

GUIDE FOR DOCUMENTING AND MONITORING SCHOOL SEGREGATION IN BULGARIA

Romani CRISS, in partnership with the FXB Center for Health and Human Rights at Harvard University, ANTIGONE, the European Roma Rights Centre (ERRC), Life Together and Integro Association Bulgaria developed and implemented the DARE-Net project: Desegregation and Action for Roma in Education-Network.

This project has been funded with support from the European Commission. (EACEA Education, Audiovisual and Culture Executive Agency through its „Lifelong Learning” program)

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

Guide for documenting and monitoring school segregation in Bulgaria

Table of contents

DARE-Net project: Desegregation and Action for Roma in Education-Network

I. Introduction

II. Legal framework: prohibition of school segregation and the right to education

1. What is school segregation?

- 1.2. UN treaties and bodies about racial segregation
- 1.3. OSCE bodies about Roma school segregation
- 1.4. Council of Europe bodies about Roma school segregation
- 1.5. European Union bodies about Roma school segregation
- 1.6. Legal frameworks addressing segregation at national level
- 1.7. School segregation in Bulgaria

2. The right and access to education – impact of school segregation

- 2.1 The Right to Education encompassed in international and regional legal instruments
- 2.2 The EU policy on Roma social inclusion and education
- 2.3. Protection against ethnic discrimination and the right to education in Bulgaria

3. Roma school segregation cases in Bulgaria

- 3.1. All Roma segregated schools
 - The 75th school “Todor Kableshkov”
 - The 103rd municipal school in Sofia
 - The Roma only school in Ihtiman
- 3.2. All-Roma segregated classes in mainstream schools
 - 1st school “Saint Kiril and Methodius”
- 3.3. Overrepresentation of Roma children in special schools for children with learning disabilities
 - The case of Blagoevgrad School

4. The right to education interpreted by the European Court of Human Rights

- 4.1. Article 2 of the Protocol no.1 to the ECHR
- 4.2. The right to education of Roma children and principles set by the ECHR
- 4.3. School segregation cases against other countries before the ECHR
 - DH v. Czech Republic (2007): enrolment of Roma children in special schools
 - Sampanis and Others v. Greece (2008): enrolment of Roma children in separate school facility
 - Orsus and Others v. Croatia (2010): enrolment of Roma children in segregated classes
 - Sampani and Others v. Greece (2012): enrolment of Roma children in separate school facility
 - Horvath and Kiss v. Hungary (2013): enrolment of Roma children in special schools

Lavida and others v. Greece (2013): enrolment of Roma children in separate school

III. Methodology regarding identification, documentation, monitoring and reporting of segregation cases

- 3.1. School segregation in the case of the Roma communities
- 3.2 Documenting school segregation
- 3.3. Identifying school segregation
- 3.4. Models for documenting and reporting segregation
- 3.5. Reporting and monitoring school segregation

IV. Recommendations for preventing and combating school segregation Specific recommendations on Bulgaria stemming from the REF projects

DARE-Net project: Desegregation and Action for Roma in Education-Network

Romani CRISS, in partnership with the FXB Center for Health and Human Rights at Harvard University, ANTIGONE, the European Roma Rights Centre (ERRC), Life Together and Integro Association Bulgaria developed and implemented the DARE-Net project: Desegregation and Action for Roma in Education-Network funded by the European Commission (EACEA Education, Audiovisual and Culture Executive Agency) through its „Lifelong Learning” program.

The DARE-Net project implemented on a 24 months’ time line starting in December 2013 aims to create a transnational network of Roma and non-Roma civil society and academic organizations to analyze practices and initiatives relating to Roma education and school desegregation of Roma children in Romania, Croatia, Greece, Hungary, the Czech Republic and Bulgaria.

The project seeks to address the issue of school segregation of Roma children. Not only that school segregation is a serious form of discrimination against Roma, and violates the right of equal access to education, but it keeps the Roma population from realizing their full potential as equal citizens and potential leaders. Discrimination, social exclusion and poverty dominate the lives of many of the estimated 10 to 12 million Roma living in the European Union and candidate countries today nearly half of whom are children and youths.

One of the most serious challenges Roma children face in securing equal opportunities in education is school segregation, which is very linked to other issues such low quality of education - lower teacher expectations and poor teaching, geographic isolation. As a result, two out of three Roma students in Europe do not complete primary school and the overwhelming majority does not complete secondary school.

The problem of school segregation is not a national, isolated one, but common to all partner countries. The causes of school segregation, the effects, the context, as well as the types of school segregation are most of times the same in all partner countries.

Romania, Hungary, Czech Republic, Bulgaria and Greece have been selected as the six country sites for their demographic and strategic relevance. On a national level, each country has significant and interlinking Roma populations. Furthermore, all these countries have national and/or European Court of Human Rights’ case law on the segregation of the Roma children issue. A transnational perspective is crucial for applying best practices on combating school segregation in the partner countries.

Although some steps have been taken in some countries, specifically on adopting the legislation banning school segregation, little progress has been made in effectively combating this phenomenon. From the experience of the former National Strategy for the Improvement of the Situation of the Roma population, adopted and

implemented by the Romanian Government, the implementation lacked results in the field of desegregation, other than adopting legislation. Taking into account the European context, that 18 member states have adopted their National strategies for Roma, under the EU Framework for National Roma Integration Strategies, it is crucial to have, unlike the past 10 years, mechanisms for monitoring the implementation. Civil society is a powerful democratic tool which can be used to report on the implementation of public policies for Roma. Therefore, clear methodologies which can be used in all member states which adopted National Strategies, are necessary. The project proposes this type of tool, which will have a transnational, yet locally tailored, perspective¹.

¹ See DARE-Net project: Desegregation and Action for Roma in Education-Network available at <http://www.dare-net.eu/overview>

I. INTRODUCTION

Although the situation for many of Europe's Roma people remains difficult, important progress has been made at European and national levels. In the last two years, the European Union and Member States have focused on adopting anti-discrimination laws and making EU funding more effective in promoting Roma inclusion. This includes fighting discrimination and segregation in education as well as supporting programs to address the vicious circle of poverty, social marginalization, lower school attainment, poor housing and health condition.

The European Commission² called on the EU Member States to prepare or revise National Roma Integration Strategies in order to address more effectively the challenges of Roma inclusion. In the area of education the EU Member States have been encouraged to ensure that all Romani children have access to quality education and are not subject to discrimination or segregation.

Despite such calls, as indicated by the European Commission³, gaps were still persistent in regard to how EU Member States have addressed measures in the field of education. In terms of their policies, for example, Bulgaria did not appropriately address segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic did not adopt an integrated approach, with more concrete targets and corresponding measures on tackling segregation of Roma in the educational system. Greece, Portugal, Poland, Slovakia and Hungary did not apply an integrated approach, a strong focus on desegregation or a tailored response to specific needs of Romani children. Italy and Romania did not provide precise quantitative targets and identification of the necessary resources while Denmark, Germany, Estonia, France, Luxemburg and the Netherlands did not include tools to measure the impact of the equal treatment approach on the situation of Romani children. Another relevant aspect is related to the fact that Member States do not collect and disseminate disaggregated data by ethnicity on basic education indicators making more difficult to assess human rights violations as well as the development and implementation of policies⁴.

² See European Commission, Communication “An EU Framework for National Roma Integration Strategies up to 2020”, April 2011 available at http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf

³ See European Commission staff working document accompanying the document National Roma integration Strategies: a first step in the implementation of the EU Framework 2012, available at http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf.

⁴ See also 2014 European Commission Report on the implementation of the EU framework for National Roma Integration Strategies, available at http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf; see European Commission, Steps forward in implementing national Roma integration strategies, 2013, available at http://ec.europa.eu/justice/discrimination/files/com_2013_454_en.pdf

The Council of Europe's Commissionaire for Human Rights⁵ has recently highlighted the fact that Romani children are yet disproportionately streamed into special schools, in particular schools for children with disabilities.

Overrepresentation of Romani children in schools is often reported in countries such as Bulgaria, Czech Republic, Hungary, Russia, Serbia, Slovakia, and Macedonia. Even when Roma and non-Romani children share the same school, Romani pupils are often separated from the majority in different class-rooms, by being in specific areas of the class, or in entirely separate classes. Remedial classes, separate classes and segregation in the classroom have been reported in Croatia, Czech Republic, Greece, Hungary, Montenegro, Portugal, Russia, Serbia, Slovakia, Macedonia and Turkey. Segregated housing, as well as the fact that non-Roma parents pull their children out of schools frequented because of the presence of Roma pupils (the so-called "white flight" phenomenon) results in de facto segregation of entire schools, often providing an inferior quality of education, situations visible in Bulgaria, Cyprus, Hungary, Moldova, Montenegro, Serbia, Slovakia or Turkey⁶.

Taking into account that (a) school segregation is spread across Europe, (b) most of the school segregation cases remain undocumented and unreported, (c) many of the obstacles in identifying, documenting, and reporting school segregation are similar in many of the countries in Europe (e.g. difficulties in getting access to information to ethnic segregated data in schools; fear of some Roma parents and children to take a stand because of possible retaliation from school officials; distrust of some Roma parents in what they perceive as lengthy, corrupted and biased justice system), a guide for documenting and monitoring school segregation constitutes a necessary tool that is elaborated through this document.

The present guide is separated into four chapters that focus on (I) providing general information on the existing legal framework on segregation and education, (II) describing the methodology for identifying, documenting, monitoring and reporting of segregation cases, (III) analyzing the specific subject of segregation at national level and (IV) providing recommendations on combating and preventing segregation practices in education.

The purpose of the guide is to provide the relevant stakeholders with practical tools they need to identify, document and report when preventing or fighting school segregation in the countries of the project. Nevertheless, the methodology is applicable to other countries where school segregation may occur.

The guide for identifying, documenting and reporting cases of school segregation constitutes a practical tool mainly for non-governmental organizations, but also for activists, aiming to fight this phenomenon.

⁵ See Council of Europe, Commissionaire for Human Rights, Thomas Hammarberg, "Human rights of Roma and Travellers in Europe" Report, http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf.

⁶ Idem

II. LEGAL FRAMEWORK: PROHIBITION OF SCHOOL SEGREGATION AND THE RIGHT TO EDUCATION

1. WHAT IS SCHOOL SEGREGATION?

In order to better identify school segregation, we first need to clarify its definition. For the moment being, there is no agreed legal definition of segregation at either international or European level but segregation per se is prohibited under international human rights treaties and the European Convention on Human Rights. It is well known that the European Court of Human Rights has condemned several States for failing to end the segregation of Roma children. It must be said that States must provide education in a non-discriminatory manner, and, as in almost all areas governed by children's rights law, take into account the best interests of the child. Education is a prerequisite to the participation of Roma people in the political, social and economic life of their respective countries on a footing of equality with others.

1.2. United Nations treaties and bodies about racial segregation

The UNESCO Convention against Discrimination in Education (CADE) from 1960 is one of the human rights treaties that expressly refers to and prohibits segregation in education⁷. In the context of defining discrimination, Article 1 of the UNESCO Convention⁸, stipulates that the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, [that] has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: [...]; (c) Subject to the provisions of Article 2⁹ [...], of *establishing or maintaining separate*

⁷ UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: A comparative analysis (2006), available at: <http://unesdoc.unesco.org/images/0014/001459/145922e.pdf>

⁸ 429 UNTS 93.

⁹ Article 2 of the Convention, expressly provides for the accepted situations when right to education may be limited or restricted. "When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article I of this Convention: (a) The establishment or maintenance of separate educational systems or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take the same or equivalent courses of study; (b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level; (c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms

educational systems or institutions for persons or groups of persons; or (d) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man”.

The International Convention on the Elimination of All Forms of Racial Discrimination¹⁰ (ICERD) defines ‘racial discrimination’ according to Article 1(1) as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

In accordance with Article 3 of the ICERD “States Parties *particularly condemn racial segregation* and apartheid *and undertake to prevent, prohibit and eradicate all practices of this nature* in territories under their jurisdiction”¹¹.

In relation to “*racial segregation*”, the UN Committee on the Elimination of Racial Discrimination in its Recommendation XIX¹² makes a clear reference stating that segregation may stem both from intentional and unintentional actions of public or private actors as well as on the basis of multiple grounds such as race, color, ethnic origin or level of income. Thus the Committee “observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports¹³.”

In its General Recommendation XXVII on discrimination against Roma¹⁴, the UN Committee on the Elimination of Racial Discrimination *urges States to:*

with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level”.

¹⁰ International Convention on the Elimination of All Forms of Racial Discrimination, text available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

¹¹ See ICERD, Article 3.

¹² UN Committee on the Elimination of Racial Discrimination, *CERD* General recommendation XIX (47) on article 3, adopted at the 1125th meeting, on 17 August 1995, available at:

<[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f50%2f18\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f50%2f18(SUPP)&Lang=en)>

¹³ *CERD*, General Recommendation XIX (47), Para 3 and 4.

¹⁴ UN Committee on the Elimination of Racial Discrimination (CERD), *CERD General Recommendation XXVII on Discrimination Against Roma*, 16 August 2000, Section 3 “Measures in the field of education”, para. 18; available at: <<http://www.refworld.org/docid/45139d4f4.html>>.

“prevent and avoid as much as possible *the segregation of Roma students*, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavor to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education”.

1.3 OSCE bodies about Roma school segregation

The Action Plan on Improving the Situation of Roma and Sinti within the OSCE area¹⁵, adopted by the Permanent Council of the OSCE includes specific recommendations for the participating States aimed at tackling segregation.

Paragraph 73 of the OSCE Action plan refers to “comprehensive school desegregation programs aiming at:

(1) Discontinuing the practice of systematically routing Roma children to special schools or classes (e.g., schools for mentally disabled persons, schools and classes exclusively designed for Roma and Sinti children); and (2) transferring Roma children from special schools to mainstream schools.”¹⁶

1.4. Council of Europe bodies about Roma school segregation

Segregation of Roma children in education and the need to address this phenomenon is referred in several Council of Europe recommendations. It is the case of Recommendation no. R(2000)4 of the Committee of Ministers¹⁷ which takes note “that the problems faced by Roma in the field of schooling are largely the result of long-standing educational policies of the past, which led either to assimilation or to *segregation of Roma children at school* on the grounds that they were “socially and culturally handicapped”. While addressing education, “the member States should ensure that this does not lead to the establishment of separate curricula, which might lead to the *setting up of separate classes*.”¹⁸

Similarly, through its Recommendation (2009)4 the Committee of Ministers¹⁹ acknowledges segregation and subsequently condemns the *existence of situations of de facto segregation in schooling*. Moreover the Committee outlines that “Member states should ensure that *legal measures* are in place to *prohibit segregation on racial or ethnic grounds in education*, with effective, proportionate and dissuasive sanctions, and that the law is effectively implemented. Where de

¹⁵ OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, adopted by the Permanent Council in its Decision No. 566 on 27 November 2003 and endorsed by the Ministerial Council by Decision no.3/03 of 1 and 2 December 2003, Maastricht, the Netherlands, available at: < <http://www.osce.org/odihr/17554?download=true>>.

¹⁶ Idem

¹⁷ Committee of Ministers; Recommendation R (2000)4 on the education of Roma/Gypsy children in Europe adopted on 3 February 2000, available at:< <http://www.refworld.org/docid/469e04c02.html>>.

¹⁸ Idem

¹⁹ Committee of Ministers, Recommendation CM/Rec(2009)4 on the education of Roma and Travellers in Europe, adopted by the Committee of Ministers on 17 June 2009, available at: < <https://wcd.coe.int/ViewDoc.jsp?id=1462637>>

facto segregation of Roma and Traveller children based on their racial or ethnic origin exists, *authorities should implement desegregation measures...*²⁰.

The Council of Europe's European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation no.7²¹ advocates for legal measures to prohibit segregation and outlines a definition of this phenomenon.

ECRI defines **segregation** as “the act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification, in conformity with the proposed definition of discrimination. As a result, the voluntary act of separating oneself from other persons on the basis of one of the enumerated grounds does not constitute segregation”²².

A subsequent ECRI recommendation on combating anti-Gypsyism and discrimination against Roma²³ calls on member States to “take urgent measures, including legal and political ones, *to put an end to the segregation at school which Roma children are subjected to*, and integrate them into schools attended by pupils from the majority population; and to *abolish the too-frequent placement of Roma children in special schools*, making sure that Roma pupils not afflicted with mental disorders are spared such placement and that those already placed are speedily enrolled in ordinary schools”²⁴.

1.5 European Union bodies about Roma school segregation

In 2011, the European Commission adopted a Communication pushing for the development of national strategies for Roma integration detailing the concrete policies and measures to be taken²⁵. Each EU Member State produced a **Roma strategy** or a set of integrated policy measures that were assessed by the European Commission in a Communication adopted in 2012²⁶. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013²⁷. The 2013 assessment report focused specifically on

²⁰ Idem

²¹ ECRI General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination, adopted on 13 December 2002, available at: <http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/ecri03-8%20recommendation%20nr%207.pdf>.

²² Idem.

²³ ECRI General Policy Recommendation no.13 on combating anti-Gypsyism and discrimination against Roma, adopted on 24 June 2011, available at:<http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf>

²⁴ Idem, point 4, para d and f.

²⁵ [Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020](#), available at:< <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011DC0173>>.

²⁶ [National Roma Integration Strategies: a first step in the implementation of the EU Framework](#), available at: <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0226>>

²⁷ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, 2013/C 378/01, available at: [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01)).

the structural preconditions needed in each country²⁸ while the 2014 report looked at overall progress in all key areas.²⁹

In its EU Framework for National Roma Integration Strategies the European Commission outlines among other issues that in some Member States, only a limited number of Roma children complete primary school and “*Roma children tend to be over-represented in special education and segregated schools*”³⁰. The Commission called on *Member States to ensure that all Roma children have access to quality education and are not subject to discrimination or segregation*, regardless of whether they are sedentary or not. Subsequently “Member States should, as a minimum, ensure primary school completion. They should also widen access to quality early childhood education and care and reduce the number of early school leavers from secondary education pursuant to the Europe 2020 strategy”³¹.

Furthermore, the Council of the European Union made specific recommendations on effective Roma integration measures³² in education as well as non-discrimination action calling on Member States to “ensure *equal treatment and full access for Roma boys and girls to quality and mainstream education* and to ensure that all Roma pupils complete at least compulsory education. This goal could be attained by means of measures such as: a) *eliminating any school segregation*; (b) *putting an end to any inappropriate placement of Roma pupils in special needs schools*; ... (d) increasing the access to, and quality of, early childhood education and care, including targeted support, as necessary; (e) considering the needs of individual pupils and addressing those accordingly, in close cooperation with their families; (f) using inclusive and tailor-made teaching and learning methods, including learning support for struggling learners and measures to fight illiteracy, and promoting the availability and use of extracurricular activities; (g) encouraging greater parental involvement and improving teacher training, where relevant; (h) encouraging Roma participation in and completion of secondary and tertiary education; ...”

