

# GUIDE FOR DOCUMENTING AND MONITORING SCHOOL SEGREGATION IN ROMANIA



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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# **Guide for documenting and monitoring school segregation in Romania**

## **Table of contents**

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

#### **I. Introduction**

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

##### **1. What is school segregation?**

- 1.2. UN treaties and bodies about racial segregation
- 1.3. OSCE bodies about Roma school segregation
- 1.4. Council of Europe bodies about Roma school segregation
- 1.5. European Union bodies about Roma school segregation
- 1.6. Legal frameworks addressing segregation at national level
- 1.7. Data regarding school segregation of Roma children in Romania
  - Data analyzed by Ministry of Education and research institutes
  - Data analyzed by UNDP- United Nations Development Program
  - Data analyzed by Romani CRISS
  - Date from European Union Agency for Fundamental Rights

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

- 2.1 The Right to Education encompassed in international and regional legal instruments
- 2.2 The EU policy on Roma social inclusion and education
- 2.3 Impact of School Segregation in Romania
  - Roma children’s segregation officially recognized in 2004
  - Segregation in education of Roma children forbidden by Ministry Order in 2007
  - Segregation in education insufficiently addressed after the Order 1540
  - Implementing notification no. 29323/2004 regarding school segregation
  - Notification no.28463/2010 regarding the permanent monitoring of school segregation
  - School segregation phenomenon insufficiently analyzed and addressed through desegregation

##### **3. THE RIGHT TO EDUCATION INTERPRETED BY THE EUROPEAN COURT OF HUMAN RIGHTS**

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

##### **4. CASES OF SCHOOL SEGREGATION OF ROMA CHILDREN IN ROMANIA**

- 4.1. Enrolling Roma children in annex buildings of the main school: Romani CRISS v. Cehei School
- 4.2. Enrolling Roma children in “special schools”: Romani CRISS v. Grup Scolar Special

- 4.3. Enrolling Roma children in separate classrooms: Romani CRISS and Amaro Suno v. Auto School Group
- 4.4. Enrolling Roma children in separate classrooms: Romani CRISS and Romii Romașcani v. School 3
- 4.5. Enrolling Roma children in separate classrooms: Romani CRISS and Amaro Suno v. School 19
- 4.6. Enrolling Roma children in separate classrooms: Romani CRISS v. School „Josika Miklos”
- 4.7. Enrolling Roma children in separate classrooms: Romani CRISS and Romii în Europa v. „Constantin Brăiloiu” Highschool
- 4.8. Enrolling Roma children in separate classrooms: Romani CRISS v. „Ioniță Asan” Highschool

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

#### **1. MONITORING SCHOOL SEGREGATION CASES**

- 1.1. What is monitoring and why is it so important?
- 1.2. Steps for implementing monitoring

#### **2. INVESTIGATION AND DOCUMENTATION**

- 2.1. Research on the premises
- 2.2. Obtaining data through interviews

#### **3. PRACTICES THAT CAN LEAD TO SCHOOL SEGREGATION**

- 3.1. Monitoring elements for school segregation

#### **4. ESSENTIAL ELEMENTS FOR INVESTIGATING AND DOCUMENTING SCHOOL SEGREGATION**

- 4.1. Data about the town
- 4.2. Data about the schools in town
- 4.3 Data about the community
- 4.4. Data regarding the monitored school
- 4.5. Data regarding the school’s goods and supplies
- 4.6. Data about the students
- 4.7. Students’ distribution by class
- 4.8 Data about allocation
- 4.9. Data about Roma students’ allocation by class
- 4.10. Data about teachers’ qualifications
- 4.11. Data about students’ grades

#### **5. DOCUMENTING AND REPORTING CASES OF SCHOOL SEGREGATION**

- 5.1. Report regarding monitoring

#### **6. SCHOOL SEGREGATION AND FORMS OF DISCRIMINATION FORBIDDEN IN ROMANIA IN EU**

- 6.1. Forms of discrimination in Racial Equality Directive
- 6.2. Forms of discrimination in the transposition of the Racial Equality Directive in Romanian Law
- 6.3. How do we understand forms of discrimination
- 6.4. Essential elements for analyzing discrimination
- 6.5. Identifying school segregation as discrimination
- 6.6. Key elements of school segregation
- 6.7. Consequences of Roma children’s school segregation

6.8. Questions for analyzing school segregation from the elements of discrimination's perspective

#### **IV. Recommendations for preventing and combating school segregation**

## **DARE-NET Project: “Desegregation and Action for Roma in Education”-Network**

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

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 does not complete secondary school.

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

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

Although some steps have been taken in some countries, specifically on adopting the legislation banning school segregation, little progress has been made in effectively combating this phenomenon. From the experience of the former National Strategy for the Improvement of the Situation of the Roma population, adopted and implemented by the Romanian Government, the implementation lacked results in the field of desegregation, other than adopting legislation. Taking into account the European context, that 18

member states have adopted their National strategies for Roma, under the EU Framework for National Roma Integration Strategies, it is crucial to have, unlike the past 10 years, mechanisms for monitoring the implementation. Civil society is a powerful democratic tool which can be used to report on the implementation of public policies for Roma. Therefore, clear methodologies which can be used in all member states which adopted National Strategies, are necessary. The project proposes this type of tool, which will have a transnational, yet locally tailored, perspective<sup>1</sup>.

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

## I. Introduction

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

The European Commission<sup>2</sup> 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<sup>3</sup>, gaps were still persistent in regard to how EU Member States have addressed measures in the field of education. In terms of their policies, for example, Bulgaria did not appropriately address segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic did not adopt an integrated approach, with more concrete targets and corresponding measures on tackling segregation of Roma in the educational system. Greece, Portugal, Poland, Slovakia and Hungary did not apply an integrated approach, a strong focus on desegregation or a tailored response to specific needs of Romani children. Italy and Romania did not provide precise quantitative targets and identification of the necessary resources while Denmark, Germany, Estonia, France, Luxemburg and the Netherlands did not include tools to measure the impact of the equal treatment approach on the situation of Romani children. Another relevant aspect is related to the fact that Member States do not collect and disseminate disaggregated data by ethnicity on basic education indicators making more difficult to assess human rights violations as well as the development and implementation of policies<sup>4</sup>.

The Council of Europe's Commissioner for Human Rights<sup>5</sup> 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

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<sup>2</sup> 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](http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf)

<sup>3</sup> 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](http://ec.europa.eu/justice/discrimination/files/roma_nat_integration_strat_en.pdf).

<sup>4</sup> 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](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](http://ec.europa.eu/justice/discrimination/files/com_2013_454_en.pdf)

<sup>5</sup> See Council of Europe, Commissioner 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](http://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf).

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<sup>6</sup>.

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

The present guide is separated into four chapters that focus on (I) providing general information on the existing legal framework on segregation and education, (II) describing the methodology for identifying, documenting, monitoring and reporting of segregation cases, (III) analyzing the specific subject of segregation at national level and (IV) providing recommendations on combating and preventing segregation practices in education. The purpose of the guide is to provide the relevant stakeholders with practical tools they need to identify, document and report when preventing or fighting school segregation in the countries of the project. Nevertheless, the methodology is applicable to other countries where school segregation may occur.

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

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<sup>6</sup> 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<sup>7</sup>. In the context of defining discrimination, Article 1 of the UNESCO Convention<sup>8</sup>, stipulates that the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, [that] has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

[...]; (c) Subject to the provisions of Article 2<sup>9</sup> [...], *of establishing or maintaining separate educational systems or institutions for persons or groups of persons*; or (d) of

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<sup>7</sup> 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>

<sup>8</sup> 429 UNTS 93.

<sup>9</sup> 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".

inflicting on any person or group of persons conditions which are in-compatible with the dignity of man.”

The International Convention on the Elimination of All Forms of Racial Discrimination<sup>10</sup> (ICERD) defines ‘racial discrimination’ according to Article 1(1) as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.

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

In relation to “*racial segregation*”, the UN Committee on the Elimination of Racial Discrimination in its Recommendation XIX<sup>12</sup> makes a clear reference stating that segregation may stem both from intentional and unintentional actions of public or private actors as well as on the basis of multiple grounds such as race, color, ethnic origin or level of income. Thus the Committee “observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports<sup>13</sup>”.

In its General Recommendation XXVII on discrimination against Roma<sup>14</sup>, 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 endeavor to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.

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

<sup>11</sup> See ICERD, Article 3.

<sup>12</sup> UN Committee on the Elimination of Racial Discrimination, *CERD* General Recommendation XIX (47) on article 3, adopted at the 1125th meeting, on 17 August 1995, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f50%2f18\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f50%2f18(SUPP)&Lang=en)

<sup>13</sup> *CERD* General Recommendation no. XIX (47), paragraph 3 and 4.

<sup>14</sup> 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<sup>15</sup>, adopted by the Permanent Council of the OSCE includes specific recommendations for the participating States aimed at tackling segregation. Paragraph 73 of the OSCE Action plan refers to “comprehensive school desegregation programs aiming at:

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

### 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<sup>17</sup> 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.*”<sup>18</sup>

Similarly, through its Recommendation (2009)4 the Committee of Ministers<sup>19</sup> 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...*”<sup>20</sup>

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

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

<sup>16</sup> Idem

<sup>17</sup> 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>>.

<sup>18</sup> Idem

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

<sup>20</sup> Idem

<sup>21</sup> ECRI General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination, adopted on 13 December 2002, available at: <

**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”<sup>22</sup>.

A subsequent ECRI recommendation on combating anti-Gypsyism and discrimination against Roma<sup>23</sup> 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”<sup>24</sup>.

### 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<sup>25</sup>. 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<sup>26</sup>. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013<sup>27</sup>. The 2013 assessment report focused specifically on the structural preconditions needed in each country<sup>28</sup> while the 2014 report looked at overall progress in all key areas.<sup>29</sup>

In its EU Framework for National Roma Integration Strategies the European Commission outlines among other issues that in some Member States, only a limited number of Roma children complete primary school and “*Roma children tend to be over-represented in special education and segregated schools*”<sup>30</sup>. 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.

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[http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation\\_N7/ecri03-8%20recommendation%20nr%207.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/ecri03-8%20recommendation%20nr%207.pdf).

<sup>22</sup> Idem

<sup>23</sup> 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](http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N13/e-RPG%2013%20-%20A4.pdf)

<sup>24</sup> Idem, point 4, para d and f.

<sup>25</sup> [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>>.

<sup>26</sup> [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>>

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

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

<sup>29</sup> Report available at: [http://ec.europa.eu/justice/discrimination/files/roma\\_implement\\_strategies2014\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf).

<sup>30</sup> [Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020](#)

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”<sup>31</sup>.

Furthermore, the Council of the European Union made specific recommendations on effective Roma integration measures<sup>32</sup> in education as well as non-discrimination action calling on Member States to “ensure *equal treatment and full access for Roma boys and girls to quality and mainstream education* and to ensure that all Roma pupils complete at least compulsory education. This goal could be attained by means of measures such as measures: a) *eliminating any school segregation*; (b) *putting an end to any inappropriate placement of Roma pupils in special needs schools* d) increasing the access to, and quality of, early childhood education and care, including targeted support, as necessary; (e) considering the needs of individual pupils and addressing those accordingly, in close cooperation with their families; (f) using inclusive and tailor-made teaching and learning methods, including learning support for struggling learners and measures to fight illiteracy, and promoting the availability and use of extracurricular activities; (g) encouraging greater parental involvement and improving teacher training, where relevant; (h) encouraging Roma participation in and completion of secondary and tertiary education; ...”

Subsequently the Council of the EU called on Member States to “continue their efforts to ensure the effective practical enforcement of Directive 2000/43/EC, in particular by ensuring that

**Their national, regional and local administrative regulations are not discriminatory and do not result in segregation practices.** Policies and measures to combat segregation should be accompanied by appropriate training and information programs

Including training and information on human rights protection, addressed to local civil servants and representatives of civil society and Roma themselves<sup>33</sup>.

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<sup>31</sup> Idem

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

<sup>33</sup> Idem

## 1.6 Legal frameworks addressing segregation at national level<sup>34</sup>

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	SEGREGATION APPROACH
<b>United Kingdom and Ireland</b>	Racial segregation constitutes a form of direct discrimination; segregation in schools between persons of different racial or ethnic groups is unlawful.
<b>France</b>	Segregation on ethnic grounds is prohibited at all levels and ethnic origin cannot form the basis of educational policy.
<b>Belgium</b>	National courts stated that segregation has to be understood as “the social separation of groups in a country where a mixed population lives ”.
<b>Finland</b>	The National Discrimination Tribunal considered that <i>segregation constituted a form of discrimination</i> .
<b>Denmark</b>	The Complaints Committee for Ethnic Equal Treatment stated that the <i>segregation of Roma children is contrary with the equality law</i> .
<b>Hungary</b>	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
<b>Croatia:</b>	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
<b>Greece:</b>	The Prosecution Office of the Supreme Court through a relevant “Urgent Written Order” (with Protocol Number 720/22-02-2011 <sup>35</sup> ) requested all

<sup>34</sup> ERRC, *Access to education and school segregation of Roma Children*,

<[http://www.equineteurope.org/IMG/pdf/errc\\_school\\_segregation\\_roma\\_dezideriu\\_gergely\\_final.pdf](http://www.equineteurope.org/IMG/pdf/errc_school_segregation_roma_dezideriu_gergely_final.pdf)>.

<sup>35</sup> 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>>.

local prosecutors in Greece to “take care of striking the phenomenon of exclusion of Roma from the public educational system of Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured.

**Bulgaria**

Racial segregation means issuing an act, performing an action or omission to act, which leads to compulsory (emphasis added) separation, differentiation or dissociation of persons based on their race, ethnicity or skin color

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

**1.7. Data regarding school segregation of Roma children in Romania**

Roma children’s segregation in Europe it is not directly a consequence of the legislative regulation of the educational system in separate schools only for Roma or separate classrooms only for Roma children as opposed to non-Roma children. The Open Society Foundation, in a comprehensive report regarding Roma’s equal access to quality education, shows that Roma children’s segregation in education is frequently met in states in Central and South-East Europe, due to geographical isolation/ residential segregation, to the procedure of making the classes or schools or due to the teaching language<sup>36</sup>.

Roma Education Fund shows, for example, that in Romania, although there wasn’t an explicit separation policy, a de facto segregation was set, starting in the early ages of learning, mainly due to the formation of special classrooms in the school. On the other hand, school segregation is also the result of school principals adopted decisions or of residential segregation<sup>37</sup>.

School segregation phenomenon can be present in various ways: **INNER-SCHOOL SEGREGATION, INTER-SCHOOL SEGREGATION OR INDIVIDUAL SEGREGATION.**

**INNER SCHOOL SEGREGATION** means organizing **separate classrooms** for Roma. This type of segregation can also include inner-class segregation, which means applying a different level of the standard curriculum in the same classroom for Roma children.

**INTER-SCHOOL SEGREGATION** may have three different sources: geographic or residential segregation between ethnic groups, incorrect or culturally biased selection process

<sup>36</sup> Open Society Institute, Equal Access to quality Education for Roma, Vol.1 Bulgaria, Ungaria, Romania, Serbia; Vol.2 Croatia, Macedonia, Montenegro, Slovacia; Monitoring Reports, Q.E.D. Publishing, 2007.

<sup>37</sup> Roma Education Fund, Country Assessment and the Roma Education Fund’s Strategic Directions, Advancing Education of Roma in Romania, page. 38-39, Komáromi Nyomda és Kiadó Kft., 2007.

determining the placement of healthy children in **schools for mental disabled children** or the existence of private or religious institutions, requiring admission based on an exam or tax, towards which the Roma children are de facto excluded due to the social disadvantage.

