



The Judicial Narrative of the European Court of Human Rights on Inclusion and Diversity in Education

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Abstract: This article aims to present a study of the judicial arguments of the European Court of Human Rights (ECtHR) in the field of cultural diversity and inclusion concerning education. Analyzing the justificatory arguments of the judgments allows us to understand and delimit strategic frameworks for the implementation of public policies for the inclusion of minorities in the advancement of current educational systems, contributing to the consolidation of their human rights. It analyzes the application of Article 14 of the European Convention on Human Rights. The arguments arising from the application of this principle are addressed from the point of view of cultural diversity, analyzing the institutional difficulties and subtleties of institutional discourses that are often discriminatory based on race or ethnic origin. Arguments from the cases judged by the ECtHR are listed, highlighting the grounds that support positive action with the aim of advancing the effective protection of minorities, especially in education. It is claimed that arguments stemming from the principle of non-discrimination contribute to deepening concrete policies for the inclusion of minorities and that it is necessary to overcome the hesitations of institutionalized discourses.

1. INTRODUCTION

The right of minorities is a subject that crosses various areas of life. Members of such minorities are frequently victims of discrimination based on race or ethnic origin. This fact can directly affect several other dimensions such as equal treatment in the access to labor market, in the education system, in politics, in the economy, and many others. It is within this context that this article aims to present the arguments used by the European Court of Human Rights (ECtHR) concerning the concepts of inclusion and diversity. The formulation of the research starts from the role played by the ECtHR in addressing the rights of minority groups within the field of the educational system and, more concretely, the access to education and its resources. From here it is crucial to define the scope of analysis through the access to education of minority groups. Such scope is delimited through case-law arguments in the judicial reasoning. For this purpose, it is important to consider that the European Convention of Human Rights (ECHR) does not have a specific provision for the protection of minority groups. Instead, the Court uses the provision of its article 14 about the principle of non-discrimination framing judicial interpretations based on race and ethnic origin. From the reasoning arises the need to adopt an institutional discourse about inclusion and diversity. However, the discourse, attitudes, and policies of institutions, demonstrate resistance and hesitations to fully implement substantive equality. Also, doctrine critiques argue that attending to specific attributes of a large range of people might jeopardize the legal framework of anti-discrimination policies. This article discusses the judicial arguments derived from the application of Article 14 giving evidence to the effect between the formal and substantive approach of law. It follows the analysis by pointing out a sensitive and friendly approach of the ECtHR to inclusion and diversity stressing that the judicial reasoning admits a different treatment to disadvantaged

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people in specific minority groups. It concludes by claiming that the educational system needs to overcome the hesitations of implementing inclusive measures for groups of students with vulnerabilities and adopt an intersectional perspective in the interpretation of general policies.

2. INCLUSION AND DIVERSITY – BETWEEN THE RULE OF LAW AND ITS SUBSTANTIVE EFFECT

The ECtHR has played a crucial role in addressing issues of inclusion and diversity of minorities within its jurisprudence. The principle of non-discrimination is a crucial rule, established in Article 14, of the [European Convention on Human Rights \(1950\)](#). It states that “The enjoyment of the rights and freedoms outlined in the Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Despite the absence of explicit provisions for minority rights in the European Convention on Human Rights, the European Court of Human Rights has nonetheless played a crucial role in safeguarding the rights of minority groups through its interpretive approach to the Convention, particularly through the application of Article 14, which prohibits discrimination in the enjoyment of Convention rights ([Medda-Windischer, 2003](#)). This provision is not alone. A whole framework of fundamental principles and rules has been created, which constitute a guiding structure in the design of public policies that aim to ensure, for example, equal treatment in access to several social dimensions such as education. This is the case of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, or the Framework Convention for the Protection of National Minorities. All these instruments call on the signatory states to adopt a social model of inclusion that responds to multicultural diversity and the impact that can result from people’s specific differences.

This framework is based on the premise that all persons deserve to be equally treated before the law despite their differences (race, ethnic origin, gender, sex, political beliefs, etc). Underpinning the whole legal context of non-discrimination is not only equal treatment but the concrete adoption of inclusion measures for diversity. It is therefore important to realize that the formal legal agenda of the rule of law does not always lead to an effective achievement of equality in the face of the differences that people present. This is especially evident in the discourse and practices of institutions. For example, a guide published by the [United Nations \(2012\)](#) states that “In the European Union too many persons belonging to minorities still face threats, discrimination and racism. They are confronted with the risk of being excluded from fully taking part in the economic, political, social, and cultural life available to majorities in the countries or societies in which they live” (p. 133).

