

GUIDE FOR MONITORING AND DOCUMENTING SCHOOL SEGREGATION IN GREECE



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

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

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Table of contents

Abbreviations	4
DARE-Net project: Desegregation and Action for Roma in Education-Network	5
I. Introduction.....	6
II. Legal framework: prohibition of school segregation and the right to education	8
1. What is school segregation?.....	8
1.1. UN treaties and bodies about racial segregation.....	8
1.2. OSCE bodies about Roma school segregation.....	9
1.3. Council of Europe bodies about Roma school segregation	10
1.4. European Union bodies about Roma school segregation.....	11
1.5. Legal frameworks addressing segregation at national level:	12
1.6. Types of Roma School Segregation:.....	13
1.7. Main obstacles and challenges in addressing school segregation:.....	13
2. The Right and Access to Education – impact of school segregation	15
2.1 The Right to Education encompassed in international and regional legal instruments	15
2.2 The Right to education at national level	15
2.3 The EU policy on Roma social inclusion.....	17
2.4 Impact of School Segregation	19
3. The Greek policy framework relevant on education for Roma children	22
3.1. The intercultural education policy	22
3.2. Policy measures for school integration of Roma children	23
3.3. Roma inclusion programs in Greece	24
4. Roma School Segregation in Greece:	26
4.1. Instances of segregation in Greece.....	26
4.2. Segregation within and between schools	27
4.3. The right to education interpreted by the European Court of Human Rights	27
4.4. School segregation cases against Greece before the ECHR	30
4.5. School segregation cases against other countries before the ECHR.....	35
III. Methodology regarding the identification, documentation, monitoring and reporting of segregation cases.....	45
1. Identification	45
2. Documentation	50
3. Monitoring	54
4. Reporting.....	56
IV. National specific subject.....	58
V. Recommendations on preventing and combating school segregation	61
Annex 1	67
Annex 2	69
Annex 3	71
Sources	73

Abbreviations

App. No.	Application Number
Art.	Article
ASEAN	Association of Southeast Asian Nations
CRC	Convention on the Rights of the Child
EC	European Commission
ECRI	European Commission against Racism and Intolerance
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECMI	European Centre for Minority Issues
EEC	European Economic Community
EPSO	Employment, Social Policy, Health and Consumer Affairs
ERRC	European Roma Rights Centre
ETS	European Treaty Series
EU	European Union
FRA	European Union Fundamental Rights Agency
GHM	Greek Helsinki Monitor
GNCHR	Greek National Commission for Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGOs	Intergovernmental Organizations
IPODE	Greek Diaspora Education and Intercultural Studies
NGOs	Non-governmental Organizations
OSCE	Organisation for Security and Co-operation in Europe
RAP	Regional Action Plan
SOKADRE	Coordinated Organisations and Communities for Roma Human Rights in Greece
TFEU	Treaty on the Functioning of the European Union
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN	United Nations
UNTS	United Nations Treaty Series

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

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

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

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

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

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

Although some steps have been taken in some countries, specifically on adopting the legislation banning school segregation, little progress has been made in effectively combating this phenomenon. From the experience of the former National Strategy for the Improvement of the Situation of the Roma population, adopted and implemented by the Romanian Government, the implementation lacked results in the field of desegregation, other than adopting legislation. Taking into account the European context, that 18 member states have adopted their National strategies for Roma, under the EU Framework for National Roma Integration Strategies, it is crucial to have, unlike the past 10 years, mechanisms for monitoring the implementation. Civil society is a powerful democratic tool which can be used to report on the implementation of public policies for Roma. Therefore, clear methodologies which can be used in all member states which adopted National Strategies, are necessary. The project proposes this type of tool, which will have a transnational, yet locally tailored, perspective¹.

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

I. INTRODUCTION

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

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

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

The Council of Europe's Commissioner for Human Rights⁵ has recently highlighted the fact that Romani children are yet disproportionately streamed into special schools, in particular schools for children with disabilities. Overrepresentation of Romani children in schools is often reported in countries such as Bulgaria, Czech Republic, Hungary, Russia, Serbia, Slovakia, and Macedonia. Even when Roma and non-Romani children share the same school, Romani pupils are often separated from the majority in 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

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

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

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

⁵ See Council of Europe, 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

been reported in Croatia, Czech Republic, Greece, Hungary, Montenegro, Portugal, Russia, Serbia, Slovakia, Macedonia and Turkey. Segregated housing, as well as the fact that non-Roma parents pull their children out of schools frequented by Roma (the so-called “white flight” phenomenon) results in de facto segregation of entire schools, often providing an inferior quality of education, situations visible in Bulgaria, Cyprus, Hungary, Moldova, Montenegro, Serbia, Slovakia or Turkey⁶.

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

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

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

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

⁶ *Idem*

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

1. WHAT IS SCHOOL SEGREGATION?

In order to better identify school segregation, we first need to clarify its definition. For the moment being, there is no agreed legal definition of segregation at either international or European level but segregation per se is prohibited under international human rights treaties and the 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.

1.1. UN treaties and bodies about racial segregation

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

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

⁸ 429 UNTS 93.

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

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

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

In relation to “*racial segregation*” the UN Committee on the Elimination of Racial Discrimination in its Recommendation no. XIX¹² makes a clear reference stating that segregation may stem both from intentional and unintentional actions of public or private actors as well as on the basis of multiple grounds such as race, color, ethnic origin or level of income. Thus the Committee “observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports”¹³.

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

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

1.2. OSCE bodies about Roma school segregation

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

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

¹¹ See ICERD, Article 3.

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

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

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

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

¹⁵ OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, adopted by the Permanent Council in its Decision No. 566 on 27 November 2003 and endorsed by the The Ministerial Council by Decision

Para 73 of the OSCE Action plan refers to “comprehensive school desegregation programmes aiming at:

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

1.3. Council of Europe bodies about Roma school segregation

Segregation of Roma children in education and the need to address this phenomenon is referred in several Council of Europe’s recommendations. It is the case of Recommendation no. R(2000)4 of the Committee of Ministers¹⁷ which takes note “that the problems faced by Roma in the field of schooling are largely the result of long-standing educational policies of the past, which led either to assimilation or to **segregation of Roma children at school** on the grounds that they were “socially and culturally handicapped”. While addressing education, “the member States should ensure that this does not lead to the establishment of separate curricula, which might lead to the **setting up of separate classes**.”¹⁸ Similarly, through its Recommendation (2009)4 the Committee of Ministers¹⁹ acknowledges segregation and subsequently condemns the **existence of situations of de facto segregation in schooling**. Moreover the Committee outlines that “Member states should ensure that **legal measures** are in place to **prohibit segregation on racial or ethnic grounds in education**, with effective, proportionate and dissuasive sanctions, and that the law is effectively implemented. Where de facto segregation of Roma and Traveller children based on their racial or ethnic origin exists, **authorities should implement desegregation measures**...”²⁰

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

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

A subsequent ECRI recommendation on combating anti-Gypsyism and discrimination against Roma²³ calls on member States to “take urgent measures, including legal and political ones, **to put an end to the segregation at school which Roma children are subjected to**, and integrate

no.3/03 of 1 and 2 December 2003, Maastricht, the Netherlands, available at: <
<http://www.osce.org/odihr/17554?download=true>>.

¹⁶ Idem

¹⁷ Committee of Ministers, Recommendation no. R(2000)4 on the education of Roma/Gypsy children in Europe adopted on 3 February 2000, available at:< <http://www.refworld.org/docid/469e04c02.html>>.

¹⁸ Idem

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

²⁰ Idem

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

http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/ecri03-8%20recommendation%20nr%207.pdf>.

²² Idem.

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

them into schools attended by pupils from the majority population; and to “***abolish the too-frequent placement of Roma children in special schools***, making sure that Roma pupils not afflicted with mental disorders are spared such placement and that those already placed are speedily enrolled in ordinary schools”²⁴.

1.4. European Union bodies about Roma school segregation

In 2011, the European Commission adopted a Communication pushing for the development of national strategies for Roma integration detailing the concrete policies and measures to be taken²⁵. Each EU Member State produced a Roma strategy or a set of integrated policy measures that were assessed by the European Commission in a Communication adopted in 2012²⁶. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013²⁷. The 2013 assessment report focussed specifically on the structural preconditions needed in each country²⁸ while the 2014 report looked at overall progress in all key areas.²⁹

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

Furthermore, the Council of the European Union made specific recommendations on effective Roma intergration measures³² in education as well as non-discrimination action calling 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; ...”

²⁴ Idem, point 4, para d and f.

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

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

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

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

²⁹ Report available at: http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

³⁰ [Communication from the European Commission on an EU Framework for National Roma Integration Strategies by 2020](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011DC0173)

³¹ Idem

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

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

1.5. Legal frameworks addressing segregation at national level³⁴:

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

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

³³ Idem

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

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

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

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

1.6. Types of Roma School Segregation³⁶

School segregation may vary in forms. It is not always displayed in the same manner and across Europe the following types have in practice been noted:

- **Segregation between schools** (where most Romani children attend Roma-majority schools) (Bulgaria, Slovakia, Cyprus, Greece, Hungary, Romania, Turkey).
- **Segregation within schools** (when in mainstream education Romani children are separated from the others in classes and other facilities) (Croatia, Slovakia, Bulgaria, Greece, Former Yugoslav Republic of Macedonia, Romania).
- **Segregation into special schools**, including schools for children with mild intellectual disabilities (Czech Republic, Slovakia, Bulgaria, Hungary, Former Yugoslav Republic of Macedonia, Poland).

1.7. Main obstacles and challenges in addressing school segregation³⁷:

Having identified what constitutes school segregation, the next important step is to identify indicators that lead to such a particular trend. These indicators embody at the same time the main obstacles and challenges that the States need to overcome in order to effectively tackle the *phenomenon* of school segregation.

- **INSUFFICIENT POLITICAL WILL:** New and sound policies to tackle various facets of the segregation problem have been heralded by governments on both the left and right across specific European countries. Despite the fanfare surrounding these policies, none have achieved effective and sustainable results. Politicians and policymakers agree that schools need to be desegregated. However, whilst there is consensus on this, there are unfortunately few politicians willing to champion or even openly support the measures required to accomplish this desegregation. Politicians frequently lack the political will to effectively promote desegregation efforts. The ‘Roma question’, as it is often referred to, is viewed by mainstream politicians as a political liability. In electoral politics, there is little incentive to champion

³⁶ *Access to education and school segregation of Roma Children, op. cit.*

³⁷ J. Fox and Z. Vidra, *Applying Tolerance Indicators: Roma School Segregation*, ACCEPT PLURALISM Research Project, European University Institute, 2013, available at: <http://cadmus.eui.eu/bitstream/handle/1814/26140/2013-21-Roma_Indicators.pdf?sequence=1>, p. 28.

the Roma cause. In this context policies that are legislated (and many are not) still face an uphill battle to be successfully implemented. As a result, these policies are undermined through a combination of indifference, neglect, muted opposition, or even outright sabotage.

- **NATIONALISM:** In some European countries, nationalism remains a dominant belief system and ideology that informs and undergirds policy varied in domains. Policies aimed at Roma inclusion are thus not a priority; moreover, they are in a certain sense in tension with policies informed by national (or nationalist) priorities. Furthermore, mainstream politicians can be seen increasingly pandering to the even more brazen nationalist rhetoric of the radical right, thus tilting the scales further in the direction of nationalism.

- **MISGUIDED POLICIES:** Not all policies aimed at desegregation are adequately and appropriately focused on the Roma. Other policies lack effective enforcement mechanisms. Some countries take the easy way out by formulating cultural diversity policies that aim first and foremost at national minorities other than the Roma. This one-size-fits-all approach to cultural diversity does not take account of the specificities of Roma exclusion in these countries. Dedicated policies are needed to address these issues specific to the Roma in ways that attend not only to their cultural distinctiveness, but to their socio-economic marginalisation as well.

- **RACISM:** Pervading all of these reasons for policy failures is racism. In specific European countries, the Roma are viewed as racially inferior by people and politicians alike. Racism circulates in various guises, often muted or even explicitly denied, but always informing and reinforcing the logic of continued segregation. Racism does not only undermine efforts aimed at integration; it simultaneously provides a convenient explanation for the failures of integration: the Roma, it is said, simply do not want to integrate, or are incapable of integrating. The failures of integration thus rest on the shoulders of the Roma. This in turn relieves the majority of the responsibility for fixing the problem. There is thus an expectation that the Roma should integrate, but racism makes that integration logically impossible.

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

The right to education is an internationally recognized right. It is provided for in many standard-setting instruments, ranging from the Universal Declaration of Human Rights to various conventions, declarations, recommendations, frameworks and programmes of action. The international human rights treaties lay down the legal obligations for the right to education and serve the same end: the promotion and development of the right of every person to education, without discrimination or exclusion³⁸.

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

A necessary corollary for the full enjoyment of the right to education, access to education entails the right of access to existing public educational institutions on a non-discriminatory basis. This right is violated, for example, if people belonging to a specific ethnic, linguistic or religious group have restricted access to existing public institutions, as is the case for Roma children in some European countries³⁹. Therefore, the following instruments are important for combating school segregation.

INTERNATIONAL TREATIES

Universal Declaration of Human Rights⁴⁰: Art. 26.

1966 International Covenant on Economic, Social and Cultural Rights⁴¹: Arts. 2 (2); 3; 13 & 14.

1966 International Covenant on Civil and Political Rights⁴²: Art. 26.

1989 Convention on the Rights of the Child⁴³: Art. 2; 28 & 29.

1979 Convention on the Elimination of Discrimination against Women⁴⁴: Art. 10.

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

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

³⁸ 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>

³⁹ *DH and Others v. Czech Republic*, ECtHR, Grand Chamber, 2007, App. No. 57325/00. F. Coomans, Discrimination and Stigmatisation Regarding Education: The Case of Romani Children in the Czech Republic, in Willems (Ed.), *Development and Autonomy Rights of Children: Empowering Children, Caregivers and Communities*, Intersentia 2002.

⁴⁰ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, A/RES/217/A (III). The Declaration is not a treaty. However, due to the incorporation of the rights it establishes into the 1966 Covenants, it is considered a document of weighted importance.

⁴¹ 993 UNTS 3.

⁴² 1966 International Covenant on Civil and Political Rights, 999 UNTS 171.

⁴³ 1577 UNTS 3.

