GUIDE FOR DOCUMENTING AND MONITORING SCHOOL SEGREGATION IN HUNGARY

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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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, perspective[1].

[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 Commission[2] 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 Commission[3], 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 addressed segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic did not adopted 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 provided 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 State 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 policies[4].

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

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

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

The Council of Europe's Commissionaire for Human Rights[5] has recently highlighted the fact that Romani children are yet disproportionately streamed into special schools, in particular schools for children with disabilities. Overrepresentation of Romani children in schools is often reported in countries such as Bulgaria, Czech Republic, Hungary, Russia, Serbia, Slovakia, and Macedonia. Even when Roma and non-Romani children share the same school, Romani pupils are often separated from the majority in 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 Turkey[6].

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.

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

[6] Idem

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

1. WHAT IS SCHOOL SEGREGATION?

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

1.2. United Nations treaties and bodies about racial segregation

The UNESCO Convention against Discrimination in Education (CADE) from 1960 is one of the human rights treaties that expressly refers to and prohibits segregation in education[7]. In the context of defining discrimination, Article 1 of the UNESCO Convention[8], 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 2[9] [...], *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".

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[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 Discrimination[10] (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. XIX[12] 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, colour, 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 Roma[14], 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>

[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 area[15], 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 Ministers[17] 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 Ministers[19] 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]

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[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, a*dopted by the Committee of Ministers on 17 June 2009,available at: < https://wcd.coe.int/ViewDoc.jsp?id=1462637>*

[20] Idem

The Council of Europe's European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation no.7[21] advocates for legal measures to prohibit segregation and outlines a definition of this phenomenon.

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

A subsequent ECRI recommendation on combating anti-Gypsyism and discrimination against Roma[23] 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 taken[25].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 2012[26]. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013[27].The 2013 assessment report focussed specifically on the structural preconditions needed in each country[28] 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

[21] ECRI General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination, adopted on 13 December 2002, available at: < http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/ecri03-8%20recommendation%20nr%207.pdf>.
[22] Idem
[23] ECRI General Policy Recommendation no.13 on combating anti-Gypsyism and discrimination against Roma, adopted on 24 June 2011, available at:< http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf>
[24] Idem, point 4, para d and f.
[25] Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020, available at:< http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011DC0173>.
[26] National Roma Integration Strategies: a first step in the implementation of the EU Framework, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0226>
[27] Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, 2013/C 378/01, available at: http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01).
[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.

number of Roma children complete primary school and "***Roma children tend to be over-represented in special education and segregated schools***"[30]. The Commission called on *Member States to* ***ensure that all Roma children have access to quality education and are not subject to discrimination or segregation***, regardless of whether they are sedentary or not. Subsequently "Member States should, as a minimum, ensure primary school completion. They should also widen access to quality early childhood education and care and reduce the number of early school leavers from secondary education pursuant to the Europe 2020 strategy"[31].

Furthermore, the Council of the European Union made specific recommendations on effective Roma integration measures[32] in education as well as non-discrimination action calling on Member States to "ensure *equal treatment and full access for Roma boys and girls to quality and mainstream education* and to ensure that all Roma pupils complete at least compulsory education. This goal could be attained by means of measures such as: a) ***eliminating any school segregation;*** (b) ***putting an end to any inappropriate placement of Roma pupils in special needs schools***; (d) increasing the access to, and quality of, early childhood education and care, including targeted support, as necessary.

Similarly by means of measures as (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 themselves[33].

[30] Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020
[31] Idem
[32] Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States.
[33] Idem

1.6 Legal frameworks addressing segregation at national level[34]

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

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

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

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

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

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

1.7. Sociological interpretation of segregation in Hungary

Segregation refers to the involuntary physical separation between Roma and non-Roma, which is manifested in the disproportionate overrepresentation of Roma in schools and classes. Segregation hinders social integration, reinforces stereotypes and racism among majority and minority communities. Therefore, segregation in and of itself is damaging – both for minority and majority communities.

The failure of several actors within the school system to provide inclusive education and the lower expectations for Roma children compared to majority students constitutes institutional discrimination.[36] This in turn results in absenteeism and early drop out, i.e. an effective exclusion of Roma from school. Even if not a single teacher, social worker or local decision maker engages in an intentionally discriminatory conduct, the end result can still be exclusion. This, of course, does not imply that Roma children and/or parents cannot be liable for underachievement, absenteeism or early drop out.

However, their individual liability needs always to be examined in the institutional context. Institutional discrimination describes the collective failure of an organization to provide an appropriate and professional service to Roma through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping. Structural discrimination denotes segregation and institutional discrimination, as well as the discriminatory impact of organizational procedures, whether in schools, or regional and national administration of education, which may include inequalities of opportunity and a restriction of choice.

[36] The following introduction to the Sociological Interpretation of Segregation is an extract from the paper of Orsolya Szendrey, *Brief summary of the education policy measures promoting equal opportunities for multiple disadvantaged children, especially Roma in Hungary*

In Hungary, the main forms of segregation are the so called *Gypsy schools,* where the majority of students are Roma, the organization of *Gypsy classes* within normal schools, and the systematic channelling of Roma students into special schools for mentally disabled students. The right of the parents to choose the way of education and the school for their children is guaranteed in the constitution. There are no real restrictions in practice, only the financial circumstances of the family limit this selection within the public education system.

As soon as the proportion of Roma students reaches a certain level (15-20 %), non-Roma parents do not tolerate them anymore and take their children out of the school. The children of well-off parents leave the school first, and then those, who can afford to take their children into a more distant school. At the end of this process, the few non-Roma, who remain in the school are usually multiply disadvantaged, just like the majority of the Roma students. Such *white flight* resulted in extreme differences among the schools within bigger cities and between the schools of neighbouring small settlements.

The prominent Program for International Student Assessment (PISA) surveys highlighted the fact that the Hungarian educational system provides the fewest opportunities for children of poor families and of parents with lower education among the surveyed Organisation for Economic and Co-operation and Development countries (OECD) (OECD PISA, 2000, 2003, 2006, 2009). Among all groups of disadvantaged children, the most vulnerable are Roma children. According to the 2000 PISA survey, a Roma child is fifty times less likely to complete secondary level education compared to a non-Roma peer from an average social background. These children do not have equal opportunities to obtain the qualifications that would later enable them to lead successful lives in society.

According to the PISA analyses of 2000, 2003, 2006 and 2009 and 2012 learners' performance in the Hungarian educational system is much more affected by socio-economical background than the OECD average. Hungary still has very high values on this scale, which means that among the surveyed public education systems the Hungarian provides less equality of chances for children from families with lower education, fewer cultural advantages, and worse financial position.

A survey conducted in the 2003–2004 school year showed that there were 178 primary schools in Hungary in which the majority of students were Roma (and over 40 percent of the Roma primary school students attend these schools).[37] Most of these Roma schools did not evolve only as a result of the spontaneous segregation of the settlement, but the choices of the more privileged parents and the decisions of local authorities. In those schools where the proportion of Roma students is higher than the average, the standards of education are lower than average: worse human resources (e.g. more lessons taught by unqualified teachers) and material conditions.

The quality of education in the segregated schools inevitably drops as a result of the decline in the number of students attending the school, since less children means less per capita state support for the school. Furthermore the survey confirmed that the more segregated a school is, more expensive the education gets, while these schools are usually in smaller settlements in the most deprived regions of Hungary. Kertesi and Kézdi also

[37] Havas and Liskó 2004

found that as the proportion of Roma children grow in a school; the quality of education services provided for these children will decrease inevitably due to the fact that it is harder to recruit and keep skilled and motivated teachers in such schools and provide the same level of services among worse infrastructural and technical conditions.[38]

The researchers reemphasized that segregation means the accumulation of educational problems within one school or class, which will inevitably result in reduced quality of education services provided for the students in that particular school or class. The other important factor behind worse educational achievements in a homogenous class or school is the peer influence, as the expectations of the other students in the class have significant impact on the motivation and success of the disadvantaged children. Therefore the futures of the Roma students in these segregated schools are predetermined. The lower quality of education and lower achievement results in high unemployment of the Roma population in the long term.

1.8 Legal interpretation of segregation in Hungary

The Hungarian anti-discrimination law (ADL)

Domestic law in Hungary explicitly defines discrimination as aligned with EU law and also defines segregation. The Hungarian anti-discrimination law (ADL), the Act CXXV on equal treatment and the promotion of equal opportunities of 2003 entered into force on 27 January 2004. While the Fundamental law of Hungary contains a general clause banning discrimination, the ADL provides a comprehensive framework on anti-discrimination. Sectorial laws (civil law, labour law, and the laws on health care, education and so on) refer the provisions of the ADL in all discrimination-related instances, consequently creating a great degree of consistency within the system.

The ADL covers all five grounds provided by the EU anti-discrimination Directives and in some respect (e.g. grounds covered and material scope) the Hungarian law goes beyond the requirements of the Directives. It lists altogether 19 prohibited grounds of discrimination. The list of protected grounds is as well non –exhaustive.

The ADL approaches the issue of scope from a personal, instead of material aspect. It prohibits any form of discrimination in the public sector, irrespectively of the area discrimination manifest itself, and as such it goes far beyond the scope of the EU directives. In the private sector, only four groups of actors fall under the ADL's scope (regardless of the field concerned): (i) those who make a public proposal for contracting (e.g. for renting out an apartment) or call for an open tender; (ii) those who provide services or sell goods at premises open to customers; (iii) self-employed persons, legal entities and organisations without a legal entity receiving state funding in respect of their legal relations established in relation to the usage of the funding; and (iv) employers with respect to employment.

[38] Kertesi and Kézdi 2004

The prohibition of segregation and violations of inherent rights

The ADL defines segregation as:

"A conduct that separates individuals or groups of individuals from other individuals or groups of individuals in a similar situation on the basis of their characteristics as defined in Article 8, without any law expressly allowing it."[39]

The law also defines that "the principle of equal treatment is not violated if, a) in public education, at the initiation and by the voluntary choice of the parents, education for ethnic or other minorities is organized whose objective or programme justifies the creation of segregated classes or groups; provided that this does not result in any disadvantage for those participating in such an education, and the education complies with the requirements approved, laid down and subsidised by the State."[40]

The Act of CXC of 2011 on National Education does not prohibit discrimination in education expressis verbis. Art 1. (2) of this Act however lays down the principle of equal treatment as one of the principles governing public education.

According to Article 2:42 (2) of the Civil Code:

"Human dignity and Inherent rights shall be respected by everyone. Inherent rights are protected by law. (3) Inherent rights shall not be deemed violated by conduct that is approved by the holder of the rights".

Discrimination is a violation of inherent rights according to Article 2:43. § of the Code Civil:

"Discrimination against private persons on the grounds of gender, race, ancestry, national origin, or religion; violation of the freedom of conscience; any unlawful restriction of personal freedom; injury to body or health; contempt for or insult to the honour, integrity, or human dignity of private persons shall be deemed as violations of inherent rights."

Article 2:54 § of the Civil Code provides that inherent rights may only be enforced personally except for incapacitated or deceased persons.

Under domestic law a person whose inherent rights have been violated may: a) demand a court declaration of the occurrence of the infringement, b) demand to have the infringement discontinued and the perpetrator restrained from further infringement; c) demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution; d) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature.[41]

[39] See Article 10(2) of the ADL
[40] Ibid., Article 28(2)(a) and (b)
[41] See Art. 2:51.(1) a)-e) of the Civil Code

The violation of inherent rights can only be established by civil courts. Administrative courts (with a competence to review administrative decisions) do not have such competence. Inherent rights shall be respected by everyone: the Civil Code does not make any distinction between public law and private law organizations with respect to the obligation to respect inherent rights.[42]

[42] See Art. 2:42. (2) of the Civil Code

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 exclusion[43].

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

A necessary corollary for the full enjoyment of the right to education, access to education entails the right 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 countries[44]. The following instruments are important for combating school segregation.

INTERNATIONAL TREATIES	
	Universal Declaration of Human Rights[45]: Art. 26.
	1966 International Covenant on Economic, Social and Cultural Rights[46]: Arts. 2 (2); 3; 13 & 14.
	1966 International Covenant on Civil and Political Rights[47]: Art. 26.
	1989 Convention on the Rights of the Child[48]: Art. 2; 28 & 29.
	1979 Convention on the Elimination of Discrimination against Women[49]: Art. 10.

[43] 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
[44] *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.
[45] 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.
[46] 993 UNTS 3.
[47] 1966 International Covenant on Civil and Political Rights, 999 UNTS 171.
[48] 1577 UNTS 3.
[49] 1249 UNTS 13.

	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 TREATIES	
	1950 European Convention of Human Rights[50] (ECHR): Protocol I, Art. 2
	1996 Revised European Social Charter[51]: Art. 10
	1995 Council of Europe Framework Convention for the protection of National Minorities[52]: Arts. 12 & 14
	EU Charter of Fundamental Rights[53]: 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 1of 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

[50] ETS No. 5.
[51] ETS No. 163.
[52] ETS No. 157.
[53] Published in the *Official Journal of the European Communities*, 18 December 2000 (2000/C 364/01).