Beyond these treaties, a whole set of judicial discourse can be identified in the application of the rule of law. It is part of the States’ obligations not only to adopt measures to protect specific needs and differences of people but also to correct injustices through the application of law. In this sense, the ECtHR plays one of the most important roles since it requires “(...) States to eliminate discrimination in practice and to ensure the effective employment of the rights to equality and non-discrimination” ([United Nations, 2023, p. 3](#)).

Considering this distinction between what the formal framework is and the scope of its applicability, it should be considered the difficulties that can arise in accessing the education system. It is therefore important to look at the judicial practice and assess how the reasoning behind judgments addresses issues of vulnerability. There is literature that discusses the concept of vulnerability and

what features make a group vulnerable (Peroni & Timmer, 2013). This concept was considered by the ECtHR in the case *Chapman v. the United Kingdom* (2001). The Court used the following reasoning: “(...) the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs (...). This enunciation recognizes that some particular cases need to be framed in the regulatory process.

The body of case law has consistently highlighted the necessity of protecting the rights of minority groups, often framing such protections as integral to the broader principles of democracy and the rule of law. The Court has underscored that the safeguarding of minority rights is not merely a matter of social justice but is fundamentally linked to the legitimacy of the legal order itself, emphasizing that access to justice for all, particularly for marginalized populations, is essential for upholding the European Convention on Human Rights (Polgári, 2020). This understanding aligns with the Court’s broader interpretative framework, which acknowledges that ensuring the inclusion of diverse groups is essential for the stability and moral foundation of European democratic societies, thereby reinforcing the rule of law in a manner that is both substantive and procedural (Polgári, 2020; Spano, 2021; Varjú, 2014).

The Court’s jurisprudence in this area reflects a nuanced and evolving conception of the principle of non-discrimination, one that transcends a purely formal or mechanical understanding and instead embraces a more substantive vision that recognizes the importance of substantive equality, and the protection of vulnerable populations (Spano, 2021). This approach is evident in the Court’s careful balancing of individual rights against the state’s interests, highlighting that restrictions on rights must be both necessary and proportionate, thereby ensuring that any limitations do not disproportionately affect minorities and further entrench existing inequalities (Varjú, 2014). This careful attention to proportionality and necessity establishes a framework within which the rights of minorities are not only recognized but actively protected, thereby fostering an environment conducive to genuine inclusion and diversity in European societies (Polgári, 2020). Such a framework underscores the Court’s commitment to enforcing judicial independence and the rule of law as essential to the protection of minority rights, as any erosion of these principles could lead to systemic discrimination and marginalization of vulnerable groups within the legal system (Spano, 2021). This ongoing engagement with the principles of the rule of law and individual rights indicates the Court’s recognition that the health of democracy is intricately linked to the promotion and safeguarding of diversity and inclusion within its member states, thereby reaffirming its foundational role in shaping the European human rights landscape. (Polgári, 2020; Varjú, 2014) In this context, the Court not only addresses specific cases related to minority rights but also contributes to a broader dialogue on societal values and norms, reinforcing the idea that a diverse population is a hallmark of a vibrant democracy.

3. THE NARRATIVE OF THE EUROPEAN COURT OF HUMAN RIGHTS ABOUT INCLUSION AND DIVERSITY

The judicial reasoning used in the European Court on Human Rights about inclusion and diversity shows the concern of the Court to enlarge the dimension of Article 14 (principle of non-discrimination). To further illustrate the significance of the judicial reasoning used in the European Court on Human Rights, it is important to note that it has also been used to challenge discriminatory practices and promote equality in other areas, such as employment and education. The principle of non-discrimination is a fundamental tenet of human rights law, and it is particularly crucial in the context of education. This principle ensures that all individuals, regardless of their backgrounds

or circumstances, have equitable access to educational opportunities, thereby safeguarding their rights and promoting social justice within the educational landscape (Tziola, 2014). The European Court of Human Rights has consistently emphasized this principle by holding that discrimination in education undermines not only the right to education itself but also the broader spectrum of human rights that individuals may be entitled to, linking education to the enjoyment of civil and political rights. (Ganvir & Gundecha, 2020).

The right to education is recognized as a fundamental human right, as outlined in various international instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights (Dibra, 2014). Furthermore, the obligation of states to provide quality education aligns with the commitment to uphold non-discrimination principles, as failing to do so can result in significant barriers for marginalized groups, including minority groups, whose access to education is often hindered by systemic inequalities (Perez et al., 2021). This implies that institutions should consider implementing positive actions to compensate historical disadvantages of minorities and to actively promote their integration into a diverse society.