⁴⁴ 1249 UNTS 13.

REGIONAL TREATIES

1950 European Convention of Human Rights⁴⁵ (ECHR): Protocol I, Art. 2

1996 Revised European Social Charter⁴⁶: Art. 10

1995 Council of Europe Framework Convention for the protection of National Minorities⁴⁷: Arts. 12 & 14

EU Charter of Fundamental Rights⁴⁸: 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 life. It should be the primary and common interest of the state administrations to provide quality education to all children, regardless of their situation. Suitable educational methods should maximize and develop their abilities and adapt to their needs. This approach is provided for in Article 23, paragraph 3 in conjunction with Article 29, paragraph 1 of the Convention on the Rights of the Child that emphasizes the overall development of their personality and abilities to the fullest potential of the children.

2.2 The Right to education at national level

The Greek legislative framework guarantees schooling for all children, citizen or foreign, from the age of 6 to the age of 15 (6-year elementary school and 3-year lower high school). Education is compulsory and is applicable to all children regardless of the residence status (legal or irregular) of their parents.

- Greek Constitution⁴⁹: Art. 14 (Equality) and Art. 16 (Education) -> Specifically: Art. 16(4): *“All Greeks are entitled to free education on all levels at State educational institutions. The State shall provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities”*.
- Law 3304/2005⁵⁰: Chapter II of Law 3304/2005 establishes its scope, which extends to both the public and private spheres and covers employment, social protection, education and access to public goods and services, including housing.
- Law 2910/2001⁵¹: Art. 40 stipulates that all children born to third-country nationals living in Greece have the right to public education.
- Law 3386/2005⁵²: Art. 72 re-establishes the framework of the above article which guarantees the right of third national children living in Greece to public education. In effect,

⁴⁵ ETS No. 5.

⁴⁶ ETS No. 163.

⁴⁷ ETS No. 157.

⁴⁸ Published in the *Official Journal of the European Communities*, 18 December 2000 (2000/C 364/01).

⁴⁹ <<http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>>.

⁵⁰ “On the Application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation”, Government Gazette A’ 16/27-01-2005.

⁵¹ “On the Entry and Stay of aliens in the Greek Territory”, Government Gazette A’ 91/02-05-2001.

school authorities enrol foreign students even if they do not have the necessary documents, such as school certificates or birth certificates that are required for enrolment. The same is true for Roma children who may not have certificates of residence in a given municipality or may be enrolled at different ages than those foreseen by the law (e.g. age 6 for elementary schooling, and as of 2008 age 5 for compulsory pre-school).

2.3 The EU policy on Roma social inclusion

Since the eastward enlargement of the Union took place, pressure had been mounting from Roma organisations and activists for an EU Roma policy. The struggle against social exclusion, marginalisation and discrimination is now an integral part of Europe's politics. The European integration has induced a further dimension to the politics of Roma: free movement and migration within the EU.

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

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 discrimination, poverty, low educational attainment, labour market barriers, housing segregation and poor health.

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*⁵³, followed by the June 2011 Conclusions⁵⁴ that endorsed the Presidency's report on Roma inclusion. In the context of the *EU Framework*⁵⁵ Member States have been called upon to present the European Commission national strategies for Roma inclusion or specific measures for Roma within their wider social inclusion policies. The main responsibility as well as the competences to improve the situation of all marginalised people, including the Roma, rest with Member States. National contact points have been set up in each country for Roma integration strategies⁵⁶.

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 2012⁵⁷. The European Council adopted a recommendation on effective Roma integration measures in the Member States on 9 December 2013⁵⁸. The 2013 assessment report of the European Commission focussed

⁵² “On the Entry, Stay and Social Inclusion of third-country nationals in the Greek Territory”, Government Gazette A’ 212/23-08-2005.

⁵³ <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010658%202011%20INIT>>.

⁵⁴ <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2023%202011%20INIT>>.

⁵⁵ <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0173&from=en>>.

⁵⁶ For Greece the designated contact point is: Ministry of Employment, Social Insurance and Welfare of Greece ESF Coordination and monitoring Authority.

⁵⁷ [National Roma Integration Strategies: a first step in the implementation of the EU Framework](#), available at:

<<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52012DC0226>>

⁵⁸ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, 2013/C 378/01, available at: [http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224\(01\)](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013H1224(01)).

specifically on the structural preconditions needed in each country⁵⁹ while the 2014 report looked at overall progress in all key areas.⁶⁰

Education is recognised as one of the four key areas addressed by the National Roma Integration Strategies. **The EU's goal is to ensure that all Roma children complete at least primary school and have access to quality education**⁶¹. All Member States recognise the importance of education, and most have set goals that generally go beyond the minimum standard of primary school completion set forth in the EU Framework, covering a broader spectrum of education from preschool⁶² to secondary and even tertiary education.

In December 2013 the Council of the European Union made specific recommendations on effective Roma intergration measures⁶³ including in education as well as non-discrimination. The Council of the EU called on Member States to:

“ensure equal treatment and full access for Roma boys and girls to quality and mainstream education, among other, by eliminating any school segregation and putting an end to any inappropriate placement of Roma pupils in special needs schools⁶⁴.

Notwithstanding the introduction of national strategies for Roma integration, research and monitoring carried out by international organisations shows that segregation of Romani children into separate and/or substandard education continues to be the most widespread violation with respect to the right to education. This could be due to the following identified shortcomings of both national and European frameworks⁶⁵:

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

⁵⁹ Report available at: <<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52013DC0454>>

⁶⁰ Report available at: http://ec.europa.eu/justice/discrimination/files/roma_implement_strategies2014_en.pdf.

⁶¹ EU Roma integration goals were set out in the Communication "An EU Framework for National Roma Integration Strategies up to 2020", COM(2011)173 of 5 April 2011.

⁶² *Preventing Social Exclusion through the Europe 2020 strategy - Early Childhood Development and the Inclusion of Roma Families* – official report of the European Platform for Roma Inclusion under the Belgian Presidency, developed from UNICEF and the European Social Observatory in collaboration with the Belgian Federal Planning Service for Social Integration, 2011: <<http://www.ecdgroup.com/pdfs/Preventing-Social-Exclusion.pdf>>.

⁶³ Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States.

⁶⁴ Idem

⁶⁵ B. Rorke, Roma Rights 2013: National Roma Integration Strategies: What Next?, *ERRC*, 2014, available at: <<http://www.errc.org/article/roma-rights-2013-national-roma-integration-strategies-what-next/4238/2>>.

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

2.4 Impact of School Segregation

Due to segregation, Roma children are *de facto* excluded on account of their social disadvantages and this dissuades them also from professional integration. Segregated education is also a major factor for the school underachievement of Roma. Research in several countries has indicated that educational provision in segregated settings is of inferior quality and multiplies social disadvantage. It is well known that children who miss out on, enter late into the school system, or leave too early will subsequently experience significant difficulties, ranging from illiteracy and language problems to feelings of exclusion and inadequacy⁶⁶. As a result, they will have a harder time getting into further education, university or a good job.

In many EU Member States, Roma represent a significant and growing proportion of the school age population and therefore, the future workforce. The Roma population is young: 35.7% are under 15 compared to 15.7% of the EU population overall. The average age is 25 among Roma, compared with 40 across the EU⁶⁷. The vast majority of working-age Roma lack the education needed to find good jobs. It is therefore of crucial importance to invest in the education of Roma children in order to allow them, later on, to successfully enter the labour market. In Member States with significant Roma populations, this already has an economic impact. According to estimates, in Bulgaria, about 23% of new labour entrants are Roma, in Romania, about 21%⁶⁸.

While primary school attendance is compulsory in all EU Member States, Member States have a duty to ensure that primary education is available to all children at the compulsory ages.

⁶⁶ EC, *An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final, p. 5.

⁶⁷ Fundación Secretariado Gitano, *Health and the Roma community, analysis of the situation in Europe*, 2009. The study looks at Bulgaria, the Czech Republic, Greece, Portugal, Romania, Slovakia and Spain.

⁶⁸ World Bank, *Roma Inclusion: An Economic Opportunity for Bulgaria, the Czech Republic, Romania and Serbia*, September 2010.

According to the best available evidence from the Labour Force Survey 2009⁶⁹, an average of 97.5% of children completes primary education across the EU. Surveys suggest that in some Member States, only a limited number of Roma children complete primary school⁷⁰.

According to recent research by the EU Fundamental Rights Agency the levels of school segregation in mainstream schools attended by Roma vary according to the Member States: Slovakia: 58%, Hungary: 45%, Greece: 35%, Czech Republic: 33%, Bulgaria: 29%, Romania: 26%, France: 24%, Spain: 10%, Italy: 8%, Portugal: 7%, Poland: 3%. Segregation in special schools, Roma children attending special schools mainly with Roma: Czech Republic: 23%, Slovakia: 20%, France: 18%, Bulgaria: 18%, etc⁷¹.

The most recent results on school segregation in Greece referring to segregation in mainstream schools attended by Roma children indicate a percentage of segregation of 35%⁷².

In terms of school attendance, the Regional Action Plans (RAP) conducted in 2012 include some sparse estimates of Roma children attending preschool education. According to the RAP of East Macedonia – Thrace⁷³, 20% of Roma children attend kindergarten. 20% of all the Roma children in preschool age are also attending kindergartens in the settlement of Chrysochori. 20% is also the figure reported for Gastouni and 30% for the settlement of Kavasila in Western Greece. In Thessaly⁷⁴ for the period 2004-2005 Roma students comprised 1.9% of the total number of students in kindergartens (a number which is close to Roma proportion over the national population). The RAP of Western Greece⁷⁵ on the other hand, suggests that in the settlements under its scope, as many as 95% of all the Roma children enrol at some point to a day care facility or at a kindergarten, but there is no continuance in school attendance and most drop out at some point. The reasons for this, cited by the parents themselves, are most often their inability to support their children, the distance between the facility and their home, or “family work”. The same reasons for school dropout are cited in the rest of the RAPs.

Recent Ministry of Education statistics⁷⁶ place the average primary school dropout rates for the general population at around 0.6%, during the last few years. Two thirds of that percentage used to represent Roma students dropout but this seems to be changing since last year the exclusion rate of migrant children is on a rise⁷⁷.

Specifically, during the school year 2010-2011 the number of enrolled students was 596,507. During the respective school year 3,417 students discontinued their studies. Out of these students 1,898 were Roma, 952 migrants, 49 returnees (migrants of Greek origin) and 522 others. The highest dropout rate was recorded in Western Attica (5.9%) followed by Rodopi prefecture (2.5%). In 2011-2012 the number of enrolled students was 617,598 of which 3,646 dropped out. Of these total number 1,317 were Roma, 1,668 migrants, 47 returnees and 611 others. West Attica still had the highest dropout rate (2.9%), followed by Rodopi (2.3%) and Xanthi (1.6%).

⁶⁹ Labour Force Survey, 2009 - <http://epp.eurostat.ec.europa.eu/portal/page/portal/microdata/lfs>.

⁷⁰ Open Society Institute, *International Comparative Data Set on Roma Education*, 2008. Data on primary education is available for 6 Member States: Bulgaria, Hungary, Latvia, Lithuania, Romania, and Slovakia. 42% is the weighted average for these Member States.

⁷¹ FRA, Education: The situation of Roma in 11 EU Member States. Roma Survey - Data in Focus (forthcoming in 2014).

⁷² *Ibid.*

⁷³ Greece, Regional Action Plan for the Integration of Roma - East Macedonia Thrace, (“Περιφερειακό Επιχειρησιακό Σχέδιο Δράσης για την Ένταξη των ΡΟΜΑ - Ανατολικής Μακεδονίας Θράκης”), 2012 (draft).

⁷⁴ Greece, Regional Action Plan for the Integration of Roma - Thessaly, (“Περιφερειακό Επιχειρησιακό Σχέδιο Δράσης για την Ένταξη των ΡΟΜΑ - Θεσσαλίας”), 2012(draft).

⁷⁵ Greece, Regional Action Plan for the Integration of Roma - Western Greece (RAP WG-2012), (ΕΛΛΑ ΔΥΤΙΚΗΣ ΕΛΛΑΔΑΣ, ΜΟΔ Α.Ε., “Επιχειρησιακό Σχέδιο Δράσης για την Ένταξη των ΡΟΜΑ”), October 2012 (draft).

⁷⁶ Ministry of Education report on School dropout in Secondary education”, (“Η μαθητική διαρροή στην Δευτεροβάθμια Εκπαίδευση»), (2007).

⁷⁷ 2013 Annual Report of the Greek Ombudsman, p. 104-105.

The above data, however, fails to record the number of Roma who do not even start a school year. Related data has been collected on a project basis, with various methods and fluctuating samples, thus comparisons are not always feasible.

As for attendance at elementary school level, a more recent estimate (2010) suggests that 51% of Roma children between 6-15 years old attend elementary school. In addition, empirical findings show that school dropout rates increase after Christmas and during spring time. Most 12 year old pupils suspend their studies in order to follow their parents at work and supplement the family income. Educational staff are confronted with the Roma parents reluctance in acknowledging the utilitarian character of education. Another inhibiting factor is the distances that the student has to travel and segregations of various sorts. It is worth notice that Muslim Greek Roma in the area of Thrace follow a Turkish language curriculum (based on bilateral agreements with Turkey for minorities education), which is an additional handicap in their course for functional literacy inside Greece.

3. THE GREEK POLICY FRAMEWORK RELEVANT ON EDUCATION FOR ROMA CHILDREN

As mentioned in the previous section, Greece guarantees through its legislative framework schooling for all children, native or foreign, from the age of 6 to the age of 15 (6-year elementary school and 3-year lower high school). Post-compulsory secondary education (lyceum), according to the 1997 educational reform, consists of the Unified Upper Secondary General Education Schools (“Eniaia Lykeia”) and of the Technical Vocational Educational Schools (“TEE”); students may transfer from one type of school to the other. As for the former type, studies last 3 years and after graduation a competitive national examination takes place giving access to University or to Technological Educational Institutes. For the latter type, the duration of studies is either of two (A' level) or three years (B' level)⁷⁸. Education is applicable to all children regardless of the residence status (legal or irregular) of their parents.

3.1. The intercultural education policy

Intercultural education in Greece has developed as a response to a number of factors⁷⁹: the poor school performance of native minority children (the Roma in particular as well as the Muslims of western Thrace); the need to adapt to EU standards as regards intercultural education and the education of minority children in particular; the arrival of nearly half a million of immigrants (largely undocumented) during the first half of the 1990s and the need to enrol and integrate their children in Greek schools.