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 2020[54], followed by the June 2011 Conclusions[55] that endorsed the Presidency's report on Roma inclusion. In the context of the EU *Framework*[56], 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 2012[57]. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013[58]. The 2013 assessment report of the European Commission focussed specifically on the structural preconditions needed in each country[59] while the 2014 report looked at overall progress in all key areas.[60]

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 education[61]. 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 preschool[62] 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 addressed segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic,

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[54] See http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010658%202011%20INIT
[55] See http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2023%202011%20INIT
[56] See http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=en
[57] 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
[58] 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).
[59] Report available at: http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52013DC0454
[60] Report available at: http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.
[61] 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.
[62] *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>.

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 children[63].

A positive development was marked in December 2013 when the Council of the European Union made specific recommendations on effective Roma integration measures[64] including in education as well as non-discrimination.

The Council of the EU called on Member States to:

"Ensure **equal treatment and full access for Roma boys and girls to quality and mainstream education, among other, by eliminating any school segregation and putting an end to any inappropriate placement of Roma pupils in special needs schools**[65].

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

Notwithstanding the introduction of national strategies for Roma integration, research and monitoring carried out by international organisations shows that segregation of Romani children into separate and/or substandard education continues to be the most widespread violation with respect to the right to education. This could be due to the following identified shortcomings of both national and European frameworks[66].

- Within the context of the EU Framework for Roma Integration, there is a need for a concerted drive to work with local authorities, law enforcement agencies, educational institutions, and civil society partners to launch public awareness-raising campaigns, and support community-based initiatives to dispel anti-Roma prejudice and foster inter-cultural dialogue.
- Progress cannot be made without more effective action to counter discriminatory attitudes and practices.
- There is a domination of the social policy paradigm mobilised to tackle manifestations of inequality, poverty, segregation and other social or economic 'problems'. While acknowledging the need for effective interventions, this way of framing the issues also appears to place the primary responsibility for 'integration' on disadvantaged Roma people themselves.
- There is a relatively limited role of Roma communities played in the development and implementation of the policy initiatives nominally designed to support them.

[63] 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.

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

[65] Idem

[66] B. Rorke, Roma Rights 2013: National Roma Integration Strategies: What Next?, *ERRC*, 2014, available at: < http://www.errc.org/article/roma-rights-2013-national-roma-integration-strategies-what-next/4238/2 >.

- Arguments about anti-racism and social cohesion have to be won within the communities and institutions which are part of Roma people's lives and on which many depend for services and support.
- Member states need to quit the foot-dragging and deliver on Roma inclusion, and meet their obligations to guarantee equality, justice, and security for all citizens regardless of their ethnicity.
- There have been no systemic moves to end school segregation.
- The capacity to absorb and manage EU funds remains weak. In systemic terms, the impact on Roma communities remains negligible.
- National governments need to screen their national, regional and local administrative regulations and practices, in order to identify and repeal any discriminatory and segregating measures.
- All public service providers need to review their procedures and practices to end direct and deliberate forms of discrimination. In addition, all public bodies and service providers should review their ways of working to ensure that Roma do not experience indirect and sometimes unintended discriminatory treatment due to institutional racism.
- Equality bodies or other relevant human rights bodies: in most cases their role was not substantiated in connection with the implementation process of the strategies. In general, details of financial resources for implementing anti-discrimination measures were missing in the national strategies.

2.3 Impact of School Segregation in Hungary

During the 2001 National Census, 190 406 inhabitants identified themselves as belonging to the Roma ethnic minority, while following an intensive NGO campaign across Romani neighbourhoods, in the 2011 National Census this number rose to 315 000. At the same time, self-identification based ethnic data significantly differ from the results of surveys carried out by sociologists who generate estimates on the basis of third party identification. Significantly, the questions pertaining to Roma ethnic minority in the National Census do not ask respondents about their experiences with (racial) discrimination, being limited to questions on minority language and culture. Even the most moderate estimate provided by sociologists sets the number of Roma in Hungary at approximately 650 000. The proportion of Roma under 18 is higher than in the entire society. In 2003, Kemény and Janky estimated the proportion of Roma primary school age students to be about 15 % of the entire student body in that age group.[67]

There are further estimates, which set the proportion of multiply disadvantaged students among the Roma primary school age children at around 75%.[68]

„In this context any decision that may have a negative impact within the education system has an exponentially negative impact on those who are barely capable of enforcing the interests, are less mobile, have a poor network of relationships or little knowledge capital. This conclusion is particularly true for areas where the unspecified legal regulations or the responsibility transferred to the intermediate institutions would result in uncertainty rather than specific support".[69]

[67] Kemény István- Janky Béla- Lengyel Gabriella: A magyarországi cigányság 1971-2003; Gondolat, Budapest, 2004. 18.

[68] http://ec.europa.eu/justice/discrimination/files/roma_hu_strategy_annex1_hu.pdf 30. vagy http://www.econ.core.hu/file/download/bwp/bwp1003.pdf (Kertesi-Kézdi: Iskolázatlan szülők gyermeki és roma fiatalok a középiskolában Beszámoló az Eduactio Életpálya-felvételének 2006 és 2009 közötti hullámaiból)

[69] Civil Society Monitoring Report on the implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary; http://romadecade.org/cms/upload/file/9270_file8_hu_civil-society-monitoring-report_en.pdf

School segregation is not the cause but the result of the socio-political processes that have been implemented in the last 25 years. School segregation stigmatizes the Roma living in extreme poverty, reinforcing unemployment and a low level of education that keeps or pushes them to the periphery of society. Based on the research carried out by Havas and Zolnay in 2010[70] it is now known that about 300 villages have become ghettoised. At the same time, there is a drastic decrease in the number of Roma students in the primary schools of cities that may result from two factors. On the one hand, poor families – including poor Roma families – have been pushed out of the cities to the countryside. On the other hand, in the period 2004-2010 certain municipalities reorganized their public education systems to achieve desegregation. In this period, the number of Romani children in primary schools decreased in cities and grew everywhere else.

Havas and Zolnay remind readers „of the table that showed between 2004 and 2010 the average change in the proportion of Romani students according to the type of settlement (city, town, and village). There is only one type of settlement, i.e. county seats where the average proportion has not risen but to the contrary, decreased. The research results from 2004 demonstrated that the majority of cities that served as county seats operated one Roma only segregated school. Data from 2004 also showed that on average these homogenous Roma schools taught 200 students less than the other primary schools in the same city. This fact led to the conclusion that the homogenous Roma schools were maintained in order to segregate the most disadvantaged Romani children from the other children". [71]

According to sociologic estimations about 30% of all primary schools in Hungary deny access to quality education for Roma children by some kind of segregation practice, and cca. 30 % of Roma students are taught in a segregated setting.[72] Roma children face early school dropout and mostly end up in vocational schools without obtaining a secondary education diploma. While 80% of the majority population will leave the school system with a secondary school diploma, only 10% of Roma children do so. Since the compulsory school attendance age has been reduced from 18 to 16 years, this tendency is not expected to change in the near future.

The Hungarian educational system is severely selective; it provides the fewest opportunities for children of poor families[73]. A research conducted by UNESCO in 2008 showed that selection pressure from the middle class play a crucial role in development of educational inequalities The Hungarian educational system increased the brought along disadvantages arising out of the family background because of strong selection and segregation mechanism prevail at all levels of public education. This results in discrimination in the access to education based on social status and Roma origin. Lack of data of ethnic origin of students in primary education and nursery is a barrier to desegregation and planning. In 2013 a new definition for socially disadvantaged status has been adopted, while the new legislation left the procedure intact where children could be registered (Art, 67/§. of the Act XXXI of 1997). Roma children however, even in case they qualify for socially disadvantaged status, are under-registered and remain invisible for officials.

As of January 2013 a major educational reform has been introduced: 2670 primary and secondary schools were nationalized. State owned schools are now managed by a centralized body. The reform which originally aimed at enhancing equality in reality deepened inequalities. The government missed the historic opportunity to inspect all state-owned schools and close down or reorganize those in which Roma or socially disadvantaged children constitute the majority of the students.

[70] Gábor Havas and János Zolnay: Integrating school politics http://beszelo.c3.hu/cikkek/sziszifusz-szamvetese
[71] Gábor Havas and János Zolnay: Integrating school politics http://beszelo.c3.hu/cikkek/sziszifusz-szamvetese
[72] Havas-Liskó, 2005, p. 11.
[73] PISA 2012 Results: Excellence through Equity Giving Every Student the Chance to Succeed, volume II. available at: http://www.oecd.org/pisa/keyfindings/pisa-2012-results-volume-II.pdf

Access to nurseries and kindergartens is limited due to their low capacity: in average, only 1 out of 4 nursery-aged children are accommodated in nursery.[74]As of 1 January 2012 the fee of nursery care has been increased significantly (Act XXXI of 1997, Art. 148. § (2)).

Children of uneducated parents have lower kindergarten attendance rates.[75] According to a new legislation enrolment and attendance of kindergarten will be compulsory from the age of three, but the implementation was postponed to September 2015, due to the lack of kindergartens and other resources.

[74] Central Statistics Office 2012, http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/kisgyermnapkozbeni.pdf
[75]Kertesi-Kézdi, 2013, http://www.econ.core.hu/file/download/bwp/bwp1314.pdf)

3. ROMA SCHOOL SEGREGATION CASES IN HUNGARY

The Hungarian Equal Treatment Act includes the presumption of discrimination which is based on the idea that establishing a protected ground and a disadvantage in itself creates a strong enough suspicion for discrimination for the burden of proof to be shifted. This is more advantageous for the victim than the solution applied by the directives because in the Hungarian system the causal link between the protected ground and the disadvantage does not need to be substantiated in any way.

The test for the burden of proof to be shifted only requires that the victim substantiates rather than proves his/her claims. Substantiation involves a lower level of certainty:

if the victim establishes facts from which it may be presumed that: (i) a disadvantage was suffered and that she has protected characteristic (real or assumed) then the burden of proof shifts.

Change for Children Foundation (CFCF) was founded in 2004 with the express purpose of fighting structural discrimination against Roma and impoverished children in public education through collective legal action coupled with community organising and local actions.

Between 2005 and 2008 CFCF focussed on tackling segregation created and/or maintained by local governments and schools. In the period 2009-2011 it shifted the focus to the Ministry of Education and other central/national public authorities, highlighting their failures in ending segregation. It also followed up on the DH litigation and challenged misdiagnosis in various individual cases. Last, it challenged unusual forms of segregation, i.e. through the establishment of foundation schools.

The jurisprudence CFCF established relates to the illegality of class, building and school level segregation – be that among public or between public and private (foundation) schools – damages caused by segregation, as well as the procedural flaws leading to misdiagnosis. Significantly, CFCF has successfully litigated for an effective, proportionate and dissuasive remedy against segregation in public education.

3.1. THE MISKOLC SEGREGATION CASE

Miskolc is the fourth biggest city in Hungary, located in the north-east part of the country. Although according to the census in 2001, only 2.2% of the population of Miskolc declared themselves Roma, Miskolc is known as having the highest Roma population in Hungary. Many Roma in Miskolc and its outskirts live in segregated settlements. Housing and school segregation of Roma habitants of Miskolc had long traditions.

In April 2004 the local council of Miskolc took a decision to integrate certain schools from an economic and administrative point of view. This meant that schools that used to be separate institutions were turned into single economic and administrative units

operating in different buildings. The decision to integrate the schools did however leave the school districts untouched. The enrolment of children who reside in the school district cannot be refused. Due to the high degree of segregation in housing, schools are also strongly segregated in Miskolc. The school integration took place in a way that segregated Roma schools were integrated into predominantly non-Roma, elite schools. However, since the school districts remained intact, in spite of the economic and administrative integration of the educational institutions, this did not mean that Roma pupils had become entitled to continue their studies in the elite schools.

In June 2005 CFCF brought before the Court an *actio popularis* claim against the local council, claiming that by integrating the schools into single economic units while simultaneously maintaining their separate school districts, the local council had contributed to maintaining the segregation of Roma and/or socially disadvantaged pupils, and thus violated the requirement of equal treatment. CFCF alleged that the municipality committed indirect discrimination, as its apparently neutral decision put Roma and/or indigent pupils into a disproportionately disadvantageous situation. CFCF also argued that the local council's failure to take effective measures to make sure that the schools implement their pedagogical plan aimed at the integration of disadvantaged pupils, amounts to direct discrimination.

