts to the state to show otherwise.

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96 Id. ¶¶ 95–96. 97 Id. ¶ 96. 98 Id. 99 See id. ¶ 101. 100 Id. 101 Id. 102 Horváth, App. No. 11146/11, ¶ 102. 103 Id. ¶ 103 (emphasis added). 104 Id. ¶ 104. 105 Id. 106 Id. ¶ 105. 107 Id. ¶ 106; see D.H. v. Czech, 2007-IV Eur. Ct. H.R. 315 (2007). 108 Horváth, App. No. 11146/11, ¶¶ 107–08.
2. Application of the General Principles to the Case

Compared to the statistical evidence the applicants provided to the court to establish the overrepresentation of Roma children in special-needs schools, the government provided nothing to dispute these figures.109 The government did not give any justification for the disproportionate representation of the Roma, except for the high occurrence of disadvantageous social development within the population.110 The ECtHR did take into consideration the fact that the Hungarian authorities took measures to avoid misdiagnosis; however, the 2006 findings of the Council of Europe Commissioner for Human Rights that 20 percent of Roma children are assigned to special classes, compared to only 2 percent of the majority children, raised serious concerns about the adequacy of these measures.111 Therefore, due to the significant adverse effect of the procedures in place on Roma children, the court found that the state has “positive obligations” to avoid such discriminatory practices.112

In particular, the Hungarian authorities’ decision to set the borderline of acceptable IQ scores at 86, sixteen points higher than the WHO standards, without justification, was troubling for the court.113 The ECtHR did not actually value the validity of the various tests used to determine the capabilities of the applicants, but it did find that the state did not take the necessary steps to guard the children from misdiagnosis.114 Because the state had a positive obligation to avoid discriminatory practices due to the history of the Roma population, its failure to have such safeguards in place marked a significant departure from the state’s obligations.115

As a result of the state’s failures, the applicants were placed in a special-needs school.116 The court went further and said that it may have been this placement that in fact compounded the children’s difficulties in development.117 Thus, because the applicants were able to prove that the testing procedures had an adverse effect on them, and the Roma community in general, and because the state was unable to show safeguards in place to protect children from misdiagnosis, the court found that the applicants suffered discriminatory treatment.118

109 See id. ¶ 110.
110 Id.
111 Id. ¶ 114.
112 See id. ¶ 116.
113 See id. ¶ 118.
114 Id. ¶ 119.
115 Id. ¶¶ 116, 119.
116 See id. ¶ 127.
117 See id.
118 Id. ¶ 128.
Because the applicants did not make any damages claims in their application, however, the court could only require the government to pay for the costs and expenses incurred before the court.\(^{119}\)

III. ANALYSIS

The underlying argument put forth by the Hungarian government is that the Roma are a disadvantaged people in terms of socio-economic factors, and that their children are inevitably ill equipped to succeed in mainstream schools.\(^{120}\) They argue that this is an issue of social development and is not affected by the right of education protected by the Convention.\(^{121}\) The government asserts that it has to use standardized tests in order to measure how students will perform in mainstream schools—thus, the government effectively measures how one fits with the general population, not intelligence and ability for a medical purpose.\(^{122}\) Whereas the practice of screening children began for the medical purpose of detecting disorders in order to begin a treatment program, it evolved into a screening tool designed to measure a child’s potential success in school.\(^{123}\) The problem with this approach is that it does not take into account that the analytical and memory abilities that are measured, can be improved through school attendance and classroom experience.\(^{124}\) Indeed, this was one of the complaints of the applicants; once placed into a remedial school, there is no way one could improve, because the curriculum is too rudimentary to prepare a child for the demands of a mainstream school.\(^{125}\) Thus, once a student is wrongfully placed in a remedial school, it is very hard to rectify the problem because the child loses years of adequate education necessary to prepare for a mainstream school.\(^{126}\)

The applicants’ success in this case turned on their ability to show that Horváth and Kiss are not mentally disabled by international standards, as measured by independent experts.\(^{127}\) In addition to showing that the classification of the children as mentally disabled is at the very least suspicious, the applicants were able to provide statistical data that showed the representation of

\(^{119}\) Id. ¶ 131–134.


\(^{121}\) See id.

\(^{122}\) See id. ¶ 95; Reply to Government, supra note 84, ¶ 4.

\(^{123}\) See Reply to Government, supra note 84, ¶ 5.


\(^{125}\) See Horváth, App. No. 11146/11, ¶¶ 33, 34.

