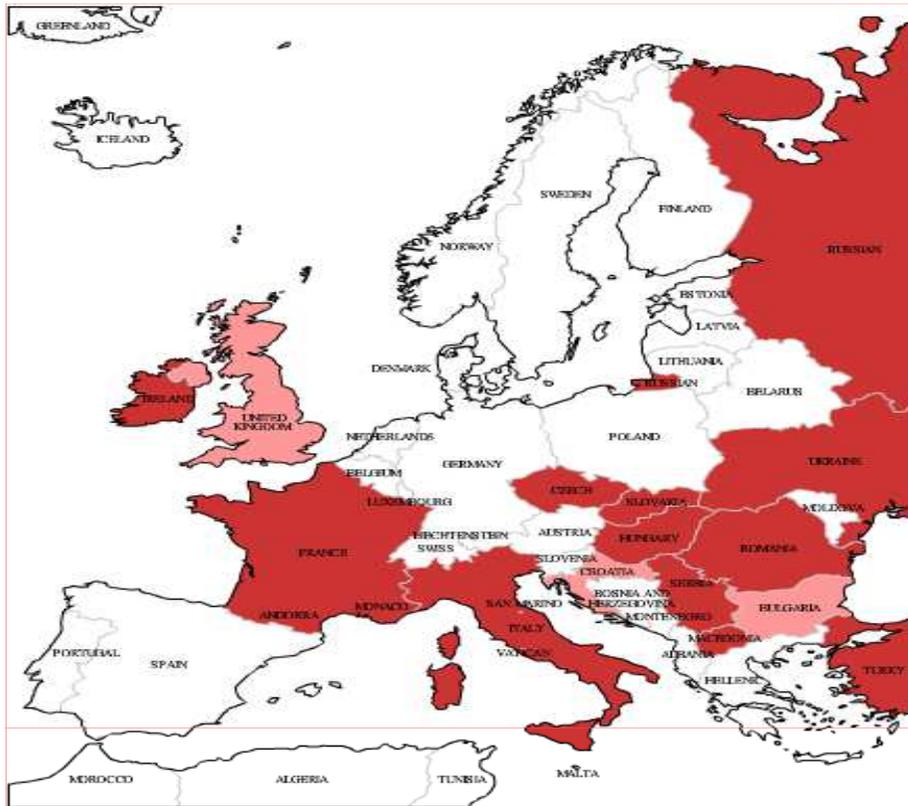


Access to education and school segregation of Roma children

A European perspective of law and practice addressing school segregation



- ERRC is currently litigating in 11 jurisdictions challenging aspects related to housing, violence, police brutality, identity documents, free movement, education, public services:
 - Slovakia, Hungary, Romania
 - Serbia, Macedonia, Turkey
 - Italy, France, Ireland
 - Ukraine, Russia

- The European Roma Rights Centre (ERRC) is an international human rights law organization that fights discrimination against Roma through:
 - strategic litigation
 - research and advocacy
 - human rights education
 - and media and communication activities
- ERRC involved in segregation cases before the ECHR (Czech Rep., Croatia, Hu)
- ERRC is supporting Roma individuals in litigating human rights violations in 66 pending cases
- 50 are before the domestic Courts and 16 before the ECHR and the ECSR. ERRC is currently developing new litigation in 45 potential cases and is currently following up the implementation of final judgments in a further 7 cases.



School segregation of Roma children in Europe: patterns

- Segregation between schools (where most Romani children attend Roma-majority schools) (Bg, Sk, Cyp, Gr, Hu, Ro, Tr)
- Segregation within schools (when in mainstream education Romani children are separated from the others in classes and other facilities) (Cro, Sk, Bg, Gr, Mk, Ro)
- Segregation into special schools, including schools for children with mild intellectual disabilities (Cz, Sk, Bg, Hu, Mk, Pl)



Defining school segregation as a form of discrimination

- The UNESCO Convention against Discrimination in Education
- “Discrimination includes any distinction ... which, being based on race, colour... national or social origin, economic condition... , has the purpose or effect of nullifying or impairing equality of treatment in education and in particular... establishing or maintaining separate educational systems or institutions for persons or groups of persons...” (Article 1)
- International Convention on the Elimination of All Forms of Racial Discrimination
- 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 (Article 3)
- CERD XXVII: recommends “to prevent and avoid ... the segregation of Roma students”



Defining school segregation as a form of discrimination

- Council of Europe
- Committee of Ministers Rec. 2000/4: “creation of separate classes” for Roma children
- ECRI Rec. no. 7/ 2002 “Segregation is 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...”
- Committee of Ministers Rec. 2009/4: “de facto segregation of Roma children based on their racial or ethnic origin”, “assessment procedures that result in risks of enrolling children in special-education institutions based on linguistic, ethnic, cultural or social differences”
- OSCE Action Plan on Roma and Sinti, 2003
- “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 children)”
- EC, EU Framework Roma strategies
- Roma children over-represented in special education and segregated schools.



Defining school segregation as a form of discrimination

UK and Ireland: racial segregation constitute 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.