The respondent argued that it has no official knowledge of the ethnicity of the students in its schools and referred to the regulations of the law on national and ethnic minorities according to which "the admission and acknowledgement of the fact that one belongs to a national or ethnic minority is the exclusive and inalienable right of the individual. No one is obliged to make a statement concerning minority affiliation. An Act or a legal provision concerning its implementation may require the individual's declaration with regard to the exercise of some minority right."76 CFCF stressed that discrimination is usually based on not a real but on the perceived characteristic of the individual therefore it is irrelevant whether the victim of discrimination declares himself a Roma, what is as stake is whether others consider him as a Roma.

The First Instance Court judgment (2005)

In November 2005, the Court of First Instance in Borsod-Abaúj-Zemplén County Court rejected the claim. As for the ethnic composition of the schools, the Court relied on sociological studies submitted by the respondent, the pedagogical programs of the schools and the fact, that the municipality asked the opinion of the Local Roma Self-government before adopting the resolution on the economic an administrative integration of the schools.

The court established that it was common general knowledge that in certain primary schools Roma students were overrepresented[77].The Court however maintained that it is for the applicant to prove the causal link between the protected ground and the alleged disadvantage. Moreover the Court took the position that discrimination can only be a result of an active and intentional conduct.

[76] Art 7 (1)-(2) of the Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, available at: http://www.mtaki.hu/docs/cd2/Magyarorszag/tv1993_77ang.htm

[77] According to Art 163. § (3) of the Hungarian Code of Civil Procedure the Court may rely on consideration which is common general knowledge.

The Second Instance Court judgment (2006)

The Debrecen Appeal Court partially modified the first instance judgment. It found that as a result of the decision to integrate the schools without simultaneously re-drawing the school districts, Miskolc had maintained the segregation of Roma children in violation of their right to equal treatment based on ethnic origin. The court observed that the legal provision regulating the reversal of the burden of proof in fact created a legal presumption to the effect that once the protected ground (Roma ethnicity) and the disadvantage suffered (separate education) had been established, the burden of justifying discrimination automatically fell to the defendant.

> Therefore the court of appeal took the position that in order to shift the burden of proof the applicant shall not prove the causal link between the protected ground and the disadvantage. It is for the respondent to justify its actions.
> Another important point is that the Court agreed with CFCF in that *not only active, but also passive conduct could lead to a breach of the obligation of equal treatment, especially of the obligation to accord a similar quality service in education to all.*

The court ordered Miskolc to publicise its finding through the Hungarian Press Agency. However, the Court stated that it could not grant the order requested by CFCF to integrate Roma children into mainstream classes as it would be beyond the civil court's scope of authority to instruct an elected public body in detail on how such integration should be achieved. The court noted that in the absence of a detailed and school-specific integration plan it could not render any other decision.

Unfortunately the Court failed to determine the form of discrimination the respondent had been responsible for, the judgement only refers to the violation of the right to equal treatment and does not mention whether the omission to integrate Roma children amounted to segregation, direct or indirect discrimination.

3.2. THE HAJDÚHADHÁZ SEGREGATION CASE

Hajdúhadház is a town of 13.000 habitants in eastern Hungary. The municipality of Hajdúhadház maintained two primary schools, the Bocskai István Primary School and the Dr. Földi János Primary School. Both schools had 3-3 separate buildings in different locations. The Bocskai István School offered primary education in three different locations. The central building was located in Szilágyi Dániel Street, in which the school offered advanced language and bi-lingual education. The building in Rákóczi Street was designated for children with special educational needs and offered Roma minority education. The third building in Kossuth Street offered Roma minority education and advanced informatics studies. The Földi János Primary School had a central building in Jókai street, and two other buildings in Szabó Gábor and Dr. Földi János Street, both in which Roma minority education is provided.

In 2006 CFCF launched an *actio popularis* claim against the municipality of Hajdúhadház and the primary schools on the grounds that the proportion of Roma students educated in the schools' central buildings was relatively low (28 and 22 per cent), whereas in the separate supplementary buildings it reached 86 and 96 per cent in one school, and 100 per cent in the other. Also, in both schools, the central buildings

were much better equipped than the supplementary buildings, which lacked facilities, library, and computers or specialised class rooms.

Table: Proportion of Roma students in Hajdúhadház

	Bocskai István Primary School	**Szilágyi Dániel Street (central building)**	**Rákóczi Street**	**Kossuth Street**
Ratio of Roma students	54%	28%	96%	86%
	Dr. Földi János Primary School	**Jókai Street (central building)**	**Szabó Gábor Street**	**Dr. Földi János Street**
Ratio of Roma students	32%	22%	100%	100%

CFCF requested the Court to establish that the respondents segregated Roma students from ethnic Hungarian students by maintaining separate buildings for Roma students and directly discriminated Roma students by offering education of lower quality. Subsequently CFCF requested the Court to order the respondents to eliminate segregation by implementing desegregation plan, and that the respondents express their apology to the public for discriminating Roma students.

The First Instance Court judgment (2007)

The first instance proceedings took place in Hajdú-Bihar County Court and the judgment was delivered on 2 May 2007. In relation to the standing of CFCF in the case the Court stated that as a non-governmental organization CFCF is entitled to pursue equality protection through civil procedures brought before civil courts or through administrative proceedings before the Equal Treatment Authority where a discriminatory act infringes the public interest by injuring an unspecified multitude of people. The local Roma Self-Government and a group of Roma parents affected by the proceedings protested against CFCF's conduct and called upon it to withdraw its claim. However, it was obvious before the Court that the municipality collected signatures from the parents on a pre-printed form opposing the claim, and that the president and another member of the RSG testified in favour of CFCF, while another member stood in favour of the municipality.

The County Court stressed that *the right to bring an actio popularis claim is independent from the consent of the group of potential victims*. The County Court therefore recognized CFCF's legal standing irrespective of the fact that some of the Roma parents and members of the local Roma Self-government objected to the lawsuit, or the novel and unique appointment of an educational expert to estimate the proportion of Roma children in the different school buildings.

The County Court appointed a public education expert *to establish the number and proportion of Roma students or students perceived/assumed as Roma* in the central and the supplementary school buildings. The County Court set forth the methodology, ordering the expert to visit each and every classroom of the respective schools; to work

together with the local Roma Self-government; to involve a sociology expert; require relevant data from the headmasters of the schools and RSG.

The public education expert required a list of students in all classes from the headmasters. The expert then gave a number for each student on the list. The expert handed the list of students (together with their address) to the RSG who had to identify the Roma students from the list. In identifying Roma students or students perceived/assumed as Roma the expert therefore relied on the knowledge of the local Roma leaders. After the RSG had identified the Roma students on the list, the names were deleted, and only the numbers given individually to all students were kept on the list. The list provided to the expert by the RSG was therefore anonymous. This method enabled the expert to handle perceived ethnic data without violating the right to personal data of the Roma students. *The County Court stressed that it is of no relevance whether an active and intentional conduct or an omission resulted in segregation.*

The County Court established that segregation cannot be justified by the fact that there is a long history and tradition of segregation of Roma children in Hajdúhadház, which is therefore not the result of the respondents' intentional measures. Nor can segregation be justified by the lack of financial resources to end it, neither by the provision of ethnic minority education. The County Court called on the public education expert to analyse whether Roma minority education can justify the physical separation of Roma students. According to Art. 28. (2) a) of the Act on Equal Treatment segregation based on minority education is lawful, if such education is initiated by and is organised in pursuance of the parents' voluntary choice, whereas the objectives of the programme justify the creation of segregated classes or study groups. The public education expert established in his expert opinion that minority education provided by the respondents was not of the parents' voluntary choice, therefore it was not justified.

The County Court relied on the expert opinion in relation to the quality of education provided by the respondents in the central and supplementary buildings. The Court found that certain equipment was not at all available to students taught in the supplementary buildings, while access to other equipment was restricted or limited. The lack or restricted access to certain equipment and services (library, PE facilities, etc.) resulted in a lower quality of education provided to the Roma students educated in the supplementary buildings compared to the students taught in the central buildings.

The County Court ordered the respondents to eliminate the unlawful situation within 4 months, without specifying the method of desegregation. While CFCF requested the Court to oblige the respondents to adopt and implement a desegregation plan prepared by a public education expert, the Court did not specify how the unlawful situation shall be terminated. As the Court put it, there are several ways in which segregation and direct discrimination can be terminated.

The Second Instance Court judgment (2007)

The respondents appealed to the Regional Court of Appeals of Debrecen, which delivered its judgment on 13 December 2007. They appealed the first instance judgement on several grounds, one of them being the lack of CFCF's legal standing. The respondents argued that in school segregation cases the number of victims affected by the alleged discrimination is precisely definable.

The Regional Court upheld the ruling of the court of first instance with regard to CFCF's standing stressing that the number of students affected by discrimination varies continuously (as a result of fluctuation), therefore all of the conditions of bringing a public action are fulfilled by CFCF.

The Regional Court overruled the decision of the first instance Court regarding segregation. The Regional Court ruled that it cannot establish segregation unless CFCF defines the measures adopted by the respondents which resulted in the disproportionate ratio of Roma students in the various school-buildings. The Second instance Court therefore took the position that segregation is a result of an active measure, rather than an omission.

The Supreme Court judgment (2008)

The final decision in the case was delivered by the Supreme Court on 19 November 2008. CFCF requested the judicial review of the judgement of the Second instance Court. It also requested a referral for a preliminary ruling to the then European Court of Justice (ECJ) on the question whether the Racial Equality Directive has a direct effect in the case. The Hungarian legislation was not in line with the RED up until 1 January, 2007. Since the case covered a time period dating back to 2004, the Courts had to apply the previous legislation which set forth less strict rules on justification of racial discrimination. CFCF argued that since the Act on Equal Treatment did not fully implement the Racial Equality Directive until its amendment, the previous regulations on justification shall not be applied; instead the RED shall have a direct effect. According to CFCF applying the rules of justification of the RED directly would have led to the rebuttal of the justification defence presented by the respondents.

The Supreme Court rejected CFCF's request for the referral arguing that since segregation in Hajdúhadház existed long before joining the EU, the ECJ did not have jurisdiction to give preliminary ruling in this case. The Supreme Court referred to the Ynos kft. v. János Varga case (Case C-302/04) in which the ECJ ruled that "The Court has jurisdiction to interpret the Directive only as regards its application in a new Member State with effect from the date of that State's accession to the European Union. (…) In this case, as the facts of the dispute in the main proceedings occurred prior to the accession of the Republic of Hungary to the European Union, the Court does not have jurisdiction to interpret the Directive. "

The Supreme Court partially overruled the judgment of the Regional Court and in essence upheld the ruling of the first instance court, deviating from it by omitting to set deadlines regarding the implementation of the desegregation measures.

3.3. THE MISKOLC SEGREGATION CASE – KOLOMPÁR ET AL

In 2008, Morley Allen & Overy the law firm offered pro bono legal services to five Romani youths seeking legal action for damages against the Municipality of Miskolc. The Roma children studied in schools impugned in the Miskolc desegregation case. The claim for damages relied on the previous judgment of the Debrecen Court of Appeals following the *actio popularis* by CFCF establishing that Roma children's right to equal treatment had been violated due to segregation (the "Miskolc Desegregation Case"). The respondent in the case argued that the applicants failed to prove any disadvantage arising out of attending segregated schools and that the judgment of the Debrecen Court of Appeal cannot serve as a sole legal basis for the applicant's claim.

The First Instance Court and Second Instance Court judgements (2009)

The County Court ruled partly in favour of the applicants. According to the ruling, the Municipality failed to guarantee necessary conditions of integration and established the fact of violation of their right to equal treatment. On the other hand the Court considered that the applicants were unable to prove they suffered damages in connection with the illegal acts and subsequently the claim for damages was dismissed. The decision was appealed. The proceedings took place at the Debrecen Appeal Court. The appeal was dismissed.

The Supreme Court judgment (2010)

The applicants sought judicial review from the Supreme Court of Hungary. Before the Supreme Court it was inevitable to interpret the judgement of the Debrecen Appeals Court rendered in the Miskolc Desegregation Case. While the Debrecen Court did not specify the form of discrimination that the Miskolc municipality had committed, the Supreme Court established that it could only have been indirect discrimination.

The Supreme Court established that since disadvantage is part of the definition of indirect discrimination, it was therefore not necessary for the applicants to prove further disadvantage or that they suffered damage once it had been established that the respondent indirectly discriminated them.

The Supreme Court issued a landmark decision when awarded damages in the sum of HUF 100,000, approximately EUR 333 to each of the five applicants who had been educated in segregated schools and thus put a 'price' on the detrimental effects of segregation in education.

3.4. THE GYŐR SEGREGATION CASE

Győr is the sixth largest city in Hungary and one of the seven main regional centres of the country halfway between Budapest and Vienna. The Kossuth Lajos Primary School of Győr was located in an area in which most of Győr's Roma reside. According to official documents - the pedagogical report of the school from the year 2003/2004, the pedagogical program of 2004, and the vice-mayors report on the situation of public education in Győr of 2005- 2/3 of the students in this primary school belong to the Roma minority. Further official documents underlined that the number and proportion

of socially disadvantaged students is the highest in the Kossuth Lajos Primary School, compared to other schools of Győr.

