

GUIDE FOR MONITORING AND DOCUMENTING SCHOOL SEGREGATION IN THE CZECH REPUBLIC



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.

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Czech Republic**

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

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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 organisations to analyse 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 realising 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 is 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 do 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 programmes to address the vicious circle of poverty, social marginalisation, 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.

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,

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

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.

Serbia, Slovakia, and Macedonia. Even when Roma and non-Romani children share the same school, Romani pupils are often separated from the majority in 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 by Roma (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) analysing 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 organisations, but also for activists, aiming to fight this phenomenon.

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, colour, 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 educational systems or institutions for persons or groups of persons*; or (d) of inflicting on any person or group of persons conditions which are in-compatible with the dignity of man”.

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

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, colour, 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 no. 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, colour, 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 reports”¹³.

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

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 endeavour 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.

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>>.

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 programmes 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’s 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 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:

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 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 no. 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>>

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>.

“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 focussed specifically on 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.

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)).

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

Furthermore, the Council of the European Union made specific recommendations on effective Roma intergration 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 measures: 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 .

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	Adressing 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

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

³³ Idem

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>.

HUNGARY	Segregation is a behaviour 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 authorisation 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 720/22-02-201135) requested all local prosecutors in 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”.
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 colour
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 that separates or exclude Roma children from receiving a mainstream education that should be offered under ordinary circumstances to all children on a equal footing.

1.7. School segregation in Czech Republic

The legal protection against discrimination and school segregation

The Czech Republic was the last country in the EU to adopt legislation to implement the requirements of the EU anti-discrimination legislation.³⁵ Adoption of the law was a necessary step to avoid legal proceedings by the European Commission for failing to

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>>.

³⁶ Trust for Civil Society in Central and eastern Europe, “Czech Republic becomes last EU state to adopt anti-discrimination law”, 25 June 2009, available at: <http://www.ceetrust.org/article/306/>

implement the obligations contained in the EU Equality Directives.³⁷ The Anti-Discrimination Law (ADL) was adopted as late as 17 June 2009 by the Czech Chamber of Deputies breaking the President's veto and came into force on 1 September 2009³⁸.

The prohibition of discrimination in the ADL covers the following grounds: race, ethnicity, nationality, gender, sexual orientation, age, disability, religion, faith or belief.³⁹ It is applicable in the field of the right to employment and access to employment, access to a profession, business or other self-employment, social security, *access to education and its provision*, access to goods and services including housing (if they are offered to the public or at the time when they are being provided).⁴⁰

In the Czech Republic apartheid and racial or class segregation against a group or a individual, member of a certain group, are crimes according to Section 402 of the Criminal Code⁴¹. On the other hand, the text of the Czech anti-discrimination law, when taken together with other related Czech law⁴² does in fact appear to provide substantive protections and adequate procedures against discrimination as required by EU Race Directive⁴³. The Act, which came into force on September 1, 2009, is a comprehensive legal act prohibiting direct and indirect discrimination generally.

Nevertheless, the anti-discrimination law does not contain any express provisions which would directly prevent the segregation of Romani children into separate schools, classes or study groups. But so far there is no substantial Czech case law which clearly condemns or forbids segregation. In practice, it can be said the ADL's ability to serve as an effective safeguard against discrimination in education is still to be proven⁴⁴.

School segregation of Roma children in Czech Republic

In 2007 the European Court of Human Rights (ECHR) delivered its judgment in *D.H.v the Czech Republic*, which ruled that the country discriminated against Romani pupils by

³⁷ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework of equal treatment in employment and occupation

³⁸ European Roma Rights Centre (ERRC), Written Comments by the ERRC concerning the Czech Republic for consideration by the European Commission on the Transposition and Application of the Race Directive and on the legal Issues Relevant to Roma Integration, report available at: <http://www.errc.org/cms/upload/file/czech-republic-red-written-comments-5-april-2013.pdf>

³⁹ Act no. 198/2009 Coll, Article 2(1)

⁴⁰ *Ibid.*, Article 1(1)

⁴¹ See Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC; Country Report Czech Republic, PAVLA BOUČKOVÁ, State of affairs up to 1st January 2012, report available at: http://www.non-discrimination.net/content/media/2011-CZ-Country%20Report%20LN_FINAL.pdf

⁴² Laws including Act No. 40/1964 Coll, Civil Code, the Education Act, Decree No. 72/2005 on the Provision of Counselling Services in Schools and School Counselling Facilities and Decree No. 73/2005 Coll on the Education of Children, Pupils and Students with Special Education Needs and Children, Pupils and Students, who are Exceptionally Gifted.

⁴³ European Roma Rights Centre (ERRC), Written Comments by the ERRC concerning the Czech Republic for consideration by the European Commission on the Transposition and Application of the Race Directive and on the legal Issues Relevant to Roma Integration, report available at: <http://www.errc.org/cms/upload/file/czech-republic-red-written-comments-5-april-2013.pdf>

⁴⁴ See: OSJI, ERRC, COSIV, *Eighth Communication to the Committee of Ministers on the DH Judgment Implementation*, available at: <http://www.errc.org/cms/upload/file/eighth-communication-to-the-committee-of-ministers-on-judgment-implementation-18-may-2012.pdf>

offering them inferior education in doubly-segregated schools, designed for pupils with intellectual disabilities and disproportionately attended by Roma. International and national human rights NGOs have long highlighted that the Czech Republic has made very little progress in securing non-discriminatory access to education for Roma or children with disabilities since then. Romani children and other children determined to have intellectual disabilities continue to be trapped in a cycle of low-quality segregated education. The Czech government has failed to address the problem of discrimination against Romani pupils in education and has failed to establish an inclusive education system for all as a matter of priority, and it has not carried out the necessary systemic reform in order to comply with the D.H. decision. As a result, Romani pupils in practical and Roma-only schools and classes and pupils with disabilities in special or mainstream schools are re-living the same violations of their right to equal treatment in the field of education experienced by their parents and relative⁴⁵.

In the Czech Republic there are basically 3 types of schools where segregation of Roma pupils is most frequent:

- 1) Primary schools (previously the special schools)
- 2) Primary schools with predominantly Roma pupils
- 3) Classes for pupils with intellectual disabilities in mainstream primary school buildings. These classes are attended by Roma pupils who are taught according to educational program for light, mild and severe mental disability. It is a widespread myth that in separate classes or schools for Roma pupils better care is provided than in mainstream schools, where they should be together with children from the majority population.

During the enrollment processes of children to pre-school facilities and later to primary schools, certain criteria are still considered, among other:

- ✓ Skin colour
- ✓ Other racial features, for example specific clothing of the minority etc.
- ✓ Surname or first name – either common or specific for a certain minority
- ✓ Name of the parents or their origin
- ✓ The address (so called Roma ghettos)
- ✓ Confessing to Roma minority
- ✓ Language, accent, way of communication
- ✓ Social status (social disadvantage, criteria stated by law about public education for uneducated parents of the children, lower than average income etc.)
- ✓ Level of education
- ✓ Position at the labour market (employment)
- ✓ A certain feature or specific behaviour revealing certain belief
- ✓ Recipients of social and other allowances
- ✓ Occupation

In Ostrava there are few socially excluded localities inhabited mostly by Roma. Municipalities are mainly responsible for placing Roma into artificial *ghetto* areas and thus

⁴⁵ Written Comments of the European Roma Rights Centre, Mental Disability Advocacy Centre, League of Human Rights and the Platform for Social Housing, Concerning the Czech Republic For Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28 th April to 23 rd May 2014), report available at: <http://www.errc.org/cms/upload/file/czech-republic-cescr-march-2014.pdf>.

contributing to segregated schools as Roma children usually attend the primary school closest to their home. In these segregated schools with a majority number of Roma (often with more than 99 %) children are educated according to the educational curriculum for children with intellectual disability. It often happens that in ordinary primary schools the classes are from the start divided into classes with Roma children only and classes with only non-Roma children. The quality of education in "*Roma – only class*" is much lower. A Roma child from a disadvantaged family attending regular elementary school would be slower, weaker, often tested by the counseling center, where receives the label "LMP" (light mental disability) and at the recommendation of the counselling centre is transferred to practical elementary school with an educational LMP program. Any social disadvantage is considered to be a handicap (*socially disadvantaged persons can be defined as persons coming from an environment with low social and cultural status, those endangered by a high crime rate in their area, where there is a constitutional care/guardianship ordered etc.*).

Some directors of primary schools are against a greater number of Roma pupils in their schools. They are afraid of losing pupils from the majority population, so they recommend the legal guardians of Roma children practical primary school or primary schools near socially excluded localities, thus segregated schools. It is however necessary to draw attention to sometime inadequate teachers's methods working with Roma children mostly stemming from insufficient knowledge of specific ethnic groups that does not lead to ensuring proper conditions for smoother coexistence between the majority and minorities. . Roma parents are not sufficiently aware about the educational options for their children as well as the consequences of enrolling the pupils in certain schools or classes, particularly those called "practical". This lack of knowledge results also from the failure of the educational authorities to provide effective information on parental rights and responsibilities in this area.

School segregation of Roma children or children with social, physical and intellectual disabilities is deeply rooted in the Czech educational system.

International human rights bodies have long expressed concern about the school segregation of Roma children. On August 2011 the Committee on the Rights of the Child (CRC) noted that "there continues to be serious and widespread issues of discrimination, particularly against the Roma minority children in the State party, including the systemic and unlawful segregation of children of Roma origin from mainstream education."⁴⁶ The CRC recommended, among other measures to address this problem, that the Czech government ensure "the full and effective integration of children of Roma origin in the school system, and in doing so apply practical measures that facilitate diversity and inclusion in all schools for all children, regardless of their ethnic or sociocultural background."⁴⁷

On September 2011, the Committee on the Elimination of Racial Discrimination (CERD) expressed its "concern regarding the persistent segregation of Romani children in education." The CERD recommended the Czech government to "take concrete steps to ensure effective de-segregation of Romani children and students and to ensure that they are not deprived of their rights to education of any type or at any level."⁴⁸

⁴⁶ Concluding Observations of the Committee on the Rights of the Child, Czech Republic, U.N. Doc. CRC/C/CZE/CO/3-4 (2011), para 30-31, available at: <http://www1.umn.edu/humanrts/crc/czech2011.html>.

⁴⁷ Ibid, para 62(a).

⁴⁸ Committee on the Elimination of Racial Discrimination, Czech Republic – Concluding Observations, September 2, 2012, para 12, available at <http://www2.ohchr.org/english/bodies/cerd/cerds79.htm>.

In January 2012, the Organization for Economic Co-Operation and Development (OECD) released a report on education in the Czech Republic which concluded that for Romani children “attendance of special schools is still very high in spite of the decision to progressively integrate disadvantaged students into mainstream schools.”⁴⁹

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, highlighted the need for urgent reforms in the Czech school system in his February 2012 report Human Rights of Roma and Travellers in Europe.⁵⁰

In October 2012, within the UN Universal Periodic Review (UPR), 16 countries urged the Czech Republic to implement the National Action Plan for Inclusive Education and to eliminate continued segregation of Romani children at school. Czech Republic was also recommended to make available the necessary human and other resources and to set clear, measurable and ambitious targets for transfers of children to ordinary education and for overall de-segregation of the school system.⁵¹

Similarly, in October 2012, in its field assessment visit report, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) urged the Czech government ‘to do more to overcome the marginalization and segregation in schools of children from Roma and Sinti communities’. The report also ‘encouraged the Education Ministry to assume a leadership role in the process and provide educators with clear guidelines regarding inclusive education’.⁵²

In its 2013 evaluation report of the Roma national integration strategies in EU, the European Commission concluded that despite the commitments made by the Member States and anti-discrimination legislation, racism towards and discrimination against Roma continue. The European Commission pointed out particularly the segregation of Roma children in education still widespread in several Member States such as the Czech Republic⁵³.

⁴⁹ OECD Reviews of Evaluation and Assessment in Education, Czech Republic, “Main Conclusions” January 2012, available

at http://www.oecd.org/document/48/0,3746,en_2649_39263231_44567984_1_1_1_1,00.html, p.129.

⁵⁰ Council of Europe Commissioner for Human Rights, Human Rights of Roma and Travellers in Europe, February 2012, available at

http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf at p. 126.

⁵¹ Report of the Working Group on the UPR: Czech Republic. A/HRC/22/3, rec. 94.104.

⁵² OSCE/ODIHR, Equal Access to Quality Education for Roma Children: Field Assessment Visit to the Czech Republic, October 2012. Available at: <http://www.osce.org/odihr/96661>

⁵³ 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

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 programmes of action. 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 exclusion⁵⁴.

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

A necessary corollary for the full enjoyment of the right to education, access to education entails the right of access to 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 countries⁵⁵. The following instruments are important for combating school segregation.

INTERNATIONAL TREATIES

Universal Declaration of Human Rights⁵⁶: Art. 26.

1966 International Covenant on Economic, Social and Cultural Rights⁵⁷:
Arts. 2 (2); 3; 13 & 14.

1966 International Covenant on Civil and Political Rights⁵⁸: Art. 26.

1989 Convention on the Rights of the Child⁵⁹: Art. 2; 28 & 29.

1979 Convention on the Elimination of Discrimination against Women⁶⁰:
Art. 10.

Convention on the Elimination of All Forms of Racial Discrimination:
Art. 1; 2 & 5.

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

REGIONAL

⁵⁴ 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>

⁵⁵ *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.

⁵⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, A/RES/217/A (III). The Declaration is not a treaty. However, due the incorporation of the rights it establishes into the 1966 Covenants, it is considered a document of weighted importance.

⁵⁷ 993 UNTS 3.

⁵⁸ 1966 International Covenant on Civil and Political Rights, 999 UNTS 171.

⁵⁹ 1577 UNTS 3.

⁶⁰ 1249 UNTS 13.

TREATIES

1950 European Convention of Human Rights⁶¹ (ECHR): Protocol I, Art. 2

1996 Revised European Social Charter⁶²: Art. 10

1995 Council of Europe Framework Convention for the protection of National Minorities⁶³: Arts. 12 & 14

EU Charter of Fundamental Rights⁶⁴: 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 struggle against discrimination on the basis of 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, yet there is no substantial case law before the Court of Justice of the EU on racism or ethnic discrimination. 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, 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 2020⁶⁵, followed by the June 2011 Conclusions⁶⁶ that endorsed

⁶¹ ETS No. 5.

⁶² ETS No. 163.

⁶³ ETS No. 157.

⁶⁴ Published in the *Official Journal of the European Communities*, 18 December 2000 (2000/C 364/01).

⁶⁵ <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010658%202011%20INIT>>.