**INDIVIDUAL SEGREGATION**, meaning residence schools, is also a form of segregation very often met, mostly the result of children's enrolment process based on **where they live**. The marginal placement of the community will determine the predominant enrolment of children from the respective community in a **residence school** that becomes majority or very often, is exclusively attended by students belonging to a certain ethnicity<sup>38</sup>.

### **Data analyzed by the Ministry of Education and research institutes**

In 1999 the Ministry of Education, the Institute of Education Sciences and IRQL published a comprehensive study<sup>39</sup> on the segregation of Roma children in Romanian education system, including an estimate of the phenomenon of segregation in schools in rural areas. The research did not provide relevant data on the segregation of Roma in separate classes in ethnically mixed schools and neither about segregation of Roma in special schools. However, the study represents a source of relevant data that provides an estimate of Roma segregation in education<sup>40</sup>. According to the results obtained at the time, the schools included in the analysis and attended by Roma children were classified as follows:

- ✓ Mixed schools – with an average of Roma children from 1 to 50%
- ✓ Mostly Roma schools – with an average of Roma children from 50,1 to 70%
- ✓ Predominantly Roma schools – with an average of Roma children between 70,1 and 100%

According to this classification, in 87% of rural schools Roma pupils were taught in mixed schools, in 6.4% of cases in Roma majority schools and 5.8% of cases in predominantly Roma schools. The number of Roma children attending schools with more than 50% average of Roma children in the time of data collection was 38,334 students or 12.2% of Roma students enrolled in the 5560 school units that were analyzed having enrolled Roma students.

### **Data analyzed by United Nations Development Program (UNDP)**

In 2002 a study conducted by UNDP<sup>41</sup> reveals similar data to the research made by Education Science Institute, IRQL, and Ministry of Education and Research regarding

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<sup>38</sup> European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.2, Lilla Farkas, Segregation of Roma Children in Education, Addressing Structural Discrimination through the Race Equality Directive, July 2007.

<sup>39</sup> M. Jig au, M. Surd coordinators, *and Roma children's participation in education. Problems, solutions, actors*, Ministry of Education and Research, Education Science Institute and IRQL, Marlin Publishing House, Bucharest, 2002

<sup>40</sup> The big number of schools included in the research (approx. 20.000 schools in the rural environment) offers a consistent basis for evaluating discrimination.

<sup>41</sup> *The Roma in Central and Eastern Europe. Avoiding the dependency trap*, UNDP, Bratislava, 2002

Roma students who were taught in segregated school environments. UNDP study reveals, for example, that a proportion of 13.5% of respondents considered that in the classrooms where their children learned, most pupils were Roma.

### **Data analyzed by Romani CRISS**

In its annual report published in 2004<sup>42</sup>, Romani CRISS cleared that the formulation of the problem in terms of segregation of Roma in education does not enjoy recognition of the term itself by the state officials. It was assumed, at the time, that education officials are not willing to accept that there are segregated schools in the educational system. Segregation of Roma in Romanian educational system could be characterized as a de facto segregation. This was not a result of law or official policy, but a manifestation of tradition, prejudice and inertia<sup>43</sup>.

Moreover, this hypothesis was subsequently confirmed. In an analysis prepared by Romani CRISS on desegregation in 2006, it was shown that from a total of 30 county inspectorates only 7 recognized that they face situations of segregation. In its response on the analysis of segregation, the Ministry of Education pointed out that out of 42 school inspectorates a total of 30 inspectorates provided answers. "The requirement to analyses and propose solutions to the problem of segregation in education, 30 counties responded. Of these counties, Botosani, Cluj, Dâmbovița (5 communities), Galati (2 cases – School no. 3 Com. Ivești and Sat Toflea, Brăhășești town), Giurgiu county; Maramures replied that it faces the problem of segregation only as "residential segregation"<sup>44</sup>. Representatives of Braila, Gorj and Teleorman counties showed that they don't face the problem of segregation. In other counties, it was recognized the existence of default problems related to segregation.<sup>45</sup>

In 2008 Romani CRISS analysed the school segregation phenomenon of Roma children on **90 schools**. In **67%** of the total number of analyzed schools there were **cases of school segregation of Roma, by schools or by classrooms**.<sup>46</sup> According to the research, the distribution criteria of Roma children leading to segregation were the following:

SEGREGATION	ROMA CHILDREN DISTRIBUTION CRITERIA
	Preference of parents and/or children

<sup>42</sup> See Romani CRISS, Respecting Human rights: Roma citizens of the rule of law, Annual report 2003, Bucharest.

<sup>43</sup> Idem

<sup>44</sup> Romani CRISS, Analysis of desegregation process, Mihai Surd, 2007, Bucharest.

<sup>45</sup> Idem

<sup>46</sup> Romani CRISS, UNICEF Romania, Report regarding the Monitoring the enforcement action against school segregation in Romania, Laura Surd, July 2008, Bucharest

Pupils' school results
Frequenting kindergarten beforehand
School tests / evaluation tests
Distribution according to the pupil's home address
Distribution according to the surname

### Data from the European Union Agency for Fundamental Rights

European Union Agency for Fundamental Rights (FRA) in its Annual Report of 2008<sup>47</sup> shows that segregation of Roma children is a phenomenon prevalent in much of the European Union and a problematic area is represented by the special needs schools, where a substantial number of students is constituted by migrant children and / or Roma children.

The Agency's (FRA) report indicates various forms of segregation identified in the education systems in the Member States, including Romania. According to FRA segregation manifests itself in different forms and in different Member States, as:

FORMS OF SEGREGATION	COUNTRY
<b>Classrooms only for Roma or units inside the school</b>	Hungary; Romania; Slovenia; Slovakia
<b>Over-representation of migrant and minority pupils in special</b>	Bulgaria; Czech Republic; Luxemburg; Hungary; Austria; Poland; Romania; Slovenia; Slovakia; Finland
<b>Schools exclusively or predominantly made for migrants or minority pupils due to socio economic factors or housing, admission policies, discriminatory attitudes or/and teaching language</b>	Bulgaria; Czech Republic; Estonia; Greece; France; Ireland; Italy; Latvia; Lithuania; Luxemburg; Hungary; Netherland; Austria; Romania; Slovenia; Sweden; Great Britain <sup>48</sup> .

In the following years reports, the European Union Agency for Fundamental Rights (FRA) has reiterated its concern about the phenomenon of school segregation stating that it persists in the European Union. Segregation continued to be practiced by schools and

<sup>47</sup> EU FRA-European Union Agency for Fundamental Rights), Annual Report, 2008, Section 4.3.4.1. "Roma, Sinti and Travellers", pag.74, available at [http://fra.europa.eu/fraWebsite/material/pub/ar08/ar08\\_en.pdf](http://fra.europa.eu/fraWebsite/material/pub/ar08/ar08_en.pdf)

<sup>48</sup> Idem FRA Annual Report 2008, Section 4.3.5.1. "The issue of Segregation", page. 76.

education authorities through indirect methods, as a result of unintentional practices or as a result of residential segregation of Roma communities<sup>49</sup>.

The Agency believes that "the situation of Roma children in education remains poor despite the efforts of Member States<sup>50</sup>: "Roma children are more exposed to segregation in classes or special schools compared with other children due to learning difficulties, reluctance of the enrolment of Roma children, pressure from non-Roma pupils' parents to not get Roma children in their classes and the isolated location of Roma settlements" FRA shows<sup>51</sup>. In 2014, with the publication of the report on challenges and progress in fundamental freedoms, the European Union Agency for Fundamental Rights clearly shows that despite the commitments of Member States to combat discrimination, segregation of Roma children in education remains a widespread problem in countries such as Czech Republic, Hungary, Romania and Slovakia<sup>52</sup>.

FRA refers to practices placing Roma children in schools for children with intellectual disabilities in schools attended only by Roma children or classes composed exclusively of Roma children, Romania being among other countries<sup>53</sup>.

## **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 programs 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<sup>54</sup>.

### **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<sup>55</sup>.

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<sup>49</sup> European Union Agency for Fundamental Rights (FRA), *Fundamental Rights: challenges and achievements 2011*, Annual Report, 15 June 2011, chapter „Roma in the EU-a question of fundamental rights implementation”.

<sup>50</sup> *Idem*

<sup>51</sup> *Idem*

<sup>52</sup> FRA, *Fundamental rights: challenges and achievements in 2013 - Annual report 2013*, available at: <http://fra.europa.eu/en/publication/2014/fundamental-rights-challenges-and-achievements-2013>

<sup>53</sup> FRA, *Fundamental rights: challenges and achievements in 2013 - Annual report 2013*, Capitol 7 Roma Integration, Section 7.3. Member States target integration in four priority areas

<sup>54</sup> 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>

<sup>55</sup> *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*

**The following instruments are important for combating school segregation:**

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**INTERNATIONAL  
TREATIES**

Universal Declaration of Human Rights <sup>56</sup> Art. 26
1966 International Covenant on Economic, Social and Cultural Rights <sup>57</sup> : Arts. 2 (2); 3; 13 & 14.
1966 International Covenant on Civil and Political Rights <sup>58</sup> : Art. 26.
1989 Convention on the Rights of the Child <sup>59</sup> : Art. 2; 28 & 29.
1979 Convention on the Elimination of Discrimination against Women <sup>60</sup> : Art. 10.

**REGIONAL  
TREATIES**

1950 European Convention of Human Rights <sup>61</sup> (ECHR): Protocol I, Art. 2
1996 Revised European Social Charter <sup>62</sup> : Art. 10
1995 Council of Europe Framework Convention for the protection of National Minorities <sup>63</sup> : Arts. 12 & 14
EU Charter of Fundamental Rights <sup>64</sup> : Art. 14

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

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Willems (Ed.), *Development and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, Intersentia 2002.

<sup>56</sup> 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.

<sup>57</sup> 993 UNTS 3.

<sup>58</sup> 1966 International Covenant on Civil and Political Rights, 999 UNTS 171.

<sup>59</sup> 1577 UNTS 3.

<sup>60</sup> 1249 UNTS 13.

<sup>61</sup> ETS No. 5.

<sup>62</sup> ETS No. 163.

<sup>63</sup> ETS No. 157.

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

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

On the other hand, the social and economic inclusion of Roma has become a proclaimed priority for the EU institutions and the Member States. On April 7, 2010 the European Commission presented its Communication on the social and economic integration of Roma in Europe (IP/10/407; MEMO/10/121) – the first policy document dedicated specifically to Roma. It outlined an ambitious program for Roma inclusion as well as the complexity and interdependence of the problems faced by Roma communities in terms of social exclusion, low educational attainment, labor 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<sup>65</sup>, followed by the June 2011 Conclusions<sup>66</sup> that endorsed the Presidency's report on Roma inclusion. In the context of the EU *Framework*<sup>67</sup>, 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 marginalized 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<sup>68</sup>. The European Council adopted a [recommendation on effective Roma integration measures](#) in the Member States on 9 December 2013<sup>69</sup>. The 2013 assessment report of the European Commission focused specifically on the structural preconditions needed in each country<sup>70</sup> while the [2014 report looked](#) at overall progress in all key areas.<sup>71</sup>

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

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

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

<sup>68</sup> [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>>

<sup>69</sup> Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, 2013/C 378/01, available at: [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01)).

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

<sup>71</sup> Report available at: [http://ec.europa.eu/justice/discrimination/files/roma\\_implementation\\_strategies2014\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_implementation_strategies2014_en.pdf).

Education is recognized 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<sup>72</sup>. All Member States recognize 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<sup>73</sup> to secondary and even tertiary education. However, much remains to be done. Several Member States are still struggling with addressing school segregation of Roma children. Bulgaria did not appropriately address segregation in primary and secondary education, as well as monitoring and data collection. The Czech Republic, Greece, Portugal, Poland, Slovakia and Hungary still need to implement more integrated measures on tackling segregation of Roma in the educational system and identify tailored responses to specific needs of Romani children<sup>74</sup>.

A positive development was marked in December 2013 when the Council of the European Union made specific recommendations on effective Roma integration measures<sup>75</sup> including in education as well as non-discrimination.

The EC called upon 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*”<sup>76</sup>.

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.

### **2.3. Ministry of Education’s policies and the impact of school segregation in Romania**

In 2003, Romani CRISS documented the first case of school segregation in the town of Cehei, Salaj County. The school worked in the main building where classes were composed exclusively of Romanian children and in an annex building separate from the main building functioned classes composed exclusively of Roma children. Roma children were taught in totally inappropriate teaching conditions- waterlogged walls, lack of heat,

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<sup>72</sup> 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.

<sup>73</sup> *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>>.

<sup>74</sup> 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](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](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](http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf).

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

<sup>76</sup> Idem

lack of teaching materials, etc. - in stark contrast to the conditions they their colleagues in the main building had. The case was covered by Romani CRISS, debated by the Ministry of Education and also brought to the attention of the National Council for Combating Discrimination. The latter study found that the conditions were such as to lead to discrimination against Roma children.

In the 2003-2004 school year Phare program "Access to education for disadvantaged groups with focus on Roma" (PHARE 2001) began implementing, in whose support committee representatives of various ministries and government institutions, inter-governmental organizations and non-governmental organizations of the Roma or Roma or had educational projects for Roma were invited. It was the setup for dialogue between Roma rights activists and governments and the Ministry of Education regarding segregation of Roma children in the Romanian educational system. Discussing various segregation cases reported by Roma activists in the field, discuss the situation in other countries and site visits undertaken by the PHARE's Committee for Support determined the Ministry of Education to react. In close collaboration with some support committee members the Ministry of Education issued a notification on the Elimination of segregation in education.<sup>77</sup>

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<sup>77</sup> Romani CRISS, Respectarea drepturilor omului in Romania: Romii cetateni ai statului de drept, Raport anual 2006-2007, Bucuresti, raport disponibil la [www.romanicriss.org](http://www.romanicriss.org)

## **Roma children's segregation officially recognized in 2004**

On April 20, 2004, the Ministry of Education, through Pre-university education Secretary of State Cabinet's, adopted:

**Notification no. 29323 forbidding Roma children's segregation** in education The notification forbade the formation of preschool groups and first and fifth grades, with only or predominantly Roma children. This type of organization of groups or classes, setting aside the arguments brought to attention, was segregation.

The measures should have entered into force at national level, in accordance with the logic of notification, from the 2005-2006 school years. For all the other levels of compulsory education, grade 2nd, 3rd, 4th, 6th, 7th, 8th, 10th and 11th desegregation of segregated Roma classes and schools should have taken place in 3 years' time since the notification.

Desegregation of the latter school levels, according to the notification, was to be the result of the analysis performed by the schools on the local context of segregation, and of desegregation plans set by schools taking into account the particularities of each case. Desegregation plans, according to the notification should have involved the county school inspectorates, schools and Roma NGOs, the human rights NGOs and other donors, as well<sup>78</sup>.

### **Application of Notification no. 29323/2004 regarding school segregation**

In his reply on the analysis of segregation, in June 2006, the Ministry of Education showed that out of the 42 school inspectorates only 30 responded, out of which seven identified aspects of segregation of Roma children. According to the Ministry Botosani, Cluj, Dâmbovița counties (5 communities), Galati county (2 cases – School no 3 Com. Ivești and Toflea village, Com Brăhășești), Giurgiu county, Maramures county replied that they face the problem of segregation only as "**residential segregation**"<sup>79</sup>. "The most commonly cited reasons were: **"poverty of Roma families, long distance to go to the "better" nearest school", the reluctance of Roma families to education, Roma children not attending kindergarten, late school enrolment"**.

