

WRITTEN COMMENTS

BY THE EUROPEAN ROMA RIGHTS CENTRE CONCERNING MACEDONIA

Regarding EU Accession Progress for Consideration by the European Commission during its 2014 Review



CHALLENGING DISCRIMINATION PROMOTING EQUALITY

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1 ACCESS TO EDUCATION

The overrepresentation of Romani pupils in special education is an ongoing problem in Macedonia.

The ERRC has identified a number of gaps and shortcomings in the regulatory framework around special education in Macedonia. The Law on Primary Education (LPE) contains contradictory provisions. On the one hand, it promotes inclusive education (Article 3), while on the other it provides for segregating pupils with special educational needs in special schools and classes (Article 10).¹ Furthermore, the LPE fails to give a definition for “special educational needs”, leaving room for broad interpretations. For example, the administrative regulations seem to permit educating children suffering from “educational negligence”, anti-social behaviour and in segregated environments, i.e. in special schools and/or classes intended for children with mental disabilities. Though the regulations foresee a categorisation commission (i.e. diagnostic body) to assess which school would be appropriate for a child, it lacks precise regulations on the commission’s work. The Convention on the Rights of Persons with Disabilities requires Macedonia to ensure that children with disabilities “receive the support required, within the general education system, to facilitate their effective education.” There is no indication that the commission is supposed to consider what supports would be needed by a child with a learning need to succeed in a mainstream school. Moreover, there is a lack of clear guidance on the provision of adequate information to parents or on informed consent, and there are unclear processes and responsibilities for monitoring, re-categorisation and transfer of children with special educational needs into mainstream education.

Over four years after enacting of the LPE, the Ministry of Education has still failed to adopt new regulations on the manner and conditions for enrolling students with special educational needs in mainstream primary schools as stipulated in Article 51 paragraph 2,² and as required by the Convention on the Rights of Persons with Disabilities, to which Macedonia is a party.

On the occasion of a press conference in June 2012 the then Minister of Labour and Social Policy (“MLSP”) announced the discovery of dozens of cases where children without disabilities were placed in special schools. He claimed that parents were encouraging children to “act disabled” in order to get into special education so as to receive benefits and he promised to review all relevant cases. He mentioned that children were coming from marginalised families and indicated that criminal charges would be brought against any parent who forced their children to act in this way.³ The Minister failed to note that schools segregating children on the basis of disability are discriminatory with regard to all children, Roma and non-Roma. Some media outlets in Macedonia have interpreted “marginalised families” to mean Roma and have reported the comments accordingly.

To follow up the allegations of children without disabilities being placed in special education, in November 2012 the ERRC submitted freedom-of-information requests to relevant ministries to find out whether they had conducted inspections of the Centres for Social Work, the special schools and the commissions for categorisation. Although resolute and extensive government action was announced back in 2012 at the press conference, the only response the ERRC received stated that the MLSP had conducted an inspection of the Centres for Social Work; the information on the specific findings was vague.⁴ One ad hoc inspection of the “Zlatan Sremac” special school was conducted by the Education Inspectorate in order to monitor the enrolment process.⁵

The ERRC collected data from three special schools and 12 mainstream schools which had classes with a continuing overrepresentation of Romani children. In the 2012-2013 academic year, the percentage of Roma students at the special school Maca Ovcarova, in the town of Veles, went up to 38%, two percentage points higher than the 2011-2012 academic year. At the special school Ranka Milanovik, in Skopje, it increased from 60% to 72%.

1 Law on Primary Education (“Official Gazette of Rep. of Macedonia” No. 103/08 from 19.08.2008, 33/10, 116/10, 156/10, 18/11, 51/11, 6/12) and Rulebook on the criteria and method for implementation of the primary education for students with development difficulties (“Official Gazette of Rep. of Macedonia” No. 27/96 from 05.06.1996).

2 ERRC and National Roma Centrum, *Fact Sheet: Overrepresentation of Romani Children in Special Education in Macedonia*, August 2012, available at: <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-en-30-august-2012.pdf>.

3 Government of RM, Ministry of Labour and Social Policy: Abuses in categorization of children with mental impairment have been detected, 28 June 2012, available at: <http://vlada.mk/node/3684?language=en-gb>.