Greece's intercultural education policy was formally inaugurated with **Law 2413/1996**⁸⁰ which created the Institute for the Greek Diaspora Education and Intercultural Studies (IPODE, Ινστιτούτο Παιδείας Ομογενών και Διαπολιτισμικής Εκπαίδευσης).

The second component of intercultural education in Greece has been the reception and support classes. Reception classes were first set up in gymnasiums and lyceums in the 1980s, particularly in the Thessaloniki area for the children of co-ethnic returnees⁸¹. **Law 1894/1990**⁸² revised the **1404/1983** legislation on reception classes, incorporated these classes in the mainstream public school system and focused on Greek language, culture and history courses for pupils who did not have Greek as their mother-tongue.

One of the most important components of intercultural education in Greece are the special programs co-funded by the Greek State and the European Union, which cater for the needs of Muslim children in Western Thrace, Roma children and children from immigrant and co-ethnic

⁷⁸ I. Dimitrakopoulos, (2004), *Analytical Report on Education in Greece (2003)*, National Contact Point for Greece – ANTIGONE, Information and Documentation Centre, Athens, accessed AT <<http://fra.europa.eu/fra/material/pub/RAXEN/4/edu/R4-EDU-EL.pdf>> and G. Mavrommatis, (2004), Roma in public education, RAXEN and ANTIGONE (National focal point for Greece, available at: <http://dikadirom.gr/assets/studies/studies%20and%20researches_iii/Roma%20in%20Public%20Education_Raxen_National%20Focal%20Point%20for%20Greece.pdf>).

⁷⁹ A. Triandafyllidou and H. Kouki, *Tolerance and Cultural Diversity Discourses and Practices in Greece*, 2012, available at: <http://cadmus.eui.eu/bitstream/handle/1814/22318/ACCEPT_PLURALISM_2012_08_Finalcountryreport_Greece.pdf?sequence=1>, p. 40.

⁸⁰ “Greek Education Abroad, Intercultural Education and other”, Government Gazette A' 124/14-06-1996.

⁸¹ G. Markou, Intercultural education in multicultural Greece, *European Journal of Intercultural Studies* 1993, Vol.4:3, pp. 32-43 and M. Damanakis, European and Intercultural Dimension in Greek Education, in *European Educational Research Journal* 2005, Vol.4:1, pp. 79-88.

⁸² “On the Athens Academy and other”, Government Gazette A' 110/27-08-1990.

returnee families⁸³. These Programs have been running since 1997 and have provided for specialized textbooks concerning the teaching of Greek as a foreign language, training of teachers in intercultural education, special initiatives of intercultural education activities.

Until 1984, the Greek State had not shown any particular interest as to the school performance of Roma minority children. In fact, a Ministry working group document dated 27 March 1986 on Roma children blamed Roma families for their children non-attending school or attending with very poor results⁸⁴. In 1987 there was a first attempt to study the issues of Roma children education and to identify the relevant problems in cooperation between the Ministry of Education (General Secretariat of Popular Education), the Ministry of Health and the Ministry of Interior. The relevant study issued by the General Secretariat of Popular Education proposed for the first time a different approach to the analysis of Roma children educational issues with a view to recognize their cultural specificity and addressing the root causes of their school failure.

3.2. Policy measures for school integration of Roma children

It was only in 1993 when the Ministry of Education issued a circular (**Circular G1/1126**, 17 September 1993) which invited all Directorates and Regional Offices as well as teachers and school principals to cooperate in a special effort to integrate Roma children in public schools. According to Pitsiou and Lagios⁸⁵ this slow realization that a special approach was needed for the integration of Roma children into the school system was largely due to a **White Paper** issued by the Ministers of Education of EEC member states on 22 May 1989 regarding Roma education and intercultural education at large.

Article 72 of Law **3386/2005** (previously art. 40 of Law 2910/2001) stipulates that all children born to third-country nationals living in Greece have the right to public education. In effect, school authorities enrol foreign students even if they do not have the necessary documents, such as school certificates or birth certificates that are required for enrolment. The same is true for Roma children who may not have certificates of residence in a given municipality or may be enrolled at different ages than those foreseen by the law (e.g. age 6 for elementary schooling, and as of 2008 age 5 for compulsory pre-school).

An important step was taken through the introduction of the aforementioned Law **3304/2005** for the implementation of the principle of equal treatment regardless of racial or national origin, of religious or other beliefs, of disability, age or sexual orientation in the field of employment (co-signed by the Minister of Education). The latter appointed three specialised bodies responsible for the promotion of equal treatment: the Greek Ombudsman, the Labour Inspectorate and the Equal Treatment Commission. The Greek Ombudsman addresses cases of violations of the equality principle by public actors, therefore it can examine cases of discrimination that take place in the public educational system. In fact, the Office of the Ombudsman has frequently addressed issues related to the education of Roma children⁸⁶.

⁸³ Triandafyllidou and Kouki, *op. cit.*, p. 42.

⁸⁴ *Ibid.*, p. 44.

⁸⁵ H. Pitsiou and V. Lagios (2007) “Η θέση των τσιγγανοπαίδων στο σχολείο και οι εκπαιδευτικές πρακτικές του ΥΠΕΠΘ για την εκπαίδευση τους” [the position of Roma children in school and the educational practices of the Ministry of education for their schooling], presented at the 4th Panhellenic Conference of the Greek Institute of Applied Pedagogy and Education (Ινστιτούτο Εφαρμοσμένης Παιδαγωγικής και Εκπαίδευσης, 4ο πανελλήνιο συνέδριο), Athens, 4-6 May 2007, available at: <http://www.elliepek.gr/documents/4o_synedrio_eisigiseis/16_22.pdf>.

⁸⁶ In fact a special office on Roma was inaugurated. The official website for the Roma Ombudsman: <<http://www.synigoros.gr/?i=maps.el>>. The Annual Reports of the Ombudsman always contain a specific section on the discrimination in education of Roma. See i.e. *Annual Report 2013*, p. 104, *et seq.*

In October 2008, the Ministry of Education issued a **circular**⁸⁷ where it emphasised the inclusion of Roma children in the reception and tutorial/support classes and presented the framework for the establishment and functioning of such classes. Two years later, on 20 August 2010 the Ministry of Education issued another **special circular**⁸⁸ that pointed to the obligation of school headmasters to assist and encourage the enrolment and participation of Roma children in schools. The circular reminded headmasters that Roma children have a **special Student Card** that follows them from school to school. Because of the frequent moving of families this Card allows schools to trace back the school history of the child and ensures a continuation in the school career of the child. The ministry thus invited school headmasters to enrol children even without the appropriate documentation (proving their residence), even if they were older than the class they should attend. It emphasized that the equality of all citizens is a Constitutional principle and should not be violated, and that **any reluctance to enrol or effort to segregate Roma from non Roma children is a violation of this principle, introduces discrimination among Greek citizens and is against the obligations of Greece emanating from international conventions** (such as the UN Convention for Children Rights and the European Convention of Human Rights). The Circular encouraged cooperation among all relevant services (health services for instance for the vaccination of children and general family support services) for the successful inclusion of Roma children in the national education system..

3.3. Roma inclusion programs in Greece

Since 2011 and the inauguration of the National Roma Integration Strategies, Greece has implemented policy incentives to increase school attendance *via* two programmes – ‘*Education of Roma Children*’⁸⁹ and ‘*Roma Children in Macedonia and Thrace*’⁹⁰. Details about these programmes will be further analysed in Chapter IV.

The Greek Ombudsman created a separate office that deals exclusively with Roma issues⁹¹ and circulated a guide⁹² for municipal authorities regarding the integration of Roma communities. This guide contains recommendations including in the area of education, urging local authorities to ensure that all Roma children attend school. It also highlights the importance of raising awareness among the Roma communities on the obligation of the State to provide access to education irrespective of the capabilities of parents. A number of aspects need to be seriously considered if Roma education policies in Greece are to be effectively implemented and with a view to produce sustainable results for Roma inclusion:

- **Stronger focus on desegregation and an integrated approach** is necessary. There is still need to enforce full compulsory education, strengthen learning support and fight prejudices (2011)⁹³.
- There is a **need to develop systematic measures** to reinforce inclusion in compulsory education. Ensure access to high quality and inclusive early childhood education and childcare, as well as pre-school education; need to ensure proper monitoring of enrolment and attendance; to reinforce desegregation measures (2014)⁹⁴.

⁸⁷ 116184/Γ1/10-9-2008.

⁸⁸ Φ.3/960/102679/Γ1.

⁸⁹ The official website of the programme: <<http://www.keda.gr/roma/>>.

⁹⁰ The official website of the programme: <<http://roma.eled.auth.gr/>>.

⁹¹ The official website for the Roma Ombudsman: <<http://www.synigoros.gr/?i=maps.el>>.

⁹² The guide is available at: <<http://www.synigoros.gr/resources/toolip/doc/2012/02/02/romaguide.pdf>>.

⁹³ EU: *Discrimination*, Greece: Country Fact Sheet, 2012, available at:

<http://ec.europa.eu/justice/discrimination/files/country_factsheets_2012/greece_en.pdf>.

⁹⁴ EU: *Roma Integration by EU country*, Greece, available at: <<http://ec.europa.eu/justice/roma-integration/greece/>>.

- Greek schools are funded through the central budget of the Ministry of Education according to the number of children and special needs requirements of schools (eg, building maintenance). This budget is complemented by municipality funds to cover additional activities (eg. sports, minor maintenance issues, etc). The amount of local funds available for schools varies according to the finances of the various municipalities. In 2011, Zones of Educational Priority (that included areas with Roma) were identified and targeted for priority resources (prior to 2011 no special provisions were made for schools in socio-economically deprived areas). Cuts to the education budget however have meant that this **policy has not been implemented**.
- The Greek educational system does not have any anti-discrimination provisions. **No monitoring mechanisms are in place** to record instances of racism, xenophobia, intolerance, or discrimination. Greece has not ratified the UNESCO Convention against Discrimination in Education. In 2005, Greece did adopt more general anti-discrimination legislation (Law 3304/2005 extending to education as well), but it has not been actively implemented.
- The right of Roma children to education is prevented not only due to the movement of many families in search of seasonal agricultural work, but also because of the **chronic marginalization of Roma communities**, which often leads children to illiteracy and labour exploitation.

4. ROMA SCHOOL SEGREGATION IN GREECE

Although segregation is forbidden, it actually persists in many schools. There have been several efforts to attract and maintain the Roma children into schools but with only limited success (for only the regions addressed by a special programme and for the period in which the programme was functioning)⁹⁵.

Numerous efforts at desegregation have had only limited (localised) success or have simply been ineffective. The resistance of Greek majority parents and local authorities against desegregation has been registered in several places across Greece. Informal alliances of parents and teachers (sometimes in combination with local authorities) have coordinated their efforts in some cases to obstruct various efforts at desegregation (like bussing).

The first issue of concern has been the question of migrant and Roma minority segregation in schools and the efforts to de-segregate them. Segregation as a policy means the spatial separation of children in separate classrooms and/or in separate schools. Such a policy in Greece is of course against the Constitution and is not implemented anywhere, at least not officially. However, there have been two types of segregation practices and two related discourses registered in Greece.

4.1. Instances of segregation in Greece

In the first section, three types of segregation were mentioned (namely, segregation between schools where most Romani children attend Roma-majority schools - segregation within schools when in mainstream education Romani children are separated from the others in classes and other facilities - segregation into special schools, including schools for children with mild intellectual disabilities). Since Greece has only presented segregation of the first two categories, an example of the third type of segregation will be presented that has not taken place in Greece.

In fact, segregation may take the form of informal spatial separation of the Roma minority children in separate school annexes created near a Roma camp with the excuse that they thus can better cater to the needs of the Roma children, but with the implicit scope of keeping these children physically away from the local 'normal' school. A former secretary of state in Intercultural Education and a local councillor note in the area of Aspropyrgos, in the western outskirts of Athens that there had been acute problems of rejection of the local Roma population by the local Pontic Greek and overall Greek population, which have led among other things to the set up of a separate Roma school⁹⁶. Pontic Greeks have arrived in the area in the last 15 years, they are Greek citizens like the Roma of course, and are locally a majority. Roma in this area are generally nomadic, or in any case, move frequently between this place and other parts of Greece depending on where job opportunities arise and many among them come from other Balkan and central eastern European countries. These features create additional challenges for their local integration.

This type of direct segregation is against the Greek Constitution but is supported by local actors with the justification that Roma children are not vaccinated and suffer from various skin or other contagious diseases, thus representing a health hazard for other children⁹⁷. A former secretary of State that had taken a special interest in Roma children integration in schools confirms that such risks truly exist and that he, as a secretary of state, had to face such incidents where primary school teachers had been infected. The Ministry as a response had issued a circular reminding school

⁹⁵ A. Triandafyllidou and R. Gropas (2011), "Migrants and Political Life in Greece: Between Political Patronage and the Search for Inclusion", *South European Society and Politics*, published on I-First on 23 September 2011.

⁹⁶ Triandafyllidou and Kouki, *op. cit.*, p. 47.

⁹⁷ *Ibid.*, p. 49.

headmasters of the protocol for registering Roma children including their accompanying them to the local health centre for vaccinations, the need to overlook the lack of residence certificates and the importance not to turn away Roma children from schools. The importance of health related assistance to Roma children is also confirmed by an NGO chairperson working with Roma children.

Apart from this form of acute segregation and complete rejection of Roma minority children, there are more subtle ways of indirect segregation, notably ethnic selection that appears to be practiced informally in some schools which refuse migrant or Roma children with the excuse that there are no more free places in the school. Such practices have been indirectly documented in a recent research⁹⁸ and have also been referred to by teachers and parents in the areas concerned. The relevant testimonies however are indirect: informants accuse their neighbouring schools who are seen as ‘elitist’, all native children schools, of practicing such informal ethnic selection with the excuse that the school is full.

De facto segregation and resistance of Greek majority (non Roma) parents and local authorities against de-segregation has been registered in several places across Greece. While recent governments are paying lip service to the fight against Roma pupil segregation⁹⁹, in practice problems persist¹⁰⁰.

