

European Roma Rights Centre

THE IMPACT OF LEGISLATION AND POLICIES ON SCHOOL SEGREGATION OF ROMANI CHILDREN



**A Study of Anti-Discrimination Law and Government Measures to
Eliminate Segregation in Education in
Bulgaria, Czech Republic, Hungary, Romania and Slovakia**

The Impact of Legislation and Policies on School Segregation of Romani Children

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ERRC

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The study builds on previous ERRC research in the five countries which documented existing patterns of segregated education and explored the impact of legislative and policy frameworks on school segregation of Roma. The documentation collected in previous years was updated to include policy developments, especially in the period 2003-2006, as well as recent field research findings based on testimonies of Romani parents, children, teachers and educational administration authorities at central and local levels of government. The study also uses ERRC legal databases.

Savelina Danova/Roussinova compiled and expanded the research material, and produced the final version of this study. Vera Egenberger, commented on and edited the final version. Claude Cahn and Dimitrina Petrova read the study and provided comments. Lilla Farkas, attorney at the Budapest-based Chance for Children Foundation, read parts of the study, commented and provided additional information.

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EXECUTIVE SUMMARY

1. Segregated education of Roma remains a prevalent feature of the educational systems in Bulgaria, Czech Republic, Hungary, Romania and Slovakia. This situation has been repeatedly condemned by human rights bodies supervising state's compliance with international human rights laws as well as by public institutions at national level which monitor human and minority rights. More recently, in some countries, national courts implementing newly adopted anti-discrimination legislation, have ruled against segregated educational facilities finding them in breach of the ban on discrimination and segregation in education.
2. Existing legal and policy tools, including targeted actions on Roma education, in the five countries subject to this study, are not effective in challenging ingrained patterns of school segregation. Neither anti-discrimination laws nor other relevant legislation require public authorities to undertake specific actions to eliminate segregation in education; such actions are minimal or entirely absent in some countries. Where desegregation initiatives exist, their implementation is contingent upon endorsement by local educational institutions whose decisions are sometimes informed by public pressure to preserve segregated education. Lack of coherence between Roma-specific measures and other policies in the field of education outweighs the potential positive effect of measures to reduce inequalities of Roma in education.
3. Although by the transposition of the EU Race Equality Directive, Member States of the EU enhanced protection against discrimination, the current anti-discrimination framework is not sufficient to challenge systemic discrimination and/or segregation of Roma in education. Anti-discrimination laws provide remedies for individuals who had suffered due to actions or inaction of an identifiable perpetrator. School segregation of Roma, however, has been shown to be the result of both individual decisions as well as the complexity of rules, practices and traditions which make up the educational systems. School segregation is not incidental, it affects large numbers of Roma in these countries. To address this systemic problem, it is not enough to bring to court a school or a school maintainer or even a Ministry of Education. A change requires proactive and long-term engagement of educational institutions at all levels to eliminate the physical separation of Roma and non-Roma; to revise educational policies and consistently monitor their impact in order to exclude the possibility of segregation in the future.
4. In recent years, inequalities facing Roma in education, including segregated education, have been given attention by governments in Central and Eastern Europe as a result of which a number of policy documents on Roma in general as well as on education in particular have been developed.

5. As of the end of 2006, however, there is no evidence that the measures implemented by governments can reverse or even challenge segregated education of Roma. Although governments have undertaken actions to address inequalities of Roma in education, in only a few instances mechanisms to remedy the problem of segregated education have been defined. Most of the Roma-specific measures in the field of education are neither aimed at nor do they result in visible reducing of the number of Romani children educated in separate school facilities.
6. Roma-specific actions in the field of education are rarely related to general educational policies; these are often stand-alone initiatives without strategic focus or systematic implementation. Due to the absence of reliable ethnically disaggregated data, there is no clear evidence what is the effect of these measures on the educational achievement of Romani children. It is likely, however, that any positive results will be short-lived as long as improvement of educational achievement is sought within the segregated settings.
7. Where specific desegregation mechanisms have been developed, their implementation is often frustrated by resistance of educational institutions at local levels to inclusive education; by insufficient government involvement to guarantee sustainable implementation; and by lack of coherence with other instruments of educational policy some of which tend to deepen inequalities in education.
8. In order to address the complexity of barriers for school desegregation and to overcome the inconsistency of current efforts to remedy inequalities in education, adoption of specific legislative measures is required. Functional and effective desegregation policies are possible through binding obligations on public authorities to eliminate segregated education and give effect to the principle of equal treatment.
9. The ERRC recommends enactment in national legislation of an enforceable statutory duty to desegregate education requiring public authorities to take specific actions and achieve measurable results. The European Union can set the legal framework for the enactment of the duty to desegregate undertaking action on the basis of Article 13 of the Treaty Establishing the European Community.

INTRODUCTION

10. The prevalence of segregated education of Roma in Central and Eastern Europe has been a concern voiced by Roma and human rights organisations since the beginning of the 1990s. Persistent patterns of school segregation of Roma have ever since been noted by a number of international institutions and organisations who called on national governments to develop policies to address this problem.
11. Racial segregation – whether by purpose or by effect of unintentional processes – is prohibited under international law as a particularly severe form of racial discrimination.¹
12. Segregated education is also a major factor for school underachievement of Roma. Research in several countries has indicated that educational provision in segregated settings is of inferior quality and multiplies social disadvantage. Recent tests conducted by the Ministry of Education and Science in Bulgaria demonstrated that, when placed in integrated education, Romani children achieve higher educational results.
13. Test results in Bulgarian language and mathematics of Romani children in the fourth grade in Roma-only schools and their peers who participated in school integration programs run by Romani non-governmental organisations, showed that in four years, Romani children in the integrated schools have accumulated serious advantages in school achievement as compared to their peers in the Roma-only schools.² For example, in Bulgarian language, the average grade for the children in the Roma-only schools in Vidin was 2.30, while the average grade for their Romani peers in integrated schools was 4.05, on a grade scale in which 2 is the lowest and 6 is the highest grade. In mathematics, the respective grades were 2.45 and 3.55. In Montana, the results in Bulgarian language were 2.85 and 4.08 respectively, and in mathematics – 3.10 and 3.69, respectively.³

¹ A detailed review of governments' obligations under international law with respect to eliminating discrimination and segregation in education is provided in the European Roma Rights Centre report "Stigmata: Segregated Schooling of Roma in Central and Eastern Europe", available at: <http://www.errc.org/db/00/04/m00000004.pdf>.

² School desegregation projects in Bulgaria were initiated and carried out by Roma-led non-governmental organisations in 2000, with the support of the Open Society Institute Roma Participation Program. Their goal is to ensure that Romani children from the Roma-only schools based in the Roma neighbourhoods have access to and integrate in the standard schools in each town. As of the end of 2006, school desegregation initiatives were operating in eight Bulgarian cities/towns with support from the Roma Education Fund. For more information on these initiatives, see Open Society Institute. *Roma Participation Program Reporter. Special Desegregation Issue*. August 2002, available at: http://www.soros.org/initiatives/roma/articles_publications/publications/desegregation_20020801/rpp1.pdf.

³ Balgarski Helzinski Komitet. *Pet godini po-kasno. Nepravitelstvenite proekti za desegregacia na romskoto obrazovanie v Balgaria*. Sofia, 2005, available at: <http://www.bghelsinki.org/upload/resources/06desegregation.pdf>.

14. A recent study in Hungary, concluded that, “School segregation, irrespective of the mechanism that generated it, has a significant effect on students’ development. School segregation of children from families of lower social status leads to a declining level of education in schools attended by those students. The two phenomena are connected, not incidentally but in a causal way. In a highly segregated school system, initially disadvantaged children are bound to receive lower quality education than in a less segregated school system. School segregation magnifies initial inequalities.”⁴
15. To date, physical separation of Roma and non-Roma at school remains a prevalent characteristic of the educational systems in Central and Eastern Europe. In its Resolution on the Situation of Roma in the European Union from April 2005, the European Parliament noted “the racially segregated schooling systems in place across several Member States, in which Roma children are taught either in segregated classes with lower standards or in classes for the mentally handicapped” and called upon Member States “to move forward with desegregation programmes within a predetermined period of time, thus ensuring free access to quality education for Roma children”.⁵ In 2006, the Council of Europe Commissioner on Human Rights stated that, “A particular concern is segregation in education, which, in one form or another, is a common feature in many Council of Europe member states. In some countries there are segregated schools in segregated settlements, in others special classes for Roma children in ordinary schools or a clear over-representation of Roma children in classes for children with special needs.”⁶
16. The European Roma Rights Centre has been engaged in systematic monitoring and documentation of patterns of segregated education of Roma since 1996, leading to the publication of two comprehensive studies on the problem: “Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic” (1999) and “Stigmata: Segregated Schooling of Roma in Central and Eastern Europe” (2004).⁷
17. The Stigmata report describes the most common types of segregating Romani children in educational institutions in Bulgaria, Czech Republic, Hungary, Romania and Slovakia:

⁴ Gábor Kertesi and Gábor Kézdi. *Segregation in the Primary School System in Hungary: Causes and Consequences*. Published in Hungarian in the *Közgazdasági Szemle*, Vol. 52, No. 4 and 5, 2005. Available in English at: <http://www.romaeducationfund.org>.

⁵ European Parliament Resolution on the Situation of the Roma in the European Union, P6_TA(2005)0151, recital P, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0151+0+DOC+XML+V0//EN>.

⁶ Final Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the Human Rights Situation of the Roma, Sinti and Travellers in Europe for the attention of the Committee of Ministers and the Parliamentary Assembly, Chapter III. Discrimination in Education – Unequal Access and Segregation, available at: <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=941414&SecMode=1&Admin=0&Usage=4&IntranetImage=82209>.

⁷ Available on the ERRC website at: <http://www.errc.org/db/00/23/m00000023.rtf> and <http://www.errc.org/db/00/04/m00000004.pdf>.

- Segregation in schools for children with developmental disabilities (special schools);
 - Segregation in separate classes within mainstream schools;
 - Segregation in “ghetto schools” (as a result of residential patterns; withdrawal of non-Romani children from school; or demographic changes).
18. In the last few years, inequalities facing Roma in education, and segregated education in particular, have been given attention by national governments as a result of which a number of concepts, strategies and action plans have been developed envisaging measures to address these problems.
 19. While in debates at national level stereotypical views explaining underachievement of Roma in education with lack of aspirations still prevail over a genuine assessment of the quality of education available to Roma, there is also a more rationalist streak, at least in some countries, which argues in favour of policies to improve the education of Roma from the point of view of economic efficiency.
 20. Some recent studies defend investments in the education of Roma and others in disadvantaged situations on the grounds of significant economic returns that would benefit the larger society. For example, one study in Hungary has found that “...an investment that makes one young Roma successfully complete secondary school would yield significant direct long-term benefits to the national budget. According to our benchmark estimate, discounted to age 4 (a possible starting age for such an investment), the present value of the future benefits is about HUF 19M (EUR 70,000) relative to the value the government would collect on the representative person in case if she had not continued her studies after the primary school. The benefits are somewhat smaller if (without the suggested early childhood educational investment), the young Roma person finished vocational training school (HUF 15M, EUR 55,000).”⁸
 21. The same study concluded that, “benefits would come from increased government revenues, from personal income tax and employer/employee contributions after earned income. Savings on unemployment insurance, welfare benefits and public employment projects are negligible, and savings on incarceration costs are also small. Larger value added tax benefits on consumption are also sizable.”⁹
 22. This report provides a review of government policies in the field of education which target the problems of inequality in access to education, and more specifically, segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. The report does not purport to be an exhaustive review of educational policies

⁸ Gábor Kertesi and Gábor Kézdi. *Expected long-term budgetary benefits to Roma education in Hungary*. A report sponsored by the Roma Education Fund (REF). June 2006.

⁹ Ibid.

and reforms. Each of the five countries have embarked upon complex systemic reforms to improve the efficiency and equity of education. These reforms are at different stages in each of the five countries and will affect Roma differently across countries.

23. While the effect on the education of Roma of general educational reforms undertaken in recent years, is still to be seen, it should be noted that pervasive inequalities facing Roma in education, and especially ingrained patterns of segregated education, cannot be eliminated through general educational policies alone but they require targeted long-term measures.

Purpose and Outline of the Study

24. The ERRC study is based on country-specific reviews of relevant measures to confront segregated education, compounded by field research which sought to document the current state of efforts to desegregate schools through interviews with Romani parents and children, civil society organisations, and educational authorities.
25. The point of reference for the study is a broad consensus of various actors – Roma, civil society, governments and international institutions – that segregated education is a major barrier for equal access to educational opportunities.
26. The purpose of the study has been to document the state of government actions to desegregate education of Roma as of the end of 2006. We present an overview of legislation and policy measures which are directly aimed at or may have an impact on desegregating education of Roma. We discuss the effectiveness of these policies exploring their scope, sustainability and potential to reverse segregated education. The study also includes a discussion of Roma-specific educational measures and to assesses their impact on segregated education.
27. Our primary focus is measures developed within the framework of mainstream government policies, i.e. systematic, long-term interventions which are commensurate with the scale of the school segregation problem in the respective countries.
28. The first part is a review of recently adopted anti-discrimination legislation and its potential to effect reversal of school segregation patterns.
29. The second part presents an overview of government commitments elaborated in Roma-specific policy documents and/or general policy documents in the field of education. The purpose of the review was to find out whether governments have formulated specific tasks to desegregate education; what mechanisms were proposed to fulfil these tasks; how governments assessed the impact of Roma-specific policies in the field of education. Central to the discussion about the effectiveness of current Roma-specific policies in education is the issue of their relation to the general educational policy framework of the respective country, i.e. whether Roma-specific policies exist parallel to or as a component of mainstream educational policies.

30. In the third part, we describe targeted government actions to eliminate segregation of Roma at school and discuss their impact on patterns of segregated schooling. This part includes the only existing examples as of the end of 2006 of government involvement in desegregation actions – government policy to encourage desegregation through financial incentives (Hungary) and experimental desegregation actions carried out within a Phare project (Romania).
31. In the fourth part, we present a review of policies and other measures aimed at the integration in mainstream education of children with special educational needs and we analyse their potential to challenge segregation of Roma in special remedial schools and classes.
32. The fifth part is an overview of certain common to all five countries educational measures targeting Roma and their effect on school desegregation.
33. We conclude by elaborating a recommendation for the enactment of a legally-binding duty to desegregate education by the governments of the five countries.