Chance for Children Foundation (CFCF) filed an actio popularis action against the municipality of Győr requesting the Court to determine that the municipality segregates Roma and socially disadvantaged children at school level. CFCF requested the Court to order the municipality to prohibit the establishment of new classes in the primary school where Roma and socially disadvantaged children are overrepresented.

The municipality challenged the legal standing of CFCF by referring to the action of the local parents who collected signatures against the applicant and its claim. The respondent further argued that the primary school provided Roma minority education and Roma ethnography has been embedded in several subjects. The respondents alleged that the parents freely choose the school and were fully informed about the education possibilities in other schools.

In 2009 the respondent made an attempt to overcome the disproportionate number of socially disadvantaged children in the impugned school, therefore it changed the school districts, hoping that socially disadvantaged children from that area will enrol to different primary schools, while well-off families who live in the school district would choose the Kossuth Lajos school for their children. This measure however did not have any effect on the composition of the school since middle class families still had the freedom to choose another school for their children, while the Roma children should have travelled far to their new schools. According to the respondent this fact supported its argument that the Roma parents chose the Kossuth Lajos primary school out of their free will. The municipality of Győr decided in March 2010 that it would start no first grade classes in the school from September 2010.

The First Instance Court judgment (2010)

The Győr-Moson-Sopron County Court[78] held with respect to the legal standing of the applicant that by bringing an actio popularis claim, the applicant litigates in its own name and does not represent the individual victims. This is why the Court did not see any relevance in the respondent's argument according to which CFCF cannot bring such a claim without the support of the Roma families. As for the argument presented by the respondent that Roma minority education justifies the overrepresentation of Roma children in the primary school, the Court relied on a public education expert's opinion holding that the Roma minority curriculum can be integrated into the normal curriculum given by the fact that Roma ethnography is taught in Hungarian language.

While the Hungarian Equal Treatment Act allows segregation in case of minority education, it also sets forth a number of criteria which have to be met in order to justify segregation. According to art. 28. (2) a) of the Equal Treatment Act, segregation based on minority education is lawful if such education is initiated by the parents on the basis of their voluntary choice, and the objectives of such education justify the creation of segregated classes or study groups. The objectives and the content of minority education in the Kossuth Lajos School did not justify the creation of a separate institution; moreover the Court found that the parents did not have all the necessary information when choosing schools for their children. The Court assessed the impact of the new

[78] The final decision in the case was given on September 30, 2010

school district and established that it had no effect on the proportion of socially impoverished children. The Court pointed out that without extra support, the families could not enrol their children to schools far from their residence.

> The Court established that the municipality was held accountable for maintaining the spontaneous segregation and for not taking action against it. The Court stressed that segregation in the Kossuth Lajos School was not a result of a proactive behaviour of the respondent, but it was a consequence of objective (residential) circumstances.
> The Court emphasized that the definition of segregation does not require the applicants to prove any disadvantage, the separation in and of itself of a group from another based on a protected characteristic is unlawful. The Court incorporated the argument adopted by the Supreme Court of the United States in the Brown v. Board of Education case, emphasizing that segregation is unlawful even if the quality of education, including the personnel and material conditions are equal.
> Subsequently the Court established that segregation was based on not only the Roma origin of the students but on their social class (socially impoverished status) as well.

The Court ordered the respondent to end segregation, however refrained from defining the manner in which the unlawful situation shall be terminated. The Court argued that segregation can only be terminated by implementing a desegregation plan which entails broader measures that go beyond the scope of the case before a civil court.

The Regional Appeals Court of Győr judgment (2010)

The municipality appealed the judgement of the first instance Court. The appeal judgment upheld the finding of segregation based on ethnic origin, but dismissed CFCF's claim of segregation based on social class. The Court argued that the socially disadvantaged status is not an essential feature of an individual's personality while actio popularis claims may only be brought if discrimination is based on a characteristic which at the same time is considered to be an essential feature of the personality of an individual.

The Supreme Court judgment (2012)

CFCF challenged the judgment before the Supreme Court with a view to accept a finding of segregation based on social class and to secure an obligation for implementing a desegregation plan.

> The Supreme Court upheld the findings of the first instance Court establishing that the municipality is responsible for segregation based on social class (socially impoverished status) as well. The reasoning of the judgement points out that the parents' level of education and the financial background of the child are both characteristics which determine the personality of an individual as well as her role and place in society.

As to the means of desegregation, the Supreme Court dismissed CFCF's claim and stressed that a civil court cannot order the respondent to prohibit enrolment in a class

where Roma and socially disadvantaged children would be overrepresented. The Supreme Court feared that such a judgement would lead to closing down the school, a consequence that would extend beyond the competence of a civil court.

Constitutional Court: Effective, proportionate and dissuasive remedies?

CFCF decided to challenge the unfavourable judgment in every possible way and submitted a complaint to the Constitutional Court, claiming that the judgment violates fundamental rights as set forth in the Hungarian Constitution. The judgment actually eliminates the only effective remedy against segregation: the execution of desegregation plans, including closing down segregated schools. The case is still pending before the Court.

3.5. THE JÁSZLADÁNY SEGREGATION CASE

Jászladány is a town of approximately 6000 inhabitants out of which approximately 1850 people belonged to the Roma minority in 2007. Jászladány had only one primary school until September 2003. The school had a renovated central building and another supplementary building in a rather poor condition. Children from grade 1-4 attended classes in the central building, while children form grade 5-8 studied in the supplementary building. Many children (mostly non-Roma) attended primary schools in the nearby towns ("white flight").

On the initiative of the mayor of Jászladány a private school - maintained by a foundation of which the mayor was a board-member- was established to educate children who 'wished to study'. The overwhelming majority of students in the foundation school were non-Roma. The municipality and the foundation concluded a rental agreement and the municipality allowed the foundation one part of the central, newly renovated building in order to open the private school. The municipality asked for a symbolic rental fee only, while providing the private school with significant financial support.

The foundation school imposed a tuition fee of HUF 3.000-4.000 (EUR 10-13) on students (the minimum wage at the time was about HUF 50.000, EUR 170). As a result of the lease agreement and the opening of the new private school, Roma and socially disadvantaged children – who could not afford to pay the tuition fee - remained in the public school, while non-Roma and well-off children enrolled to the private school. Since the private school was operating in the central building, more Roma students had to attend classes in the supplementary building.

Several legal actions were initiated by various public bodies against the municipality, to no avail. The Office of Public Administration challenged the lease contract but lost the administrative case before all instances – including the Supreme Court.

On 23 July 2007 CFCF together with a local Roma NGO, JRPSZ (Jászsági Roma Civil Rights Association) submitted an *actio popularis* claim against the municipality of Jászladány and the foundation. CFCF requested the Court to quash the rental contract concluded between the municipality and the foundation as null and void, find that segregation existed between the public school and the private school and establish direct

discrimination with regard to the quality of education and its physical conditions in comparison to the foundation school.

The respondents argued that CFCF and JRPSZ do not have legal standing with respect to the claim concerning the validity of the contract. According to the Hungarian Civil Code anyone - demonstrating a legal interest- can bring a claim against the validity of a contract in case the contract is in breach of law, is against good morals or in case it disguises another contract. According to the respondents, the plaintiffs could not demonstrate such a legal interest. In relation to the claim on direct discrimination and segregation the respondents argued that the students in the two different schools were not in a comparable situation since the municipality only maintains the public school, while the foundation maintains only the private school. With respect to the claim on segregation, the respondents stressed that parents have the right to choose schools for their children and none of the parents have been prevented from enrolling their children to the private school.

The first and second instance Court judgments (2009)

The Jász-Nagykun-Szolnok County Court dismissed the claim of the plaintiffs on 9 December 2009. The judgement was appealed but the Regional Court of Appeal of Debrecen upheld the first instance judgment in 2010.

The Supreme Court judgment (2011)

CFCF filed a request for judicial review at the Supreme Court and alternatively, a request for referral to the Court of Justice of the European Union. In its request for a preliminary ruling, similarly as in the Hajdúhadház case, CFCF claimed direct application of the EU Race Directive for justification of racial discrimination. CFCF argued that even if the rental agreement has been concluded before Hungary's accession to the EU, the unlawful effect of the contract still remained, therefore the CJEU would have had jurisdiction to bring a preliminary ruling. The Supreme Court rejected CFCF's request for a referral, invoking the ruling in the Ynos kft. vs. János Varga case (Case C-302/04).

CFCF requested the Court to establish that the fact of the case amount to segregation and direct discrimination (quality of education) based on not only the Roma origin of the students but also on their social class (financial and social status - the Hungarian Equal Treatment Act protects social and financial status as grounds based on which a difference in treatment is unlawful).With regard to the comparable situation, CFCF argued that the public and the private schools are strongly interdependent and connected. The private school provides primary education through which it fulfils a duty compulsory for the municipality.

The Supreme Court (SC) quashed the judgment of the second instance Court, established that the municipality segregated Roma and socially disadvantaged students from the overwhelmingly non-Roma and socially advantaged students of the private school.

The Court established that the students of the public school have been segregated from students in the private school on the basis of their Roma origin and social status. The Court stated that the public and the private school were in a comparable situation because both schools were operating in a building owned by

the municipality. Therefore the ownership of the municipality over the school buildings created the necessary ground for comparison between the schools.

With regard to the validity of the rental contract, the Court dismissed the claim on the merits, but it did obiter dicta say that the plaintiffs demonstrated a legal interest in challenging the rental contract, therefore they did have legal standing to mount such a challenge.

In relation to the quality of education the Supreme Court was of the view that the public and private schools were not in a comparable situation. The Court stressed that only schools with a common maintainer (which has the power to influence the quality of education) may be comparable with regard to the personnel and material conditions. The Court therefore upheld the judgement of the second instance Court on dismissing a claim of direct discrimination.

The Court also stated that the rental contract led to a situation resulting in segregation although it did not accept the plaintiffs' argument on the validity of this contract. The municipality was found responsible for maintaining the unlawful consequence of the rental agreement, therefore the omission of the municipality of not acting against segregation served as a basis of its responsibility.

Although the Court established that Roma and socially disadvantaged children of the public school have been segregated from the non-Roma and well-off children of the private school, the Court was not in a position to determine how the unlawful situation shall be abolished. As a consequence, the case was sent back to first instance to allow CFCF to submit a desegregation plan and find the right cause to challenge the validity of the rental contract (contrary to public morals). CFCF designed and submitted a plan with assistance from a public education expert funded by the Roma Education Fund.

Legal Action against the Ministry of Education and Culture/National Resources

In September 2009 CFCF filed a legal action against the Ministry of Education alleging that by failing to take action against segregating school maintainers (local governments) the respondent violated the principle of equal treatment. In 2003 the Ministry of Education entrusted two experts to research and investigate the situation of Roma children in Hungarian primary schools. The outcome of the research included a list of segregated schools. Since the Ministry did not take any action against segregation even in possession of such a detailed study and list of schools, CFCF decided to bring an actio popularis claim against the primary stakeholder in public education.

CFCF went through the list of segregated schools and selected altogether 23 cities in which there were more than one primary school maintained by the municipality and in which there were at least one segregated school. In these cities desegregation is practicable but not done. In CFCF's view, the Ministry has maintained the illegal segregation of Romani children from the non-Romani students at the level of schools (institutions), school units and classes, by neglecting its obligations arising out of its capacity of governing education. In CFCF's view the Ministry should have ordered the Offices of Public Administration (as school inspectorates cannot investigate school level

segregation in Hungary) to carry out inspections on whether the listed schools were segregated and order the municipalities to end the unlawful situation.

CFCF has entered into negotiations with the Ministry and requested to be involved in the inspections the Ministry decided to carry out at last, but that request was denied. In the meantime, the Ministry requested Offices of Public Administration to investigate schools. Unfortunately such inspections did not target Roma children but only focused on the proportion and situation of socially disadvantaged children. The quality and method of the inspection did not even meet the expectations of the Ministry. CFCF elaborated a detailed methodology on the proper inspection of segregation by public administration. The case is pending at the time of writing this report and the judgment of the first instance Court is not expected any time soon.

3.6. The Gyöngyöspata segregation Case

Gyöngyöspata is located in the north of Hungary, encircled by vineyards and sunflower fields. Roma living in a segregated area in very poor conditions living in the locality have been several times the target of extreme right groups. The Parliamentary Commissioner for National and Ethnic Minority Rights published a report on Gyöngyöspata in April 2011. The Ombudsman investigated paramilitary anti-Roma marching in the village and the responsibility of the law enforcement bodies for allowing such manifestations. The Ombudsman extended his investigation to the local primary school since several complaints from local Roma parents had been submitted because of segregation.