On the other hand, the Ministry of Education's report on the progress of the desegregation component of PHARE 2003 shows that: "Some county school inspectorates haven't sent the reviewed documents and action plans despite the fact that the notification explicitly requires this. Other inspectorates responded with a short note that there is no segregation in the respective counties, though they didn't bring any evidence to support their claim. A telephone survey conducted by ME at the beginning of the 2004-2005 school years showed that the notification was not disseminated properly by school inspectors to schools and many teachers were not familiar with it. Classes continued to be segregated;

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<sup>78</sup> Romani CRISS, An analysis of desegregation process, Report 2007, Bucharest.

<sup>79</sup> Romani CRISS, An analysis of desegregation process, Report 2007, Bucharest.

Roma parents who wanted to enroll their children in schools in ethnically mixed continued to be directed to mixed community schools”<sup>80</sup>

### **Roma children segregation in education forbidden by Minister Order in 2007**

In February 2007, the Ministry of Education signed a memorandum of cooperation on ensuring equal access of Roma children to quality education through desegregation and by promoting education for identity with more organizations interested in Roma education: the Ministry of Education, the National Agency for Roma, National Council for Combating Discrimination, OSCE / ODIHR, together with the working group of NGOs, Roma Center "Amare Rromentza" Intercultural Institute in Timisoara, Romani CRISS, Save the Children, PER Regional Center, Ovidiu Rom. In this memorandum, the signatories undertake to develop a strategy for desegregation of the education system<sup>81</sup>.

As a result of this cooperation and of the segregation cases identified in PHARE, on July 19, 2007 Minister of Education issued **Order 1540**.

According to art. 1, Order 1540/2007 aims to prevent, prohibit and eliminate segregation, seen as a serious form of discrimination, with negative consequences for children’s equal access to quality education<sup>82</sup>.

In order to achieve this objective it was forbidden starting with the 2007-2008 school year, the segregation of grades 1 and 5, with mainly or solely Roma students. Prevention and elimination of school segregation is done in accordance with the Methodology for the prevention and elimination of school segregation of Roma children...”<sup>83</sup>

According to Art. 3 of Order no. 1540 "The analysis of pre-university segregated schools situation and the making of desegregation plans of action will be performed by the county school and school units concerned, with the support of national public authorities / county / local NGOs with experience in the field and representatives of the local communities in which the schools exist”<sup>84</sup>.

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<sup>80</sup> Romani CRISS, An analysis of desegregation process, Report 2007, Bucharest, quoted from “School desegregation: progress and challenges. Experiences from the Phare 2003 <Access to education for disadvantaged groups> project”, Bucharest, April 2006.<http://www.edu.ro/index.php/articles/c499/>

<sup>81</sup> Romani CRISS, Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, Bucharest, available at [www.romanieriss.org](http://www.romanieriss.org)

<sup>82</sup> Order no. 1.540 from 19 July 2007 prohibiting school segregation of Roma children and approving the Methodology for the prevention and elimination of school segregation of Roma children, published in Official Monitor no.692 from 11.10.2007.

<sup>83</sup> Idem

<sup>84</sup> Idem

## **Roma children's segregation in education insufficiently addressed after the Order 1540**

After the entry into force of the Order no. 1540/2007, in July 2008, Romani CRISS and UNICEF Romania published a report on monitoring the application of measures against school segregation in Romania, on a sample of 90 schools

In 67% of the schools in the sample (90 schools) Roma school segregation was present, either on school level or in the classes. 60% of the segregated schools were located at a distance of between 1 and 3 km from similar school and / or mixed<sup>85</sup>.

In 67, 5% of the segregated schools there were cases of unqualified teaching staff and commuting. In 97% of the schools with segregated classrooms there were cases of staff changing in the last school year<sup>86</sup>.

The order 1540/19.07.2007 is applied to only 63% of the schools in the (77 schools), segregation being present in first grade and fifth. The Order was unknown by either the entire school staff or just by some teachers, including the school principal.

In segregated schools, 57% of the teachers were commuters. Each third teacher in the segregated schools and every fifth teacher in the schools with segregated classrooms had changed his working place in the last year<sup>87</sup>.

28% of the segregated schools or certain annexes of the building were placed at 1 kilometer from other schools of similar level and/or mixed ones. For most of the segregated schools the isolation of the community was not the one determining the segregation of the Roma<sup>88</sup>.

The graduation of the Roma children in segregated schools in the capacity exam in the past school year was of 14%. In 28% of the segregated schools, the graduation of the capacity exam was of 0%<sup>89</sup>.

## **Notification no.28463/2010 regarding the permanent monitoring of school segregation**

In 2010, the Ministry of Education noted that they “receive signals from the schools teaching totally or partially in minorities’ language or from schools with a high number of Roma children, saying they notice some **segregation tendencies of Roma children** from, the other children..., this being in disagreement with the current legislation... and with

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<sup>85</sup> For details, see Romani CRISS and UNICEF Romania, Laura Surdu, Report regarding the monitoring the application of measures in Romania, July 2008, Bucharest.

<sup>86</sup> Idem

<sup>87</sup> Idem

<sup>88</sup> Idem

<sup>89</sup> Idem

international laws”<sup>90</sup>. As a result, the Ministry adopted Notification no. 28463 from 3 March, 2010.

Notification no. 28463 on the prevention and elimination of segregation of Roma students considers the permanent adoption of a set of measures, among which includes enrolment, even after the start of the school year, in schools and pre-schools, of Roma children or of other ethnicities, returned with their parents from work in different parts of the country or abroad, without being assigned to different groups / classes / school bodies<sup>91</sup>.

According to the notification, in the context of reconfiguration of classes/schools according to the number of students, Roma preschoolers and pupils were to be distributed along with the other preschoolers and students of different ethnicities, to avoid in this way the segregation of Roma. Monitoring the provisions in the notification is made by inspectors for Roma education issues in cooperation with the inspectors in charge of pre-school and school inspectors coordinating secondary and high school education<sup>92</sup>.

### **School segregation phenomenon insufficiently analyzed and addressed through desegregation**

In its report published in **June 2014**, the **European Commission against Racism and Intolerance** (ECRI) notes that, although the authorities have taken measures to combat **school segregation and discrimination** against Roma children, **these two phenomena remain a serious concern**. ECRI notes that there is no accurate estimate of the extent of school segregation and research conducted by civil society indicates that the number of classes / segregated schools is still high. The report shows that the Romanian authorities informed the European Commission against Racism and Intolerance that each County School Inspectorate was asked to submit a report on school segregation of Roma pupils and a plan for desegregation. What is noteworthy is that ECRI hasn't received information about how this information was used by the Ministry of Education<sup>93</sup>.

It is precisely from this point of view that the European Commission against Racism and Intolerance recommended Romanian authorities to perform a comprehensive assessment of the extent of school segregation of Roma children and to take specific action on the basis of reports submitted by school inspectorates<sup>94</sup>.

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<sup>90</sup> Quote from Notification no. 28463 from 3.03.2010 concerning the prevention and elimination of Roma pre-school children and students segregation in school, some measures of maintaining the teaching in minority languages, studying mother tongues in the educational system in Romania.

<sup>91</sup> Quote from Notification no. 28463 from 3.03.2010 concerning the prevention and elimination of Roma pre-school children and students segregation in school, some measures of maintaining the teaching in minority languages, studying mother tongues in the educational system in Romania.

<sup>92</sup> Idem

<sup>93</sup> The European Commission against Racism and Intolerance (ECRI), Fourth report on Romania, June 2014, paragraph 116.

<sup>94</sup> The European Commission against Racism and Intolerance (ECRI), Fourth report on Romania, available at: [http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/160-2014\\_06\\_03\\_Romania\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/Library/PressReleases/160-2014_06_03_Romania_en.asp)

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

International human rights bodies have constantly underlined that the importance of the right to education relies in that the exercise of other rights depends in first place on the realization of right to education.<sup>95</sup> 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.<sup>96</sup> 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”.<sup>97</sup>

#### 3.1. Article 2 of the Protocol no.1 to the ECHR

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

In the Belgian Linguistic Cases the European Court of Human Rights held that “The first sentence of Article 2 of the Protocol 1 guarantees, in the first place, a right of access to educational institutions existing at a given time, but such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, inter alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed<sup>98</sup>.

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

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<sup>95</sup> 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>

<sup>96</sup> 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](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>

<sup>97</sup> 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>

<sup>98</sup> 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).

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”<sup>99</sup>.

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<sup>100</sup>. On the other hand, it needs to be underlined that the primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusory, in particular for those who have insufficient means to maintain their own institutions<sup>101</sup>.

### **3.2. The right to education of Roma children and principles set by the ECHR**

The primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusory, in particular for those who have insufficient means to maintain their own institutions<sup>102</sup>. 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 (ECHR) on Article 14, discrimination occurs when, without objective and reasonable justification, persons in relevantly similar situations are treated differently<sup>103</sup> or when States fail to treat differently persons whose situations are significantly different.<sup>104</sup> The ECHR 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

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<sup>99</sup> Ibidem para.5

<sup>100</sup> *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 37, Series A no. 48.

<sup>101</sup> Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Weak, *Theory and Practice of the European Convention on Human Rights*, Fourth Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.

<sup>102</sup> Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, *Theory and Practice of the European Convention on Human Rights*, Fourth Edition, Intersentia, Antwerpen-Oxford, 2006, page 899.

<sup>103</sup> *Case of Willis v the United Kingdom*, Application no. 36042/97, at para. 48, and *Okpiz v Germany*, Application no. 59140/00, at para. 33

<sup>104</sup> 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

democratic society built on the principles of pluralism and respect for different cultures.”<sup>105</sup>

The ECHR 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<sup>106</sup> and, as with European Union law, in particular the Race Directive such a situation may amount to “indirect discrimination”, which does not necessarily require discriminatory *intent*.<sup>107</sup> The ECHR also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.<sup>108</sup>

In its case law the ECtHR noted that Roma do not only enjoy protection from discrimination, but they also require special protection.<sup>109</sup> 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.<sup>110</sup>

#### 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<sup>111</sup>. 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<sup>112</sup>.

#### 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

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<sup>105</sup> *Timishev v Russia*, Application nos. 55762/00 and 55974/00, at para. 58.

<sup>106</sup> *Hugh Jordan v the United Kingdom*, Application no. 24746/94, at para. 154; and *Hoogendijk v the Netherlands (dec.)*, Application no. 58461/00

<sup>107</sup> *D.H. v The Czech Republic*, Application no. 57325/00, at para.184.

<sup>108</sup> *Zarb Adami v Malta*, Application no. 17209/02, para. 76

<sup>109</sup> *Chapman v the United Kingdom*, Application no. 27238/95 and *Connors v the United Kingdom*, Application no. 66746/01.

<sup>110</sup> *D.H. v the Czech Republic*, Application no. 57325/00, para. 182

<sup>111</sup> *Oršuš and Others v. Croatia [GC]*, no. 15766/03, para 147.

<sup>112</sup> *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

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”<sup>113</sup>.

### 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 structured involvement on the part of the relevant social services.<sup>114</sup> 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<sup>115</sup>.

### 3.3. SCHOOL SEGREGATION CASES AGAINST OTHER COUNTRIES BEFORE THE ECHR

So far the European Court of Human Rights has decided in six cases concerning the right to education of Roma children in Europe: *D.H. and Others v. the Czech Republic* (2007), *Sampans and Others v. Greece* (2008), *Orcus and Others v. Croatia* (2010), *Sampani and Others v. Greece* (2012), *Horvath and Kiss v. Hungary* (2013) and *Lavida and Others v. Greece* (2013). In all six cases, the ECHR 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*<sup>116</sup> 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

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<sup>113</sup> *D.H. and Others v. Czech Republic*, § 182.

<sup>114</sup> *Oršuš and Others v. Croatia* [GC], no. 15766/03, para 177.

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

<sup>116</sup> *D.H. and Others v. Czech Republic*, application no. 57325/00, Grand Chamber November 13, 2007, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{)

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.

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.<sup>117</sup>

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<sup>117</sup> 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<sup>118</sup> 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.<sup>119</sup>

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

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

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<sup>118</sup> 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>

<sup>119</sup> D.H and Others v. the Czech Republic – summary of the case, available at: [http://www.crin.org/docs/FileManager/Summary\\_of\\_Cases.pdf](http://www.crin.org/docs/FileManager/Summary_of_Cases.pdf)

With regard to the complaints of insufficient monitoring of the applicants' progress at school and of racial discrimination, the Constitutional Court noted that it was not its role to assess the overall social context and found that the applicants had not furnished concrete evidence in support of their allegations. It further noted that the applicants had had a right of appeal against the decisions to place them in special schools, but had not exercised it. As to the objection that insufficient information had been given about the consequences of placement in a special school, the Constitutional Court considered that the applicants' representatives could have obtained this information by liaising with the schools and that there was nothing in the file to indicate that they had shown any interest in transferring to a primary school. The Constitutional Court therefore ruled that this part of the appeal was manifestly ill-founded.

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

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

The European Court Chamber ruled initially in favor of the Czech Republic and the applicants appealed. *On 13 November 2007, the European Court of Human Rights Grand Chamber ruled that the practice of placing Roma children in special schools*

amounted to racial discrimination against them with regards to the right to education (amounting to a violation of Convention's Art. 14 read in conjunction with Art. 2 of Protocol 1).

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

As to the burden of proof in discrimination cases, the Court re-enforced the principle that once the applicant has shown a difference in treatment it is for the Government to show that the respective treatment has an objective justification. An important step was taken as to whether statistics can constitute evidence. The Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (see *Hugh Jordan*<sup>120</sup>). 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*<sup>121</sup>, and *Zarb Adami*<sup>122</sup>), 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 Court 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*<sup>123</sup> and *Connors v. the United Kingdom*<sup>124</sup>). It observed that there is an emerging international consensus among the Contracting States of the Council of Europe recognizing the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community**

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<sup>120</sup> *Hugh Jordan v. UK*, ECtHR, 2001, App. No. 24746/94.

<sup>121</sup> *Hoogendijk v. The Netherlands*, 2005, App. No. 58641/00.

<sup>122</sup> *Zarb Adami v. Malta*, 2006, App. No. 17209/02.

<sup>123</sup> *Chapman v. UK*, *op. cit.*, § 96.

<sup>124</sup> ECtHR, 2004, App. No. 66746/01, § 84.

The Court added that the applicants in their submission had to establish only that, without objective and reasonable justification, they were treated less favorably than non-Roma children in a comparable situation and that this amounted in their case to indirect discrimination. The Grand Chamber observed that **the tests used to assess the children's learning abilities or difficulties have given rise to controversy** and continue to be the subject of scientific debate and research. While accepting that it is not its role to judge the validity of such tests, various factors in the instant case nevertheless lead the Grand Chamber to conclude that **the results of the tests carried out at the material time were not capable of constituting objective and reasonable justification** for the purposes of Article 14 of the Convention.

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

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

Consequently, the Grand Chamber concluded that there had been a violation in the instant case of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 as regards each of the applicants<sup>125</sup>.

### **Sampanis and Others v. Greece (2008): enrolment of Roma children in separate school facility**

The 11 applicants, Greek nationals of Roma origin, were living in Psari, an authorized residential site near Aspropyrgos (Greece). They brought the case out of concern that the authorities' failure to provide schooling for their children during the 2004-2005 school year and the subsequent placement of their children in special classes, in an annex to the main Aspropyrgos primary school building, was a measure related to the Roma origin of the children. On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enroll their children. According to them, the head teachers of two schools had refused to enroll their children on the ground that they had not received any instructions on this matter from the competent ministry. The head teachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with

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<sup>125</sup> D.H. and Others v. Czech Republic, application no. 57325/00, Grand Chamber November 13, 2007, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{"itemid":\["001-83256"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{)

the appropriate formalities. However, the parents were apparently never invited to enroll their children.