1. THE PROHIBITION OF DISCRIMINATION AND SEGREGATION IN EDUCATION UNDER DOMESTIC LAW

34. Among the most positive legislative developments with relevance to Roma in the recent years has been the transposition of the EU Race Equality Directive in the domestic legislation of the five countries in this study. Comprehensive anti-discrimination laws, where they were adopted, are potentially a strong tool for remedying individual victims of racial discrimination, in the field of education, among others. Anti-discrimination legal frameworks in the five countries, however, do not provide an adequate tool to challenge systemic discrimination and/or segregation of Roma in a number of fields. Non-discrimination provisions are not compounded by positive obligations on public authorities to promote equality and social inclusion.
35. This part of the study reviews relevant provisions in the anti-discrimination legislation transposing the EU Race Equality Directive which are applicable to the case of segregated education of Roma in the five countries. By way of examples from existing judicial practice challenging segregated education of Roma, we discuss the limitations of existing anti-discrimination laws.¹⁰
36. Comprehensive anti-discrimination laws transposing the EU Race Equality Directive in Bulgaria, Hungary, Romania and Slovakia enhanced and consolidated protections against discrimination and established mechanisms for their enforcement.¹¹ The EU Directive prohibits discrimination on the grounds of ethnic origin in access to education and training. It contains a prohibition of both direct discrimination defined as “less favourable treatment on grounds of racial or ethnic origin”, and of indirect discrimination which occurs in the terms of the Directive, “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”¹² The definition of indirect discrimination is relevant to patterns of segregation of Roma in education – where general rules and practices applied to all, such as psychological tests, school districts/geographical location, etc.

¹⁰ An elaboration of international law prohibiting racial discrimination in education and racial segregation is provided in the ERRC report *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe*, available at: <http://www.errc.org/db/00/04/m00000004.pdf>.

¹¹ As of December 2006, no comprehensive anti-discrimination law was adopted in the Czech Republic.

¹² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2(2).

result in assignment of Roma to substandard education, either in special remedial schools or in Roma-only schools and classes.¹³

37. As of December 2006, the Czech Republic alone had not adopted comprehensive anti-discrimination law. Czech legislation does not provide definitions of direct and indirect discrimination coherent with the EU Race Equality Directive and lacks a consistent system of sanctions against discrimination. A general guarantee of equal access to education without regard to race, skin colour, sex, language, creed or religion, nationality, ethnic or social origin, property, ancestry, state of health, or any other status, was included in the new Schools Act No561/2004 Coll. of the Czech Republic which took effect on January 1, 2005. This provision however is not supplemented by any procedures by which an individual victim of discrimination could seek enforcement of this ban. Furthermore, the Schools Act does not designate an authority which has powers to check or reverse acts of discrimination within the school system. For example, there is no specific requirement on the Czech Education Inspection Authority to monitor discrimination or segregation in its periodic evaluations.
38. Segregation in education is explicitly defined as a form of discrimination in the anti-discrimination legislation of Bulgaria and Hungary. Bulgarian Protection against Discrimination Act (2003) and Hungarian Equal Treatment Act (2003) contain definition of segregation in education and prohibit it as a form of discrimination.
39. According to the Hungarian Equal Treatment Act, “unlawful segregation is a conduct that separates individuals or groups of individuals from others on the basis of their characteristics as defined in Article 8 without a reasonable explanation resulting from objective consideration.”¹⁴ The Act further stipulates that, “the principle of equal treatment is especially violated if a person or group is a) unlawfully segregated in an educational institution, or in a division, class or group within such an educational institution, b) limited to a care or educational system, or a care or educational system is created or maintained whose standards do not reach accepted

¹³ The E.U. Network of Independent Experts on Fundamental Rights recommended that it should be clarified whether the prohibition of indirect discrimination should be seen as imposing an obligation on the Member States to monitor, by statistical means, the impact on ethnic and religious minorities of the measures they introduce or maintain in the fields to which the prohibition of discrimination applies. The imposition of such an obligation should be considered as inherent to the prohibition of discrimination. It should include both an obligation to develop impact assessments on an *ex ante* basis, when a new regulation or practice is introduced, in order to anticipate its potential impact, and an obligation to evaluate, *post hoc*, the effective impacts on ethnic or religious minorities of existing regulations or practices at regular intervals. *Thematic Comment No 3, The Protection of Minorities in the European Union*, p. 62, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf.

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights.

¹⁴ Article 10 (2) of the CXXXV Act of 2003 on the Promotion of Equal Treatment and Equal Opportunities.

professional requirements or do not meet professional rules, and thus do not ensure a reasonable expectable opportunity to prepare for state exams.”¹⁵

40. According to the Bulgarian Protection against Discrimination Act, racial segregation consists in actions or inaction leading to coercive separation, distinction or isolation of a person on grounds of race, ethnic belonging or colour of skin. The Act goes further to impose an obligation on the Minister of Education and Science and local government bodies to “take such measures as are necessary to exclude racial segregation in educational institutions” (Article 29(1)).
41. In Bulgaria and Hungary, national courts ruling under the respective anti-discrimination acts, have found that the existence of Roma-only schools violated the prohibition of segregation and the principle of equal treatment in education. Both courts accepted that inaction of the responsible institutions had led to a breach of their obligation to ensure equal treatment. The Sofia District Court (Bulgaria) ruled that the separation of the Romani children in the Roma-only school at issue “was not the result of their free will but of circumstances beyond their control, accompanied by inaction on the part of authorities obliged to take measures to remedy this situation”.¹⁶ Similarly, the Debrecen Appeals Court (Hungary) ruled that, “the maintenance of a situation that results in disadvantage, which is, however, not a result of an action, may also amount to the violation of the law”.¹⁷
42. In none of the countries in this review, anti-discrimination laws formulate specific positive obligations for public institutions to ensure the implementation of the equal treatment principle; neither do they stipulate specific positive obligations to eliminate and prevent segregation in education. While the Bulgarian Protection against Discrimination Act contains a general provision imposing a positive obligation on the respective authorities to act to exclude segregation in education, the measures to be applied by the authorities referred to in the Act are not elaborated either in the act itself or in any other normative document. As demonstrated by recent court decisions in Bulgaria (See Case Study 1) and Hungary,¹⁸ absent statutory obligations specifying the actions to be undertaken to eliminate segregation in education, courts tend to refrain from ordering educational institutions and/or school maintainers to implement specific desegregation actions. The remedies to be applied by courts in cases when segregation is established therefore, remain unclear.

¹⁵ Article 27(3), Act on the Promotion of Equal Treatment and Equal Opportunities.

¹⁶ Sofia District Court, Decision Sofia, 22.07.2005, civil action No 1630/2004 (Unofficial translation.)

¹⁷ Debrecen Appeals Court, Pf. I. 20683./2005/7, 9 June 2006. (Unofficial translation.)

¹⁸ In June 2006, the Debrecen Appeals Court found that the local council of Miskolc, Hungary, has violated the prohibition of segregation in education of the Hungarian Equal Treatment Act by carrying out an administrative merge of several schools while preserving their original catchment areas. The action of the local council, the stated aim of which was to eradicate segregation, resulted instead in a consolidation of segregation – the Romani children continued to study in nominally integrated but separate facilities. The court however refused to grant the order requested by the claimant – the Chance for Children Foundation – to integrate the Romani

43. In Romania, discrimination in education on the grounds of, among others, ethnicity is prohibited by the Law on Education as well as by the Ordinance on Preventing and Punishing All Forms of Discrimination as amended by Law 48/2002. There is no explicit prohibition of segregation in education in the law.
44. This review includes also an analysis of Notification 29323/20.04.2004 issued by the Ministry of Education and Research of Romania although the latter document has no legally-binding force. The Notification is worth noting, however, because of the elaborate definition of school segregation; the specific instructions to educational institutions to map the occurrence of segregated education and prepare plans for actions to eliminate segregated schooling; and the requirement for monitoring and assessment of outcomes. The Notification defines segregation as “a very severe form of discrimination” and specifies that it involves “the intentional or unintentional physical separation of Roma from other children at school, in classes, buildings and other facilities, such that the number of Roma children is disproportionately high than that of non-Roma compared to the ratio of school-age Romani children in the total school-age population in a specific administrative unit.”
45. The Notification lists a number of measures to be undertaken by the school inspectorates (county-level subdivisions of the Ministry of Education and Research) to desegregate education and requires them to initiate action plans to eliminate segregation by May 28, 2004.
46. The Notification does not have the force of law. Educational institutions which fail to comply with it are not subject to any sanctions. Furthermore, there is no link between the obligations to desegregate spelled out by the Notification and sources of funding for the implementation of relevant activities.
47. The implementation of the Notification by county school inspectorates has been uneven; systematic mapping of segregated education has not been achieved, neither have action plans to desegregate education been produced by all county school inspectorates.¹⁹

children in mainstream classes. The Court invoked limitations of its perceived mandate when refusing to grant the request, as doing otherwise “would amount to the enforcement of measures in public law”. See Debrecen Appeals Court, Pf. I. 20683./2005/7. Further details about this judgment are available from the website of the Chance for Children Foundation, at: http://www.cfc.hu/?nelement_id=29&article_id=38.

¹⁹ According to information provided by the Ministry of Education and Research (MER), as of June 2006, 30 out of 42 county inspectorates have provided information about segregated education of Romani children in their respective area. Some of the inspectorates responded only after repeated inquiries from the MER. A Progress Report on the implementation of the Phare 2003 Project, noted that: “Nevertheless, problems and misunderstandings continued even after the Notification was issued. Some County School Inspectorates did not submit review documents and action plans, despite the fact that the Notification had specifically requested this. Others responded with a short note to the effect that there was no segregation in their Counties, but provided no evidence to back this assertion. A telephone survey of schools by the MER early in the 2004-5 school year revealed that information about the Notification had not always been passed from Inspectorates to schools

Some of the counties which produced desegregation plans subsequently were selected for financial assistance through a Phare project to implement the action plans.²⁰

Case study 1: Bulgarian Court Finds Roma-only School Violates Prohibition of Racial Segregation

On October 25, 2005, the Sofia District court released its decision on Case 11630/2004 finding that the Bulgarian Ministry of Education, the Sofia Municipality and School Number 103 of Sofia have violated the prohibition of racial segregation and unequal treatment provided in Bulgarian and international law. The court found that the Bulgarian authorities have committed racial segregation against the Romani children of Sofia School 103, a typical ghetto school with one hundred percent Romani students, situated in the Romani neighbourhood Filipovtsi in Sofia. The Court ruled that the Romani children who have attended and are attending School 103 have been and continue to be subjected to segregation and unequal treatment and that their right to equal and integrated education has been violated.

The civil suit against the Ministry of Education, the Sofia Municipality and School 103 was filed by the European Roma Rights Centre (ERRC) as an independent and sole claimant in its own capacity as an international public interest law organisation. The ERRC challenged the failure of the Bulgarian authorities to terminate the conditions of racially segregated education of the Romani children attending School 103 and ensure that the Romani children have equal access to education and equal treatment in education. The ERRC claimed that the fact that 100 per cent of the student body of School 103 was Romani constituted segregation on racial grounds prohibited by Article 29 of the Bulgarian Protection against Discrimination Act. Furthermore, the ERRC claimed that inaction on part of the Bulgarian authorities, namely – substandard material conditions in the school, lower expectations for the students' performance, lack of training for working with bilingual children, and lack of control on school attendance, violated the right to equality in education and the right to equal treatment in education of the Romani children in School 103.

The Court ruled that the separation of the Romani children in the Roma-only School 103 “was not the result of their free will but of circumstances beyond their control, accompanied by inaction on the part of authorities obliged to take measures to remedy this situation”. The Court accepted that the separation of the Romani children in

and that many teachers were unaware of it. Segregated classes continued to exist and Roma parents seeking to enrol their children in ethnically mixed schools continued to be directed back to their segregated neighbourhood schools.” See “School Desegregation: Progress and Challenges. Experiences from the Phare 2003 ‘Access to Education for Disadvantaged Groups’”, Bucharest, April 2006.

²⁰ School desegregation actions undertaken in some Romanian counties in the framework of the Phare 2003 project are discussed in chapter 3 of this report.

School 103 was the result of lack of opportunity to attend other schools caused by residential segregation in an all-Romani neighbourhood, obstacles for enrolment in other schools, and fear of racist abuse by non-Romani children.

Further, the Court affirmed that the poor material conditions in School 103, the low educational results of the children, and failure of the school authorities to exert control on truancy are manifestations of unequal and degrading treatment of the children in School 103. Regardless of the fact that the national standard educational criteria were applicable to School 103, the available evidence indicating that the Romani children could not meet the standard educational requirements to a degree comparable with that of children in other schools, was sufficient to prove violation of their right to equal and integrated education. The Court also rejected the argument that the poor educational performance of the Romani children was due to irregular school attendance, stating that the Sofia municipality and the Ministry of Education had been required by law to exert control on the school with regard to such matters. Finally, the Court stated that “the negative consequences for society resulting from the existing situation are tremendous”.

Finally, acknowledging that “segregation is found, engaging the responsibility of the indicated municipal and state authorities to take measures”, the Court did not stipulate any specific obligations for the institutions concerned, noting that measures are “a question of expediency”.