4.2. Segregation within and between schools

Indicative of Roma children exclusion from mainstream schools is the case of five localities where true local conflicts about the inclusion or segregation of Roma children from mainstream schools have been registered when the Ministry sought to enforce the ‘bussing’ of children and their dispersion in several schools of the area (in Aspropyrgos, near Athens, in Sofades near Karditsa, Ntamaría and Athili near the town of Lamia, and in Peraia near Salonica).

Local authorities (mayor, prefect) in these areas in agreement with non Roma parents prevented Roma children from going to school (for instance the municipality refused to hire a school bus that would bring the children from the Roma settlement to school). After a series of protests and the mobilisation of the Greek Helsinki Monitor, the public prosecutor of the Supreme Court (Areios Pagos) intervened (in September 2010 and in February 2011) and asked local public prosecutors to stop the segregation of Roma children from schools within their districts. Left wing parties and the Greens brought the issue also in Parliament in September 2011.

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

International human rights bodies have stated 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.¹⁰¹

⁹⁸ E. Markou (2010), Διαδικασίες θεσμικής διάκρισης και σχολικές δομές: η θέση του διευθυντή σε πολυπολιτισμικά και διαπολιτισμικά σχολεία. [Processes of institutional discrimination and school structures: the role of school principals in multicultural and intercultural schools] paper presented at a conference in Athens, October 2010.

⁹⁹ Fox and Vidra, *op. cit.*, p. 9.

¹⁰⁰ See “ANTIGONE” *Annual Report 2011, 2012 and 2013*; The Greek Ombudsman, Department of Children’s Rights, *Parallel Report to the UN Committee on the Rights of the Child*, (April 2012), available at: <<http://www.synigoros.gr/resources/parallel-report-un--3.pdf>>; Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, Greece, (August 2012), available at: <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_GRC_CO_2-3.pdf>. See also from the Greek National Commission of Human Rights (GNCHR): GNCHR, “Comments on the draft Second periodic Report of Greek Republic on the International Covenant on Civil and Political Rights”, 2013, <http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/Parathrhseis_EEDA_prosYPEKS_DSA_PD.pdf>; GNCHR, “Report and Proposals on the Roma rights”, *Annual Report 2009*, pp. 100 *et seq.*; GNCHR, “Proposals for the Protection of Roma in Greece”, *Annual Report 2001*, pp. 179 *et seq.*

¹⁰¹ 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

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 completed¹⁰². Further more the Court held that “the right to education guaranteed by the first sentence of Article 2 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention”¹⁰³.

In its recent law case, the European Court of Human Rights reiterated that the word “respect” in Article 2 of Protocol No. 1 means more than “acknowledge” or “take into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State¹⁰⁴. On the other hand, it needs to be underlined that the primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusionary, in particular for those who have insufficient means to maintain their own institutions¹⁰⁵.

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

The primary objective of Article 2 of Protocol no.1 is to quarantine a right to non-discriminatory access to the existing educational facilities. The right to education, understood as a right of equal access, requires by implication the existence and the maintenance of a minimum of education provided by the State, since otherwise that right would be illusionary, in particular for those who have insufficient means to maintain their own institutions¹⁰⁶. 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.

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>

¹⁰² 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).

¹⁰³ *Ibidem* para.5

¹⁰⁴ See *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 37, Series A no. 48.

¹⁰⁵ 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.

¹⁰⁶ 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.

THE RIGHT TO NON-DISCRIMINATION APPLICABLE IN ROMA RELATED CASES

According to the case law of the European Court of Human Rights (ECtHR) on Article 14, discrimination occurs when, without objective and reasonable justification, persons in relevantly similar situations are treated differently¹⁰⁷ or when States fail to treat differently persons whose situations are significantly different.¹⁰⁸ The ECtHR has stated that “no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”¹⁰⁹

The ECtHR established that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory, notwithstanding that it is not specifically aimed at that group¹¹⁰ 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*.¹¹¹ The ECtHR also clarified that discrimination that is potentially contrary to the Convention may result from a *de facto* situation.¹¹²

In its case law the ECtHR noted that Roma do not only enjoy protection from discrimination, but they also require special protection.¹¹³ 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.¹¹⁴

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 recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community¹¹⁵. In this 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 cases¹¹⁶.

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

¹⁰⁷ *Willis v the United Kingdom*, Application no. 36042/97, at para. 48, and *Okpiz v Germany*, Application no. 59140/00, at para. 33

¹⁰⁸ 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

¹⁰⁹ See: *Timishev v Russia*, Application nos. 55762/00 and 55974/00, at para. 58.

¹¹⁰ See: *Hugh Jordan v the United Kingdom*, Application no. 24746/94, at para. 154; and *Hoogendijk v the Netherlands* (dec.), Application no. 58461/00

¹¹¹ See: *D.H. v The Czech Republic*, Application no. 57325/00, at para. 184.

¹¹² See: *Zarb Adami v Malta*, Application no. 17209/02, para. 76

¹¹³ *Chapman v the United Kingdom*, Application no. 27238/95 and *Connors v the United Kingdom*, Application no. 66746/01.

¹¹⁴ See: *D.H. v the Czech Republic*, Application no. 57325/00, para. 182

¹¹⁵ See *Oršuš and Others v. Croatia [GC]*, no. 15766/03, para 147.

¹¹⁶ See *Chapman v. the United Kingdom [GC]*, no. 27238/95, § 96, ECHR 2001-I, and *Connors v. the United Kingdom*, no. 66746/01, § 84, 27 May 2004

disadvantaged and vulnerable minority”. The Court stated that „they therefore require special protection. As is attested by the activities of numerous European and international organisations and the recommendations of the Council of Europe bodies, this protection also extends to the sphere of education”¹¹⁷.

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 services¹¹⁸. 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 practices¹¹⁹.

From the aforementioned considerations the following standards can be derived: (1) Roma children constitute a **vulnerable and disadvantaged minority**, (2) **special consideration** should be given in relevant regulatory frameworks and decisions in particular cases, (3) Roma require **special protection** that also extends to **the sphere of education**, (4) particular **attention** should be given to their needs, (5) a difference of treatment may be necessary for the **correction of inequality**, (6) **specific safeguards** have to be in place, (6) the State has **specific positive obligations** when it comes to the education of Roma and (7) should undertake **positive measures** to ensure the full enjoyment of Roma children’s right to education.

4.4. School segregation cases against Greece before the ECHR

Greece has been convicted in a number of cases by the European Court of Human Rights for violating the right to education and non-discrimination of Roma children.

1. SAMPANIS AND OTHERS V. GREECE (2008): ENROLMENT IN SEPARATE SCHOOL FACILITY

The 11 applicants (Greek nationals of Roma origin) were living in Psari, an authorised residential site near Aspropyrgos (Greece). The applicants 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 annexe to the main Aspropyrgos primary school building, was a measure related to the Roma origin of the children.

On 21 September 2004 the applicants visited, with other Roma parents, the premises of the Aspropyrgos primary schools in order to enrol their children. According to the applicants, the head teachers of two schools had refused to enrol their children on the ground that they had not received any instructions on this matter from the competent ministry. The head teachers allegedly informed them that as soon as the necessary instructions had been received they would be invited to proceed with the appropriate formalities. However, the parents were apparently never invited to enrol their children.

¹¹⁷ see *D.H. and Others v. Czech Republic*, § 182.

¹¹⁸ See *Oršuš and Others v. Croatia* [GC], no. 15766/03, para 177.

¹¹⁹ See *Horvath and Kiss v Hungary*, App. no. 11146/11, para. 115-116.

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.

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

Key findings of the Court were the following: even though the incidents of a racist nature that took place in front of Aspropyrgos primary school in September and October 2005 could not be imputed to the Greek authorities, it could nevertheless be presumed that those incidents influenced the decision to place pupils of Roma origin in an annexe to the primary school. There was a strong presumption of discrimination and *it was for the Government to show that the difference in treatment was the result of objective factors, unrelated to ethnic origin*. Whilst the evidence did not show that the applicants had met with an explicit refusal by the school authorities, *given the Roma community's vulnerability and considering that Article 14 requires in certain circumstances a difference of treatment in order to correct inequality*, the competent authorities should have recognised the particularity of the case and *facilitated the enrolment of the Roma children*, even if some of the requisite administrative documents were not readily available. Due to *Greek law recognising the specific nature of the Roma community's situation and domestic legislation providing for the possibility of enrolling pupils at primary school simply by means of a declaration signed by someone with parental authority*, this obligation should have been particularly clear to the Aspropyrgos school authorities as they were aware of the problem of providing schooling for the children living in Psari camp and of the need to enrol them at primary school. The 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. Moreover, 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.

Thus, the Court concluded that the conditions of school enrolment for the Roma children and their placement in special preparatory classes resulted in discrimination against them and constituted a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1 in respect of each of the applicants.

2. SAMPANI AND OTHERS V. GREECE (2012): ENROLMENT IN SEPARATE SCHOOL FACILITY

On 11 December 2012, in the case *Ioanna Sampani and Others v. Greece*¹²⁰, filed by 140 Roma (98 children and 42 parents) through the NGO Greek Helsinki Monitor (GHM), 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 and 2010 resulted in further discrimination against the applicants.

The application concerned the *continuing educational segregation* of Roma children to a *Roma-only ghetto school*, namely the 12th Elementary School of Aspropyrgos. This segregation occurred against the 5 June 2008 judgment in the case of *Sampanis and Others v. Greece*¹²¹, when the ECtHR found Greece in violation of the Convention in relation to the initial school exclusion of Roma children living in the Psari settlement of Aspropyrgos and subsequently their segregation in a separate facility (an annex of the 10th Elementary School of Aspropyrgos). Following the ECtHR judgment, the Ministry of Education renamed the 10th Elementary School of Aspropyrgos annex as 12th Elementary School of Aspropyrgos so that Greece could claim before international *fora* that no school segregation takes place anymore.

On 22 February 2011 the Deputy Prosecutor of the Greek Supreme Court issued a relevant “**Urgent Written Order**” (with Protocol Number 720/22-02-2011) addressed to all local prosecutors of Greece, affollowing a a letter (16 February 2011) on behalf of the “*Coordinated Organisations and Communities for Roma Human Rights in Greece*” (SOKADRE) asking him to investigate thoroughly cases of educational exclusion and marginalisation of Roma children in “school-ghettos”, acontrary to Greek law as well as following several circulars and other clear instructions from the Prosecution Office of the Supreme Court itself¹²². According to his above Order, the Deputy Prosecutor of the Greek Supreme Court officially asked all local prosecutors of Greece to “*take care of striking the phenomenon of exclusion of Roma from the public educational system of Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured*”. It is noteworthy that although the above document (“Order”) of the Prosecution does not refer strictly to the specific provisions of the Greek anti-discrimination legislation, there is no doubt that at least this concrete judicial authority has fully realised the tremendous importance of the enforcement of the existing legal framework against discrimination.

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

The Court, noting the lack of significant change since the *Sampanis and Others v. Greece* judgment, found that Greece had not taken into account the particular needs of

¹²⁰ ECtHR, 2012, App. No. 59608/09.

¹²¹ *Catalytic intervention of the Supreme Prosecutor on the educational exclusion of Roma*, *op. cit.*

¹²² *Ibid.*

the Roma children of Psari as members of a disadvantaged group and that the operation between 2008 and 2010 of the 12th Primary School in Aspropyrgos, which was attended by Roma pupils only, had amounted to discrimination against the applicants.

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.

3. LAVIDA AND OTHERS V. GREECE (2013)¹²³: ENROLMENT IN SEPARATE SCHOOL

On 21 October 2011, the ECtHR communicated to Greece another application concerning the Roma community in Sofades –Central Greece- where all 550 Roma pupils attend the Roma-only 4th Primary School as opposed to the 289 non-Roma pupils who attend the non-Roma-only 1st and 2nd Primary Schools (*Case of Lavidia and Others v. Greece* – application no. 7973/10)¹²⁴ with the following questions:

“1. *Les requérants disposaient-ils en droit interne d'un recours au travers duquel ils auraient pu soulever leurs griefs tirés de l'article 14 de la Convention combiné avec l'article 2 du Protocole no 1?*

2. *Les placement de certains des requérants dans une école réservée aux Roms les a-t-il privés de leur droit à l'instruction et les a-t-il fait subir une discrimination dans la jouissance de leur droit à l'instruction en raison de leur origine rom, en méconnaissance des articles 14 de la Convention et 2 du Protocole no 1?*”

The developments following the communication of the *Lavidia and Others* application are indicative of the resistance of many local communities to the integration of Roma pupils into mainstream schools for all pupils.

On 23 December 2011 the Ministry of Education's Office of the Special Secretary ordered the transfer (effective from 1 January 2012) of all Roma children of the first grade attending classes at the 4th Primary School to five other municipal schools in Sofades and surrounding villages¹²⁵. At the same time, specialized educational staff would be assigned to these schools in order to ensure the smooth integration and school attendance of the Roma pupils. From the next school year (2012-2013), pupils that were to be registered in the first grade did not do so at the 4th Primary School but would be dispersed and enrolled in the five aforementioned primary schools. In that letter, the Special Secretary expressed her “*deep concern*” regarding the concentration of Roma pupils in certain primary schools in the prefecture of Karditsa, particularly in light of “*the application of Lavidia against Greece, before the European Court of Human Rights.*”

This decision caused uproar in the non-Roma community of Sofades (some 40% of the total population compared to 60% for the Roma community) and precipitated virulent racist reactions on the part of the local societies in Sofades and Karditsa, leading to the closing of schools to which Roma pupils were to be transferred.

As a result, on 26 January 2012 the Minister of Education **overturned the desegregation decision** announcing an effective regression into the *status quo ante* of prevailing segregation with an “icing” of token desegregation that included the creation of a new 5th Primary School only for Roma and the selection of just nine first graders to formally register at the 1st and 2nd Primary

¹²³ ECtHR, 2013, App. No. 7973/10.

¹²⁴ 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.

¹²⁵ See also *2012 Annual Report of the Greek Ombudsman*, <http://www.synigoros.gr/?i=kdet.el.ehtisies_ektheseis_documents.93959>.

Schools but be assigned to preparatory classes housed at the premises of the 5th Kindergarten [which is located in the new Roma settlement and is attended exclusively by Roma pupils]. Moreover, from the beginning of the school year 2012-2013, the pupils of the 5th Kindergarten were to be registered to various Primary Schools of the town of Sofades under the provision that their numbers will not surpass 20% of the total student body at any given school.