The Greek Government claimed that the applicants had simply approached the schools to obtain information with a view to the enrolment of their children, and that the head mistress had told them what documents were necessary for that purpose. Subsequently, in November and December 2004, a delegation of primary school teachers from Aspropyrgos visited the Psari Roma camp to inform and persuade parents of the need to enrol their children. An informal meeting was convened on 23 September 2004 and it was decided, firstly, that pupils at the age of initial school admission could be taught on the existing premises of the Aspropyrgos primary schools, and secondly, that additional classes would be created for older children, to prepare them for integration into ordinary classes.

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

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

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

Whilst the evidence did not show that the applicants had met with an explicit refusal by the school authorities, **given the Roma community's vulnerability and considering that Article 14 requires in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognized the particularity of the case** and facilitated the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available. Due to Greek law recognizing the specific nature of the Roma community's situation and domestic legislation providing for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority, this obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enroll them at primary school.

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

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

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

### **Orsus and Others v. Croatia (2010): enrolment of Roma children in segregated classes**

15 Croatian nationals of Roma origin complained that they had been segregated at primary school because they were Roma. They attended primary school in the villages of Macinec and Podutren at different times between the years 1996 and 2000. They claimed that the Roma-only curriculum in their schools had 30 % less content than the

official national curriculum. They alleged that that situation was racially discriminating and violated their right to education as well as their right to freedom from inhuman and degrading treatment. In April 2002 the applicants brought proceedings against their primary schools. They submitted a psychological study of Roma children who attended Roma-only classes in their region which reported that segregated education produced emotional and psychological harm in Roma children, both in terms of self-esteem and development of their identity<sup>126</sup>.

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.<sup>1</sup> Subsequently, on 19 December 2002, the applicants lodged a complaint with the Constitutional Court under section 62 of the Constitutional Court Act. In their constitutional complaint they reiterated their earlier arguments, relying on the relevant provisions of the Constitution and of the Convention. The Court dismissed the applicants' complaint as well. Subsequently they addressed the European Court of Human Rights.

In 2010 the Grand Chamber of the European Court of Human rights delivered its judgment in the case of Orsus and others vs. Croatia. The ECtHR considered that the case raised primarily a discrimination issue and it recalled its findings from its case law that, **as a result of their history, the Roma had become a specific type of disadvantaged and vulnerable minority. They therefore required special protection, including in the sphere of education.** The Court noted the reasons given by the Government for the placement of the applicants in Roma-only classes, namely that they had lacked adequate command of the Croatian language. The Court stated that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to Article 14 of the Convention, when this affected, as in the Orsus case, exclusively the members of a specific ethnic group, specific safeguards had to be put in place<sup>127</sup>.

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

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<sup>126</sup> 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>

<sup>127</sup> Idem. See para. 147-162.

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**<sup>128</sup>.

As regards the **school curriculum**, the European Court noted that once assigned to Roma-only classes the applicants **had not been provided with a program specifically designed to address their alleged linguistic deficiency**. All applicants had spent a substantial period of their education in Roma-only classes. **There had been no particular monitoring procedure** and, although some of the applicants had attended mixed classes at times, the **Government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian**. The **lack of a prescribed and transparent monitoring procedure had left a lot of room for arbitrariness**<sup>129</sup>.

Statistics submitted by the applicants for the region in which they lived have not been contested by the Government and had showed a drop-out rate of 84% for Roma pupils before completing primary education. The applicants, without exception, had left school at the age of fifteen without completing primary education and their school reports evidenced poor attendance. The Court noted that such a high drop-out rate of Roma pupils in that region had called for the **implementation of positive measures in order to raise awareness of the importance of education among the Roma population and to assist the applicants with any difficulties they had encountered in following the school curriculum**. However, according to the Government, the social services had been informed of the pupil's poor attendance only in the case of the fifth applicant and no precise information had been provided on any follow-up<sup>130</sup>.

In terms of the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the European Court held that the **parents, themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent**. In addition, **no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest**. The applicants could have attended the government-funded evening school in a nearby town. However, that had not been sufficient to repair the above-described deficiencies in the applicants' education<sup>131</sup>.

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<sup>132</sup>.

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<sup>128</sup> Idem. See para 188-162.

<sup>129</sup> Idem. See para.163-171

<sup>130</sup> Idem. See para 176 and 177.

<sup>131</sup> Idem. See para 178 and 179.

<sup>132</sup> 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>

## **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*<sup>133</sup>, filed by 140 Roma (98 children and 42 parents) through the Greek Helsinki Monitor, a Greek non-governmental organization, the European Court of Human Rights ruled that there was evidence of a practice of discrimination under Article 14 of the European Convention of Human Rights in conjunction with Article 2 of Protocol No. 1, since it was found that the operation of the school during 2008 to 2010 resulted in further discrimination against the Roma applicants.

The application concerned the *continuing educational segregation* of Roma children to a Roma-only school, namely the 12<sup>th</sup> Elementary School of Aspropyrgos. This segregation occurred against the 5<sup>th</sup> June 2008 judgment in the case of *Sampanis and Others v. Greece*<sup>134</sup>, 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 10<sup>th</sup> Elementary School of Aspropyrgos). Following the ECtHR judgment, the Ministry of Education renamed the 10<sup>th</sup> Elementary School of Aspropyrgos annex as 12<sup>th</sup> 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<sup>135</sup>. According to his above Order, the Deputy Prosecutor of the Greek Supreme Court officially asked all local prosecutors of Greece to “*take care of striking the phenomenon of exclusion of Roma from the public educational system of Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured*”. It is noteworthy that although the above document (“Order”) of the Prosecution does not refer strictly to the specific provisions of the Greek anti-discrimination legislation, there is no doubt that at least this concrete judicial authority has fully realized the tremendous importance of the enforcement of the existing legal framework against discrimination.

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

<sup>133</sup> ECtHR, 2012, App. No. 59608/09.

<sup>134</sup> Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma, op. cit.

<sup>135</sup> [Ibid.](#)

Convention on Human Rights in conjunction with Article 2 of Protocol No. 1 (right to education).

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

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

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

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

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

The case of Horvath and Kiss against Hungary concerns the misdiagnosis and placement of two Roma children in special schools. Due to the placement to a special school they were unable to enroll in mainstream secondary schools. Horváth and Kiss complained to ECHR that their education in a remedial school had represented ethnic discrimination in the enjoyment of their right to education. They alleged that the tests used for their

placement had been culturally biased and knowledge-based, thus putting Roma children at a particular disadvantage.

István Horváth was born in 1994. He was living in a Roma settlement in Nyíregyháza, close to the eastern border of Hungary. In 2001 an Expert and Rehabilitation Committee had assessed his mental ability and diagnosed him with mild mental disability and declared him a special educational need child. Pursuant to the diagnosis he could only enroll to a special, remedial school for disabled children. The plaintiff's parents were not allowed to be present during the diagnosis, their consent or approval was not gathered for the placement in special school and parents were not informed about their right to appeal the decision.

András Kiss was born in 1992. He started the elementary education in a segregated mainstream (normal) school in the Roma settlement, where he was educated under a program called Step by Step, as a result of his "socio-cultural" disadvantaged background. In 2000, he was diagnosed with mild mental disability and referred to a special school. His parents did not agree with the replacement, did not consent to the replacement and wanted the child to be educated in a mainstream school.

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

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

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

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

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

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

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

The 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.<sup>136</sup>

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

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

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<sup>136</sup> Horvath and Kiss v. Hungary, application no. 11146/11, Second section (2013), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124>

The ECtHR stressed that “as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. **Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases**<sup>137</sup>. The Court stated that the wording of Article 2 of Protocol No. 1 implies a positive obligation on the part of the State<sup>138</sup> 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**”<sup>139</sup>.

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.**”<sup>140</sup>.

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<sup>141</sup>.

### **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<sup>142</sup> concerning the Roma community in Sofades –Central Greece– where all 550 Roma pupils attend the Roma-only 4<sup>th</sup> Primary School as opposed to the 289 non-Roma pupils who attend the non-Roma-only 1<sup>st</sup> and 2<sup>nd</sup> Primary Schools<sup>143</sup>.

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<sup>137</sup> Oršuš and Others, §§ 147-148

<sup>138</sup> Horvath and Kiss v. Hungary, para. 103

<sup>139</sup> Idem; para. 116.

<sup>140</sup> Ibid; para. 121

<sup>141</sup> Horvath and Kiss v. Hungary

<sup>142</sup> European Court of Human Rights, case of Lavida and others v. Greece (2013); App. no. 7973/10.

<sup>143</sup> 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.

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 4<sup>th</sup> Primary School to five other municipal schools in Sofades and surrounding villages<sup>144</sup>. 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 4<sup>th</sup> Primary School but would be dispersed and enrolled in the five aforementioned primary schools. In that letter, the Special Secretary expressed her "*deep concern*" regarding the concentration of Roma pupils in certain primary schools in the prefecture of Karditsa, particularly in light of "*the application of Lavida against Greece, before the European Court of Human Rights.*" This decision caused uproar in the non-Roma community of Sofades (some 40% of the total population compared to 60% for the Roma community) and precipitated virulent racist reactions on the part of the local societies in Sofades and Karditsa, leading to the closing of schools to which Roma pupils were to be transferred.

As a result, on 26 January 2012 the Minister of Education *overturned the desegregation decision* announcing an effective regression into the *status quo ante* of prevailing segregation with an "icing" of token desegregation that included the creation of a new 5<sup>th</sup> Primary School only for Roma and the selection of just nine first graders to formally register at the 1<sup>st</sup> and 2<sup>nd</sup> Primary Schools but be assigned to preparatory classes housed at the premises of the 5<sup>th</sup> 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 5<sup>th</sup> 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 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

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<sup>144</sup> See also 2012 Annual Report of the Greek Ombudsman, [http://www.synigoros.gr/?i=kdet\\_el.ehtisies\\_ektheseis\\_documents.93959](http://www.synigoros.gr/?i=kdet_el.ehtisies_ektheseis_documents.93959).

refusal to close down school no. 4 and the hostile reactions of the parents of non-Roma pupils when Roma children were enrolled in the other schools in Sofades.

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

**Even in the absence of any discriminatory intention on the State's part, the European Court held that a position which consisted in continuing the education of Roma children in a state school attended exclusively by children belonging to the Roma community and deciding against effective anti-segregation measures could not be considered as objectively justified by a legitimate aim.** The situation complained of by the applicants for the 2009-2010 academic year had lasted until the 2012-2013 academic year. Subsequently the Court held that there had been a violation of Article 14 taken together with Article 2 of Protocol No. 1<sup>145</sup>

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<sup>145</sup> See affaire Lavidia and others vs. Greece, *Requête no.7973/10*, Arrest, 30 May 2013, Definitive, 30/08/2013, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{"itemid":\["001-119974"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)

## 4. CASES OF SCHOOL SEGREGATION OF ROMA CHILDREN IN ROMANIA

National Council for Combating Discrimination received different complaints regarding segregation of Roma children, by placing them in separate buildings or annexes of the school or outside the school, enrollment in separate classes in the same building, taking or moving them in separate classes in the subsequent cycle of education or their placement in schools for children with special needs. Romani CRISS together with other NGOs monitored the various situations of school segregation of Roma children and accordingly informed the National Council for Combating Discrimination and the Court of Law requesting an acknowledgement of the fact that separating children in different schools based on their ethnicity constitutes.

### 4.1. Enrolling Roma children in annex buildings of the main school: Romani CRISS v. Cehei School

Romani CRISS monitored the first case of school segregation in 2003. The case Romani CRISS vs Cehei School was aiming at, essentially, the formation and maintenance of separate classes for Roma children and their operation in an annex (former stables) of the main school. Also, the case was questioning the unsuitable conditions for conducting classes for Roma children in the annex building as opposed to the conditions available in the main building of the school where non-Roma children were taught. Romani CRISS promoted the first action in acknowledging and sanctioning a segregation case, claiming discrimination of Roma children in front of the National Council for Combating Discrimination<sup>146</sup>.

By judgment no. 218 / 23.06.2003, NCCD found that the facts raised by CRISS constitute acts of discrimination and ordered the punishment of school with a warning. NCCD Board noted that the division into different classes was not made based on the qualifications obtained over the years" and the different conditions for conducting classes "were better in the main building than in the annex building<sup>147</sup>". NCCD found that there was no objective justification for the treatment in question (implicit indirect discrimination), without analyzing whether there was a direct causal relationship between the children's ethnic origin and the conditions the Roma children studied in or their exclusive placing in a separate building<sup>148</sup>.

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<sup>146</sup> For details see Romani CRISS, Gergely D., Morteau M., „Implementing anti-discrimination legislation in Romania, Combating ethnic discrimination through law procedures”, ECA publishing, Bucharest, 2004.

<sup>147</sup> For details regarding Romani CRISS vs Cehei School case see Respecting human rights: Roma citizens of rule of law, Bucharest 2004; also Romani CRISS, Gergely D., M. Morteau, „Implementing anti-discrimination legislation in Romania, Combating ethnic discrimination through law procedures”, ECA publishing, Bucharest, 2004.

<sup>148</sup> For details, see Gergely D. Roma children's segregation in Romanian educational system and legal protection against discrimination, New Magazine of Human Rights, no. 1/2009, Vol.5 January-March, Bucharest, C.H. Beck, 2009

Although the decision is highly objectionable in terms of ambiguity of legal classification and gaps in reasoning<sup>149</sup>, it must be said that the NCCD decided at that time the first decision of a public institution in Romania founding that the segregation of Roma children in education is an act of discrimination.

#### **4.2. Enrolling Roma children in “special schools”: Romani CRISS v. Special School Group**

Romani CRISS monitored the case initially signaled by the public television (TVR 1) on the situation of Roma children in the town of Dumbrăveni. It was about the transfer of Roma children from the school, grades 1 to 12 (general secondary school) in the “Special High School” in the village, a school for children with intellectual disabilities. Discussions with school representatives revealed that after a test given by the Committee established by the School Inspectorate, children who remained repeaters 2 or 3 years were moved. The Committee was the one deciding the students' mental health problems and decided to move them to a special school, releasing certificates saying that the children have special educational requirements. Following this policy, over 90% of children attending special school group were Roma, though the reasons for the move were mostly related to the repetition of the same grades and not to the existence of a disability in connection with the child's intellect.

In January 2007, Romani CRISS notified NCCD regarding the practice of analysing and assigning of Roma children in the special need school<sup>150</sup> leading to discrimination against them on grounds of ethnic origin. Also, Romani CRISS, Equal Opportunities organization in Zalau, Human Rights Association for Equal Opportunities for Roma / Sinti brought an action in Sibiu Court of Law against Dumbraveni High School Sibiu, Dumbraveni Special School Group, County School Inspectorate, Ministry of Education, Department of Complex Evaluation and the Sibiu Child Protection Commission, seeking the annulment of the situation created by discrimination, mainly by adopting a plan for desegregation of Roma children by paying the sum of 1 lei, as moral damages.

By the decision no. 733 of 11.06.2008, NCCD decided that the facts presented by CRISS constitute discrimination and recommended that the Ministry of Education make all the necessary efforts to adopt measures to eliminate discrimination against Roma pupils who were moved from the mainstream schools in special needs schools, based on socio-economic needs. It was noted that in practice, the evaluation system of students for their enrollment in special needs schools was not fair, causing disproportionate effects on Roma children. In addition, the enrollment was motivated on socio-economic considerations (financial and material support to children) rather than on medical status resulting in discriminatory effects against Roma children. Statistically, it was found that Roma pupils represent the overwhelming majority of children in these special schools, but not in all cases there is a medical reason to justify their inclusion<sup>151</sup>. Also, NCCD opinioned that

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<sup>149</sup> Idem.