In his report, the Ombudsman established that Roma children were physically segregated from non Roma children in the primary school of Gyöngyöspata. This report served as basis for CFCF's actio popularis claim submitted to the Court of Eger on 11 October, 2011. CFCF referred to this report in its legal action as an essential evidence of school segregation which cannot be doubted before Courts. CFCF claimed that Roma children in the primary school were taught separately from non-Roma children and their classrooms were located on different floors. CFCF also claimed that Roma children were unlawfully excluded from swimming classes which is compulsory for all non-Roma children and received a lower level of education compared to non-Roma students. The legal action was lodged against the primary school and its maintainer, the Municipality of Gyöngyöspata.

The school argued that it has no official knowledge of the proportion of Roma children in the locality therefore it could not segregate them on the basis of ethnic origin. The municipality rejected the findings of the Ombudsman claiming that the institution was bias in its report findings.

The first instance Court judgement (2012)

On 6 December 2012 the Eger Regional Court ruled in favour of CFCF, finding that the municipality and the school segregated the Roma children in Roma only classes and provided inferior education to children in these classes.

The Court ordered the defendants to put an end to school segregation from the next academic year starting with the first grade classes. The Court rejected the remainder of the claim. Due to the appeal of the respondents, the case is now pending on the court of second instance.

3.7. THE NYÍREGYHÁZA RE-SEGREGATION CASE

The Roma settlement of Nyíregyháza is situated on the outskirts of the city. A rare and badly connected bus line is available but reaching downtown is time-consuming. A primary school located in the middle of the settlement has long been available for local children. The school as a result of its location taught mostly Roma children. Studies conducted in the area showed that Roma parents chose the school mainly because of its location, being very close to their homes.

In 2007, as a result of CFCF's Court action and extensive negotiations, Nyíregyháza closed its segregated school in the Guszev settlement and provided a free school bus for Roma children who were integrated to mainstream primary schools in the city centre. Integration of children of the lower grades turned out to be successful, while for children of upper grades was not. In 2011, the new mayor decided to have the school reopened as part of the Greek Catholic Church's primary school. The school building was provided for free and substantial local funds were allocated for extra financial support. Alongside Roma Education Fund, CFCF has been engaged in advocacy and lobbying against such move, as well as in negotiations with the Bishop of the Greek Catholic Church, but to no avail.

The Greek Catholic church maintains a nursery, a primary and a secondary school in the city centre which are considered elite schools. The Church has long been present in the settlement offering Roma missionary services. The segregated school was reopened in September 2011. Altogether 16 children of first grade were enrolled to the „re-segregated" school.

CFCF initiated a legal action against the municipality and the Church seeking an order of *restitutio in integrum* which would re-establish desegregation. CFCF submitted an *actio popularis* claim stating that its decision to support the reopening of the school led to segregation of Roma children. With respect to the Church, CFCF argued that through its actions the church segregated Roma children between its schools. Similar to the Jászladány desegregation case, CFCF challenged the contracts concluded between the municipality and the Church. In this case CFCF submitted a claim against the agreement on a different ground: the breach of good/public morals since the impact of the contracts is that Roma children are placed in the settlement and taught in a segregated school once again.

The municipality apparently ignored the procedure since no substantial counter argument or justification has been presented from their side in regard to the main claims. The Church however presented several arguments, such as: since it provides religious education it offers segregated education based on the religion of the students and not on the basis of ethnic origin. Contrary to all official documents available in the case, the Church argues that not only Roma children are enrolled to the school and that it has no official knowledge of the ethnicity of children. However, the Church entered into contract with the purpose of providing missionary services to the Roma in the Roma settlement.

The Church claimed that integration is an out of date concept, moreover the education they provide for the children in the settlement which they call “love based” education is actually better for the children. Therefore the children suffer no disadvantage by attending the school in the settlement. Lastly, the Church argued that the families practiced their freedom to choose religious education for their children.

The first instance Court judgement (2014)

On 28 February 2014 the Court of Nyíregyháza delivered its judgement. The Court established that the Roma children were segregated on a school level, and that the municipality segregated Roma students by handing over the school building to the Church.

The Court stated that the religious education provided by the Church in the segregated school could not justify racial segregation. The Court pointed out that the parents of the children enrolled in the Roma School did not choose the school due to the religious character of education provided by the Church here but due to its location and the fact that many Roma children were harassed in other schools. The Court prohibited the continuation of the activity and banned the Church to set up new classes within the segregated school.

The Court however dismissed CFCF’s claim as to the termination of school segregation arguing that the Court could not order the closing down of the school entirely because it would have violated the parent’s right to freely choose education for their children and that it would have affected public law relationships which fall beyond the scope of civil litigation.

The Church and the municipality appealed the judgment, the first hearing in the Debrecen Appeal Court will be held on 6 November, 2014.

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

International human rights bodies have constantly underlined that the importance of the right to education relies in that the exercise of other rights depends in first place on the realization of right to education.[79] 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.[80] 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".[81]

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

Article 2 of Protocol No. 1 to the European Convention of Human Rights provides that: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

In the Belgian Linguistic Cases the European Court of Human Rights held that "The first sentence of Article 2 of the Protocol 1 guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed[82].

Furthermore the Court held that "the right to education guaranteed by the first sentence of Article 2 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention"[83].

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[79] 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

[80] 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

[81] 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

[82] 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).

[83] Ibidem para.5

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 State[84]. 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 illusionary, in particular for those who have insufficient means to maintain their own institutions[85].

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

The primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusionary, in particular for those who have insufficient means to maintain their own institutions[86]. 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 differently[87] or when States fail to treat differently persons whose situations are significantly different.[88] 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."[89]

The ECtHR established that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory, notwithstanding that it is not specifically aimed at that group[90] and, as with European Union law, in particular the Race Directive such a situation may amount

[84] Campbell and Cosans v. the United Kingdom, 25 February 1982, § 37, Series A no. 48.
[85] Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, Theory and Practice of the European Convention on Human Rights, Fourh Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.
[86] Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, Theory and Practice of the European Convention on Human Rights, Fourh Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.
[87] Case of Willis v the United Kingdom, Application no. 36042/97, at para. 48, and Okpisz v Germany, Application no. 59140/00, at para. 33
[88] 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
[89] Timishev v Russia, Application nos. 55762/00 and 55974/00, at para. 58.
[90] *Hugh Jordan v the United Kingdom*, Application no. 24746/94, at para. 154; and Hoogendijk v the Netherlands (dec.), Application no. 58461/00

to "indirect discrimination", which does not necessarily require discriminatory *intent*.[91] The ECtHR also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.[92]

In its case law the ECtHR noted that Roma do not only enjoy protection from discrimination, but they also require special protection.[93] 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.[94]

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 community[95]. 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 cases[96].

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"[97].

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 problems, such as active and

[91] *D.H. v The Czech Republic*, Application no. 57325/00, *at para.184.*
[92] Zarb Adami v Malta, Application no. 17209/02, para. 76
[93] Chapman v the United Kingdom, Application no. 27238/95 and , Connors v the United Kingdom, Application no. 66746/01.
[94] D.H. v the Czech Republic, Application no. 57325/00, para. 182
[95] Oršuš and Others v. Croatia [GC], no. 15766/03, para 147.
[96] 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
[97] D.H. and Others v. Czech Republic, § 182.

structured involvement on the part of the relevant social services[98]. 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 practices[99].

4.3. The school segregation case against Hungary

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 enrol 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.

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

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 enrol 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

[98] Oršuš and Others v. Croatia [GC], no. 15766/03, para 177.
[99] Horvath and Kiss v Hungary, App. no. 11146/11, para. 115-116.

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.

The first instance Court judgment (2009)

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 individualise 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 individualisation 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.

The second instance Court judgment (2009)

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 defence, that it had done no more than enrol 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 Supreme Court judgment (2010)

The 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 County Council was found liable for its failure to supervise the legality, or to organize the supervision of the legality, of the functioning of the EP, as well as for failing to end the unlawful practice. The prejudice to the applicants was caused by their deprivation of the right to a remedy provided for by law and thereby of the theoretical chance of obtaining a more favourable assessment of their learning abilities. The Supreme Court consequently upheld the first-instance judgment with regard to the payment of damages to each applicant by the County Council in the sum of HUF 300,000 (approx. EUR 1.000).

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.[100]

> 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

[100] 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

mental disability. The underlying figures were uncontested by the Hungarian Government. The Court found a *prima faciae* **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**[101]. The Court stated that the wording of Article 2 of Protocol No. 1 implies a positive obligation on the part of the State[102] and that in light of the recognized bias in past placement procedures into special schools the State **have specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests**"[103].

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**."[104]

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[101] Oršuš and Others, §§ 147-148
[102] Horvath and Kiss v. Hungary, para. 103
[103] Idem; para. 116.
[104] Ibid; para. 121

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 applicants[105].

4.4. 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), Orsus and Others v. Croatia (2010), Sampanis and Others v. Greece (2008), Sampani and Others v. Greece (2012), Horvath and Kiss v. Hungary (2013) and Lavida and Others v. Greece (2013). In all six cases, the ECtHR found a violation of article 2 Protocol 1 ("Right to education") in conjunction with article 14 ("Prohibition of discrimination") of the European Convention on Human Rights.

D.H. and others v. the Czech Republic[106] was the first case dealt with by the European Court of Human Rights concerning the right to education of Roma children in Europe and their segregation.

The European Roma Rights Centre brought the case before the Court and following the judgment made a relevant summary of the outstanding novelty of the decision in a number of respects, including the following:

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

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

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 Right's Article 14 jurisprudence in line with principles of antidiscrimination law that prevail within the European Union.

[105] Horvath and Kiss v. Hungary

[106] 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"]}

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

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

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

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

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

SHIFTING BURDEN OF PROOF – In order to guarantee the effective protection of 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.[107]

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

DH v. Czech Republic (2007): enrolment of Roma children in special schools

The applicants[108] 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.[109]

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

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

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[108] 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

[109] 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 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 Centre (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 channelling 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 neighbouring 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 favour 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*[110]). 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*[111], and *Zarb Adami*[112]), 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*[113] and *Connors v. the United Kingdom*[114]).
>
> It observed that there is an emerging international consensus among the Contracting States of the Council of Europe **recognising 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 favourably than non-Roma children in a comparable situation and that this amounted in their case to indirect discrimination.
>
> The Grand Chamber observed that the **tests used to assess the children's learning abilities or difficulties have given rise to controversy and continue to be the subject of scientific debate and research.** While accepting that it is not its role to judge the validity of such tests, various factors in the instant case nevertheless lead the **Grand Chamber to conclude that the results of the tests carried out at the material time were not capable of constituting objective and 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**

[110] *Hugh Jordan v. UK*, ECtHR, 2001, App. No. 24746/94.
[111] *Hoogendijk v. The Netherlands*, 2005, App. No. 58641/00.
[112] *Zarb Adami v. Malta*, 2006, App. No. 17209/02.
[113] *Chapman v. UK*, *op. cit.*, § 96.
[114] ECtHR, 2004, App. No. 66746/01, § 84.

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 applicants[115].

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 authorised residential site near Aspropyrgos (Greece). They brought the case out of concern that the authorities' failure to provide schooling for the their children during the 2004-2005 school year and the subsequent placement of their children in special classes, in an annexe 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 enrol their children. According to them, the head teachers of two schools had refused to enrol 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 enrol 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.

[115] 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"]}

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 favourable 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 annexe 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 recognised 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 recognising 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 enrol them at primary school.

The 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 **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 identity[116].

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

[116] 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

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**[117].

The Croatian laws applicable for the case and the issues at stake at the time had not provided for separate classes for children lacking proficiency in the Croatian language. **The European Court observed that tests applied for deciding whether to assign pupils to Roma-only classes had not been designed specifically to assess the children's command of the Croatian language, but had instead tested the children's general psycho-physical condition**. Similarly, the Court considered that while the applicants might have had some learning difficulties, as suggested by the fact that they had failed to go up a grade for the initial two years of their schooling, **those difficulties had not been adequately addressed by simply placing them in Roma-only classes**[118].

As regards the **school curriculum**, the 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**[119].

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**

[117] Idem. See para. 147-162.
[118] Idem. See para 188-162.
[119] Idem. See para.163-171

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-up[120].

In terms of the parents' passivity and lack of objections in respect of the placement of their children in separate classes, **the 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' education[121].

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. 1[122].

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*[123], filed by 140 Roma (98 children and 42 parents) through the Greek Helsinki Monitor, a Greek non-governmental organisation, 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*[124], 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

[120] Idem. See para 176 and 177.
[121] Idem. See para 178 and 179.
[122] 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
[123] ECtHR, 2012, App. No. 59608/09.
[124] *Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma*, *op. cit.*

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 itself[125].

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 realised the 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 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, colour 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 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**.

[125] *Ibid*.

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 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.

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 application[126] 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 Schools[127]. The developments following the communication of the *Lavida and Others* application were indicative of the resistance of many local communities to the integration of Roma pupils into mainstream schools for all pupils.