- Croatia: The Constitutional Court 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

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: the National Discrimination Tribunal considered that segregation constituted a form of discrimination

Denmark: the Complaints Committee for Ethnic Equal Treatment stated that the segregation of Roma children is not in accordance with the equality law.



Defining school segregation as a form of discrimination

Bulgaria: Racial segregation shall mean issuing an act, performing an action or omission to act, which leads to *compulsory* (emphasis added) separation, differentiation or dissociation of persons based on their race, ethnicity or skin color’.

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.

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.



European case law addressing segregation

- Children who failed their class year were placed in special schools following a decision taken by the teacher or on the basis of tests
- Children were diagnosed with mental disabilities and put in separate “remedial schools”
- Despite the fact that several communities were living in the same proximity thus children should be mainstreamed in the same school Roma children were placed in a school with Roma only students
- Roma children were placed in separate classes, in a facility built next to the main school building, following protests from parents of non-Romani children
- Romani children were placed in Roma-only classes with reduced curricula considering that they had an inadequate command of national language, in context of non-Roma parents objections

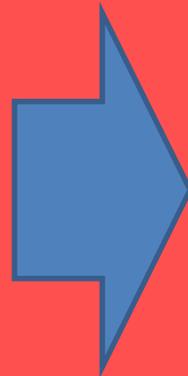


European Court of Human Rights case law

- **DH v. Czech Republic (2007)** → • **Enrolment in special school institution**
- **Horvath/Kiss v. Hungary (2013)**
- **Lavida v. Greece (2013)** → • **Enrolment in separate school**
- **Sampanis v. Greece (2008)** → • **Enrolment in separate school facility**
- **Sampani v. Greece (2012)**
- **Orsus v. Croatia (2010)** → • **Enrolment in separate school class**

School segregation of Roma children

- **Vulnerable and disadvantaged minority**



- *Separating Roma vs. including Roma*

- **Consideration**
- **Protection**
- **Attention to needs**
- **Measures to correct**
- **Specific safeguards**
- **Positive measures**
- **Specific positive obligations**

European Court of Human Rights case law

Protection

- The European Court notes in its case law that the vulnerable position of Roma/Gypsies 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.
Chapman v. the United Kingdom



- Considering that Roma have become a specific type of disadvantaged and vulnerable minority they require special protection. (...) this protection also extends to the sphere of education. *D.H. and Others v. Czech Republic*

European Court of Human Rights case law

Safeguards

- Given the Roma community's vulnerability, which made it necessary to pay particular attention to their needs, and considering that Article 14 required in certain circumstances a difference of treatment in order to correct inequality, the competent authorities should have recognised the particularity of the case and facilitate the enrolment of the Roma children, even if some of the requisite administrative documents were not readily available. (Sampanis v. Greece)
- The Court considered that while temporary placement of children in a separate class on the grounds of language deficiency was not, as such, automatically contrary to Article 14 of the Convention, when this affects exclusively the members of a specific ethnic group, specific safeguards had to be put in place. (Orsus v. Croatia)

European Court of Human Rights case law

Positive obligations

- The Court reiterates that the word “respect” in Article 2 of Protocol No. 1 (State shall respect the right of parents to ensure ... education) means more than “acknowledge” or “take into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. *Lautsi and Others v. Italy*
- In the context of the right to education of members of groups which suffered past discrimination in education with continuing effects, structural deficiencies call for the implementation of positive measures in order, *inter alia*, to assist the applicants with any difficulties they encountered in following the school curriculum.
- These obligations are particularly stringent where there is an actual history of direct discrimination. Therefore, some additional steps are needed in order to address these problems, such as active and structured involvement on the part of the relevant social services. (*Orsus v. Croatia*)
- States have specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests. (*Horvath and Kiss v. Hungary*)

The Romanian equality body tackling segregation

Segregation as a form of discrimination

- Decision no. 218 din 23.06.2003 Scoala Cehei
- Decision no. 75 din 02.03.2006 Scoala Macin
- Decision no. 103 din 24.05.2007 Grup Scolar Auto Craiova
- Decision no. 356 din 27.08.2007 Scoala Glina
- Decision no. 338 din 03.09.2007 Liceu Sportiv Roman
- Decision no. 306 din 13.05.2008 Scoli Acas, Cidreag
- Decision no.330 din 27.03.2008 Scoala Atid
- Decision no. 733 din 11.06.2008 Scoala Dumbraveni
- Decision no. 530 din 03.11.2009 Scoala Hărăngla
- Decision no. 209 from 04.07.2012 Scoala Luceafarul
- Decision no. 559 from 12.12.2012 Scoala Ionita Asan

- Overcoming shortcomings
- Absence of a legal definition and legal consequences in the equality law
- Definition only in secondary legislation
- Developing a substantive approach
- Shift from looking into different physical conditions to principles behind separation
- Considering the best interest of the child vs. pedagogical principles
- Incorporating the principles set by the ECHR in national case law
- Shift from indirect discrimination to direct discrimination
- Shift from warnings to fines
- Influencing the national policies on access to inclusive education for Roma children