⁶⁶ <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2023%202011%20INIT>>.

the Presidency's report on Roma inclusion. In the context of the EU *Framework*⁶⁷, 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 2012⁶⁸. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013⁶⁹. The 2013 assessment report of the European Commission focussed specifically on the structural preconditions needed in each country⁷⁰ while the 2014 report looked at overall progress in all key areas.⁷¹

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 education⁷². 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 preschool⁷³ to secondary and even tertiary education. However, much remains to be done.

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 children⁷⁴.

A positive development was marked in December 2013 when the Council of the European Union made specific recommendations on effective Roma integration measures⁷⁵ including in education as well as non-discrimination.

⁶⁷ <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=en>>.

⁶⁸ 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>>

⁶⁹ 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)).

⁷⁰ Report available at: <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52013DC0454>>

⁷¹ Report available at: http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

⁷² 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.

⁷³ *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>>.

⁷⁴ 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.

⁷⁵ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

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 schools⁷⁶”.

It remains to be seen however 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.

2.3. The Czech educational system and the impact of school segregation

Equal access to education and the prohibition of discrimination is anchored in the Education Act no. 561/2004 along side the principles and aims of education, whereby every citizen of the Czech Republic or another EU member state has the right to equal access to education without any discrimination based on race, colour, sex, language, religion or belief, nationality, ethnic or social origin, property, gender and health status or other status of the citizen⁷⁷.

The Education Act guarantees to children with special educational needs the right to education whose content, forms and methods respond to their educational needs and abilities, creation of necessary conditions that make such education possible⁷⁸. The law defines the child, pupil and student with special educational needs – a person with health disability, health disadvantage or social disadvantage⁷⁹. As a matter of fact, Roma children are usually considered socially disadvantaged children, on the basis of their family environment they come from, with a low social and cultural status.⁸⁰ These children are mostly diagnosed by school counselling facility as children with light mental disability which means that they are considered disabled and thus are shifted from mainstream education to practical classes or schools, although they have no health handicap.

The Educational Act changed the former system of special and mainstream schools. Despite the formally abolishment of the so-called special schools, which in the past catered for a considerable proportion of Roma pupils, in practice, the segregation of Roma children continues to take place in schools with reduced curricula, although these schools are no longer labelled as “special”. There are no clear and objective criteria for placement in special education and no measures to enhance the sensitivity of educational professionals and foster a system based on cultural diversity. The actual implementation of culturally sensitive or adapted tests for determining the academic and intellectual abilities of children from ethnic minorities is low. The situation is similar in relation to the implementation of other measures to secure the inclusion of Roma children in mainstream education⁸¹.

⁷⁶ Idem

⁷⁷ § 2 article 1 (a), law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act)

⁷⁸ §16 article (6), law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act)

⁷⁹ §16 article (1), law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act)

⁸⁰ §16 article (4) (a), law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act)

⁸¹ See Report on Measures to Combat Discrimination, Directives 2000/43/EC and 2000/78/EC; Country Report

As pointed out by human rights NGO's⁸² the change of the educational legislation has failed to eradicate the system of inferior education which thousands of Romani pupils face on a daily basis. A great number of Romani pupils in both practical schools and segregated elementary schools continue to follow the curriculum for children with mild mental disabilities. All that the change in name has achieved is confusion; neither parents nor the Ministry of Education have a clear idea about the type and quality of education provided to Roma in various schools. The legislation governing the new system is impenetrable.⁸³ Moreover, the use of the term 'practical school' has not been clearly defined by the Czech legislature; different laws, decrees and policies refer to the term with discrepancies.⁸⁴

The Czech Republic adopted the National Action Plan on Inclusive Education (NAPIE) in March 2010⁸⁵ and has also developed an inclusive education plan. The same year the Czech School Inspectorate carried out a thematic investigation⁸⁶ that revealed the fact that 83 % of former remedial schools had not undergone the transformation envisaged by the Education Act and continued to be profiled as "hidden special schools." It was also found that Roma children account for about 35 % of students diagnosed with mild mental disability, and in some regions the Roma children with such diagnosis made an absolute majority (53 %). Similarly, it was found that at least 5 000 pupils in practical schools are without a proper medical diagnosis.

In September 2011, the Czech government approved the Strategy for the Fight against Social Exclusion 2011-2015.⁸⁷ However, until now, no targeted budget and schedule have been allocated to implement the NAPIE and Strategy, nor are they binding on any government department.

The European Commission partly suspended the payment of structural funds in the field of education in 2012. It turned out that part of the funds that should have been set aside for funding pro-inclusive measures, has been (mis)used for other purposes⁸⁸. The Organization for Economic Cooperation and Development (OECD)⁸⁹ criticized the high disproportionality in placement of Roma children in special education. In response to the report of the Commissioner for Human Rights, the Ombudsman confirmed the continuing discrimination against Roma children. Research on a sample of 68 former special schools found that, on average 35 % of students at these schools are of Roma origin⁹⁰.

Czech Republic, PAVLA BOUČKOVÁ, State of affairs up to 1st January 2012, report available at: http://www.non-discrimination.net/content/media/2011-CZ-Country%20Report%20LN_FINAL.pdf

⁸² Written Comments of the European Roma Rights Centre, Mental Disability Advocacy Centre, League of Human Rights and the Platform for Social Housing, Concerning the Czech Republic for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28 th April to 23 rd May 2014), report available at: <http://www.errc.org/cms/upload/file/czech-republic-cescr-march-2014.pdf>

⁸³ Idem

⁸⁴ Public Defender of Rights, Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, 2012, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf.

⁸⁵ Ministry of Education, National Plan for Inclusive Education, 2010, available at: <http://www.msmt.cz/socialni-programy/narodni-akcni-plan-inkluzivniho-vzdelavani>.

⁸⁶ <http://www.csicr.cz/cz/dokumenty/tematicke-zpravy/zprava-z-kontrolni-cinnosti-v-byvalych-zvlastnich-skolach>

⁸⁷ Agency for Social Inclusion, Strategy for Combating Social Exclusion for the Period 2011-2015.

⁸⁸ <http://www.amnesty.cz/z700/inkluzivni-vzdelavani-v-ceske-republice-ukol-nesplnen>

⁸⁹ <http://www.oecd.org/edu/preschoolandschool/49480900.pdf>

⁹⁰ See <http://www.ochrance.cz/tiskove-zpravy/tiskove-zpravy-2012/vyzkum-potvrdil-neprimou-diskriminaci-romskych-zaku/>

In November 2012, the Czech government submitted a New Consolidated Action Plan to the Council of Europe's Committee of Ministers with regard to the implementation of the DH and others judgment.⁹¹ As indicated by NGOs⁹² some of the measures outlined in the Action Plan have already been delayed or entirely neglected. The Czech government has pointed to the political instability which rocked the country in 2013 (the government fell in June, elections were held in October, and the new government, following a series of President's obstructions, were confirmed by the Parliament in late February 2014) as reason for this lack of movement on implementing the D.H. judgment. Implementation of most measures under the Consolidated Action Plan did not require political action but rather a concerted effort by the Education Ministry to stick to the timetable and activities it proposed in 2012.⁹³ Meanwhile, although the phasing out of practical schools has been included in the Strategy and the Action Plan, the newly appointed Minister of Education made statements of having no intentions to close down practical schools;⁹⁴ for example, the Minister pointed out by closing down practical schools "we will not solve the problem. We have a system of special and practical schools we should proudly promote in Europe".⁹⁵

Indeed in the Czech Republic there are two parallel educational systems - mainstream schools (regular primary schools) and practical elementary schools (former special schools). But recently the Association of Psychological-Pedagogical Centres raised serious concerns over the accuracy and adequacy of the assessment practices within the process of enrolment into the practical education system when it comes to Romani pupils. They concluded that the most commonly used test (WISC III) does not adequately reflect the specific situation of Roma children. Although the Ministry of Education established a working group to review the objectivity and purpose of the assessment instruments, there have not been any changes in the use of the flawed tests and assessment instruments. Diagnostic centres thus continue segregating children based on the tools about which "well founded doubts" exist. No safeguards or guidance exist to ensure that these unreliable tests are no longer used. These tests, even if safeguarded and objectified, suggest that an actual disability can be a legitimate reason for segregating Romani children and perpetuate discrimination contrary to the UN Convention on the Rights of Persons with Disabilities (CPRD).⁹⁶

⁹¹ Government of the Czech Republic, Consolidated Action Plan for the Execution of the Judgment of the European Court of Human Rights in the Case of D.H. and Others v. The Czech Republic, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1846711&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>. Please, see the overview of the DH case documentation and developments since 2007 up today here: <http://www.errc.org/cikk.php?cikk=3559>.

⁹² Written Comments of the European Roma Rights Centre, Mental Disability Advocacy Centre, League of Human Rights and the Platform for Social Housing, Concerning the Czech Republic for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session (28 th April to 23 rd May 2014).

⁹³ ERRC, OSJI, OSF Prague, COSIV, Submission to the Committee of Ministers, Council of Europe on the DH Case, November 2013, available at: <http://www.errc.org/cms/upload/file/tenth-communication-to-the-committee-of-ministers-on-judgment-implementation-november-2013.pdf>.

⁹⁴ Parlamentni Listy.cz, 'Chladek: We welcome that Minister Fiala will not close down practical schools', 9 March, 2013, available at: <http://www.parlamentnilisty.cz/arena/politici-volicum/Chladek-Vitam-ze-ministr-Fiala-prakticke-skoly-rusit-nebude-264980>; Idnes.cz, 'Schools lack conditions for promoting inclusion', 19 January, 2014, available at: http://zpravy.idnes.cz/skolam-chybi-podminky-na-inkluzi-d4n-domaci.aspx?c=A131017_164157_domaci_jj.

⁹⁵ Idnes.cz, 'Schools lack conditions for promoting inclusion', 19 January, 2014, available at: http://zpravy.idnes.cz/skolam-chybi-podminky-na-inkluzi-d4n-/domaci.aspx?c=A131017_164157_domaci_jj.

⁹⁶ Written Comments of the European Roma Rights Centre, Mental Disability Advocacy Centre, League of Human Rights and the Platform for Social Housing, Concerning the Czech Republic for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session.

The Czech Ombudsperson research in 2012, which is considered by the broad coalition of experts to be the most representative out of six existing statistical surveys on the proportion of Romani children in practical education⁹⁷ highlighted that Romani children continue to be overrepresented in schools and classes designed for children with mild mental disabilities where they constitute around 35% of all children.⁹⁸ According to different estimates 150,000 to 300,000 Roma live in the Czech Republic (1.4 to 2.8 per cent of the population),⁹⁹ so the proportion of Romani children in schools and classes designed for children with mental disabilities is more than 10-times higher¹⁰⁰.

The UNDP household survey “Roma Education in Comparative Perspective“ emphasises that 17% of all Romani children between the ages of seven and 15 attend practical and special schools and 60% of these Romani children are placed in ethnically segregated special/practical schools with the majority of their schoolmates being Roma.¹⁰¹

Roma children in the Czech Republic are segregated not only into practical elementary schools¹⁰², but there are also regular primary schools with classes for pupils with mild mental disabilities, where most of its pupils are Roma children. Some regular primary schools even divide the class into two groups. In one group are educated children from mainstream society, and in the second group Roma children. Both classes have officially mainstream education curriculum, but in practice the group of Roma pupils are educated more slowly and thus their results correspond with the education of the reduced curriculum. Another form of segregation can be encountered in socially excluded localities, where regular primary schools are attended by 90 % or more Roma pupils. Parents of children from majority population often rejects

⁹⁷ Idem. Romani children in (former) special schools - statistical evidence:

Ministry of Education 2009a: Education Paths and Education Chances of Roma Pupils in Elementary Schools in the Neighbourhood of Socially Excluded Localities: Half of the monitored schools had more than 50 per cent of Romani pupils.

Ministry of Education 2009b: Analysis of An individual teacher’s approach to the Pupils with Special Educational Needs: The monitored schools had more than 44 per cent Roma pupils.

Institute for Information in Education 2009: Monitoring of the General Education Program (RVP), Prague, Institute for Information in Education: The monitored schools had more than 35 per cent Roma pupils.

Czech School Inspectorate 2010: General Information from the Thematic Inspection in the Former Special Schools, Prague, Czech School Inspectorate: The monitored schools had more than 35 per cent Roma pupils.

Public Defender of Rights 2012: Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, Public Defender of Rights: The monitored schools had more than 32 per cent Roma pupils.

Czech School Inspectorate 2012: Thematic Report on the Progress in Transformation of Former Special School in the School Year 2011/2012: 26.4 per cent of the pupils were Roma. This methodological validity of the survey has been challenged by the Public Defender of Rights and ERRC.

Czech School Inspectorate 2013: The CSI Annual Survey found that Romani children represent 28% all children taught practical curricula. The survey and its methodology have not been made public; the reservations prevails about the methodology, validity and representativeness of this survey.

⁹⁸ Public Defender of Rights, Research of the Public Defender of Rights into the Question of Ethnic Composition of Pupils of Former Special Schools, Brno, 2012, available at: http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf

⁹⁹ Minister for Human Rights, The Roma Integration Concept 2010-2013, available at: http://ec.europa.eu/justice/discrimination/files/roma_czech_republic_strategy_en.pdf. See also European Commission, An EC Framework for National Roma Integration Strategies’ Annex: available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0173:FIN:EN:PDF>.

¹⁰⁰ Written Comments of the European Roma Rights Centre, Mental Disability Advocacy Centre, League of Human Rights and the Platform for Social Housing, Concerning the Czech Republic for Consideration by the Committee on Economic, Social and Cultural Rights at the 52nd Session.

¹⁰¹ UNDP, Roma Education in Comparative Perspective, 2012, pp. 67-68.

¹⁰² "Segregation is an act, when the society shows a certain group of people, that they are considered worse than the others." (Kenneth Clarke, witness in the process Brown vs. Board of Education 1956).

placement of their children to such schools, considering these schools as poor quality establishments and so called *Roma schools*.

According to the findings of a pilot project implemented in Ostrava by the Life Together (Vzájemné soužití) non-governmental organization in January 2014 the segregation of Roma children occurs already prior to and during the enrolment process, when school directors recommend to Roma parents ordinary, but segregated schools, without a recommendation of school counseling facilities. For example, a director of a mainstream, non-segregated primary school asked Roma parents the following question: "is not your child better at your school?" anticipating that a larger number of Roma children were intending to manifest interest in the enrolment process there. School principals are not shy to publicly express their "fear" that if they would accept a certain number of Roma children, they will lose the majority non-Roma children from their schools.