<sup>150</sup> For details, please see Romani CRISS, Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS v. Dumbraveni High school, Dumbraveni Special School Group, Sibiu CSI and Ministry of Education, Research and Youth, pag. 117.

<sup>151</sup> See Romani CRISS, Human rights in practice, (2008-2009), Monitoring Roma children's segregation in education.

"in special schools, the enrollment of students must expressly meet the requirements provided by the law according to the special situation of the student, and not due to socio-economic aspects"<sup>152</sup>.

Basically NCCD found that the inclusion of Roma children in special needs schools constitutes discrimination using arguments retained in the case DH and Others v. Czech resolved by the European Court of Human Rights, with the decision no.733 of 11.06.2008. NCCD has retained a presumption of indirect discrimination on the distribution of Roma children in relation to their disproportionate number in the school, lack of objective justification based on the evaluation system, evaluation of tests and the issue of parental consent that cannot amount to wavering to not be discriminated against. Unfortunately, the Courts of Law<sup>153</sup> have dismissed the complaint filed by Romani CRISS and Equal Opportunities for procedural reasons, not analyzing the problem.

#### **4.3. Enrolment of Roma children in separate classrooms: Romani CRISS and Amara SunOS v. Auto School Group**

Romani CRISS and Amara SunOS monitored the situation of Roma children in Auto School Group in Craiova. At school level the class structured showed an obvious disproportion regarding Roma children. Thus, for the 3<sup>rd</sup> grade there were 3 classes: in class A out of 16 students, 6 were non-Roma and 10 were Roma in class B, out of 24 students, 16 were non-Roma and 8 were Roma, in class C, all 17 children were Roma. In the 4<sup>th</sup> grade there were 3 classes with the following structure: in class A there were 20 non-Roma students and 8 Roma, in class B there were 18 non-Roma and 10 Roma students and in class C all 23 children were Roma<sup>154</sup>. In the 6<sup>th</sup> grade there were 2 classes as follows: class A had 4 non-Roma and 16 Roma students and class B had 21 non-Roma students and 3 Roma.

In February 2007, Romani CRISS filed a complaint with the National Council for Combating Discrimination, considering that the school treated differently Roma students by separating them in grades 3, 4 and 6 from the non-Roma children. On the same issues, Romani CRISS filed the proceedings before the Craiova Court of Law demanding damages worth 1 RON and requesting that the school restore the situation previous the discrimination, i.e. the distribution of children in classes

NCCD found that in the structure of the school year two classes consisting exclusively of Roma children were formed and held. Through decision no. 103 of 25.05.2007, NCCD decided that the formation of classes on grounds of ethnic origin is discrimination and recommended to the school management and to the County School Inspectorate to adopt the necessary measures to achieve desegregation process<sup>155</sup>.

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<sup>152</sup> CNCD, decision no. 733 from 11.06.2008

<sup>153</sup> Sibiu Court House, Sibiu Tribunal, Alba Iulia Court of Appeal

<sup>154</sup> For details see, Romani CRISS "Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS and Amaro Suno v. Craiova Auto School Group and Dolj CSI, pag. 109.

<sup>155</sup> Idem

Craiova Court of Law rejected the complaint filed by Romani CRISS. On 21 November 2008, Craiova Tribunal partly admitted the appeal made by Romani CRISS and obliged the School Inspectorate and the Auto School Group to pay damages amounting to 1 RON, as well as apologizing to the local Roma community.

#### **4.4. Enrolment of Roma children in separate classes: Romani CRISS and Romii Romascani v. School 3**

Romani CRISS and Association "Romii Romascani" monitored the situation of Roma children who were taught separately of the majority children in 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grades at School no. 3 in Roman. In the school years 2003-2006 classes that taught only Roma children were formed in the vicinity of the Roma community. In 2005/2006 the School Inspectorate has proposed the abolition of these classes and their desegregation<sup>156</sup>. Local Roma leader didn't agree with the abolition of the classes in the community asking that the separate classes be kept. Due to lack of space, the classes were moved to the school no. 3 of Roman, which was located at a distance of 2-3 km from the community. Roma children's classes, as were initially formed, were subsequently moved to annex B and later, in annex A of School no. 3. Basically, Roma children were learning in separate classes from the majority children, in the same schools<sup>157</sup>.

In March 2007, Romani CRISS filed a complaint with the National Council for Combating Discrimination on maintaining separate classes with Roma children<sup>158</sup>.

By judgment 338 of 03.09.2007, NCCD brought into attention the issue of achieving a fair balance between the state and interests of Roma children, as members of a disadvantaged ethnic community and the interests of the school, considering that the pedagogical principle of establishing, and maintaining the ethnic homogeneity of a class cannot justify per se, the ethnic segregation of Roma children. On the other hand, NCCD found that the effect of incorporation, transfer or acquisition of exclusive classes composed solely of Roma children is a form of direct discrimination on grounds of ethnicity, which affects the equal access of Roma children to quality education<sup>159</sup>.

In the case of Romani CRISS vs. Auto School Group and School 3, by decisions no. 103 of 24.06.2007 and no. 338 of 03.09.2007, NCCD, for the first time, explicitly framed segregation of Roma children in separate classes as direct discrimination or indirect discrimination. NCCD Board considered that the existence of classes consisting of Roma children only is contrary to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Rights of the Child and the UNESCO Convention on Discrimination in Education<sup>160</sup>. In addition, it referred to the

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<sup>156</sup> For details see, Romani CRISS "Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS and Association „Romii Romascani” vs. School nr. 3 Roman and Neamt CSI, pag. 118

<sup>157</sup> Idem

<sup>158</sup> Idem

<sup>159</sup> See NCCD, Report regarding the implementation of Racial Directive in Romania 2003-2010, Section X. Ethnic segregation. Education. A., at [www.cncd.org.ro](http://www.cncd.org.ro)

<sup>160</sup> See NCCD, decisions no. 103 from 24.06.2007 and no. 338 from 03.09.2007.

context of the issuance by the Ministry of Education of Notification no. 29323/20.04.2004 and the Order no. 1540 of 19.07.2007 on banning school segregation of Roma children.

NCCD has addressed the causal relationship between the establishment / maintenance of separate classes of study and ethnicity of children as opposed to previous approaches which sought rather justification report measures. This was treated explicitly in decision no. 338/2007 the Board addressing both the issue of randomness and the justification put forward by the school authorities on the principle of taking over classes as homogeneous.<sup>161</sup>

#### **4.5. Enrolment of Roma children in separate classes: Romani CRISS and Amaro Suno v. School 19**

Romani CRISS and Amaro Suno monitored the situation of the students enrolled at School 19 in Craiova. In grades from 5 to 8 there were a total of 106 Roma children enrolled. Regarding the grades 1 to 4 (1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> grades) it was noted that there were classes where the pupils were all Roma or the great majority was made of Roma children. The structure was the following: class 1 A, all students were non-Roma. Class 1B 20 non-Roma and 6 Roma students, class 1c all 19 pupils were Roma<sup>162</sup>. For the 2<sup>nd</sup> grade: class A all pupils were non-Roma, class B 23 non-Roma children and 2 Roma, class C had 8 Roma pupils and 8 non-Roma pupils. In the 3<sup>rd</sup> grade: class A out of 22 students 4 were Roma, class B out of 16 students 14 were Roma. In the 4<sup>th</sup> grade: class A all children were non-Roma, class B out of 21 students 5 were Roma. In 5<sup>th</sup> grade in class C, all 18 pupils were Roma<sup>163</sup>.

School representatives have motivated this by the fact that "Roma children remain repeaters or Romanian parents require that, before the start of the school year, their children learn in certain teacher's class" or "due to late enrollment of Roma children, their parents failing to notice deadline for entries".

In February 2007, Romani CRISS filed a complaint to the NCCD<sup>164</sup>.

Through decision no. 395 of 14.01.2008, NCCD initially held that discrimination cannot be found in the distribution of Roma children in classes in the School 19, Craiova. Romani CRISS filed an appeal against the decision of the NCCD. The Court of Appeal held that in the reasoning of the judgment no. 395 NCCD "... retained only the definition of segregation ... without making an actual analysis of the referral, according to the facts of discrimination, authority with which NCCD was invested." The High Court of Cassation and Justice dismissed NCCD's recourse and through the civil Decision no. 401 of 2010 has maintained the legal

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<sup>161</sup> For details, see Gergely D. Roma children's segregation in Romanian educational system and legal protection against discrimination, *New Magazine of Human Rights*, no. 1/2009, Vol.5 January-March, Bucharest, C.H. Beck, 2009

<sup>162</sup> For details see, Romani CRISS "Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS and Amaro Suno v. School 19 Craiova and Dolj CSI.

<sup>163</sup> *Idem*

<sup>164</sup> *Idem*.

and thorough solution of the Bucharest Court of Appeal<sup>165</sup>. Thus, The National Council for Combating Discrimination was forced to reconsider the complaint filed by Romani CRISS. Consequently, in the decision no. 234 of 20.06.2011 NCCD held that segregation of Roma children in School 19 was indirect discrimination (first grade formation), direct discrimination in the structure of grades 2, 3 and 5 and sanctioned the school management with a warning.

#### **4.6. Enrolment of Roma children in separate classes: Romani CRISS v. „Josika Miklos” School**

Romani CRISS monitored the students learning at "Josika Miklos" school, with grades 1 to 8, in Atid (Harghita). The school had a total of 155 students out of which 87 students were Roma (percentage 56.13% of the total number of students in the school). In the primary, in the school year of 2006 - 2007 a total of 97 students were enrolled, of which 63 Roma pupils and in secondary education, a number of 58 students, 24 being Roma. At primary level, it was found that some classes consisted wholly or mainly of Roma children<sup>166</sup>.

According to the data presented by the school representatives, in 1<sup>st</sup> grade out of 27 students, 19 were Roma; in the second grade, class A, out of 14 students 8 were Roma; grade II B of 16 students all were Roma; in the 3<sup>rd</sup> grade, 12 out of 24 students were Roma; in the 4th grade 8 out of 16 students were Roma; in the 5th grade of 23 students, 13 were Roma; in sixth grade 6 out of 12 students were Roma; in the 7<sup>th</sup> grade of 11 students, 5 were Roma; in the eighth grade of 12 students, none was Roma. School unit representatives argued that the distribution was made on performance, on the other hand, those students came from families where the parents live a "migratory life." In May 2007, Romani CRISS filed a complaint with the National Council for Combating Discrimination.

Through decision no. 330 of 27.03.2008, the National Council for Combating Discrimination found that the distribution of students in classes, in "Josika Miklos" School, in Atid was not made on the basis of objectively justified reasons, so there were discriminatory consequences regarding Roma children. So NCCD found that the facts raised by Romani CRISS constitute discrimination under Art. 2 paragraph 1 and paragraph 4 of the Ordinance no. 137/2000 republished<sup>167</sup>.

#### **4.7. Enrolment of Roma children in separate classes: Romani CRISS and Roma in Europe v. „Constantin Brailoiu” High School**

Romani CRISS and Roma in Europe Association monitored Roma children's situation from grades 1, 2 and 5 learning at Constantin Brăiloiu High school in Targu Jiu. For the

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<sup>165</sup> See Romani CRISS, Human rights in practice, (2008-2009), Monitoring Roma children's segregation in education

<sup>166</sup> For details see, Romani CRISS "Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS v. Josika Miklos School, in Atid, Harghita CSI and Ministry of Education.

<sup>167</sup> See Romani CRISS, Human rights in practice, (2008-2009), Monitoring Roma children's segregation in education.

1<sup>st</sup> grade there were 2 classes with the following structure: class 1 A, from a total of 25 one was Roma; class 1 B, out of 17 enrolled, 11 were Roma.

For the 2<sup>nd</sup> grade there were 2 classes with the following structure: class 2 A, there were 17 pupils, out of which one was Roma<sup>168</sup>. In class 2 B, out of 20 students, 10 were Roma. In the 5<sup>th</sup> grade there were 2 classes with the following structure: class 5A, 26 pupils and no Roma; class 5 B, out of 23 students, 19 were Roma<sup>169</sup>.

Romani CRISS filed action before the Court requesting that the CSI and the school unit to pay 1 RON moral damages for discrimination and to restore the previous situation in the desegregation classes<sup>170</sup>. Tg. Jiu Court of Law, through the civil sentence no. 1338 of 26 February 2008, dismissed the complaint holding that no evidence was given in support of the claims on acts of discrimination. The Civil Decision no. 1693 of 05.06.2008, issued by Gorj Tribunal dismissed the appeal of Romani CRISS as unfounded. The court held that the burden of proof belonged to the applicant, contrary to the reversal of the burden of proof set out in European Directives, as well as in the national law and anti-discrimination Ordinance no. 137/2000 republished.

#### **4.8. Enrolment of Roma children in separate classes: Romani CRISS v. „Ioniță Asan” High school**

Romani CRISS monitored the situation of Roma children enrolled in first grade in a separate class unit from non-Roma children. The classroom intended only for Roma children was poorly cared for, had no floor, and the walls were dirty. In February 2012, Romani CRISS notified the National Council for Combating Discrimination seeking the acknowledgement of Roma students discrimination based on social and ethnic considerations, by separating them into distinct class with poor study conditions.

Through decision no. 559 of 12.12.2012, NCCD found Romani CRISS' referral grounded and found that the alleged facts constitute discrimination. NCCD decided to sanction both the school and the School Inspectorate, separately, with a fine of 2,000 RON for each defendant.

NCCD found that the system of distribution of students in class B, where Roma children were wasn't transparent and the criteria underlying the division on students, although seemingly neutral, had a discriminatory effect against pupils from a disadvantaged category, not being objectively justified by any legitimate purpose. It resulted from the documents in the file that the school wanted to move Roma children in a single class, in their attempt to motivate them in school, arguing that it is better to be fewer students in a class, so the teacher can take better care of them.

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<sup>168</sup> For details see, Romani CRISS “Respecting human rights in Romania: Roma citizens of the rule of law, Annual report 2006-2007, CRISS and Roma in Europe Association” v. Constantin Barailoiu High school, in Targu Jiu and CSI Gorj.

<sup>169</sup> Idem

<sup>170</sup> Idem

NCCD held ethnicity as the criteria based on which the class was formed and he said that the school principal is obliged to form primary school making sure that students coming from an ethnically disadvantaged social category are not segregated in one class. Also, NCCD found that the segregation of children's has negative educational and social consequences, among which the maintenance of prejudice and stereotypes, causing a high degree of school drop-out, inability to attract and retain qualified teachers, the inability to prepare students to standards required for transitioning towards higher forms of education<sup>171</sup>.

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171 National Council for Combating Discrimination, decision no. 559 from 12.12.2012.

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

#### **1. MONITORING CASES OF SCHOOL SEGREGATION**

Monitoring is a widely spread word, used in different contexts describing various stages of a collecting process, verifying and analyzing public interest information, including respecting legal provisions or fundamental rights.<sup>172</sup>

##### **1.1. What does monitoring mean and why is it important?**

Monitoring, generally, means certain surveillance and it's also called "fact finding". This is made out of two main elements: investigating and documenting.

**INVESTIGATION** can be achieved, for example, through interviews with victims or witnesses of specific incidents or situations; by observing events such as lawsuits, elections or street demonstrations, following the process by which Roma children are separated in different schools, facilities or separate classes. Investigation can be done by visiting the scene, the home of those affected by the situation in question, at home or in the place indicated by witnesses, meeting with representatives of public and private institutions like Prefecture, Municipality, school etc.

**DOCUMENTATION** refers to gathering all written information, data and any evidence, in reports, press releases, and open letters requesting investigation and ultimately addressing complaints by specialized institutions, such as Courts or institutions specialized in combating discrimination.