Subsequently the Council of the EU called on Member States to “continue their efforts to ensure the effective practical enforcement of Directive 2000/43/EC, in particular by ensuring that their *national, regional and local administrative regulations are not discriminatory and do not result in segregation practices*. *Policies and measures to combat segregation should be accompanied by appropriate training and information programmes*, including training and information on human rights protection, addressed to local civil servants and representatives of civil society and Roma themselves³³.”

²⁸ Report available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52013DC0454>

²⁹ Report available at:

http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

³⁰ Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020

³¹ *Idem*

³² Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

³³ *Idem*

1.6 Legal frameworks addressing segregation at national level³⁴

At national level the definition of segregation may be found in anti-discrimination legislation, other laws pertaining to equality or in education legislation. Both the form of regulating as well as the definitions varies considerable from country to country.

Country	Addressing segregation
UK AND IRELAND	Racial segregation constitutes a form of direct discrimination; segregation in schools between persons of different racial or ethnic groups is unlawful
FRANCE	Segregation on ethnic grounds is prohibited at all levels and ethnic origin cannot form the basis of educational policy
BELGIUM	National courts stated that segregation has to be understood as “the social separation of groups in a country where a mixed population lives”
FINLAND	Finland: The National Discrimination Tribunal considered that segregation constituted a form of discrimination
DENMARK	Denmark: The Complaints Committee for Ethnic Equal Treatment stated that the segregation of Roma children is contrary with the equality law
HUNGARY	Segregation is a behavior aimed at separating individuals or a group of persons from other individuals or another group of persons in a comparable situation, based on a characteristic defined in law, without an express authorization set out in an Act of Parliament
CROATIA	Croatia: The Constitutional Court had stated that “the question of whether Roma had been placed in separate classes with the aim of discriminating against them on the basis of their race or ethnicity was crucial in determining whether discrimination had occurred”.
GREECE	Greece: The Prosecution Office of the Supreme Court through a relevant “Urgent Written Order” (with Protocol Number 720/22-02-2011 ³⁵) requested all local prosecutors in Greece to “take care of striking the phenomenon of exclusion of Roma from the public educational system of

³⁴ ERRC, *Access to education and school segregation of Roma Children*, <http://www.equineteurope.org/IMG/pdf/errc_school_segregation_roma_dezideriu_gergely_final.pdf>.

³⁵ Greek Helsinki Monitor, *Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma*, 21 March 2011, <<http://cm.greekhelsinki.gr/index.php?sec=192&cid=3741>>.

	Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured”.
BULGARIA	Racial segregation means issuing an act, performing an action or omission to act, which leads to compulsory (emphasis added) separation, differentiation or dissociation of persons based on their race, ethnicity or skin color.
ROMANIA	Segregation is a serious type of discrimination consisting of physical separation with or without intention, of minority children from the rest of the children in groups, classes, buildings, institutions and other educational facilities, so that the proportion of minority children in light of the total number of children in the particular unit is disproportionate when compared to their proportion in that age group within the total population in the administrative/territorial unit.

The aforementioned definitions and frameworks may help us get an overall picture of what school segregation implies, as a form of discrimination in the area of education which basically leads to a physical separation excluding or affecting Roma children from receiving a mainstream education that should be offered under ordinary circumstances to all children on an equal footing.

1.7. School segregation in Bulgaria

The legal protection against discrimination and school segregation

Within the Bulgarian legal system segregation is defined by the Protection against Discrimination Act (Additional provisions, par. 1, p. 6). The respective legal definition reads that:

“Racial segregation shall mean issuing an act, performing an action or omission to act, which leads to compulsory separation, differentiation or dissociation of persons based on their race, ethnicity or skin color”.

It should be noted however that the Bulgarian legal definition is in contravention to European law standards, as it explicitly requires the separation to be “compulsory”, i.e. forced. However, the Protection against Discrimination Act explicitly states that segregation constitutes a prohibited form of discrimination.

In Bulgaria, the main forms of school segregation are:

- The existence of the so called “**Gypsy**” or “**all-Romani schools**”, where the majority or even all of the students are from Roma origin;
- The establishment of **all-Romani classes** within mainstream schools;
- The systematic placement of Roma students into **special schools for mentally disabled** students.

Generally the right of the parents to choose the education and the school for their children is guaranteed in the Bulgarian Constitution and the Education Act. There are no legal restrictions in the course of choosing a school; however a list of problems and practices placed the Roma children in a segregated environment. Among these issues are the existing residential segregation of the Roma community; the demonstrated unwillingness of the head teachers in the mainstream schools to accept applications for enrolment of Roma children; the manifested prejudices among the Bulgarian parents and children, which prevent Roma students and parents from choosing the mainstream schools as possible alternative; the limited finances of the Roma families.

THE FIRST TYPE OF SEGREGATION described above is the existence of the **ALL-ROMANI SCHOOLS**. The tradition of the residential segregation of the Roma in Bulgaria led to the existence of the all-Romani schools. These are municipal schools, which are built in the big Roma settlements and the sole fact that no Bulgarians live in the settlement condemns the schools to only enroll Roma children. The factual situation shows that the educational level in these all-Romani schools is much lower in comparison with the rest of municipal schools. Apart from being educated in a segregated environment, the Roma children in the all-Roma schools are subject to lower expectations for educational achievements, they study in worse physical environment (bad buildings; overcrowded classes; frequently in two or even three shifts; lack of elementary educational facilities), the teachers put much less efforts in following the compulsory curricula; regular school attendance is not monitored carefully.

The existence of the all-Romani schools is a subject of debate within the Bulgarian civil society. The situation of placement of Roma children in Roma ghettos in practice condemns Roma children to segregated education and subsequently to a less favorable environment. On the other side, possible closure of these schools may possibly leave a large number of Roma children out of schools. Evidence is available (through different researches and/or existent practices) that in a case of school closure many of the Roma children will rather stay at home than go to the mainstream schools in distant settlements. Therefore the situation should be studied carefully and proposals should be developed regarding possible way-outs: gradual limitations of the number of classes in the all-Romani schools; gradual closure of the secondary stage of education in the all-Romani schools; continuous work with Roma families and parents regarding the benefits of integrative education, development of desegregation programs.

THE SECOND TYPE OF SEGREGATION, described above is the establishment of **ALL-ROMANI CLASSES** within the mainstream schools. Surprisingly, it firstly happened with the start of the desegregation programs in Bulgaria. The

development of desegregation programs should be a result of joint efforts of educational institutions, civil society actors and Roma communities.

The Bulgarian educational system has a decade of attempts of civil society organizations to develop and implement desegregation programs aimed at enrolment of Roma children in the mainstream schools. These programs however were not sufficiently supported by the educational institutions and local administrations, neither administratively or financially. Where the local administrations usually participate in the programs, often propose mainstream schools, located in distant settlements and suffer from lack of students. These are however not attractive for the Roma families, especially when small children are in question. The head teachers of the mainstream schools, which are closer to the Roma settlements on the other side are not supportive and avoid by all means the enrolment of Roma children. One of the reasons for this is that in case of enrolment of Roma children, the parents of the Bulgarian children start to oppose and frequently even withdraw their children and move them to other schools. The practices show that as soon as the proportion of Roma students reaches a certain level (more than 4-5 per class), Bulgarian parents do not tolerate them anymore and decide to move their children out of the school. At the end of this process, the few non-Roma, who remain in the school are usually multiply disadvantaged, just like the majority of the Roma students. Such *white flight* resulted in factual establishment of more schools where predominantly Roma children are enrolled, instead of securing integrative environment.

To avoid the described situation some of the head teachers in the mainstream schools turn to other form of segregation – they gather the Roma children enrolled in separate classes, thus segregating them again. This “secondary level segregation” is in some cases obvious and opened; where in other cases there are attempts to cover it by establishment of “foreign languages classes” or “advanced computer literacy classes”, where additional taxes may apply with the aim to prevent Roma children (who are traditionally from financially disadvantaged families) from applying to enroll in these classes. There are, in practice, also other negative effects of this type of segregation, beside the separate environment, created for the children. Usually the educational level and subsequently the educational achievements in the segregated all-Romani classes are significantly lower compared to the other classes in the same school. It often results from the negligence of the teachers and their lower expectations from the children. The lower results, however, are used to defend the position, that the sole presence of the Roma children in the mainstream schools ruins the level of education and lead to lower educational achievements among the Bulgarians students also.

Comparative researches however prove these arguments as false. There are cases, where comparative tests have been done in all-Romani, mainstream and all-Bulgarian schools. The results from these tests showed that the educational achievements of the Roma children enrolled in the mainstream schools are better than those of Roma children from the Romani-schools, while at the same time the educational results of the Bulgarian children in the mixed schools are the same as are the educational results of the Bulgarian children enrolled in all-Bulgarian schools.

An additional problem is that many school headmasters and teachers are not professionally prepared to work with bi-lingual children. The insufficient professionalism also stimulates the teachers to avoid working with Roma children. They would rather shift responsibility to children for the lower results than to search for problems within the educational system, teaching methods of the curricula or adaptability to children needs. To support the process of integrative education, educational authorities should work to secure additional opportunities for professional qualification of the teachers.

Mainstream schools are seen as problematic by some of the Roma parents also. Many Roma are afraid to allow their children to attend mainstream education schools, aware of prejudices against Roma, and fearing that children will be subject to discrimination and harassment in the schools. These parents prefer the more secure capsulated environment in the Roma settlements thinking that their children are too young to meet discrimination and unequal treatment. It is a subsequence of discriminatory attitude, which one can confront in the mixed schools. Cases of discrimination and harassment against Roma children have been documented in many of the mainstream schools. These are cases of children discriminated by teachers or fellow-students of Bulgarian origin. There are also cases of discrimination against Roma students by parents of Bulgarian students at the same school. In some of these cases the appointment of an assistant-teacher helps to avoid such situations. However, the school headmasters and the teachers are generally not familiar with the requirements of the Protection against Discrimination Act, and allow discrimination in the educational facilities. Among some of the Roma groups it is also traditionally problematic to leave the girls to study far from home.

THE THIRD TYPE OF SCHOOL SEGREGATION in the Bulgarian educational system results from the factual **OVERREPRESENTATION OF ROMA CHILDREN** in the so-called **SPECIAL SCHOOLS**, or schools for children with special educational needs. These are in fact schools for children with intellectual disabilities, where the compulsory curriculum is limited to minimum. Within these schools children from first to eight grades are admitted. According to the law and procedures, the children enrolled in these schools should only be enrolled only under considerable non-biased and neutral scrutiny and only in the best interest of the child. Parental consent needs to be fully informed and includes awareness of all consequences on the child schooling opportunities. Upon graduation these schools do not issue secondary school diploma, but just a “certificate” that does not allow for the children to further continue his education.

However, many of these schools provide additional social benefits for the children enrolled, such as free textbooks and school materials, free food and sometime even boarding school system. For some of the Roma families who live under the existence-minimum such social benefits are seen as a reason to enroll the child in the particular school. As in the recent years the Bulgarian educational system started to provide opportunities for inclusive education for children with special educational needs, the number of children in special schools decreased. It became a reason for the head teachers and the teaching staff in these schools to start recruiting children, trying to save the existence of the schools and their jobs. In this situation, many cases have been known when teachers from special schools go to

Roma settlements during the school vacation and before the beginning of the academic year, they present the benefits offered by the school to Roma parents. Many parents are not aware that these are meant for mentally disabled children and they do not provide sufficient level of education. The children do not go through the compulsory medical examinations, and are enrolled in the school only with the consent of their uninformed parents. These are children who are in fact fully capable to follow the normal curriculum and to achieve better.

As a result the Roma children are segregated in special schools receiving an inadequate level of education. In many cases more than one child from a Roma family is enrolled in some of these special schools. There are some documented cases, when the parents of Roma children enrolled special schools have also graduated from the same school in the past. If a child who graduates from special school wants to continue the education at the next level, this child should take additional exams before being allowed to do so. Such practices deprive a large number of Roma children of their right to equal integrative education. Despite being secured by the law, the right cannot be exercised on practice.

2. THE RIGHT AND ACCESS TO EDUCATION – IMPACT OF SCHOOL SEGREGATION

The right to education is an internationally recognized right. It is provided for in many standard-setting instruments, ranging from the Universal Declaration of Human Rights to various conventions, declarations, recommendations, frameworks and action programmes. The international human rights treaties lay down the legal obligations for the right to education and serve the same end: the promotion and development of the right of every person to education, without discrimination or exclusion³⁶.

2.1 The Right to Education encompassed in international and regional legal instruments and EU policy

A necessary corollary for the full enjoyment of the right to education, access to education entails the right to access existing public educational institutions on a non-discriminatory basis. This right is violated, for example, if people belonging to a specific ethnic, linguistic, or religious group have restricted access to existing public institutions, as is the case for Roma children in some European countries³⁷. The following instruments are important for combating school segregation.

INTERNATIONAL TREATIES

Universal Declaration of Human Rights ³⁸ : Art. 26.
1966 International Covenant on Economic, Social and Cultural Rights ³⁹ : Arts. 2 (2); 3; 13 & 14.
1966 International Covenant on Civil and Political Rights ⁴⁰ : Art. 26.
1989 Convention on the Rights of the Child ⁴¹ : Art. 2; 28 & 29.
1979 Convention on the Elimination of Discrimination against Women ⁴² : Art. 10.
Convention on the Elimination of All Forms of Racial

³⁶ UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: A comparative analysis (2006), available at:

<http://unesdoc.unesco.org/images/0014/001459/145922e.pdf>

³⁷ *DH and Others v. Czech Republic*, ECtHR, Grand Chamber, 2007, App. No. 57325/00. F. Coomans, Discrimination and Stigmatization Regarding Education: The Case of Romani Children in the Czech Republic, in Willems (Ed.), *Development and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, Intersentia 2002.

³⁸ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, A/RES/217/A (III). The Declaration is not a treaty. However, due to the incorporation of the rights it establishes into the 1966 Covenants, it is considered a document of weighted importance.

³⁹ 993 UNTS 3.

⁴⁰ 1966 International Covenant on Civil and Political Rights, 999 UNTS 171.

⁴¹ 1577 UNTS 3.

⁴² 1249 UNTS 13.

Discrimination: Art. 1; 2 & 5.

UNESCO Convention against Discrimination in Education: Art. 1; 3 & 4.

REGIONAL TREATIES

1950 European Convention of Human Rights⁴³ (ECHR): Protocol I, Art. 2

1996 Revised European Social Charter⁴⁴: Art. 10

1995 Council of Europe Framework Convention for the protection of National Minorities⁴⁵: Arts. 12 & 14

EU Charter of Fundamental Rights⁴⁶: Art. 14

According to Article 3, paragraph 1 of the Convention on the Rights of the child, children always have to be treated in accordance with their best interest. Undoubtedly the best interest of the child means to obtain a complete and quality education, essential for a successful start into the life. It should be the primary and common interest of the state administrations to provide quality education to all children, regardless of their situation. Suitable educational methods should maximize and develop their abilities and adapt to their needs. This approach is provided for in Article 23, paragraph 3 in conjunction with Article 29, paragraph 1 of the Convention on the Rights of the Child that emphasizes the overall development of their personality and abilities to the fullest potential of the children.

2.2 The EU policy on Roma social inclusion and education

The fight against discrimination based on racial or ethnic origin, social exclusion and marginalisation is now an integral part of Europe's policies. The European Union issued specific legislation against discrimination on the basis of race or ethnic origin (Directive 2000/43). However, there is no substantial legal case brought before the Court of Justice of the EU on racism or ethnic discrimination yet. The Race Directive (2000/43) covers non-discriminatory access to education as well, but no strategic litigation or infringement procedures have been initiated by the European Commission to address the problem of Roma school segregation in EU Member States.

On the other hand, the social and economic inclusion of Roma has become a proclaimed priority for the EU institutions and the Member States. On April 7,

⁴³ ETS No. 5.

⁴⁴ ETS No. 163.

⁴⁵ ETS No. 157.

⁴⁶ Published in the *Official Journal of the European Communities*, 18 December 2000 (2000/C 364/01).

2010 the European Commission presented its Communication on the social and economic integration of Roma in Europe (IP/10/407; MEMO/10/121) – the first policy document dedicated specifically to Roma. It outlined an ambitious program for Roma inclusion as well as the complexity and interdependence of the problems faced by Roma communities in terms of social exclusion, low educational attainment, labour market barriers, housing segregation and poor health status.

EU Member States expressed their commitments towards promoting Roma inclusion in May 2011 with the EPSCO Council conclusions on an EU Framework for National Roma Integration Strategies up to 2020⁴⁷, followed by the June 2011 Conclusions⁴⁸ that endorsed the Presidency's report on Roma inclusion. In the context of the EU *Framework*⁴⁹, Member States have been called upon by the European Commission to present national strategies for Roma inclusion or specific measures for Roma within their wider social inclusion policies. The main responsibility as well as the competences to improve the situation of all marginalised people, including the Roma, rest with Member States.

Each EU Member State produced a *Roma strategy* or a set of integrated policy measures that were assessed by the European Commission in a Communication adopted in 2012⁵⁰. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013⁵¹. The 2013 assessment report of the European Commission focussed specifically on the structural preconditions needed in each country⁵² while the 2014 report looked at overall progress in all key areas.⁵³

Education is recognised as one of the four key areas addressed by the National Roma Integration Strategies. The EU's goal is to ensure that all Roma children complete at least primary school and have access to quality education⁵⁴. All Member States recognise the importance of education, and most have set goals that generally go beyond the minimum standard of primary school completion set forth in the EU Framework, covering a broader spectrum of education from preschool⁵⁵ to secondary and even tertiary education. However, much remains to be done.

⁴⁷ See <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010658%202011%20INIT>

⁴⁸ See <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2023%202011%20INIT>

⁴⁹ See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=en>

⁵⁰ National Roma Integration Strategies: a first step in the implementation of the EU Framework, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0226>

⁵¹ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, 2013/C 378/01, available at: [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01)).

⁵² Report available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52013DC0454>

⁵³ Report available at:

http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

⁵⁴ EU Roma integration goals were set out in the Communication "An EU Framework for National Roma Integration Strategies up to 2020", COM(2011)173 of 5 April 2011.

⁵⁵ *Preventing Social Exclusion through the Europe 2020 strategy - Early Childhood Development and the Inclusion of Roma Families* – official report of the European Platform for Roma Inclusion under the Belgian Presidency developed from UNICEF and the European Social Observatory in collaboration with the Belgian Federal Planning Service for Social Integration, 2011: <<http://www.ecdgroup.com/pdfs/Preventing-Social-Exclusion.pdf>>.

Several Member States are still struggling with addressing school segregation of Roma children. Bulgaria did not appropriately address segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic, Greece, Portugal, Poland, Slovakia and Hungary still need to implement more integrated measures on tackling segregation of Roma in the educational system and identify tailored responses to specific needs of Romani children⁵⁶.

A positive development was marked in December 2013 when the Council of the European Union made specific recommendations on effective Roma integration measures⁵⁷ including in education as well as non-discrimination.

The Council of the EU called on Member States to:

“Ensure equal treatment and full access for Roma boys and girls to quality and mainstream education, among other, by eliminating any school segregation and putting an end to any inappropriate placement of Roma pupils in special needs schools⁵⁸.”