Irrespective of the form of attended school segregation and the attitudes of some educators or some non-Roma parents, Roma children following such education would stand no chance to succeed admission tests for any kind of secondary or higher education. Subsequently, these children will be unsuccessful in the labor market, and end up within the vicious circle of poverty and social exclusion. Clearly school segregation negatively affects the educational and mental development of the Roma children with a substantially negative consequence on their equal right to education.

3. 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.¹⁰³ 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.¹⁰⁴ 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”.¹⁰⁵

It is said that for the Roma children in Europe, access to education remains a dream. Discrimination in access to education of Roma children takes place through segregation, arbitrary placement into special schools, misdiagnosis based on biased tests which do not take into consideration specificities of the Roma minority etc.¹⁰⁶

3.1. 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 completed¹⁰⁷ .

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

¹⁰³ 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.unhchr.ch/tbs/doc.nsf/0/ae1a0b126d068e868025683c003c8b3b?Opendocument>

¹⁰⁴ 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>

¹⁰⁵ 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>

¹⁰⁶ Farkas Lilla, *Segregation of Roma Children in Education, Addressing Structural Discrimination through the Race Equality Directive*, p. 91, available at: http://www.non-discrimination.net/content/media/Segregation%20of%20Roma%20Childr%20en%20in%20Education%20_en.pdf

¹⁰⁷ 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).

time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention”¹⁰⁸.

In its recent case law, 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 State¹⁰⁹. 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 institutions¹¹⁰.

3.2. 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 institutions¹¹¹. 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 differently¹¹² or when States fail to treat differently persons whose situations are significantly different.¹¹³ 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.”¹¹⁴

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

¹⁰⁸ Ibidem para.5

¹⁰⁹ See *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 37, Series A no. 48.

¹¹⁰ 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.

¹¹¹ 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.

¹¹² *Willis v the United Kingdom*, Application no. 36042/97, at para. 48, and *Okpizs v Germany*, Application no. 59140/00, at para. 33

¹¹³ 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

¹¹⁴ See: *Timishev v Russia*, Application nos. 55762/00 and 55974/00, at para. 58.

that it is not specifically aimed at that group¹¹⁵ 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*.¹¹⁶ The ECtHR also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.¹¹⁷

In its case law the ECtHR noted that Roma do not only enjoy protection from discrimination, but they also require special protection.¹¹⁸ 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.¹¹⁹

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 community¹²⁰. In its case law 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 cases¹²¹.

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”¹²².

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 of groups which 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

¹¹⁵ See: *Hugh Jordan v the United Kingdom*, Application no. 24746/94, at para. 154; and *Hoogendijk v the Netherlands (dec.)*, Application no. 58461/00

¹¹⁶ See: *D.H. v The Czech Republic*, Application no. 57325/00, at para.184.

¹¹⁷ See: *Zarb Adami v Malta*, Application no. 17209/02, para. 76

¹¹⁸ *Chapman v the United Kingdom*, Application no. 27238/95 and , *Connors v the United Kingdom*, Application no. 66746/01.

¹¹⁹ See: *D.H. v the Czech Republic*, Application no. 57325/00, para. 182

¹²⁰ See *Oršuš and Others v. Croatia [GC]*, no. 15766/03, para 147.

¹²¹ See *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

¹²² see *D.H. and Others v. Czech Republic*, § 182.

problems, such as active and structured involvement on the part of the relevant social services¹²³. 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 practices¹²⁴.

3.3. The school segregation case against the Czech Republic

D.H. and others v. the Czech Republic¹²⁵ is 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 judgement 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.

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.

¹²³ See Oršuš and Others v. Croatia [GC], no. 15766/03, para 177.

¹²⁴ See Horvath and Kiss v Hungary, App. no. 11146/11, para. 115-116.

¹²⁵ 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#{)

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 rights 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.¹²⁶

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

The applicants¹²⁷ 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 centre, 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 1999.¹²⁸

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

¹²⁶ 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>

¹²⁷ 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>

¹²⁸ D.H and Others v. the Czech Republic – summary of the case, available at: http://www.crin.org/docs/FileManager/Summary_of_Cases.pdf

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 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 Romani 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*¹²⁹). 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*¹³⁰, and *Zarb Adami*¹³¹), 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*¹³² and *Connors v. the United Kingdom*¹³³). 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

¹²⁹ *Hugh Jordan v. UK*, ECtHR, 2001, App. No. 24746/94.

¹³⁰ *Hoogendijk v. The Netherlands*, 2005, App. No. 58641/00.

¹³¹ *Zarb Adami v. Malta*, 2006, App. No. 17209/02.

¹³² *Chapman v. UK*, *op. cit.*, § 96.

¹³³ ECtHR, 2004, App. No. 66746/01, § 84.

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 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 applicants¹³⁴.

3.4. 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.

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

¹³⁴ *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#{)

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 school teachers from Aspropyrgos visited the Psari Roma camp to inform and persuade parents of the need to enrol 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 identity¹³⁵.

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**¹³⁶.

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

¹³⁵ 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>

¹³⁶ Idem. See para. 147-162.

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 not been adequately addressed by simply placing them in Roma-only classes**¹³⁷.

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 arbitrariness**¹³⁸.

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-up¹³⁹.

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' education¹⁴⁰.

¹³⁷ Idem. See para 188-162.

¹³⁸ Idem. See para.163-171

¹³⁹ Idem. See para 176 and 177.

¹⁴⁰ Idem. See para 178 and 179.

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 primary education had not been justified, in violation of Article 14 taken together with Article 2 of Protocol No. 1¹⁴¹.

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*¹⁴², 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*¹⁴³, 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 itself¹⁴⁴. 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

¹⁴¹ 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>

¹⁴² ECtHR, 2012, App. No. 59608/09.

¹⁴³ *Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma, op. cit.*

¹⁴⁴ *Ibid.*

tremendous importance of the enforcement of the existing legal framework against discrimination.

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.¹⁴⁵

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.

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**¹⁴⁶. The Court stated that the wording of Article 2 of Protocol No. 1 implies a positive obligation on the part of the State¹⁴⁷ and that in

¹⁴⁵ 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>

¹⁴⁶ Oršuš and Others, §§ 147-148

¹⁴⁷ Horvath and Kiss v. Hungary, para. 103

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**”¹⁴⁸.

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.**”¹⁴⁹

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 applicants¹⁵⁰.

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 application¹⁵¹ 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 and 2nd Primary Schools¹⁵². 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

¹⁴⁸ Idem; para. 116.

¹⁴⁹ Ibid; para. 121

¹⁵⁰ Horvath and Kiss v. Hungary

¹⁵¹ European Court of Human Rights, case of Lavida and others v. Greece (2013); App. no. 7973/10.

¹⁵² 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.

surrounding villages¹⁵³. 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 programme to that in other state primary schools.

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**

¹⁵³ See also 2012 Annual Report of the Greek Ombudsman, http://www.synigoros.gr/?i=kdet_el.ehtisies_ektheseis_documents.93959.

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. 1¹⁵⁴.

¹⁵⁴ 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

1.1 TESTIMONIES OF ROMA PARENTS ON SCHOOL SEGREGATION

In the Czech Republic various forms of Roma school segregation in primary schools may be encountered:

- Roma pupils are educated either in primary practical schools or in mainstream primary schools but in classes with a reduced curriculum – LMP educational programme)
- Segregation of Roma pupils into one class in ordinary schools, while other children attend other classes
- Segregation of Roma children in ordinary schools, officially educated according to ordinary educational programme, but in reality with a slower pace education in comparison with other children and where school results of Roma children correspond to those for LMP educational programme in practical schools.

ROMA STORIES ABOUT SEGREGATION

Jiří Vaněrka

This story is told by the legal guardian – the grandmother of a Roma child. It shows hidden segregation during primary school enrollment. The grandmother of 6 year old Jiri from Ostrava Hrušov appealed against the decision of not taking her grandson to primary school to the school's founder, North-Moravian regional authority. The appeal was dismissed and currently a legal action is being prepared. Jiri has been accepted to another quality, non-segregated school, the Chrustova primary school.

"I am a mother of 5 children, all are now adults. One of my daughters got pregnant in an early age, so I have looked after Jiri since his birth. I am not educated myself, I only completed primary school and I thus depend on social allowances. My parents did not emphasize education, the priority was to feed and shelter the family.

My daughter Zina was one of the DH case applicants, she was placed to special school. I did not want Jiri to experience the same, so since Jiri was 4 years old he attended the kindergarten. I wanted him to be used to other children and to be prepared for school. In October 2013 I was told by my friends that NGO Life together (LT) runs a campaign for empowerment of Roma parents in the field of school segregation. The campaign was for parents whose children were in a pre – school age and were about to be enrolled to primary school. Next week I took part in the campaign, I was present at regular meetings. I was impressed by the campaign from the beginning, we formed a group of about 20 mothers. We were told and presented also in a form of theatre playing how we can defend ourselves, what can be done in case our child is rejected during the enrollment process. We were told what the child has to know, that we have to support them and place them to a good school. Beside our meetings our children were also provided with necessary knowledge and tutoring before the enrollments.

We met nearly every week and the number of parents was increasing. Then we should choose the good school for our children. I chose Pěší primary school for Jirka. There are also other grandsons at this school, it is close to my place, I have heard positive things about this school.

During the enrollment process there were LT employees with us as a support and monitors (with a consent of both the parents and the school). I was grateful for this support, I felt more confident, we also all agreed with recording of the process to have a proof in case anything went wrong. Prior to the enrollment our children were assessed by a psychologist, pedagogue, they knew all necessary things for the entrance test (although there is no standard for this test and it slightly differs from school to school, some skills are commonly tested – to recognize colours, basic numbers, to know own name, name of family members, the address, to be able to sing a song, to recognize left and right side etc.). During that preparatory assessment my grandson was praised by the teacher, she concluded he was mature enough to go to school and there should not be any problems.

When The Day of the enrollment came (15th January 2014), we met earlier and Mrs. Šmarhovyčová, who led the campaign and accompanied us (12 Roma children and their parents) to Pěší school, told us that she had a call in the morning from the principle of the school recommending us to place our children to a primary school in Ostrava – Kunčičky (residentially segregated school with majority of Roma pupils, far from my home). He told her that he would probably have more children coming and he can open only one class. He mentioned the fear that if he accepted a larger number of Roma pupils, more than 5 or 6, he would lose "white" children and the school may finally become segregated. I felt insecure after this statement but I knew that Jirka is perfectly prepared for the tests and although I have quite dark skin, my grandson has a lighter one. Thus I calmed down and we left for school.

To describe the process of the enrollment: the teacher took Jirka aside, together with some more children. At first he was asked to draw some picture, then he was doing a test. Everything took place in one room, there were teachers, a lot of parents and children. Jirka had to recognize letters, numbers, fairytales, colours, shapes etc., meanwhile I was talking to another teacher and answered her questions (where I live, if I have a job etc.). Jirka completed all tasks, as did other children. The teacher wrote her assessment to the test (number of points), according to the level of their knowledge. The monitor asked the teacher if she can have a look at the tests of our children (there were other 11 Romani children from mothers of our group). The teacher wrote to each of the task: failed / did not recognize / bad vocabulary etc. With such results none of the children would be accepted. I was furious and angry. I was calmed down by Jolana not to worry, that we will not leave it like that. I felt so sorry for Jirka, we were both prepared for the process.

Jolana went to the teacher and asked her for another test, because the results did not correspond with reality. The teacher initially refused but when she realized we would not give up, she agreed. So she once again tested Jirka and we were present. Jirka succeeded in everything, the only thing he did not know was the name of one old fairytale. Jirka was upset, he cried and asked why he has to do everything again and nobody else. The teacher claimed that during the first examination Jirka did not communicate with her. So we asked her for changing the results of the test, which she

did. It was the same with other Romani children there. We left the school disgusted. Jolana then spoke to the principle and told him what happened. The record from this talk clearly showed that everything was arranged in advance.

The headteacher said, among other things: „*Why are you going to place so many Roma children to our school? Why are they not going somewhere else? I do not want this school to become Roma School, why did they not go to the school in Ostrava – Kunčičky? I spoke to the headteacher there and he knows about the children. I am afraid that children from the majority will leave this school*“. During the enrollment the principle called to other schools and complained about how many Roma children came to his school and asked the others how many Roma children came to their schools for the enrollment. So we were waiting for the results. In 2 weeks we found out that out of 40 children who came to the enrollment 10 were 10 denied (the principle was going to open 1 class for 30 children).

Out of these 10 rejected kids 8 were Roma children, including my Jirka. He only accepted those Roma children who were given postponement last year (and he had to accept them, according to the Education Act). As the official reason the principle stated the insufficient capacity of the school. I knew I could not let it be, it was so humiliating. Me and one more mother we decided to make an appeal, where we wrote that the capacity can not be the reason for refusal if the child lives in the area of the school and that we have an impression that the refusal was based on our ethnicity. The whole case was also published in media. Now we are waiting for the reply to our appeal. I took Jirka to another good school, ZS Chrustova, where the teachers had completely different attitude. The school is not so close to our home but it is a good school and I can say I have done my best to fight for quality education for my grandson. However, I will not forget my experience in Pěší School".

Alexandra Miková

This is the story of Alexandra, no. 2, 12 years old, a clear example of segregation in education, where health difficulties of the child are considered to be a child handicap. Since January 2014 Sasa attends another school. Neither Sasa nor her mother could stand the strong pressure from children at the previous school and lack of interest of the pedagogical staff. Sasa is satisfied at the new school. Despite constant health problems Sasa manages the school attendance; she is going to attend 5th grade.

"Alexandra was 5 years old when she attended a preparatory class for pre-school children before the compulsory school attendance. The class was in Ostrava-Radvanice primary school. She started school at the age of 6. I remember the first day very well. There were lists of children on the front door; they were divided into 2 classes. There were 2 lists, 1A and 1B class. Alexandra was on 1A list. She was the only Roma child on that list; all other children were from the majority. I was interested how the selection was done so I went to see 1B class. There were exclusively Roma children and 1 child from the majority.

It was horrible for Sasa. She did not make any friends there, nobody talked to her, children made fun of her, called her names, pointed at her that she had darker skin. She did not like going to school, she cried when she had to. When children played various games, during physical education or when children did some activities that

required couples, she was always alone; nobody wanted to be her sparring partner. Luckily, her class teacher was very nice and Alexandra liked her.

We somehow managed 1st class and Saša proceeded to the 2nd year. Then she got ill. She often complained about stomach ache, she often suffered from bowel obstruction. At first I thought that it is a result of her not ideal mental state – she was often sad, she complained to us that nobody talks to her at school. Then Sasa was treated with diarrhoea. Her health problems continued, so she often stayed at home, her school attendance was poor. When she was at school, she was behind her classmates, they harrassed her.