1.1 Equality Bodies and Other Supervisory Institutions

48. Four out of the five countries subject to this study have established equality bodies pursuant to Article 13 of the Race Equality Directive. An exception is the Czech Republic where the anti-discrimination bill which was not approved by the Parliament by the end of 2006 envisaged the designation of the Ombudsman as a specialised body. The bodies established vary in their powers and functions. The Slovak National Centre for Human Rights meets only the minimum requirements of the Race Equality Directive, i.e. to provide independent assistance to victims in pursuing their complaints about discrimination, to conduct independent surveys and publish reports. Specialised equality bodies in Bulgaria and Hungary, the Commission for the Protection against Discrimination and the Equal Treatment Authority, respectively, have broader powers including investigation of individual complaints as well as ex officio investigations; issuing legally binding recommendations; and applying sanctions. The Romanian National Council for Combating Discrimination also investigates individual complaints, issues legally binding decisions and imposes sanctions. Cases of discrimination against Roma in education dealt with

by the NCCD, indicate that this body may not be sufficiently effective in remedying segregated education of Roma. (See Case Study 2)

49. Equality and other specialised bodies in some countries have recently carried out studies focusing on the education of Roma. In Hungary, the Parliamentary Commissioner for National and Ethnic Minorities has carried systematic targeted studies of various patterns of discrimination of Roma children in education, including a comprehensive survey of special education in some parts of Hungary which revealed persistent patterns of misplacement of Romani children in special education.²¹ The findings of the Ombudsman have been instrumental in subsequent revision of some of the problematic provisions in legislation concerning special education. The Slovak National Centre for Human Rights has carried out targeted research on the integration of Romani children with special educational needs in mainstream education in 2005. The report concluded that “primary schools tend to misinterpret and fail to apply legal regulations governing school integration and based on the fact that there is reasonable apprehension that the rights of a child are violated in the process of school integration, the monitoring results have been forwarded to the Ministry of Education of the Slovak Republic to take further actions.”²²
50. In all five countries government bodies are tasked with supervision of the quality of the educational process in schools and school facilities irrespective of their founder. In the common case, such bodies have no explicit obligations to inspect and sanction cases of discrimination in the education system. Among the five countries reviewed, an exception is the Hungarian National Education Evaluation and Examination Centre (OKÉV) which has specific tasks to investigate discrimination in education. Amendments to the Hungarian Public Education Act²³ in September 2003 gave this institution powers to investigate compliance with the prohibition of discrimination in public education institutions. The OKÉV is also empowered to take action in cases of petty offences posing a threat to public education. The body’s sanctioning powers however are limited.²⁴

1.2 Limitations of Existing Anti-Discrimination Legislation to Combat School Segregation

51. The existing legal framework in the five countries provides for negative obligations with respect to discrimination and segregation in education. Negative obligations are

²¹ See Annual Reports of the Parliamentary Commissioner for National and Ethnic Minorities 1999-2004, available at: <http://www.obh.hu/nekh/en/reports/reports.htm>.

²² See Slovak National Centre for Human Rights. *Report on Observation of Human Rights in the Slovak Republic for the Year 2005*, p. 86.

²³ Section 66 (2) of Act LXI of 2003.

²⁴ According to Government Decree 218/1999. (XII.28.) on Certain Petty Offences it is a petty offence to discriminate against a child by intentionally breaching public education legislation. A fine of up to HUF 100,000 (approx. Euro 367) may be imposed for acts of discrimination in education.

enforceable through complaints concerning violations of the law in individual cases (filed either by private individuals or by organisations acting in the public interest). Instances of segregation which are not challenged before courts or other competent institutions will remain, therefore, unaddressed. Furthermore, negative obligations require evidence that an individual perpetrator has violated the prohibition of discrimination and/or segregation and that an individual complainant(s) was subjected to less favourable treatment. School segregation of Roma, however, has been shown to be the result of both individual decisions as well as the complexity of rules, practices and traditions which make up the educational systems. School segregation is not incidental, it affects large numbers of Roma in these countries. To address this systemic problem, it is not enough to provide individual remedies.

52. Existing anti-discrimination laws prohibit segregation but do not go beyond to require specific pro-active measures by public authorities. In the absence of positive obligations which spell out the measures to be undertaken by educational and other relevant authorities, courts tend to refrain from prescribing remedies which require implementation of measures within the remit of educational institutions.
53. Absent an enforceable positive obligation to desegregate education, the challenge of long lasting and pervasive patterns of school segregation affecting Roma in these countries, is not effective. A positive obligation would require institutions, among others, to provide evidence that they have not complied with their duty because they pursued other legitimate aims which could not have been achieved by desegregation measures. As demonstrated by Case Study 2, segregation at school can be justified by apparently arbitrary reasons.
54. Limitation of anti-discrimination policies has been recognised by the European Commission in its Communication “Non-discrimination and equal opportunities to all – A Framework Strategy”, which resulted from the consultation process launched by the publication of the Green Paper on Equality and Non-discrimination in an Enlarged EU in 2004. The Communication states that “the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups. There is a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals. The EU should reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, the disabled, older and younger workers and other vulnerable groups.”²⁵
55. The EU Network of Independent Experts on Fundamental Rights has also concluded that anti-discrimination law is not effective in tackling segregation of Roma and there

²⁵ Commission of the European Communities. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. “Non-Discrimination and Equal Opportunities for All – a Framework Strategy”, {sec(2005) 689}, p. 2, at: http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0224en01.pdf.

is a need to adopt positive obligations to desegregate Roma education: “As exemplified in particular in the fields of education (7.1.) and housing (7.2.) – but the same findings have been made, in other reports, with respect to employment or the access to health care, as documented in previous reports by the Network of Independent Experts –, the Roma/Gypsy are in many respects, in a number of Member States, placed in situation of *de facto* segregation. This situation cannot be tolerated further. But it appears insufficient to rely on the tool of antidiscrimination law to effectively bring a change to the structural situation the Roma/Gypsies are currently facing. Affirmative action is required. [...] with regard to the necessity of achieving the integration of the Roma/Gypsies, the mere prohibition of direct or indirect discrimination does not suffice. Equal treatment in this case involves taking into account a) the need to achieve *desegregation* of Roma/Gypsies in the area of housing and in particular of education, whether the situations of segregation that are encountered are the result of deliberate choices made by the public authorities or of personal preferences; b) the need to *compensate for past discrimination* which resulted in a particularly unfavourable situation for the Roma/Gypsies in social and economic life as a whole, by adopting a policy of *affirmative action* to integrate the Roma/Gypsies in the community; c) the need to encourage the integration of the Roma/Gypsy minority while respecting the attachment to an itinerant life which some of its members may still have.”²⁶

Case study 2: Romanian Anti-Discrimination Body Rejects Segregation Complaint

On 7 June 2004, the ERRC, Romani Criss and Hochin Humanitarian Foundation filed a complaint with the Romanian National Council for Combating Discrimination alleging that the existence of a predominantly-Roma class in the Ion Creanga School in Targu Frumos, Romania, was in breach of the Governmental Ordinance 137/2000 on Preventing and Combating All Forms of Discrimination.

In their complaint, the petitioners referred to the fact that 31 of the 33 children in a new 5th grade class formed in the academic year 2003-2004 at Ion Creanga School were Roma. The entire class had been transferred from a school which only had grades 1 to 4. The petitioners presented evidence which showed that teaching in this class was of a lower quality than in other classes in the same school, the teachers were behaving in a derogatory manner towards the Roma, and the furnishings were in a worse state than in other classes. The parents had repeatedly asked the school principal to transfer their children to other classes, but did not get a positive answer.

²⁶ EU Network of Independent Experts on Fundamental Rights. *Thematic comment n° 3: The Protection of Minorities in the European Union*. 25 April 2005, pp. 45-54, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf.

By a decision dated 14 March 2006, the NCCD rejected the complaint and held that the facts presented did not constitute discrimination as defined by the Governmental Ordinance 137/2000. In doing so, it noted that the segregated class was already formed upon its transfer to the Ion Creanga School, and that the reason why it was kept in the same formula was because the Romani children studied French in their old school, whereas the main foreign language taught at Ion Creanga School was English. The Council also noted that “no requests to transfer the children to different classes existed, and where such requests had been filed, they were subsequently withdrawn”. As for the allegations that educational standards and class furnishings were of a lower quality compared to other classes in the same school, the Council rejected them as unsubstantiated. (Summary of Decision No. 256/14.03.2006 of the Romanian Council for Combating Discrimination (unpublished, on file with the ERRC))

2. POLICY DOCUMENTS ON THE EDUCATION OF ROMA

56. In the period 1999-2006, the Governments and/or Ministries of Education of the five countries subject to this study have elaborated a number of Roma-specific educational policy documents as well as included Roma-related priorities in general educational policy documents.²⁷
57. The policy documents produced acknowledge the lower educational achievement of Romani children; the barriers for Roma to access quality education; the forms of segregated education of Roma; as well as incompatibility of certain educational models with the diversity of the school population.
58. The general goals set forth in these documents are: integration of Roma in the educational systems; improvement of the educational status of Roma, including school achievement at primary and secondary levels and higher participation in university education; improvement of the multicultural competences of teachers and other educationalists.
59. A common problem with these policy documents is the fact that structurally and financially the measures on the education of Roma envisaged in them are parallel to and not part of mainstream educational policies. In only a few instances, Roma-specific educational measures are incorporated in the general educational policy framework and their funding is secured through the state budgets. Overwhelmingly, financing of such measures is haphazard and lacks sustainability.
60. Furthermore, the impact of the measures envisaged in these policy documents is impossible to assess due to lack of specific targets and quantifiable indicators about the state of the education of Roma. Lack of reliable data on education disaggregated by ethnicity makes the problem of monitoring and assessment even more complicated.

2.1 The Issue of Eliminating Segregated Education of Roma in Government Documents

61. In general, policy documents on Roma education acknowledge patterns of segregated education of Roma. For example, the 2002 Basic Positions of Slovak Government's Roma Communities Integration Policy states: "The disproportionately high representation of Roma children in special schools is a separate problem requiring immediate attention".²⁸

²⁷ These documents have different names in the different countries such as "Concept", "Strategy", "Action Plan".

²⁸ Basic Positions of Slovak Government's Roma Communities Integration Policies, at: http://www.government.gov.sk/romovia/basic_information.php.

62. The 2004 Strategy of the Bulgarian Ministry of Education and Science for the Educational Integration of Pupils and Children from the Ethnic Minorities identifies among the specific problems facing Roma in education “isolation in kindergartens and schools in the Roma neighbourhoods and in separate classes in the mixed schools” as well as “enrolment in special schools of children who are not diagnosed with mental disability”.²⁹
63. The Hungarian government program 2004-2006, in a separate chapter entitled “Equal opportunities for the Roma”, declares “We will continue with the policy of creating opportunities and eradicating discrimination for Roma citizens in the areas of education, employment, housing, healthcare and culture. Integration programmes will also continue in education. We will use a normative integration payment in schools to make sure that they do not start separate classes for Roma and non-Roma children but teach them in an integrated approach. The Programme From the Last Bench will be used to make sure that children unjustly classified as disabled can go back to normal school classes.”³⁰
64. Specific measures to eliminate prevailing physical separation of Romani from non-Romani children at school, however, appear in very few policy documents. One example is the Action Plan for implementation of the Strategy for Educational Integration of Children and Students from Ethnic Minorities of the Bulgarian Ministry of Education and Science for the period 2005-2009. This document elaborates activities such as review of national legislation and development of proposals which enhance legal guarantees for the integration of Roma; identification of receiving schools and kindergartens; desegregation of schools and kindergartens by transferring the children to schools outside the Romani neighbourhoods; development of yearly plans for transferring children by the municipalities, etc.³¹
65. The Czech government Roma Integration Concept is vague with regard to measures to overcome the physical separation of Roma children at school. While the Concept admits that “...simply discontinuing the existence of special schools...is not enough to rectify the situation”, it does not propose any measures directly targeted at the elimination of the physical separation of Roma children who at some places constitute substantial part of the student body in the special remedial schools even after the special schools have been formally removed as a type of educational institution by the Czech School Act.³²

²⁹ Strategia za obrazovatelna integracia na decata i uchenicite ot etniceskite malcinstva (Unofficial translation by the ERRC). Available at: http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/documents/strategies/strategy_integration.pdf.

³⁰ “New Dynamism for Hungary! Program of the Government of the Republic for a Free and Equitable Hungary 2004-2006”, at: <http://www.miniszterelnok.hu/domain2/files/modules/module15/375933C7A42D89B.pdf>.

³¹ Ministerstvo na obrazovanieto i naukata. Nacionalen plan za deistvie po izpalnenie na Strategijata za obrazovatelna integracia na decata i uchenicite ot etniceskite malcinstva, 2004-2005, 2008-2009. Available at: http://www.pd.e-gov.bg/oblastta/osedv/files/nacionalen_plan_po_strategijata_za_obrazovatelna_integracia.pdf.

³² See Concept for Roma Integration, part 4.4. Affirmative Action, available at: www.mzv.cz/servis/soubor.asp?id=1477.

66. The Concept further recognises the existence of schools with majority Romani student body, in addition to the special remedial schools, in places where Roma live predominantly in the catchment areas of the respective school or where non-Roma decide to leave the school. The measures proposed envisage improvement of the quality of education in these schools but do not aim to end separation of Romani children in them: “The Ministry of Education, Youth, and Sports must try to ensure that, in cases where educational segregation has in fact occurred, these schools can provide Roma children with adequate education and aid their integration in society”. To that end it proposes to implement a project of schools with a full-day programme. The updated version of the program for 2005 does not provide any more specific mechanisms for eliminating physical separation of Romani children.
67. The National Action Plans for the Decade of Roma Inclusion 2005-2015 of several countries participating in this initiative also formulate the goal of ensuring inclusion of Roma in mainstream education. Integration/Desegregation of Roma education is explicitly formulated as a goal in the Action Plans for the Decade of Roma Inclusion of Bulgaria, Hungary and Romania. Correspondingly, the Action plans of these countries envisage specific actions to achieve this goal such as: eliminate segregated classes/schools by 2008 (Romania); moving the Romani children out of the Roma quarters and closing the segregated kindergartens and schools by taking into account the parents’ preferences; moving the children who do not meet requirements for special education out of the special remedial schools (Bulgaria). The National Action Plan of the Czech government aims to “achieve full inclusion of children with socio-cultural disadvantage in the educational mainstream”³³ through the system of funding of schools. The Slovak National Action Plan aims to “cut down the number of Roma children attending special elementary schools and special training facilities” but does not provide any mechanisms by which this goal should be achieved unlike other areas covered by the Action Plan for which the Plan provides either “Tools” or “Instruments” to achieve the goals.