It remains to be seen to what extent and when the EU Member States will effectively implement such measures endorsed at the highest European political level, by the Council of the European Union.

⁵⁶ See European Commission staff working document accompanying the document National Roma Integration Strategies: a first step in the implementation of the EU Framework 2012, available at http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf; European Commission, Steps forward in implementing national Roma integration strategies, 2013, available at http://ec.europa.eu/justice/discrimination/files/com_2013_454_en.pdf; 2014 European Commission Report on the implementation of the EU framework for National Roma Integration Strategies, available at http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

⁵⁷ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

⁵⁸ Idem

2.3. Protection against ethnic discrimination and the right to education in Bulgaria

CONSTITUTIONAL PROTECTION OF EQUALITY AND EDUCATION

Under the Bulgarian Constitution every person has the right to education⁵⁹. The Constitution provides that education is compulsory for individuals up to 16 years old as well as free of charge education, funded by the state and local municipalities, as regards the state based and municipal schools.

The Bulgarian Constitution⁶⁰ provides for the equality of individuals irrespective of their racial or ethnic origin (among other grounds). The Constitution can be directly imposed by the national courts (see Art. 5, para 2). It also provides that the international treaties, covenants and conventions ratified by Bulgaria are part of the internal legislation and prevail in case of contradiction with the national legislation (see Art. 5, para 4). In this sense every international act related to race equality and ratified by Bulgaria is part of the internal legislation. Among the latter is the European Convention for Human Rights and Fundamental Freedoms, the International Covenant for Civil and Political Rights, International Covenant for Economic, Social and Cultural Rights, the Framework Convention for Protection of National Minorities. Up until the entry into force of the Protection against Discrimination Act (PADA) however, the Constitution has been only occasionally used as a motion ground before the national courts, and with very limited success. The same applied for the use of international human rights treaties.

THE PROTECTION AGAINST DISCRIMINATION ACT (PADA)

The Protection against Discrimination Act is seen as a specific national legislation related to race and ethnicity and constitute the law transposing the EU Directive 2000/43 (Race Equality Directive). It explicitly includes race and ethnic origin as a protected ground and proclaims racial segregation as prohibited form of discrimination. It also provides for positive measures for the benefit of individuals on the basis of origin. Art. 7, p. 13 of the law reads as follows: “special measures benefiting disadvantaged persons or groups on the grounds under Art. 4 (1) aimed at equalizing their opportunities, as far and as long as such measures are necessary”).

Bulgaria adopted the *Protection against Discrimination Act* in 2003 and it came into force in January 1st 2004 as part of the harmonization process of national legislation with EU equality standards. It is a single equality law that bans discrimination on various grounds (sex, race, extraction (color), ethnicity, citizenship, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground provided for by law or international treaty), and provides uniform standards for protection and remedy.

⁵⁹ See art. 51 of the Constitution of Bulgaria

⁶⁰ Published in SG 56/13 July 1991; amended with SG 85/26 September 2003; SG 18/25 February 2005; SG27/31 March 2006; SG78/26 September 2006; SG 12/6 February 2007

PROHIBITION OF DIRECT AND INDIRECT DISCRIMINATION

PADA defines direct and indirect discrimination in its Art.4, parag 2 and 3 with definitions in compliance with transposed EU Directives.

It defines direct discrimination as treating a person on grounds provided for under Art. 4/1 less favorably than another person is treated, has been treated, or would be treated in comparable circumstances, and indirect discrimination as putting a person on the grounds under Art. 4/1, through an apparently neutral provision, criterion or practice, at a disadvantage compared with other persons.

PROHIBITION OF HARASSMENT, SEXUAL HARASSMENT, INCITEMENT TO DISCRIMINATION, VICTIMIZATION AND RACIAL SEGREGATION

The PADA states in its Art. 5 that harassment, sexual harassment, incitement to discrimination, victimization and *racial segregation*, as well the construction and maintenance of an architectural environment hindering the access of persons with disabilities constitutes discrimination.

EXCEPTIONS TO DISCRIMINATION AND POSITIVE ACTION

The PADA also introduces the notion of exceptions to the prohibitions and enumerating cases where differential treatment does not constitute discrimination (for various occupational activities, religious education, age and length of service for the purposes of retirement, pregnant women and mothers, activities under the Employment Act, army service, etc.).

The Protection against Discrimination Act also introduced the concept of positive action measure that does not amount to discrimination. Such measures may be introduced in favor of women participation in education and training⁶¹ activities as well as in favor of disadvantaged groups⁶² (here included Roma, and especially in the area of education⁶³) and persons with disabilities⁶⁴.

⁶¹ *Protection against Discrimination Act*, art.7, para 1, point 12: Following shall not be deemed discrimination... the measures in the field of education and training to ensure balance in the participation of men and women, insofar and until such measures are necessary;

⁶² *Protection against Discrimination Act*, art.7, para 1, point 13: Following shall not be deemed discrimination... the special measures benefiting individuals or groups of persons in disadvantaged position on the basis of the grounds, referred to in Article 4, Paragraph 1 aiming at equalization of their opportunities, insofar and until such measures are necessary; and point 15: the measures for protection of originality and the identity of persons, belonging to ethnic, religious or language minorities, and their right of sustaining and developing, individually or jointly with the rest of their group members, their culture, of professing and practicing their religion, or of using their own language;

⁶³ *Protection against Discrimination Act*, art.7, para 1, point 16: Following shall not be deemed discrimination... the measures in the field of the education and training to ensure participation of persons belonging to the ethnical minorities, as far and while these measures are necessary;

⁶⁴ *Protection against Discrimination Act*, art.7, para 1, point 10: Following shall not be deemed discrimination... the different treatment of persons with disabilities during training and acquiring an education to the effect of satisfying specific educational needs aiming at equalization of their opportunities;

SHIFTING THE BURDEN OF PROOF

The PADA also introduced the concept of shifting the burden of proof. Article 9 states that within the proceedings for the protection against discrimination the victim of alleged discrimination establishes facts from which it may be inferred that discrimination is at hand and it is for the respondent party to prove that the right to equal treatment was not breached.

THE SCOPE OF ANTI-DISCRIMINATION LAW

Protection provided by PADA includes explicitly three major areas of life and legal protection such as: the exercise of labour rights, the *exercise of the right to education and training*, and the exercise of other rights (among them subscription, memberships in different organizations and access to goods and services) as well as balanced participation of women and men.

THE BULGARIAN EQUALITY BODY

The PADA also provided for the establishment of a special equality body - Protection against Discrimination Commission - an independent specialized state body, financed from the state budget, with the powers to investigate complaints and issue binding rulings, finding discrimination and imposing sanctions as well as issuing instructions on obstructers. The PADA also provides two different types of protection proceedings: before the Commission for Protection against Discrimination (through complaint, own motion or signal), or before the Courts of law. The court proceedings may be initiated by any person, as well as it allows a type of class action in terms of proceedings initiated by trade unions and non-governmental organizations registered in public interest on their own behalf.

THE BULGARIAN LEGISLATION PROVIDING FOR THE RIGHT TO EDUCATION

The regulation on providing education in Bulgaria is covered by the National Education Act (NED)⁶⁵. It is worth mentioning that the previous Bulgarian Parliament discussed a law proposal for a new Education Act, which has passed the first voting. The proposal was elaborated with the active participation of advocating civil organizations and comprised provisions on inclusive education, protection of students with a “minority origin and children with disabilities.

According to the draft law, Article 60, paragraph 3 and Article 97 paragraph 5 and 6 segregation on the basis of ethnic origin was prohibited in schools and kindergartens.

⁶⁵ Adopted by the Parliament in 1991 and published in SG 86/18 October 1991, further amended with SG 90/24 October 1994; SG 36/31 March 1998; SG 124/27 October 1998; SG 153/23 December 1998; SG 67/27 July 1999; SG 68/30 July 1999; SG 90/24 September 2002; SG 95/8 October 2002; SG 29/31 March 2003; SG 71/12 August 2003; SG 114/30 December 2003; SG 40/14 May 2004; SG 28/1 April 2005; SG 94/25 November 2005; SG 103/23 December 2005; SG 105/29 December 2005; SG 41/19 May 2006; SG 105/22 December 2006; SG 113/28 December 2007; SG 50/30 May 2008; SG 35/12 May 2009; SG 36/15 May 2009; SG 74/15 September 2009; SG 50/2 July 2010; SG 78/5 October 2010; SG 9/28 January 2011; SG 23/22 March 2011; SG 99/16 December 2011 and SG 102/21 December 2012.

However, before the second voting the Parliament has been dismissed due to the Council of Ministers preliminary resignation and currently is not sure that the next Parliament will continue to work on the same proposal.

The current NED however provides for exercising the right to education in kindergartens and schools, prohibiting “privileges and limitations” on certain grounds, race and ethnic origin among them. In line with the Constitutional provisions it provides for free education and compulsory affiliation with educational facility until age of 16.

The NED proclaims the Bulgarian language as an official language at school, however giving the opportunity for the students whose mother tongue is different, including Roma, to also study mother tongue as a supplementary subject matter. The problem is however, that there are not enough qualified teachers to teach these subjects. According to NED the educational institutions are state, municipal or private. The kindergarten (pre-school) facilities educate children from 3 to 6 years of age. The preschool years are compulsory for children age 5 and 6. The preschool class can be attended in kindergarten or in school. The kindergarten education applies monthly taxes, where the education in the school preschool groups is free. The kindergarten education is full day however, where the school preschool groups are half-day operating facilities.

A special provision (Art. 20, Para. 5 of NED) provides for securing additional preparation for children with difficulties on command Bulgarian language command. These are predominantly children from Roma and/or Turkish background as in the family they speak Romanes or Turkish language, and some of them have insufficient command of Bulgarian language.

The Act provides for the possibility for creation of facilities for children with special educational needs and/or disabilities. However, such facilities should be used only when every other opportunity (for integrative education) for a specific child is unsuccessfully explored. According to the NED provisions the school education is divided in three stages: primary education (from 1st to 4th grade); secondary education (from 5th to 8th grade) and high education (from 9th to 12th grade). Normally the children are 16 when they graduate from 8th grade, which means that the secondary level is compulsory. However the compulsorily is connected with the age of the student (until 16) and not with the level of education accomplished. Art. 27 of NED provides for integrative education for the children with “special needs”, though there is also a possibility given within the law for creation of special schools.

According to the level of financing, there are three types of schools in Bulgaria: State, Municipal and private. The majority of the schools are municipal. The state schools (mostly the upper secondary and special schools) and kindergartens are managed by the Ministry of Education and Science. The municipal schools and kindergartens are opened or closed by ordinance of the Minister of Education and Science, based on proposals from the municipal council. The director of the state schools is appointed by the Minister of Education and Science, and the director of the municipal schools is appointed by the Chair of the Regional Educational Inspectorate. The schools are free to create their own board

of trustees, which include teachers and parents' representatives. Overall funding for education comes from the budget allocated by the Ministry of Education and Science and from municipal budgets. State schools are directly financed from the budget of the Ministry of Education and Sciences. The schools can attract funds also through applying for grants – a practice which is increasing in Bulgaria. However, many indicators highlight the poor quality of education received by Roma children, especially in the crucial first years of school.

EQUALITY AND NON-DISCRIMINATION IN EDUCATION

As regards the educational institutions and their responsibilities to secure equal and non-discriminatory education, it should be noted that there is no special authority tasked with the implementation of EU Race Directive 2000/43 in the field of education. However, the highest authority in the field of education – i.e. the Ministry of Education, Youth and Science has the obligation to secure the implementation of the Protection against Discrimination Act's provisions in the area of education. The ministry of Education set up a Centre for integration of the students with minority. The Centre is financed both by the state budget and external programming and works through projects aimed at educational integration.

THE REGIONAL INSPECTORATE ON EDUCATION

The Regional Inspectorates on Education are obliged to implement the educational national policy and law on regional level. Every director of educational facility is obliged to secure the implementation of the Protection against Discrimination Act in the respective facility. It should be mentioned that the institutions both at central and local level are far from being active in the field of non-discrimination in education, when ethnic minorities are involved. The scope of activities of the regional inspectorates is defined by Rules for establishment and activities of the Regional Inspectorates, accepted by the Ministry of Education, Youth and Science in 2003, last amended in 2012. The Rules however extend to the technicality of the implementation of the national educational standards, inspections of the professional activities of the teachers and reviewing claims for violation of the NED.

In only few cases regional inspectorates have been addressed with situations of alleged discrimination on the basis of ethnic origin by parents and/or non-governmental organizations. There is no case where regional inspectorates issued a decision finding discrimination. Before the Sofia Regional Inspectorate a case of alleged discrimination on ethnic basis was submitted by a Roma student in September 2012. The student claimed that he was rejected in one of Sofia municipal schools, allegedly due to his ethnic origin. No reaction was documented as regards the complaint until the student initiated a procedure before the Commission for Protection against Discrimination. When the latter has been initiated, the Commission obliged the respective regional inspectorate to perform a school inspection connected with the alleged violation. The regional inspectorate reacted only after receiving the instruction letter from the Commission, performing an inspection in the school and elaborating a report on the individual case.⁶⁶

⁶⁶ Case No 347/2011, Commission for Protection against Discrimination, 5 members special jury

Other activity undertaken also by a limited number of regional inspectorates is endorsing Annual Plans for Realization of National Integration Strategy. Only one of the regional inspectorates (in Stara Zagora region) published its Annual plan on its web page, thus making it public.⁶⁷ There is also no active participation noted in the national program “Success”, which by definition release funding for activities aimed at integration of students from different minorities.⁶⁸

THE ROLE OF THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

In its capacity as a specialized equality body, the Commission for Protection against Discrimination has the obligation to review and secure the implementation of the provisions of the Protection against Discrimination Act including the provisions, which ban *segregation* in educational institutions.

The Commission may initiate proceedings following a complaint from an individual or ex officio (self-initiate procedures) in cases of violations as well as to impose measures, compulsory instructions and fines in cases of violation of the law, including in the field of education. The Commission has the following duties, according to law:

- To make a finding of a breach of the law or other laws governing the equal treatment, and establish the perpetrator and affected party;
- To order prevention or termination of a breach, and restitution of the status quo ante;
- To impose the sanctions and compulsory administrative measures envisaged;
- To issue binding instructions aimed at ensuring compliance with this or other laws governing equal treatment;
- To appeal against administrative acts contrary to the anti-discrimination law or other laws governing equal treatment, bring judicial action, and, as an interested party, join judicial proceedings brought under this or other laws governing equal treatment;
- To make proposals and recommendations to state and local government bodies to terminate discriminatory practices and to repeal acts contravening this or other laws governing equal treatment;
- To keep a public register of its final decisions and binding instructions; to give opinions on draft legislation’s conformity with antidiscrimination legislation, and make recommendations for the adoption, repeal, amendment, or supplementation of legislation;
- To provide independent assistance to victims of discrimination in making complaints about discrimination; to conduct independent surveys;
- To publish independent reports and make recommendations on any issue relating to discrimination. Every one of the rights and obligation listed applies for the field of education and on the ground of ethnic origin.

⁶⁷ Available at http://www.riobg.com/start.php?RIO_NUMBER=24 (in Bulgarian only)

⁶⁸ Information published at <http://uspeh.mon.bg/?m=7> (in Bulgarian only)

The Commission for Protection against Discrimination annually reviews a certain number of cases connected with claims of discrimination on ethnic basis and including such in the field of education. The Commission reviews cases of alleged discrimination, establishing a specific jury for discrimination in specific area. Every jury consists of 3 members. There is also one 5-members jury, which reviews cases of multiple discrimination (e.g. alleged discrimination based on more than one ground). For some strategic cases however, the Commission may construct a so-called *ad hoc jury*.

The last statistics available for the public concerns 2011 and shows that the *5 members jury* of the Commission (for multiple discrimination) reviewed 21 cases on claims for ethnic discrimination (no statistics are available regarding the public field of the claims and thus information is not available if there are cases from the field of education between these). However, a statistical public information reveals discrimination on the basis of disability and ethnic origin and shows that the Commission reviewed (for both groups) 16 cases in the field of education. Besides this, the *1st jury* (responsible for cases of alleged ethnic/race discrimination) reviewed 26 cases of alleged discrimination on ethnic origin and 1 case of alleged discrimination based on race, but none of them in the area of education.⁶⁹

In terms of collecting ethnic data public educational institutions, both at central and local level, do not gather information on ethnic origin of students, on the basis of the Personal Data Protection Act. However the Regional Inspectorates on education and the educational directorates of the municipalities in fact collect information regarding students' ethnic origin annually, as the head teachers in every educational facility are obliged by the National Education Act and its Rules for Imposing, to fill annual forms (called *Form No1 for Information regarding the School Organization and Activities*⁷⁰) at the beginning of every academic year, which obviously contain information on the matter.

As a result these institutions possess data and information regarding ethnic origin and disability status of the students. This information is however not available publicly as the institutions refuse to admit that they collect such information, hiding behind the provisions of Personal Data Protection Act. Therefore official planning is based on virtual figures with no information on how the institutions actually gathered the information. There is no special legal provision placing them under the duty to collect such information with planning purposes.

⁶⁹ The information is available within the 2011 Commission for Protection against Discrimination's Annual Report, available at <http://www.kzd-nondiscrimination.com/layout/index.php/godishen-otchet> (in Bulgarian only)

⁷⁰ See at: <http://www.referati.org/zadyljitelna-uchilishtna-dokumentaciq/61059/ref>

3. ROMA SCHOOL SEGREGATION CASES IN BULGARIA

3.1. All Roma segregated schools

According to the information of the Ministry on Education in Bulgaria there are almost 500 segregated all-Romani educational institutions (both schools and pre-school facilities). Close to 77 % of the Roma children are educated in these segregated environments and only a bit more than 33 % of the Roma children is enrolled in integrated educational facilities. About 100 of the segregated schools are in urban environment and the rest are small (in terms of number of children) village schools. In several cases school segregation of Roma children has been challenged with a view to enforce their right to quality and equal education. The following case law provides an overview of situations and issues raised before the Legal Courts in Bulgaria.

The 75th school “Todor Kableshkov”

The 75th school “Todor Kableshkov” is a municipality owned Roma-only school, placed in the Fakulteta Roma district in Sofia, Krasna Polyana sub-district. The children are segregated and subsequently discriminated against with regard to their right to education being forced to attend poor-quality education provided by a segregated school. In terms of number of students, this school is the biggest in Sofia. Every year it accommodates between 1400 and 1550 students.

The building of the school is however not designed to accommodate this number of students, and because of that they usually study in two shifts, and sometimes even in three shifts, minimizing the effective school time. External inspections shows that the level of attendance is very poor, the educational achievements of the students are significantly lower than in other schools, the educational facilities are significantly poorer compared to the other municipal schools in Krasna Polyana sub-district of Sofia. Where the rest of the municipal schools in Krasna Polyana usually organize two or three classes for first grades every academic year, the 75th school organizes seven or eight. The drop-out rate however is so high, that at the end of the secondary stage of educational cycle only one class graduates 8th grade.