I wanted to do something, talked to school staff. I was at school quite often, my husband alike. The teacher knew about the problem. She knew how other children behave to Sasa, that they mock her, but she did not know how to sort the problem out. Again we took our daughter and went to the doctor with her. She had to undergo a lot of examinations and the doctors finally found out that Sasa suffers from Crone disease (acute bowel inflammation). We went to school and informed the staff about her illness. We also went there to discuss the possibilities for her, how can she go on. Her class teacher recommended to us to go to pedagogical-psychological counselling centre (PPP) with her. She wanted the suggestion of the psychologist how to work with her. So we went to PPP and their assessment showed that our daughter is not in a good state, not only physically, but also psychologically. I can read the assessment from the psychologist: *low self-confidence, her insecurity very much influences her results at school. Thus we recommend reacting to her needs sensitively. Encourage her, make sure she does well. If Sasa does anything wrong or is behind at school, please deal with it privately, not in class, and encourage her too, if possible.*

The teacher followed the recommendations the first month. Then her class teacher left for maternity leave. Sasa had a new class teacher and she did not follow any recommendations from the psychologist, it was forgotten. My daughter was under big pressure. She was prescribed some medicine – it contained a high percentage of hormones influencing human's mental state. Sasa was very sensitive, irritated, tired. She did not catch up with children at class, was not able to do her homework. She used to come home tired and exhausted. As soon as she came from school, she fell asleep. Her class teacher ridiculed her in front of children. She threatened her that if her school attendance did not improve, Sasa would have to repeat the class, because she does not come to school and she has no grades, thus cannot be properly classified.

We turned to the head teacher, who recommended Sasa to go to practical school because she believed Sasa needed to be in a smaller group of children where the teacher would have more time to pay attention to her. I refused because I did not have good experience with practical school in my family. My older children attended special schools. Moreover, I knew that Sasa is clever. So I myself asked for another assessment in PPP. I told the head teacher that I wish the psychologist to do another assessment and wanted to give it to the class teacher as the lead how to work with Saša.

Another assessment from the psychologist said: *Sasa is communicative, but very insecure. She always seeks eye contact when talking to someone. Her insecurity influences her understanding of the tasks. She is responsive, quick-witted; she likes to*

join activities, eager to take part in it. The psychologist recommended making the individual plan with her, considering her illness and tiredness not to give her homework. Important is understanding for her learning difficulties, to treat her sensitively, to build trust between the teacher and the girl. Sasa should be in a calm environment, should be positively motivated, better is to give her fewer tasks and let her do them correctly. We handed this assessment to the head teacher.

Sasa finished her 4th grade, but there has been no individual plan done with her, there have been no changes in the attitude of neither the teacher nor the children. Sasa did not have to repeat the class; she was given a written reprehension for not elaborating her homework. I called the psychologist from PPP and told her everything. She did not understand the attitude of the teacher and advised us to wait for the beginning of the next school year and if nothing changes and nobody will stick to the plan she created, she will help us to take legal action against the school.

At present, her health problems go on. In June she spent one month in hospital in an intensive care unit. We do not want to burden her, but we also want her to get educated, in spite of her illness. We do not want her to wake up one day and blame us for it. Now we try to make her holidays nice, she is not looking forward to school in September. We are trying to understand her as her parents, but we also dread the forthcoming school year".

Diana Šmarhovyčová

The story of Diana, another obvious example that illustrates segregation of Roma children into one class and how it influences the child at school.

"To describe my 11 year old daughter, she has always been a healthy, lively and sociable child. When she was 4 years old she went to the kindergarten. She used to have a lot of friends there, she liked to draw and learn there. There was no problem at all there. There were mostly white children, maybe 3 Roma children. Her father is not Roma, so Dianka has lighter skin. When she was 5, a pre-school facility was opened in Ostrava-Radvanice where we used to live. Dianka wanted to go to school very much, so we decided with my husband to place her there. It was a kind of preparatory class before compulsory school attendance.

The class teacher was a young lady, and there was also a Roma pedagogical assistant, because there were about 70% Roma children there. It was close to Lipina, socially excluded area where we used to live. There the children did the same activities like in a kindergarten – they drew, learned poems, played in a park. Within the school hours the psychologist from PPP was invited to examine all children. She checked all children individually with their parent's presence. When I came to this psychologist with Dianka, I considered it to be a right thing; I wanted to know how Dianka and her knowledge and skills, according to the expert is.

Before the assessment, Dianka was very concentrated and could not wait. She told me she would do her best there to be able to go to school. The outcome was very good; Dianka was recommended to go to school. During the enrollment to school everything went well. In September Dianka awaited her first day at school. We all could not wait.

It was an important event for us all, so I took a camera with me that day. Dianka dressed nicely. When we came to school, I saw the list of children at the front door. There were two classes, 1A and 1B. When I began to read the names, something was wrong. Dianka was supposed to attend 1B class. When I entered the schoolroom, I was shocked. There were only Roma children and one white child. So I checked 1A class, and it was the other way round, 1 Roma child and the rest were children from the majority. Dianka began to cry, there was not even one friend from her preparatory class.

I asked the class teacher how they sorted children out. She replied she did not approve of it, either, but she was not responsible for it. I was waiting for the head teacher who was supposed to come with the mayor of Ostrava-Radvanice to welcome the children. I was so upset that I even did not take the camera out from my bag. The head teacher with the mayor came into the class, greeted the children and left immediately. I did not have the chance to talk to them. Children were given little presents. At each school desk there was a bag with school aids – pencils, diaries, exercise books, coloured pencils etc. Children from 1A class could take these presents home with them; children from 1B class had to leave them at school. As soon as it finished I went to the head teacher's office with Dianka. I asked her about the division of children and told her I did not approve of it.

She told me that those children who chose English language at the enrollment were placed to one class. I told her that I was not asked which foreign language Dianka could learn at all. The head teacher promised to me to find out and do something about it. The next day, when I was accompanying Dianka to school, the head teacher told me that Dianka would be placed to 1A class. It was her order. I think she did it because she knew I worked in an organization where we dealt with this issue. Other mothers, who protested against creation of exclusively Roma class, were not heard out. So I did something for my daughter but the problem was not solved at all. All children from 1A class knew what the criteria for selection to this class were.

Dianka has lighter skin after her father so I hoped that other children at her class will not judge her and will accept her. But as I accompanied her to school and I am darker, this was enough for children's prejudices. They began to ridicule her, she had no friends, and she hardly found her soul mate. Dianka did not like to go to school. She used to complain at her stomach, headache etc. Roma class, 1B, was on the 2nd floor and 1A class was on the 1st floor, so children could not meet easily. Dianka had no support at her class.

When I noticed that it was getting worse and Dianka was resistant to go to school, I visited her class teacher. I explained to her how was the attitude of other children toward Dianka and how it affected her. The teacher told me that Dianka did very well at class; she had very good grades and was one of the best ones at school. She assured me that Dianka had friends at her class, that she is just little bit oversensitive. I tried to believe her and left for home a little bit calmer. The next day the teacher talked about this issue we discussed in front of the whole class. I can imagine how Dianka could feel embarrassed among other kids. Dianka still did not look forward to going to school, but she stopped complaining about her classmates calling her names etc. Her favourite toys were Disney toys, which were fashionable and all children wanted to have them. These toys were quite expensive. One evening I noticed that some of her toys were missing. I

asked Dianka where her toys were. She told me she did not know. When I raised my voice, Dianka began to cry and admitted she gave them to her class mates. She did it to make friends. It was the only moment when children talked to her and paid attention to her and she thus bought their attention. I tried to explain to her that these children who behave like that and call her names are not good and they are not clever.

Dianka did not want me to accompany her to school. She was ashamed of me and although I felt bad, I understood her. Next day I went to school again and I called the class teacher to the head teacher's office, where both were present. I described how it goes at class but the class teacher denied it. When I pointed at the fact that it is just because of this practice of intentional segregation, the head teacher told me she did not have any other choice. The area of Radvanice is divided into two parts. One consists of villas and nice houses, inhabited by the majority, the second one, called Lipina, there are Roma people there. The parents of white children complained that they did not want their children to attend the same class as Roma children. These parents threatened that there were a lot of Roma children there and they would place their children to another school. Each primary school needs children to be given finances per pupil, so this was the solution, made by the head teacher and the local mayor – to create Roma and non-Roma class.

I knew that my child had no good future at this school, and I knew that I could not change it myself. If I accused the school or sent the inspection there, the only one who would pay for it would be my daughter. We were lucky and toward the end of that year we moved away. Dianka changed school and at the new one there are children from more minorities living (Vietnamese children etc.), so the classes are diverse. Dianka is still attending this school, in September she will go to 6th class. She likes this school, children like her, she made friends and they go out together after school, too. We both do not have nice memories for her first day at school".

1.2. IDENTIFYING ROMA SCHOOL SEGREGATION

✓ IDENTIFICATION

- ✓ How can we recognize segregation in school?
- ✓ How can we distinguish what is segregation and discrimination?

If you want to know why and where segregation occurs, first of all we need to identify locations where Roma live, usually in socially excluded localities¹⁵⁵. It is advisable to make contact with someone from the local area, preferably with Roma parents or to contact a local non-profit organization that works with local Roma people. The best way is to establish a relationship with parents, either personally or through a field worker who know the local Roma.

It is important to find out how many primary schools exist in the area and which school is attended by the majority of Roma children. This information shall be provided by a field worker or the parents themselves. To identify segregation it is necessary to understand the terminology so that we may correctly understand the situation that occurs in primary schools.

DIRECT DISCRIMINATION: an illegal situation, when a person or a group of persons is treated less favourably than another person or a group of persons in a comparable situation, on the basis of a real or presumed reason, which is not justifiable (such as race, ethnic origin, social status, age etc.)¹⁵⁶.

EXAMPLE 1

A situation, where a school is attended only by Roma children or a class within the school is attended only by Roma pupils while non-Roma children are placed in a proximity school or in different class within the school.; The only difference between the groups is given by the ethnic origin or race of the children and this constitute the reason for the placement.¹⁵⁷

EXAMPLE 2

Special education schools attended by an excessive number of Roma pupils () amounts to discrimination. Diagnostic centres (school counselling facilities) use psychological tests and other methods not adjusted to ethnic differences resulting from the social specifics of Roma. The way of testing is not based on neutral criterias. The so called tests and other methods have

¹⁵⁵ According to Governmental reports about the situation of Roma minority in 2012 approximately 400 socially excluded localities have been identified and the number is still increasing. Socially excluded citizens are mostly (80%) Roma, who have more difficult access to institutions and services (to institutional support), they are excluded from the social networks and do not have enough contacts outside the excluded localities. See <http://www.socialni-zaclenovani.cz/studie-ghett-v-cr-pribyva-vetsinu-v-nich-tvori-romove>

¹⁵⁶ § 2 odst. 3, Antidiskriminační zákon 198/2009 Sb

¹⁵⁷ Such act is illegal in practice and is not in accordance with EU Race directive 43/2000/EC.

less favourable impact on Roma children than have on children from the majority population, because such tests can not assess children's abilities on an equal footing.¹⁵⁸

INDIRECT DISCRIMINATION: an illegal situation, where a general policy, practice or criteria have a disproportionately prejudicial effect, though couched in neutral terms, but puts in a disadvantageous situation a person or a group of persons due to race, ethnic origin, social status age etc. .¹⁵⁹

EXAMPLE 1

In the DH case the ECtHR confirmed indirect discrimination of Roma children. They were diagnosed as mentally disabled and consequently were excessively (27 times more likely than other children) placed and thus segregated into special schools. The tests used for determining the level of intellect were culturally biased towards the Roma children. In other words, the tests used for determining the intellect of children were apparently neutral, but in fact Roma children were 27 times more likely to be placed to special school than any other child, so that the impact of the policy on Roma children generated a prejudicial effect by treating them less favorably.

EXAMPLE 2

Notice 73/2005 Sb. of education of children with light mental disability¹⁶⁰ enables to educate these pupils without disabilities in practical schools. Classes for disabled pupils¹⁶¹ are thus attended also by pupils with other type of disability or health disadvantage,¹⁶² or by pupils with social disadvantage.¹⁶³ This seemingly neutral rule has in fact discriminatory impact on Roma pupils (pupils with social and health disadvantage), because an excessive number of these pupils is still placed – segregated – to practical primary schools and to classes with reduced curriculum. As a result, although the above mentioned notice is neutral, its application is racially disproportioned and discriminatory, obviously disadvantaging Roma people.

¹⁵⁸ According to the tests Roma children are assessed as children with a disability. The same mechanism has never been used for other children. The fact that disproportionality of the tests or other methods is not based on "race", but on various characteristics (culture, history, social status) does not mean that the tests are not racially biased, because all these characteristics are linked to the term "race" or „ethnic origin“. Roma child who does not complete the test in a certain language, is treated less favourably than any other child, who speak fluent language of the test. <http://poradna-prava.sk/wp-content/uploads/2014/02/PDF-1-MB.pdf>

¹⁵⁹ § 3 article 1, Anti-discriminatory Act 198/2009

¹⁶⁰ Notice 73/2005 on education of children, pupils and students with special educational needs and children, pupils and students exceptionally gifted

¹⁶¹ According to § 3, article 6 a) , directive no. 492/2005 on regional normatives, if a pupil educated in a specially created school or a group is handicapped, such school receives more finances than those educating children without any diagnosis (§ 3, column 1 of the normative)

¹⁶² § 10 (2) notice 73/2005 on education of children, pupils and students with special educational needs and children, pupils and students exceptionally gifted

¹⁶³ § 3 (5) (b) notice 73/2005 on education of children, pupils and students with special educational needs and children, pupils and students exceptionally gifted

SEGREGATION¹⁶⁴: involuntary separation of Roma and non-Roma pupils, can be identified in classes and schools with mostly or solely Roma children. The Czech Republic has no legal definition for segregation in its legislation. International human rights treaties prohibit racial segregation and treat segregation as a form of discrimination¹⁶⁵.

EXAMPLE 1

There are 20 primary schools in one city. 5 of them are practical elementary schools educating children according to the framework curriculum for pupils with mild mental disabilities. Mr. Radish lives near socially excluded locality and his child will be enrolled in primary education. Mr. Radish visits Jincovka Elementary School, the local school¹⁶⁶. When Mr. Radish visits the school, he quickly walks away because he does not like that there are more Roma children than children from the majority population. After having walked out of the building, he noticed the sign on the school - Practical elementary school. Only then did he realize that it is not a normal primary school and he must enroll his child elsewhere. Not far from the elementary school Jincovka there is an ordinary primary school. Mr. Radish comes in and is very satisfied and confident that there are the same children as his child (children from mainstream society), and his child will be safe there.