³³ Government documents on education include Roma in the category of “children from socio-culturally disadvantaged backgrounds”. The socio-cultural disadvantage of Roma children is explained by the Government Roma Integration Policy Concept as “defects in the structuring of terms, in the language of instruction, and in the concept of discipline due to their different family upbringing. “The Concept on Early Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education”, adopted by Government decision No 564/05 from May 2005, for example, includes Roma by virtue of their linguistic specifics as well as due to the fact that “among parents of children from socio-culturally disadvantaged backgrounds (particularly from the Roma community), one can find relative indifference to education and lack of trust in institutions”. Finally, the Concept indirectly refers to Roma by pointing to the fact that “Children from socio-culturally disadvantaged backgrounds start their mandatory school attendance insufficiently prepared more often than children from the majority. (Later they are moved to remedial schools or they achieve lesser results than children from the majority.)” See *Koncepce včasné péče o děti ze sociokulturně znevýhodňujícího prostředí*, at: <http://www.msmt.cz/vzdelavani/koncepce>.

2.2 Assessment and Supervision

68. A common characteristic of government policy documents on Roma education is the lack of targets which identify the specific, measurable improvements that are to be made over a set period of time. Proper monitoring and evaluation of progress is thus not guaranteed. Assessment of results is often general and vague. For example, the Czech government document “Long-Term Objective of Education and the Development of the Education System in the Czech Republic” provides an evaluation of the situation in the area of educating pupils from socio-culturally disadvantaged background which states: “Increased attention was paid to the education of Roma, the support of teaching assistant has proven successful... The Programmes ‘Support of Roma Pupils of Secondary Schools’, ‘Support of the Integration of the Roma Community’ are continuing; the network of preparatory classes and equipment in the classes has expanded; the number of assistant teachers and their level of training has increased; methodology manuals have been published for teachers.”³⁴
69. In one instance, the Action Plan for the implementation of the Bulgarian government Strategy for Educational Integration of Children and Pupils from Ethnic Minorities, provides a target of “30% desegregated kindergartens and schools” by 2009.³⁵ A specific break down of the percentage of school facilities to be desegregated per year, however is not provided, although the Strategy requires assessment and updating on a yearly basis.
70. Quantification of results is often provided with respect to the means but not with respect to the outcomes of integration policies. For example, government documents refer to the number of teacher assistants trained and/or employed but do not provide information on the impact of these activities in terms of improving the educational results of Romani pupils, neither do they specify what number of teacher assistants work in integrated schools and what number work in segregated schools.
71. Assessing the progress of implementation of government policies is further hampered by the lack of reliable data on education disaggregated by ethnicity. Despite government acknowledgement of disproportionate disadvantages facing Roma in education, there is no effort to track tendencies in drop-out rates, school achievement, or integration from Roma-only classes, Roma-only schools or special schools into mainstream schools.³⁶ For example, it is difficult to assess whether and how many

³⁴ Dlouhodobý záměr vzdělávání a rozvoje vzdělávací soustavy České republiky, CZ 2005, part II.2.3, available at: <http://www.msmt.cz/dokumenty/dlouhodoby-zamer-vzdelavani-a-rozvoje-vzdelavaci-soustavy-ceske-republiky>. (Unofficial translation by the ERRC.)

³⁵ Ministerstvo na obrazovanieto i naukata. Nacionalen plan za deistvie po izpalnenie na Strategiata za obrazovatelna integracia na decata i uchenicite ot etnicheskite malcinstva, 2004-2005, 2008-2009.

³⁶ According to a public statement of the Czech Minister of Justice, Pavel Nemeč, the Czech government approved in the beginning of 2006 a new monitoring system for the collection of data on the Romani community in the Czech Republic. According to him, the system will work on the basis of the collection of

Romani children from special schools were integrated in mainstream education if government statistics provide only the total number of children integrated. Anecdotal evidence suggested that reintegration of Romani children from special to mainstream schools, even in clear cases of misplacement, has been extremely limited. When new measures are introduced aiming to deal with this problem, it is reasonable to develop a system of assessment of their impact.

72. Failure to collect such data is usually justified by perceived limitations imposed by legislation on protection of personal data. The misconception of the incompatibility of personal data protection and collection of data disaggregated by ethnic origin, has been largely discussed by experts. Recently, a report commissioned by the European Commission, concluded: “Contrary to widespread belief, the international, European and national rules on protection of privacy and data do not categorically prohibit the collection of data in relation to discrimination...The Member States are also allowed to introduce specific legislation permitting the procession of sensitive data insofar as this takes place for reasons of substantive public interest and if suitable safeguards are provided for. On top of that, it should be noted that there are forms of data collection that regularly do not engage protection laws, including anonymous workplace monitoring and anonymous surveys.”³⁷
73. Detailed reporting on the implementation of policies is rare, even though some government documents provide some form of commitment to regular review. Evaluation of implementation tends to be general and vague. There is no centralised authority with powers to conduct regular monitoring of the implementation of the government educational strategies and report on the results. Some aspects of the monitoring may fall within the remit of authorities such as central government school inspection bodies or regional authority inspection bodies. These organs however do not have specific obligations to carry out a comprehensive assessment of government policies on Roma education and the results of their monitoring do not provide any clear picture.

2.3 Financing

74. With few exceptions, Roma educational policies are unrelated to other instruments of education policy, particularly with regard to funding secured from the state budget. As a result, such policies are not systematically funded and in fact, are commonly underfunded. One example outside this pattern – although limited in its impact on

anonymous data that will be statistically processed and evaluated. The information will be used, according to the Minister, for the provision of targeted support. See Roma information service *Romea*, 04.01.2006, at: http://www.romea.cz/english/index.php?id=servis/z_en_2005_0338.

³⁷ Timo Makkonen. *Measuring Discrimination. Data Collection and EU Equality Law*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.2., 2007, p. 72.

school desegregation – is the introduction in some countries of integration normatives – an increase of the normative funding from central government for the integration of children with social, health and mental disadvantages in mainstream education.

75. In many cases, the primary source of funding for the implementation of educational policies targeting Roma are various government grant schemes and/or pre-accession funds (Phare). These forms of funding have not secured financial stability and sustainability of Roma-specific actions in the field of education. Project-based interventions are temporary, one-off events rather than systematic policies. As the Czech government itself admitted in the Roma Integration Policy Concept 2005 “government spending in this area lacks effectiveness as it places too much emphasis on ethnic rather than on social approaches, on ad-hoc and short-term interventions rather than on long-term priorities.”³⁸
76. Activities undertaken as part of Phare funded projects have often been discontinued after the end of the project. Failure to ensure continuity of the actions, meant that investments made by Phare projects were wasted. An example is the resources spent on training teacher assistants. Lack of mechanisms for the employment of teacher assistants in some countries has resulted in serious disproportion between the number of persons trained and the number of persons employed as teacher assistants. Alternatively, good practices emerging from such projects have not been transformed into consistent policy measures.
77. Financial schemes which are parallel to the funding provided from central budgets rely on the initiative of school maintainers and/or individual schools. While it is reasonable to assume that many of them will have interest to increase their budget by receiving a grant, the criteria for the allocation of grants do not necessarily require exclusion of segregated education and/or integration of Romani children, neither do such criteria require specific results to be achieved by the recipients. Furthermore, there is no effective monitoring of the spending of public funds in the instances when they are provided for the improvement of the education of Roma.
78. In some instances, local maintainers reject financial opportunities related to the education of Roma and/or disadvantaged students, often under pressure from local majority communities which do not favour integration of Roma in education.
79. Finally, where preferential funding is provided from the central budget to school maintainers, there are not guarantees that the money would reach the schools which need it most. Distribution of funds to the concrete schools is within the discretion of school maintainers, and in the absence of strict control, the funding may not reach the proper targets.

³⁸ Koncepce romské integrace 2005, Dotační politika státu v oblasti integrace romských komunit, available at: <http://www.vlada.cz/dokument8150.html>.

3. POLICIES AND MEASURES TARGETING SEGREGATION OF ROMANI CHILDREN IN STANDARD EDUCATION

80. The education of Romani children in separate pre-school and school facilities as well as in separate classes within schools with non-Roma children has been condemned as a severe form of discrimination and a factor for the exclusion of Roma from equal education opportunities.
81. Acknowledgement of these problems by the governments of the five countries, however, has not resulted in systematic efforts to confront segregated education of Roma. Actions specifically aimed at eliminating physical separation of Roma and non-Roma in education are extremely limited and inconsistent, given the proportions of this problem and its impact on the quality of education provided to Roma.
82. As of the end of 2006, government involvement in school desegregation in the five countries has been minimal, except in Hungary. Efforts to place Romani children from separate schools and classes into integrated education have been carried out predominantly within projects run by non-governmental organisations (ex. Bulgaria) and/or within Phare projects (ex. Romania), without clear perspectives for the transformation of the experimental activities into government policy.
83. This part of the study looks at the few existing examples of government actions to desegregate education of Roma and discusses their potential impact and limitations.

3.1 Financial Incentives for Desegregation of Education

84. The system of financial incentives to eliminate separation of socially disadvantaged children, including Roma, at school has been pioneered by Hungary in 2003 and is implemented as part of the mainstream government education policy in Hungary alone.
85. The target of the Hungarian integration incentive is “severely disadvantaged children”, a group defined on the basis of parental income and educational level.³⁹ Although this group involves a large number of Romani children, the fact that Roma are not explicitly mentioned for the purposes of desegregation policies, has raised concerns that in some instances Roma may be excluded from the implementation of these policies.

³⁹ The misconception that gathering ethnically disaggregated data violates data protection laws is a major barrier for producing reliable data on Roma in various sectoral fields in Hungary as well as in all other countries subject to this study. The category “severely disadvantaged” introduced in Hungarian law was apparently a compromise solution to the dilemma of singling out Roma for the purposes of desegregating education. While Roma are not explicitly targeted for the purposes of the integration policies, nation-wide studies in Hungary indicate that the prevailing number of persons falling into the category of “severely socially disadvantaged”

86. Amendments to school legislation provide an option for school maintainers who undertake to ensure progressive integration of disadvantaged students in classes with other students in the same school, to receive higher per student allowance.⁴⁰ The measure targets primarily a widespread in Hungary form of segregation of Romani children within mainstream schools, by means of establishing separate classes on the basis of student achievement and on the basis of remedial education according to a modified curriculum.⁴¹ Education in these classes, whatever the justification for their establishment, is of inferior standard and few children placed in such classes have been able to integrate in mainstream education at later stages. Their chances to progress beyond primary school are also seriously reduced.
87. School maintainers are eligible for increased normative funding per student – capacity development normative and integration normative – if children in their school meet the conditions for socially disadvantaged students. Both types of increased normative funding expect improvement of the methodological methods in the educational institutions as well as require formal contact with parents, growing number of children in education granting “maturity” exam,⁴² etc. The difference between the two schemes for preferential funding is that the integration normative, which is also higher than the capacity development one, is provided for school maintainers who undertake to rearrange the structure of the study groups in a given school so as to exclude separation of disadvantaged students; ensure that their percentage is not higher than 50% in any given class and that the difference between the proportion of disadvantaged students between classes is less than 25%.
88. In addition, through tender schemes, the government provides support for the adaptation and introduction of education programmes facilitating inclusive education in specific institutions.⁴³

may be Roma. According to official data, about 650.000 children nationwide can be regarded as disadvantaged, and a half of them as severely disadvantaged, i.e. their parents' education level is not higher than primary school. A representative national Roma survey indicated that 64% of all Roma families surveyed receive some aid related to childcare. Excluding families with no children, the estimated number of families which receive social support in relation to childcare is 75-80%. The same survey indicated that 75% of the children live in families in which neither parent has educational level higher than primary school. (Kertesi Gábor: A roma gyerekek iskolai szegregációja és a halmozottan hátrányos helyzetű gyerekek iskolai szegregációja igen jelentős mértékben egymást átfedő problémák, Sulinova 2006, manuscript.)

⁴⁰ Decrees 57/2002. (XI.18.) OM and 11/1994.MKM of the Ministry of Education.

⁴¹ Detailed description of these types of segregation is provided in the ERRC report “Stigmata: Segregated Schooling of Roma in Central and Eastern Europe”.

⁴² School-leaving exam which allows students to continue in higher education institutions.

⁴³ The Nationwide Educational Integration Network (OOIH) was established as a background institution to the Education Department, whose aim is to spread integrated schooling in public education institutes and to offer professional support. The OOIH aims to build up a professional network. By means of open competition 45 elementary schools (so-called “base institutions”) were selected by the Network to develop the management and pedagogical content of integrated schooling. The base institutions are assisted by local area coordinators.

89. A form of financial incentive which is linked to integrated education has recently been introduced in Romania. In 2005, the Ministry of Education and Research introduced a merit salary for teachers at the amount of 20% of the minimum wage for a period of four years, starting in July 2006. The Order specifies desegregation activities among the eligible activities for which a merit salary can be awarded. Although this measure alone does not have potential to reverse patterns of segregation, it may serve as an indicator that school desegregation is a priority of government education policy.⁴⁴

3.1.1 Potential Impact and Limitations of Financial Incentives as a Tool for Educational Integration

90. Financial incentives for schools to integrate Romani children are an important but not necessarily efficient method for achieving desegregation of Roma education. Importantly, financial incentives provide an option but not an obligation for desegregation, i.e. school maintainers and/or schools may choose not to take advantage of such incentives. While provision of preferential subsidies conditioned on integrating education raises the profile of school integration in society, this policy as currently implemented in Hungary has a limited potential to effect reversal of segregation. Pervasive anti-Roma sentiment and long-established patterns of segregation are a powerful counterweight. In such conditions, non-binding measures cannot result in any significant challenge to segregation. Surveys and anecdotal reports in Hungary have indicated that few potential beneficiaries of the preferential subsidies for integration provided by the government undertook to apply for them.⁴⁵
91. One significant limitation of the additional per student grants as they are applied in Hungary is that they do not address inter-school segregation, i.e. uneven distribution of Roma in the schools within one administrative unit resulting in “ghettoisation” of some schools. Freedom of school choice provisions in Hungarian legislation as they existed by the end of 2006 had allowed parents to decide not to enrol their children in certain schools and schools were free to choose which children outside their

⁴⁴ Annex to the Ministry of Education and Research Order O.M.Ed.C. No.5466/15. nov.2005, available at: <http://www.edu.ro/index.php?module=uploads&func=download&fileId=2203>.