**ACCURACY, IMPARTIALITY, OBJECTIVITY AND PRESENTATION ON TIME** of information is crucial in monitoring activity. In the context of human rights and combating discrimination when the objectivity of the monitoring process or the outcome of the monitoring it's called into question, it can undermine the entire effort made by an organization to support a cause. Responding to public authorities, addressing the media and public, writing complaints to the Courts or institutions to combat discrimination, it all relies on the veracity and objectivity of the investigation and the documentation made<sup>173</sup>.

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<sup>172</sup> Public Interest Law Initiative, "Pursuing the Public Interest"- A handbook for Legal professionals and Activists, Public Interest Law Initiative, Columbia Law School, 2001.

<sup>173</sup> Romani CRISS, Guide for human rights local monitors, Av. Dezideriu Gergely, Bucharest, ECA publishing, 2003.

## 1.2. Steps in implementing the monitoring

Monitoring is firstly about a careful preparation. The following steps are essential in considering the monitoring:

**ESTABLISHING THE OBJECTIVES OF THE MONITORING**  
**IDENTIFYING THE PROBLEM**  
**IDENTIFYING THE KEY ACTORS**  
**DETERMINING INFORMATION SOURCES**  
**ANALYZING LEGAL PROVISIONS**  
**ESTABLISHING RESEARCH METHODS**

### ESTABLISHING THE OBJECTIVES OF THE MONITORING

Setting goals, firstly, gives us a better understanding of the size and scope of the monitoring itself. Determining the facts to be investigated and documented will help establish the human and financial resources necessary to achieve the purpose of monitoring. From the beginning it will be established the subject of the documentation, what will the monitoring follow and what strategies might result from the investigation outcomes.

To identify initial targets of the investigation it's necessary to have at least a minimal consultation with those directly involved, either victims, witnesses, or any other group or organization, or institution holding information about the situation in matter.

<b>Monitoring objectives</b>	
<b>What is there to investigate/document?</b>	If in school X from a certain town school segregation of Roma children exists, contrary to the policies of the Ministry of Education.
<b>What do we want?</b>	Preventing and combating discrimination of Roma children's school segregation through the instruments created by the Ministry of Education and the anti-discrimination law.
<b>Possible strategies</b>	Amicable resolution of the situation made by the authorities. Mediating the situation with the school or local authorities (school, municipality, school inspectorate, Ministry) Sanctioning segregation by involving the NCCD

	Fixing segregation with the help of the Court of Law
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**IDENTIFYING THE PROBLEM**

Most times it is more difficult than it seems, to identify facts or circumstances which are to be monitored. Defining the problem in an early stage can help in formulating questions that respond to the causes creating a problem or another.

<b>IDENTIFYING THE PROBLEM</b>	
<b>EXAMPLE</b>	Roma and non-Roma children learn in the X school in town. At one point Roma children were transferred to the school. It seems like the number of Roma children began to grow and the number of non-Roma pupils to decrease. It seems that in some classes there are Roma children and in other classes non-Roma children only. In most classes Roma students average is 90%
<b>IDENTIFIED PROBLEM</b>	The share of Roma children in school and in class has changed. What causes this change? Do we have a case of school segregation of Roma children?
<b>DEFINING THE PROBLEM FREQUENT QUESTIONS</b>	<p>When were the Roma children transferred?</p> <p>Why was the transfer made??</p> <p>How were these children allocated?</p> <p>What were the criteria behind their allocation?</p> <p>What was the share of students of before the transfer, after the transfer, during the school year, in the following school year?</p> <p>Why has the number of the non-Roma children decreased?</p> <p>What were the causes? What do parents think? What does the school think?</p> <p>What measures have been taken? Etc.</p>
<b>RELEVANT ASPECTS</b>	<p>The share of Roma children in one class is higher than 50 %</p> <p>In the school the share of Roma children is of over 50% of the total number of school children</p> <p>In class or in school Roma pupils share is over 30% and there is the risk of segregation<sup>174</sup></p>

<sup>174</sup> If in X town the share of Roma children of school age is of 8% of the total number of children of school age in that locality, then the share of Roma children in the classes in that school shouldn't exceed 8%.



## IDENTIFYING KEY ACTORS

Setting goals will help us identify potential sources of information about the situation to be monitored. Relevant stakeholders should be identified as fast as possible. Of course, the relevant actors are usually the victims, those whose rights have been violated, and their families or their representatives and potential witnesses. Also relevant are the other actors: institutions or authorities who work in the field, institutions responsible for addressing situations like the one monitored. Public authorities that have no direct prerogatives are relevant locally, regionally or nationally.

To demonstrate the state's responsibility in a given situation, a great variety of interviews, information, data, samples, materials that support the allegations of the case is required<sup>175</sup>.

IDENTIFYING KEY ACTORS	
<b>VICTIMS</b>	Roma students segregated in any way.
<b>REPRESENTATIVES</b>	Families of respective students, parents or other representatives (parents or relatives as legal representatives and underage students)
<b>COMMUNITY</b>	The formal or informal community leader from where the student come (if the case)
<b>ROMA REPRESENTATIVES</b>	School mediator
<b>SCHOOL AUTHORITIES</b>	School principal, teachers, school secretary
<b>LOCAL AND CENTRAL AUTHORITIES</b>	Maier, Prefect, School General Inspector, Minister of Education

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<sup>175</sup> Public Interest Law Initiative, "Pursuing the Public Interest"- A handbook for Legal professionals and Activists, Public Interest Law Initiative, Columbia Law School, 2001.

## DETERMINING INFORMATION SOURCES

In any investigation some sources of information can, apparently, be identified. In general, potential sources of information are the individuals who can provide information during interviews or trips of the monitors. Other sources are official documents obtained from public institutions and local authorities, regional or national. Other sources may include non-governmental organizations and other groups in town or in the country who has made a previous documentary, as well as from local authorities that were aware of the situation<sup>176</sup>.

<b>INFORMATION SOURCES</b>	
<b>VICTIMS</b>	Roma students segregated in any way.
<b>REPRESENTATIVES</b>	Families of respective students, parents or other representatives (parents or relatives as legal representatives and underage students)
<b>COMMUNITY</b>	The formal or informal community leader from where the student come (if the case)
<b>ROMA EXPERTS</b>	School mediator, health mediator, Roma political organizations representatives, Roma local expert, Roma issue counsellor in the Prefect's office
<b>SCHOOL AUTHORITIES</b>	County School Inspectorate, Ministry of Education
<b>LOCAL AND CENTRAL AUTHORITIES</b>	Local council, Special committee in in council, Ombudsman (locally), NCCD local office, Prefect's office, Ministry of Education
<b>MASS MEDIA</b>	Local press, central press, local radio, central radio, local and central television.

## ANALYZING LEGAL PROVISIONS

Analyzing legal provisions starts in the same time with the monitoring preparation state and it continues until the end. From the beginning, once the problem is identified, it is good to know which the legal provisions applicable to the given situation are.

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<sup>176</sup> Romani CRISS, Guide for human rights local monitors, Av. Dezideriu Gergely, Bucharest, ECA publishing, 2003.

<b>National legal provisions</b>	
<b>RELEVANT NORMS</b>	O.M.E.C.T. Order no. 1540/19.07.2007 forbidding school segregation of Roma children and approving the methodology for preventing and eliminating school segregation of Roma children.
<b>RELEVANT LEGISLATION</b>	GO 137/2000 regarding prevention and sanctioning of all forms of discrimination, with all modification and additions, republished in Official Monitor, Part 1, no. 166, from 7 March 2014

### **Establishing research methods**

Selecting research methods depends not only on the purpose of the investigation and documentation but also on factors such as the conditions in which the monitoring will take place: community size, region, safety during monitoring, the need for translators, availability of victims or their families to discuss and of the authorities to have meetings and discussions etc. Choosing the order in which the interviews will be conducted, for example, may call into question issues that could be omitted. Interviewing the officials before victims can sometimes cause losing sight of the essential elements.<sup>177</sup>

<b>Investigation methods</b>	
<b>DIRECT OBSERVATION</b>	Structured direct observation (when talking about school segregation, the number of Roma students, number of non-Roma students, material teaching conditions in classes, annexes, school, quality of learning, teachers' qualification) etc. Using audio video recording for the material conditions (respecting applicable legal provisions)
<b>STRUCTURED TALKS (interview, questionnaires)</b>	Structured talks with victims, legal representatives of students, witnesses Based on a set of questions like a questionnaire, prepared beforehand or adapted according to the given situation Using audio video recording for interviews (respecting applicable legal provisions)
<b>ANALYSIS OF DOCUMENTS</b>	Requests for written information and documents from the local and central school authorities, as well as from public authorities in order to identify explanations from the officials regarding the school segregation situation.

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<sup>177</sup> Public Interest Law Initiative, "Pursuing the Public Interest"- A handbook for Legal professionals and Activists, Public Interest Law Initiative, Columbia Law School, 2001.

## 2. INVESTIGATION AND DOCUMENTING

The investigation involves an on-site research of some incidents or situations that challenge the non-compliance of rights foreseen by the law. When talking about Roma children school segregation we question both the right to education and the right not to be discriminated based on ethnic considerations. Investigation is supposed to find data that will allow us to describe the circumstances of a particular incident, in our case a situation of school segregation, not allowed by law.

Investigation at the scene of the incident through research, interviews, observation and document analysis is the essence of the monitoring of any event that raises a potential violation of human rights.

<b>Principles of investigation</b>	
<b>Ensure impartiality</b>	As much as possible, on-site investigation and subsequently must emphasize facts and ensure that all parties expressed their views. Investigation of facts that will seem unbalanced will lead to feelings of bias and it will easily be attacked and rejected.
<b>Check and check again the facts</b>	The success of any documentation depends on the facts on which it's based. The facts should be presented accurately. Therefore any method of research should include questions or any other means to test the truthfulness of the information provided. Single incorrect information can destroy the credibility of the entire monitoring.
<b>Look for specificity</b>	The more specific the monitored facts will be, the more useful they will be. The information obtained must be detailed enough and must be directly relevant to the specific monitored case.
<b>Distinguish facts from opinions</b>	During the investigation a distinction between facts and opinions, suspicions, assumptions, rumors or assumptions must be made. Information without a real objective, factual basis, undermines the final report and may compromise efforts in the whole process of monitoring.

### 2.1. Research on the scene

Research involves traveling to the scene where the incident occurred or where there is information that a particular event occurs. For example, in the town of x, y school Roma students learn in separate classes because parents of non-Roma pupils are reluctant to accept no more than one or two Roma students in classes. On-site investigation will

involve the collection of data by different methods (direct observation, interview, document analysis, etc.) to determine if the facts confirm or not.

The source of information at the scene can be:

<b>Sources of information</b>	
<b>VICTIMS</b>	Roma students segregated in any way.
<b>REPRESENTATIVES</b>	Families of respective students, parents or other representatives (parents or relatives as legal representatives and underage students)
<b>COMMUNITY</b>	The formal or informal community leader from where the student come (if the case)
<b>ROMA EXPERTS</b>	School mediator, health mediator, Roma political organizations representatives, Roma local expert, Roma issue counsellor in the Prefect's office
<b>SCHOOL AUTHORITIES</b>	County School Inspectorate, Ministry of Education
<b>LOCAL AND CENTRAL AUTHORITIES</b>	Local council, Special committee in in council, Ombudsman (locally), NCCD local office, Prefect's office, Ministry of Education
<b>MASS MEDIA</b>	Local press, central press, local radio, central radio, local and central television.

## 2.2. Obtaining data through interviews

Making of interviews is one of the fundamental elements of monitoring. The interviews are based on a few fundamental principles: agreement, confidentiality, impartiality and security.<sup>178</sup>

- ✓ It is important to find about how are the persons interviewed and what do they do
- ✓ It is important to explain beforehand the objective and the purpose of monitoring
- ✓ It is important to present information about the organization for which we conduct the interview.

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<sup>178</sup> Idem

- ✓ It is important to say if the information will be public or not and if so, how will they be made available.

<b>Check</b>	
<b>Agreement</b>	The interview (audio or video) is done after obtaining the agreement to conduct it from the interviewee. It should be established if the victim/witness/interviewee is ready to give information about the case.
<b>Confidentiality</b>	The interview is confidential and no information will be presented without the previous consent of the person.
<b>Anonymity</b>	The interviewee must be asked if it wishes to remain anonymous or if we can use the initials of his name. It should be established if the victim/witness is willing to offer information about the case with mentioning his /'her name.
<b>Release from anonymity</b>	It should be explained that a complaint can't be anonymous because it must be signed by the plaintiff. The same situation is also available for the witnesses.
<b>Empathy</b>	During the interview one should show empathy for the victim's/witness'/ interviewee's feelings
<b>Time</b>	The interviewee must be given the necessary time in order to answer the questions.
<b>Not making suggestions</b>	The interviewee must say what he knows without any suggestions for answers from the interviewer
<b>Details</b>	The obtained info must be detailed and they must be directly relevant for the specific case.

### 3. Practices that can lead to school segregation

During the monitoring process attention should be paid to practices that can lead to segregation of Roma students. The Ministry of Education makes explicit reference to a number of situations or actions that could lead to the creation of school segregation<sup>179</sup>:

SITUATION LEADING TO SEGREGATION	DETAILS
Teaching Roma children in residentially segregated schools	Schools from a compact Roma neighborhood or near such a place and without another school near, where all students or a big share of the students are Roma.
Deliberately guiding and directing Roma children towards segregated kindergartens/schools from or near Roma neighborhoods	Though mixed kindergartens and school are available, the guiding is done towards segregated ones.
Placing all children that didn't attend pre-school in the same class	All Roma children who didn't attend kindergarten are put in the same class, separated by the other children
Deliberately placing, inside of a mixed school, Roma children in groups/classrooms/buildings/other facilities destined for them only.	Roma children are put in separate groups or classrooms, away from non-Roma children or Roma children have classes in separate buildings from the non-Roma children.
Placing children who enrolled later to school in the same class	Roma students are put in the same class on the reason that they enrolled late.
Keeping the class intact in the case of transferring Roma children from a segregated school in a mixed school	It is thought that it's beneficial for the students to be kept in the same structure as the one in the former kindergarten/school/group/school.

<sup>179</sup> Appendix 1 to O.M.E.C.T. Order no. 1540/19.07.2007 forbidding school segregation of Roma children and approving methodology for preventing and eliminating school segregation of Roma children segregation

### 3.1. Elements of monitoring school segregation

In monitoring segregation situations several conditions should be met: there is a physical separation of students belonging to the Roma ethnic groups / classes / buildings / schools / other facilities, so that the percentage of students of Roma ethnicity of the total number of students in the school / class / group is disproportionate to the percentage of Roma children of school age in the total population of school-age in the respective administrative territorial unit.<sup>180</sup>

<b>SEGREGATION ELEMENTS</b>	<b>DETAILS TO FOLLOW</b>
<b>PHISICAL SEPARATION</b>	<b>Roma children are separated from the non-Roma children</b>
<b>WAY OF STUDYING</b>	<b>Roma students are separated by groups/classes/buildings/schools or other facilities from the non-Roma students</b>
<b>DISPROPORTIONED PERCENTAGE</b>	<b>The percentage of Roma children in the separated school/ class/group is disproportioned in regard to the percentage of Roma children of school age</b>
<b>INTENT</b>	<b>It's irrelevant if the separation of Roma children from the other children was done with or without intention, because in both cases the discrimination is the same.</b>

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<sup>180</sup> Art. 2 of O.M.E.C.T. Order no. 1540/19.07.2007 forbidding school segregation of Roma children and approving methodology for preventing and eliminating school segregation of Roma children segregation.