To challenge the described situation, in May 2003 a lawsuit was filed before the Sofia District Court on behalf of 28 Romani school children from 75th school against the Ministry of Education, the Municipality of Sofia, and the 75th Todor Kableshkov School. The complaint referred to violations of constitutional guarantees of equality and the right to education, as well as numerous international treaties to which Bulgaria is party. It is worth noting that the case was lodged before the effective enforcement of the Bulgarian *Protection against Discrimination Act*.

On 11th November 2004 the District Court issued its decision: “The court found, based on the written evidences, that in the school at issue during 2002/2003

school year 1800 children have been enrolled, all of them from Roma origin; 349 out of them were first grades who formed 10 groups”. The Court determined that:

“There are more than 30 children in every class-group and in some of the class-groups – more than 40. *The number of the children in 75th school is few times more than the number of the children in the other schools in the same sub-district in Sofia*”. The decision pointed out the poor material basis of the school, and that part of the students study in a temporary building located in the school yard. “*That building cannot secure a normal temperature*” – stated the Court and that “*It has been also proved that during the winter the school was working on three shifts with shorter school-time*”. The court took into account the results of the Regional Inspectorate’s comparative survey done in cooperation with local Roma non-governmental organization “Romani Baht” Foundation, proving that the educational achievements of the children in the segregated schools were lower, due to the lack of a bilingual educational system.

*The Court found, however, that the **plaintiffs did not prove they suffered as a result of the above situation***. In this regard the judge cited the Supreme Court of Cassation’ practice, where it is stated that plaintiffs should prove not only negative facts, but also that they suffered because of respective facts. Normally such facts are evidenced in the Bulgarian civil process by a witness testimony stating that plaintiffs were disturbed and abused by the facts established by the Court. In the case the strategy of the legal team representing the Roma children was to rather urge the Court to admit, that there are illegal practices which *by a necessity lead to moral damages*. As the moral damages were not proved, however, the first instance decision was issued in favor of the respondents. The plaintiffs’ representative appealed the first instance decision. **The Appeal Court however upheld the first instance court decision.**

LESSONS LEARNED IN THE CASE

- The case evidenced the ultimate need to use the legal basis provided by the special protection against discrimination law in challenging school segregation
- The case showed that it is essential to include as evidence comparative surveys, ideally elaborated in partnership with educational institutions – in the instant case – the Regional Inspectorate on Education in Sofia.
- The case showed that it is essential for achieving successful results to prove the negative educational consequences for the Roma children through gathering evidences that indicate the level of impact suffered attending segregated education.
- Many of the Roma children – plaintiffs in the case were victimized by the head-teacher and the rest of the teachers in the school, because of their participation in the court case. The later showed that any court case should be prepared carefully to avoid victimization of the students.

The 103rd municipal school in Sofia

The 103rd municipal school in Sofia is a Roma-only school based in Philipotzi Roma district in Sofia, Lyulin sub-district. The children were segregated, and forced to attend the poor-quality education provided by the respective school. External inspections showed that the level of attendance is very poor, the educational achievements of the students are significantly lower than in other schools, the educational facilities are significantly poorer compared to the other municipal schools in Lyulin sub-district of Sofia. The material base proves to be significantly poorer compared to the other municipal schools.

Based on the lessons learned from the *75th school "Todor Kableshkov"* case a group of civil activists were looking for a way to challenge the situation not including directly the Roma students in the case in order to avoid possible further victimization. At the time the Bulgarian Protection against Discrimination Act (PADA) was already enforced. As Article 7(2) of the Race Equality Directive of the Council of European Union requires member states to provide legal standing for NGOs engaged in judicial or administrative procedures on behalf or in support of victims of discrimination the PADA provided for NGOs and equality bodies to take action in the public interest without representing an individual victim. Using this provision, the case challenging the described situation has been initiated before the Court on behalf of the European Roma Rights Center (international non-governmental organization). The case has been brought against the Ministry of Education, the Sofia Municipality and School 103 under the provisions of the Protection against Discrimination Act.

The Sofia district Court decision

In 2005 the Sofia District Court issued its judgment.

The Court ruled in favor of the plaintiff and found that the Romani children "*who have attended and are attending School 103 have been and continue to be subjected to segregation and unequal treatment*" and that their right to equal and integrated education had been violated.

The Court made a *bona fide* application of the law to the facts of the case, issuing a very strong condemnation of racial segregation that echoes the sort of activist language that is more typical of decisions given by common law courts. Particularly striking were the emphatic statements made by the Court on the long term consequences of racial segregation stating that "*the negative consequences of the existing situation are enormous*". In the view of the Court, ***segregation persisted due to the failure of the authorities to act*** pursuant to the positive obligation set by the Protection against Discrimination Act, to fight discrimination placed on them by the law.

The Court ruled that the separation of the Romani children in the Roma-only 103rd School "*was not the result of their free will but of circumstances beyond their control, accompanied by inaction on the part of authorities obliged to take measures to remedy this situation*". The Court accepted that the separation of the Romani children in 103rd School was the result of lack of opportunity to attend other schools

caused by residential segregation in an all-Romani neighborhood, obstacles for enrolment in other schools, and fear of racist abuse by non-Romani children.

Further, the Court affirmed that the poor material conditions in 103rd School, the low educational results of the children, and failure of the school authorities to exert control on truancy are manifestations of unequal and degrading treatment of the children in 103rd School. Regardless of the fact that the national standard educational criteria were applicable to 103rd School, the available evidence indicating that the Roma children could not meet the standard educational requirements to a degree comparable with that of children in other schools, was sufficient to prove violation of their right to equal and integrated education.

The Court rejected the argument that the poor educational performance of the Roma children was due to irregular school attendance, stating that the Sofia municipality and the Ministry of Education had been required by law to exert control of the school with regard to such matters.

The appeal Court decision

The respondents appealed the decision and regrettably the second instance Court decided that ***Roma children were not subjected to segregation as they studied in the 103rd school by their own will.***

However, the Court upheld the statement that “*on account of the respondents’ inaction the right to education and to equal treatment of the Roma children who studied and still study in 103rd Secondary school in its exertion, including with no regard to their ethnic origin, is violated*”.

The Court referred segregation with indirect discrimination citing the Bulgarian anti-discrimination law provisions: „According to Art.4 of the Protection against Discrimination Act direct and indirect discrimination, based on characteristics including the ethnic origin is forbidden *and under Art.5 of the same racial segregation is considered discrimination.*”

The Court also found that alongside irregular attendance, the language barrier is one of the major reasons for the lower performance of the Roma children, as it leads to lag in the general educative process and to dropout of Roma students from school. The Court admitted that the lack of bilingual training emerges as one of the major reasons for underperformance “*the students’ writing culture is low, they operate with an insufficient lexical stock, their level of Bulgarian language proficiency is low, they lack skills for synthesis and analysis of the knowledge and skills in solving language problems. Their knowledge of Bulgarian could not serve for the achievement of necessary results at the end of the 4th grade in terms of syllabus and state educational requirements.*”

Referring to equality and non-discrimination the Court pointed out in its decision that: „*the principle of non-discrimination requires not only the ban on the unequal treatment of persons in similar circumstances, but also different treatment of persons in different circumstances in order to eliminate an existing inequality;*

the absence of such different treatment in the latter case, if no reasonable and objective justification exists, such treatment constitutes discrimination.”

LESSONS LEARNED

- The definition of segregation in the Bulgarian anti-discrimination legislation does not fully correspond with international and European standards.
- The Bulgarian definition of segregation provides for a “forcible separation”, thus hindering the chances for a successful Court decision.
- More advocacy is needed with a view to promote the necessity for amending the legislation so that it corresponds to international human rights standards whereby segregation comprises an act of separation irrespective of its forced nature.

The Roma only school in Ihtiman

The Roma only school in the small town of Ihtiman is placed near to the Roma district – Iztok district. The school enrolls children from first to eight grades. In general about 700 children are usually enrolled in the school every academic year – almost all of them of Roma origin. When the situation was challenged before the Court, there were three preschool classes, three first grade classes, four second grade classes, three third grade classes, three fourth grade classes, two 5th grade classes, three 6th grade classes, two 7th grade classes, and two 8th grade classes. The physical and material educational facilities of the school were significantly poorer than in the other schools in Ihtiman. There was no central heating in the school.

The case was initiated on behalf of the European Roma Rights Centre (international non-governmental organization) and the Romani Baht Foundation (non-governmental organization based in Sofia). The claim of the case involved mainly challenging the fact that the children are educated in a segregated environment and thus received a lower quality of education compared to that in the other mainstream schools. The plaintiffs asked the Court to establish that the children are victims of segregation as a form of discrimination and subsequently order the closure of the educational establishment. The respondents were the school itself, the Ihtiman Municipality and the Ministry on Education and Science.

The case was dismissed by the Court on the basis that the enrolment of the Roma children in the respective school was a result of their parents’ manifestation of free will. Basically, the argument was in line with the logic of the definition of segregation that linked separation only with a forceful act.

1.2. All-Roma segregated classes in mainstream schools

Following the challenge of school segregation through legal proceedings in Bulgaria, non-governmental organizations started to develop programs for school desegregation of Roma children. Initially such projects and initiatives have been implemented with the support of the OSF Roma Participation Program and later on by the Roma Education Fund.

Desegregation programs included the enrolment of Roma children in mainstream schools by supporting Roma families with transport and school materials, as well as bussing of the children in the big cities. The process, however, was not fully supported by the relevant educational authorities, which led to refusals of some head teachers in the mainstream schools to enroll Roma children. In some of the cases the head teachers accepted the applications of the Roma parents, but by attempting to prevent the signing out of the Bulgarian children, they organized the education of the Roma children enrolled in separate classes. This process led to school segregation of Roma children. In many cases this type of segregation is justified by organizing special classes – such as for foreign language education for instance, where Roma children are not enrolled.

1st school “Saint Kiril and Methodius”

The *1st school “Saint Kiril and Methodius”* is a municipality based school in Blagoevgrad. The school exists for 42 years and has educated both Bulgarian and Roma children, thus creating a successful model of an educational institution with mixed ethnic groups. In time the school turned slowly into a Roma school.

When Bulgarian parents started to move their children to other schools, due to enrolment of Roma children, the Municipality of Blagoevgrad accommodated a primary course (1st to 4th grade) of a Foreign Languages School in the building of the 1st School “Saint Kiril and Methodius”. Right after this process the Bulgarian parents started to withdraw their children from the 1st school “Kiril and Methodius” and to move them to the Foreign Languages School. Bulgarian children were attending the school nearby their homes, but with no Roma children – i.e. the Foreign Languages School.

The “Saint Kiril and Methodius” school’s statistics indicated that before the accommodation of the other school’s classes it had 483 students (Bulgarians and Roma) and afterwards had only 326 students. This constitutes an estimated 32.5 % reduction. As a result for the last academic year the 1st school “Saint Kiril and Methodius” had only managed to form 2 first grade classes, one of which consisted only of Roma students, and the other had 50 % Roma and 50% Bulgarians. The Head Teacher of the school informed the municipality that the Roma parents were highly concerned that their children are segregated describing the situation and asking for actions to solve the problem. He has also organized “silent marches” with his students in front of the Municipality’s building. The Head Person of the School Board also addressed the municipality officials to support the efforts of the Head Teacher.

Romani Baht Foundation organized a meeting with a group of Roma parents whose children were educated in the school and subsequently they initiated a Court

action against Municipality and the City Council arguing for a breach of the equality and non-discrimination principle in the case of their children. They asked the Court to establish that the segregation of their children constituted discrimination and to order the respondents to stop their separation and to ensure an integrated education. The case received broad media attention both locally and nationally.

The first instance Court decision

The first instance Court took note of the fact that in the case there was no question as to the ethnic origin of the Roma children in the school. They were studying in the 1st Municipal school in classes where all the children or predominant number of children were Roma. It was not arguable that the City Council established another school in the same building and that most of the children enrolled in the 1st school were of Roma origin.

The Court stated in its decision that the facts of the case indicated that the school practice led to a *split* of the children from Bulgarian and Roma origin in the two schools. Referring to the scope of the Protection against Discrimination Act the Court ruled that it is to secure foremost equality and effective remedies against discrimination. In this regards the law covers education as well and subsequently segregation is a prohibited form of discrimination. Furthermore the Court took note of the principle of shifting the burden of proof in discrimination cases and stated that it is for the respondent to prove the non-existence of discrimination.

However, based on the evidence provided for, the Court could not conclude that the Roma children were victims of discrimination due to school segregation on the basis ethnic origin. The Court stated that under the provisions of the Education Act it is the decision of the parents that determines where the children will study. Subsequently the Court concluded that the separation of the Roma children in the 1st school was not a result of segregation based on their ethnic origin but on the free choice of their parents. Furthermore, the Court opinioned that the act of the municipality did not create different schools for different ethnic groups. The Court decision was appealed but dismissed by the Court which endorsed the first instance decision.

LESSONS LEARNED

- The Bulgarian definition of segregation provides for a “forcible separation”, thus hindering the chances for a successful Court decision. More advocacy is needed with a view to promote the necessity for amending the legislation so that it corresponds to international human rights standards whereby segregation comprises an act of separation irrespective of its forced nature

3.3. Overrepresentation of Roma children in special schools for children with learning disabilities

This type of educational segregation in the Bulgarian educational system results from the factual overrepresentation of Roma children in the so-called special schools, or schools for children with special educational needs. These are in fact schools for children with intellectual disabilities, where the compulsory curriculum is limited to minimum. According to the law and procedures, the children enrolled in these schools should only be enrolled under considerable non-biased and neutral scrutiny and only in the best interest of the child. Parental consent needs to be fully informed and include awareness of all consequences on the child schooling opportunities. Upon graduation these schools do not issue secondary school diploma, but just a “certificate” that does not allow for the children to further continue his education.

The case of Blagoevgrad School

The Blagoevgrad School is a state owned school assigned for children with learning disabilities. It is located close to the Roma settlement in the town. Over 85 percent of the children who attend this school are Roma. Roma parents were interviewed to understand whether they would have their children transferred into a normal school. Most of the parents answered negatively as this would affect the school benefits provided for the children. Such benefits generally include free meals, some clothes and medicine. The families were extremely poor and they considered the benefits essential.

Romani Baht Foundation interviewed around 19 families whose children were enrolled in the special school. The Roma parents could not recall signing a consent form for their children to be enrolled in a school for children with learning disabilities. 14 out of the 19 interviewed families were not even aware that the school is assigned for children with special needs. It seemed that they have been informed that the school provides education to poor children. 14 children have been interviewed as well. They stated that they do not remember any tests, and that some “few months ago a doctor has examined them”. However, it was unclear what kind of medical examination had taken place. During the interviews several families have been identified where parents have also graduated the same school. In some of the cases brothers and sisters were attending the same school.

Romani Baht Foundation initiated a Court case claiming that the children’s right to education has been damaged and that predominantly Roma children suffer disproportional negative consequences amounting to discrimination on the basis of ethnic origin. The case was brought against the school and the Regional Inspectorate on Education.

A number of procedural aspects have been brought before the Court, initially in regard to the legal standing of the organization sitting as plaintiff and subsequently the legal standing of the school as a respondent in the case. Following the acceptance of the legal standing of Romani Baht, the Court decided that the *school does not have a standing as it is not established as a legal entity and dismissed the case*. The only respondent left in the proceeding was the Regional Inspectorate. Following the first instance ruling and appeal was lodged by the second instance Court dismissed the appeal as well.

4. THE RIGHT TO EDUCATION INTERPRETED BY THE EUROPEAN COURT OF HUMAN RIGHTS

International human rights bodies have constantly underlined that the importance of the right to education relies in that the exercise of other rights depends in first place on the realization of right to education.⁷¹ Everyone has the right to education which is a fundamental human right protected by all international and regional systems for human rights protection, including the European Convention on Human Rights and Fundamental Freedoms.⁷² In the legal doctrine, the equal access to education was named as the „key to achieving greater economic and political power and thus, equality in society”.⁷³

4.1. Article 2 of the Protocol no.1 to the ECHR

Article 2 of Protocol No. 1 to the European Convention of Human Rights provides that: “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.”

In the Belgian Linguistic Cases the European Court of Human Rights held that “The first sentence of Article 2 of the Protocol 1 guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed⁷⁴.

Furthermore the Court held that “the right to education guaranteed by the first sentence of Article 2 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation

⁷¹ General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights defines education as both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities, available at:

<http://www.unhcr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

⁷² See for example: UNESCO Convention Against Discrimination in Education (1960), available at:

http://portal.unesco.org/en/ev.php-URL_ID=12949&URL_DO=DO_TOPIC&URL_SECTION=201.html; Convention on the Rights of the Child (1989), available at: <http://www2.ohchr.org/english/law/crc.htm>; Art.2 of the Protocol no.1 to European Convention on Human Rights and Fundamental Freedoms, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/009.htm>

⁷³ M.E.A Goodwin, *Taking on racial segregation: the European Court of Human Rights at a Brown v. Board of Education moment?*, page 94, available at: <http://arno.uvt.nl/show.cgi?fid=96970>

⁷⁴ ECHR, Belgian linguistic case, Judgment of 23 July 1968, para. 4; also *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 52, Series A no. 23; and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 152, ECHR 2005-XI).

must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention”⁷⁵.

In its recent legal case, the European Court of Human Rights reiterated that the word “respect” in Article 2 of Protocol No. 1 means more than “acknowledge” or “take into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State⁷⁶. On the other hand, it needs to be underlined that the primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusory, in particular for those who have insufficient means to maintain their own institutions⁷⁷.

4.2. The right to education of Roma children and principles set by the ECHR

The primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusory, in particular for those who have insufficient means to maintain their own institutions⁷⁸. The European Court of Human Rights has developed through its jurisprudence a number of underlining standards when referring to the right to education and non-discrimination of Roma children.

THE RIGHT TO NON-DISCRIMINATION APPLICABLE IN ROMA RELATED CASES

According to the case law of the European Court of Human Rights (ECtHR) on Article 14, discrimination occurs when, without objective and reasonable justification, persons in relevantly similar situations are treated differently⁷⁹ or when States fail to treat differently persons whose situations are significantly different.⁸⁰ The ECtHR has stated that “no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”⁸¹

The ECtHR established that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered

⁷⁵ Ibidem para.5

⁷⁶ *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 37, Series A no. 48.

⁷⁷ Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, *Theory and Practice of the European Convention on Human Rights*, Fourth Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.

⁷⁸ Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, *Theory and Practice of the European Convention on Human Rights*, Fourth Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.