⁴⁵ For example, a survey among 573 school directors in 2004 in Hungary, found that 26.4% of the directors have encountered unanimous agreement among teachers and non-Romani parents with regard to the implementation of the integration subsidy; 29% of them have encountered disagreement on the part of teachers; and 24% have encountered disagreement on the part of non-Romani parents. The same study also found that 33% of the schools surveyed have already applied for the integration normative; 24.5% intended to do so; and 42.5% declared they will not apply. Of those who declared that they will not apply, 41% pointed as a reason the high number (over 80%) of the Romani children in them; 8% believed the introduction of the integration normative is too problematic; 5% opposed the integration normative; 7% did not have enough information; and 39% provided various other reasons. See Havas Gabor, Liskó Ilona: Szegregáció a roma tanulók általános iskolai oktatásában. Felsőoktatási Kutatóintézet, Budapest 2005.

cachment areas to enrol. Integration normatives have no effect on the migration of non-Romani children between schools and respectively cannot regulate the proportion of Romani and non-Romani children in a given school. On the contrary, according to experts, if segregation within one school is diminished, i.e. Romani students attend same class with non-Romani peers, absent adequate measures to control the distribution of Romani children in a number of schools, segregation between schools is likely to increase, i.e. the proportion of Roma students in some schools increases over time as a result of withdrawal of non-Romani children. A survey in Hungary carried out in June 2004 indicated that whereas segregation within schools has slightly diminished, segregation between schools has increased.⁴⁶

92. Schools with substantial numbers of Romani children have no chance to increase the number of non-Romani children in them as a result of integration normatives. The only type of “integration” such schools can apply is integration of Romani children from special remedial classes with other Romani children in standard classes. This process, however, does not change patterns of segregated education of Roma as indicated by the case study of Békés, Hungary (see Case Study 3).
93. The fact that supplementary financing per student grant allocated from the central budget to the school maintainers is not earmarked, coupled with lack of central government control on the spending of the preferential funding allows for abuses in the utilisation of the integration normatives. As indicated by anecdotal reports in Hungary, some maintainers use integration normatives to cover general costs rather than costs related to facilitating integrated education; or integration normatives are used in schools which are not eligible for them. Furthermore, in the absence of control on the way schools organize their education process, real desegregation may not occur despite the fact that the school has received integration normatives.
95. Finally, the effect of financial incentives for integrated education may be undermined by the existence of other funding schemes which do not necessarily require recipient schools to integrate Roma and disadvantaged children. If one part of funding for schools is conditioned on integrated education but there are other instruments for financial support which do not necessarily require that education is organized in an integrated way, the effect of the financial incentives will be undermined. A case study from Alsózsolca, Hungary (see Case Study 4), indicates how inequalities in education already created by patterns of segregated education may deepen if financial awards for schools are not conditioned on ensuring inclusive education.

⁴⁶ Ibid.

CASE STUDY 3: Alsózsolca

Alsózsolca is a town of 6,200 inhabitants in Borsod-Abaúj-Zemplén County of Hungary. According to unofficial estimates, Roma residents are about 25% of the total population and Romani children comprise about 50% of the school population. Part of the Romani community – around 500 persons – lives in a separate settlement.

The town has three schools. School No 3 was established in the late 1980s as a special remedial school in proximity to the Romani neighbourhood. According to estimates by local sources, Romani children are close to 100% in this school. According to the school headmaster, around one-third of the Romani children in the town have been identified as children with mental disadvantage. Most of them are educated in school number 3, but one part of them is also in school No 2.

School No 2 is a standard school in which the proportion of Romani children is roughly 50% of the student body. According to the director, the school has to maintain separate Roma classes to prevent transfer of non-Romani children to other schools, including the neighbouring city of Miskolc. The information provided by the school authorities reveals that in the lower grades, in which there are enough children to have more than one class per grade, some of the classes are Roma-only. The Roma-only classes are small classes, a reduction allowed in cases of children with disadvantages.

There is a third school, school No 1, which by its material conditions and by the educational achievement of children is considered the best school in the town. An estimated 20-30% of its student body are Romani children. According to local sources, the school systematically avoids Romani students. ERRC research indicated that in the school year 2003-2004, 14 Romani children were transferred from this school into the special school without any examination. In the school year 2005-2006, school No 1 won a government grant of HUF 17 878 820 for the implementation of a programme on competence based education.⁴⁷ This fund will be spent on development of children's achievements, knowledge, and skills. Although the school has the lowest percentage of Romani children in the village, whereas at least half of the local children are Romani, it has not reportedly been required to organise its education process in an inclusive way. It can be expected that with the additional financial resources the quality of education in this school will be raised, while local inequalities in education – especially between non-Roma and Roma, who are largely excluded from the innovative teaching methods, will deepen.

(Field research, Hungary, April-May, 2006)

⁴⁷ The funds were allocated to the school through the Operational Programme Human Resources Development HEFOP/2005/3.1.3, at: <http://www.hefop.hu/uploaded/pages/112/content/313%20eredmenyek.pdf>.

CASE STUDY 4: Békés

“The integration policy of the school has good reputation outside the city. We keep contact with the University of Szeged; would-be teachers visit our classes; experts respect our work. Within the city, however, we do not want to let our programmes known because each of our professional results reinforces the opinion that ours is a Roma school that should rather be avoided.” (Comments by the headmaster of the school.)

Békés, a city of 21,000 inhabitants in South-Eastern Hungary, has two separate Roma neighbourhoods. There are four schools in the city: The Reformed Christian (Calvinist) Secondary and General School is attended by some 270 pupils of 5th to 8th grade and the estimated proportion of the Roma pupils is 5 to 10 percent. Karacs Teréz School is a municipal school which provides special foreign language education; out of the 570 pupils of the school there are no Romani students. Hepp Ferenc School is also a municipal school, specialised in mathematics, where there are around 50 Roma out of 730 pupils. The third municipal school, Eötvös József School, specialised on gymnastics and music, has an estimated 65% (270) Roma pupils out of some 415.

In the school year of 2005/2006, the Eötvös József School had 23 study groups. In classes A boys had gymnastics, girls had a higher number of music classes; classes B were specialised in German language. Classes C were small groups of up to 15 for children with learning disabilities (dyslexia, dysgraphia, dyscalculia).

- *An estimated 46% of the pupils in the Eötvös József School are severely disadvantaged. This group is comprised of children who live in families where the income per person is less than 80% of the average pension amount for the country amount and the parents' completed education is not higher than eighth grade of general school. 86% of severely disadvantaged children are Romani.*
- *An estimated 17% of pupils are of special education needs. Experts' opinion certifies that the special education needs children have learning disabilities or behavioural disorder or other symptoms that are not mental disabilities but make learning difficult for them.*
- *An estimated 60% of special education needs children are Romani; and 16% of the Romani children are identified as children with special education needs. 10% of severely disadvantaged children are of special education needs as well.*

According to local sources, several ideas about reorganising the schools in the town have been discussed in recent years:

- *Reorganisation of the schools' catchment areas in order to achieve a more even distribution of Roma pupils among schools. This version was rejected because of the opposition of two schools, Karacs Teréz and Hepp Ferenc, where the proportion of Roma children is much lower than their local ratio.*
- *Administrative merge of the three schools. This proposal has been left undecided.*
- *In the spring of 2006, there was an idea for the local authority to apply for integration subsidy in order to diminish segregation between the schools. The idea was not realised due to opposition on the part of some of the schools.*

A fourth version was accepted: The borders of the schools' catchment areas have been eliminated. Since there are no formal borders between the catchment areas, Roma parents are theoretically not prevented from enrolling their children in any school in the town.

The paradox of the education integration

Theoretically, the Eötvös József School meets the government requirements for integration subsidies because it has separate classes for children with severe disadvantages and with learning disabilities. The school has applied and received financial assistance for integrating these children with other children in the school. Given the prevalence of Romani children in the school however, the physical separation of the Romani children from the other children in the town cannot be achieved with the available tools. Educational integration for this school meant integration of predominantly Romani classes with other predominantly Romani classes. Moreover, implementation of integration programmes has made a name for the school as “specialised in the education of Roma and disadvantaged students”, a fact which repels non-Romani parents. According to the school director, “In two or three years' time the proportion of Roma children might reach 80-90% at our school. We count on this, anyway, what else can we do? Then we teach such proportion of Roma children. And we still continue our integration programme.”

(Field research, Hungary, April 2006.)

3.2 Project Initiatives

96. This study also looked at government efforts aimed at eliminating physical separation of Romani and non-Romani children which were implemented in the framework of separate projects and do not necessarily entail revision of legislation and policies in order to ensure sustainability of the project activities. Such initiative has been undertaken by the Romanian government within the 2003 Phare project “Access to Education for Disadvantaged Groups”.

97. The implementation of the school desegregation component of the Phare 2003 project in Romania started in the school year 2005-2006 in 38 schools out of 108 schools in total participating in the project.⁴⁸ The segregatory practices in these schools included: i) Roma-only schools located into or in close proximity to neighbourhoods with majority Romani residents; ii) segregation of Romani children in a separate school building in cases where schools had two buildings; and iii) separation of Romani children in Roma-only classes in ethnically mixed schools.
98. Desegregation measures included: i) integrating Romani children from separate classes with their non-Romani peers within one school, including integration of Romani children who used to attend school in a separate school building; bussing Romani children from distant Roma-only schools into ethnically mixed schools; and closing schools which used to be attended by Romani children only. (see for example Case Study 5)
99. While it is early to assess the outcome of the desegregation actions undertaken in Romania, the implementation of the project made evident the limitations of non-binding school desegregation measures. ERRC/Parudimos research in some counties as well as reports from other sources indicated that schools which were entirely segregated or had some form of segregation refused to undertake desegregation actions. (see Case Study 6)

Case study 5: Cetatea de Baltă

Cetatea de Baltă is a village in the Alba county, Romania, with population of 3235 persons according to the 2002 national census data. The village has one school (grades 1-8). A separate school building hosting grades 1-4 was built in 1956 next to the Romani settlement in the village. The separate building had two rooms where Romani children from first to fourth grade were taught by a single teacher. In the beginning of school year 2005-2006, as part of the Phare 2003 project, school authorities decided to move all Romani children to the main school building in the centre of the village and close the school in the Romani settlement. Not all of the Romani children however were immediately integrated with their Romanian peers. The actions of the local authorities have provoked serious protests on the part of the non-Romani parents. Social and health services were involved to provide support for the Roma families whose children were at school.

At the start of the school year, first grade Romani students were enrolled in mixed classes in the main building of the school. Twenty Romani children attending an all-Romani kindergarten in the settlement were also transferred to the kindergarten in the village

⁴⁸ County school inspectorates have identified a total of 47 schools in which some form of segregated education was practiced.

together with non-Romani children. In the beginning of the second school term, eight second-grade Romani children were placed in an integrated class. At the time of the ERRRC/Parudimos field visit, in May 2006, the school director intended to proceed with the integration of the remaining sixteen Romani students from grades 3-4 in the beginning of the school year 2006-2007. According to reports, as of March 2007, all Romani children from the segregated school in the settlement were educated in integrated classes.

(Field research, Romania, May 2006.)

Case study 6: Pecica

Pecica, in Arad County, Romania, is a town of 13,000 people according to the 2002 Romania census data. The Romani community comprising some 10% of the town population, lives in two separate settlements. One of them has a school with grades 1-4, which is made of three classrooms in which students from the four grades and one pre-school group attend school in two shifts. According to the principal of the school, the school was renovated with Phare money under a previous project. The director of the school considered that the school did not present a case of segregation because it was located in a Romani neighbourhood and naturally the students were Romani. For this reason the director refused to initiate desegregation actions. The Phare program brought a school mediator. The mayor of the town was not able to confirm whether the mediator will be hired by the municipality after the end of the project.

(Field research, Romania, May 2006.)

3.3 Regulation of School Choice

100. Regulations concerning school enrolment – whether by parental choice, unlimited by school zoning, or on the basis of residence in the respective school district – have had an impact on school segregation in the five countries. Due to patterns of residential segregation, school districts covering the respective all-Romani neighbourhood have preserved the patterns of segregated schooling in the period before 1989.
101. In the early 1990s, legislation regulating enrolment was amended in all five countries to give parents freedom to choose the school where their child would be enrolled. Theoretically, freedom of school choice can be beneficial for the elimination of school segregation because Romani children can enrol at any school. In practice, however, freedom of choice appears to have facilitated segregation in education because parents of non-Romani children often take advantage of the lack of limitations to enrolment and leave schools in which the proportion of Romani children is high or growing.

102. Evidence suggests that if freedom of school choice is not accompanied by certain requirements for schools to maintain a balance of ethnic groups in their student bodies which is adequate to the ethnic composition in the respective territory, segregation is likely to occur.
103. Schools which do not want to enrol Romani children use the same school district rule as a pretext to reject Roma children. For example, research in Romania indicated that as of 1998, more than half of the rural schools with at least 50 per cent Romani student body were located at a distance of less than three kilometres from schools of the same level in which the student body was predominantly non-Romani.⁴⁹
104. In Hungary, schools are obliged to enrol all children who have their residence in the respective school district. If after the enrolment of all children from the respective school district, the school still has free space, it could opt for enrolling children from outside its own catchment area. Until 2007, the law was interpreted to give freedom to schools to choose whether and how many children outside the school district to enrol, and respectively, to reject children from other school districts. According to various sources in Hungary, including the government itself, this system was responsible for the high levels of selectivity and segregation in Hungarian schools, with children from poorer and Romani families ending up in worse schools and children from well-to-do families enrolled in better schools.⁵⁰
105. An attempt to remedy this situation is an amendment to the Hungarian Public Education Act, in force from January 2007, which introduces certain limitations with regard to the proportion of disadvantaged children who can be enrolled in a given school.⁵¹ According to the amendment, in case that a local municipality maintains more than one school, the boundaries of the neighbouring catchment areas have to be drawn so that the proportion of severely disadvantaged children shall not exceed 25%. For example, catchment areas will have to be drawn in such a way that if in one area the proportion of severely disadvantaged children is 50%, this proportion cannot be more than 75% or less than 25% in the neighbouring area. In addition, schools which have free space after the enrolment of the children from the respective school district, are obliged to enrol preferentially disadvantaged children and children with special educational needs (mentally disabled, dyslexic, etc.). Under this mechanism, decisions about which students get to fill empty spaces in a school will be made on the basis of drawing lots.