On 13 February 2012, MEP **Nikos Chrysogelos** (Verts/ALE) tabled a parliamentary question¹²⁶ in which the EC were effectively called to answer whether the measures taken at the 26 January 2012 meeting, following the reactions of the local society, were in conformity with the Article 153 TFEU and with Directive 2000/43/EC. On 2 April 2012 the vice-president of the EU Commission and Commissioner responsible for justice, fundamental rights and citizenship Viviane Reding gave on behalf of the Commission an official answer: *“The Commission shares the analysis of the honourable Member that measures taken in this case do not go far enough towards effective desegregation although they reflect some will to address the issue”*¹²⁷.

Moreover, the Commissioner highlighted that the Racial Equality Directive **prohibits** direct and indirect discrimination based on racial or ethnic origin, *inter alia* in education. Greece has transposed this directive into national legislation (Law 3304/2005). It is therefore for the national courts, in light of all the facts of a case, to determine whether a concrete situation constitutes discrimination. Furthermore, the Commissioner replied that a key objective of the Greek ESF operational programme ‘Education and Lifelong Learning’ is to reinforce access and participation of all in education, that the programme supports a preventive integrated action aiming at combating early school leaving of groups with cultural specificities, including the Roma, and that the action comprises a wide array of needs-based interventions, including reinforced access to early childhood education, additional pedagogical and psycho-social support, and targeted teacher training. This statement constitutes one of the most authoritative arguments in support of the argument that segregation of Roma pupils, as has been practiced for some more than twenty five years at the 4th Primary School, is violating the Convention and EU law.

The same was upheld in May 2013 by the *ECtHR*, which found that the continuing nature of this situation and the State’s refusal to take anti-segregation measures implied discrimination and a breach of the right to education. Even in the absence of any discriminatory intention on the State’s part, the European Court stated that 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 aim¹²⁸.

¹²⁶ Question for written answer to the Commission, Rule 117, Nikos Chrysogelos, available at: <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2012-001731+0+DOC+XML+V0//EL>>.

¹²⁷ Answer given by Ms. Reding on behalf of the Commission, available at: <

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-001731&language=EN> >.

¹²⁸

4.5. School segregation cases against other countries before the ECHR

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

DH V. CZECH REPUBLIC (2007): ENROLMENT OF ROMA CHILDREN IN SPECIAL SCHOOL INSTITUTION

*D.H. and others v. the Czech Republic*¹²⁹ is the first case dealt with by the European Court of Human Rights concerning the right to education of Roma children in Europe. Between 1996 and 1999 the 18 Roma applicants were placed in special schools in Ostrava.. The material brought before the Court showed that the applicants’ parents had consented to and in some instances expressly requested their children’s placement in a special school. Consent was indicated by signing a pre-completed form. In the case of two applicants, the Court indicated discrepancies surrounding the dates on the forms, which were later than the dates of the decisions to place the children in special schools. In both instances, the date seemed to have been corrected by hand, and one of them was accompanied by a note from the teacher citing a typing error.

The decisions on placement were then taken by the head teachers of the special schools concerned, after referring to the recommendations of the educational psychology centres where the applicants had undergone psychological tests. The applicants’ school files contained the report on their examination, including the results of the tests with the examiners’ comments, drawings by the children and, in a number of cases, a questionnaire for the parents. The written decision concerning the placement was sent to the children’s parents. It contained instructions on the right to appeal, a right which none of them exercised.

On 29 June 1999 the applicants received a letter from the school authorities informing them of the possibilities available for transferring from a special school to a primary school. It appeared that four of the applicants were successful in aptitude tests and thereafter attended ordinary schools.

On 15 June 1999 all the applicants apart from 4 asked the Ostrava Education Authority (*Školský úřad*) to reconsider, outside the formal appeals procedure (*přezkoumání mimo odvolací řízení*), the administrative decisions to place them in special schools. They argued that their intellectual capacity had not been reliably tested and that their representatives had not been adequately informed of the consequences of consenting to their placement in special schools. They therefore asked the Education Authority to revoke the impugned decisions, which they maintained did not comply with the statutory requirements and infringed their right to education without discrimination.

On 10 September 1999 the Education Authority informed the applicants that, as the impugned decisions complied with the legislation, the conditions for bringing proceedings outside the appeal procedure were not satisfied in their case. On 15 June 1999, 12 lodged a constitutional appeal in which they complained, *inter alia*, of *de facto* discrimination in the general functioning of the special-education system. In that connection, they relied on, *inter alia*, Articles 3 and 14 of the Convention and Article 2 of Protocol No. 1. While acknowledging that they had not appealed against the decisions to place them in special schools, they alleged that *they had not been*

¹²⁹ *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#{)

sufficiently informed of the consequences of placement and argued (on the question of the exhaustion of remedies) that their case concerned continuing violations and issues that went far beyond their personal interests.

In their grounds of appeal, the applicants explained that they had been placed in special schools under a practice that had been established in order to implement the relevant statutory rules. In the submission they indicated, that the practice had **resulted in *de facto* racial segregation and discrimination that was reflected in the existence of two separately organised educational systems for members of different racial groups, namely special schools for the Roma and “ordinary” primary schools for the majority of the population.** That difference in treatment was not based on any objective and reasonable justification, amounted to degrading treatment, and had *deprived them of the right to education* (as the curriculum followed in special schools was inferior and pupils in special schools were unable to return to primary school or to obtain a secondary education other than in a vocational training centre). Arguing that they had received an inadequate education and an affront to their dignity, the applicants asked the Constitutional Court (*Ústavní soud*) to find a violation of their rights, to quash the decisions to place them in special schools, to order the respondents (the special schools concerned, the Ostrava Education Authority and the Ministry of Education) to refrain from any further violation of their rights and to restore the status quo ante by offering them compensatory lessons.

In their written submissions to the Constitutional Court, the special schools concerned pointed out that all the applicants had been enrolled on the basis of a recommendation from an educational psychology centre and with the consent of their representatives. Furthermore, despite having been notified of the relevant decisions, none of the representatives had decided to appeal. According to the schools, the applicants’ representatives had been informed of the differences between the special-school curriculum and the primary-school curriculum. Regular meetings of teaching staff were held to assess pupils (with a view to their possible transfer to primary school). They added that some of the applicants had been advised that there was a possibility of their being placed in primary school.

The Education Authority pointed out in its written submissions that the special schools had their own legal personality, that the impugned decisions contained advice on the right of appeal and that the applicants had at no stage contacted the Schools Inspectorate. The Ministry of Education denied any discrimination and noted a tendency on the part of the parents of Roma children to have a rather negative attitude to school work. It asserted that each placement in a special school was preceded by an assessment of the child’s intellectual capacity and that parental consent was a decisive factor. It further noted that there were eighteen educational assistants of Roma origin in schools in Ostrava.

In their final written submissions, the applicants pointed out (i) that there was *nothing in their school files to show that their progress was being regularly monitored* with a view to a possible transfer to primary school, (ii) that the *reports from the educational psychology centres contained no information on the tests* that were used, and (iii) that their recommendations for placement in a special school were *based on grounds such as an insufficient command of the Czech language, an over-tolerant attitude on the part of the parents or an ill-adapted social environment*, etc. They also argued that the gaps in their education made a transfer to primary school impossible in practice and that social or cultural differences could not justify the alleged difference in treatment.

On 20 October 1999 **the 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.

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

(b) *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.

The applicants first brought their case before the Strasbourg Court in 2000 (Application no. 57325/00). On 5 May 2006 the applicants requested the referral of their case to the Grand Chamber in accordance with Article 43 of the Convention. On 3 July 2006 a panel of the Grand Chamber granted their request.

Upon examining the case, 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 this sphere, the Court re-established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified. 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*¹³⁰). 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*¹³¹, and *Zarb Adami*¹³²), **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*

¹³⁰ *Hugh Jordan v. UK*, ECtHR, 2001, App. No. 24746/94.

¹³¹ *Hoogendijk v. The Netherlands*, 2005, App. No. 58641/00.

¹³² *Zarb Adami v. Malta*, 2006, App. No. 17209/02.

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.

Furthermore, 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*¹³³ and *Connors v. the United Kingdom*¹³⁴). It observed that there is an emerging international consensus among the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.

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

The Grand Chamber observed, further, 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 applicants¹³⁵.

¹³³ *Chapman v. UK, op. cit.*, § 96.

¹³⁴ ECtHR, 2004, App. No. 66746/01, § 84.

¹³⁵ 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#{)

HORVÁTH AND KISS V. HUNGARY (2013)¹³⁶: ENROLMENT OF ROMA CHILDREN IN SPECIAL SCHOOL INSTITUTION

The case of Horvath and Kiss against Hungary concerned the misdiagnosis and placement of two Roma children in special schools. Due to the placement to a special school they were unable to enrol in mainstream secondary schools. Horváth and Kiss complained 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, 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 enrol to a special, remedial school for disabled children. The plaintiff's parents were not allowed to be present during the diagnosis, their consent or approval was not gathered for the placement in special school and parents were not informed about their right to appeal the decision. András Kiss was born in 1992. He started the elementary education in a segregated mainstream (normal) school in the Roma settlement, where he was educated under a program called Step by Step, as a result of his "socio-cultural" disadvantaged background. In 2000, he was diagnosed with mild mental disability and referred to a special school. His parents did not agree with the replacement, did not consent to the replacement and wanted the child to be educated in a mainstream school.

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

Both Roma applicants claimed that the Expert Panel (EP) discriminated them and misdiagnosed them as "mildly mentally disabled" on the basis of their ethnicity, social and economic background. They asserted that the EPs were free to choose the tests they 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

¹³⁶ 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>

should individualise each case, decide on special needs in each case according to the needs and circumstances of the individual child, identify the reasons underlying any special needs, and establish specific support services which a child needed according to the extent of disability. The Court held that this kind of individualisation was lacking with regard to the plaintiffs and that the Expert Panel had failed to identify the specific professional services that would help the applicants in their education. In the court's view, the County Council had failed to ensure effective control over the Expert Panel.

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

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

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

The Supreme Court reviewed the second-instance judgment and found it partly unfounded. It stated that the conduct of the Special School and the County Council had not violated the applicants' right to equal treatment, either in terms of direct or indirect discrimination. The Supreme Court further noted that the systemic errors of the diagnostic system leading to misdiagnosis – regardless of its impact on the applicants – could not establish the respondents' liability. The creation of an appropriate professional protocol which considers the special disadvantaged situation of Roma children and alleviates the systemic errors of the diagnostic system is the duty of the State. The Court observed that the EP's handling of the parental rights had violated the relevant law. The County Council was found liable for its failure to supervise the legality, or to organize the supervision of the legality, of the functioning of the EP, as well as for failing to end the unlawful practice. The prejudice to the applicants was caused by their deprivation of the right to a remedy provided for by law and thereby of the theoretical chance of obtaining a more favourable assessment of their learning abilities. The Supreme Court consequently upheld the first-instance judgment with regard to the payment of damages to each applicant by the County Council in the sum of HUF 300,000 (approx. EUR 1.000).

The Roma applicants further addressed the European Court of Human Rights. On 29 January 2013 the Court delivered its judgment.¹³⁷

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

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

The ECtHR stressed that "as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection. **Their vulnerable position means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases**¹³⁸. The Court stated that the wording of Article 2 of Protocol No. 1 implies a positive obligation on the part of the State¹³⁹ 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**"¹⁴⁰.

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.**"¹⁴¹

¹³⁷ *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>

¹³⁸ Oršuš and Others, §§ 147-148

¹³⁹ *Horvath and Kiss v. Hungary*, para. 103

¹⁴⁰ *Idem*; para. 116.

¹⁴¹ *Ibid*; para. 121

Therefore, The facts of the case indicated that the schooling arrangements for Roma with the alleged “mild mental disability” had not been attended by adequate safeguards that would have ensured that their special needs as members of a disadvantaged group were taken into account. As a result they had been isolated from pupils from the wider population and had received an education which was likely to have compromised their personal development instead of helping them to develop skills to facilitate their life among the majority population. The Court considered that the Hungarian Government had failed to prove that the difference in treatment had no disproportionately prejudicial effects on the applicants and had accordingly established a violation of Article 2 of Protocol No. 1 in conjunction with Article 14 in respect of both applicants¹⁴².

ORSUS AND OTHERS V. CROATIA (2010)¹⁴³: 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.

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

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

¹⁴² Horvath and Kiss v. Hungary

¹⁴³ 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>

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 place¹⁴⁴.

The Croatian laws applicable for the case and the issues at stake at the time had not provided for separate classes for children lacking proficiency in the Croatian language. The European Court observed that tests applied for deciding whether to assign pupils to Roma-only classes had not been designed specifically to assess the children's command of the Croatian language, but had instead tested the children's general psycho-physical condition. Similarly, the Court considered that while the applicants might have had some learning difficulties, as suggested by the fact that they had failed to go up a grade for the initial two years of their schooling, those difficulties had not been adequately addressed by simply placing them in Roma-only classes¹⁴⁵.

As regards the school curriculum, the Court noted that once assigned to Roma-only classes the applicants had not been provided with a program specifically designed to address their alleged linguistic deficiency. All applicants had spent a substantial period of their education in Roma-only classes. There had been no particular monitoring procedure and, although some of the applicants had attended mixed classes at times, the Government had failed to show that any individual reports had been drawn up in respect of each applicant and his or her progress in learning Croatian. The lack of a prescribed and transparent monitoring procedure had left a lot of room for arbitrariness¹⁴⁶.

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-up¹⁴⁷.

In terms of the parents' passivity and lack of objections in respect of the placement of their children in separate classes, the Court held that the parents, themselves members of a disadvantaged community and often poorly educated, had not been capable of weighing up all the aspects of the situation and the consequences of giving their consent. In addition, no waiver of the right not to be subjected to racial discrimination could be accepted, as it would be counter to an important public interest. The applicants could have attended the government-funded evening school in a nearby town. However, that had not been sufficient to repair the above-described deficiencies in the applicants' education¹⁴⁸.

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

¹⁴⁴ Idem. See para. 147-162.

¹⁴⁵ Idem. See para 188-162.

¹⁴⁶ Idem. See para.163-171

¹⁴⁷ Idem. See para 176 and 177.

¹⁴⁸ Idem. See para 178 and 179.