4 ERRC e-mail correspondence with the Ministry of Labour and Social Policy, December 6, 2012.

5 ERRC email correspondence with State Education Inspection, 31 January 2013.

In his 2013 report on Macedonia, the Commissioner for Human Rights of the Council of Europe highlighted the European Court of Human Rights case law on the placement of Romani children in special schools, which amounts to indirect discrimination when carried out without an objective or reasonable justification. The Commissioner emphasised that the authorities' undertakings in this context should go beyond reforming the system of categorising of children, and should include more comprehensive and systematic measures aimed at providing access to adequate education in mainstream schools for all children without discrimination on any ground.⁶

The 2013 European Commission progress report on Macedonia echoed this concern, noting that no comprehensive measures had been taken to address the overrepresentation of Romani children in special schools.⁷ At the end of 2013, the ERRC asked the authorities for details of any measures they had taken to address this issue, but has not received a response. As far as the ERRC is aware, there have been no concrete measures taken by the Macedonian educational authorities to reduce or eliminate the overrepresentation of Romani children in special education or to facilitate the transfer of these children back into a mainstream educational setting.

The lack of ethnically disaggregated data still constitutes a problem. Currently, ethnically disaggregated data are only collected with regard to kindergarten enrolment, but not at other educational levels, hiding the real situation of segregation of Romani children in education.⁸

2 FREEDOM OF MOVEMENT

Since visa liberalisation in December 2009, allowing Macedonian citizens to travel to the EU Schengen area without visas, the number of asylum seekers from Macedonia has significantly increased, mostly in Belgium, Sweden and Germany.⁹ The most frequent reasons given for asylum claims concern lack of health care, unemployment and lack of schooling.¹⁰ In general, the authorities of receiving countries claim that the vast majority of asylum seekers are of Romani ethnicity despite the fact that countries such as Germany do not register the ethnicity of asylum seekers. EU officials have called on the Macedonian authorities to take measures to prevent their citizens seeking asylum in the EU, because the majority of applicants were perceived as not qualifying for asylum.

ERRC has conducted research indicating that Macedonian officials engage in racially motivated discriminatory practices at the Macedonian border, in an apparent effort to discourage Roma from leaving the country and claiming asylum in the EU. Between 2011 and April 2014, the ERRC documented the cases of 91 Romani individuals who were prevented from exiting the country, and has become aware of another 33 such cases. In addition, in the same period, the ERRC documented 42 cases in which Macedonian border officials revoked the passports of Romani individuals who had been deported from EU countries as failed asylum seekers, and has become aware of another 155 such cases.

Most of the ERRC's documented cases show that only Roma were asked for evidence to justify why they were travelling (i.e. in cases when Roma and non-Roma were travelling together). It appears that the border officials were instructed to act based on the ethnicity of the people trying to leave: some Roma were told explicitly by the border officials that they cannot pass the border due to their ethnicity.

Given the gravity of these violations, the ERRC has launched a Constitutional Court initiative challenging the last 2011 amendments to the Law on Travel Documents of citizens of Macedonia allowing for the revocation

⁶ Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the "former Yugoslav Republic of Macedonia", from 26 to 29 November 2012, CommDH (2013) 4, 9 April 2013.

⁷ European Commission, *the FY RM Progress Report 2013*.

⁸ UNICEF, OSF and REF, Roma Early Childhood Inclusion Overview Report, 2012, p. 90, available at: http://www.unicef.org/serbia/Roma_Early_Childhood_Inclusion-Overview_Report.pdf.

⁹ For example, UNHCR data for 2010 show that EU member states and Switzerland received 6,289 asylum applications from citizens of "the former Yugoslav Republic of Macedonia", whereas the corresponding number for 2009 (i.e. prior to visa liberalisation) was 838. See: Council of Europe Commissioner for Human Rights, Report on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, p. 24.

¹⁰ Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the "former Yugoslav Republic of Macedonia", from 26 to 29 November 2012, CommDH(2013)4, 9 April 2013, available at <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2265118&SecMode=1&DocId=2002190&Usage=2>.

of passports in various circumstances.¹¹ In its Constitutional Court initiative, the ERRC requested the highest judicial authority of the country to declare unconstitutional certain of these amendments.