⁴⁹ See Surdu, Mihai. "The Quality of Education in Romanian Schools with High Percentages of Romani Pupils". In *Roma Rights 3-4/2002, Segregation and Desegregation*.

⁵⁰ See for example, Written replies to the list of issues of the Committee on Economic, Social and Cultural Rights (E/C.12/HUN/Q/3), to be considered during the examination of the third periodic report of Hungary (E/C.12/HUN/3), paragraph 27.

⁵¹ Article 66, Law LXXIX. 1993.

4. LEGISLATION AND POLICIES ON THE EDUCATION OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

106. One of the most harmful discriminatory effects from the functioning of the educational systems has been the erroneous placement of Romani children in special remedial schools and classes for children with light mental disadvantages.⁵² In each of the five countries, government sources and experts have acknowledged overrepresentation of Roma in such facilities as a result of misplacement.
107. The reasons for overrepresentation of Roma have also been well documented: culturally-biased diagnostic methods; discrimination and intentional exclusion of Romani children from mainstream education; attractiveness of the social provisions in special schools for parents in economically disadvantaged situations; as well as lack of informed or any consent on the part of Romani parents regarding the enrolment of their children in special schools.
108. Independent from the problem of segregation of Romani children in special schools for mentally disadvantaged children, the denial of the right of children with physical and mental disabilities of access to mainstream education and segregation in separate educational facilities, is banned under existing anti-discrimination law and is condemned as a human rights violation.⁵³
109. In all five countries, recent amendments to legislation and policy aim at the integration of children with special educational needs in mainstream education. Along with financial incentives for the integration of children with special educational needs in mainstream education introduced in some countries, integration has also been facilitated by the declining numbers of children in education in general and the financial untenability of some schools.
110. Due to the fact that governments do not provide ethnically disaggregated data on the numbers of children transferred to mainstream education, it is not possible to determine to what extent Romani children benefit from such measures. This study established that in some countries provisions for integration in mainstream education are explicitly targeted at children with health and mental disabilities only, and do not require systematic identifying and reintegrating in mainstream education of children who have been erroneously placed in special schools. Accordingly, existing financial

⁵² In each of the five countries there are several types of special schools for children with various health and mental disorders. Roma children have been found to predominate in one specific type of special schools – the schools for children with light mental disadvantage. We use the term “special schools” to refer to this particular type of schools.

⁵³ Convention on Protecting the Rights of Persons with Disabilities, adopted by the United Nations General Assembly, 13 December 2006 open for ratification.

incentives for integration of children with special educational needs are designed to benefit children with objectively diagnosed physical and mental disabilities but not children who were misplaced in special education.

111. Children misplaced in special schools – a distinct group within the student body of special schools composed mainly of Romani children – are not given specific attention in legislative provisions regulating integration of special educational needs children. This omission means that the integration of Romani children from special schools is envisaged to take place within the regular policy process, a solution which is unlikely to have any serious impact on Romani children having in mind that practices of erroneous tracking of Romani children in special education are pervasive and ingrained in the educational system of several countries in this study.
112. Policies on integration of children with special educational needs in standard education do not identify misplaced children as a separate target group, except in Hungary; at the level of separate projects, there are very few initiatives undertaken by governments which tackle directly segregation of Romani children in special remedial schools. Such initiatives are usually limited in scope and their sustainability is uncertain due to lack of a regulatory basis to transform them into consistent policy.

4.1 Formal Disbanding of Special Schools: The Czech Schools Act

113. The Czech Schools Act in force since January 2005, introduced a number of reforms in the Czech educational system.⁵⁴ Of particular relevance to this study is the formal removal of the category of special schools from the educational system as well as the provisions for integrated education of children with special educational needs.
114. ERRC research in 2006 indicated that despite the fact that special schools, and special schools for children with mild mental disadvantage in particular, ceased to exist in the legal order, there was no discernable effort to reduce segregation in the field of education. Romani children continue to be educated in segregated environments in the former special schools; when Romani children do manage to enrol in a regular school, they continue to be disproportionately placed in segregated special education or separate classes with less rigorous curricula.
115. Furthermore, anecdotal reports suggest that Romani children tend to be tracked to the so called practical training schools (*praktické školy*) introduced by the new school legislation. The practical training schools are lower secondary schools (5-9 grades) and are established for primary school graduates of special remedial or auxiliary schools.⁵⁵

⁵⁴ Zákon č. 561/2004 Sb., o předškolním, základním, středním a vyšším odborném a jiném vzdělávání (Act on Pre-School, Primary School and Secondary School Education (Schools Act)), at: <http://www.atre.cz/zakony/frame.htm>.

⁵⁵ See Systém vzdělávání v ČR, at: <http://www.nuov.cz/index.php>.

In practice, these schools are the secondary phase of the primary special remedial schools and their curriculum is based on the Framework Program for Basic Education for children with special educational needs, providing an increased number of practical subjects and a reduced number of academic subjects.

116. In spite of the fact that the Czech government acknowledged segregated education of Roma – both in special schools and in some standard schools, the Act as well as related legal norms lack provisions aimed at eliminating physical separation of Romani children at school.
117. There is an overall conceptual vagueness and lack of consistency of some of the new categories introduced by the Act which raises questions about the competence and consistency of the actions which are to be undertaken in compliance with it. For example, the Act introduced the category “children with special educational needs”, divided in three subcategories: children with health disability, with health disadvantage and with social disadvantage.⁵⁶ While the first two categories are clearly and objectively defined, the last one is vague and is omitted in almost all implementing regulations and related government decrees. The subcategory “children with social disadvantage” is defined by the Act to include children from “family environment with a low social and cultural status” without any explanation in the Act itself or elsewhere what the criteria for defining such status are.⁵⁷
118. The terminology used by the Government to define special educational needs is further complemented by the category – “socio-culturally disadvantaged children” which appears in the Government Concept on Early Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education and which is explicitly associated with Roma. This formulation indicates that cultural background is considered to be a disadvantage – a notion which has largely predetermined the erroneous placement of Romani children in special schools in the Czech Republic.⁵⁸
119. Neither the Schools Act nor implementing regulations provide any guidance as to who identifies children with social disadvantage and on the basis of what criteria.⁵⁹

⁵⁶ Article 16(1). It can be assumed that Romani children from the former special remedial schools, fall in the subcategory children from socially disadvantaged background, since many of the Romani children placed in the special remedial schools reportedly do not have any health or mental disability.

⁵⁷ Article 16(4) (Unofficial translation.)

⁵⁸ *Koncepci (projektu) včasné péče o děti ze sociokulturně znevýhodňujícího prostředí* (Concept (Project) on Timely Care for Children from Socio-Culturally Disadvantaged Backgrounds in the Area of Education) adopted by Czech Cabinet Decision No 564/05 from 11 May 2005.

⁵⁹ 2005/72 Sb. Vyhláška o poskytování poradenských služeb ve školách a školských poradenských zařízeních (Regulation on providing counselling in schools and educational counselling facilities), at: <http://www.atre.cz/zakony/frame.htm>. This Regulation provides that children with health disability and health disadvantage shall be identified by the educational counselling centres. The latter are not supposed to identify children with social disadvantage.

Regulation 72/2005 Coll. establishes that advisory services shall be provided for children and their legal representatives. One type of advisory services is designated for the pedagogical-psychological counselling centres which provide diagnostic and advisory functions with regard to children with health disabilities. The second type of advisory services is to be provided by educational advisor and preventive methods advisor. At this point the Regulation mentions that such services are to be provided also for children from different cultural backgrounds and socially disadvantaged students.

120. The Schools Act also regulates the transfer of children from one school to another, elaborating on the transfer of children with health disabilities. On this basis, Regulation 73/2005 Coll. which deals with the education of children with special educational needs, provides for the types of education for these children – individual integration, group integration (separate classes within the mainstream school) or education in separately established schools.⁶⁰ The Regulation however is focused on children with health disabilities and provides the forms of integration of these children only. It has no provisions for the integration of children from socially disadvantaged backgrounds, neither does it elaborate supportive measures for this category of children. There is no obligation on the authorities to integrate children from socially disadvantaged backgrounds into regular schools or classes.
121. According to the Schools Act, individual schools are obliged to elaborate their own school education plans on the basis of the National Framework Educational Program which are prepared by the respective ministries for each area of education defined by the Act, including education of children with special educational needs. An annex to the Framework Educational Programme for primary education specifies the principles for the education of children with mental disabilities, ranging from light mental disability to severe mental disability. The Framework program further instructs school directors how to develop their School Education Plans. These plans have to be based on the specific educational aims of the school, take into account the needs and the capabilities of the children, the justified requirements of the parents or legal representatives as well as the social environment in which the education will take place.⁶¹

⁶⁰ 2005/73 Sb. Vyhláška o vzdělávání dětí, žáků a studentů se speciálními vzdělávacími potřebami a dětí, žáků a studentů mimořádně nadaných, at: <http://www.atre.cz/zakony/frame.htm> (Regulation on the education of children and pupils with special educational needs). Article 2 § 4 of the Regulation laid down that the following schools were available for children and pupils suffering from mental disability: specialised nursery schools (*speciální mateřské školy*), special schools, auxiliary schools (*pomocné školy*), vocational training centres (*odborná učiliště*) and practical training schools (*praktické školy*).

⁶¹ The separate teaching plans for schools for children with light mental disability were updated in 2005. See č.j. 22 115/2005-24 10.6.2005 tj Učební plán vzdělávacího programu zvláštní školy, at: http://www.msmt.cz/Files/HTM/MTT_79ucebniplany.htm.

4.1.1 No Challenge to Segregation of Roma in Special Remedial Schools

122. The reforms in the school structure in the Czech Republic do not provide mechanisms for the desegregation of Roma children misplaced in the former special schools. The re-categorisation of the special remedial schools does not guarantee that these institutions, many of which have majority Romani student bodies, will be reorganised in order to exclude separation of Romani children. Neither does the legislation guarantee that Romani children in the former special schools, will have access to standard education. On the contrary, field research indicates that there are no changes in the composition of the former special schools and in the provision of substandard educational services for Roma. (see Case Studies 7 and 8)
123. In its most recent review of the Czech government's implementation of the UN Convention on the Elimination of All Forms of Racial Discrimination from February-March, 2007, the UN Committee on the Elimination of Racial Discrimination (CERD) expressed deep concern about the disproportionately large number of Roma children in special schools and stated that "this situation also seems to result from discriminatory practices and lack of sensitivity on the part of the authorities to the cultural identity and specific difficulties faced by the Roma." The Committee recommended that the government "should develop effective programmes specifically aimed at putting an end to the segregation of Roma in this area" and it "should review the methodological tools used to determine the cases in which children are to be enrolled in special schools so as to avoid indirect discrimination against Roma children on the basis of their cultural identity."⁶²

Case study 7: Elementary School Halkova, Frýdek Místek, Moravian-Silesian Region, Czech Republic

This former remedial special school was renamed an "Elementary School" in accordance with the new School Act. It is relatively small, with approximately 70 pupils. According to estimation provided by the Director, the number of Romani children was approximately 20. Children with whom the ERRC spoke, however, testified that most of their classmates were Romani. Mothers of children also confirmed that they usually see other Romani women in the school. The school includes a number of Romani children transferred to the school when another special school in the area was closed. Since remedial special schools were abolished as of 1 January 2005, this school was now an Elementary School with a "remedial education" programme including curricula for both "practical" and "auxiliary" schools in conformity with a Czech Education Ministry decree from 1993.

⁶² Committee on the Elimination of Racial Discrimination. Seventieth session, 19 February-9 March, 2007. *Concluding observations of the Committee on the Elimination of Racial Discrimination. Czech Republic*, available at: <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.CZE.CO.7.pdf>.

The “practical” curriculum involves instruction primarily in various forms of manual labour. There are also pupils at the school with mental disabilities, ranging from light to more severe, who are instructed according to the “auxiliary school” curriculum, as well as pupils with behaviour problems determined by an examination performed by the pedagogical-psychological counselling centre.

(Field research, June 2006).

Case study 8: Elementary School in Ivanovice na Hané, Southern Moravia, Czech Republic

Two remedial classes have been established at this school for pupils for whom the tempo of instruction in the mainstream classes is said to be “too fast”. The first of these classes was established as of 1 January 2001. The second class was established in September 2005, when the children from the first remedial class had to continue their education into the second phase of primary school (grades 5-9). As of the time of the ERRC visit, the two classes were attended only by Romani children; the first classes was composed of children grades 1-4 and the second – of children grades 5-9. Only three Romani children are enrolled in mainstream classes. In an interview with ERRC researchers, the school principal reported that 8% of the children in the school as a whole are Romani, of whom 1% were enrolled in mainstream classes. The principal stated that no changes related to integrating the Romani minority had occurred at the school after 1 January 2005. Most of the Romani children are therefore largely educated separately from the other children. The exception is for subjects termed “cultural” – art classes, work-skills classes, and physical education classes are attended by the children from the remedial classes together with children from the mainstream classes. The principal told ERRC researchers that education is “not a priority for Romani citizens”. He also stated that “insufficient hygienic habits” of Romani families, by which he apparently meant that the Romani children attend school in an unkempt or unwashed state, resulted in other children isolating themselves from the Romani children.

(Field research, June 2006).

4.2 Integration Normatives for Children with Special Educational Needs

124. In the Czech Republic, Hungary and Slovakia, governments have introduced higher per student allowance for a student with special educational needs integrated in mainstream education.⁶³

⁶³ In Bulgaria and Romania, as of the end of 2006 the per student funding has not been fully introduced.