#### 4. ESSENTIAL ELEMENTS FOR INVESTIGATING AND DOCUMENTING SCHOOL SEGREGATION

When investigating, either by direct observation or with interviews with the relevant actors in educational institutions, but also local communities it is useful to obtain a set of relevant information in order to establish the entire context of a school segregation case.

<b>4.1. Data regarding the locality</b>	
<b>Number of inhabitants according to the data from the last Census</b>	Public info regarding the Census
<b>Ethnic component of the locality</b>	Data from the Census, estimations for the number/percentage of Roma from the Roma leaders and local authorities
<b>Number of school age children in the locality</b>	Local authority (Maier, vice-Maier), school principal, Roma leader in the community
<b>Estimated number of school age Roma children in the locality</b>	Local authority (Maier, vice-Maier), school principal, Roma leader in the community, school mediator, Roma expert in the municipality
<b>Number of school age children (7-18 years old) in the locality</b>	Local authority (Maier, vice-Maier), school principal, Roma leader in the community
<b>Estimated number of school age Roma children (7-18 years old) in the locality</b>	Local authority (Maier, vice-Maier), school principal, Roma leader in the community, school mediator, Roma expert in the municipality
<b>School age children not enrolled in school. If so, how many are they and how many of them are Roma</b>	Local authority (Maier, vice-Maier), school principal, Roma leader in the community, school mediator, Roma expert in the municipality

<b>4.2. Data regarding the schools in the community</b>					
	Kindergarten	Schools with grades from 1-4	Schools with grades from 1-8	Schools with grades 5-8	High schools and professional schools
<b>Number of</b>					

<b>school units</b>					
<b>Number of enrolled children</b>					
<b>Number of Roma students</b>					
<b>Number of segregated schools</b>					
<b>Number of students enrolled in segregated schools</b>					

<b>4.3. Data about the community</b>	
<b>Placement of the community</b>	In the locality, outside the locality, isolated etc.
<b>Spoken language</b>	Romani language speakers or not
<b>Infrastructure</b>	Pebbled roads, asphalt, dirt road, without asphalt etc.
<b>Public transportation</b>	Available/unavailable near the community, frequency of transportation (how many times a day)
<b>Distance between the community and the school</b>	Distance to the nearest pre-school Distance to the nearest school with grades from 1-4 Distance to the nearest school with grades from 5-8 Distance to the nearest high school
<b>4.4. Data regarding the monitored school</b>	
<b>Name</b>	E.g. "Mihai Eminescu" school
<b>Type of school</b>	School with grades from 1-4, with grades from 5-8, with grades from 1-8
<b>Distance</b>	Distance to the nearest school of the same level
<b>Share</b>	Mixed school, Roma school (majority, exclusive)
<b>Infrastructure</b>	Asphalt road to the school, asphalt road to the mixed school, asphalt road until the Roma school
<b>Transportation</b>	Is there school transportation for students (Roma and non-Roma), is there public transportation from the community to the school
<b>General appearance</b>	First look appearance of the school (building, school yard, cleaning, walls, floor, furniture, desks, chairs, windows, heating etc etc.

<b>4.5. Data regarding the school's material facilities</b>	
<b>Infrastructure</b>	Running water (hot water, cold water) Heating (wood, heating station, central heating, solar heating, etc.) Bathrooms (inside or outside of the building)
<b>Laboratories</b>	Physics, chemistry, biology, geography, foreign languages, IT etc.
<b>Equipment's</b>	Available to all children in school, laboratories
<b>Other facilities</b>	Medical office, library, gym
<b>Accessibility</b>	Roma students have/don't have access to labs, computers, library, gym, medical office etc.
<b>Furniture</b>	New furniture, old furniture, damaged furniture, bedraggled furniture Roma children's classrooms have/don't have damaged furniture
<b>Density</b>	Classrooms' density regarding the number of students

<b>4.6. Data about the students</b>	
<b>Total number of students</b>	The total number of students in the school
<b>Roma students number</b>	The total number of Roma students in school
<b>Total number of students from grades 1-4</b>	
<b>Total number of Roma students from grades 1-4</b>	
<b>Total number of students from grades 5-8</b>	
<b>Total number of Roma students from grades 5-8</b>	

<b>4.7. Students' distribution in classrooms</b>						
<b>Grade</b>	1 A	1 B	1 C	2 A	2 B	2 C
<b>Roma students</b>						
<b>Non-Roma students</b>						
	3 A	3 B	3 C	4 A	4 B	4 C
<b>Roma students</b>						
<b>Non-Roma students</b>						
	5 A	5 B	5 C	6 A	6 B	6 C
<b>Roma students</b>						
<b>Non-Roma students</b>						
	7 A	7 B	7 C	8 A	8 B	8 C
<b>Roma students</b>						
<b>Non-Roma students</b>						

<b>a. Data regarding distribution</b>	
<b>Distribution criteria for grades 1-4</b>	Ethnic criteria, school abilities, going to kindergarten or not, distance to school, old age of the students for enrolment to school, repetency, low school frequency, principal's decision, teachers' decision, parents' decision, students' decision, random distribution etc.
<b>Distribution criteria for grades 5-8</b>	idem

<b>4.9. Data about Roma students school/class distribution</b>	
<b>Separate school unit</b>	Roma students learn in a separate school

<b>Separate school building</b>	Roma students learn in a separate school building, near the main building
<b>Mixed school unit</b>	Roma students learn in the same school with non-Roma students
<b>Mixed classroom</b>	Roma students learn in separate classrooms
<b>Mixed classrooms with Roma majority</b>	Roma students have a higher share than 50% in the mixed classroom
<b>Mixed classrooms without Roma majority</b>	Roma students have a share of X (0-49%) in the mixed classroom
<b>Separate classrooms</b>	Roma students learn in separate classrooms

#### 4.10. Data about teachers' qualifications

<b>Teachers</b>	Number of teachers in the school
<b>Qualification</b>	Number of qualified teachers, unqualified teachers, on the way of getting their qualification
<b>Origin</b>	Local teachers, commuters
<b>Personal</b>	School mediator, psychologist, school counsellor, doctor, medical nurse, supporting teacher etc.

#### 4.11. Data about the students' grades

<b>Possibility of graduating</b>	Share of students passing the exams Share of Roma students passing the exams
<b>Repetency</b>	Share of students not having graduating in the next school year Share of Roma students not having graduating in the next school year
<b>School drop-out</b>	Share of students that have dropped-out of school Share of Roma students that have dropped-out of school
<b>Specializing</b>	Share of students participating in local, county, national competitions, school subjects contest Share of Roma students participating in local, county, national competitions, school subjects contest
<b>Extra-curricular activities</b>	Share of students participating in extra-curricular activities for enriching their knowledge Share of students participating in extra-curricular activities for enriching their knowledge

## 5. DOCUMENTING AND REPORTING SCHOOL SEGREGATION CASES

If documentation is the process of collecting and organizing the information obtained through investigative field research, direct observation, interview and document analysis, reporting is the written summary of all information collected and put together in a way that can lead to relevant and cogent conclusions.

Accuracy, clarity and objectivity of the report are the premises underlying a case, and are also the base for possible actions that related to it including before Courts or other institutions or public authorities. Without these elements, the report will not stand being subjected to criticism and lack of arguments.<sup>181</sup>

Therefore the report is an account of events written after an investigation and documentation held in relation to incidents of human rights violations, in our case, school segregation of Roma children on ethnic considerations. A report must provide a clear and accurate account of events. Objectivity helps accuracy in reporting, exaggeration undermines the accuracy and causes loss of credibility. Some key issues are to be detained in connection with the report<sup>182</sup>.

<b>5.1. Report of monitoring</b>	<b>Details</b>
<b>Based on facts, not suppositions</b>	Statements of the victims and witnesses, experts', specialist', public clerks', authorities' representatives statements, photos, audio material, video material, documents or other evidence.
<b>It's fortified with facts and evidence</b>	The report will show the facts and it's connection between certain statements, assertions, reasons imputed by the parties and that can be justified or not
<b>The story telling is impartial</b>	The report must contain a balanced view of the happenings. All aspects of the situation must be analyzed, even those that don't support the statements of the victims.
<b>The language used is objective</b>	The report must avoid the use of emotional language. The facts must be told as precisely and exact as possible.
<b>No comments</b>	The report must contain quotes from the statements and from documents, and not personal opinions.
<b>The information is well structured</b>	The report must be divided in precise sections, clear, with quotes from the source. The exception is made when the victim or the witness wants to remain anonymous.

<sup>181</sup> For details, see The Human Rights Handbook-A practical Guide to Monitoring Human Rights by Kathryn English, barrister and Adam Stapleton, barrister, Human Rights Centre, University of Essex

<sup>182</sup> Idem

<b>Contains reasoned conclusions</b>	The report will contain a part with the conclusion of the direction resulting from analyzing all the information obtained after the investigation and documentation.
<b>Contains recommendations</b>	The report has recommendations suggesting the following steps to take. <sup>183</sup>

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<sup>183</sup> Romani CRISS, Guide for human rights local monitors, Av. Dezideriu Gergely, Bucharest, ECA publishing, 2003.

## **6. SCHOOL SEGREGATION AND FORMS OF DISCRIMINATION FORBIDDEN IN THE EU AND ROMANIA**

### **6.1. Forms of discrimination in Racial Equality Directive**

Directive 2000/43 / EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin known as the Racial Equality Directive is a major milestone in the field of combating discrimination in the European Union. All EU Member States have ensured compliance of national legislation with the Directive and transposed the minimum standards set out in this legal instrument.

Racial Equality Directive prohibits direct and indirect *discrimination*, harassment or victimization, the order to discriminate based on racial or ethnic origin and *it applies also in education*. In the text of the Directive the segregation on the basis of the subject of racial or ethnic origin is not specifically banned, nor any reference to it.

However, this "non-reference" to the word "segregation" is not an obstacle in clearly specifying segregation as a form of discrimination, whether direct, as defined in the Directive "when a person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin" or as a form of indirect discrimination "when a provision, criterion or practice disadvantages certain people of a certain race or origin to other people, unless those provisions, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary"<sup>184</sup>.

The Directive expressly prohibits harassment as a form of discrimination if there is unwanted conduct related to racial or ethnic origin of a person, with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Similar provision to discriminate against people based on ethnic origin is considered to be discrimination. In addition, Member States shall introduce into their national legal systems necessary measures to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or legal action aimed at respecting the principle of equality (victimization)<sup>185</sup>.

### **6.2. Forms of discrimination in Romanian Law of transposing the Racial Directive**

The Romanian government adopted Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination. The Ordinance was approved by law in 2002 and underwent successive changes in 2003, 2004, 2006 and beyond. For example, Law 324/2006 amending and supplementing Government Ordinance no. 137/2000 expressly provided that the Ordinance is the legislative act transposing Directive 2000/43 / EC (Racial Equality Directive)

Article 1 paragraph 2 of GO no. 137/2000 further republished and amended provides that the *principle of equality between citizens*, of exclusion of discrimination and guaranteed privileges are guaranteed, *including the right to education*.

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<sup>184</sup> D.Gergely, Roma children segregation in the Romanian educational system and legal protection against discrimination, New Human Rights Magazine, no. 1/2009, Vol.5 January- March, Bucharest, C.H. Beck, 2009, International Studies center's trimestral Magazine.

<sup>185</sup> Directive 2000/43/CE from June 29, 2000 for implementing equal treatment principle between people indifferent of the racial or ethnic origin

In Article 2 paragraph 1-7 the Ordinance prohibits direct discrimination, indirect discrimination, the order to discriminate, harassment, multiple discrimination or victimization. It should also be noted that according to Art. 3 provisions of the Ordinance shall apply to all natural or legal persons, public or private, and *public institutions* with responsibilities in the *education system*.

**DISCRIMINATION** is defined as "any distinction, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, membership in a disadvantaged category, as well as any other criterion which has the purpose or effect the restriction, removing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms and legal rights in the political, economic, social cultural or any other field of public life.

**INDIRECT DISCRIMINATION** targets "apparently neutral provisions, criteria or practices that disadvantage some people, based on the criteria set out in para. (1) (e.g., race, nationality, ethnicity, etc.) to other people, unless those provisions, criteria or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary".

**THE ORDER TO DISCRIMINATE** refers to the disposition to discriminate against based on either of the criteria foreseen by the law and it is considered discrimination.

**HARASSMENT** is any behavior based on race, nationality, ethnicity, language, religion, social category, convictions, gender, sexual orientation, belonging to a disadvantaged category, age, handicap, refugee status or asylum seeker or any other criteria leading to an intimidating, hostile, degrading or offensive".

**VICTIMIZATION** is "any adverse treatment, emerged as a reaction to a complaint or legal action regarding the violation of equal treatment and non-discrimination principle."

### 6.3. How do we understand forms of discrimination

**DISCRIMINATION** means to be treated less favorably compared to another person because of a personal reason such as nationality, ethnicity, language you speak, your religion or beliefs, gender, sexual orientation, age, disability, chronic illness or other reasons. Because of this kind of unjustified treatment, a right that you have by law is violated.

In the table below there are some hypothetical cases that illustrate forms of discrimination in a very simple manner.

<b>FORMS OF DISCRIMINATION</b>	<b>HOW DO I UNDERSTAND?</b>
<b>DIRECT DISCRIMINATION</b>	When a person is treated differently than other persons because of his/hers ethnicity and one of his/her rights are violated: equal and quality education. E.g.: Roma children are put in different classrooms because non-Roma children's parents don't want them in their children's classrooms. The learning conditions for the Roma lack quality and their teachers lack qualifications.
<b>DISPOSITION TO DISCRIMINATE</b>	When an authority disposes that someone will not benefit from a right due to his/her ethnicity. E.g.: a school principal orders a teacher not to receive Roma children to his classes.
<b>INDIRECT DISCRIMINATION</b>	When a requirement or an apparently neutral condition that applies to everyone, negatively affects the members of a group. E.g.: in a schools test are given to all students, testing their intellectual abilities, but they don't take into consideration the specificity of children coming from a disadvantaged social environment, with a different psycho-pedagogical, linguistic or cultural status.
<b>HARASSMENT</b>	When someone says something about another person due to that person's ethnicity or does something against that person creating an offensive, hostile or degrading environment. E.g1: a teacher tells his students during class that they are "stinky gypsies" and makes them impersonate a crow. E.g2: the school principal starts a campaign to raise signatures to move Roma children in an annex building of the school, to keep them apart of the non-Roma children.
<b>VICTIMIZATION</b>	When someone is punished because he/she filed a complaint or legal action because of discrimination. E.g.: 20 Roma children filed a complaint to NCCD because they were segregated and after NCCD's investigation, the school headmaster lowers their behavior grade for acts of indiscipline although none of them did anything

### 6.4. Essential elements when analyzing discrimination

In order to establish if there was a case of discrimination we must investigate the real situation, to analyze more elements and identify answers to a series of questions that will help us establish (or not) if a person:

- ✓ **Was treated less favorably (different treatment)**
- ✓ **In comparison with a different person in a similar situation (comparison)**
- ✓ **Based on a reason (forbidden criteria) without an objective justification (justification)**
- ✓ **If a right recognized by the law was**

It is important to note that, mainly, the victim of discrimination must show evidence to retain the presumption of discrimination and not the entire set of elements that are provided in the table below. When indicating the different treatment in comparable situations on the basis of forbidden criteria, the appellant will be in charge to indicate objective and reasonable justification for that treatment, the pursued legitimate aim and the applied methods to achieve that goal. But identifying all elements contained in the table below helps document the case to clarify whether discrimination has occurred or not and for the main arguments that will be built in a possible case.