On 23 December 2011 the Ministry of Education's Office of the Special Secretary ordered the transfer (effective from 1 January 2012) of all Roma children of the first grade attending classes at the 4th Primary School to five other municipal schools in Sofades and surrounding villages[128]. 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

[126] European Court of Human Rights, case of Lavida and others v. Greece (2013); App. no. 7973/10.
[127] 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.
[128] See also *2012 Annual Report of the Greek Ombudsman*, http://www.synigoros.gr/?i=kdet. el.ehtisies _ektheseis_documents.93959.

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 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 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 Court noted that the relevant authorities, in particular the Ministry of Education, had been informed about the existence of ethnic segregation in the education of Roma children in Sofades. This situation had been described in two letters sent to that Ministry, and in a report by the Regional Education Department. The report had drawn attention to the existing situation and recommended that the authorities avoid placing Roma children in schools attended exclusively by children belonging to the Roma community, in order to end social exclusion and promote Roma integration.

It suggested building new schools and re-drawing the school catchment map. It noted that the education of Roma children in the existing schools in Sofades was impractical, given the large number of pupils and lack of infrastructure. **The report also noted the municipal council's refusal to close down school no. 4 and the hostile reactions of the parents of non-Roma pupils when Roma children were enrolled in the other schools in Sofades**.

The Court observed that the relevant authorities had officially recognised 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 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. 1**[129].

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

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

There are three different phases of a segregation case including the **FACT FINDING** of the case, the **REPORTING OF THE CASE** and **THE FOLLOW UP**. Each of these phases include essential components or steps such as the one indicated in the table below:

FACT FINDING – PREPARATION OF CASE	Desk research (identifying segregation) Field visits (settlement, parents, children) Meeting stakeholders (school, maintainer, Roma leader) Attempt to settle the case Press
REPORTING SEGREGATION	Complaint Litigation Monitoring the case Attempt to settle the case Media
FOLLOW UP OF THE CASE	Monitoring the case

1.1. Identifying segregation

In Hungary there is no official database of segregated primary schools. Primary schools do not (officially) collect ethnic data of their students based on their self-identification, except when it comes to the provision of positive measures, e.g. implementing projects targeting Roma students. The lack of official data on segregated schools however should not constitute a barrier to identify segregated schools.

Therefore a legitimate question would be: "From what sources can we gather information about segregation?" A variety of sources can be useful!

1. Complaints

Complaints from e.g. the parents of Roma children or local Roma leaders are the primary source of information on school segregation.

2. Data on the estimated number of Roma children through the National School Competence Assessment

Data on the estimated proportion of Roma children is available with the Educational Authority. Since the academic year 2005/2006 each school (private

and public) has to carry out a centrally organized competence assessment of students in grade 4, 6, 8 and 10. While all students in the assessed grades fill in the booklets and questionnaires, the national data analyses are based on the performance of 20 students from each school. The results of the assessment are public. Each school has to fill in a questionnaire in which schools are required to estimate the proportion of Roma students. The data on the estimated number of Roma children is collected by the Educational Authority. This data is accessible through a freedom of information request.

3. DATA ON SEGREGATION IN THE LOCAL/REGIONAL EQUALITY PLANS

Another important source of information on segregation is the local equality plan. The previous Public Education Act (Act LXXIX of 1993) required local governments to adopt an action plan on equal opportunities in public education, as a precondition to participate in national and international tenders allocating resources with public education aims. The action plans were drafted in accordance with the instructions and samples provided by the government.

While the guide and sample action plan provided by the Ministry of Education only required local governments to collect data on the number of socially and multiply disadvantaged children in their primary schools, very often local governments included data on the percentage of Roma children in their schools in these action plans. Some of the documents explain the method by which ethnic data was generated (mainly relying on the information provided by the local Roma self-government or on local sociological studies), but mostly there are no reference to source of such data. The equality plans can be accessed through a freedom of information request and in most cases they are available on the website of the municipality.

4. PUBLIC EDUCATION INFORMATION SYSTEM (DATA ON THE NUMBER OF MULTIPLY DISADVANTAGE CHILDREN)

In Hungary the definition of multiply disadvantaged children was intended to cover Roma students through the modification of the Public Education Act in 2002. The multiply disadvantaged children are those pupils, who can benefit from the integration program: whose parents attended only elementary school; and whose family is eligible for supplementary family allowance, i.e., they come from an economically disadvantaged environment; or those students who have special needs according to the head of the school. The students who live in the care of the state also belong to this category.

In order to determine the multiply disadvantaged status of their children, parents can sign a declaration (voluntarily) before the public notary of the settlement, in which they affirm that they do not have higher education than primary school.

Sociological surveys confirmed that, although, only a part of those people who live under the poverty line are Roma in Hungary, the low level of education and the poor economic conditions of the family together are typical of Roma children. Therefore the definition "multiply disadvantaged children" is a useful tool to make the integration supports and programs accessible for the poorest families irrespectively of their ethnicity, while at the same time this definition covers the

majority of Roma pupils. Subsequently the Hungarian educational integration program targeted the elimination of segregation of the multiply disadvantaged pupils. This way the ethnic aspect of the segregation of Roma children got out of the scope of the education policy.

5. Data on children taking part in minority education

Art. 22 parag 3 of the Act on National Minorities provides for the right to self-determination in education for minorities in Hungary. Minority children may take part in education in their mother tongue, minority bilingual education, minority language education or Roma minority education. Roma minority education may also be conducted solely in Hungarian, however, based on the parents' needs, the operator of the institution shall also provide for the teaching of the Roma language (Romanes or Beás).

Minority education has to be organised in case parents of at least 8 students request so. While non-minority (non-Roma) children might also take part in a minority education despite of belonging to the minority, in practice the number of children taking part in Roma minority education may indicate the number of Roma children.

Data with respect to the number of children taking part in minority education is collected through the National Statistical Data Collection Program.

Choosing the right respondent

Once the community is identified, the NGO must properly identify the respondent against whom a complaint may be submitted. After identyfing the respondent, you can start designing the legal stategy in the case and decide the legal path you want to follow.

Hence, the following questions should be answered:

- Who is the maintainer of the school? (e.g., school director, church, private institution, minority self government, Ministry of Education, etc.)
- Who funds the school?
- How are funds distributed at national level?
- Does the funding come directly from the central institutions or is the national budget divided among the regional or school inspectorates, governments?

1.2. Documenting segregation

The following sources might provide important information on segregation

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

1. STATISTICS

The EU non-discrimination Directives[130] mention statistical evidence as a possible means of establishing indirect discrimination. In general, national laws do not specify statistics as a type of evidence but permit their use. Statistical data can be also useful in presuming segregation. In both cases the discriminatory act or practices affect a greater number of people. Using statistics helps to shift the focus away from the individual victim towards broader underlying structural inequalities. To bring either an individual or either an actio popularis claim, facts shall be established in such a way the discrimination is presumed. Where this is the case it is necessary to focus on the effects of the rules or practices to show that they are disproportionately unfavourable to specific groups of persons by comparison to others in a similar situation.

In the Hoogendijk v. the Netherlands case the ECJ recognized the role of statistical data in establishing a prima faciae discrimination case. As the Court put it: "where an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex."[131]

Statistics is an effective tool to prove/presume indirect and structural discrimination, patterns of inequalities and the impact of a certain measure or rule. Similarly to situational testing, statistical data may establish sufficient evidence to shift the burden of proof but it does not prove the individual claim. Statistics are useful in proving school segregation cases, collective redundancy claims and unequal pay.

When collecting statistical data or requesting them from defendants, some basic questions need to be considered:

- Is the time period long enough to show disproportionate impact?
- What is the best statistical range?
- Are the groups compared in essentially similar positions?

2. QUESTIONNAIRE PROCEDURE AND FREEDOM OF INFORMATION REQUESTS

In some EU Member States national law provides for the so called questionnaire procedure, a tool that may facilitate access to information needed to establish a prima faciae case. The victim of discrimination prior to making a formal complaint or starting a legal action, have the opportunity or - in some countries- the obligation to contact the alleged discriminator and seek clarification of his or her conduct. Answers provided to such a questionnaire – or a lack of response – allow courts to draw inferences in relation to discrimination. In countries in which the questionnaire procedure is not formalized, the general national rules on evidence shall enable victims to use this evidence, the

[130] See EU Race Directive 2000/43/EC or EU Framework Directive 2000/78/EC

[131] Hoogendijk v. the Netherlands , application no. 58641/00, First section of the European Court of Human Rights, Inadmissibility decision of 6 January 2005, available at: http://eu.vlex.com/vid/hoogendijk-v-the-netherlands-81122606

questionnaire and the response –or the lack thereof- about the alleged discriminatory conduct. A detailed response may also provide a plausible explanation to the victim herself and persuade her that she has not suffered discrimination.

In other Member States a questionnaire procedure covers a public information request. The freedom of information laws provide for specific procedures to access by the general public data held by governments and public authorities. Freedoms of Information Requests are important sources of information. They are not only directly emanating from the stakeholders but they have to be available in due time and with limited costs. CFCF has been using the freedom of information procedure in almost each case, during fact finding and preparation for legal actions and also to follow up cases already brought to the court.

3. COMMON KNOWLEDGE

Common knowledge is information in the public domain that is generally held or accessible by the community in which the term is used. Common knowledge needs not to be cited and proved until it's not contested by a party with substantial evidence. Hungarian courts now have a consistence practice in relying on common knowledge in school segregation cases. The fact that a certain area is inhabited mainly by Roma, or a certain school has long been segregated now may be accepted as a common (local) knowledge.

Ethnic data as a common knowledge in Hungarian case law

CASE	ETHNIC DATA – COMMON KNOLEDGE
Miskolc desegregation case	„The trial court found it common knowledge that previously, as well as presently a greater number of Roma students attended the impugned schools”
Kaposvár desegregation case	„It attached the Gypsy settlement to the school in question”
Gyöngyöspata desegregation case	The former president of the Roma Self- government „clearly stated that in Gy. it was common knowledge who was of Roma and who was not of Roma origin”

4. DOCUMENTARY EVIDENCE

Sociological studies, research papers on segregation can be used as documentary evidence. CFCF based its claim against the Ministry of Education on a sociological study where researchers listed all segregated schools in Hungary indicating the proportion of Roma students in these schools. In an actio popularis claim of misdiagnosis of Roma children against the Expert Panel of Heves County CFCF submitted a report entitled “Pitfalls and bias” published by the Roma Education Fund in order to prove the shortcomings and discriminatory effects of the Hungarian tests which asses the mental ability of children.

Ethnic data cited in documentary evidence submitted in Hungarian cases

CASE	ETHNIC DATA IN DOCUMENTARY EVIDENCE
Miskolc desegregation case	„Based on the schools' pedagogical program it was found that the impugned action concerned a greater number of Roma children"
Nyíregyháza desegregation case	Pedagogical program
Hajdúhadház desegregation case	Pedagogical program, minutes of local councillors' meetings
Kaposvár desegregation case	„The school district covers the eastern part of the town of Kaposvár, where Roma are overrepresented. Appr. 15% of the students are NOT Roma" pedagogical program
Jászladány desegregation case	Press articles, photos
Győr desegregation case	„In 2004-ben, the majority of the town's Roma population lived on the territory of the school's catchment area. According to the school's 2003/2004 academic year report, to the 2004 pedagogical program and the vice-mayor's … 2005 report … on education, over 2/3 of the impugned school's students belong to the Roma ethnicity"
Gyöngyöspata desegregation case	Report of the Ombudsman
Tiszavasvári desegregation case	Minutes of local councillors' meeting
Horváth and Kiss v Hungary misdiagnosis case	HU Govt. stated that the proportion of Roma students in the impugned school 'was 40 to 50% in the last ten years. Statistical data indicate that in 2007 Roma represented 8.7% o the total number of pupils attending primary school in Nyíregyháza."

5. Specific evidence: situation testing

Situation testing is often used to uncover discriminatory practices such as refusal of access to bars, restaurants or employment. In Hungary the systematic use of testing has led to important legal victories combating widespread discrimination against Roma. Hungarian law defines situational testing as a method the Hungarian equality body may apply in order to prove discrimination:

"… in relation to the conduct of the alleged discriminator, the Equal Treatment Authority shall put into an identical situation persons who are different from the point of view of a [protected ground] but are similar from the point of view of other characteristics, and it shall examine the action of the alleged discriminator in respect of these persons from the point of view of respect for equal treatment"

(Article 13(1) of Government Decree 362/2004 on the Equal Treatment Authority and on the Detailed Rules of its Procedure).

Method for successful and reliable situation testing:

- Work in pairs: Situation testing shall be carried out by pair of people, 2-4-6 or even more, depending on the case.
- The control group should be in a comparable situation: Testers shall only differ from each other on a basis of a single characteristic, which is the ground of the alleged discrimination. Other features, such as their gender, age range, outfit (including hairstyle, clothing, tattoos/body jewellery, etc.) has to be identical or very similar.
- Set up a situation similar to the alleged discriminatory act: Not only the testers and the control group shall have similar feature but the whole testing has to be carried out in the same/similar circumstance shortly after the claim has been reported
- Ensure that there is no emotional link between the testers and victim/perpetrator in order to ensure fairness and credibility
- Fully document the testing procedure: The person organizing the situation testing shall elaborate a testing protocol. The purpose of the testing protocol is to explain the aims of the testing, the situation and the required behaviour from the testers. Each tester shall be fully aware of the protocol.