125. For example, in Slovakia, mainstream schools are entitled to receive 250% of the standard normative for a child with special educational needs. The normative for a child in a special remedial school, however, is also very high (200% of the standard and for boarding schools – 500% of the standard), a fact which diminishes the potential of the integration incentive.⁶⁴
126. The higher integration normative for children with special educational needs is meant to be an incentive for integration of children in mainstream education. Founders of the standard primary schools can increase their budget by accepting children with special educational needs from the special schools.
127. In the absence of systematic targeted measures to integrate Romani children from the special schools in standard schools, however, these legislative provisions are unlikely to have any significant impact on the patterns of school segregation of Roma in special schools. Although Czech and Slovak educational authorities have acknowledged the fact that many Romani children are misplaced in the special remedial schools, legal regulations do not envisage higher normative funding for integrating in standard schools children without mental disability who have been mis placed in special remedial schools.
128. In the Czech Republic and Slovakia, the integration of special needs education children in mainstream education is regulated only for children who are diagnosed with health and mental disabilities. The category of children from socially disadvantaged backgrounds, which incorporates, among others, many Romani children, is almost invisible in legislation. The Czech Schools Act mentions children from socially disadvantaged backgrounds but there is no specific reference to this category in related government acts dealing with transfer from one school to another or from one educational programme to another.
129. In Slovakia, provisions for the re-integration of children from socially disadvantaged backgrounds in mainstream education are included in a methodological instruction of the Ministry of Education.⁶⁵ The instruction recommends the use of a set of diagnostic tools developed in 2004 by the Institute of Child Psychology and Patopsychology.⁶⁶

⁶⁴ Normatívne určené objemy finančných prostriedkov pre zriaďovateľov na rok 2006 vrátane garantovaného minima (NPZ-2006-BV, verzia z 3. 5. 2006), available at: http://www.minedu.sk/FaR/FINRS/2006/WEB_2006_DATA_V3.xls.

⁶⁵ Metodické usmernenie č. 12/2005-R z 20. júla 2005, ktorým sa upravuje postup pedagogicko-psychologických poradní pri posudzovaní školskej spôsobilosti detí zo sociálne znevýhodneného prostredia pri prijímaní do 1. ročníka základnej školy, at: http://www.minedu.sk/RP/2005/2005_12_R_smernica_postup_pedag_psych_poradni.doc.

⁶⁶ The new methodologies were designed within the project Phare SR0103.01, “Reintegration of Children from Socially Disadvantaged Backgrounds from Special Schools into Standard Schools”, implemented in the period 2003-2004. The first of them serves the purpose of assessing the school aptitude of socially disadvantaged children at their entry to primary education, while the second one is a screening instrument to rule out mental retardation in order to reintegrate wrongly placed children in standard primary education.

The experimental implementation of these tools found that some 10% of Romani children in special remedial schools can be immediately reintegrated in mainstream schools and another 40% were wrongly placed.

130. The use of the new methodologies however is not mandatory; it is left at the discretion of the examining psychologists at the pedagogical-psychological centres under the umbrella of the Ministry of Education.⁶⁷ Lack of a binding norm compounded by the lack of human resource and financial capacity of the diagnostic bodies seriously questions the potential of the instruction to effect a process of reintegration of Romani children in mainstream education.⁶⁸
131. Another problem is the lack of adequate safeguards against misuse of special educational provisions for the segregation of Romani children. According to the respective Czech and Slovak laws, integration of children with special educational needs takes place through education according to individual study plans in the standard schools and through the establishment of separate classes within the standard schools (group integration) with adapted curriculum. School directors are thus allowed to create separate classes for the purposes of educating children with special educational needs.
132. This means that even if standard schools decide to integrate Romani children from the special schools, they can still keep the Romani children in separate classes. The integration normative for children with special educational needs creates an incentive for standard schools to place Romani children in separate classes on the basis of “special educational needs” (see for example Case Study 9). This latter assumption is supported by evidence from Slovakia and other countries where school directors and teachers often admit that in order to keep the non-Romani children at school, they have to find ways to separate them from the non-Romani children.

Case study 9: Nálepko

Nálepko is a village in the Kosice region, Slovakia. According to the municipal records, Nálepko has 2824 inhabitants, 1232 of them Roma.⁶⁹ About 550 Roma live in the village, the others live segregated in distant places. There are two segregated localities where Roma live – Grün and Pila. Most of Roma live in Grün which is about 2 kilometres from the central part of the village.

⁶⁷ Methodological Instruction 12/2005-R of the Ministry of Education at Sec. 3, paragraph 4, recommends that the new methodic shall be preferentially applied.

⁶⁸ Funding regulations do not account for the concentration of Roma in certain areas of Slovakia, in which the work of the pedagogical-psychological centres would be much more intense as compared to other places.

⁶⁹ Number from the documentation of the municipality. According to the Mapping of Roma Communities there are 1115 Roma inhabitants. Sociografický výskum rómskych osídlení, available at: http://www.government.gov.sk/romovia/list_fakt.

There is one school with kindergarten. Some non-Romani parents prefer to send their children to the schools in other towns or villages, but the majority of children in the village attend the village school. As of June 2006, there were 555 pupils at primary school and 45 pupils at kindergarten. According to the school director, some 58 percent of the pupils in the primary school were Romani and this number was likely to increase in the following years.

According to the mayor of the village, in the last two years, after a new principal was appointed, the number of pupils in special remedial classes has increased from 56 to 97. The school director confirmed that there was a special class in every grade. The number of Romani children in the special classes was not specified but according to the director, the Romani children were more than the non-Romani children. In addition, there was a Roma-only “balancing class” in the third grade.

According to the director, the balancing class was designed for children who should have been placed into a special remedial class but their parents did not want them there. The balancing class was a Roma-only class composed of children who attended the zero-grade class in this school.

(Field research, Slovakia, June 2006.)

4.3 Targeted Measures to Re-integrate Romani Children from Special Schools in Mainstream Education

133. In Hungary, in September 2003, the Ministry of Education program “Out of the Last Bench” initiated supervision of all first and second grade children diagnosed with light mental disability; supervisions have been conducted by independent expert committees or expert committees from other counties. According to reports, as a result of the revisions, in 2004, some 10% of first and second-grade pupils were recommended for transfer to standard schools.⁷⁰ There is no specific information however whether all or most of the children were actually integrated in mainstream education. The Program was discontinued after one year.
134. As an auxiliary measure to the “Out of the Last Bench” Program, a separate integration normative was introduced to cover the reintegration in mainstream education of children who were wrongly diagnosed and placed in special education. Receiving mainstream schools were invited to apply for funding which is 70% of the

⁷⁰ The Parliamentary Commissioner for Ethnic and Minority Rights. *Annual Report on the Activities of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, 1 January-31 December, 2004*, Appendix 3, p.27.

integration normative for a child with special educational needs, in addition to the standard normative from the central government, for the development of programmes to integrate students who were misplaced in special schools.

135. In Slovakia, measures to reintegrate Romani children from special schools into standard schools have been undertaken experimentally within the 2002 Phare project “Further Integration of Roma Children in the Educational Field and Improved Living Conditions implemented in the period 2005-2006”. This project established 20 pilot transitional classes within 20 special schools in which a total of 162 Romani children were taught according to a modified curriculum designed to facilitate their integration in mainstream education. According to reports, at the end of the project, only a few Romani children from the transitional classes were transferred to standard schools.⁷¹ As of the end of 2006, there was no legal basis for establishing transitory classes which makes the continuation of this activity uncertain. Furthermore, in the absence of legal mechanisms regulating the transfer of children from transitory classes in the special schools to standard schools, it is unlikely that reintegration of any significant number of Romani children would take place. Special schools, which will face a diminishing school population, are likely to resist. On the other hand, standard schools, especially the ones in which the percentage of Romani children is not big, may be opposed to receiving more Romani children. Finally, if Romani children from special schools, who are to be integrated in mainstream education, end up in segregated standard schools, school segregation does not diminish, it only takes a different form.

4.4 Segregation of Romani Children in Special Schools: Persisting Problems

136. The impact of Government policies to reduce the numbers of children educated in separate special education facilities on the desegregation of Romani children in these schools is still not visible. In the meantime, a number of factors which had so far influenced the erroneous placement of Romani children in special education, have not been eliminated. Such factors are the culturally-biased diagnostic methods for placement in special education which were proven to produce racially disproportionate results; the lack of systematic re-diagnosing of children in special education; and the lack of effective control mechanisms to detect and sanction misuse of special education provisions leading to segregation of Roma.

⁷¹ See, for example, “Tranzitívne triedy ako možnosť prestupu zo špeciálnych na bežné základné školy”. In *Spravodaj Interface*, 2/2006. SGI – Inštitút pre dobre spravovanú spoločnosť, 2003-2006.

5. EDUCATIONAL MEASURES TARGETED ON ROMA AND THEIR IMPACT ON SCHOOL DESEGREGATION

137. This part of the study discusses targeted measures to improve educational achievement of Roma and their impact on segregated education. In most of the countries subject to this study, the main measures with respect to the inclusion of Roma in education introduced by governments in recent years have been provisions for pre-school education and appointment of school mediators/teacher assistants. Although even these measures are not systematically implemented in some countries, anecdotal reports suggest that they have positive effect on school attendance of Roma and may reduce drop-out rates. The effect of these measures on the quality of education available to Roma, however, is questionable as long as they are implemented in segregated settings. These measures have little influence if any on the actual physical separation of Romani children at school and, in certain instances, may even encourage segregated education of Roma.

5.1 Provisions for Pre-School Education

138. There is a consensus among educational experts in the five countries that access to pre-school education for Roma children is a major precondition for higher educational achievement, prevention of placement in special schools for the mentally disadvantaged, and prevention of early drop-out from school.
139. An evaluation of the pre-school education needs of Romani children from socially disadvantaged background in Slovakia carried out within the framework of a Phare project, emphasised the overwhelming importance of extended kindergarten education for Roma children and also recommended that ‘compulsory pre-school preparation (for all five year-old children)’ should be legally required.⁷²
140. Participation of Romani children in pre-school education is low, especially where pre-school education is not free of charge. In most of the countries subject to this review, pre-school education is not free of charge, except in the last year before mandatory school. Attendance of kindergartens usually involves some sharing of costs by the parents. These costs are often a barrier for poor families.
141. Furthermore, pre-school facilities are usually established and maintained by local authorities and depend on the budget of the respective local government. In more disadvantaged municipalities/regions, both budgetary constraints and parents’ economic

⁷² FAS (2004) *Reintegration of socially disadvantaged children from special schools into standard primary schools*, Final Report, FAS International Consulting Limited, Bratislava, March 2005.

situation are obstacles for maintenance of sufficient number of pre-school facilities. This fact affects disproportionately Romani families, especially in cases where enrolment in kindergarten favours working mothers and/or parents. Such condition excludes many Romani families in which either one or both parents are unemployed.

142. For example, it is estimated that about 80 percent of Romania's Roma children do not have a chance to enrol in preschool education, because preschool is partly locally subsidized and partly paid for by parents, and because preschool classes, which often have limited space, give priority to children whose parents are employed. A needs assessment study in Slovakia for the Decade of Roma Inclusion cited official statistics from the Institute of Education and Forecasting for the school years 2002/2003 and 2003/2004, according to which "Roma children represented only 0.79% of all children attending kindergarten. Even when it is recognised that these figures are only partial, being based on "self-reported ethnicity", the assessment found that this figure "implies very low attendance compared to other ethnic groups".⁷³
143. Pre-school education in the last year before school is mandatory only in Bulgaria and Hungary. In Bulgaria, an amendment to the Public Education Act introduced in the school year 2003/2004 one-year obligatory and free pre-school education. A positive measure to ensure participation in primary education of disadvantaged children was introduced in Hungary by an amendment to the Public Education Act (2003) which obliges nurseries to enrol three-year old children of "severely disadvantaged families" in the catchment zone of the respective nursery, if the parents so requested. The measure benefits in particular Roma families, who comprise a substantive part of the category of "severely disadvantaged". It is aimed at remedying the problem with rejection of Roma children from pre-school facilities on grounds of lack of space.
144. An alternative to mandatory pre-school education are the "zero grade" classes introduced in the Slovak education system in 2002. Zero grade classes are designed for children from disadvantaged backgrounds and are set up in regular schools. They are an opportunity for the children to master the regular school curriculum in two phases (zero grade and first grade). Although the setting up of these classes is within the discretion of each school, the legislation provides for incentives for the schools to open such classes. Each child in a zero grade class receives 170% of the per student funds provided from the central budget for a child in a regular grade school.
145. In the Czech Republic, children who have one year before the start of mandatory primary school education, are given preference for registering in pre-school education. In this case, pre-school education is provided free of charge. Pre-school education however is not mandatory.⁷⁴

⁷³ World Bank. *Needs Assessment for the Roma Education Fund: Slovak Republic*, Paris: Roma Education Fund, December, 2004.

⁷⁴ Law No 561/2004 Coll. (the School Act), Sections 34, 47, 123.

146. While pre-school education is seen by both pedagogues and parents as a major tool for overcoming barriers for the integration of Roma children in the educational systems, the establishment of pre-school facilities in segregated settings, including in special remedial schools, is not conducive to the elimination of the physical separation of Romani from non-Romani children. In all of the countries reviewed, pre-school facilities are established also in segregated settings, including special schools. Preparatory classes in the Czech Republic are found primarily in schools with higher percentage of Romani children. A document of the Slovak government estimated that there were 31 kindergartens attended only by Romani children and in 82 kindergartens the proportion of Romani children was in the range of 50-100%.⁷⁵ Similarly, segregated pre-school facilities are established in areas predominantly populated by Roma in Bulgaria and Romania. In Bulgaria, where pre-school education in the year before the primary school is mandatory, Roma-only schools also establish pre-school classes.
147. Segregated education in pre-school stages limits chances of Romani children to improve their linguistic skills in the majority language through interaction with children from the majority. Furthermore, where pre-school facilities are part of segregated primary schools, Romani children are likely to continue their education in the same segregated environment. This situation does not facilitate the process of reducing the numbers of Romani children educated separately.
148. Structural problems to ensure access for Romani children to pre-school education in integrated settings are sometimes compounded by discriminatory practices of school authorities, the result of which is to keep away Romani children from standard schools. For example, a report of the Slovak Ministry of Education observed that enrolment of children in “zero grades” was sometimes conditioned on their performance during examination of school psychologists. If a child failed the examination, often due to language problems, the child was denied enrolment in a zero grade and recommended enrolment in pre-school education at a special remedial school.⁷⁶

5.2 School Mediators/Teacher Assistants

149. The position of school mediator/teacher assistant was experimentally introduced in the frame of NGO projects in some countries in the 1990s with the purpose of improving access of Romani children to education. Individuals with Romani background who do not necessarily have pedagogical training, were engaged in helping Romani children at school as well as liaising between Romani children and

⁷⁵ Súčasný stav vo výchove a vzdelávaní rómskych detí a žiakov (správa), p.7. Available at: http://www.minedu.sk/RS/OVaVRK/DOC/STAVVaVR/stav_vychova_vzdelavanie_romskych_deti_ziakov.rtf.