\(^{126}\) See id; ROMA EDUCATION FUND, supra note 124, at 25.

Roma children in specialized schools.\textsuperscript{128} In the town where the applicants lived, Roma children amounted to 8.7 percent of the student body, but 40–50 percent of the Roma population was placed in a special school.\textsuperscript{129} These numbers are chilling on their own, but they are even more effective in the arguments presented to the court because the government failed to provide any statistics to rebut these numbers or to provide an explanation for them.\textsuperscript{130} The ECtHR could still have taken the view of the government, however, that these numbers show a lack of social development and the poor socio-economic conditions of the Roma and are unrelated to the right to education.\textsuperscript{131} The ECtHR’s response to the government, that it owes a positive obligation to its people, particularly that it must take care to provide safeguards for the disadvantaged class, is monumental.\textsuperscript{132} Traditionally, the right to education enshrined in Article 2 of Protocol 1 had provided weak protection.\textsuperscript{133} It did not specify the quality of the education that states must provide.\textsuperscript{134} Instead, the right requires that states guarantee access to the existing educational system.\textsuperscript{135} The ruling in this case, however, gives new life to the Article by issuing positive obligations on the states.\textsuperscript{136}

The ECtHR stopped short of ordering a reform of educational testing in Hungary, but it did make it clear that the state is obligated to undo historical racial segregation in schools through positive obligations.\textsuperscript{137} This is one step further than the court was willing to go in the prior case of \textit{D.H. and Others}.\textsuperscript{138} In that case, the ECtHR accepted the use of statistical evidence to prove the violation of rights, held that tests alone cannot serve as the justification for different treatment, and perhaps most importantly, held that the burden shifted to the government to show that there had been no breach of the principle of equal treatment.\textsuperscript{139} The application of these standards in this case was clear and apparent in all of the arguments made by the applicants—it was

\textsuperscript{128} See Horváth, App. No. 11146/11, ¶ 7.
\textsuperscript{129} Id.
\textsuperscript{130} See id. ¶ 110.
\textsuperscript{131} See id. ¶ 96.
\textsuperscript{132} See id. ¶ 116.
\textsuperscript{133} See \textit{HUMAN RIGHTS REVIEW 2012}, supra note 76, at 425.
\textsuperscript{134} Id.
\textsuperscript{135} See id.
tailored to fit the standards set forth in *D.H. and Others*. Now, the ECtHR has seemingly turned to the next phase of eliminating the discrimination of Roma by applying its precedent and creating the next benchmark for states: positive obligation. Indeed, this is a direct rebuke of the government’s argument dividing the responsibilities of the state’s educational and socio-economic goals. Whereas the government argued that it had no choice but to accept the low social development of the Roma population, the court asserted that it must tackle this history of inequality if it is to fix the educational system.

The ECtHR subtly charged the government to recondition its educational policy in regards to the Roma, from the national to the municipal level, if it is to win the favor of the court in potential future cases. Interestingly, the ECtHR did not award damages in this case because the applicants did not apply for them, but it does not say that damages would have been inappropriate otherwise.

**CONCLUSION**

Horváth had dreams of becoming a dance teacher, like his father. Instead, he received special vocational training to become a baker. Kiss had aspirations to be a car mechanic. Even though he continued his education in a mainstream secondary vocational school, however, because the school did not offer the necessary courses, he never had the chance to pursue this goal. Their misfortunes at the hands of their government has paved the way for a critical analysis of educational policy and the obligations of a state to provide not only for its majority population, but also those who are on the periphery of society.

Educational opportunities not only advance the life of the individual, but also affect the advancement of the society as a whole. The experiences of various peoples and nations have contributed to this belief. This is why the European Convention on Human Rights guarantees the right to education—it is critically important for the survival and well-being of an equal society. The court must balance the demands of a sovereign nation to develop its own pol-

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140 See Reply to Government, *supra* note 84, ¶ 132.
142 See id. ¶ 96.
143 See id. ¶¶ 96, 116.
144 See id. ¶¶ 104, 111, 119.
145 See id. ¶¶ 131–134.
147 Id.
148 Id. ¶ 28.
149 See id. ¶¶ 8, 28.
icies with the demands of individuals to be treated equally. It may have been easier to defer to the judgments of the government and accept that their experiments in policy-making be given deference. The ECtHR, however, has shown that in the face of such disproportionate and obvious mistreatment, it will not stand by and allow for further experimentation on behalf of children who are due respect.