The minutes or questionnaire of the testing is the personal report of the testers. The person organizing the situation testing shall set forth relevant questions in advance which shall be answered by the testers immediately after the testing. The minutes shall describe the circumstances of the testing (when was the testing carried out, in what circumstances, what was the tester wearing, what was the attitude of the(alleged) perpetrator, was he polite/aggressive/mean, etc.). The person responsible for organizing the situation testing may prepare a general report of the results. The general report shall summarize the protocol and the minutes of the testing and draw down conclusion about the outcome of the testing.

Situation testing can be useful and in some occasion it is the only way to establish facts in order to presume discrimination. However some may argue, that situation testing only proves a discriminatory practice but not the individual claim. Others criticizing this method point out that testing may provoke illegal acts, especially if testers and control persons are not in a comparable situation. This is why it is crucial to ensure the credibility and the fairness of the process. Photos, videos shoot during testing may interfere with privacy rights, but can also ensure that accusation on the fairness of the testing can be rebutted.

CFCF has used situational testing in order to establish facts for a segregation case. In the city of Szarvas CFCF tested the enrolment policy of a faith based school, recorded it on hidden cameras, and showed it on the most popular commercial channel. The next

day the head of the given faith' education department visited CFCF and pledged to put an end to discrimination. Roma children were subsequently enrolled in the faith school and another integrated school. CFCF provided them with prep classes in the framework of a summer camp.

1.3. Monitoring school segregation

It is not unprecedented that circumstances relevant to our case are changing. It is therefore of utmost importance to keep updated. Relevant changes might occur during fact-finding/preparation for a case, during litigation and even after the case has been decided by a Court or other body. As a consequence an on-going monitoring of the circumstances of the case is indispensable.

The following changes might have a crucial effect on our case:

1. New school maintainer

The change in the school maintainer, for example a church or a private foundation takes over the former public school, might raise several issues. When maintenance rights are handed over to a maintainer through a contract, this might be challenged on the ground that an agreement as such is null and void. On the other hand a new maintainer might take actions against segregation therefore it is important to find out the intentions of the new maintainer.

2. New head teacher

A new head teacher might have a different vision or view, might introduce positive, integration programs, or on the contrary, might even worsen the situation of Roma students. On the one hand, it is important to regularly check whether there has been a change in the head teacher, and if so, it is also important to meet her/him as soon as possible to find out her/his intentions.

3. Voluntary desegregation

It is not unprecedented that the respondent under the pressure of a lawsuit decides to desegregate. It has happened in the Győr and in the Nyíregyháza desegregation case. In the Győr case the municipality decided not to launch new classes in the segregated school therefore prohibited the continuation of the unlawful practice. However after a final judgment has been delivered, it decided to continue segregation and allowed the school to launch new classes.
In the Nyíregyháza case CFCF dropped the claim after the municipality made a decision to close down the segregated school, introduced free school buses for the children residing in the Roma settlement. However four years later the new mayor put an end on the integration process and the segregated school has been reopened by a church.

4. Amendment of the relevant laws

The amendment of the law on public education, or the anti-discrimination law might affect a case. If you think that an amendment or a draft law undermines the existing protection against segregation in education, you have to consider actions

against the new legislation. It might be an awareness raising campaign to convince the MPs not to vote for the law, challenge the new legislation in before courts (intended to ensure a constitutional control or to submit the case for a review by the Constitutional Court) or you might want to report the legislation to the European Commission in case the amendment is contrary to EU law.

5. New local Roma leader

The election of a new Roma minority self-government might also affect your case. It is very important to meet the new leaders, enter in dialog and explain them the negative consequences of segregation and the benefits of desegregation and inclusive education.

6. Grants/projects

EU or national funds shall not be used for the preservation or reinforcement of segregated education. If the school or the school maintainer is granted with such funding, it has to be properly examined and understood as to what the purpose of the funding was and whether the grantee fulfilled its obligations.

7. White flight

It might also happen that the student body changes due to the so called "white flight" phenomenon whereby non-Roma parents decided to transfer their children from the school that receives Roma students or where the composition of the class changes with more Roma students. As it has happened in CFCF's case in Gyöngyöspata, non-Roma parents decided to transfer their children to another school after a case has been launched against segregation in the school. While there were both Roma and non-Roma children enrolled to the school, desegregation was feasible by reorganizing the classes. Due to white flight, effective desegregation measure could only be adopted if the school which welcomed non-Roma students takes part in the process.

1.4. Reporting school segregation

If the result of fact finding (desk research, field visits, meeting of stakeholders) shows that the school unlawfully separates Roma children and any attempts to settle the case with the school maintainer/school out of Court were futile, segregation shall be reported.

In Hungary there are several bodies which have the competence to hear a segregation case:

- Report class-level segregation to the school maintainer/ministry responsible for education;
- Report class-level and school- level segregation to the equality body;
- Report class-level, school-level segregation and the misdiagnosis of Roma children to civil courts;
- Report class-level, school-level segregation and the misdiagnosis of Roma children to the Commissioner for fundamental rights (Ombudsman)

1. **To whom shall we report school segregation?**

REMEDY	PROS	CONS
SCHOOL MAINAINER	none	ineffective
EQUAL TREATMENT AUTHORITY	legal representation is not obligatory actio popularis action is available faster, quicker procedure, less formal decision is subject to a judicial review the hearing is held where the applicant resides no procedural fee is payable by the applicant unless if it acts in bad faith	supervisory court is of an administrative nature no access to the Court of Justice of the European Union (not a tribunal)
CIVIL COURT	access to the Court of Justice of the European Union access to the Constitutional Court binding decision are subject to judicial execution	procedural fee is paid by the claimant in case the claim is unsuccessful lengthy procedure legal representation is obligatory from the second instance
OMBUDSMAN	legal representation is not obligatory no procedural fee procedure is less formal highest quality might have access to the Constitutional Court	decision is not subject to judicial review decisions are not binding limited competence

2. Drafting the complaint

The complaint shall consist of the following:

FACTS OF THE CASE: based on official documents, field visits, testimonials, sociological studies, expert's opinion, etc.
In this part the complaint shall give a clear picture of the school, the maintainer, the student body, the Roma community and the reason of segregation. Based on the facts the complaint shall conclude why the factual circumstances constitute an unlawful situation, what led to segregation and who is responsible for segregation through what action (active or passive).

THE CLAIM: rights that have been violated and the legal consequences the complainant seeks to obtain.
In this part the complaint shall provide the explanation as to establishing the violation of rights, prohibition of further continuation of the unlawful acts, termination of the unlawful situation, peculiar and non-peculiar damages, etc.

RELEVANT LAWS AND CASE LAW: legal provisions applicable to the facts of the case and similar cases addressed by Courts.
In this part the complaint shall quote the relevant national and international laws as well as principles established by national and international courts.

PROCEDURAL ASPECTS: legal provisions applicable to the case.
This part may refer to requesting the Court to obtain further evidence: proposal to hear certain persons as witnesses, to obtain certain official documents from the respondents, to appoint an expert with a view to provide an expert's opinion, etc.

3. Principles of a segregation complaint: ACCURACY

The complainant shall obtain all relevant information before making a complaint. The complaint therefore has to be preceded by a proper fact finding which gathers information from all relevant stakeholders. The head teacher, the school maintainer and the parents of the segregated children have to be heard and their opinion has to be included in the complaint.

Attempt to settle the case

Before bringing a case to the Court or to the equality body, it is advised trying to settle the case in out of Court. Always offer your expertise to voluntary desegregation.

Involve Roma parents

It is very important to seek the opinion about the school from the Roma parents and children before making the claim. It might happen that some of the parents would support the Roma only school. In this case it should be clarified what is their reason for support: e.g. the location of the school, racist attitudes in other school, tuition fee, etc.

4. Individual case or actio popularis?

The complaint related to school segregation may focus on violations of individuals' rights, or the violation of public interest. In the first case the person(s) whose rights have been violated shall take part – either in person or through a representative- in the case.

In the second case the children actually affected by segregation are not clients/parties in the procedure; it is the NGO bringing an actio popularis claim to the civil court or to the equality body that will have the rights delegated to the applicant/claimant in the procedure. Article 7(2) of the Race Equality Directive requires Member States to provide legal standing to NGOs engaged in judicial or administrative procedures on behalf or in support of victims of discrimination.[132] Only a handful of Member States allow NGOs and equality bodies to take action in the public interest without representing an individual victim. It is noteworthy that member states seem more willing to grant NGOs the right to take representative action on the ground of disability.[133]

The Hungarian anti-discrimination law allows actio popularis claims to be instituted by NGOs representing the public interest, provided that the discrimination is based on a protected ground that is an essential characteristic of the individual and that the discrimination affects a larger group of potential victims who cannot be accurately identified.

5. Basic information to collect in a school segregation case

The following table lists the minimum of information that needs to be presented in a claim on segregation. Therefore, in documenting discrimination the following questions shall be addressed and fact finding should focus on the following:

QUESTIONS	ANSWERS
1. Who did	The school, local, regional or national government
2. What	Created, maintained segregated class, building, school
3. To whom	To Roma from xyz settlement
4. When	Since DD/MM/YY
5. Where	In town, school

[132] Racial Equality Directive, art.7 (2), available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML
[133] Mark Bell, Janet Cormack , Developing Anti-Discrimination Law in Europe: The 25 EU Member States Compared (2005), p.55-57, available at: http://www.migpolgroup.com/publications_detail.php?id=169

6. How?	By enrolling Roma children in class C only, etc.
7. What is the result of the wrongdoing?	We feel humiliated; have access to lower quality education and equipment.
8. Who is responsible for the wrongdoing?	The school, local, regional or national government.
9. Who has seen, heard or witnessed the wrongdoing?	Local Roma leader, parents
10. Are there documents, statistics, and expert opinions to prove the claim?	Yes – No
11. What is the victim's protected ground? Is it real, assumed, associated, multiple?	Race and ethnic origin. Assumed as well as real.
12. Who is the control person or group to which the treatment suffered by the victim is comparable?	Majority children in the other class, building, school.
13. Does the case fall under national anti-discrimination law?	Yes.

6. Reporting segregation to the school maintainer

As of 1 January 2013 the Hungarian State through a governmental body – the Klebelsberg School Maintainer Centre (KLIK) – took over the maintenance rights of all the primary and secondary schools previously maintained by local governments. The KLIK is therefore responsible for all type of segregation in public schools.

As a consequence a complaint may be issued first to the school maintainer to conduct an (internal) investigation on the case. CFCF has already tested this possibility in 2013 when it issued a formal complaint against school segregation in Kaposvár. The KLIK did not investigate the case and did not make any decision over the complaint. Therefore CFCF found this procedure *ineffective* and chose to bring the case to the civil Court.

7. Reporting to the Equal Treatment Authority

The Equal Treatment Authority (ETA), as the national equality body has the competence to investigate discrimination based on race, colour of the skin, nationality, etc. in all fields covered by the ADL.

The ETA is a quasi-judicial body, and it is entitled to apply one or more of the following sanctions:

- Order that the situation constituting a violation of law be eliminated
- Prohibit the further continuation of the conduct constituting a violation of law
- Publish its decision establishing the violation of law
- Impose a fine.

The decisions of the equality body are subject to judicial review. On the first instance the Metropolitan Court of Public Administration and Labour has exclusive competence. The decision of the Metropolitan Court can be reviewed by the Supreme Court. A sample complaint can be downloaded from the website of the equality body:
http://www.egyenlobanasmod.hu/urlap/urlap.pdf

8. Report class-level, school-level segregation and the misdiagnosis of Roma children to civil Courts

The breach of the right to equal treatment is a violation of inherent rights; therefore a civil claim can be brought to Courts in any school segregation situation.

9. Report class-level, school-level segregation and the misdiagnosis of Roma children to the Commissioner for fundamental rights

The Act CXI of 2011 on the Commissioner for Fundamental Rights regulates the mandate, task and competence of the Commissioner.[134] The Commissioner may conduct ex officio proceedings and proceeding based on individual complaints against authorities in case of fundamental rights violations.

Since the prohibition of discrimination is a constitutional requirement, the Commissioner has the power to conduct proceedings in cases of discrimination.

[134] Act CXI of 2011 on the Commissioner for Fundamental Rights, Available in English at: http://www.ombudsman.hu/allam/eng/index.htm

1.5. Generating ethnic data

The collection of aggregated ethnic data in establishing segregation is often indispensable in order to bring a successful claim. In order to overcome discrepancies in law enforcement the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection published a joint report on processing ethnic data.[135] The purpose of the report was to serve as guidance for law-enforcement bodies when dealing with ethnic minorities.