⁷⁶ Správa o vzdelávaní rómskych detí s návrhom opatrení, Úrad vlády SR, 2006, p. 5. Available at: [http://www.rokovania.sk/appl/material.nsf/0/30B4F96F874EA214C12570DC004CD30D/\\$FILE/Zdroj.htm](http://www.rokovania.sk/appl/material.nsf/0/30B4F96F874EA214C12570DC004CD30D/$FILE/Zdroj.htm).

families and school. Currently, all five countries subject to this study, maintain a certain number of school mediators/teacher assistants. Their legal status and functions differ from country to country.

150. The introduction of school mediator/teacher assistant has had controversial responses from educationalists and Roma communities in various countries. While some positive aspects have been reported, there have also been concerns that the implementation of this measure reinforces school segregation as well as the general stereotype that Roma are not apt for the regular educational process.
151. In some countries like Slovakia and Czech Republic, recent amendments to educational laws incorporated the position school mediator/ teacher assistant in the educational system.⁷⁷ Their employment is within the discretion of the school director and their funding is an earmarked subsidy provided from the central budget to school maintainers. Due to the fact that the funding is not part of the per student normative provided from the central budget, school maintainers have to apply separately for it which creates an additional administrative burden and a disincentive.⁷⁸
152. In Bulgaria and Romania, the financing of school mediator/ teacher assistant is not provided from the central government budget and depends on the decision of the maintainer of the school and/or on the availability of external sources (most often donor money).
153. The functions of the teacher assistants/mediators also vary from country to country. In Slovakia, their tasks are to facilitate communication between teachers and Roma children in the classroom, particularly helping Roma children to understand the instructions given by teachers, and supporting them in accomplishing the educational activities as well as mediation between school and Roma families. Similar tasks are defined for the position of teacher assistant in the Czech Republic and Bulgaria.
154. In Romania, school mediators have been in existence since the 1990s. Their main responsibilities include: facilitating connections between schools and families of Roma pupils; identifying potential Roma teachers; identifying and mediating inter- and intra-community conflicts; and supporting the schooling of Roma children at all levels of education. The employment status of the mediators, however, is unclear. Some of the mediators have been employed by the local authority, others by schools.

⁷⁷ The Public Education Act (regulations) in the Czech Republic stipulates the establishment of the teacher assistant position by an act of the Ministry of Education. Decree 73/2005 Coll. On the education of children with special educational needs gives a broad definition of the teacher assistant functions leaving it to the schools to determine their specific functions.

⁷⁸ For example, in Slovakia the Ministry of Education provides funds for school maintainers for objectively justified recurring costs, in addition to the per student normative. Among the eligible justified costs for this additional funding are costs of wages and insurance payments for teaching assistants and zero-grade teachers. Act No. 597/2003 Coll. governing the financing of primary and secondary schools and school facilities, Government Decree No. 2/2004 stipulating the details of the allocation of funds from the state budget for primary schools, secondary schools, applied training centres, primary schools of arts and school facilities.

155. Depending on the specific circumstances, the functions of the teacher assistants as well as their position in the educational system, may have positive impact on the education of Roma. There is no evidence however, that the position of the assistant teacher is used as a tool to promote desegregation of Roma in education.
156. None of the existing regulations relevant for teacher assistants establishes a relation between employment of teacher assistants and integration in education. On the contrary, teacher assistants are mainly used by schools with higher proportion of Romani children, or Roma-only schools or special schools which also have higher proportion of Romani children. A recent document of the Czech government, for example, mentions that since 1993, educators and assistants have been working in schools with higher number of children from socio-culturally disadvantaged backgrounds.⁷⁹ It may be assumed, that where the employment of teacher assistant is within the discretion of the school, schools with lower number of Romani children may avoid employment of teacher assistants to prevent increase of the Roma student body in that school. Although the role of school mediator/teacher assistant for the education of Romani children has been given positive assessment in some countries, there is no evidence that teacher assistants can compensate the inferior quality of education provided in segregated schools. Neither is there any indication that the presence of teacher assistants in segregated schools encourages the integration of Roma in mainstream schools. On the contrary, it can be reasonably assumed that Romani parents would prefer to keep their children in the segregated schools where they can rely on the assistance and care of individuals – in some cases – from the Romani community. Employment of teacher assistant in segregated schools is thus likely to be a factor maintaining patterns of segregation.
157. The concept of introducing assistants to the teacher in the class room to take care especially for Romani children has also been criticised for its stigmatising effect on Romani children. It is perceived as reinforcing popular stereotypes that Romani children, unlike other children, cannot cope with the curriculum and need additional help.⁸⁰ In 2005-2006, for example, within the Phare 2001 project, an experimental introduction of teacher assistants to work together with titular teachers in the classroom provoked serious protests among Romani parents, Romani NGOs and educationalists in Bulgaria.⁸¹ The negative effects of this measure were reinforced by the fact that the teacher assistants were placed in schools which, as a result of NGO actions, had integrated Romani children from local segregated schools. The placement of teacher assistants in the classrooms was seen by Romani parents as intervening with the school integration process.

⁷⁹ Koncepce včasné péče o děti ze sociokulturně znevýhodňujícího prostředí.

⁸⁰ See for example the Council of Europe report DGIV/EDU/ROM(2006)3, The situation of Roma School Mediators and Assistants in Europe, available at: http://www.coe.int/t/dg3/romatravellers/documentation/Education/RomaMediators06_en.asp.

⁸¹ ERRC research in Bulgaria, 2004 and 2005.

CONCLUSION: CHALLENGES TO SCHOOL DESEGREGATION

158. Segregated education of Roma in the five countries in this study is a reality which is not contested by governments. On the positive side, recognition of the problem has been a step forward towards finding solutions to it. An effective and systematic policy to combat segregation of Roma in education, however, is not in place in any of the countries in this study.
159. Targeted government actions to eliminate segregated education are minimal. Although some government policy documents formulate specific objectives to integrate Roma in education, the actual measures implemented do not challenge directly physical separation of Roma and non-Roma; alternatively, where such actions do exist (Hungary), their impact is limited to certain forms of segregated education and they do not address the problem in its entirety.
160. The review of government policies in the five countries indicates that public authorities are primarily concerned with placing and keeping Romani children in education, rather than ensuring access to quality education, a crucial condition for which is education in non-segregated settings.
161. Where efforts to implement desegregation measures have been undertaken, their impact has been undermined i) by lack of sustainability and ii) by systemic factors encouraging segregation that arise from the implementation of other policies and practices. With the exception of Hungary, governments did not ensure that desegregation measures were part of general educational policies, i.e. had legal basis and systematic funding. Desegregation activities implemented by non-governmental organisations (Bulgaria) or within separate projects (Romania) are beneficial only for the limited number of children who participate in them but they have no potential to reverse segregation unless they are transformed into a national policy.
162. None of the governments in this review has made consistent efforts to ensure coherence of desegregation measures with other policies either in the field of education itself or in other relevant fields such as health care, social services, and housing. The example of the financial incentives for integrated education from Hungary, indicates that even where a targeted policy measure is incorporated in the general policy framework, it may not achieve the intended effect if other policy measures in the relevant field are not consistent with it. If one funding mechanism supports integration but another funding mechanism allows segregating institutions to take advantage of it without implementing inclusive education measures, the overall impact is minimal.
163. Desegregation policies cannot be successful if they are not accompanied by a broader impact assessment of policies and practices which may have the effect of deepening

inequalities and facilitating segregation trends. As demonstrated by this study, schools have no remedy for segregation in those cases when segregation occurs as a result of the withdrawal of non-Romani children. If one school tries to integrate separate Romani classes but other schools in the town, using the lacunae in the legal framework, exclude Romani children, the first school is likely to be progressively abandoned by its non-Romani students who are opposed to studying together with Roma. Desegregation measures in this context have no meaning unless there is a revision of school zoning and choice of school policies.

164. Recent attempts to rationalise the school networks in several countries may also influence desegregation attempts in a negative way. Merging of two or more schools into one administrative unit has resulted in several countries in perpetuating segregated education of Romani children who remain physically separated (in a separate school building) although they formally attend the same school. School merging has allowed school maintainers in some instances to avoid desegregation measures claiming that the school has an ethnically diverse student body. In other situations, school merging has led to a considerable increase of the Romani student body within a single school building which fact in turn triggered the withdrawal of non-Romani students and the segregation of the school, respectively.
165. Finally, policies to equalise state support for private and public education institutions without any requirements for private institutions to integrate Romani and/or disadvantaged students also encourage segregatory trends by providing an option for non-Romani parents to enrol their children in educational institutions which can be accessed by a very limited number of Roma due to the enrolment criteria and the tuition fees.
166. Addressing the complexity of these barriers and overcoming the inconsistency of the desegregation measures requires specific legislative measures. Functional and effective desegregation policies should be given effect through binding obligations on public authorities as described in the following section.

RECOMMENDATIONS

167. The ERRC report *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe* provides detailed recommendations for educational reforms to achieve equality of opportunity for Romani children in education, at the centre of which is school desegregation. The implementation of functional desegregation policies require systematic targeted action by state institutions at central and local level complemented by regular revision of legislation and policies aimed at removing barriers for achieving equality of opportunity for Romani children in the educational systems.
168. Systematic and long-term implementation of desegregation policies can be secured through the adoption of adequate legislative measures imposing obligations upon relevant institutions at central and local levels of government to undertake specific actions and achieve specific results.
169. **Enforceable Statutory Duty to Desegregate Education:** The European Roma Rights Centre recommends enactment in national legislation of an enforceable statutory duty to desegregate education requiring public authorities to take action to eliminate segregated education within a certain period of time. Where action to desegregate education has not been undertaken, public authorities must demonstrate that they were pursuing other legitimate aims, and that those other aims could not be achieved through other means which include desegregation.
170. **Components of the Duty to Desegregate Education:** The duty to desegregate education should comprise the following components: i) a baseline assessment of the situation with segregated education, including reliable data about the numbers of Romani children in segregated facilities, types of segregated facilities, and their location; ii) launching a consultation process involving relevant stakeholders, including Roma civil society organisations, with the aim of formulating the principles and methods of desegregation; iii) development and implementation of long-term plans for desegregation and periodic updating of these plans; iv) annual assessment of the implementation progress based on quantifiable indicators; v) regular impact assessment to ensure that laws, regulations, and administrative provisions do not operate against the results of the desegregation policies.
171. **Incentives and Sanctions:** The fulfilment of the duty to desegregate education should be accompanied by appropriate incentives for educational institutions and educationalists; proportionate and dissuasive sanctions should be envisaged for failure to meet obligations imposed by law.
172. **Inspection:** A central-level public institution should be empowered to inspect the implementation of the desegregation duty; to issue binding recommendations and impose sanctions for non-compliance.

173. The adoption of the positive obligation to desegregate education should be without prejudice to other specific policy measures aimed at improving access to and quality of education received by Roma. Activities which have been proven to produce positive results should be integrated in the national educational policy frameworks to ensure systematic and consistent implementation. As noted in this paper, currently, the prevailing part of actions targeting the education of Roma are not implemented as a part of the mainstream government educational policies; as a result these activities lack consistency and sustainability and do not achieve the intended impact.
174. Furthermore, the adoption of a positive duty to desegregate education should preferably be one segment of a larger legislative reform in the Member States introducing a positive duty on public authorities to promote equality in all areas of life.
175. The leading role of the European Union in the process of setting the general legal framework for the adoption of legally binding obligations to desegregate education by the Member States is crucial. Possible solutions, involving legislative action on the basis of Article 13 EC,⁸² have been justified by the EU Network of Independent Experts on Fundamental Rights.⁸³ This expert body proposed to the European Union to consider adopting a directive based on Article 13 EC and specifically aimed at improving the situation of the Roma/Gypsies population. The Directive “should take into account the need to effectuate the desegregation of the Roma/Gypsy communities, where this is required, especially in employment, housing and education.”
176. Alternatively, it was noted that Article 13(2) EC could be relied upon to ensure that the Member States will inform themselves mutually about the measures they are taking in order to ensure the desegregation of the Roma/Gypsies in the fields of employment, education and housing, to which health care and social security could be added, and about the reasons for their successes and failures in addressing this problem. This strategy would oblige the Member States to collect the requisite information about the situation of the Roma under their jurisdiction.

⁸² Article 13(1), “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.” Article 13(2), “By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.” Consolidated Version of the Treaty Establishing the European Community, Official Journal of the European Community, 29/12/2006, available at: <http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf>.

⁸³ EU Network of Independent Experts on Fundamental Rights. *Thematic comment n°3*, pp. 45-64; *Report on the Situation of Fundamental Rights in the European Union and its Member States in 2005: Conclusions and Recommendations*, Ref.: CFR-CDF/Conclusions 2005, pp. 121-124, 186-193, available at: http://ec.europa.eu/justice_home/cfr_cdf/doc/report_eu_2005_en.pdf.

177. The Experts further proposed developing the potential of the Race Equality Directive as an instrument for the protection of the rights of minorities by imposing an obligation on the Member States to monitor, by statistical means, the impact on ethnic and religious minorities of the measures they introduce or maintain in the fields to which the prohibition of discrimination applies. It was specified that such monitoring should include both an obligation to develop impact assessments on an *ex ante* basis, when a new regulation or practice is introduced, in order to anticipate its potential impact, and an obligation to evaluate, *post hoc*, the effective impacts on ethnic or religious minorities of existing regulations or practices at regular intervals.
178. Finally, with a view to possible revision of the Directive, the Experts proposed that Member States should be made to allow the alleged victims of discrimination to prove discrimination by bringing forward statistics demonstrating the disparate impact on the members of the categories to which they belong of certain generally applicable, apparently neutral regulations or practices. This in turn requires that such statistics are collected and made available, and that they are updated on a regular basis.

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The European Roma Rights Centre (ERRC) is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma. The approach of the ERRC involves, in particular, strategic litigation, international advocacy, research and policy development, and training of Romani activists. The ERRC is a cooperating member of the International Helsinki Federation for Human Rights and has consultative status with the Council of Europe, as well as with the Economic and Social Council of the United Nations.



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