EXAMPLE 2

Mrs Horváthova, who works as a project coordinator in a program focused on human rights and education in a non-profit organization, is going to enroll her daughter to the nearest primary school. She successfully enrolled her child to this school, but on the first day of school she was unpleasantly surprised that her daughter goes to the A class with Roma children only, and in the B class there were 19 children from the majority and two Roma children. She asked the director how is this possible and his answer was that children are divided according to opting for the English language during the enrollment. Mrs. Horvathova told him that she was not asked. She later found another elementary school because she did not like the existing elementary school. In the new school her child was happy because there were children from both mainstream society and the Roma community in one class.

¹⁶⁴ The UNESCO Convention against discrimination in education (CADE) from 1960 bans segregation based on race in schools.. The ECtHR condemned several States for their inaction to bring an end to segregation of Roma children in schools.

¹⁶⁵ Article 1 and 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, text available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

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¹⁶⁶ Local school is the school established in the place of a permanent residence of the child. Most children attend local schools. The law allows to choose another school.

EXAMPLE 3

The daughter of Mrs. Tedokova attends 3rd grade in primary school, located about 15 minutes from her home. The daughter asked her mother why there are stupid "gypsies" in school in 4th grade, where Anetka does not go, and there is very little "white" children. In addition to this, Roma children have the same subjects as they have in 3rd grade. Mrs. Tedokova was curious and asked the director what kind of class is the one with the majority of Roma pupils. The director replied that it is a class for children with disabilities and that they have reduced educational curriculum.

EXAMPLE 4

Mrs. Gažiová, who lives in the socially excluded area, wants to enroll her child in the primary school located 15 minutes by bus, but she knows the school is a good quality school. The director, when saw Mrs. Gažiová, stopped her and told her that this school is not suitable for her daughter; that the tuition is very difficult and her daughter shall attend a school that is close to their residence. Mrs. Gažiová told him that she choose this school and that her daughter did not even have a chance to complete school readiness test, and could not know if her daughter managed or not. The director very kindly replied, "Mrs. Gažiová, your daughter is very beautiful and I fear that this could lead to bullying, she will be better among her peers, enroll her to school you have it in front of the house." Mrs. Gažiová sadly went away and enrolled her little girl to school the headmaster recommended. Her daughter was happy because she mostly played at school, did not receive much of the tasks and had there all her friends who live next to her.

The above examples illustrate several situations of school segregation, and the different form of manifestation. There might be cases as well where Roma children are discriminated (due to their ethnic origin) in ordinary primary non-segregated school with ordinary curriculum.

EXAMPLE 1

In one class there are 20 children from the majority and 5 children of Roma origin. The teacher orders stickers for children. He orders only 20 pieces for majority children and justifies this by saying that Roma children would have tare iit to pieces anyway, and that is why he does not order the stickers for them. The Roma children are treated less favorable on the bias asummtion that being members of the Roma minority they would behave inappropriately in comparison with the non-Roma children not manifesting such an unacceptable behavior.

EXAMPLE 2

The pupils from the majority non-roma population regularly mocked a Roma children, calling him a gypsy and saying that he stinks like his parents and siblings. The teacher never says anything to defend the Roma child and allows the children further harras and humiliate the child.

1.3. DOCUMENTING ROMA SCHOOL SEGREGATION

✓ DOCUMENTATION

- ✓ How to document segregation?
- ✓ What evidence is needed?
- ✓ What are the the legal grounds for initiating proceedings against segregation?

The procedure of the documentation is similar with the case where a Roma child is placed into practical school or to a class with reduced curricula (LMP programme).

1. **FIRST** check whether the procedure for placing the pupil to different type of schools with reduced curricula is in accordance with the procedure laid down in the Education Act.¹⁶⁷

- a) A DIAGNOSIS OF THE CHILD HAS TO BE CONFIRMED AND THE WRITTEN RECOMMENDATION OF SCHOOL COUNSELING FACILITY FOR PLACEMENT INTO ANOTHER SCHOOL IS NEEDED. If a child was placed outside the mainstream education without a diagnosis, it means a violation of the Education Act¹⁶⁸ and it is evident that the child was placed outside the mainstream education because of ethnicity, so there has been direct discrimination.
- b) FULLY INFORMED AND VOLUNTARY CONSENT OF THE LEGAL GUARDIAN / PARENT FOR THE TRANSFER OF CHILDREN TO ANOTHER EDUCATIONAL PROGRAM. In case that parental consent is manipulated, for example by arguments of the director or an ordinary school teacher („*your child will be better at school with the majority of Roma children, your child will not be bullied there etc.*”), or if the child is recommended by PPP to change school and the differences between framework educational programs were not properly explained to parents, it violates the Education Act.

2. **IT IS RECOMMENDED TO VERIFY** the recommendations of the advisory school facility by an independent psychologist who diagnoses the child and finds out if the diagnosis is in accordance with diagnosis of the CSI¹⁶⁹.

¹⁶⁷ §49column (2) of the law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act). The principle of the school can transfer the pupil into the school for pupils with health handicap or to special primary school on the basis of the written recommendation of the school counselling facility and only with a written and fully informed consent of the legal representative of the child.

¹⁶⁸ §49 column (2) law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act).

¹⁶⁹ Nothing will change in the CR if some systematic changes are not accepted, primarily the system of financing of regional schooling (practical schools receive more finances per pupil than ordinary schools), PPP shall look for ways how to find the best solution and supportive measures for each child to maximally develop his potential and talent. Ordinary primary schools shall have more support for education of children with disadvantages, the CR shall have enough capacity in quality pre-school facilities for all children.

- a) If the diagnoses vary and does not fully consider the overall background of the child, IT COULD BE CONSIDERED DISCRIMINATION on the basis of the child's ethnicity.

3. DETERMINE THE PROPORTION of Roma and non-Roma children educated according to the Framework Education Programme with LMP Annex in an elementary school / a classroom.

- a) This finding can be accomplished by VISITING THE SCHOOL. It is also recommended to read the thematic or the ANNUAL REPORT OF THE CSI¹⁷⁰, where you can look up the percentage of Roma children educated at the school.
- b) This finding should help to distinguish equal access to education for pupils from the majority and Roma community. If more than 50% of pupils at the school are of Roma origin, this clearly implies a reason for further segregation of another Roma pupil, because the existence of systematic segregation in Czech schools remains a fact (as evidenced by the research of the Ombudsman and findings of the CSI in the school year 2011/2012).

4. It is necessary to keep WRITTEN EVIDENCE OF RECOMMENDATIONS OF COUNSELING FACILITY related to the placement of the child to another school and possibly also a written diagnosis from an independent psychologist.

5. It is recommended to KEEP EVIDENCE, if possible video or audio recordings (as to statements of school staff explaining the child's future educational path on the basis of the diagnosis.

- a) If the director uses any discriminatory expressions (*"Your child is not smart enough to handle the subjects at an elementary school, he can not even behave himself", or "Your child is very slow and may face bullying¹⁷¹, so it's better if will be among his peers" etc.*), such recording will serve and can be later used as evidence for the relevant body or court, if needed.
- b) If the video/audio recording is done by the legal guardian of the child / parent, he does not need to have permission to video / audio recording. If the recording is done by a third party that is participating in a meeting, a parent has to have written parental consent (name, surname, date of birth and the sentence *"I give my voluntary consent to videotape/sound recording"*, then write the date and place of the meeting and the signature of a parent).

6. Ask the school principal what are THE SPECIFIC REASONS THAT LED TO THE TRANSFER of children outside the mainstream education. It is necessary to have an official opinion of the director or do the recording, where the principal clearly states the reasons.

¹⁷⁰ An argument that the ethnicity of pupils is not recorded and is illegal, is very frequently used by the school principals. It is thus impossible to rely on true data of the number of Roma children in schools. In some thematic reports children with social handicap are mentioned (meaning mostly Roma children). To find out the number of Roma pupils in a certain school the visit is the most effective solution.

¹⁷¹ Security and protection of the health of pupils is anchored in the Education Act §29 (2)

- a) During a conversation with the director it is necessary to emphasize that the responsibility of schools is to educate children in the best way to develop their potential and thus prepare them to start their new life, and that it is necessary to use all methods, maximizing the educational needs of the child (eg. individual education plan¹⁷², providing teacher's assistant¹⁷³).
- b) If the Director will argue that "*the child does not have sufficiently appropriate behavior, disrupts the class, can not cope with learning and feel a failure, so just suffers,*" or that "*the child will be better among his Roma peers*" and therefore recommends examination of the child by school counseling facility etc., he does not use appropriate arguments and those can not be the reason for placing the child outside the mainstream education. The diagnosis has to be defined clearly. Such behavior is not in accordance with the Education Act.

7. There are situations when Roma children are directly registered in practical elementary schools and this is a result of attending preparatory classes¹⁷⁴, therefore **it is necessary to document WHEN (IN WHAT YEAR / WHAT CLASS) THE CHILD LEFT THE MAINSTREAM EDUCATION.**

In case segregation occurs within an ordinary elementary school, (2 classes for children of the same age, one class with mostly or solely Roma children, another class with mostly or solely children from the majority) the following steps are relevant:

1. **FIRSTLY IT NEEDS TO BE SPECIFIED THE FRAMEWORK EDUCATIONAL PROGRAMME OF THE GIVEN SCHOOL.** This information can also be found on the school website and this is essential to find out if the treatment of Roma and other children is equal. The school may officially teach according to the ordinary educational programme, but Roma children may be taught in a different way (according to the reduced curriculum).
2. It is necessary to **FIND OUT WHAT PERCENTAGE OF PUPILS IN A CLASS ARE THOSE OF ROMA ORIGIN.**
3. **It is necessary to request an explanation from the headmaster as to the CONTENT OF THE CURRICULA IN THE CLASSROOM with mostly Roma children.** The best way to evaluate the quality of education in practice is to visit the class and compare it with the other classes, where children from the majority are taught. If the school allows an audio recording of the class, it is the best method for further proof of a lower quality of education in the Roma class. If the school facility and level of education is of a lower quality, it means that the tuition is conducted differently in "Roma class" and "non-Roma class", so it adds to the intensity of less favorable treatment. Roma children have obviously the same intellectual abilities as the children from the majority, so providing better school

¹⁷² §18 law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act) and §6 (4) notice 73/2005 on education of children, pupils and students with special educational needs and children, pupils and students exceptionally gifted

¹⁷³ §16 (9) law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act) And §7, §8 notice 73/2005 on education of children, pupils and students with special educational needs and children, pupils and students exceptionally gifted

¹⁷⁴ §47 law 561/2004 on pre-school, primary, secondary, tertiary and other education (the Education Act) enables to establish preparatory classes for socially disadvantaged children before their compulsory school attendance with the aim to balance their development

facilities and equipment to majority children is therefore a clear example of less favorable treatment and therefore it means discrimination, which is illegal.

4. **A VISIT AT THE SCHOOL CAN BE PERFORMED WITH PARENTS OF ROMA CHILDREN ATTENDING THE SCHOOL**, with relatives of the children or on the basis of a recommendation. You may say from the start that the reason of your visit is to figure out whether the school segregates children. If you are a member of a non-profit organization, it is preferable to have transparent communication with the school and keep it in the spirit of "cooperation", so they may not have an immediate feeling that their school is attacked.
5. **IT IS MOST SUITABLE TO RECORD AND KEEP ANY INFORMATION OR USE EMAIL CORRESPONDENCE**, which may also serve as evidence.

Segregation of Roma pupils may take place in mainstream schools having officially a Framework education program for regular elementary school, but in reality teaching children at a very slow pace, at a lower quality where results are consistent with the learning outcomes of practical schools. The following steps are relevant for documentation:

1. **DETERMINE WHAT IS THE PERCENTAGE OF THE ROMA CHILDREN ATTENDANCE THE SCHOOL PARTICULARLY IF THEY CONSIST THE MAJORITY OF PUPILS**. In most cases majority parents do not want to send their children to these types of schools.
2. **IT IS IMPORTANT TO FIND OUT THE REASONS WHY THE SCHOOL IS CONSIDERED AS "ROMA SCHOOL"**, in what area is the school situated (whether it is in the excluded area - then this is the reason why it is mostly attended by Roma children). It means that the local schools in excluded localities are mostly "Roma schools", and the fate of these children is destined to total segregation of children from mainstream society, children are denied the right to equal access to education, which violates the Education Act and we can talk about institutional discrimination.

In education institutions as well, bias views are often encountered, arguments that Roma children are lazy, have lower requirements, Roma girls often get pregnant at a young age and Roma families are not sufficiently cooperating. In some cases, these arguments reflect the attitudes of teachers and responsible officials of the school system, which is based on racial stereotypes. Therefore it is important to gather the views of school principals and teachers who work in these schools. This information can be obtained in a simple anonymous questionnaire focused on the local Roma community, which can be sent to schools and they either respond or not. If there is no answer, it is possible to meet the school staff and ask them unofficially their opinion.

The so called *situational testing* can also be an option; you may act as the parent of the child from the majority, who is interested in placing your child in the "Roma School", and therefore require information about the school, the staff and neighborhood. If there is a problem and you manage to get a sound recording, proving discrimination may be easier. It also helps to have notes or the aforementioned questionnaire.

Officially, these schools are running as elementary schools with Framework Educational Programme for regular primary schools, although in practice children are educated like in practical elementary schools. The consequence of the children is that they would not be able to get to secondary school. This fact can be verified through findings looking at completion rates of compulsory schooling and enrolment rate in secondary schools.

If it is, in most cases, secondary vocational schools and rarely other secondary schools with graduation, it is evident that the quality of education in these schools is low and children do not get to such schools on the basis of the high quality received education, although according to the law even after completion of the practical elementary schools children can go to any further education. In most cases, school directors keep internal record of children and their further enrolment. When schools do not keep such records it is necessary to communicate with parents. If these schools offer a different level of education than in ordinary primary schools predominantly attended by children of the majority population, it adds to the intensity of less favourable treatment.

In all cases of segregation the evidence of discrimination against Roma children can be used when filing a complaint with the founder of the school¹⁷⁵, the management of the school, the Ministry of Education, the Ombudsman, or civil courts.

¹⁷⁵ Ordinary schools are established by municipalities and founders of primary practical schools are mostly regional authorities. As these schools fall into the category of primary education, the founders can also be municipalities.

1.4. MONITORING ROMA SCHOOL SEGREGATION

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.