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. 1¹⁴⁹.

¹⁴⁹ See *Orsus and Others v. Croatia*, application no. 15766/03, Grand Chamber (2010), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97689>

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

1. IDENTIFICATION

Introducing the identification process

While on first glance the process of identifying segregation cases gives the impression of a passive process of observing, stakeholders are invited to establish a more active information-gathering approach, which requires substantial effort. Stakeholders must collect *prima facie* information about segregation-related problems and illustrative patterns of relevant human rights' violations. Stakeholders can either be direct witnesses of segregation cases, accurately and objectively reporting incidents they see, or learn of from the victims, their parents or other sources.

Accordingly, identification processes require thorough techniques for collecting accurate and precise information. Careful inquiries, follow-up, and analysis are indispensable to the information-gathering process. Sound information is the key to producing well-documented reports, which can subsequently be used to encourage action by the authorities. Identification is, therefore, a process that must not be underestimated.

Defining the identification's object

Despite the national characteristics, for the identification process of segregation cases, one must take into consideration the multifaceted nature of Roma education segregation. Even though in Greece *intra-school segregation* is more common, stakeholders must be prepared to identify possible *intra-class segregation* or *inter-school segregation*.

Distinguishing between school segregation cases and other types of abuse/discrimination

Stakeholders are invited to distinguish between school segregation cases and other types of abuse/discrimination against Roma children in the context of education.

HARASSMENT

As a form of discrimination, harassment is defined as follows: "when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidation, hostile, degrading, humiliating or offensive environment"¹⁵⁰.

Concerning this form of discrimination against Roma students, stakeholders may take into consideration the following points:

- Students, teachers, parents and even public officials are reported to partake in harassment.
- Despite efforts, these racist attitudes, which result in the exclusion of Roma students from education, are tolerated by school administration or other officials, even though they are not directly incited by them.
- Harassment of Roma pupils may take place within the premises of the school or outside.
- Verbal or physical abuse does not have to be explicitly racist to amount to harassment.

¹⁵⁰ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

EXAMPLE

If harassment is inflicted upon Roma children by underage students, the failure of the school to stop harassment and - if necessary - discipline perpetrators amounts itself to discrimination.

VICTIMISATION

Victimisation amounts to “adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment”¹⁵¹.

Victimisation of Roma students can take various forms. Some examples go as follows:

- Giving lower marks or extra homework to a student because he/she or his/her parents instituted proceeding for any kind of discrimination he/she had suffered.
- Taking disciplinary action against a teacher because following his/her advice Roma students or parents lodge a complaint.
- Excluding or hindering access of Roma parents to social services for their actions relating to the segregation of their children in school.

! The aforementioned types or any other form of abuse or discrimination constitute violations of Roma’s human rights but do not constitute *per se* cases of segregation.

EXAMPLE

A characteristic case of discrimination stemmed from the behaviour of parents of non Roma children in the Halandri municipality, regarding the scheduled relocation of a Roma settlement. The relocation was postponed, in accordance to a court ruling, in order to avoid disruption of the school attendance of Roma children. This caused a vivid reaction by the parents of the non-Roma schoolchildren. The local parents’ association voted, on 26 October 2012, against the enrolment of the Roma children to the local school. In the end, however, their demand was rejected by the competent school principal.

! However, some incidents of abuse or discrimination may constitute indicators of actual or potential school segregation.

EXAMPLE

As mentioned in the *Sampanis and others* case, on 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.

¹⁵¹ *Id.*

Defining the information to look for

Information required is not always directly related to specific incidents. In fact, many may be more general, related to the context within which the segregation cases are occurring, such as the economic or cultural context.

CONTEXTUAL INFORMATION, such as:

- Historical context: precedents of segregation or desegregation.
- Economic indicators, such as: unemployment rate of a Roma community, financial aid provided by the State to Roma families for education, financial investment for schools in socio-economically deprived areas.

EXAMPLE

While prior to 2011 no special provisions were made for schools in socio-economically deprived areas, in 2011, Zones of Educational Priority (that included areas with a Roma population) were identified and targeted for priority resources. Cuts to the education budget, however, have meant that this policy has not been implemented¹⁵².

- Social indicators, such as: access to health care and general access to education of Roma communities, teacher-parent coalitions against Roma inclusion.
- Organization and functioning of the school system: type of school systems (selective or not), civic education – teaching about diversity, recruitment of minority/immigrant teachers, teacher training programmes, promoting a culture of anti-racism and non-discrimination, curriculum.

EXAMPLE

Programmes in mainstream Greek schools have introduced Cultural Mediators: young Roma women who act as mediators between teachers and Roma families. This programme has enjoyed success in keeping Roma children in schools and improving their performance. At present the programme operates, however, in only a very limited number of schools¹⁵³.

- Organization and working of a specific school.
- Statistical data, such as: size and age structure of the school population, percentage of Roma students, age comparison of Roma and non Roma students, school dropout.

IMPORTANT

Statistics are of fundamental importance in segregation cases. Special care should be taken for a systematic collection of statistical data.

LEGAL AND CONSTITUTIONAL INFORMATION, such as:

- International conventions, treaties ratified by the government.

EXAMPLE

Greece has not ratified the UNESCO Convention against Discrimination in Education.

¹⁵² Fox and Vidra, *op. cit.*, p. 15.

¹⁵³ *Ibid.*, p. 19.

- Important court cases, prosecution, etc.
- Relevant constitutional provisions and laws.

Reports of:

- Incidents, and
- Individual allegations of segregation cases.

Establishing sources of gathering information

Gathering information about segregation cases must be accomplished through a large variety of sources. These might include:

- print media;
- internet sites;
- radio broadcasts;
- official reports;
- court records or police records;
- statements and interviews of witnesses and victims;
- individual allegations of segregation;
- reports from other NGOs or IGOs;
- academic writings;
- visits and missions.

! Gathering information can be very labour intensive and potentially expensive. Stakeholders will have to make choices on the basis of their financial and human resources.

EXAMPLE

Published materials, which should be gathered, read and filed must be attentively selected, since online sources are not always adequate or reliable. Given the nature of Roma segregation cases, stakeholders should take into consideration that missions and visits of affected - or potentially affected - Roma communities or schools are of major importance. Fact-finding activities are classic sources of information including interviews, questionnaires etc.

Contact-building and information gathering process

Contact-building refers to the development of networks of knowledgeable individuals or groups, who will report, provide information or facilitate the access to information on segregation cases.

Contact-building is essential to the proper conduct of the information gathering process, aiming at a solid identification of cases. Networks of this kind are of vital importance not only for gathering of information but also for the assessment of information. Every piece of information

must be double-checked. A reliable contact network is one of the most effective ways to verify information.

EXAMPLE

If one contact reports a case to you, you will need to double-check this information by conducting fact-finding yourself, or by asking confirmation of the incident by other contacts.

Varied sources of contact

Ideally, stakeholders' network should be varied and representative of various ethnic groups, regions, social classes, professions, political affiliations etc.

For segregation cases, certain contacts are indispensable, such as:

- Roma parents;
- Roma children;
- other members of the local Roma community;
- other children and their parents;
- representatives of local government institutions and NGOs locally active;
- school management and staff;
- management and staff of regional Directorates of primary/secondary education;
- where applicable, Roma school mediators or assistances.

Safe sources of contact

In order to guarantee the consistency, accuracy, and veracity of information provided, stakeholders have to assure the safety of their contact network.

Contact-building entails building trusting relationships with people:

- Stakeholders should instil a sense of confidence in the contacts, individuals or groups. Contacts should have the certainty that the information provided will be properly and appropriately considered.
- Contacts should be aware of the type and the precise objective of the stakeholders' work. As a consequence, they should also be informed about the stakeholders' research standards and their needs on precise information.

Contact-building entails evaluation of the credibility of the sources:

- Stakeholders are invited to evaluate the perspectives of their contacts, considering that they may have a political or other agenda. These perspectives may affect the information provided. As a consequence, stakeholders need to understand and compensate for the bias of contacts, groups or individuals.

2. DOCUMENTATION

Basic axes of documentation

The term documentation is a complex one and could have different meanings, depending on the context where it is employed. What is important for the stakeholders to keep in mind, though, is that documenting is a process advanced in different steps:

- a. **COLLECTING THE INFORMATION:** Stakeholders are invited to determine what information is needed, according to the aforementioned, and establish means for acquiring it.
- b. **ORGANIZING THE INFORMATION:** Stakeholders are invited to record the information discovered and store such in appropriate containers, called “documents” (video recording is also an option) or collect already-existing documents containing the needed information.

EXAMPLE

There are multiple ways of recording data. Two important tools are provided by Huridocs: “Events standard format” and “Micro-thesauri”, for frameworks for structuring and analyzing information.

- c. **ANALYZING THE INFORMATION:** In order to make data more visible and accessible, stakeholders are encouraged to present the analysis of information through statistics, charts or graphs.
- d. **DISSEMINATING THE INFORMATION.**

Basic objectives of documentation

The acknowledgement of the aforementioned steps in the process of the documentation depends on its objectives. Documenting segregation cases may aspire to meeting a wide range of purposes:

- education and awareness-rising;
- exertion of pressure on authorities to take action;
- litigation;
- submission to national authorities or international monitoring bodies;
- direct assistance to victims;
- documentaries and historical records.

! It follows that the documenting process could be different according to the purpose for which it is carried out.

EXAMPLES

The documenting person must obtain a written statement by the Roma parents, the teachers or the Roma children themselves in order to attest the existence of segregation. Such a statement can serve for litigation or written reports.

Videos documenting segregation and video testimonials from the actors involved on the existence of segregation and the impact of segregation will be useful to serve as video documentary to be used for drawing attention to the case. It can also serve for exercising pressure on authorities to take action or for historical records.

If you plan submissions to national or international authorities, then you need to ensure that the relevant information is presented in a form adapted to their eventual requirements.

Obtaining the products of documentation

Obtaining written information requires the employment of common tools of research. This does not imply that this is a simple procedure or a procedure that can be neglected.

However, written information must be supplemented by oral evidence and *vice versa*. Given the nature of segregation cases, oral evidence will be often indispensable, whether stakeholders need to collect video testimonials or written statements. Interviewing, the most common method of collecting information on alleged human rights abuses, will be part of the documentation process of segregation cases.

Interviewing: Some key elements

An interview is a process that must be well prepared. Stakeholders must consider:

1. **WHO WILL CONDUCT THE INTERVIEW:** If there is such a possibility, interviewers should be two. One person asks the questions, maintaining eye contact, while the other discreetly takes notes, identifying missed questions and/or answers. If you contact persons who do not speak Greek, then you must use interpreters.
2. **RECORDING THE INTERVIEW:** Tape-recording may present concerns to those who do not want to reveal their identity. A tape recorder can only be used with the express consent of the interviewee, before the initiation of the interview.
3. **PREPARATORY RESEARCH:** The interviewer should prepare for the interview by learning as much as possible about the victims, the witness and the relevant circumstances.
4. **INTERVIEW TEMPLATE:** The interviewer might as well prepare a list of queries, which help to develop a strategy for the interview. Annex 1 proposes an Interview Template for segregation cases. The interviewer should be careful to avoid allowing the list of questions to become a hindrance to communication with the interviewee.
5. **INITIATING THE INTERVIEW:** Prior to the interview, the interviewer should introduce himself/herself and explain his/her mandate, establish the purpose of the interview, discuss the ground rules for the interview, talk about how the witness may be protected after the interview, and anticipate the manner in which the information obtained will be used. He/She should stress that it is crucial to obtain as many details as possible in order to establish the facts, for example, that there has been a human rights violation.
6. **DURING THE INTERVIEW:** The interviewer should maintain rapport with the interviewee, and develop a climate of acceptance and trust. In this direction, he/she should avoid the appearance of judging the interviewee, disapproving of his/her conduct, or disbelieving the information provided.
7. **CONCLUDING THE INTERVIEW AND KEEPING IN CONTACT:** The interviewer should ask the interviewee if he/she has any questions or has thought of any additional information which might be useful. Establishing a mechanism for continuing communications with the witness is also important. In any case, the witness should know how to get in touch with the stakeholders so that he/she can reach them at any time in order to provide new information.

Sensitive issues

Here is a list of obstacles which might appear when contacting people during the documentation process and possible ways to overcome them.

A. Groups with particular characteristics

1. ROMA COMMUNITY

You should be aware that Roma communities may have particular characteristics and a way of life that is very different from the rest of the society or country - or from that of the interviewer. Cross-cultural differences include attitudes about the gender and status roles, or appropriate topics of conversation. Roma may also lack confidence and may be reluctant to share information, fearing that if they open about segregation cases they will face the authorities' reaction on several grounds.

- ✓ The interviewer should project an attitude of professionalism, sincerity, and sensitivity. He/She should be respectful of differences in language, methods of communication and social structure.
- ✓ The interviewer should reassure the interviewees who are afraid to come forward with information. He/She must also explain to the interviewee the various stages of assessment and utilisation the information will go through, and the exact uses that will be made of it.

2. CHILDREN

Since in segregation cases the victims are children, stakeholders should seek to get in contact with them. Children, though, have their own perception of the world. Their needs and abilities are significantly different from those of adults.

- ✓ The interviewer should keep in mind this difference and should approach the interview differently according to the age, maturity, and understanding of the child.
- ✓ It will probably be necessary to use simpler language, appropriate to the age of the child, and to spend more time developing rapport with the child who will be interviewed.
- ✓ Keep direct questions to the absolute minimum and introduce general conversation so that the child does not feel that he/she is being cross-examined. Alternate interview questions with discussion can be useful as well.
- ✓ Stakeholders should assist children to express themselves, by:
 - ✓ Listening attentively and demonstrating actively that you have heard the child. The interviewer may summarise what has been said or ask discretely for clarifications;
 - ✓ Showing respect for the child's feelings;
 - ✓ Not interrupting the child's chain of thought and narrative.
- ✓ Encourage the child to ask questions during the interview and to indicate if he/she does not understand a question or the reasons for asking it.
- ✓ Taking notes during the interview may be distracting for the child, so if it is necessary to take notes, it is important to explain the reason and seek the child's permission first¹⁵⁴.
- ✓ In addition to interviewing the child, the interviewer should talk to members of the child's family and community.

¹⁵⁴ Action for the Rights of Children (ARC), *Working with children*, Revision Version 01/01, available at: <http://www.unicef.org/violencestudy/pdf/ARC_working_with_children.pdf>.