The European Court of Human Rights has consistently affirmed the inextricable link between the right to education and the principle of non-discrimination. This emphasis is evident in various rulings, where the Court has addressed cases involving children facing discrimination in educational settings. Arantes (2021) presents a study analysis of decisions of the European Court of Human Rights involving the education of people with disabilities, arguing that this body still needs to create a new paradigm for inclusion in the educational system. Therefore, states must ensure inclusive education that respects the diverse needs of all students, irrespective of their backgrounds or identities (McCowan, 2012; Dibra, 2014). The Court has also recognized that the right to education is not merely a status-based entitlement but also an instrumental means to facilitate the enjoyment of other fundamental rights, such as the right to information, freedom of expression, and the right to participate in the political process. (Dibra, 2014).

The ECtHR's judicial narrative is constructed through a set of arguments that allow empirical evidence and normative statements to be considered. Legal argumentation is a fundamental field of study for understanding judicial decisions and for disaggregating the concepts, interpretations, strategies, and dimensions that the rule of law contains (Atienza, 2016). The interpretation given to Article 14 of the ECHR in cases involving access to the education system determines that law must be applied considering the unique cultural and ethnic characteristics of minority groups (Sandland, 2008).

To support this vision, this research examined three fundamental case-law examples. By following the premises of legal argumentation theory, the study identified both empirical and normative statements. These statements have the potential to clarify how facts are subsumed under rules, essentially illustrating the logical deductions made by the court during the judicial decision-making process.

In the case *Horváth and Kiss v. Hungary* (2013) it was claimed that in the education system in Hungary children diagnosed with mental disabilities are schooled outside of mainstream school, in separate "remedial schools". The applicants argued that this circumstance was a breach of Article 1 of the ECHR. In this case, the Court focused on the interpretation of the word "respect." It implies that institutions (including schools) must undertake some positive obligations to address the difficulties certain groups might encounter, for example, in the school curriculum. The Court

also used the concept of disproportionality to assert that Roma children are part of a minority group with vulnerabilities. This reasoning led the Court to determine that there had been direct discrimination in this case.

The case *D.H and Others v. Czech Republic (2007)* reveals a situation of child segregation. It was alleged that children of Roma origin were placed in schools for children with special needs, thereby hindering their learning process with an inferior curriculum and segregating the group. The applicants argued that the education system applied a segregation criterion based on race and ethnic origin, which constituted a violation of Article 14 of the ECHR. The Court considered that there had been indirect discrimination, ruling that Article 14 not only prohibits acts of discrimination but also institutionalized practices that violate human rights on the grounds of race and ethnic origin. The concept of disproportionality was used to emphasize the harmful effect that a general policy or measure might have on vulnerable groups.

In the case, *X and others v. Albania (2022)* eighteen Albanian nationals of Roma and Egyptian ethnic origin complained to the ECHR for discrimination on the ground of segregation because the Government failed to implement desegregation measures in an elementary school which children of the Roma and Egyptian minorities almost exclusively attended. The applicants claimed to the Court the violation of Article 1 of Protocol 12 to the ECHR because of discrimination based on their ethnic origin and their right to an inclusive education. The Court's judgment considered that the absence of action of public authorities constitutes a situation of segregation and impacts in lives of the Roma and Egyptian children. The ECtHR justified that there was a "positive obligation" to correct the inequality alleged by the applicants and that policies should be adopted to avoid the perpetuation of discrimination. One of the relevant arguments of this case was that the reasoning applied in cases in the ambit of Article 14 is the same brought under Article 1 of *Protocol No. 12 (2000)* concluding that the right to inclusive education needs to be assured by domestic law. The Court clarifies that *Protocol No. 12 (2000)* is to be articulated with Article 14 of the ECHR. The general provision of the ruling states that "The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political other opinion, national or social origin, association with national minority, property, birth or other status". This case was brought to the Court fifteen years after the case *D.H. and Others v. Czech Republic*. The time-lapse shows that institutional hesitations contribute to in fact situations that lead to discriminatory practices.

4. ARGUMENTS AND LEGAL REASONING ABOUT INCLUSION AND DIVERSITY IN EDUCATION

The body of case law put into evidence the ECtHR position about inclusion and the attention that public authorities should give to a multicultural society. The jurisprudence has led to the establishment of positive obligations on states to protect minority identities from both direct and indirect discrimination. The Court's judicial narrative has highlighted the importance of respecting and preserving the diversity of minority communities within the broader European context (*Guller, 2017*).