PRACTICAL PRIMARY SCHOOLS AND CLASSES FOR MILDLY MENTALLY DISABLED CHILDREN IN ORDINARY SCHOOLS

If you want to monitor the change in the number of Roma pupils in selected practical primary schools and mainstream schools with classes for pupils with light disability **it is recommended to VISIT THE SCHOOL AT LEAST TWICE A YEAR TO SEE HOW MANY ROMA PUPILS WERE THERE DURING YOUR FIRST AND SECOND VISIT to the class/school for children with LMP.**

As a tool you can use the **ANNUAL REPORT OF THE SCHOOL**, where you will find the number of pupils educated by the Framework Education Programme with an LMP Annex and also helpful thematic report of the CSI, giving a general overview of how the situation of children educated in accordance with RVP LMP develops. It is still important to monitor preparatory classes, which are in most cases established at practical elementary schools, as most children from preparatory classes later start their compulsory school attendance straight in the same practical elementary school.

During the school year, it is good **TO ESTABLISH A CLOSER RELATIONSHIP WITH THE PARENTS** or at least with one who has a child at the school classroom you want to monitor because the parent can provide a lot of information you can use (*information that his friend transferred his child to the school or vice versa. The parent can also provide you information regarding the diagnosis of the PPP, or recommend someone whose child was examined in one of the school counseling facilities*). It also makes the visit to school / class easier, because you can accompany the parent during class meetings or anytime a parent needs to visit the school, so you can take advantage of this situation. Thus you may determine the number of Roma children, either through direct communication with the Director or with any teacher, or estimate the number of Roma children.

SEGREGATED CLASSES IN PRIMARY SCHOOLS WITH RVP FOR ORDINARY PRIMARY SCHOOLS

A suitable method for monitoring segregation in elementary school with divided classes (classes with the majority of Roma children and classes with the majority of non-Roma children, where both groups are formally educated in accordance with an ordinary RVP programme), is to **MAKE CONTACT WITH BOTH PARENTS, ROMA AND NON-ROMA**. In this case, it is necessary to keep track of when the division of classes occurs (if in the 1st class or in subsequent years).

It is very important to **MONITOR THE QUALITY OF EDUCATION PROVIDED TO ROMA PUPILS AND OTHER CHILDREN**. It is necessary to **monitor the increasing/decreasing number of Roma pupils at the school** and how the school headmaster responds to the changes.

In case of finding where segregation occurs, you should **KNOW AT LEAST ONE ROMA AND ONE NON-ROMA PARENT WHOSE CHILD IS GOING TO ATTEND PRIMARY SCHOOL** and would be willing to work with you. If you have established cooperation with parents, the testing can be done during the enrollment process. This means you may see how the division into classes happened. If children were already divided in the 1st class, segregation occurs since the very beginning. **It is necessary to VISIT SCHOOL AT LEAST TWICE A YEAR TO FIND OUT THE LEVEL OF KNOWLEDGE THAT EACH CHILD IS GIVEN** (*explain to the director that the parent is interested to see how the tuition looks like*). At this stage it is very useful to have an independent pedagogue who may verify and issue a report on the knowledge of both children, whether they are at the same level or level of education varies.

In case of monitoring segregation in higher classes, again it is needed to cooperate with parents of Roma and non-Roma children who attend different classes in the same grade, preferably the 8th or 9th class. It is essential to monitor and compare the **quality of education** of children (whether they have the same textbooks, testing their knowledge, what secondary school they want to go to etc.). If there is **different teaching material**, it is evident that there is something wrong. In this case, it is necessary to have an opinion of the level of education of both children from an independent teacher / pedagogue.

It is important to **monitor the number of Roma pupils** (rising / falling) at the school and how the school responds to this fact (does it generate further segregated classes or vice versa integrates school Roma children individually into non-Roma classes?) Therefore, you have to visit school personally. If the cooperation with the school fails, you can go to school with the consent of their parents, as no one can object to it.

Equally important is to have a count of the number of Roma pupils who attend the preparatory classes and how many of them then go straight to the first class of the same practical elementary school. The same procedure as above can be applied to monitor the preparatory classes.

THE SO-CALLED "ROMA SCHOOLS" - ELEMENTARY SCHOOLS TEACHING OFFICIALLY BY RVP PROGRAMME FOR ORDINARY PRIMARY SCHOOLS, EDUCATING MORE THAN 50 % OF ROMA PUPILS

"Roma schools" are regular primary schools with more than half of Roma pupils. In schools with a greater proportion of Roma there is an outflow of non-Roma children. If you monitor this type of segregation, it is necessary to identify the root **causes of the segregation and the level of education that this school provides for all children.**

There is a presumption that "Roma schools" are segregated as a result of the creation of artificial "ghettos" (socially excluded localities). To turn this presumption into fact, it is important to find out **HOW MANY ROMA AND NON-ROMA FAMILIES LIVE IN THE AREA**, for how many people this school serves as local school and the proportion of Roma and non-Roma parents involved in the school area.

Although a parent may choose a primary school where your child will be educated parents generally choose the local school near their home. It is not the case for the parents from the majority if they live near the excluded localities.

Again, it is **IMPORTANT TO COOPERATE WITH ROMA PARENTS**. It is necessary to determine the number of Roma children who have completed 9th (last) year and whether they continue in secondary education. If so, at what schools? This information can be provided by principals and teachers from schools or Roma parents. The directors of these schools very often state they do not follow where their pupils go and whether they actually complete secondary education. Parents have this information, so it is better in this case to work with parents and children.

If the majority of children completing this type of basic education go mostly to vocational l schools then to quality secondary and grammar schools, it means that the quality of education is not the same as in ordinary schools, curricula may be reduced.

1.5. REPORTING ROMA SCHOOL SEGREGATION

Cases of segregation of Roma pupils in primary schools at the national level can be reported through the public authority under their control power (CSI) or examination (Ombudsman) power. The right to protection from discrimination is provided, of course, through the civil courts. Cases can be also addressed through mediation.

A complaint or a report about segregation may be submitted through several international bodies or mechanisms. The Czech Republic ratified the European Convention on Human Rights and Fundamental Freedoms, therefore, the European Court, subject to certain conditions, receives complaints from persons invoking the violation of rights guaranteed by the aforementioned Convention.

In certain conditions, the European Commission may launch "infringement proceedings"¹⁷⁶ against Member States when national legislation is contrary to EU law. If the Commission concludes that the Member State violated EU law, it has the opportunity to launch a multi-phase control, which could result in the submission of the application to the Court of Justice of the EU.¹⁷⁷

Before lodging a complaint in regard to segregation and discrimination it is important first of all to have the victims identified, the community they belong to, as well as the responsible party for segregating the Roma children. The defendant (respondent) has to be correctly identified – against whom is the complaint raised (*see Annex I*). After this step a legal strategy needs to be identified and followed according to subsequent step.

STEPS IN REPORTING SCHOOL SEGREGATION

THE FIRST STEP IS TO SUBMIT A WRITTEN REQUEST, an official letter or email to the director of the school with questions about the justification of the situation. If the answer given is not satisfied, it is possible to send a complaint to the founder of the school, usually within 15 days from the official response of the headmaster. A complaint to the founder of the school has to include personal information about the legal representative (usually a parent), data against whom the complaint is raised (school name, address), date and place of filing a complaint. Then it is necessary to mention the situation in question (*see Annex I*) and in the end it is important to sign the complaint. The deadline for the response from the founder must not exceed 30 days from the submission date of the complaints. .

ANOTHER STEP IS TO ADDRESS A COMPLAINT TO CSI. The CSI carries out inspection activities in all schools and educational institutions enrolled in the school register, irrespective of the founder, at regular intervals. CSI has to deal with complaints directly since 2005. The result of the investigation is forwarded to the founder of the school, and he is required to take corrective action. Current legislation does not change the fact that any complaint can be incentive for and result in an inspection visit, but with the important difference that today the inspectors deal only with serious cases (discrimination of Roma children in schools is a

¹⁷⁶ čl. 17 odst. 1 Smlouvy o fungování EU, dále jen „SFEU“.

¹⁷⁷ čl. 258 Smlouvy o fungování EU, dále jen „SFEU“. Soudní dvůr EU. Soudní dvůr Evropské unie provádí výklad právních předpisů EU a zajišťuje tedy jejich jednotné uplatňování ve všech státech EU. Rovněž řeší spory mezi vládami jednotlivých členských států EU a orgány EU. Na Soudní dvůr se mohou obrátit i jednotlivci, podniky nebo organizace, pokud se domnívají, že některý z orgánů EU porušil jejich práva.

serious cause for investigation). The founder of the school has, according to the legislation, to inform CSI about the measures adopted. The founder therefore is not obliged to keep the measures. However, the majority of the founders accept CSI viewpoint.

The complaint to CSI as regards the school or school facility¹⁷⁸ may be submitted by an individual or legal person. Prescribed forms are not available (*see Annex 2*). First, it is important to identify the situation (*existence of segregation in the school/classroom or misdiagnose of school counselling, etc.*) and provide basic information on the situation (*where segregation occurs, the number of children involved and their personal data, date and place when a situation has occurred, etc.*). The complaint may be sent by mail, electronic format or submitted in person. Verbal complaints will have to be put on written record. The Inspectorate of CSI or the central CSI can be contacted. When filing a complaint no fees have to be paid. CSI will issue its opinion and if segregation occurs, CSI should conduct the investigation. At the same time you file a complaint with CSI it can be requested an investigation at the school.

Informing the Ombudsman about school segregation

ANOTHER OPTION IS TO INFORM THE OMBUDSMAN, the monitoring and methodical public authority in relation to discrimination in the Czech Republic. The Ombudsman provides methodological assistance to victims of discrimination; provides legal evaluation of the situation and offer the best options for further action. The Ombudsman will advise or offer cooperation in securing evidence, conducts research in the areas of discrimination, continue to publish reports and make recommendations on issues related to discrimination and determines whether the authorities act in accordance with the law and if they reveal and affect discriminatory behaviour. It is therefore possible to ask the Ombudsman to review the case and ensure the investigation of the school.

Complaints to the Ombudsman may be submitted in writing (*see Annex 3*), electronic mail¹⁷⁹, data box¹⁸⁰, using an interactive on-line form, a complaint can be personally delivered or personally submit to the log. In any case, a complaint has to contain personal details of the applicant (*name, address, phone, email*), it is important to emphasize, against whom the complaint is directed (*ministries, regional authorities, community, etc.*) to describe the object / situation of your initiative, what you want to achieve with the filing of a complaint, and to whom it was (*the headmaster, CSI, etc.*) brought before, the list of attachments you send and the date of signature.

The above methods of filing complaints of violations of the right of equal access to education are the quickest ones, the application process is within a few weeks or months. Unfortunately, they are not always the most effective ones.

¹⁷⁸ Školou je myšlena běžná základní škola, základní škola praktická, střední škola aj., do kategorie školského zařízení spadají školská poradenská zařízení (pedagogicko-psychologické poradny aj.)

¹⁷⁹ Lze použít e-mailem zaslaným na adresu podatelna@ochrance.cz s vylíčením podstaty problému nebo ještě lépe vyplněním formuláře podnětu a jeho odesláním e-mailem. Maximální velikost e-mailové zprávy včetně příloh je 8 MB a zpráva musí respektovat pravidla elektronické komunikace <http://www.ochrance.cz/stiznosti-na-urady/jak-podat-stiznost/>

¹⁸⁰ Datová zpráva může obsahovat vyplněný formulář podnětu nebo vlastní dopis obsahující důležité informace o problému. Celková velikost zprávy včetně příloh může být maximálně 8 MB a musí být v souladu s pravidly elektronické komunikace. <http://www.ochrance.cz/stiznosti-na-urady/jak-podat-stiznost/>

Addressing School segregation through Civil Courts

ANOTHER OPTION IS TO FILE A LAWSUIT BEFORE THE CIVIL COURT. An application may be submitted with the Regional Court. The appeal will be lodged before the Supreme Court in Brno. In case of violation of the administrative process (*discrimination in manipulation of tests of school readiness during the enrollment process to school, disadvantaging Roma children*) it may be appealed to the the Supreme Administrative Court.

The last national instance where it is possible to submit an application is in the event of a violation of constitutional rights (equal access to education without discrimination is part of the constitutional order of the CR) is the **CONSTITUTIONAL COURT** in Brno. In this case, the victim of discrimination may seek end to the discriminatory conduct, remove its consequences and providing adequate compensation (for example an apology). It is also possible to apply for financial compensation for the harm suffered.

The evidentiary rules and the burden of proof in discrimination cases differ from other private disputes, but there is no presumption of guilt, as is often mistakenly claimed. In disputes about discrimination, it is a so-called split burden of proof on the evidence submitted by both parties. The applicant (i.e. victim of discrimination) has to indicate facts that may allow a presumption of a different and less favorable treatment, using documentary evidence, audio recordings, witness statements or statistics indicating the segregation of Roma children. Then it is for the respondent (i.e. who discriminated) to prove that discrimination has not occurred. The defendant has to prove that his action had a legitimate aim which justifies unequal access. He also has to demonstrate that the means to achieve that legitimate objective used were reasonable and necessary.

EXAMPLE: Applicant (Roma mother of a child who is taught jointly with other Roma children in classes for children with disabilities in a regular elementary school) with help of evidence (photos, video / audio recording, other documentary evidence) has to prove unequal access to education of her child on the basis of race or ethnicity, i.e. that there is discrimination on grounds of race / ethnicity. The defendant (school) has to prove that there was a reasonable (legitimate) reason and, if so, the school also has to prove that the difference of equal treatment between Roma and non-Roma child was reasonable and necessary.

Czech courts do not have so far extensive experience with the use of anti-discrimination law and cases of segregation. For lawsuits to prove discrimination of Roma children by segregating them outside the mainstream education or in the "Roma schools" it is important to provide evidence. This may be testimony of the directors and other people related to the case (*recorded or written documented proofs, other important recordings mentioned in the above text*), and other documentary evidence, it is even possible to use statistical evidence¹⁸¹ (*CSI thematic reports, researches of the Ombudsman and other sociological studies and research reports on the segregation of Roma children*) and mediation of generally known facts (existence of "Roma schools" in socially excluded localities mainly inhabited by Roma populations, etc.), which proves the existence of segregation of Roma children in the education system in the country.

¹⁸¹ Statistika jsou účinným nástrojem k dokázání/předpokladu nepřímé a strukturální diskriminace, nerovnosti a dopadu určitého opatření nebo pravidla.