3. PUBLIC AUTHORITIES AND GOVERNMENT OFFICIALS

Teachers, school directors or other appropriate government officials should be also contacted. Interviewing authorities is different from interviewing victims or witnesses.

- ✓ The interviewer must probe the interviewee's statements without being too confrontational. The latter may be a supporter of a particular political or other view. Stakeholders must remain polite, keep an open mind while questioning and record the testimony, even though they may not agree with the views expressed.
- ✓ Even though the interviewer should, as suggested above, prepare a list of questions, he/she must not always rigidly follow them. It may be more important to respond to the information provided by the Government official and to ask follow-up questions.
- ✓ If possible, Government officials should be interviewed after having gathered a significant amount of data and information. The Government is therefore allowed to give explanations of statements and allegations made by victims and witnesses. Subsequently, stakeholders are allowed to make further inquiries with regard to the Government's responses.

B. Assessing credibility

The interviewer will be, at a certain point, invited to assess the credibility of the interviewee's account.

- ✓ Stakeholders should not, however, feel compelled to make a definitive judgment in this regard. It is not uncommon to be unsure as to the interviewees' credibility.
- ✓ In the same direction, stakeholders are invited to record information provided even if they are not certain of its reliability. This kind of information may be of use when further information is gathered.
- ✓ The adoption of the "two-source confirmation" approach is recommended. Such an approach implies that no information is officially reported unless it has been confirmed by two different and reliable sources. The information collected through an interview should be cross-checked with the information provided from entirely independent sources. Besides, if two unrelated witnesses give concordant testimony, then the fact can be considered established.

Organising the information

While assessing, logically ordering and recording information about segregation cases, stakeholders will need to develop a system to file every piece of information at their disposal. They may choose between different options such as develop a database where they record all important information received every day, week or month, use a field book etc.

In any case, in order to facilitate the organisation of the information, stakeholders may develop a standard format to record cases. It may not include all the details obtained in an interview but will give a general picture of the case. A *Case Summary Form* - supplement to the *Interview Template* - is proposed in Annex 2, in view of allowing stakeholders to capture the essential fields, such as:

- Who collected the information, where, and when; The main facts about the segregation case
- Information and evidence provided; Responses of the Government ;
- What further action needs to be taken; what further information should be collected?

3. MONITORING

Introducing monitoring process

The identification and documentation of a segregation case are two fundamental steps towards the final reporting of the case. They offer the first picture of the case.

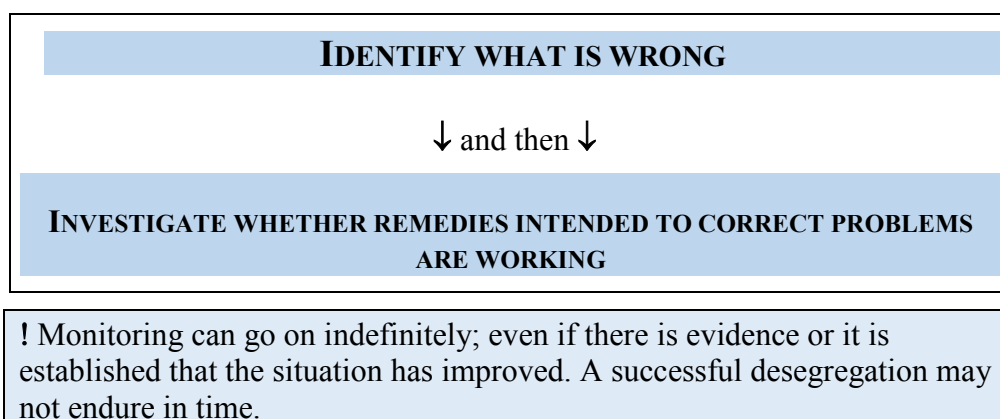
The segregation picture, though, is not static. Stakeholders are invited to keep track of a segregation case in order to not miss important changes and to take advantage of these changes when possible.

This moving picture can be captured *via* the monitoring process. What monitoring consists of is the close observation and analysis of a given situation over a long period of time, to see whether human rights standards are met. Its purpose is to provide a basis of action in view of a specific segregation case.

The object of the monitoring process

The monitoring process can be conducted on the basis of two axes. It can either focus on the violations of the Roma's right to education and non-discrimination or on the State's efforts to progressively realize the enjoyment of those rights.

In order to monitor a segregation case, stakeholders are invited to:



What to monitor

Theoretically, every change may affect the identity of the segregation case. Stakeholders may, *inter alia*, study:

- Changes in school personnel.

EXAMPLE

If the school director changes, it is worth exploring if he/she is more favourable to desegregation.

- Action plans of government organs from the national to the local levels: Such action plans can be studied to see if laws, policies and programs are implemented as intended. The various benchmarks set as targets, can be used by the stakeholders as standards for monitoring the achievements of the relevant authorities.

EXAMPLE

The Greek National Action Plan for Human Rights includes a program on the New School (School of the 21st century) aiming at the integration in primary education of socially excluded and vulnerable groups¹⁵⁵. The implementation of the program is ongoing. Stakeholders are invited to evaluate its implementation in order to study its impact on desegregation.

- Execution of the ECtHR's judgments.
- Conduct of investigation by competent authorities.

EXAMPLE

On February 22, 2011 the Deputy Prosecutor of the Supreme Court (Areios Pagos) communicated to the Prosecutors of Appeals Courts the complaints addressed by Organizations and Communities in Cooperation for Roma Human Rights in Greece regarding the exclusion of Roma children from public education. According to the complaint, 6 schools of primary education were attended exclusively by Roma pupils. In five areas access to schools was denied. Furthermore, in 10 Roma communities access to schooling was not feasible because of the lack of transport which, by law, had to be provided by the Municipality. Moreover, according to the complaint the Parents' Associations of schools in the city of Lamia was collecting signatures requesting the exclusion of Roma children or their transfer to other schools. The Prosecutor requested that prosecutors of all instances are informed of the complaint and take action to combat the negative perception of Roma children and ensure their, unhindered and without discrimination, equal integration in all State structures. On March 15, 2011 the Office of the Public Prosecutor of Amfissa sent a letter to the Public Prosecutor of Areios Pagos stating that after having conducted an investigation no similar incidents were certified concerning the children of the three Roma encampments in Amfissa.

How to monitor

It is necessary that stakeholders undertaking monitoring regularly produce information, in the form of reports. A tool, such as a recording format or survey, is used to collect data that can measure the performance of the State. Those instruments detail the events or findings in a given period and provide an overall assessment, indicating whether there are changes from one period to another, such as improvement or deterioration of the situation.

Data analysis can also be useful. It can either reveal problems or signs of improvement that are not identifiable at first glance or present the findings in a more visible and convincing manner. A wide range of tools and techniques of data analysis can be used, namely: time series, use of charts or plots, and cross-tabulation.

¹⁵⁵ Greece, National Action Plan for Human Rights, March 2014, p. 146.

4. REPORTING

Introducing the reporting process

Reporting is an essential element of the *lato sensu* monitoring function, because without it, the best documentation process can be useless. Reporting may be *internal* or *external*. Internal reports are those which are produced by the field operations staff for use within the operation/organization only. External reports are those which are produced by the field operation stakeholders, for a wider distribution to third parties, namely international human rights monitoring bodies, the international community, the media or general public, state authorities and judges. The guide focuses on the external reporting.

General principles on human rights reporting

There are a number of main guiding principles that stakeholders should keep in mind when reporting segregation cases:

1. ACCURACY AND PRECISION

Reports cannot be prepared unless they are produced on the basis of verified information. This is why the first step in preparing a report is to verify the information received. A report cannot be based on rumour or unverified information. A clear distinction must be made between facts, on the one hand, and rumours, hearsay and allegations, on the other.

2. RESPONSE-ORIENTED

It is useful to produce report on the basis of a reporting form with predetermined questions-points. A response-oriented report can be specific enough to ensure that different people writing about different incidents will write the same type of information, in the same way and employing the same terminology. It also guarantees that all relevant questions are treated.

3. IMPARTIALITY

While preparing a report, you are invited to refrain from advancing a particular agenda. A report has to state facts, not the views of its writer. It goes without saying that reporting segregation case must also be done without discrimination as to nationality, race etc.

4. PROMPTNESS

The report should be produced promptly. Promptness guarantees the effectiveness of the operation in raising concerns with the authorities.

5. ACTION-ORIENTED

The report should be action-oriented, stressing recommendations for actions that should be taken.

How to write a report

Reporting forms - as the one proposed in Annex 3 - includes the main topics to be covered by an external report. As a general rule a report must:

- 1. accurately identify patterns of segregation, and,**
- 2. offer sufficient evidence to be able to present a powerful case.**

It should be stressed, though, that not all reports have the same recipients. Depending on who the main recipient of information is, reporting should - even slightly - differ.

EXAMPLE

In the case of legal documenting/reporting you need to highlight the evidence gathering component and the means to show the law was broken.

IV. NATIONAL SPECIFIC SUBJECT

The historical record provided by three ECtHR judgments analysed in previous chapters - and the overall picture reflected by recent FRA statistics - revealing 35% segregation in mainstream schools attended by Roma¹⁵⁶ - do not necessarily allow for optimism..

The ‘Education of Roma Children’ Programme supervised by the National and Kapodistrian University of Athens and the ‘Roma Children in Macedonia and Thrace’ Programme supervised by the Aristotle University of Thessalonika, are two ongoing initiatives which *inter alia* aim at combating school segregation directed against Roma children.

On 26.11.2013 the Ministry of Education issued a circular on the School attendance of Roma children for the implementation of the aforementioned programmes. The circular also reproduces specific guidelines for other measures that should be taken in order to avoid segregation.

4.1. General measures

In Greece, against the fact that exclusion of Roma students from ordinary schools, segregation and marginalization are prohibited by law, in many cases school directors deny their involvement alleging insufficiency of space, lack of teaching personnel, as well as over-numbered classes.

The aforementioned circular does not simply invite school directors to avoid such practices, but also to encourage the attendance of Roma children. Both school directors and directors of the educational departments have to identify Roma children living in their region and take all necessary actions in order to guarantee full enrolment.

As far as their school registration is concerned, the Ministry of Education stresses that Roma children must be accepted in pre-school and primary education, even if they are unregistered or they do not possess a certificate of permanent residence.

The absence of permanent residence can be a common characteristic for Roma population, which may regularly move between different regions of Greece. This is the reason why the circular provides for the supply of the “Student Card”. Once a Roma student is enrolled in any educational structure, he/she is provided with a card which indicates his/her personal information and certifies their schooling in a specific structure. In case of sudden change of residence, this card allows for the automatic registration of the student in a new school. This procedure may be repeated unlimitedly during the school year.

The “Student Card” follows the rather successful pattern of the “Travelling Student Card”, which was first implemented in 1997. Possessing such a card, a Roma student could enrol in different schools around the country without any further documentation. This single document bypassed former enrolment problems consisting of keeping track of medical certificates and vaccinations. Initially, the Ministry of Education reported having issued 1,260 cards during the school year 1997-1998. Sadly, a research conducted by the University of Thessaly in 2007, recorded that out of 7,991 identified Roma students around the country, only 76 had used this card.

It should not be neglected that segregation is often the result of harsh reactions of non-Roma parents and parents’ associations against the enrolment of Roma children due to fears and prejudices concerning their health status. In some cases, the enrolment of Roma students cannot be

¹⁵⁶ FRA, *Education: The situation of Roma in 11 EU Member States. Roma Survey - Data in Focus* (forthcoming in 2014).

assured due to their non-vaccination. School directors are urged to contact the health services involved in order to schedule the necessary health exams and vaccinations.

4.2. ‘Education of Roma Children’ and ‘Roma Children in Macedonia and Thrace’

Both the basic aspiration and the objective of the two ongoing university programs on Education of Roma children, is the inclusion of Roma children in the “official school” and not in an “antechamber” destined for Roma students exclusively.

Both programs recognise that the education of this social group is determined -or even predetermined- by a rather “explosive” general context connected to serious problems in housing, health services and work, as well as to linguistic heterogeneity.

The basic pillars of these initiatives, which concern segregation issues, are summarized as following:

- Enforcement of the access of Roma children to preschool education. As a general rule, access to preschool education has not only a self-value but also supports the future integration in primary education.
- Linguistic and educational promotion of Roma students, inside or outside the class. The function of two institutions is crucial in this direction: the “Reception Classes” and “Supportive Teaching”, where personalized education is provided in order to respond to cognitive weaknesses. Summer classes are also scheduled in order to facilitate the transition from primary to secondary education.
- Guarantee the access to “Second Chance Schools” or adult education institutes set up by the Ministry of Education under the “Lifelong Learning Program”. Social assistances and mediators are invited to assess the educational needs of Roma students.
- Promotion of multi-cultural and inter-cultural training of teaching staff. There are two kinds of training: one addressed to Education (higher) officers and members of the supportive network in the Prefectures and another, distant-training *via* e-classes.
- Providing with psychosocial support both to Roma community (students and parents) and education professionals in order to improve effective communication, mutual understanding and expression of emotions. Understanding and optimizing differences is another important key-element.
- Interaction between school, family and local society. A very important objective is to keep record of the general Roma as well as the student Roma population of each region. There are municipalities in Greece, which do not recognize that Roma reside in their territory.

4.3. Evaluation

The aforementioned programmes along with the other measures included in the recent circular of the Ministry of Education, do not imply that the fight against segregation is a successful one. Besides, the evaluation and the effectiveness of the university programs will be considered in the future.

The presentation of these measures, here, firstly demonstrates that segregation is an existing situation in Greece which demands drastic solution. Secondly, it underlines the fact that, this time,

Greece is waiting and has to prove the effectiveness of the new ongoing actions¹⁵⁷. Such effectiveness has not been the case up until now.

The very recent report on the implementation of the “EU Framework for National Roma Integration Strategies” observes that the first signs of improvement in the lives of Roma are slowly starting to show. This is an overall assessment. As far as the Roma education issues in Greece are concerned, the report is rather reserved¹⁵⁸, assuming that Greece will need to put in place stronger measures to end and reverse the situation through a quality, accessible and mainstream inclusive education system.