Ensuring the realization of the right to education through the lens of non-discrimination is crucial, as it not only upholds the inherent dignity of all individuals but also fosters an inclusive society where marginalized groups can actively engage in civic life and contribute to the broader social fabric. This perspective is reinforced by the notion that equitable access to education equips individuals with the tools necessary to challenge systemic injustices and to exercise their rights

fully, thereby emphasizing the need for states to adopt proactive measures aimed at dismantling barriers that perpetuate discrimination in educational settings (Rao & Sweetman, 2014). The argument of “positive obligation” demonstrates that the ECtHR has underscored the necessity for states to implement effective policies and practices that promote inclusivity within educational institutions, recognizing that failure to address educational inequities not only contravenes the principle of non-discrimination but also undermines the realization of the right to education as a fundamental human right. Moreover, the Court shows a friendly approach to the concepts of inclusion and diversity in the educational system. The interpretation given to Article 14 and other related provisions (Article 1, Protocol No. 12, 2000), highlights barriers and vulnerabilities based on race and ethnic origin, acknowledging that these groups require recognition. The importance of such tailored approaches reflects a growing recognition that educational equity goes beyond mere access; it requires a nuanced understanding of the diverse needs of all students to address the systemic barriers they face. This demands from public and private institutions the engagement to monitor and evaluate educational policies, identifying disparities that might derive from aspects such as race or ethnic origin (National Academies of Sciences, Engineering, and Medicine, 2019).

This holistic approach to discrimination has encouraged member states to develop more comprehensive and nuanced anti-discrimination policies. By recognizing the complexities of intersectional discrimination, the Court has prompted governments to consider how various forms of prejudice interact and compound, leading to more effective and targeted interventions. The Court’s jurisprudence in this area has also influenced academic discourse and research on discrimination, inspiring scholars to explore new frameworks for understanding and addressing multifaceted forms of inequality. The Court’s emphasis on cumulative effects has prompted a shift in data collection and analysis methods, with many countries now developing more sophisticated tools to capture and understand complex patterns of discrimination. Furthermore, this jurisprudence has influenced the development of more inclusive public policies, extending beyond traditional anti-discrimination measures to encompass areas such as education and others. From the point of view of the ECtHR jurisprudence about inclusion and diversity in education are approached through an intersectional approach. Acknowledging multiple, overlapping forms of discrimination strengthens anti-discrimination efforts by addressing the unique challenges faced by individuals with intersecting identities. Furthermore, the intersectional analysis can reveal systemic inequalities that might otherwise go unnoticed, leading to more comprehensive and effective policies to combat discrimination in all its forms.

5. CONCLUSION

The influence of the European Court on Human Rights’ judicial reasoning extends beyond the realm of civil liberties, as it has been employed to confront discrimination and promote equality in areas like education. The impact of the Court’s jurisprudence extends beyond individual cases, setting precedents that influence legal interpretations and human rights standards in member states. Its decisions have helped shape national policies and legislation, promoting a more inclusive and equitable society across Europe. The Court’s approach to addressing the principle of non-discrimination has been particularly significant in cases involving access to the educational system. The ruling of Article 14 of the ECHR has consistently emphasized the importance of considering the cumulative effect of various discriminatory factors, rather than examining each ground of discrimination in isolation. This nuanced understanding has led to more comprehensive protection for individuals who experience complex forms of marginalization and has encouraged member states to adopt more holistic approaches to anti-discrimination legislation and policy implementation. Despite the ruling about Article 1 of Protocol No. 12 is in its infancy (because of the low

number of cases) the jurisprudence introduced arguments about inclusion upholding the principle of non-discrimination in the context of education and recognizing its central importance to address concrete aspects in the design of public measures. This requires a comprehensive and continuous effort by states to ensure that educational systems are not only inclusive and equitable but also capable of adapting to the evolving needs of diverse student populations; thus, the integration of monitoring mechanisms and accountability measures is paramount to highlight progress and address persistent challenges. It implies that the intersectional approach to discrimination also enables policymakers and educators to develop more targeted and effective interventions that address the unique challenges faced by individuals or minority groups. By recognizing the compounded effects of various forms of discrimination, institutions can create more inclusive environments that cater to the diverse needs of all students. Moreover, the adoption of intersectional frameworks in legal and educational contexts can foster greater empathy and understanding among different groups, promoting a more cohesive and tolerant society.

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