If all remedies at national level have been exhausted, victims of school segregation may file an application with the European Court of Human Rights outlining a violation of article 2 of Protocol No. 1 to the Convention on Human Rights and Fundamental Freedoms, in conjunction with Article 14 of the aforementioned Convention. The ECtHR has a strong decisive nature. If the court determines that there has been a violation of the Convention on Human Rights and Fundamental Freedoms, the State will need to identify necessary measures to bring the situation into conformity. The implementation of these measures, which are either general or specific, is controlled by the Committee of Ministers of the Council of Europe. According to the Convention an effective remedy and measures should be reasonably fast and effective in law and practice.

Another option is to request in certain conditions national Courts for a referral of the case to the European Court of Justice with a view to assess the conformity of an issue at stake in the case in line with EU law standards or to ask the European Commission to initiate infringement procedure against the Member State for non conformity of national law and practice with EU law. (*See Annex 4*). EC may initiate ex officio administrative proceedings if it considers that national law is contradictory to EU law and formally notifies the Member State and subsequently will have the right to comment on the matter before the formal opening of a procedure or an action before the Court of Justice of the EU. After several notice requirements, the Commission may bring an action before the Court or may stop the procedure if the Member State addresses the respective issues. If a case is open before the ECJ and the Court finds a violation, the Member State is obliged to immediately stop such violations and address the matter accordingly. If the Court after a new referral to the Commission finds that the Member State has not complied with its judgment it may impose a lump sum or penalty payment. To prove that there was a breach of the EU Directives it must be demonstrated that the Member State violates its obligations arising from the EU Directives for example through structural discrimination against Roma children in equal access to education. In April 2013 Amnesty International, Open Society Justice Initiative and the ERRC provided a briefing to the EC on discrimination of Roma in relation to education, so that the European Commission may assess whether there was a breach of the EU Race Directive. So far the request did not yield any response from the Commission.

Actions at the international level are as lengthy as the proceedings in the national courts. There are non-profit organizations that represent individuals in the courts for free. To change the current situation of segregation in education, it is necessary to mobilize and organize the Roma parents to stand up for the rights of their children, and of course it is also necessary to have more actions for violations of anti-discrimination law and other national standards, establishing the right of equal access to education without any discrimination.

1.6. EXAMPLES OF GOOD PRACTICES IN COMBATING SCHOOL SEGREGATION

Implementing the DH case in Ostrava

- **Background:** In 2007 the ECtHR condemned the Czech Republic for discriminating against Roma children through their excessive placement into former special schools, nowadays practical schools for mildly mentally disabled pupils. Nothing has changed after 6 years since the case decision. One of the main obstacles face by Roma parents is the lack of awareness in terms of the decision making process concerning the education of their children. Only few parents systematically fight against the rooted practice, which leads to segregating their children into practical schools.
- **Public campaign:** Roma children to be enrolled to quality, non-segregated primary schools in Ostrava in 2014; empowerment of Roma parents to create a group with the common aim to fight for inclusive education for their children.
- **Parents themselves have the key for changing this ongoing practice;** as legal representatives of children they have the right to consent for placement of the child into other than mainstream education schooling.

THE AIM OF THE CAMPAIGN: Active involvement of Roma parents with pre-school and school children, advocating for quality education attending mainstream schools. Such positive examples and their knowledge in the field of education of their children will also motivate other parents from the communities. **Methods of work: Intensive work** (separately and also in groups) with parents and their pre-school (preparation for enrollment process) and school children (support at school – tutoring etc.).

WORKING WITH PARENTS AND CHILDREN BEFORE THE ENROLLMENTS TO PRIMARY SCHOOLS: from September 2013 to January 2014 an information campaign was launched and participants have been selected both among parents and children. Parents learned about the main differences between ordinary and practical / special elementary schools, about possible pre-school facilities for their children. The group of parents used to meet approximately once a week, gradually more and more parents came, and some brought new parents, who cared about the education of their children. Parents also learned what to expect during the enrollment process to school, what basic skills their child must have in order to be accepted, and what skills the child should have when entering the first grade.

WORKING WITH PARENTS: regular meetings where parents learned the differences between regular and special / practical schools, how the view about segregation in education has changed / not changed from the verdict in the DH case. The parents acquired basic legal awareness of the possibilities how to defend themselves if their children would be sent without a good reason to the practical / special primary school (through discussions, theatrical scenes - the situations from life for the children's education, debates, some sessions with experts – a pediatrician, a psychologist for a preliminary test of school readiness of children through games etc.). Parents were provided with necessary information through understandable and readable brochure containing the necessary information from the Education Act on pre-school and primary education). An effort to incorporate some parents in school councils (building trust in the institution, greater independence and feeling of importance, increase of parental attendance at class meetings etc.)

WORKING WITH SCHOOL CHILDREN: support at the difficult beginnings of the primary school attendance (both individual and group tutoring, in groups together with their parents - the transfer of responsibilities and skills to the family). In case of need, provide contact with the school, negotiation, assistance in the form of experienced external pedagogues offering free help to school staff in case of need etc.

WORK WITH PRESCHOOL CHILDREN: preparing for their enrollment and entry into the regular elementary school, preparing to start school (essential knowledge, skills, and contact with others - some children did not attend pre-school facilities, testing of their readiness for school and development with the help of experts - games etc.).

Ways to work with parents:

- ✓ emphasis on their independence and active involvement (recruitment of other parents and children, active participation in meetings)
- ✓ The transfer of competences (common tutoring) and information - empowering parents (so that they can pass on the necessary information to other parents and children to act independently, to communicate with the school to express their needs etc.).
- ✓ understanding the importance of education for their children, the consequences of an indifferent approach to the education of their children (insufficient level of education in some practical / special schools resulting in a limited possibility / impossibility of selecting a secondary school, work)
- ✓ support before and after the start of school (different forms of tutoring as needed)
- ✓ inspiration from people from the communities (Roma high school / college students tutoring children)
- ✓ work with mothers and children realized in their natural environment - in the areas where they live, and in local centers for children and youths

The results of the campaign

The main success of the campaign was to create and unite the group of parents in Ostrava, to fight segregation of Roma children in education.

In the course of the campaign we also came to new findings that prevent desegregation at the local level (non-standard and discriminatory behavior of school principals and teachers before, during and after enrollments of children to quality schools).

As part of this campaign we have identified segregated schools and practical schools that offer low quality education.

- 45 Roma parents were involved in the campaign, 43 of them committed themselves to enroll their children in non-segregated, mainstream primary schools
- In 2 cases the school assistants from practical schools visiting Roma areas and families managed to convince Roma parents in the evening before the enrollment process to enroll their children in practical schools
- 5 parents gave their children postponement of school attendance and were convinced that the next year their children would enter ordinary elementary school
- 38 Roma parents eventually enrolled their children in ordinary elementary schools
- 38 children succeed in school readiness test
- 30 children were admitted to 7 non-segregated, ordinary elementary schools in Ostrava on 28th January 2014
- 6 children were not accepted on the basis of their ethnicity. The parents of these children enrolled them in one of the seven ordinary primary schools and wrote an appeal to the director of the school, which refused the children
- 2 parents are considering filing a complaint and possibly complain to the competent institutions
- 2 children were not even let to fill in the tests, on the day of enrollment at the school the parents were told to choose and enroll children in *their* schools

Information in the media:

Roma mothers and pupils, students from the majority population, all together appealed to the importance of education for Roma children in a media message available on Youtube.

- <http://www.youtube.com/watch?v=Dakgmyi3Ks0>

Report on the campaign in the Czech television (ČT 1)

- <http://www.ceskatelevize.cz/ivysilani/10122978233-udalosti-v-regionech-ostrava/>

Informal group of Roma parents against school segregation

A group of parents established an organized group called *Roma parents against segregation in education*. On facebook they share photos, events, experiences, stories, advices. This group of friends has all been involved in a campaign based on the empowerment of Roma parents in the fight against segregation in education. The Group already has 82 members and continues to gain new members.

- <https://www.facebook.com/groups/388153371317326/?fref=ts>

THE JOINT MEETING OF ACTIVE PARENTS



WORK WITH PRE-SCHOOL CHILDREN



1.7. A GUIDE FOR ROMA PARENTS TO AVOID THE TRAP OF SPECIAL EDUCATION

Within the campaign a guide for Roma parents was elaborated aiming to provide them with practical information about the process of enrollment of their children in primary school. The guide was designed for parents participating in the project implemented by Life Together, through workshops, regular meetings and other associated activities from October 2013 to January 2014.

The guide only summarizes important information, in particular the Law on Pre-school, primary, secondary, vocational and other education, No 561/2004 (hereinafter referred to as Education Act) so that parents may be able to act and in case of need defend their rights of children during the enrollment process.

WHAT INFORMATION RELATED TO THE ENROLLMENT OF CHILDREN TO PRIMARY SCHOOL CAN BE FOUND IN THE EDUCATION ACT?

WHO IS OBLIGED TO ASSIGN THE CHILD FOR ENROLLMENTS TO PRIMARY SCHOOL AND WHEN?

- A parent, guardian, foster parent (legal representative of the child) has to assign the child for enrollment from 15th January to 15th February of the calendar year, when the child is supposed to go to school. In your case it concerns all children who were born in 2008. All children are 6 years old (thus fulfill the condition for entering school) and can assign for enrollment for the school year 2014/2015 beginning in September 2014.

WHERE SHALL I ASSIGN MY CHILD FOR SCHOOL?

- The child shall be registered and then attend **the local school**. This is a school that is located in the district of the place of permanent residence of the child. None of the parents chose a school that would be outside the district. All children were eligible for entry into the local school.

In case the director would recommend another school that is closer to the place of residence and recommends this one as more suitable, such solution has no legal support and can not lead to rejection of your son or daughter to the school you chose. It is your responsibility to ensure daily transportation of your child to school, you are not obliged to tell the director how you will ensure transport of your child to school every day (if you do not want to provide such information yourself).

WHAT IS POSTPONEMENT OF SCHOOL ATTENDANCE, WHO ASKS FOR IT, WHAT ARE THE CONDITIONS OF SUSPENSION?

- The Education Act allows the child to sign for a school outside of his permanent residence, but free capacity of the school is a condition for admission of such child. This means that priority is given to children who reside permanently in the district where the school is located.

The Education Act contains and regulates the conditions of postponement of compulsory school attendance. The request for the postponement in writing has to be from legal representative and a medical report or report from pedagogical-psychological counseling has to be enclosed to support the request of the legal representatives for a postponement.

➤ During the proces of enrollment it can happen that the director will reccommend the postponement of compulsory schooling. The reccommendation for medical examination of the child has to be a necessary part of of the school postponement. If the director will propose only the suspension of compulsory schooling without recommending examination, such behavior can be described as non-standard. The Education Act defines the role of the director only in terms of recommendations. You do not have to follow the recommendation. In any case, this can not be an order or a reason for rejection.

➤ If the director will suggest that the child shall undergo medical examination, again the legal guardian has to give his written consent for such examination. Parental consent with examination must fulfill the condition of fully informed consent.

All children who registered for enrollments, submitted in December 2013 and January 2014, participated (with your consent and at your presence) in a preparatory test of school readiness, conducted by an external experts, and found your children as mature and able to go to the first class.

➤ Trust your own judgment and the fact that that your child has the skills and ability to be admitted to study in the first grade. You also have the support of external experts that your child is able to attend the first class. Any logopaedic problems are not the reason for the postponement. If you are aware of this problem, it is your responsibility to find counseling and speech therapy work to remove them. During the study, the problem of speech can cause worse grades or unnecessary exclusion of your child out of school groups. It is your responsibility to ensure for the child such care that fully supports the development, capabilities and will not reduce its level of involvement in the school team. The school is not required to provide your child with speech therapy.

➤ In case that during the enrollment the director will claim that your child is linguistically inadequately equipped (because they speak Romani or Czech-Romani language and is worried that a child is not ready for first grade and recommends postponement of compulsory school attendance), such acting has no support in the Education Act, and would also violate a number of other standards (the International Convention on the rights of the Child, namely the prohibition of discrimination based on ethnicity or the Anti-Discrimination Act).

In any case, knowledge of Roma language can not be a barrier to admission to the school. Experts rather tend to believe that children speaking two languages achieve better learning outcomes than children who speak one language. There is no reason to value the Romani language less than any other.

HOW THE ENROLLMENT TO THE FIRST GRADE MAY LOOK LIKE?

The Education Act does not directly state its content, but we used the information provided to us by teachers or parents whose children were enrolled already.

- It is an interview where the child, legal guardian, school director and teacher are present.
- It may take 7-20 minutes, during the interview the child completes test of maturity.
- The test itself may take the form of the written test (approximately 15 minutes) or it will be only in a form of an interview between teacher / school director and the child (may take several minutes). A common practice of schools is that they tend to have rather shorter interviews with the child (due to a large number of applicants).
- The legal representative shall fill out a questionnaire.

WHAT DOCUMENTS HAS TO BE BROUGHT BY A PARENT OR LEGAL GUARDIAN OF THE CHILD?

- Identity card
- Birth certificate of the child
- The child's insurance card
- In case of postponement of school attendance a written request of the legal representative of the child and the medical report has to be submitted

A Fair school (Férová škola): another good practice example

The League of Human Rights, a non-profit organization defending the rights and freedoms of all people in Czech Republic implemented the project aiming to promote the principles of inclusive education in the Czech education system. The basic principle was to support and appreciate *the Fair Schools* that create a fair environment for all children and seeks to use the potential of each individual.

Fair School is a long-term, nationwide project. Any elementary school in the Czech Republic may join in, the only exception are schools educating their children according to the annex to the Framework educational program for children with mental disability. Such schools usually work in a segregation way, which is contrary to the fundamental principles of fair school, and therefore can not be involved in the project.

Considering that most of the responsibility for (not) educating disadvantaged children carry standard primary schools rather than special schools, the project is aimed at regular elementary schools. The purpose of the Fair School is to promote the integration of disadvantaged children into mainstream schools, where they will be able to fully develop their potential. It should be emphasized that *the fairness* of schools is not determined by the number of educated Roma children in school. The project is also focused on handicapped children, children from poor social backgrounds and children of other ethnic minorities.

THE COMMON EDUCATION OF ALL CHILDREN AND ITS BENEFITS:

A) FOR A HEALTHY CHILD WITH GOOD SOCIAL BACKGROUND

- diversity in class provides the child with a real picture of the society in which the child will live and work, thus will be better prepared for the future
- the child learns naturally to perceive and respond to differences or changes
- in heterogeneous collective the child develops better social and civic susceptibility, the art of communication or the ability to solve problems

B) FOR CHILDREN WITH DISABILITIES

- gets the opportunity to make new friends in group, this social environment is not limited to that with children with disabilities, such as in special schools
- individual approach from the teacher can help the child to find his unknown abilities
- the child gets the feeling that is part of the society, which boosts his confidence
- the school teaches children from an early age to have tolerance, empathy, understanding, eliminates xenophobia, racism and children learn to live together with minorities
- joint lessons and education leads to less economic burden on society, as each individual is led to independence and gives more chances to succeed on the labor market
- diverse people will be able to live together when they grow up, which will bring the richer, more stable and cohesive society

The Fair School project emphasises respect for the child's personality and all its individual needs. One of the child's needs may be special eating habits (for health reasons or other beliefs). Some of the fair schools cover this issue, in particular through open and friendly communication with parents, in order to respect the needs of the child in accordance with the terms of the school and the school curriculum.