However, it should be stressed that both the ‘Education of Roma Children’ Programme as well as the ‘Roma Children in Macedonia and Thrace’ Programme are noted as “promising practises”, which include many innovative aspects that may improve school attendance rates. It is also reported that a centre in Volos had first-rate results at getting children to attend school, among other things. Besides, thanks to these programmes, the Greek government has been able to have a record of the Roma communities, issue official papers like identity cards and vaccination records for children¹⁵⁹.

¹⁵⁷ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=sampani&StateCode=&SectionCode=

¹⁵⁸ European Commission, *Report on the implementation of the EU Framework for National Roma Integration Strategies*, COM(2014) 209 final - 2.4.2014, p. 3.

¹⁵⁹ European Commission, *The European Union and Roma-Factsheet, Greece*, 4.4.2014.

V. RECOMMENDATIONS ON PREVENTING AND COMBATING SCHOOL SEGREGATION

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

PROMOTE INCLUSION IN THE EDUCATION SYSTEM

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

GENERAL MEASURES TO ADDRESS SEGREGATION¹⁶⁰

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

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

- Action plans to promote inclusion, based on in-depth analyses of the factors contributing to segregation, with appropriate financial, legal and administrative steps toward desegregation.
- Governments have to be committed to providing the extra funding needed for inclusive quality education for Roma children.
- Consideration of legislation committing to the gradual elimination of segregated education and the introduction of an inclusive system. Legislation needs to prohibit segregation of children on the basis of ethnicity.
- National information and monitoring systems to track school placements in the future to ensure that they sustain inclusive practice. Monitoring and evaluation of programmes to promote inclusion should also be undertaken. The findings of such research and data will build a better understanding of the strategies that work most effectively and can be replicated. It will also highlight those initiatives that fail, providing vital insights to help target policies and investment more efficiently.

¹⁶⁰ The following recommendations are extracts from the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

- Consideration could be given to developing a set of indicators for monitoring segregation, taking into consideration proportions of Roma and non-Roma in a region, in classrooms, mainstream schools and special schools. Where it is impractical to gather ethnic data, proxy measures, such as socio-economic status, should be developed and used as the basis for indicators. Baseline data should be gathered and used as the basis for regular updates.
- Introduction of accessible complaints mechanisms for Roma families so that they can challenge inappropriate placement of their children in segregated schooling, discriminatory actions and other barriers to realizing their rights¹⁶¹.

ELIMINATION OF SEGREGATION BETWEEN SCHOOLS¹⁶²

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

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

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

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

¹⁶¹ Idem

¹⁶² The following recommendations are extracts for the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

Roma communities in order to narrow the socio-economic and cultural gaps that entrench prejudice and xenophobia between Roma and non-Roma communities¹⁶³.

ELIMINATION OF SEGREGATION WITHIN SCHOOLS¹⁶⁴

Efforts are needed to ensure that Roma children are not segregated into separate classes, based on assessments of academic ability or attainment, and in which they are simply taught a remedial curriculum. They should be educated within the mainstream student population, with additional support teachers provided where necessary. Instruction needs to be “integrated and differentiated, whereby all students participate together in the classroom and the teacher effectively and efficiently reaches all students in a heterogeneous environment, thus avoiding the issue of placement of students in separate, special or other classrooms.”¹⁶⁵ Accordingly, action is needed to:

- Include a commitment to inclusive classroom teaching in the national action policy and plan on inclusion.
- Develop municipal policies for inclusive classroom environments. schools, teachers, municipal officials, school
- Administrators, Roma parents and children, as well as other stakeholders should be involved in that process.
- Provide support within mainstream classes to Roma children needing additional assistance.
- Monitor schools on a regular basis to ensure that segregation is not taking place, either formally or informally. Monitoring should involve Roma parents to ensure that systems are transparent and accountable to them and their children.
- Achieving comprehensive desegregation will necessarily take a number of years to implement. Accordingly, in schools with a high concentration of Roma pupils, the quality of education should be improved simultaneously with the implementation of desegregation strategies¹⁶⁶.

ENDING THE PLACEMENT OF ROMA CHILDREN IN SPECIAL SCHOOLS¹⁶⁷

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

Practical measures to work towards that end should include:

- **Critical reviews of the current school entry testing systems** used to assess whether or not a child is ready to enter regular primary school. In order for testing to be fair

¹⁶³ Idem

¹⁶⁴ The following recommendations are extracts for the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

¹⁶⁵ Idem

¹⁶⁶ Idem

¹⁶⁷ The following recommendations are extracts for the UNICEF publication “The Right of Roma Children to Education: Position Paper. Geneva: UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEECIS), 2011, available at the UNICEF CEECIS website at www.unicef.org/ceecis .

and accurate, both the testing commissions and criteria need to be reformed in order to eliminate biases and take account of differences in language, socialization, and experience.

- **Remove the financial incentives for special school placements.** The financial benefits that accrue to children with disabilities can and do serve as an incentive for parents to support their child's assessment for a special school placement. It is imperative that public policy should not promote socio-economic incentives that encourage parents to accept a lower quality education for their children. However, measures taken to address the problem should enhance choice rather than reduce it, and not penalize parents. Governments should conduct analyses of the incentives and reasons parents have for sending their children to special schools, and use the findings to help construct appropriate solutions. One approach might be to introduce the same benefits for placing students in mainstream schools as they would receive for attending special schools, such as providing free transport and free school meals.
- **Opportunities for reassessment.** Where children have been placed inappropriately in special schools, mechanisms should be in place to enable them to be reassessed and placed in a mainstream school.
- **Involve all stakeholders.** As with all initiatives, efforts to reduce the number of Roma children in special schools should be done with the cooperation of all stakeholders and with adequate funding, clear policies and guidelines. Policies can be developed to help integrate teachers from special schools into the mainstream schools, perhaps having them help with the integration of new students transferred from special schools. Special schools can also be transformed into resource centers for mainstream schools, providing expertise and support. Municipalities and the central government need to work with the teachers to ensure that most of them will be able to access gainful employment afterwards¹⁶⁸.

Specific recommendations at national level in Greece

TWO PRELIMINARY REMARKS should be made:

- Segregation is a structural dysfunction that requires a structural solution.

We cannot therefore be contented with checklists of good policies. Nor can we be complacent with policies that focus narrowly on desegregation. Segregation is a school-internal dilemma but the fight against it must not be exclusively located within school borders.

What is needed is a fundamental culture shift: Recognition and respect of cultural distinctiveness and recalibration of Roma cultural distinctiveness as a positive value. This assumes and requires a profound confrontation of racism and stereotypes.

Without this mentality shift, actual or future policies will continue to fail¹⁶⁹.

- Some of the recommendations listed here may sound familiar to knowledgeable -on segregation issues- stakeholders. Besides, we have already seen the measures they imply in varying degrees and combinations in Greece.

Grouping them here has, of course, a value *per se*. On the contrary, their simple inclusion in legislative texts or circulars and their plain declaration by the State has not anymore a value *per se*.

Indeed, the measures and policies recommended must be implemented. They do not simply imply an obligation for action but an obligation for effectiveness. This includes an obligation for an *ex post* impact assessment.

¹⁶⁸ Idem

¹⁶⁹ Fox and Vidra, *op. cit.*, pp. 32 *et seq.*

SPECIFIC RECOMMENDATIONS for preventing or combating segregation:

- Clear and unequivocal commitment by policy-makers and high level officials towards desegregation as part of social inclusion;
- Provide universal access to inclusive pre-school education;
- Eliminate every financial and administrative obstacle to the access of Roma children to education;
- Undertake a critical review of the school entry requirements which might have a discriminatory impact on Roma children;
- Take all appropriate measures to combat absenteeism and drop-outs among Roma children;
- Combat anti-Gypsyism, especially at school:
- *General Policy Recommendation No 13 from the European Commission against Racism and Intolerance* provides useful guidance on this;
- Special care for financing schools' infrastructures in socio-economically deprived areas;
- Intercultural education on a large scale:
- Adopt a curriculum of intercultural education in schools with a sizeable Roma presence. Such a curriculum must be combined with extensive training for majority teachers, hiring of and training for Roma teachers, and the development and dissemination of teaching materials across a range of subjects;
- Include teaching on the Roma genocide ("Parrajimos") in school curricula;
- Bussing to take Roma children to and from majority schools on a regular basis:
- Used effectively, bussing cannot only facilitate integration; it can also reduce absenteeism. If it is to be used to redress segregated imbalances, it must first win the support of the majority community and the Roma;
- Generalisation of the recruitment of cultural mediators:
- Young women from the Roma community can be recruited to accompany children from and to school. This allows for the trust of parents who might be reluctant to send kids to school. What is also important is that they help teachers understand the specific Roma cultural and educational needs and they facilitate the integration of Roma children in the classroom;
- Improve information to the Roma parents on the choices that are available and the consequences of placement in remedial education;
- Take immediate and urgent measures once a segregation case arises:
- These include legal and political measures, 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;
- Combat, through sanctions, the harassment inflicted on Roma pupils at school;
- Ensure that a large number of Roma join the teaching profession to aid the school integration of Roma children;
- Support comprehensive plans for integration activities at a local level.

Annex 1

Interview Template

Branch office: _____

Name of interviewer: _____

Date of interview: _____

Case title

1. Information on the interviewee:

Full name:		Sex (M/F):
Nationality:	Ethnicity:	
Place of birth (village, district, country):	Date of birth:	
Profession/Title:		
Address:		
How is the source connected to the victim and/or the case:		

2. Incidents:

Incident	Victim	School/Class	Responsible authority	Date
i.e. problems while enrolling the child / forced change of school/interruption of bussing				

Place where the case is reported (province, district, village or town):

Type of segregation:

Inter-school segregation

Intra-school segregation

Intra-class segregation

Other: _____

Date the segregation started: _____

Total number of segregated Roma children: _____

How and when do the interviewee get to know about the case: _____

He/She is aware that the incident is a segregation case

Reason of the segregation: _____

Other abuses or discriminatory practises: _____

3. Information on victims:

3.1 The group

Characteristics of group: Nationality: Age:

School:
Class:
Location or address of group:
Number of members:

3.2 Individuals (repeat for each one)

Full name:	Sex (M/F):
Nationality:	Ethnicity:
Place of birth (village, district, country):	Date of birth:
Grade of Education:	
Address:	
How did the victim get to know about the segregation:	
Is the victim aware of that the incident is a segregation case:	

4. Information on school/class:

Name of School/Class:
Name of Director and/or teacher:
Number of Roma students:
Number of non-Roma students:
Precedents of segregation/desegregation:

5. Case description (what the segregation consists of): _____

6. Consequences of segregation for victims:

6.1. School change

Interruption of education

Lower quality of education

Other: _____

6.2. Practical difficulties: _____

Psychological consequences: _____

Social disadvantages: _____

Professional integration: _____

7. Interventions or actions

What interventions were made, what action was taken? By whom, when?

Response of the authorities? Impact?

8. Consent of the sources and confidentiality:

May the *information* be communicated to the media or the authorities? _____ (yes/no)

May the *source's name* be communicated to the media or the authorities? _____ (yes/no)

Comments: _____

Annex 2

Case Summary Form

This event was documented by:

Branch office: _____

Name of field monitor: _____

Date filled in: _____

Case title

Place where the case is reported (province, district, village or town):

Type of segregation: _____

Date the segregation started: _____

1. Related incidents:

Incident	Victim	School/Class	Responsible authority	Date

Total number of segregated Roma children: _____

Other abuses or discriminatory practises: _____

2. Case description:

3. Consequences of segregation for victims:

4. Information on victims:

Characteristics of group: Age: School: Class:
Location or address of group:
Number of members:
How did the victims come to know about the segregation:

5. Information on school/class:

Name of School/Class:
Name of Director and/or teacher:
Number of Roma students:
Number of non-Roma students:

6. Information on sources:

A. Fact-finding mission report _____

Media information _____
Official reports _____
Court records or police records _____
Reports from other NGOs or IGOs _____
Academic writings _____

B. Interviews
Number of interviews: _____
No of Written Statements-Interview Template: _____

7. Interventions or actions
What interventions were made, what action was taken? By whom, when?

Response of the authorities? Impact?

What further interventions should be made? By whom?

What further information should be collected? By whom?

Annex 3

Case Reporting Form *

Date of the report: __/__/__

Case Report Number: _____

Preparing Officer(s) _____

Area office _____

A. Summary of the case based on all available information:

(Note the details, including the places, dates, circumstances, etc.)

B. Identification of the witnesses/interviewees:

(List all witnesses)

Surname: First name(s):

Interview Template Number and Date of Interview:

Reliability of Information:

C. Victims

1. Characteristics of group:

Nationality:

Age:

School:

Class:

Location or address of group:

Number of members:

2. Information on individuals (repeat for each one of them):

Full name:

Sex (M/F):

Nationality:

Ethnicity:

Place of birth (village, district, country):

Date of birth:

Grade of Education:

Address:

Other comments/information about the victims:

D. Incident

1. What happened to the victims specified above - Recitation of the facts:

2. Type of segregation:

3. Reason of segregation:

4. Violation (please specify briefly the elements of the violation and nature of person responsible):

5. Date/period of segregation:

6. Place (province, district, village or town):

7. Other abuses or discriminatory practises:

* Please use supplementary sheets, if there is insufficient space. Also use supplementary sheets for any additional information not included in the questions -- indicating the source of information. This form has been prepared for a single segregation case.

8. Consequences of segregation for the victims:

E. School

1. School and class details:
2. Responsible director or other responsible authority:
3. Number of Roma students:
4. Number of non-Roma students:
5. Precedents of segregation/desegregation:

F. Various information

1. Has the witness, the victim, and/or someone else reported the case to the authorities? If yes, who and to which authorities (i.e. police / judicial authorities / prosecutor / ombudsman / other)?
2. Was there any response or action by the authorities?
3. Has a witness and/or victim reported the case to a nongovernmental organization or other intergovernmental organization? If yes, who to what NGO/IO?
4. Did the above organization(s) take action?
5. Does the victim/source of information/witness agree that their names may be cited or that the given information may be used for steps with the authorities or may be disclosed in public reports?
6. What action has been undertaken by the observer with the authorities responsible for the violation?
7. Response given by the authorities (authorities responsible for the violation and other authorities).
8. Are documents annexed to this report? If yes, please specify.
9. Status of case:
10. Other comments:

G. Recommendations

1. Recommendations for action by the School authorities:
2. Recommendations for action by National Authorities:
3. Other Recommendations:

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