

## SEGREGATION IN EDUCATION – WHAT SHOULD STATES DO?

**Our brief overview for local and national authorities, NGOs and activists on the key international legal standards where Romani children are segregated from non-Romani children in schools**

Please note: This factsheet does not deal with the common situation where Romani children are misdiagnosed as having special educational needs and segregated on that basis. The ERRC has published a separate factsheet on this.

### **A: BASIC FACTS ON SCHOOL SEGREGATION OF ROMA CHILDREN:**

1. There is no agreed definition of school segregation in European law.
2. The only international instrument which explicitly prohibits school segregation based on race is Convention against Discrimination in Education. However, there are many other instruments which prohibit it implicitly, including, for example, the European Convention on Human Rights (Article 2 of Protocol 1 taken with Article 14) and EU Directive 2000/43 (which prohibits discrimination in education).
3. “Residential school segregation” means the involuntary separation of Roma children from the non-Roma children on the basis of their place of residence. Other types of school segregation include class-level segregation and building level segregation.
4. School segregation constitutes direct discrimination when Romani pupils are treated less favourably than non-Romani pupils on the basis of their ethnicity. When segregation putting Romani children at a disadvantage is the result of a neutral policy, practice or criterion (that is, one that is not based on race), it amounts to indirect discrimination, unless it is justified by a legitimate aim and is proportionate. It can be hard to prove direct discrimination, but easier to prove indirect discrimination, particularly if there are statistics.
5. It is not possible to “consent” to discrimination: if, for example, a parent explicitly agrees to send a child to a segregated school, that child can still be a victim of State-sponsored segregation.<sup>1</sup>
6. If authorities place Romani children in separate schools on the basis of other peoples’ racism (e.g. because the parents of non-Romani children do not want Romani children in the school), that can still amount to direct discrimination.<sup>2</sup>
7. Violation of the right to education hinders the realisation of other rights such as right to vote.

### **B: STATES’ OBLIGATIONS (A NON-EXHAUSTIVE LIST)**

8. States must ensure that education is accessible to all, especially the most vulnerable groups (without discrimination).<sup>3</sup>
9. States must abolish laws that provide for segregated schools<sup>4</sup>
10. States must closely monitor education so as to identify and take measures to redress any de facto discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination, including race, to make it possible to determine whether segregation is taking place.<sup>5</sup>
11. States have the obligation to guarantee to all that the right to education will be exercised by everyone without discrimination of any kind.<sup>6</sup>
12. States have the obligation to take positive steps to tackle structural deficiencies and assist Romani children when there is a history of past discrimination (especially direct discrimination) in with continuing effects in the education system.<sup>7</sup>

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1 D.H. v Czech Republic, § 204.

2 Sampanis v Greece, § 82.

3 General Comment no. 13, Committee on Economic, Social and Cultural Rights, article 6 (b)

4 Convention Against Discrimination in Education, Article 3(a).

5 General Comment no.13, §. 37.

6 Ibid, para. 43

7 Horvath and Kiss v Hungary, § 104.