⁷⁹ *Case of Willis v the United Kingdom*, Application no. 36042/97, at para. 48, and *Okpiz v Germany*, Application no. 59140/00, at para. 33

⁸⁰ See: *Thlimmenos v Greece [GC]*, Application no. 34369/97, para. 44; See also: “Case relating to certain aspects of the laws on the use of languages in education in Belgium” v Belgium (Merits), judgment of 23 July 1968, Series A no. 6, at para. 10

⁸¹ *Timishev v Russia*, Application nos. 55762/00 and 55974/00, at para. 58.

discriminatory, notwithstanding that it is not specifically aimed at that group⁸² and, as with European Union law, in particular the Race Directive such a situation may amount to “indirect discrimination”, which does not necessarily require discriminatory *intent*.⁸³ The ECtHR also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.⁸⁴

In its legal case the ECtHR noted that Roma do not only enjoy protection from discrimination, but they also require special protection.⁸⁵ As attested by the activities of numerous European and international organizations and the recommendations of the Council of Europe bodies, this protection also extends to the sphere of education.⁸⁶

RECOGNITION OF SPECIAL NEEDS OF MINORITIES AND SUBSEQUENT CONSIDERATION

In *Chapman v. the United Kingdom*, the European Court observed an emerging international consensus amongst the Member States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community⁸⁷. In its legal case the European Court noted that the vulnerable position of Roma means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases⁸⁸.

SPECIFIC POSITION OF THE ROMA POPULATION AND SPECIAL PROTECTION

In a number of cases, while considering that the applicants were members of the Roma minority, European Court took into account the specific position of the Roma population particularly the fact that „as a result of their history, the Roma have become a specific type of disadvantaged and vulnerable minority”. The Court stated that „they therefore require special protection. As is attested by the activities of numerous European and international organizations and the recommendations of the Council of Europe bodies, this protection also extends to the sphere of education”⁸⁹.

⁸² *Hugh Jordan v the United Kingdom*, Application no. 24746/94, at para. 154; and *Hoogendijk v the Netherlands* (dec.), Application no. 58461/00

⁸³ *D.H. v The Czech Republic*, Application no. 57325/00, at para.184.

⁸⁴ *Zarb Adami v Malta*, Application no. 17209/02, para. 76

⁸⁵ *Chapman v the United Kingdom*, Application no. 27238/95 and , *Connors v the United Kingdom*, Application no. 66746/01.

⁸⁶ *D.H. v the Czech Republic*, Application no. 57325/00, para. 182

⁸⁷ *Oršuš and Others v. Croatia* [GC], no. 15766/03, para 147.

⁸⁸ *Chapman v. the United Kingdom* [GC], no. 27238/95, § 96, ECHR 2001-I, and *Connors v. the United Kingdom*, no. 66746/01, § 84, 27 May 2004

⁸⁹ *D.H. and Others v. Czech Republic*, § 182.

SPECIFIC POSITIVE OBLIGATIONS TO AVOID THE PERPETUATION OF PAST DISCRIMINATION OF ROMA CHILDREN

In Roma related cases, the Court outlined that in the context of the right to education of members belonging to groups that suffered past discrimination in education with continuing effects, structural deficiencies call for the implementation of positive measures in order, *inter alia*, to assist the applicants with any difficulties they encountered in following the school curriculum. These obligations are particularly stringent where there is an actual history of direct discrimination. Therefore, some additional steps are needed in order to address these problems, such as active and structured involvement on the part of the relevant social services⁹⁰. In some cases, the European Court took note that efforts to combat the high proportion of Roma children in special schools have not yet had a major impact. In such circumstances the Court considers that the State has specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices⁹¹.

4.3. School segregation cases against other countries before the ECHR

So far the European Court of Human Rights has decided in six cases concerning the right to education of Roma children in Europe: *D.H. and Others v. the Czech Republic* (2007), *Sampanis and Others v. Greece* (2008), *Orsus and Others v. Croatia* (2010), *Sampani and Others v. Greece* (2012), *Horvath and Kiss v. Hungary* (2013) and *Lavida and Others v. Greece* (2013). In all six cases, the ECtHR found a violation of article 2 Protocol 1 (“Right to education”) in conjunction with article 14 (“Prohibition of discrimination”) of the European Convention on Human Rights.

*D.H. and others v. the Czech Republic*⁹² was the first case dealt with by the European Court of Human Rights concerning the right to education of Roma children in Europe and their segregation. The European Roma Rights Centre brought the case before the Court and following the judgment made a relevant summary of the outstanding novelty of the decision in a number of respects, including the following:

PATTERNS OF DISCRIMINATION - For the first time, the European Court of Human Rights has found a violation of Article 14 of the Convention in relation to a pattern of racial discrimination in a particular sphere of public life, in this case, public primary schools. As such, the Court has underscored that the Convention addresses not only specific acts of discrimination, but also systemic practices that deny the enjoyment of rights to racial or ethnic groups.

SEGREGATION IS DISCRIMINATION - The Court clarified that racial segregation amounts to discrimination in breach of Article 14 of the Convention.

⁹⁰ *Oršuš and Others v. Croatia* [GC], no. 15766/03, para 177.

⁹¹ *Horvath and Kiss v Hungary*, App. no. 11146/11, para. 115-116.

⁹² *D.H. and Others v. Czech Republic*, application no. 57325/00, Grand Chamber November 13, 2007, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{)

EQUAL ACCESS TO EDUCATION FOR ROMA IS A PERSISTENT PROBLEM THROUGHOUT EUROPE - The Court went out of its way to note that the Czech Republic is not alone - discriminatory barriers to education for Roma children are present in a number of European countries.

UNIFIED ANTI-DISCRIMINATION PRINCIPLES FOR EUROPE - This decision brings the European Court of Human Rights Article 14 jurisprudence in line with principles of antidiscrimination law that prevail within the European Union.

The Court further established, clarified or re-affirmed the following principles:

INDIRECT DISCRIMINATION - A difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a racial or ethnic group. Indeed, for the first time the Court clarified that such a situation may amount to "indirect discrimination," in breach of the Convention.

INTENT NOT REQUIRED – A difference in treatment without objective and reasonable justification may violate Article 14 even absent discriminatory intent. Thus, where it has been shown that legislation produces an unjustified discriminatory effect, it is not necessary to prove any discriminatory intent on the part of the relevant authorities.

FACIALLY NEUTRAL LAW - Even where the wording of particular statutory provisions is neutral, their application in a racially disproportionate manner without justification which places members of a particular racial or ethnic group at a significant disadvantage may amount to discrimination.

STATISTICS - When it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The Court confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination.

SHIFTING BURDEN OF PROOF – In order to guarantee the effective protection of right of non-discrimination, less strict evidential rules should apply in cases of alleged indirect discrimination. Where an applicant alleging indirect discrimination establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which show that the difference in treatment is not discriminatory.

THE SPECIAL SITUATION OF ROMA - As a result of their history, the Roma have become a specific type of disadvantaged and vulnerable minority who require special protection.

NO WAIVER OF RIGHT TO NON-DISCRIMINATION - 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.⁹³

⁹³ European Roma Rights Center (ERRC), Ostrava case: D.H. and Others v. The Czech Republic (2008), available at: <http://www.errc.org/cikk.php?cikk=2945>

DH v. CZECH REPUBLIC (2007): ENROLMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS

The applicants⁹⁴ were Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region (Czech Republic). They alleged that, as a result of their Roma origin, they were assigned to special schools. Between 1996 and 1999 they were placed in special schools for children with learning difficulties who were unable to follow the ordinary school curriculum. Under the law, the decision to place a child in a special school was taken by the head teacher on the basis of the results of tests to measure the child's intellectual capacity carried out in an educational psychology center, and required the consent of the child's legal representative. 14 of the applicants sought a review of their situation by the Ostrava Education Authority on the grounds that the tests were unreliable and their parents had not been sufficiently informed of the consequences of giving consent. The Authority found that the placements had been made in accordance with the statutory rules. 12 of the applicants appealed to the Constitutional Court. They argued that their placement in special schools amounted to a general practice that had resulted in segregation and racial discrimination through the coexistence of two autonomous educational systems, namely special schools for the Roma and "ordinary" primary schools for the majority of the population. Their appeal was dismissed on 20 October 1999.⁹⁵

The Czech Constitutional Court dismissed the applicants' appeal, partly on the ground that it was manifestly unfounded and partly on the ground that it had no jurisdiction to hear it. It nevertheless invited the competent authorities to give careful and constructive consideration to the applicants' proposals.

With regard to the complaint of a violation of the applicants' rights as a result of their placement in special schools, the Constitutional Court held that, as only five decisions had actually been referred to in the notice of appeal, it had no jurisdiction to decide the cases of those applicants who had not appealed against the decisions concerned. As to the five applicants who had lodged constitutional appeals against the decisions to place them in special schools (nos. 1, 2, 3, 5 and 9 in the Annex), the Constitutional Court decided to disregard the fact that they had not lodged ordinary appeals against those decisions, as it agreed that the scope of their constitutional appeals went beyond their personal interests. However, it found that there was nothing in the material before it to show that the relevant statutory provisions had been interpreted or applied unconstitutionally, since the decisions had been taken by head teachers vested with the necessary authority on the basis of recommendations by educational psychology centers and with the consent of the applicants' representatives.

With regard to the complaints of insufficient monitoring of the applicants' progress at school and of racial discrimination, the Constitutional Court noted that it was not its role to assess the overall social context and found that the applicants had not furnished concrete evidence in support of their allegations. It further noted

⁹⁴ D.H. and Others v. the Czech Republic, application no. 57325/00, Grand Chamber, Final Judgment (2007), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256>

⁹⁵ D.H and Others v. the Czech Republic – summary of the case, available at: http://www.crin.org/docs/FileManager/Summary_of_Cases.pdf

that the applicants had had a right of appeal against the decisions to place them in special schools, but had not exercised it. As to the objection that insufficient information had been given about the consequences of placement in a special school, the Constitutional Court considered that the applicants' representatives could have obtained this information by liaising with the schools and that there was nothing in the file to indicate that they had shown any interest in transferring to a primary school. The Constitutional Court therefore ruled that this part of the appeal was manifestly ill-founded.

In 2000, the European Roma Rights Center (ERRC) brought the case in front of the European Court of Human Rights on behalf of the 18 Roma children from the town of Ostrava in the Czech Republic. The ERRC represented the children, and on appeal before the ECtHR several NGOs, including Step by Step International, submitted amicus curiae briefs in support of the applicants. The children alleged that their assignment to "special schools" for children with learning disabilities contravened their right to education without discrimination. Tests used to assess their mental ability were culturally biased against Czech Roma, and placement procedures allowed for the influence of racial prejudice on the part of educational authorities. Statistical evidence compiled by the ERRC from Czech officials and authorities was presented to the ECtHR to demonstrate that school selection processes frequently discriminated on the basis of race. For example, a Roma child in Ostrava was 27 times more likely to be placed in schools for the learning disabled than a similarly situated non-Romani child. In fact, in the Ostrava region, more than half the population of Roma children were confined to "special schools" and the channeling of Roma children to special schools for the mentally disabled was almost automatic. As a result, the Czech school system was de facto segregated, with most Roma children attending separate schools from those of neighboring non-minority children.

Evidence before the Court, based on ERRC research in the city of Ostrava, demonstrated that school selection processes frequently discriminate on the basis of race: over half of the Romani child population is schooled in remedial special schools; over half of the population of remedial special schools is Romani; any randomly chosen Romani child is more than 27 times more likely to be placed in schools for the learning disabled than a similarly situated non-Romani child; even where Romani children manage to avoid the trap of placement in remedial special schooling, they are most often schooled in substandard and predominantly Romani urban schools.

The European Court Chamber ruled initially in favor of the Czech Republic and the applicants appealed. *On 13 November 2007, the European Court of Human Rights Grand Chamber ruled that the practice of placing Roma children in special schools amounted to racial discrimination against them with regards to the right to education* (amounting to a violation of Convention's Art. 14 read in conjunction with Art. 2 of Protocol 1).

The ECtHR provided important key findings. Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction.

As to the burden of proof in discrimination cases, the Court re-enforced the principle that once the applicant has shown a difference in treatment it is for the Government to show that the respective treatment has an objective justification. An important step was taken as to whether statistics can constitute evidence. The Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (see *Hugh Jordan*⁹⁶). However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or *de facto* situation (see *Hoogendijk*⁹⁷, and *Zarb Adami*⁹⁸), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations. The Grand Chamber further noted the information furnished by the third-party interveners that the courts of many countries and the supervisory bodies of the United Nations treaties habitually accept statistics as evidence of indirect discrimination in order to facilitate the victims' task of adducing prima facie evidence. In these circumstances, the Court considered that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence.

The European Court of Human Rights stressed the vulnerable position of Roma/Gypsies, which means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Chapman v. the United Kingdom*⁹⁹ and *Connors v. the United Kingdom*¹⁰⁰). It observed that there is an emerging international consensus among the Contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.

The Court added that the applicants in their submission had to establish only that, without objective and reasonable justification, they were treated less favorably than non-Roma children in a comparable situation and that this amounted in their case to indirect discrimination.

The Grand Chamber observed that **the tests used to assess the children's learning abilities or difficulties have given rise to controversy** and continue to be the subject of scientific debate and research. While accepting that it is not its role to judge the validity of such tests, various factors in the instant case nevertheless lead the Grand Chamber to conclude that **the results of the tests carried out at the material time were not capable of constituting objective and**

⁹⁶ *Hugh Jordan v. UK*, ECtHR, 2001, App. No. 24746/94.

⁹⁷ *Hoogendijk v. The Netherlands*, 2005, App. No. 58641/00.

⁹⁸ *Zarb Adami v. Malta*, 2006, App. No. 17209/02.

⁹⁹ *Chapman v. UK*, *op. cit.*, § 96.

¹⁰⁰ ECtHR, 2004, App. No. 66746/01, § 84.

reasonable justification for the purposes of Article 14 of the Convention.

The facts of the instant case indicated that the **schooling arrangements for Roma children were not attended by safeguards** that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State took into account their special needs as members of a disadvantaged class.

Furthermore, as a result of the arrangements **the applicants were placed in schools for children with mental disabilities where a more basic curriculum was followed** than in ordinary schools and where **they were isolated from pupils from the wider population**. As a result, they received an **education which compounded their difficulties and compromised their subsequent personal development** instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. Indeed, the Government had implicitly admitted that job opportunities are more limited for pupils from special schools.

Consequently, the Grand Chamber concluded that there had been a violation in the instant case of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 as regards each of the applicants¹⁰¹.

SAMPANIS AND OTHERS V. GREECE (2008): ENROLMENT OF ROMA CHILDREN IN SEPARATE SCHOOL FACILITY

The 11 applicants, Greek nationals of Roma origin, were living in Psari, an authorized residential site near Aspropyrgos (Greece). They brought the case out of concern that the authorities' failure to provide schooling for their children during the 2004-2005 school year and the subsequent placement of their children in special classes, in an annex to the main Aspropyrgos primary school building, was a measure related to the Roma origin of the children. On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enroll their children. According to them, the head teachers of two schools had refused to enroll their children on the ground that they had not received any instructions on this matter from the competent ministry. The head teachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enroll their children.

The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the head mistress had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary

¹⁰¹ D.H. and Others v. Czech Republic, application no. 57325/00, Grand Chamber November 13, 2007, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{\"itemid\":\[\"001-83256\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{\)

school teachers from Aspropyrgos visited the Psari Roma camp to inform and persuade parents of the need to enroll their children. An informal meeting was convened on 23 September 2004 and it was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes.

On 9 June 2005, 23 children of Roma origin, including the applicants' children, were enrolled for the school year 2005-2006. According to the Government, the number of children came to 54. In September and October 2005, from the first day of the school year, non-Roma parents protested about the admission to primary school of Roma children and blockaded the school, demanding that the Roma children be transferred to another building. The police had to intervene several times to maintain order and prevent illegal acts being committed against pupils of Roma origin. On 25 October 2005 the applicants signed, according to them under pressure, a statement drafted by primary school teachers to the effect that they wanted their children to be *transferred to a building separate from the school*. Thus, from 31 October 2005, the applicants' children were given classes in another building and the blockade of the school was lifted. Three classes were housed in prefabricated classrooms on land belonging to the municipality of Aspropyrgos. In April 2007, the Roma children were transferred to a new primary school set up in Aspropyrgos in September 2007.

Roma applicants complained that they had been subjected, without any objective or reasonable justification, to treatment that was less favorable than that given to non-Roma children in a comparable situation and this constituted a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (right to education). They further claimed a violation of Article 13 (right to an effective remedy).

In 2008 the European Court of Human rights delivered its judgment in the case of Sampanis and others v. Greece (2008). The key findings of the Court were the following: **even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the Greek authorities, it could nevertheless be presumed that those incidents influenced the decision to place pupils of Roma origin in an annex to the primary school. There was a strong presumption of discrimination and it was for the Government to show that the difference in treatment was the result of objective factors, unrelated to ethnic origin.**

Whilst the evidence did not show that the applicants had met with an explicit refusal by the school authorities, **given the Roma community's vulnerability and considering that Article 14 requires in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognized the particularity of the case** and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available. Due to Greek law recognizing

the specific nature of the Roma community's situation and domestic legislation providing for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, this obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enroll them at primary school.

The European Court stressed **the importance of introducing, especially in the case of children from ethnic minorities, pedagogically sound diagnostic tools for assessing the capacities of children with learning needs and monitoring their progress**, in order to provide for their possible placement in special classes on the basis of non-discriminatory criteria; the application of such an objective testing system would dispel any suspicions by the Roma that they were discriminate against and would ultimately assist them to integrate into ordinary schools and into local society. The **competent authorities had not adopted a single, clear criterion in choosing which children to place in the special preparatory classes**. In addition, whilst the declared objective of the preparatory classes was for the pupils concerned to attain the level of education which would enable them to enter ordinary classes in due course, there was no evidence that the preparatory classes facilitated this process.

Turning to the ostensible consent of the Roma parents to the transfer of their children into the special, Roma only classes, the Court reiterated that **no waiver of the right not to be discriminated against could be considered valid and that the applicants' consent could not be considered an informed one**. The Court was not satisfied that the applicants had been able to assess all the aspects of the situation and the consequences of their consent to the transfer of their children to a separate building.

In light of the above, the European Court held that the Government had not demonstrated that the difference in treatment was the result of objective factors, unrelated to the ethnic origin of the persons concerned, and found a violation Article 14 (protection from discrimination) of the Convention taken together with Article 2, Protocol 1 (right to education).

ORSUS AND OTHERS V. CROATIA (2010): ENROLMENT OF ROMA CHILDREN IN SEGREGATED CLASSES

15 Croatian nationals of Roma origin complained that they had been segregated at primary school because they were Roma. They attended primary school in the villages of Macinec and Podutren at different times between the years 1996 and 2000. They claimed that the Roma-only curriculum in their schools had 30 % less content than the official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. In April 2002 the

applicants brought proceedings against their primary schools. They submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity¹⁰².

On 26 September 2002 the Čakovec Municipal Court dismissed the legal action, accepting the defendants' argument that the reason why most Roma pupils were placed in separate classes was that they were not fluent in Croatian. Consequently, the court held that this was not unlawful and that the applicants had failed to substantiate their allegations concerning racial discrimination. Lastly, the court concluded that the applicants had failed to prove the alleged difference in the curriculum of the Roma-only classes. On 17 October 2002 the applicants appealed against the first-instance judgment, claiming that it was arbitrary and contradictory. On 14 November 2002 the Čakovec County Court dismissed the applicants' appeal, upholding the reasoning of the first-instance judgment.¹ Subsequently, on 19 December 2002, the applicants lodged a complaint with the Constitutional Court under section 62 of the Constitutional Court Act. In their constitutional complaint they reiterated their earlier arguments, relying on the relevant provisions of the Constitution and of the Convention. The Court dismissed the applicants' complaint as well. Subsequently they addressed the European Court of Human Rights.