Considering the diversity of life situations the Ombudsmen identified four scenarios in which law enforcement bodies are required to process ethnic data. The Ombudsmen gave guidance for collecting and processing the ethnic data of the victims of discrimination and racist crimes, of persons eligible for positive measures, of persons exercising minority rights, and finally of persons participating in minority politics.

According to the joint report the self-identification and conscious image of victims themselves is not relevant in case of discrimination, neither is the extent to which they consider themselves as members of the majority or the Roma minority community. The perceived ethnicity of victims of discrimination needs to be addressed when investigating complaints of discrimination. The joint report therefore sets forth a number of criteria which need to be taken into account by law enforcement bodies when they have to establish the perceived ethnicity of the victims.

Criteria's set by the Ombudsman to establish a person perceived ethnic origin

The Ombudsmen established primary and secondary criteria for establishing a person's perceived Roma origin. The method elaborated by the ombudsmen relies on information provided by the local leaders/representatives of the Roma community. The Ombudsmen established 7 primary criteria, stressing that if least two of these criteria apply to a certain person, he/she should be perceived as a member of the Roma minority.

The PRIMARY CRITERIA are as follows:

1. Skin colour;
2. Other racial features including clothing specific to a minority;
3. Having a surname or first name common/specific to a minority group;
4. Name of the parents, origin of the parents;
5. Place of residence (in case the address is in a settlement or in an area inhabited by the Roma minority);
6. Being recognized as a member of the Roma minority;
7. Language, accent, communication.

[135] Report on the conclusions of the study about the treatment of ethnically disaggregated data, Parliamentary
Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data
Protection and Freedom of Information, 9 November 2009. Available in Hungarian at: http://kisebbsegiombudsman.hu/data/files/158627216.pdf

The Ombudsmen elaborated secondary criteria in case only one of the primary criteria applies to a certain person.

The SECONDARY CRITERIA applied only on a complementary basis are:

1. Social status (e.g. being socially disadvantaged, a criteria defined by the act on public education for children with undereducated parents and under a certain level of income);
2. Level of education;
3. Family model;
4. Employment status;
5. A sign or act implying a certain religious belief;
6. Receiving social benefits;
7. Occupation.

The criteria's elaborated by the Ombudsmen come in handy when establishing discrimination or school segregation. When a certain measure or practice affects a greater number of people, law enforcement bodies may apply the method to establish the perceived ethnicity of the affected group.

In practice the Ombudsman, when investigating complaints concerning school segregation of Roma children would contact the local Roma leader and gather information about the typical local Roma surnames, the Roma settlement and those streets that are situated in the Roma settlement, whether local Roma speak Romanes, etc. The next step is visiting the classes and analysing the list of students provided by the school. The list shall include the name and address of the students, name of their mother (if available), and a reference to their socially disadvantaged status (if applicable). Together with the Roma leader officials are in a position to estimate the number and the proportion of children perceived as Roma per class.

In the Hajdúhadház desegregation case the C*ourt* appointed a forensic education expert to collect school level ethnic *data* in collaboration with members of the Hajdúhadház Roma Minority Self-government (hereinafter HRMSG), based on membership of the local Roma minority community, perception thereof, and place of residence as proxies for the racial and ethnic origin of Roma children. The HRMSG representatives counted all Roma students at class and building level. In case of disagreement about a child's ethnicity, they registered him as belonging to the majority population. The expert then provided a statement signed by the HRMSG representatives on the numbers and percentages for Roma and non-Roma students at class, building and school levels.

The Ombudsman report on Gyöngyöspata

The Ombudsman applied the above mentioned criteria in determining the proportion of Roma children in the primary school of Gyöngyöspata. The Ombudsman introduced a set of criteria in priority order which were taken into consideration when perceiving a student as Roma. The first and most important factor was the surname of the student and his/her mother.

The Ombudsman accepted names to be a typical "Roma name" which the local leader of the Roma Minority Self-Government considered as such. The second factor was

the socially disadvantaged status. The Ombudsman stressed in his report that this criteria usually applies to Roma children in Hungary, therefore this criteria became the second most important factor. The third criterion was the address of the students. The local Roma leader informed the Ombudsman of the streets in which only or mostly Roma families lived. (In Gyöngyöspata the Roma community is residentially segregated). The forth factor the Ombudsman considered was the first name and the social class of the students.

Staff visited all the classes and estimated the number of Roma children in each class based on their personal perceptions (basically relying on students' racial features). Then the Ombudsman asked the headmaster for a list of all students per classes. The list had to specify the student's and address, name of the parents and whether the child is registered as having a socially disadvantaged status. While applying the set of criteria introduced above, he formulated the following table:

Perceived Ethnicity in the Gyöngyöspata case

Class	**Number of students**	**Children with special educational needs**	**Social disadvantaged/ multiply socially disadvantaged**	**Number of Roma students**	
				Based on personal perception	**Based on the set of criteria**
1.a.	16	3	5/4	6-7	7=44%
1.b.+4.b.	8+4	7+0	1/7+0/3	10-12	12=100%
2.a.	18	0	5/2	0	1=6%
2.b.	9	4	2/6	6	9=100%
3.a.	19	1	8/1	1-3	3=16%
3.b.	11	4	2/7	7-10	11=100%
4.a.	19	2	6/5	1-3	5=26%
5.a.	15	0	3/8	5-7	5= 33%
5.b	13	6	3/10	10-12	13=100%
6.a.	18	2	5/5	4-5	6=33%
6. b-7.b.	6+9	5+3	2/3+0/9	15	15=94%
7.a.	16	1	5/5	3-6	6=38%
8.a.	14	1	1/3	3	3=21%
5-6-7-8.c.	4+2+2+2	4+2+2+2	0/3+1/1+0/2+1/1	9-10	9=90%

The table above shows that in "b" classes and the "c" class Roma children were overrepresented; moreover some of the classes were Roma-only classes.

The method followed by the Ombudsman did not violate the right to privacy and personal data of the students since the statistics were anonymous and they included not real, but perceived data on ethnicity. Privacy laws only protect the personal data of the individual.

After the Ombudsman published his report on Gyöngyöspata, CFCF brought an actio popularis claim against the municipality of Gyöngyöspata and the primary school because of class level segregation. (The Court of first instance based its judgment regarding ethnic data on the report of the Ombudsman.

A proxy: socially disadvantaged status

In Hungary the definition of multiply disadvantaged children was intended to cover this group of students through the modification of the Public Education Act in 2002. The multiply disadvantaged children are those pupils, who can benefit from the integration program: those pupils, whose parents attended only elementary school; and whose family is eligible for supplementary family allowance, i.e., they come from an

economically disadvantaged environment; or those students who have special needs according to the head of the school. The students who live in the care of the state also belong to this category.

In order to determine the multiply disadvantaged status of their children, parents can sign a declaration (voluntarily) before the public notary of the settlement, in which they affirm that they do not have higher education than primary school.

Sociological surveys confirmed that, although, only a part of those people who live under the poverty line are Roma in Hungary, the low level of education and the poor economic conditions of the family together are typical of Roma children. Therefore the definition "multiply disadvantaged children" is a useful tool to make the integration supports and programs accessible for the poorest families irrespectively of their ethnicity, while at the same time this definition covers the majority of Roma pupils. Subsequently the Hungarian educational integration program targeted the elimination of segregation of the multiply disadvantaged pupils. This way the ethnic aspect of the segregation of Roma children got out of the scope of the education policy.

Inspection protocol

The lack of a proper protocol for school inspectorates, equality bodies and other specialised bodies in the field of education on how an inspection of school segregation shall be carried out can result in ineffective and futile procedures. The methodology elaborated by the Hungarian Ombudsmen on how to process ethnic data and perceive ethnic origin tackles only one of the problems specialized bodies may face.

Chance for Children Foundation (CFCF) elaborated a model protocol for the Hungarian governmental agency responsible for the supervision of the lawful functioning of municipalities (as primary school maintainers until 31 December, 2012) on how to tackle school segregation. CFCF submitted the protocol to the Court in its legal action against the Ministry of Education. The protocol consists of 8 steps to be followed by the governmental agency when dealing with school-level segregation. The methodology of identifying perceived ethnic data and gathering evidence of school segregation can also be applied to establish class-level segregation.

Inspection protocol

Steps	Evidence gathered in each step	Conclusion
Step 1. Elaborate the schedule and working program of the inspection.		
Step 2. Gather information about the school maintainer and the schools of the town prior to the inspection.	- collection of all available sociological and pedagogical studies about the situation of Roma in the town - collection of information available on the website of or directly from the municipality and the school: pedagogical program, report on equality, equal opportunities action plan, report to local councillors on the education system, etc.	- establish the number of schools, the type of maintenance - are there any Roma stakeholders (NGOs/minority self-governments) in the town? - are there any official data about the proportion of Roma children in schools? - is there Roma minority education offered in any of the schools?
Step 3. Contact the local Roma leader (in Hungary the leader of the Roma Minority Self Government). Summon a public hearing.	- gather information from the local Roma leader - gather information from the Roma parents by summoning a public hearing (especially in case the Roma leaders could not be identified)	- establish the size of the local Roma population and number of school-aged Roma children - identify schools popular within the Roma community, estimate the proportion of Roma children in each school - identify separate or opposing communities within the local Roma - identify the Roma settlement or the area with mostly Roma inhabitants (street names) - identify typical local Roma names
Step 4. Contact all primary schools in the town.	- gather documentary evidence from the headmasters: a list of each students in each classes with the following information 1. name of the student 2. name of the mother 3. address 4. social status (registered as socially disadvantaged) 5. special educational needs	
Step 5. Identify segregated schools (based on documentary evidence and the	- prepare a table for each school and each class, similar to the one prepared by the Hungarian Minority Ombudsman in the Gyöngyöspata case (	- compare the information provided by the local Roma with the personal information of the students included in the list provided by the headmaster

<table>
<tr>
<td>public hearing).</td>
<td>
<table>
<tr><th rowspan="2">Class</th><th rowspan="2">Number of students</th><th rowspan="2">Children with special educational needs</th><th rowspan="2">Socially disadvantaged</th><th colspan="2">Number of Roma students</th></tr>
<tr><th>Based on personal perception</th><th>Based on the set of criteria</th></tr>
<tr><td>1.a.</td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td>1.b.</td><td></td><td></td><td></td><td></td><td></td></tr>
</table>
</td>
<td>- identify children perceived Roma based on their and their parent’s name, their address and social status
- identify the proportion of children perceived Roma in each class
- destroy the list on children perceived Roma in order to maintain anonymity
-identify segregated schools and classes by comparing the proportion of Roma children in a given class/school. Roma children are overrepresented if their proportion in a class/school is 25% more than in a parallel class/school.</td>
</tr>
<tr>
<td>Step 6. On site visits to the schools presumed to be segregated.</td>
<td>- conduct on-site visits in the presumably segregated schools together with the local Roma leader
- include the perception of the proportion of Roma children in each class to the table above (step 5.)</td>
<td>- identify the proportion of students perceived Roma in each class based on their racial features
- fill in the table together with the Roma leader (outside of the classroom)
- establish the proportion of Roma children by comparing the results of documentary evidence (step 5) and personal perceptions (step 6.)</td>
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<tr>
<td>Step 7. Contact the school maintainer; gather information about the reason of segregation.</td>
<td>- confront the school maintainer with the results of the inspection
- call the school maintainer to explain the reason of school-level discrimination of Roma children</td>
<td>- assess the justification defence provided by the municipality/school maintainer
(see Chapter 6)</td>
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<tr>
<td>Step 8. Deliver a decision, establish the manner in which segregation can be terminated</td>
<td>- involve a public education expert if necessary to elaborate a desegregation plan</td>
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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 segregation[136]

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.

[136] 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 .

Legislation needs to prohibit segregation of children on the basis of ethnicity. Hungary is already in line with the requirement.

- 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 rights[137].

Elimination of segregation between schools[138]

Measures need to be undertaken by municipalities, school maintainers, 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 school maintainers 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:

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[137] Idem

[138] 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 centres, 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 communities[139].

ELIMINATION OF SEGREGATION WITHIN SCHOOLS[140]

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."[141] Accordingly, action is needed to:

- Include a commitment to inclusive classroom teaching in the national action policy and plan on inclusion.
- Develop 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.

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[139] Idem
[140] 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 .
[141] Idem

- Achieving comprehensive desegregation will necessarily take a number of years to implement. Accordingly, in schools with a high concentration of Roma pupils, the quality of education should be improved simultaneously with the implementation of desegregation strategies[142].

ENDING THE PLACEMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS[143]

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 centres for mainstream schools, providing expertise and support. Municipalities and

[142] Idem
[143] 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 .

the central government need to work with the teachers to ensure that most of them will be able to access gainful employment afterwards[144].

[144] Idem