<b>ELEMENTS</b>	<b>TEST</b>	<b>DETAILS</b>
A. Less favorable treatment	<b>DIFFERENTIATION</b>	Disparity Exclusion Restriction Preference
B. Comparable situations	<b>COMPARISON TEST</b>	Analogy Similarity Report ability
C. Criteria/Reason	<b>FORBIDDEN CRITERIA</b>	Race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, handicap, not contagious chronic disease, HIV or any other situation
D. Justification	<b>JUSTIFICATION TEST</b>	Objective and reasonable reason Legitimate purpose Adequate method to reach the desired purpose
E. Benefit	<b>FORESEEN RIGHT</b>	Approved conventions and treaties Regulatory documents: laws, government decisions, Ministry Orders

### **6.5. Identifying school segregation as discrimination**

Segregation on ethnic grounds in the educational system is not defined as a form of discrimination in anti-discrimination law in Romania, but it is considered a form of discrimination prohibited by the National Council for Combating Discrimination and the Courts of Law that decided in many such cases, some presented in this guide, in the previous chapters.

Ministry of Education covers in detail the school segregation of Roma children and defines this phenomenon in OMECT Order no. 1540 / 19.07.2007 banning school segregation of Roma children and approving the methodology for the prevention and elimination of school segregation of Roma children

## 6.6. Key elements of school segregation

According to Order 1540/19.07.2007<sup>186</sup> **SCHOOL SEGREGATION** of Roma children is:

<p>[Physical separation of Roma students in groups/classrooms/schools/other facilities so that the share of Roma students from the total number of students in the school/classroom/group is disproportioned from the total number of Roma school age children in the respective locality]</p>	
<b>SEGREGATION ELEMENTS</b>	<b>DETAILS WE FOLLOW</b>
<p><b>PHISICAL SEPARATION</b></p> <p><b>FORMS OF STUDY</b></p>	<p>Roma students are separated from non-Roma students.</p> <p>Roma students are separated in groups, classrooms, schools or other facilities from the non-Roma students.</p>
<p><b>DISPROPORTIONED SHARE</b></p>	<p>Roma students share in school/classroom/separate group is disproportioned from the share of Roma children of school age</p>

<sup>186</sup> In art.2, paragraph 2 of Order 1540/19.07.2007

<b>INTENT</b>	It's irrelevant if the separation of Roma children from the other students was made with or without intention, in both cases the discrimination being similar.
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Section 4 of this chapter describes in detail a set of relevant information to determine the entire context of school segregation through investigation, by direct observation, interviews with relevant actors in the educational institutions and local communities.

### **6.7. Consequences of Roma children's school segregation**

Firstly, it must be said that segregation of students on the grounds of ethnicity is a form of discrimination. Segregation results in unequal access of children to education and leads invariably to an inferior quality of education offered to students with other ethnicity than the majority of the school population.

School segregation produces a number of consequences that pass on Roma students but also on the other students. This affects teaching staff, the students' parents, the communities in which they come from and the educational system. In the table below we are given some of the negative consequences, recognized even by the Ministry of Education. The consequences of school segregation can be identified and measured. The table below can be useful in this regard.

<b>NEGATIVE CONSEQUENCES</b>	<b>EFFECTS</b>
<b>Difficulties in attracting students in the education system</b>	High degree of people that don't go to school
<b>Inability of maintaining students in the system</b>	High degree of school drop out
<b>Inability of attracting qualified teaching staff</b>	High degree of unqualified teaching staff
<b>Inability of keeping qualified teachers</b>	Low degree of qualified staff
<b>Inability of preparing students to a high quality standard</b>	High degree of non-graduates
<b>Prejudice and stereotype</b>	High degree of intolerance from the majority
<b>Prejudice and stereotype</b>	High degree of intolerance from the Roma
<b>Prejudice and stereotype</b>	Strong feeling of inferiority of Roma students
<b>Negative representations of the system</b>	School's inability of generating social progress
<b>Discrimination</b>	Violation of the Roma children's right to education
	Non-inclusive, unequal and of low quality education for Roma children
	Strengthening the inferiority status of Roma students

### **6.8. Questions for analysis of school segregation from the elements of discrimination's point of view**

In order to identify, document and analyze every key element of discrimination in regard to potential situation of Roma children school segregation the following general questions in the table below can be used:

ELEMENT	QUESTIONS	DETAILS
<b>Different treatment</b>	<p>Is there, in this case, a less favorable treatment of Roma children?</p> <p>Is there a difference, restriction, exclusion or preference towards the Roma children? Where is this information from?</p> <p>What is the difference about?</p> <p>What's the restriction about?</p> <p>What's the exclusion about?</p> <p>What's the preference about?</p> <p>Who is responsible for the different treatment?</p>	<p>Which is it??</p> <p>Which is it?</p> <p>Mass-media, parent, children, NGO etc.</p> <p>Roma children in special schools, buildings or separate facilities, separate classrooms etc.</p> <p>Roma children don't have access to the school facilities</p> <p>Roma children are not allowed to participate to classes</p> <p>Roma children are ignored after classes, the teachers don't pay attention to them etc.</p> <p>School principal, teachers, school Inspectorate, the Ministry</p>
<b>Analogous situations</b>	<p>Are Roma children v. non-Roma children enrolled to school? Where the Roma children enrolled in die time?</p> <p>Are Roma children enrolled to the school or are they transferred/ moved to another school?</p> <p>Do Roma children vs non-Roma children participate to classes? Do children frequent the classes of Romanian, Hungarian, Romani language etc.?</p> <p>What is the school situation of Roma children vs non-Roma children?</p>	<p>The exact situation of children</p> <p>Where they enrolled before or after the non-Roma children or during the term?</p> <p>Where do they come from? From the same community? When were they enrolled? In what conditions? Where were they transferred from?</p> <p>Frequency, absenteeism</p> <p>The exact situation of children</p> <p>Grades, ratings etc.</p>

<b>Forbidden criteria</b>	<p>What is the cause for the different treatment?  Is it obvious that only Roma children are affected?  Are other children affected too?</p> <p>Are all Roma children separated?</p> <p>Is it obvious who the Roma children are?</p> <p>Who says who is Roma and who is not?</p>	<p>Is there a connection to the children's ethnicity?  Are Roma children the only ones separated?  Are non-Roma children separated too?  Are all the Roma children in the school separated or just some? Give more details if so.  Are Roma children self-identified or are they identified by their traits?  What are the elements?</p>
<b>Justification</b>	<p>What does the school say?</p> <p>Are there objective reasons?</p> <p>Are the causes related to the subjective reasons of the non-Roma parents?  Are the causes related to the school principal's subjective reasons?</p> <p>Are the causes related to the subjective reasons of the teacher?  Are the causes related to the subjective reasons of the Roma parents?</p> <p>Do we know the reasons for the late enrolment of the Roma children?</p> <p>Do we know why the classroom continues to have the same structure every year?</p> <p>Do we know the reasons for the lack of space?</p>	<p>Reasons for separation</p> <p>Are the reasons related with the children's ethnicity or with the fact that they come from the Roma community?  They don't want Roma children in the classroom.  He doesn't want a too high number of Roma in the school  He doesn't want Roma children in his classroom  Do Roma parents want a separate classroom, a separate school, school in the community? Why?  Because they were enrolled too late they couldn't be put in different classrooms  The Roma class keeps its structure throughout the years  The children have been moved/ transferred</p>
<b>Violated right</b>	<p>What were the consequences of the different treatment?</p> <p>What are the learning conditions?</p> <p>What is the teachers' qualification?</p>	<p>Inequity, unequal access, bad quality education, unequal education  Buildings, facilities, study hall, technical means, furniture, maintenance etc.  Substitute teacher, contracted staff or teachers</p>

What are the children's results?	etc. Ratings
What is the graduation share?	Results

## **IV. Recommendations for preventing and fighting against school segregation**

In accordance with international and European standards on human rights, the states are required to implement the legislation and the policy to allocate financial and human resources in order to ensure the right to education for all children, including Roma. To this end, governments should commit to achieving universal access to basic education for every child. In order to overcome barriers faced by Roma children, they must stop segregation and efficiently promote inclusion.

### **Promoting inclusion in the educational system**

Inclusion in education is essential for improving the opportunities for Roma children. Local authorities and schools should implement measures to ensure culturally diverse and balanced classrooms and schools. This process must go much further than changing the number of children in schools or classes. It should consider a change in terms of respect of each child, the child's best interest, in order to recognize the need to adapt of the education system to accommodate and meet the child's needs. School authorities should adopt a comprehensive policy framework to facilitate desegregation and seeks to promote inclusion. Such a framework should define segregation and desegregation, inclusion; it should include specific objectives and articulate specific and concrete measures to achieve those objectives

### **General measures to approach segregation<sup>187</sup>**

Governments and educational authorities must recognize school segregation as a problem and to tackle it efficiently. First, the relevant authorities should establish general measures to terminate school segregation. School desegregation of Roma children is an essential step in the process of inclusion. Desegregation breaks the physical separation of children and provides a place where every child has access to the same type of school or class.

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

- Action plans, based on deeply analyzing the factors that contribute to segregation, with the necessary steps from the financial, legal and administrative point of view towards segregation.
- Governments must be dedicated to give supplementary funding necessary for the Roma children quality inclusive education.

<sup>187</sup> The following recommendations are from UNICEF paper "The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and Independent States Federation (CEECS), 2011, available at UNICEF CEECS la [www.unicef.org/ceecis](http://www.unicef.org/ceecis)

- Taking into consideration dedicating the legislation for the gradual elimination of segregated education and implementing an inclusive system. Legislation should prohibit children's segregation based on their ethnicity.
- National information and monitoring systems to track school placements in the future, to ensure that they support inclusive practice. Programs that promote inclusion should be monitored and evaluated. The research and data will bring a better understanding of the strategies that work most effectively and can be reproduced. It will also highlight those failed initiatives, providing key insights to help a better targeting of policies and investments.
- It can be taken into consideration developing a set of segregation monitoring indicators, considering shares of Roma and non-Roma in a region, in classrooms, mass schools and special schools. In case the gathering of ethnical data is not possible, proxy measures, such as socio-economic status, should be developed and used as a base for indicators. Reference data should be collected and used as basis for periodical updates.
- Introducing some appeal mechanisms accessible for Roma families, so they could appeal against the inadequate placement of their children in segregated schools, discriminatory actions and other barriers in enjoying their rights<sup>188</sup>.

### **Eliminating school segregation**<sup>189</sup>

Municipalities, local and school authorities should take measures to approach structural exclusion of Roma children due to housing in segregated places. These measures are:

- The requirement that all local municipalities to make desegregation plans to be implemented in a certain period of time and connected to incentives. These plans should be based on direct consultation with both Roma and the majority population.
- Ensuring that, as long as the children remain in segregated schools in their own communities, the expense level, the staff and the standards regarding the teaching staff will be directly comparable with the ones in the majority schools.
- Investments in easy access transportation and financially convenient to take the children from the communities and take them to mass schools with a small number of Roma.

One of the challenges is the hesitation of families in the majority community of accepting a higher number of Roma in the schools. There is a pattern in some areas called *white flight* when parents take their children from the schools that accept a higher number of Roma. There are not any easy solutions, but the following should be taken into consideration:

- Assistance for development should be conditioned by a clear integration plan/ desegregation plan of the municipality or the region and its implementation.

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<sup>188</sup> Idem

<sup>189</sup> The following recommendations are from UNICEF paper "The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and Independent States Federation (CEECIS), 2011, available at UNICEF CEECIS la [www.unicef.org/ceecis](http://www.unicef.org/ceecis)

- Ensuring that development assistance refers to integration activities such as planning, school transport, monitoring and capacity building of local / regional authorities, rather than simply educational activity in schools / kindergartens and educational centers of the Roma, that should be the competence of educational authorities through their regular budgets
- Local municipalities should invest in: a) - awareness rising within local communities to promote a better understanding of Roma culture and the challenges they face. Investments can be made by multi-pronged approach to working with communities, fostering tolerance in schools and working with parents. Whole localities can be made measurement objectives to contribute in raising awareness, cultivate tolerance and promote desegregation in all sectors. b) - improving housing programs, sanitation, employment and social protection in the Roma communities in order to reduce socio-economic and cultural differences that lead to increased prejudice and xenophobia between Roma and non-Roma communities<sup>190</sup>.

### **Eliminating segregation in schools<sup>191</sup>**

It takes effort so that the Roma students are not segregated into separate classes based on the assessment of their academic skills and achievements and where they are taught on a remedial curriculum. They should be educated as other pupils of the majority, with additional teachers when needed. Training should be "integrated and differentiated, where all students participate together in the classroom and the teacher efficiently and effectively address all students in a heterogeneous environment, thus avoiding the problem of placing students in separate, special or different classes"<sup>192</sup>. Therefore, it is necessary to act for:

- Include a commitment in the national policy and action plan regarding inclusion to inclusively teach in the classroom.
- Develop local policies on inclusive classroom environments, schools, teachers, municipal officials
- Administrators, parents and Roma children and other stakeholders should be involved in this process.
- Provide support in mainstream classes for Roma children who need additional assistance.
- Regularly monitoring schools to ensure that segregation does not occur, neither formally or informally. Monitoring should involve Roma parents to ensure that systems are transparent and accountable to themselves and their children
- Obtain a comprehensive desegregation will require a number of years to be implemented. Consequently, in schools with a high concentration of Roma pupils, quality education should be simultaneously improved with the implementation of desegregation strategies<sup>193</sup>.

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<sup>190</sup> Idem

<sup>191</sup> The following recommendations are from UNICEF paper "The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and Independent States Federation (CEECIS), 2011, available at UNICEF CEECIS la [www.unicef.org/ceecis](http://www.unicef.org/ceecis)

<sup>192</sup> Idem

<sup>193</sup> Idem

## Stopping the placement of Roma children in special schools<sup>194</sup>

Urgent action is needed to address the factors contributing to the placement of Roma children in special schools. The objective of the policies should be covering the education cycles in the mainstream education from the beginning of compulsory education by the Roma. This involves examining the process that leads to segregation in special schools and removing barriers to accessing normal mainstream education.

Practical measures to help reaching this objective should objective:

- **Critical comments to the current enrollments testing system** used to assess whether or not a child is ready to enter the normal primary school. For the test to be fair and accurate, both the testing committees and the criteria should be reformed in order to eliminate prejudice and to take into account the differences in language, social environment and experience.
- **Removing financial incentives for special school placements.** Financial benefits for children with disabilities can and serve as an incentive for parents to support their child's evaluation for placement in a special school. It is imperative that public policy does not promote socio-economic incentives that encourage parents to accept a lower quality education for their children. However, the measures taken to address this problem should increase choice rather than to reduce them and without penalizing parents. Governments should consider incentives and reasons for parents to send their children to special schools, and then use the results to build appropriate solutions. One approach would be to introduce the same benefits for placing students in mainstream schools as for enrollment in special schools, such as providing free transportation and free meals.
- **Opportunities for reassessment.** Where children were inappropriately placed in special schools, there should be mechanisms to allow them to be re-evaluated 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 in cooperation with all stakeholders and adequate funding, policies and clear guidelines. Policies can be developed to help teachers in special schools integrate in mainstream schools so they can be used to aid with the transfer of pupils from special schools to normal ones. Special schools can also be transformed into resource centers for mainstream schools, providing expertise and support. Central and local authorities must work with teachers to ensure that most of them will be able to access gainful employment after<sup>195</sup>.

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<sup>194</sup> The following recommendations are from UNICEF paper “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and Independent States Federation (CEECIS), 2011, available at UNICEF CEECIS la [www.unicef.org/ceecis](http://www.unicef.org/ceecis).

<sup>195</sup> Idem