In 2010 the Grand Chamber of the European Court of Human rights delivered its judgment in the case of Orsus and others vs. Croatia. The ECtHR considered that the **case raised primarily a discrimination issue and it recalled its findings from its case law that, as a result of their history, the Roma had become a specific type of disadvantaged and vulnerable minority.** They therefore required **special protection, including in the sphere of education.** The Court noted the reasons given by the Government for the placement of the applicants in Roma-only classes, namely that they had lacked adequate command of the Croatian language. The Court stated that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to Article 14 of the Convention, when this affected, as in the Orsus case, exclusively the members of a specific ethnic group, **specific safeguards had to be put in place**¹⁰³.

The Croatian laws applicable for the case and the issues at stake at the time had not provided for separate classes for children lacking proficiency in the Croatian language. The European Court observed that **tests applied for deciding whether to assign pupils to Roma-only classes had not been designed specifically to assess the children's command of the Croatian language,** but had instead tested the children's general psycho-physical condition. Similarly, the Court considered that while the applicants might have had some learning difficulties, as suggested by the fact that they had failed to go up a grade for the initial two years of their schooling, those **difficulties had**

¹⁰² Orsus and Others v. Croatia, application no. 15766/03, Grand Chamber (2010), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97689>

¹⁰³ Idem. See para. 147-162.

not been adequately addressed by simply placing them in Roma-only classes¹⁰⁴.

As regards the school curriculum, the European Court noted that once assigned to Roma-only classes **the applicants had not been provided with a program specifically designed to address their alleged linguistic deficiency.** All applicants had spent a substantial period of their education in Roma-only classes. **There had been no particular monitoring procedure** and, although some of the applicants had attended mixed classes at times, the Government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian. **The lack of a prescribed and transparent monitoring procedure had left a lot of room for arbitrariness¹⁰⁵.**

Statistics submitted by the applicants for the region in which they lived have not been contested by the Government and had showed a drop-out rate of 84% for Roma pupils before completing primary education. The applicants, without exception, had left school at the age of fifteen without completing primary education and their school reports evidenced poor attendance. The Court noted that such a high drop-out rate of Roma pupils in that region had called for **the implementation of positive measures in order to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties they had encountered in following the school curriculum.** However, according to the Government, the social services had been informed of the pupil's poor attendance only in the case of the fifth applicant and no precise information had been provided on any follow-up¹⁰⁶.

In terms of the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the European Court held that the parents, themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent. In addition, **no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest.** The applicants could have attended the government-funded evening school in a nearby town. However, that had not been sufficient to repair the above-described deficiencies in the applicants' education¹⁰⁷.

While recognizing efforts made by the Croatian authorities to ensure that Roma children received schooling, the European Court of Human Rights held **that no adequate safeguards had been put in place at the relevant time to ensure sufficient care for the applicants' special needs as members of a disadvantaged group.** Accordingly, the placement, at times, of the applicants in Roma-only classes during their

¹⁰⁴ Idem. See para 188-162.

¹⁰⁵ Idem. See para.163-171

¹⁰⁶ Idem. See para 176 and 177.

¹⁰⁷ Idem. See para 178 and 179.

primary education had not been justified, in violation of Article 14 taken together with Article 2 of Protocol No. 1¹⁰⁸.

SAMPANI AND OTHERS V. GREECE (2012): ENROLMENT OF ROMA CHILDREN IN SEPARATE SCHOOL FACILITY

On 11 December 2012, in the case *Ioanna Sampani and others v. Greece*¹⁰⁹, filed by 140 Roma (98 children and 42 parents) through the Greek Helsinki Monitor, a Greek non-governmental organization, the European Court of Human Rights ruled that there was evidence of a practice of discrimination under Article 14 of the European Convention of Human Rights in conjunction with Article 2 of Protocol No. 1, since it was found that the operation of the school during 2008 to 2010 resulted in further discrimination against the Roma applicants.

The application concerned the *continuing educational segregation* of Roma children to a Roma-only school, namely the 12th Elementary School of Aspropyrgos. This segregation occurred against the 5th June 2008 judgment in the case of *Sampanis and Others v. Greece*¹¹⁰, when the ECtHR found Greece in violation of the Convention in relation to the initial school exclusion of Roma children living in the Psari settlement of Aspropyrgos and subsequently their segregation in a separate facility (an annex of the 10th Elementary School of Aspropyrgos). Following the ECtHR judgment, the Ministry of Education renamed the 10th Elementary School of Aspropyrgos annex as 12th Elementary School of Aspropyrgos so that Greece could claim before international *fora* that no school segregation takes place anymore.

On 22 February 2011 the Deputy Prosecutor of the Greek Supreme Court issued a relevant “Urgent Written Order” (with Protocol Number 720/22-02-2011) addressed to all local prosecutors of Greece, following a letter (16 February 2011) on behalf of the “Coordinated Organizations and Communities for Roma Human Rights in Greece” (SOKADRE) asking him to investigate thoroughly cases of educational exclusion and marginalization of Roma children in “school-ghettos”, contrary to Greek law as well as following several circulars and other clear instructions from the Prosecution Office of the Supreme Court itself¹¹¹. According to his above Order, the Deputy Prosecutor of the Greek Supreme Court officially asked all local prosecutors of Greece to “*take care of striking the phenomenon of exclusion of Roma from the public educational system of Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured*”. It is noteworthy that although the above document (“Order”) of the Prosecution does not refer strictly to the specific provisions of the Greek anti-discrimination legislation, there is no doubt that at least this concrete judicial authority has fully realized the tremendous importance of the enforcement of the existing legal framework against discrimination.

¹⁰⁸ See Orsus and Others v. Croatia, application no. 15766/03, Grand Chamber (2010), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97689>

¹⁰⁹ ECtHR, 2012, App. No. 59608/09.

¹¹⁰ *Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma, op. cit.*

¹¹¹ *Ibid.*

In its Chamber judgment in the case of *Sampani and Others v. Greece* (application no. 59608/09), the European Court of Human Rights held, unanimously, that there had been a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 2 of Protocol No. 1 (right to education).

The European Court **examined whether there had been an objective and reasonable justification for the difference in treatment.** It reiterated that where a difference in treatment was based on race, color or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible. The Court noted that a number of European States encountered serious difficulties in providing adequate schooling for Roma children. The Court observed that **the case entailed a complex balancing exercise between the competing interests and that it was not easy to find suitable teaching methods for children lacking proficiency in the language of instruction.** However, the Court held that in exercising its margin of appreciation in the education sphere, **Greece had not taken into account the particular needs of Roma children in Psari as members of a disadvantaged group.**

The European Court observed that although the 9th, 10th and 12th schools shared the same catchment area, **only Roma pupils had attended the 12th school.** The school had also **experienced difficult material conditions**, to which its head teacher had drawn the authorities' attention. The Court further observed that **the plan to merge the 11th and 12th schools had been rejected** by the prefect and the mayor. The latter had stated in a letter to the Ministry of Education that since "Gypsies [had] chosen to live in dumps which they themselves [had] created" and to "engage in illegal activities", they could not expect "to share the same classrooms as the other pupils of Aspropyrgos". Appeals by the Ombudsman, who had described the institution as a "ghetto school", had been in vain and the applicants had not received a reply to their letters to the Ministry of Education.

The European Court, while noting that **the Greek Government had not given any convincing explanation of why no non-Roma pupils attended the 12th school, found that the operation of the school between 2008 and 2010 had resulted in further discrimination** against the applicants. There had therefore been a violation of Article 2 of Protocol No. 1.

Under Article 46 of the ECHR (binding force and execution of judgments), the Court recommended that those of the applicants who were still of school **age be enrolled at another State school and that those who had reached the age of majority be enrolled at "second chance schools" or adult education institutes** set up by the Ministry of Education under the Lifelong Learning Programme.

HORVATH AND KISS V. HUNGARY (2013): ENROLMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS

The case of Horvath and Kiss against Hungary concerns the misdiagnosis and placement of two Roma children in special schools. Due to the placement to a special school they were unable to enroll in mainstream secondary schools. Horváth and Kiss complained to ECHR that their education in a remedial school had represented ethnic discrimination in the enjoyment of their right to education. They alleged that the tests used for their placement had been culturally biased and knowledge-based, thus putting Roma children at a particular disadvantage.

István Horváth was born in 1994. He was living in a Roma settlement in Nyíregyháza, close to the eastern border of Hungary. In 2001 an Expert and Rehabilitation Committee had assessed his mental ability and diagnosed him with mild mental disability and declared him a special educational need child. Pursuant to the diagnosis he could only enroll to a special, remedial school for disabled children. The plaintiff's parents were not allowed to be present during the diagnosis, their consent or approval was not gathered for the placement in special school and parents were not informed about their right to appeal the decision. András Kiss was born in 1992. He started the elementary education in a segregated mainstream (normal) school in the Roma settlement, where he was educated under a program called Step by Step, as a result of his "socio-cultural" disadvantaged background. In 2000, he was diagnosed with mild mental disability and referred to a special school. His parents did not agree with the replacement, did not consent to the replacement and wanted the child to be educated in a mainstream school.

The proportion of Roma students in the special school attended by the applicants was 40 to 50% in the last ten years. Statistical data indicated that in 2007 Roma represented 8.7% of the total number of pupils attending primary school in Nyíregyháza. In 1993, the last year when ethnic data were officially collected in public education in Hungary, at least 42% of the children in special educational programme were of Roma origin according to official estimates, though they represented only 8.22% of the total student body.

Both Roma applicants claimed that the Expert Panel (EP) discriminated them and misdiagnosed them as "mildly mentally disabled" on the basis of their ethnicity, social and economic background. They asserted that the EPs were free to choose the tests they applied, and that it was well-known among experts that some tests were culturally biased and led to the misdiagnosis of disadvantaged children, especially Roma ones. This systemic error originated in the flawed diagnostic system itself, which did not take into account the social or cultural background of Roma children, was as such culturally biased, and therefore led to the misdiagnosis of Roma children. They claimed that it was the responsibility of the experts who were required by the law to be experienced in the field of mental disabilities and thus obliged to know the symptoms of such disabilities to ensure that only children with real mental disability were educated in special schools or classes. In addition, and in violation of the respective rules of procedure, the plaintiffs' parents had not been informed of the Panel's procedure or its consequences or of their rights to participate in the proceedings and to appeal against the decisions in question, so their constitutional right to a remedy was violated.

On 27 May 2009 a Hungarian Regional Court found that the respondents' conduct towards the applicants amounted to a violation of equal treatment and education and therefore ordered them, jointly and severally, to pay HUF one million, approx. 3450 EUR in damages. The Court explained that it was called on to investigate whether the respondents ensured the plaintiffs' civil rights without any discrimination. It reasoned that the relevant regulations clearly stipulated that the EP should individualize each case, decide on special needs in each case according to the needs and circumstances of the individual child, identify the reasons underlying any special needs, and establish specific support services which a child needed according to the extent of disability. The Court held that this kind of individualization was lacking with regard to the plaintiffs and that the Expert Panel had failed to identify the specific professional services that would help the applicants in their education. In the court's view, the County Council had failed to ensure effective control over the Expert Panel.

On the basis of the appeal introduced by the Special School and the County Council, the Debrecen Court of Appeal reversed the first-instance judgment and dismissed the applicants' claims against these two respondents. The Court of Appeal agreed with the Special School's defense, that it had done no more than enroll the applicants according to the EP's decision. It held that it was for the County Council to ensure effective control over the lawful operation of the Special School and the Expert Panel. The Court held that an omission in this regard might establish the County Council's liability, in particular because the parents' procedural rights had not been respected.

The Court of Appeal further noted that, in order to prevent the misdiagnosis and consequent segregation of Roma children into remedial schools, there was a need, unfulfilled, for the development of a new diagnostic testing system which should take into account the cultural, linguistic and social background of children. However, it held that the lack of appropriate diagnostic tools and the subsequent placement of the applicants into remedial schools did not have any connection to their ethnic origin, and therefore found no discrimination against the applicants, concluding that their rights had not been violated. In its view, the applicants had not suffered any damage as a result of the unlawful conduct of the respondents, since, according to the court-appointed experts' opinion, they had been educated in accordance with their mental abilities.

Chance for Children Foundation (CFCF) representing the Roma victims before the Court proceedings submitted a request for review before the Supreme Court. CFCF argued that there was no national professional standard established with regard to the diagnostic system in Hungary. The well-known systemic errors of the diagnostic system, together with the disregard of the socially, culturally and linguistically disadvantaged background, had resulted in a disproportionately high number of Roma children diagnosed as having "mild mental disability". CFCF requested the Supreme Court to establish, as an analogy with the case of *D.H. and Others v. the Czech Republic*, that the misdiagnosis of Roma children constituted discrimination. Such misdiagnosis represented direct – or alternatively indirect – discrimination, based on the ethnic, social and economic background of the applicants. The Hungarian Supreme Court reviewed the second-instance judgment

and found it partly unfounded. It stated that the conduct of the Special School and the County Council had not violated the applicants' right to equal treatment, either in terms of direct or indirect discrimination. The Supreme Court further noted that the systemic errors of the diagnostic system leading to misdiagnosis – regardless of its impact on the applicants – could not establish the respondents' liability. The creation of an appropriate professional protocol which considers the special disadvantaged situation of Roma children and alleviates the systemic errors of the diagnostic system is the duty of the State. The Court observed that the EP's handling of the parental rights had violated the relevant law.

The European Court judgment in the case (2013)

The Roma applicants further addressed the European Court of Human Rights represented by the Chance for Children Foundation (CFCF) and the European Roma Rights Centre (ERRC). On 29 January 2013 the Court delivered its judgment.¹¹²

The Court noted that Roma children had been overrepresented among the pupils at the remedial primary and vocational school attended by the applicants and that **Roma children had overall been overrepresented in the past in remedial schools in Hungary due to the systematic misdiagnosis of mental disability**. The underlying figures were uncontested by the Hungarian Government. The Court found a *prima facie* case of indirect discrimination.

The Government therefore had to prove that that difference in treatment had no disproportionately prejudicial effects. The Court accepted that the Hungarian Government's position to retain special schools had been motivated by the intention to find a solution for children with special educational needs. It also acknowledged that the Hungarian authorities had taken a number of measures to avoid misdiagnoses in school placement. However, **the Court shared the concern by other bodies of the Council of Europe about the more basic curriculum followed in the special schools and the segregation which the system caused**. A report on Hungary published by the European Commission against Racism and Intolerance (ECRI) in 2009 had found that the vast majority of children with mild learning disabilities could easily be integrated into mainstream schools, but were often still misdiagnosed because of cultural differences. Once misplaced, those children were unlikely to break out of the system of inferior education. Since the applicants had not brought their complaint about the alleged structural problems of biased testing before the Hungarian courts, the Court declared that part of the application inadmissible. It noted, however, that the tests that had been used to assess the applicants' learning ability had given rise to controversy and continued to be the subject of scientific debate. In particular, the Hungarian authorities had set the borderline value of mental disability at IQ 86 and thus significantly higher than the WHO value of IQ 70.

¹¹² Horvath and Kiss v. Hungary, application no. 11146/11, Second section (2013), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>

The ECtHR stressed that “as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. **Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases**¹¹³. The Court stated that the wording of Article 2 of Protocol No. 1 implies a positive obligation on the part of the State¹¹⁴ and that in light of the recognized bias in past placement procedures into special schools the State **have specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests**”¹¹⁵.

While the Court was not in a position to assess the validity of the tests applied in Hungary to assess the mental capacity of a child, the Court noted that “at the very least, there is a danger that the tests were culturally biased. For the Court, the issue was therefore to ascertain to what extent special safeguards were applied that would have allowed the **authorities to take into consideration, in the placement and regular biannual review process, the particularities and special characteristics of the Roma applicants who sat them, in view of the high risk of discriminatory misdiagnosis and misplacement.**”¹¹⁶

Therefore, the facts of the case indicated that the **schooling arrangements for Roma with the alleged “mild mental disability” had not been attended by adequate safeguards that would have ensured that their special needs as members of a disadvantaged group were taken into account. As a result they had been isolated from pupils from the wider population and had received an education which was likely to have compromised their personal development** instead of helping them to develop skills to facilitate their life among the majority population. The Court considered that the Hungarian Government had failed to prove that the difference in treatment had no disproportionately prejudicial effects on the applicants and had accordingly established a violation of Article 2 of Protocol No. 1 in conjunction with Article 14 in respect of both applicants¹¹⁷.

LAVIDA AND OTHERS V. GREECE (2013): ENROLMENT OF ROMA CHILDREN IN SEPARATE SCHOOLS

On 21 October 2011, the European Court of Human Rights communicated to Greece another application¹¹⁸ concerning the Roma community in Sofades – Central Greece- where all 550 Roma pupils attend the Roma-only 4th Primary School as opposed to the 289 non-Roma pupils who attend the non-Roma-only 1st

¹¹³ Oršuš and Others, §§ 147-148

¹¹⁴ Horvath and Kiss v. Hungary, para. 103

¹¹⁵ Idem; para. 116.

¹¹⁶ Ibid; para. 121

¹¹⁷ Horvath and Kiss v. Hungary

¹¹⁸ European Court of Human Rights, case of Lavida and others v. Greece (2013); App. no. 7973/10.

and 2nd Primary Schools¹¹⁹. The developments following the communication of the *Lavida and Others* application were indicative of the resistance of many local communities to the integration of Roma pupils into mainstream schools for all pupils.

On 23 December 2011 the Ministry of Education's Office of the Special Secretary ordered the transfer (effective from 1 January 2012) of all Roma children of the first grade attending classes at the 4th Primary School to five other municipal schools in Sofades and surrounding villages¹²⁰. At the same time, specialized educational staff would be assigned to these schools in order to ensure the smooth integration and school attendance of the Roma pupils. From the next school year (2012-2013), pupils that were to be registered in the first grade did not do so at the 4th Primary School but would be dispersed and enrolled in the five aforementioned primary schools. In that letter, the Special Secretary expressed her "*deep concern*" regarding the concentration of Roma pupils in certain primary schools in the prefecture of Karditsa, particularly in light of "*the application of Lavida against Greece, before the European Court of Human Rights.*" This decision caused uproar in the non-Roma community of Sofades (some 40% of the total population compared to 60% for the Roma community) and precipitated virulent racist reactions on the part of the local societies in Sofades and Karditsa, leading to the closing of schools to which Roma pupils were to be transferred.

As a result, on 26 January 2012 the Minister of Education *overturned the desegregation decision* announcing an effective regression into the *status quo ante* of prevailing segregation with an "icing" of token desegregation that included the creation of a new 5th Primary School only for Roma and the selection of just nine first graders to formally register at the 1st and 2nd Primary Schools but be assigned to preparatory classes housed at the premises of the 5th Kindergarten [which is located in the new Roma settlement and is attended exclusively by Roma pupils]. Moreover, from the beginning of the school year 2012-2013, the pupils of the 5th Kindergarten were to be registered to various Primary Schools of the town of Sofades under the provision that their numbers will not surpass 20% of the total student body at any given school.