In April 2014 the Macedonian Constitutional Court's judges announced that they will evaluate the constitutionality of the amendment to the law on Travel Documents relating to asylum seekers returned from EU countries, after having received several initiatives (including from ERRC) challenging the confiscation of passports of failed asylum seekers who have been forcibly returned from the EU, accompanied by a prohibition on travelling for a year.¹²

The Macedonian Constitution guarantees the right for every citizen to leave the territory of Macedonia and to return; restrictions on these rights can be imposed only by the law and in exceptional cases, including for the protection of the security of the Republic of Macedonia, because of criminal proceedings in progress or for the protection of public health (Article 27).¹³

According to the Council of Europe's Human Rights Commissioner, the situation is of particular concern. His report of 6 October 2013 notes that "these restrictive, migration-related measures have been adopted at the instigation of EU member states in pursuance of their immigration and border control policies, and have been tainted by discrimination as they have targeted and affected, in practice, the Roma."¹⁴

According to CoE Commissioner for Human Rights, these restrictions interfere with the internationally established right to leave a country and undermine the right to seek asylum. Instead of penalising people for attempting to exercise their human rights, the authorities should better address the root causes of poverty and social exclusion which push individuals to seek refuge abroad in the first place.¹⁵

3 VIOLENCE AND HATE SPEECH

Macedonia adopted legal provisions in February 2014 which prohibit and punish hate speech and the dissemination of online materials which potentially promote or incite hatred, discrimination or violence on any ground, against any person or group. It was enacted by the Assembly in early 2014 and came into force in mid-February 2014.¹⁶ Article 319 now provides for a prison sentence of one to five years for anyone who instigates or incites hatred, discord or intolerance on discriminatory basis.

Police brutality against Roma in Macedonia is worrying. The ERRC draws the Commission's attention to the following two incidents in 2013:

On 5 February 2013, an eighteen year-old Romani man reported ill treatment by two police officers belonging to special 'Alfa' unit. The Romani man was selling perfumes in the centre of Skopje when two non-uniformed policemen at the age of 25-35 years old approached and asked for his ID. The two policemen told him to accompany them to the 'Bit Pazar' Police Station. When they arrived at the police station, they started to interrogate him, suspecting that he was a thief because he was Roma. During the interrogation process other three police officers joined them to interrogate him. One of them, told him that he allegedly saw him breaking a car window and tried to force him to admit it, but the victim told him that he has never done anything like that. When he refused to admit the act, the interrogator started shouting at him and was humiliating him with

11 PlusInfo, Is it constitutional to be deported and subsequently not to be able to get out of Macedonia?, 17.04.2014, available at: <http://www.plusinfo.mk/vest/133656/Dali-e-ustavno-em-da-si-deportiran-em-da-ne-mozhesh-da-mrdnesh-od-Makedonija->.

12 Alfa TV, Revocation of passports of fake asylum seekers in front of the Constitutional Court, 16.04.2014, available at: http://www.alfa.mk/News.aspx?id=75134#.U1-uVWCd_K.

13 Constitution of R.Macedonia, 1 November 1991, available at: <http://www.sobranie.mk/?ItemID=A431BEE83F63594B8FE11DA66C97BEAF>.

14 Issue paper by Nils Muižnieks, Council of Europe Commissioner for Human Rights, The right to leave a country, October 2013, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2401714&SecMode=1&DocId=2082060&Usage=2>.

15 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to the "former Yugoslav Republic of Macedonia", from 26 to 29 November 2012, CommDH(2013)4, 9 April 2013.

16 See: *Official Gazette of the Republic of Macedonia, No. 27 from 05.02.2014.*

following words *'you cigan'¹⁷ admit that you are a thief'* and kicked him hard in his leg, leaving him with severe pain.¹⁸ The victim did not want to initiate any legal action due to fear of reprisals.

On May 05, 2013 at about 19:30 hours two uniformed police officers went to the Topana Romani neighbourhood, following an alert that one Romani person who was on prison leave and failed to return in due time, wounded another man with a knife. During the action, they called back-up and approximately 50-60 police officers, including the special police unit 'Alfa' came to the scene. Once they arrived, they raided the Roma community i.e. they forcibly entered Romani houses, without providing any explanation. They beat ten Roma out of which three were women. The police issued a public statement saying that during the arrest, locals resisted and attacked police officers. The ERRC is providing legal representation to one of the victims in this case, and the matter is currently pending in front of the Macedonian Public Prosecutor's office.¹⁹

¹⁷ The word cigan is always used in a negative context.

¹⁸ ERRC Interview MK/FEB2014/7.

¹⁹ ERRC Interview MK/JUNE2013/4.