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 SEGREGATION¹⁸²

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.
- 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.

¹⁸² 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 .

- National information and monitoring systems to track school placements in the future to ensure that they sustain inclusive practice. Monitoring and evaluation of programmes 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 rights¹⁸³.

ELIMINATION OF SEGREGATION BETWEEN SCHOOLS¹⁸⁴

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.

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:

¹⁸³ Idem

¹⁸⁴ 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 .

- 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 programmes within Roma communities in order to narrow the socio-economic and cultural gaps that entrench prejudice and xenophobia between Roma and non-Roma communities¹⁸⁵.

ELIMINATION OF SEGREGATION WITHIN SCHOOLS¹⁸⁶

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.”¹⁸⁷ Accordingly, action is needed to:

- 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

¹⁸⁵ Idem

¹⁸⁶ 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 .

¹⁸⁷ Idem

Roma pupils, the quality of education should be improved simultaneously with the implementation of desegregation strategies¹⁸⁸.

ENDING THE PLACEMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS¹⁸⁹

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 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 afterwards¹⁹⁰.

¹⁸⁸ Idem

¹⁸⁹ 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.

¹⁹⁰ Idem

Annex 1

How to choose the defendant?

- 1. IT IS IMPORTANT TO FIND OUT WHO IS THE FOUNDER OF THE SCHOOL (IT CAN BE THE MUNICIPALITY, COUNTY, CHURCH ETC.).**
- 2. EQUALLY IMPORTANT IS TO FIND OUT WHO FINANCES THE SCHOOL.**
- 3. HOW IS FUNDING DISTRIBUTED ON A STATE LEVEL, WHETHER THE FINANCE COMES FROM CENTRAL AUTHORITIES OR IF THE STATE BUDGET IS REDISTRIBUTED AMONG THE DISTRICT OR SCHOOL INSPECTORATES OR GOVERNMENTS?**

Annex 2

Letter of appeal

Name of the parent (legal representative):

Address:

Name of the school:

Head of the school:

Subject: Appeal against a decision not to enroll xxx (child's name, his date of birth) to a basic education to xxx (school name and address)

I, as a legal representative of the child, appeal against a decision of the School director of rejection xxx (*child's name, his date of birth*) to a basic education to xxx (*school name and address*).

The director's decision shows that **the main reason for not accepting xxx to basic education are mainly capacitive reasons** on the part of xxx elementary school. I am convinced that the son / daughter has fulfilled all the formal conditions stated in the Education Act for admission to primary school.

In our case, the child has a permanent residence in school district and successfully passed the test of school readiness. Let me refer to a statement of the Ministry of education, youth and sport related to the issue of enrollment of children in primary schools. "The Ministry of education states that under § 178, paragraph 1 of Act No. 561/2004 about pre-school, primary, secondary, tertiary, professional and other education (Education Act) it is the responsibility of the municipality to provide for the compulsory education to all its citizens. The municipality therefore cannot passively accept the fact that local schools do not have enough capacity. The task of the municipality has always been to predict the development of their citizens, and to develop educational infrastructure in line with the development of the territory." **A condition in which the school cannot accept all the pupils of the school district should be regarded as undesirable.** It usually shows the fact that the municipality defined school district (or made an agreement on a common area with other municipalities), regardless of the capacity of a school without adequate knowledge of demographic conditions in the relevant territory. Alternatively, this can testify that the municipality does not respond adequately to changes in population in the respective district. The obligation under § 178 paragraph 1 of the Education Act cannot be considered satisfied by the mere establishment of a school or school district by creating common area to the elementary school, but it always depends on the extent of the obligation on the number of children under § 178, paragraph 1, which thus effectively provide the conditions for compulsory school attendance. "Headmaster is not the one who determines the size of the school district. In case that the number of children within the school district exceeds the capacity of the primary school, director does not have the proper instrument for rejection of eligible applicants. The solution must be sought in the municipal obligations under § 178, paragraph 1), under which the municipality is "obliged to provide for the

compulsory school attendance of children with permanent residence in its territory and the children placed in its territory ...” Even if there were criteria for acceptance of a child of a gravity circuit to the primary school, it would be obvious where the child is to subscribe to the compulsory school attendance. Therefore, measures must be taken first community for all of its school-age pupils and solutions to inform the school head, which the decision relates.”
Source: www.msmt.cz / ministry / journalist / EXPRESS - msmst - to -write -children - to - WS.

In accordance with the above, I request information about the founder, and what specific preventive measures in cooperation with the school made in order to avoid the situation that the child permanently living in the school catchment area and are eligible for education at the elementary school will not be accepted for reasons of capacity.

On the website of the elementary school xxx, in the section enrollment for 2014/2015 school year, there are published conditions for admission to education. There is no information about the points system. Elementary school xxx refers to the legal standards for the entry into the first class. In connection with the decision not to accept my child I ask the Director for detailed information from the protocol related to results of the school readiness test of my son. The protocol says that the number of points my son achieved is 32 and class capacity is 30 seats. It does not say that my son did not meet the formal conditions for admission to primary school xxx. I also cannot forget another important factor that could, in my opinion, affect the decision of the Director and that is the ethnicity of my son. Therefore, I ask the founder of the school for the explanation and investigation as to whether the point system does not only result in the regulation of the number of Roma children in primary school xxx, and their accumulation in common, but ethnically homogeneous schools. The point system may result in indirect discrimination against certain groups of children. In practice and in our area, there are schools generally known as the Roma and non-Roma schools. As for the quality of these schools – there is a generally shared rule that schools with a high percentage of Roma children are by the majority population known as the schools qualitatively worse. Here I would like to point out the choice and the right of every child to education, which is guaranteed by the Constitution of the Czech Republic, the Education Act, the Convention on Human Rights and Fundamental Freedoms and the International Convention on the Rights of the Child (ethnic or social affiliation cannot disadvantage the child). Our choice of the school we made was based on the indisputable qualities of xxx elementary school. I have an interest in my child attending this primary school, which will prepare him for the future for a quality secondary school.

Thank you in advance for considering my appeal.

Regards

Signature

Annex 3

Form for submitting a complaint to the Ombudsman¹⁹¹

1. Complainant:

Name and surname: _____

Address: _____

Phone number: _____

ALWAYS INDICATE YOUR PHONE NUMBER, IT WILL HELP TO SOLVE YOUR PROBLEM FASTER.

E-mail address: _____

(or)

Name of legal entity: _____

Name and surname of the person authorized to act on its behalf:

Seat: _____

Phone/fax: _____

ALWAYS INDICATE YOUR PHONE NUMBER, IT WILL HELP TO SOLVE YOUR PROBLEM FASTER.

E-mail address: _____

In case you represent somebody else:

Name and surname of the representative: _____

Address: _____

Phone number: _____

E-mail address: _____

ALWAYS INCLUDE THE NAME, ADDRESS, PHONE NUMBER OF THE COMPLAINANT WHOM YOU REPRESENT. *Enclose the authorization to act on complainant behalf with the power of attorney mentioned below:*

Power of attorney:

.....
Authoriser
(Who grants the power of attorney?)

.....
Authorized person
(Who acts on its behalf?)

¹⁹¹ All forms for submitting the complaint can be found at <http://www.ochrance.cz/stiznosti-na-urady/jak-podat-stiznost/formulare-a-vzory-dalsi/>

2. The complaint is aimed against: (mark the appropriate authority or facility)

- Ministry_____
- Regional authority_____
- Municipality(local authority):_____
- Other(e.g. social and legal child protection unit) _____
- Socialsecurity office_____
- Labouroffice of the Czech CR_____
- Health insurance company:_____
- Policeof the CR _____
- TheArmy of the CR (Prague castle guard) _____
- Prisonservice of the CR (prisons) _____
- Facility providing protective or institutional care_____
- Facilityproviding protective treatment_____
- Stateauthority of the court ort he prosecutor´s office (President of the court, Head of public prosecution) _____
- CzechNational Bank _____
- Councilfor Radio and TV Broadcasting _____
- Otherauthority of institution_____

Any additional information to the competent authority - the name and registered office, first and last name or other information identifying particular official:

3. What is the subject of your complaint?

(Brief description of important facts and circumstances of the case, in particular, what in your opinion has done the authority (or an official) wrong?)

4. What do you want to achieve by submitting this complaint to the Ombudsman?
(Change or cancellation of a certain decision, or what would be the ideal solution for you?)

5. To what office or institution was the case brought before you turned to the Ombudsman? Have you asked some of them for a remedy? If so, when and how it happened, what was the answer?

6. List of attachments and decisions related to the clarification of the complaint (copies, not originals)

Date: _____ **Signature:** _____

Annex 4

Complaint form¹⁹² to the European Commission on violations of Community law

1. Name and surname of the complainant:
2. Alternatively, the representative:
3. Nationality:
4. Address or location¹⁹³:
5. Phone number / fax / e-mail address:
6. Region / fields and locations covered:
7. A member State or a public body which has violated Community law according to the complainant:
8. Most detailed description of the facts that led to the complaint:
9. Giving all possible and necessary legislation (treaties, regulations, directives, decisions, etc.), which the complainant considers violated by the member state:

You can use also other forms for submission of the complaint (e.g. an ordinary letter, it is in your interest to provide as much information as possible. This form shall be sent to the following address:
Commission of the European Communities
(Attn: Secretary-General)
Rue de la Loi 200,
B-1049 Brussels
BELGIUM

The form can also be delivered in person to the seat of the EC in each country. The form can be found at http://ec.europa.eu/eu_law/your_rights/your_rights_forms_cs.htm

Your complaint will be eligible if it concerns the violation of rights of the EC by a member state.

¹⁹³

Inform EC about all changes and events that can somehow influence the process of your complaint.

10. If necessary, provide financial program of the Community (possibly with a clear reference) of which has or may have the member state benefit in relation to the facts that led to this complaint:

11. Details of contacts that have happened between you and the Commission (if possible, attach copies of correspondence):

12. Details of contacts that have already taken place between you and the other Community institutions and bodies (e.g. the Committee on Petitions of the European Parliament and the European Ombudsman). If possible, give the reference number, which was assigned to correspondence from the complainant by the entity:

13. Details of contact that have already taken place between you and the national authorities, regardless of whether at central, regional or local level (if possible, attach copies of correspondence):

13.1 Administrative actions (e.g. complaint to the competent national administrations, regardless of whether at central, regional or local level, and / or national or regional ombudsman):

13.2 The use of national courts or other procedures (e.g. arbitration or conciliation). (Indicate whether there has been any decision or judgment in the case, and possibly attach a copy):

14. Provide all documents and evidence to support the complaint, including national measures (attach copies):

15. Confidentiality (mark one¹⁹⁴):

"I agree with the Commission to publish my identity in contact with the authorities of the Member State against which such application is made."

¹⁹⁴ Note that in some cases your personal data may be needed to process your complaint.

"I urge the Commission not to publish my identity in contact with the authorities of the Member State against which such application is made."

16. Place, date and signature of the complainant or the representative:

(Explanation destined for the back of the complaint form)

Each member state is responsible for the implementation of Community law within the own legal system (adoption of implementing measures before the deadline, conformity and correct application). Commission of the European Communities has the task of ensuring the correct application of Community law according to the treaties. Therefore, if a member state fails to comply with Community law, the Commission has its own power (steps in case of Infringement), through which it can try to terminate the infringement and also may refer it the case to the Court of Justice of the European Communities. The Commission will take any action it deems appropriate in response to a complaint of infringement or violation of indications that it finds itself.

Violation is a condition where a member state fails to fulfill its obligations under Community law, whether by an act or omission. The term state means the member state which infringes Community law, irrespective of the level of government that is responsible (central, regional, local).

A complaint against a member state may be submitted to the Commission by anyone, a complaint may relate to any measure (law, administrative regulation or administrative action) or practice which the complainant considers incompatible with the provisions and principles of Community law. The complainant does not have to prove legal interest in bringing proceedings. He does not even have to prove that he is directly and substantially affected by an offense. To be admissible, a complaint must relate to a breach of Community law by a member state. It should be noted that Commission with regard to rules and priorities set by the Commission for the initiation and conduct of proceedings for infringement may opt whether to take or not to take further steps in the complaint.

If anyone believes that any particular measure (law, regulation or administrative action) or administrative practice is incompatible with Community law, he should first seek redress through national administrative or judicial authorities (including national and regional ombudsmen and / or using the available arbitration and conciliation) before or in parallel with the complaint to the Commission. The Commission recommends the use of the domestic remedies, whether administrative, judicial or otherwise, prior to filing a complaint to the Commission, with regard to the benefits they can bring to the complainant.

The complainants who use the redress at the national level, they will usually be able to exercise their rights more directly and in a personal way (e.g. in the form of a court order to the administrative authority, the abolition of national decision or award of compensation) than the Commission would be able to successfully launch infringement proceedings, which may take some extra time. Before the Commission shall refer the matter to the Court of Justice the commission has a duty to contact the member state several times through official channels and try to put an end to the infringement.

All the conclusions of the Court of Justice concerning violations of law do not have any direct effect on the complainant's rights, as they are not designed to resolve individual cases. It only obliges member states to comply with Community law. Therefore, it is necessary that all the compensation claims of individual complainants shall submit to national courts.

The complainant has the following administrative guarantees:

- a) After the Commission's secretariat shall register the complaint and finds it acceptable, assigns to the complaint an official reference number. Then, without delay, send notice to the complainant that contains the above reference number, which should be used in all future correspondence. However, the actual allocation of an official reference number does not mean that the infringement proceedings against the member state concerned will be initiated.
- b) If the Commission raises a protest to the authorities of the member state to which the complaint relates, the commission shall be governed by the statement of the complainant from paragraph 15 of this form.
- c) The Commission will seek to ensure that the merits (whether to launch infringement proceedings or to close the case) shall be decided within twelve months from the time the complaint was registered by the General secretariat.
- d) If the relevant department decides to propose to the Commission to close the case, it shall inform the complainant in advance. The Commission will also keep the complainant informed of the progress of any infringement proceedings.