The European Court of Human Rights observed **that primary school no. 4 in Sofades was a school attended solely by Roma children.** In spite of the rule that pupils were to be educated in schools situated near their homes, no non-Roma child who lived in the district attached to school no. 4 was educated in that school. The European Court further noted that **school no. 4 had not been set up as a school intended exclusively for Roma children and did not include preparatory or support classes for Roma children who wished to move to an ordinary state school after having reached a sufficient educational level.** School no. 4 was an ordinary school which offered a similar program to that in other state primary schools.

¹¹⁹ Greek Helsinki Monitor, Parallel Report on Greece's compliance with the UN Convention on the Rights of the Child: An Update (March 2011 – May 2012), p. 5.

¹²⁰ See also 2012 Annual Report of the Greek Ombudsman, http://www.synigoros.gr/?i=kdet.el.ehtisies_ektheseis_documents.93959.

The European Court noted that the relevant authorities, in particular the Ministry of Education, had been informed about the existence of ethnic segregation in the education of Roma children in Sofades. This situation had been described in two letters sent to that Ministry and in a report by the Regional Education Department. The report had drawn attention to the existing situation and recommended that the authorities avoid placing Roma children in schools attended exclusively by children belonging to the Roma community, in order to end social exclusion and promote Roma integration. It suggested building new schools and re-drawing the school catchment map. It noted **that the education of Roma children in the existing schools in Sofades was impractical, given the large number of pupils and lack of infrastructure.** The report also noted the municipal council's refusal to close down school no. 4 and the hostile reactions of the parents of non-Roma pupils when Roma children were enrolled in the other schools in Sofades.

The European Court observed that **the relevant authorities had officially recognized the existence of segregation in the school in question, and the need to correct it.** Nevertheless, the Court could not subscribe to the Government's argument that for the 2009-2010 academic years it would have sufficed for the applicant parents to request the transfer of their children to another ordinary school in order to end the feeling of discrimination.

Even in the absence of any discriminatory intention on the State's part, the European Court held that a position which consisted in continuing the education of Roma children in a state school attended exclusively by children belonging to the Roma community and deciding against effective anti-segregation measures could not be considered as objectively justified by a legitimate aim. The situation complained of by the applicants for the 2009-2010 academic year had lasted until the 2012-2013 academic year. Subsequently the Court held that there had been a violation of Article 14 taken together with Article 2 of Protocol No. 1¹²¹.

¹²¹ See affaire Lavidia et autres c. Grèce, *Requête no. 7973/10*, Arrêt, 30 mai 2013, Definitif, 30/08/2013, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"itemid\":\[\"001-119974\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\)

III. METHODOLOGY REGARDING IDENTIFICATION, DOCUMENTATION, MONITORING AND REPORTING OF SEGREGATION CASES

The phenomenon of school segregation affecting large numbers of Roma in Central and Eastern Europe (CEE) has different historic roots and manifestations ranging from disproportionate placement of Romani children in special schools for children with mental disabilities to maintenance of Roma-only schools, to separation of Romani children in Roma-only classes within mainstream schools. A significant number of Roma children are discouraged from continuing their education due to school segregation. Reasons for not enrolling or leaving school are numerous and they include family financial situation, lack of adaptation of educational institutions (discrimination) as well as lack of support for children during the educational process.

3.1. School segregation in the case of the Roma communities

In the last decade, there has been a growing awareness among policy-makers and decision-makers and various civil society actors working in local, regional and national NGOs that patterns of segregated schooling pose a major barrier for access to equal educational opportunities for Romani communities throughout Europe. Bulgaria is not excluded from this process.

“School segregation is a problem because it aggravates inherited social inequalities. It is a negative phenomenon both from efficiency and moral considerations. It is especially alarming if it happens on ethnic grounds and targets minorities who are distinguishable by their appearance”¹²².

Beyond the social injustice involved in school segregation of Roma, there are major problems that are encountered in segregated education as these schools have low efficiency and are offering significantly lower quality services than mainstream schools.

De facto segregation based on residential patterns seems to be perhaps the most pervasive form of segregation in Bulgaria.¹²³ However, segregation of Roma pupils from the majority population within single schools certainly happens as well.¹²⁴ Most of the desegregation programs attempt to limit the proportion of Roma students in the schools they integrate because they expect that if that proportion gets too high, Roma students would be segregated again within those schools, or it would give rise to the so called “white flight” phenomenon where non-Roma parents enroll their children in other schools.

¹²² Gábor Kertesi : Segregation in the Primary School System in Hungary, Causes and Consequences

¹²³ See generally Wlach reports.

¹²⁴ See Wlach at 26 (noting that, unlike most of the segregated schools visited, Sliven’s segregated school is not located in the Roma neighborhood); id. at 4.

School segregation can be divided in the following core categories:

Ghetto Schools: Schools with a majority of Roma caused mainly by residential segregation
Placement of Roma in special schools for learning and mental difficulties
Segregation by classroom based on ethnicity
Zero grades (compensation for lack of school readiness)
Private Student's status (decreasing the presence of Roma within the school)

Research in this field concluded that studying in segregated environments leads to psychological harm of Roma children manifested in diminished self-esteem and self-respect leading to identity development problems¹²⁵.

On the other hand, desegregation is a serious problem in most of the countries of CEE, some more serious than others, but most countries have the same list of problems that require innovative and proactive interventions. Furthermore sustainable desegregation is a long process and always requires the close monitoring and control of the newcomers and first graders in order to maintain the proper class composition and quality of education.

3.2 Documenting school segregation

The process of documentation includes a number of steps not limited to the following:

- A. **COLLECTING THE INFORMATION:** determine what information is needed, establish the means for acquiring it and act to obtain it.
- B. **ORGANIZING THE INFORMATION:** record the information discovered, collect already-existing information containing the needed information.
- C. **ANALYZING THE INFORMATION:** put together the collected information, make assessments of information, and draw patterns and directions that lead to main conclusions and recommendations.
- D. **ESTABLISHING FACTS:** elaborate conclusions on the basis of evidence and laydown recommendations for action
- E. **DISSEMINATING THE INFORMATION:** Make public the report of the documentation process.

¹²⁵ The case for integrated education, issue No.: A school for all, REF, 2007

3.3. Identifying school segregation

In order to identify school segregation the documentation process needs to include a number of steps that will have to be focused on several action type measures such as:

FACT FINDING	<ul style="list-style-type: none"> • Desk research (identifying segregation) • Field visits (settlement, parents, children) • Meeting stakeholders (school, local authorities, regional, national authorities, Roma leader, NGOs etc.)
ANALYSIS AND FACTS	<ul style="list-style-type: none"> • Statements (parents, children, school representatives) • Documents (school recordings, documents signed by parents) • Official positions (Ministry of Education, School manager, School Inspectorate, Mayor, Prefect) • Video or audio recordings (media articles, radio interviews, vide materials made by media, NGO's)
RREPORTING	<ul style="list-style-type: none"> • Report following documentation (conclusions, recommendations) • Public reporting (media, social networks, video networks)
IDENTIFY AVENUES	<ul style="list-style-type: none"> • Identify the main course of action depending on the conclusion of the report
FOLLOW UP ON THE CASE	<ul style="list-style-type: none"> • Address the schooling authorities (mediation) • Present the case to supervisory authorities (regional and national education institutions) • Lodge a complaint with educational authorities • Lodge a complaint with equality body • Lodge a complaint with Civil courts
MONITORING	<ul style="list-style-type: none"> • Follow up the case and the measures adopted for redress

The fact finding step requires to investigate various sources that might provide important information to help establish a school segregation case.

STEP	TYPE OF INFORMATION	SOURCE OF INFORMATION
FACT FINDING	Census	Central Statistical office
	Sociological surveys	Research institutes
	Newspaper articles	Media
	Academic articles	Academic institutions
	TV or radio reports	TV, radio
	Statement by clients	Roma children, Roma parents
	Witness statements	Witness
	Documents	Potential perpetrator
	Statistics	Public administration/ institutions
	Expert opinions	Fact finding
	Tape or video recordings	YouTube, social media, TV
	Photographs	Clients, NGOs, Media
	Policy documents	(Local, regional) Government
	Laws	Internet
	Results of situation tests	Testers
Reports by monitoring organizations	United Nations, Council of Europe, EU Fundamental Rights Agency, domestic or international NGOs	
Answers to public information queries or questionnaires	Local, regional, national governments, ministries of education, school inspectorates, etc.	

The documentation process will have to focus on a number of aspects that are relevant in order to establish wheatear school segregation occurred and is contrary to the anti-discrimination provisions.

STEP	IINFORMATION	ASSEMENT
ANALYSIS AND FACTS	1. Who generated the separation?	The school (staff or management), local, regional or national government
	2. What generated the separation?	Creation of segregated class, placement in separate building, facility, maintaining same class structure, transfer of children, enrolment from the same community, late enrolment of children etc.
	3. Who was subject to separation?	Roma children from a community, neighborhood, locality, former class etc.,
	4. When was the separation taking place?	Since the school year of ...
	5. Where did occurred?	In town, school
	6. How did it happen?	Decision of School director to place Roma in a facility, different building, different class, etc.
	7. What is the result?	Roma children separated by non-Roma, material conditions inferior, no qualified teachers, lack of good schooling results, drop out of children, absenteeism, etc.
	8. Who is responsible?	The school headmaster, teacher, Mayor, local, regional or national government.
	9. Who has witnessed the situation?	Roma children, Roma parents, Roma community representatives, leader, NGOs, media, local authorities etc.
	10. Are there documents, statistics, and expert opinions to prove the situation?	Documents from school, school inspectorates, Ministry of Education, independent research, reports from NGOs, etc.
	11. What is the alleged ground for segregation? Is it real, assumed, associated, multiple?	Race and ethnic origin. Transfer from another school or class, lower schooling results, intellectual abilities, social disadvantage, lack of language command etc.
	12. Who is the control person or group to which the treatment suffered by the victim is comparable?	Majority children in the other class, building, school.
	13. Does the case raises elements of segregation contrary to anti-discrimination law?	Physical separation on the ground of ethnicity, lower quality of education etc.

3.4. Models for documenting and reporting segregation

In general, identifying cases of school segregation in Bulgaria is totally visible as to the situation of the so-called “Roma schools” (Ghetto schools) such as those in Sofia, Plovdiv, Kjustendil, Vidin, Montana, Berkovitsa, Varna, Burgas, etc. In the context of school optimization in Bulgaria, in rural areas segregation developed due to demographic changes and the fact that in those areas the majority population leaves to urban areas or abroad but Roma still live there. Along with that, school segregation can be found also in the so-called mixed, accepting schools where Roma children are part of the desegregation process in the country. If one asks why the answer is simple. In most cases school management enrolls Roma children in separate classes with the excuse that it is the option of the parents.

Documenting school segregation as well as other types of abuse and discrimination in most cases is rather a difficult process to be defined and reported. In most cases the causes are hidden and not directly shown. The existing legislation regulates public relations although there are cases that make Roma community to step back and give up their rights.

EXAMPLE

M.N. is a 15 years old Muslim Roma enrolled as regular student for 2013/2014 school year in the Vocational School of Veterinary Medicine and Forestry in the town of Kostinbrod, near Sofia. The boy was bitten in March 2014 by his classmates because he spoke with his family in his mother tongue. Following the passive attitude of the school management staff to address the case or initiate any actions in relation with the implementation of the Antidiscrimination law the Roma parents moved the child in an almost segregated school with a high percentage of Roma pupils in Sofia.

SOURCES OF INFORMATION

The most important part of the puzzle is to have an established and well – regulated source of information that can lead you to the next steps of documenting, monitoring and reporting schools segregation or other cases of discrimination,.

Usually, the Bulgarian National Statistical Institute is the state official body that collects data about the population but the existing legal framework in Bulgaria does not allow collecting such information based on ethnic grounds. In this regard this source of information is totally unreliable for providing accurate data for cases of school segregation or other types of any discrimination cases that can appear in society.

When it comes to Roma specifically, state institutions in Bulgaria are always using the argument that they do not collect data on Roma as they do not want to discriminate the community. At the same time the Ministry of Labor and Social Policy collect such information through the Employment Agency where all people that get registered in the Labor Offices declare their ethnic origin.

A possible option to get information is the Commission for Protection against Discrimination which is the most relevant institution that may provide some data. Nevertheless, in the annual report for 2011 the Commission provides information about the number of discrimination cases based on ethnic origin but it does not give information if cases were relates to Roma or other minorities as well.

When talking about school segregation, the most obvious source of information remains the local non-governmental organizations working directly with Roma communities.

WHAT COULD BE DONE?

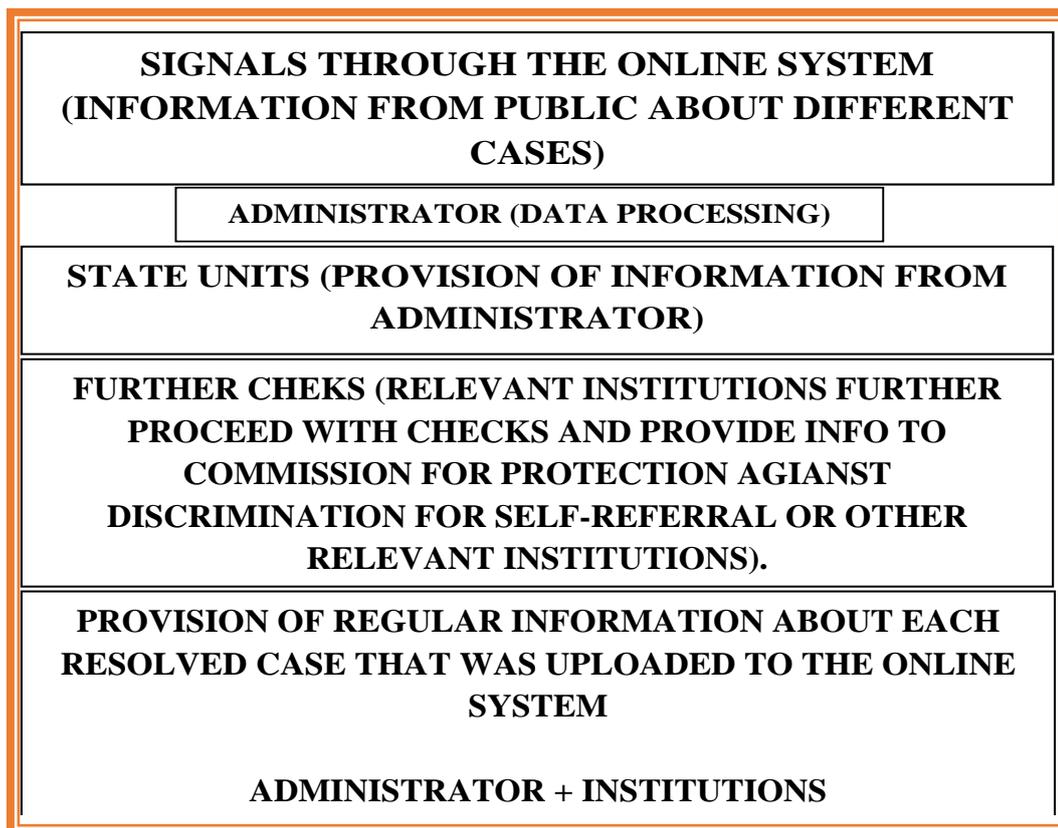
A possible solution would be to establish a good source of information through an online available data base where people can access and register issues that they are faced with ranging from school segregation, discrimination, or other violations. Such data base could provide an opportunity for individuals to signal situations or issues affecting the community in relation with public institutions.

EXAMPLE
For instance, in locality X anybody knows that in class A out of 20 children 15 are Roma. An online database can provide an easy access for people to write and describe what they have noticed. This data base should be promoted among society and linked to all local, regional and central institution including the Commission for protection against discrimination, the National Council on Ethnic and Integration Issues, all the other ministries that are responsible for the implementation of the strategic and programming documents for Roma, etc.

Having this opportunity the administrative units can initiate actions defined by the regulation to avoid school segregation or any cases of discrimination in the country. Also this can be of very much help to the Commission for Protection against Discrimination to self-referral with acts of discrimination.

Here is a graphic of how this model would look like and what would be needed in order to be implemented:





For the purpose of documentation the data base will be connected to a number of stakeholders:



For the **PUBLIC** it is important to be well informed about opportunities provided by such online data base system where they can share information about school segregation or any other type of violations. Providing such information is in the best interest of the community and individuals whose rights are affected.

NGOs may directly contribute to the process by providing free access to the data base and the necessary platform for individuals to access and report matters of concern for them.

PUBLIC INSTITUTIONS provided with information that results from the data base could generate specific measures depending on the nature and form of information of each case. This may involve initiating a range of measures such as identifying concrete situations, the parties involved, the issues at stake, a formal investigation, a complaint procedure, mediation etc.

A number of documenting tools for monitoring school segregation are included below:

OBSERVATION GRID	
SCHOOLS	
1. Name and type of the school (elementary, primary, secondary, vocational, etc.)	
2. Distance (in km) to Romani settlement and available transportation	
3. Location relative to Romani settlement (inside, on the border, outside)	
4. Location within municipality (central vs. non-central)	
5. Physical surroundings (main vs. side street, nearby public institutions, enclosed by fence, official symbols of an education unit)	
6. Courtyard (material, condition, cleanliness, overall appearance)	
7. School buildings (construction materials, quality and condition of walls, floors and furniture, cleanliness, overall appearance)	
8. School infrastructure:	
	<input type="checkbox"/> Running water <input type="checkbox"/> Indoor toilets <input type="checkbox"/> Central heating <input type="checkbox"/> Library <input type="checkbox"/> Computers <input type="checkbox"/> Specialized classrooms (e.g., laboratories)
9. Approximate average class size (number of pupils)	
10. Approximate average classroom size (in square meters)	
11. Approximate average number of pupils per computer	
12. Apparent ethnic composition of classes (all-Romani, Romani-majority, Romani-minority)	
13. Placement of Romani pupils (mixed classes only: front vs. rear, Romani vs. non-Romani desk mates)	
14. Presence of Romani teaching staff (teachers, assistants)	
15. Languages of communication between teaching staff and pupils	

**OBSERVATION GRID:
ROMANI SETTLEMENTS**

1. Name of settlement
2. Region, municipality
3. Distance (in km) to center of municipality
4. Road access (presence, material, condition)
5. Access to public transportation (type, frequency, quality)
6. Access to public utilities:
 - Electricity
 - Gas
 - Water
 - Sewerage
 - Streetlights
 - Telephone
7. Approximate number of buildings Housing (type, construction materials, size, condition, overall appearance)
8. Language(s) used by inhabitants of settlement (Romani, Bulgarian, Turkish, other)
9. Presence in settlement of public institutions:
 - City hall
 - Post office
 - Cultural center
 - Bank
 - Shops
 - Cinema
 - Church
10. Distance (in km) to nearest:
 - Education institutions:
 - Standard preschool
 - Special preschool
 - Standard primary school
 - Special primary school
 - Standard secondary school
 - Special secondary school
 - Health center
 - Non-Romani settlement

**OBSERVATION GRID:
MUNICIPAL OFFICES**

1. Name of municipality
2. Size of Romani population (local registers)
3. Romani settlements
 - Number
 - Location
 - Approximate size
4. Education institutions (number, location, proportion of Roma attending):
 - Standard preschools
 - Special preschools
 - Standard primary schools
 - Special primary schools
 - Standard secondary schools
 - Special secondary schools
5. Presence of Romani public officials
6. Willingness to provide information
7. Public officials' expressed attitudes toward Roma

3.5. Reporting and monitoring school segregation

Reporting is an essential element of the monitoring process, because without it, the best documentation process can be useless. Reporting involves an internal and external aim, on the one hand, for the use of the organization that produced the documentation and on the other hand for the use of stakeholders, for a wider distribution to third parties, such as the media or general public, state authorities and relevant institutions.

Monitoring is the most important part of any process, programs or projects that are implemented for a certain group of people (target group). In our case monitoring should be concentrated on school segregation and/or other cases of human rights abuses.

Monitoring is a continuous function that should aim primarily to provide the public and main stakeholders with regular information and early indications of progress or lack thereof in the achievement of intended results related with the decrease of the schools segregation or discrimination in the country.

Monitoring tracks the actual performance or situation against what was planned or expected according to predetermined standards.

Monitoring generally involves collecting and analyzing data on implementation processes, strategies and results and recommending corrective measures.

The most effective way to monitor segregation in schools is to cooperate directly with parents in the locality where segregation occurs. Once you identify the place and school where you want to monitor segregation and its development (at best its elimination), it is necessary to establish and maintain contact with parents of children who attend the school and with parents with children in pre-school age. For monitoring, it is important to take audio or video recordings, equally important is the e-mail or other correspondence and writing notes or reports, because these materials provide evidence of the existence of segregation.

Reporting includes a later step that involves addressing the issue with relevant authorities. In our case this might include the following:

- Report school or class-level segregation to the school **MAINTAINER/INSPECTORATE/MINISTRY RESPONSIBLE FOR EDUCATION;**
- Report school level or class-level segregation to the **EQUALITY BODY;**
- Report school-level, class-level segregation and the misdiagnosis of Roma children to **CIVIL COURTS;**
- Report school-level, class-level, segregation and the misdiagnosis of Roma children to the **OMBUDSMAN**

Reporting to **SPECIALISED INSTITUTIONS** should consist of the following parts:

FACTS OF THE CASE: based on official documents, field visits, testimonials, sociological studies, expert's opinion provide an overview of the situation, the separation of Roma and non-Roma children and the reason of segregation.

UNLAWFUL SITUATION: Based on the facts it needs to be underlined why the factual circumstances constitute an unlawful situation, that led to segregation and who is responsible for such action.

RELEVANT LAWS AND CASE LAW: Indicate the relevant national and international laws as well as principles established by national and international courts in the area of school segregation.

PROCEDURAL ASPECTS: This part may refer issues such as further needed evidence: to hear certain persons as witnesses, to obtain certain official documents from the respondents, to appoint an expert with a view to provide an expert's opinion, etc.

A complaint on school segregation can be addressed to:

- **THE RELEVANT REGIONAL INSPECTORATE ON EDUCATION**
- **NATIONAL OMBUDSMAN**
- **THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION**

The Regional Inspectorates on Education are local representatives of the Ministry on Education. Despite being legal entities and responsible for the implementation of the national policies on local level, they cannot actually take policy decisions, which will have impact on local level. Eventual closing of segregated school would be exactly a decision of this kind. Therefore a complaint for existence of segregated school may not have substantive effect if addressed to the Regional Inspectorate on Education.

However, in cases where certain schools are subject to white flight and gradually become all-Romani schools, the Regional Inspectorates are suitable addressee of warning, which could urge them to take actions to prevent further "Romanization" of mainstream schools. Other cases, suitable to be addressed to the Regional Inspectorates, are cases where all-Roma classes are organized in mainstream schools. In such cases the Regional Inspectorates have enough authority to take actions and prevent violation of the law.

In terms of the Ombudsman it needs to be noted that the jurisdiction of the National Ombudsman allows the following actions:

- 1. Recommendations to relevant authorities to stop violation;**
- 2. Proposals to bodies with law-making initiative.**

A complaint on school segregation may be lodged with the Commission for Protection against Discrimination. The complaint should be written in Bulgarian or be accompanied with Bulgarian translation, if written in foreign language, and should have the following requisites:

- **Name and address of the author,**
- **Description of the alleged violations,**
- **Statement of the claims,**
- **Date and signature.**

The Commission cannot review anonymous complaints/signals. The complaint should be accompanied with a special declaration, stating that the same case is not addressed before the Court.

Templates for complaint and declaration are available at the web page of the Commission for Protection against Discrimination available at: <http://www.kzd-nondiscrimination.com/>

The legal grounds for initiating proceedings against segregation in education are within the *Protection against Discrimination Act*.

According to Art. 5 of the Protection against Discrimination Act (PaDA), segregation is forbidden form of discrimination. The term “segregation” is defined within paragraph 1, point 6 of the Supplementary provisions of the Protection against Discrimination Act, as “...Issuing of act, performance of action or non-action, which leads to forcible separation of a person on the ground of his/her race, ethnicity or skin color.”

The ban on segregation, provided in Art. 5 of the PADA, is a subject of challenge before the court or equality body under art. 71 and Art. 50 of the Protection against Discrimination Act.

Art. 71 of the PADA defines the court procedures, and reads that every person whose rights to equality are violated, can initiate a procedure before the court, and to ask the court to:

- 1. Identify the existence of the violation;**
- 2. Order the respondent to stop the violation, to restore the situation as it was before the violation and to restrain from violations in future;**
- 3. To award non-pecuniary damages.**

Art. 71 of the PADA also gives grounds for class action, giving standing to non-governmental organizations to initiate court procedures on their own behalf in cases where the rights of many are claimed violated.

If the segregation is a result from administrative act, this act can be also appealed before the court under the provisions of the Administrative code. An important aspect to mention is the fact that THE PROCEDURES UNDER THE PADA ARE TAX FREE.

IV. RECOMMENDATIONS FOR PREVENTING AND COMBATING SCHOOL SEGREGATION

According to international and European human rights standards States have obligations to put in place legislative and policy frameworks, to allocate financial and human resources with a view to ensure the right to education for every child, including Roma. To this end, governments need to commit to achieving universal access to basic education for every child. In order to overcome barriers facing Roma children, States must end segregation and effectively promote inclusion.

PROMOTE INCLUSION IN THE EDUCATION SYSTEM

Inclusion in the educational system is essential for improving opportunities for Roma children. Local and schooling authorities should put in place measures to ensure diverse and balanced classrooms and schools. This process needs to go far beyond changing the numbers of children in school or class. It should consider a change in the approach towards the respect of every child, the best interest of the child, towards acknowledging the need of the education system to adapt, to accommodate and to address the needs of the child. Schooling authorities should adopt an overarching policy framework that facilitates desegregation and ensures promoting inclusion. Such framework should define segregation and desegregation, inclusion, should incorporate specific objectives and articulate specific concrete measures for achieving the respective goals.

GENERAL MEASURES TO ADDRESS SEGREGATION¹²⁶

Governments and educational authorities need to recognize school segregation as a problem and to effectively address it. First of all, relevant authorities should put in place general measures that ensure ending school segregation. School desegregation of Roma children constitutes an essential step towards achieving inclusion. Desegregation breaks the physical separation of the children and provides for a setting where every child has access to the same school or class.

Governments and educational authorities should establish a long-term commitment to move towards inclusive education. This might include:

- Action plans to promote inclusion, based on in-depth analyses of the factors contributing to segregation, with appropriate financial, legal and administrative steps toward desegregation.
- Governments have to be committed to providing the extra funding needed for inclusive quality education for Roma children.

¹²⁶ The following recommendations are extracts from the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the

Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

- Consideration of legislation committing to the gradual elimination of segregated education and the introduction of an inclusive system. Legislation needs to prohibit segregation of children on the basis of ethnicity.
- National information and monitoring systems to track school placements in the future to ensure that they sustain inclusive practice. Monitoring and evaluation of programs to promote inclusion should also be undertaken. The findings of such research and data will build a better understanding of the strategies that work most effectively and can be replicated. It will also highlight those initiatives that fail, providing vital insights to help target policies and investment more efficiently.
- Consideration could be given to developing a set of indicators for monitoring segregation, taking into consideration proportions of Roma and non-Roma in a region, in classrooms, mainstream schools and special schools. Where it is impractical to gather ethnic data, proxy measures, such as socio-economic status, should be developed and used as the basis for indicators. Baseline data should be gathered and used as the basis for regular updates.
- Introduction of accessible complaints mechanisms for Roma families so that they can challenge inappropriate placement of their children in segregated schooling, discriminatory actions and other barriers to realizing their rights¹²⁷.

ELIMINATION OF SEGREGATION BETWEEN SCHOOLS¹²⁸

Measures need to be undertaken by municipalities, local authorities and schools to address the structural exclusion of Roma children caused by living in segregated settlements. Such measures include:

- A requirement that all local municipalities produce desegregation plans to be implemented over a given time period, and linked with financial incentives. These plans need to be based on direct consultation with both Roma and mainstream communities.
- Ensuring that, for as long as children remain in segregated schools within their own communities, the level of expenditure, staffing ratios and standards among teachers are directly comparable to those in schools in the non-Roma community.
- Investment in affordable and accessible transport to take children from settlements to mainstream schools that do not have a significant Roma population.

¹²⁷ Idem

¹²⁸ The following recommendations are extracts for the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the

Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis.

One of the challenges is the reluctance of families from mainstream communities to accept a greater proportion of Roma children in the schools. There is a pattern in some areas of ‘white flight’, whereby parents simply remove children from schools that accept higher numbers of Roma children. There are no easy solutions to the problem, but consideration could be given to:

- Making development assistance conditional upon a clear integration/desegregation plan of municipalities or regions and its implementation
- Ensuring that development assistance covers integration activities such as planning, school transport, monitoring and capacity-building of municipal/regional authorities rather than the pure education work in schools/preschools or Roma education centers, which should be the responsibility of the education authorities through their regular budgets
- Local municipalities need to invest in: a) - sensitization and awareness-raising within local communities to promote greater understanding of Roma culture and the challenges confronting it. Investment can be made in multi-pronged approaches towards working with communities, building tolerance within schools and collaboration with parents. Whole localities can be made targets of measures to help raise awareness, build tolerance and promote desegregation in all sectors. b) – improved housing, sanitation, employment and social welfare programs within Roma communities in order to narrow the socio-economic and cultural gaps that entrench prejudice and xenophobia between Roma and non-Roma communities¹²⁹.

ELIMINATION OF SEGREGATION WITHIN SCHOOLS¹³⁰

Efforts are needed to ensure that Roma children are not segregated into separate classes, based on assessments of academic ability or attainment, and in which they are simply taught a remedial curriculum. They should be educated within the mainstream student population, with additional support teachers provided where necessary. Instruction needs to be “integrated and differentiated, whereby all students participate together in the classroom and the teacher effectively and efficiently reaches all students in a heterogeneous environment, thus avoiding the issue of placement of students in separate, special or other classrooms.”¹³¹ Accordingly, action is needed to:

¹²⁹ Idem

¹³⁰ The following recommendations are extracts for the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the

Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

¹³¹ Idem

- Include a commitment to inclusive classroom teaching in the national action policy and plan on inclusion.
- Develop municipal policies for inclusive classroom environments, schools, teachers, municipal officials, school
- Administrators, Roma parents and children, as well as other stakeholders should be involved in that process.
- Provide support within mainstream classes to Roma children needing additional assistance.
- Monitor schools on a regular basis to ensure that segregation is not taking place, either formally or informally. Monitoring should involve Roma parents to ensure that systems are transparent and accountable to them and their children.
- Achieving comprehensive desegregation will necessarily take a number of years to implement. Accordingly, in schools with a high concentration of Roma pupils, the quality of education should be improved simultaneously with the implementation of desegregation strategies¹³².

ENDING THE PLACEMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS¹³³

Urgent action is needed to address the factors that contribute to the practice of placing Roma children in special schools. Having the vast majority of Roma children go through the mainstream school system from the very beginning of their compulsory education should be the goal of policies. This requires examining the process that leads to segregation into special schools and eliminating barriers in accessing regular mainstream schools.

Practical measures to work towards that end should include:

- **Critical reviews of the current school entry testing systems** used to assess whether or not a child is ready to enter regular primary school. In order for testing to be fair and accurate, both the testing commissions and criteria need to be reformed in order to eliminate biases and take account of differences in language, socialization, and experience.
- **Remove the financial incentives for special school placements.** The financial benefits that accrue to children with disabilities can and do serve as an incentive for parents to support their child's assessment for a special school placement. It is imperative that public policy should not promote socio-economic incentives that encourage parents to accept a lower quality education for their children. However, measures taken to address the problem should

¹³² Idem

¹³³ The following recommendations are extracts for the UNICEF publication "The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the

Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

enhance choice rather than reduce it, and not penalize parents. Governments should conduct analyses of the incentives and reasons parents have for sending their children to special schools, and use the findings to help construct appropriate solutions. One approach might be to introduce the same benefits for placing students in mainstream schools as they would receive for attending special schools, such as providing free transport and free school meals.

- **Opportunities for reassessment.** Where children have been placed inappropriately in special schools, mechanisms should be in place to enable them to be reassessed and placed in a mainstream school.
- **Involve all stakeholders.** As with all initiatives, efforts to reduce the number of Roma children in special schools should be done with the cooperation of all stakeholders and with adequate funding, clear policies and guidelines. Policies can be developed to help integrate teachers from special schools into the mainstream schools, perhaps having them help with the integration of new students transferred from special schools. Special schools can also be transformed into resource centers for mainstream schools, providing expertise and support. Municipalities and the central government need to work with the teachers to ensure that most of them will be able to access gainful employment afterwards¹³⁴.

Specific recommendations on Bulgaria stemming from the Roma Education Fund projects

Starting with 2005 the Roma Education Fund has been supporting school desegregation actions that have been initiated by Romani grassroots organizations in nine towns (Berkovitsa, Montana, Pazardjik, Pleven, Plovdiv, Sliven, Sofia, Stara Zagora, and Vidin) and school desegregation actions that have been initiated in a mainstream school in the town of Blaoevgrad. These activities follow a model of integrating Romani children from Roma-only schools into mainstream schools developed in 2000 with the launch of the first desegregation project in the town of Vidin. Through that scheme, the Centre for educational integration of children and students from ethnic minorities¹³⁵ will fund projects of NGOs and local authorities aimed at enrolment of Romani children from Roma-only schools into mainstream schools according to the model developed in Vidin and practiced in the other eight towns where Romani NGOs pioneered school desegregation actions.

According to the Ministry of Education and Science, there are about 3,000 children who have been taken out of segregated schools and transferred to ethnically mixed schools, while nongovernmental organizations supported by REF put the figure at 3,500. This clearly demonstrates the symbolic pace of the desegregation process, which had been declared as a priority. The Ministry of Education and Science reports indicate that the number of segregated schools in the entire country has diminished from 105 to 64 as the result of restructuring of the

¹³⁴ Idem

¹³⁵ Office under the Bulgarian Ministry of Education

school system and of desegregation projects. These projects demonstrated that when appropriate conditions are created for the successful integration of Romani children in mainstream schools, Roma children achieve good results in these schools. When the process of integration of Romani children is part of a larger civil society action, involving awareness-raising among non-Roma, non-Roma can accept the integration of Roma in mainstream schools. Educationalists accept school integration of Roma children.

The provision of equal educational opportunities to all pupils and students requires on the one hand, the provision of equal access of Roma children to the school system in the country, and on the other hand, the provision of quality education to all children. This requires a thorough, consistent and systemic reform of the educational system in order to provide all students with equal educational opportunities. These actions should consist of the following:

- *The provision of free all-day, two-year long preschool education for all children accompanied by a supportive package of special services to act as a preventative measure against students dropping out on the grounds of socio-economic reasons. It develops the social, emotional and cognitive skills of children so that their competences in communicating in the standard national language are efficient enough for them to fully benefit from the educational opportunities offered in primary school. Such services can include: free didactical materials and school aids, free food and stay, free transport, free extracurricular classes for children with specific educational needs, etc.)*
- *The provision of a package of supportive services including free textbooks, free didactic materials and school aids, free food and stay, free transport, free extracurricular classes for children with educational difficulties, free forms of day-long types of education and study rooms.*
- *Gradual closing and transformation of segregated schools.* In order for this to be achieved it is necessary that the following measures are concurrently carried out: official recognition of the problem with the segregated schools on the part of the respective Ministry of Education. The Ministry has to take concrete measures towards the complete elimination thereof; zero admission of students in the segregated Roma neighborhood schools; the incorporation of criteria for the management of a multicultural classroom setting; overview of the procedures on students transferring from schools to ensure the smooth closure of segregated schools with minimal disruptions to the students' study patterns, thereby ensuring a balance between Roma and non-Roma students in the newly established integrated classes. *Reorganization of the school districts* under the consideration to have a more equal ratio of Roma students to non-Roma students to change the composition of the class rooms to be more equal. This measure allows combating the educational consequences of the residential segregation in case if the Roma settlement/school is part of the locality and not isolated from the center.
- *The incorporation of a system of external evaluation of the*

achievements and results made by students after the completion of each educational stage. It is especially important that this new data is standardized and that the evaluation indicators are used to assess the overall condition of the educational system. Information such as this can be used for system management purposes and in optimizing the allocation of resources. Inclusion and adequate representation of elements of Roma culture into educational programs. This ethnic representation within the school curriculum would contribute to the strengthening of Roma identity and the establishment of ethnic tolerance and inter-ethnic understanding.

- *Training of teachers on ways to apply new methods of teaching in the integrated school setting. For this purpose, two essential requirements have to be in place. On the one side, incorporation and institutionalization of bachelor and masters programs on integrated education at the university level. On the other side, the formulation of a package of training materials geared at increasing the qualifications of teachers with respect to teaching in a multicultural setting.*
- *Incorporation and institutionalization of the position of “teacher assistant”. In all integrated schools where students from a minority group are taught, it is necessary that a similar position to teaching assistants is established and a standardized professional description of what the position of associate teacher entails; this position would have to be added to the national list of professions. In view of the adequate need for associate teachers as a part of the teacher personnel available at schools, it would be necessary that this position is associated with clearly stipulated duties and responsibilities. Active incorporation of parents into all aspects of the management and organization of the school system.*
- *Informing all parents of the value and benefits of integrated education in their respective language for the purpose of preventing secondary segregation of students already incorporated into the integrated system of education; this would also be a preventative strategy against Roma children being enlisted back to Roma neighborhoods schools and would limit stereotypical opinions from disseminating on the basis of minority groups and people with disabilities.*