



Mr Spiro Ristovski, Minister of Labour and Social Policy  
Mr Pance Kralev, Minister of Education and Science  
Mr Nikola Todorov, Minister of Health

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Dear Sirs,

The European Roma Rights Centre (ERRC)<sup>1</sup> and National Roma Centrum (NRC)<sup>2</sup> are writing in response to statements made at the joint media conference on improving the work of commissions for categorisation of children with development difficulties held on 28 June 2012<sup>3</sup> by the Macedonian Ministry of Labour and Social Policy, Ministry of Education and Science and Ministry of Health. During that event, Minister Ristovski alleged that some parents forced their children to act disabled to get into “special” education and receive state benefits for persons with a disability.<sup>4</sup> Minister Ristovski also underlined that criminal charges may be brought against such parents, threatening the revocation of their parental rights.<sup>5</sup> It was reported that the Ministry of Labour and Social Policy documented dozens of such cases, all of which relate to socially disadvantaged families,<sup>6</sup> and that the Ministries would start to revise the regulations which guide the work of commissions for categorisation of children with development difficulties.

The ERRC and NRC are concerned that, in your public statements to date, you have focused blame for this situation directly on parents, rather than on the apparent failure of the education system itself and the public actors responsible for it. The ERRC and NRC welcome the Ministries’ attention to the misplacement of children in special education and strongly urge that your future steps be undertaken with full regard to respect for the human rights standards to which Macedonia is bound. Most importantly, this work must be guided by the fact that ensuring the right of every child to inclusive education of the highest standard without discrimination is the responsibility of the State, and specifically its agents in the education system.

The problems and systematic shortcomings of the special education system in Macedonia, including the overrepresentation of Romani children in special education, have been highlighted in reports by the Ombudsman office,<sup>7</sup> the State Education Inspectorate,<sup>8</sup> the ERRC<sup>9</sup> and other international<sup>10</sup> and national

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1 The 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 strategic litigation, international advocacy, research and policy development, and training of Romani activists. See: [www.errc.org](http://www.errc.org).

2 The NRC is a Macedonian-based civil society organisation for the promotion and protection of human rights of the citizens in the Republic of Macedonia. NRC acts through direct field work, research, public debates and initiatives to change legislation. See: [www.nationalromacentrum.org](http://www.nationalromacentrum.org)

3 Член 4 Правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој („Службен весник на Република Македонија“, број 30/2000 од 19.04.2000.)

4 <http://www.mtsp.gov.mk/default-mk.asp?ItemID=2D50BA69362CE341A19E6021D0AC9F60>

5 Available at <http://www.makedonija24.mk/>, published on 28.06.2012.

6 <http://www.sitel.com.mk/dnevnik/makedonija/morale-da-glumat-invalidi-za-4200-denari-mesechno>

7 Available at [http://ombudsman.mk/ombudsman/MK/posebni\\_izveshtai.aspx](http://ombudsman.mk/ombudsman/MK/posebni_izveshtai.aspx)

8 A report documented children being enrolled in the special primary school without the opinion of the categorisation commission, Report of the State Education Inspectorate No. 21-25/3 for special primary school “St. Kliment Ohridski” Novo Selo from 22.12.2010.

9 ERRC, submission to the European Commission on Macedonia, May 2011, available at: <http://www.errc.org/cms/upload/file/ecprogress-macedonia-2011.pdf>.

10 Country Assessment: Macedonia, Roma Education Fund, 2012, available at: [www.romaeducationfund.hu/sites/default/files/publications/ref\\_ca\\_2011\\_mac\\_english\\_screen.pdf](http://www.romaeducationfund.hu/sites/default/files/publications/ref_ca_2011_mac_english_screen.pdf).

NGOs.<sup>11</sup> The European Commission also noted concern at the overrepresentation of Romani children in special education in its 2011 Progress Report on Macedonia.<sup>12</sup>

Romani children accounted for at least 46% of the students in special schools and special classes visited by the ERRC in 2011.<sup>13</sup> The preliminary results of a survey of Romani parents whose children attend special education conducted by the ERRC and the National Roma Centrum in 2012 show that around 57% of respondents stated they do not know the difference between regular and special education. Another 65% of Romani parents stated that their child was placed in special education following a recommendation by school staff.

Macedonia has ratified the European Convention on Human Rights,<sup>14</sup> the European Social Charter,<sup>15</sup> the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention of the Rights of Persons with Disability<sup>16</sup>; the UNESCO Convention against Discrimination in Education.<sup>17</sup> These international laws guarantee the right to equal treatment, prohibition of discrimination including in the field of education as well as the right to education to the full development of human personality and the sense of its dignity.

The basic rights of the individual and citizen recognised in international law are one of the fundamental values of the constitutional order of the Republic of Macedonia (Article 8 of the Constitution). The Constitution further guarantees that all citizens are equal in their freedoms and rights,<sup>18</sup> while the Law on Prevention of and Protection Against Discrimination<sup>19</sup> explicitly prohibits direct and indirect discrimination, particularly in the field of education. Furthermore, in regards to parental consent for placing children in special education, in its Grand Chamber judgment the case *D.H. and others v the Czech Republic*<sup>20</sup> the European Court of Human Rights established that no waiver of the right not to be subjected to racial discrimination can be accepted as it would be against an important public interest.

In your forthcoming work to improve the regulatory framework around special education in Macedonia, the ERRC and NRC would note the following areas in need of particular attention:

- Contradiction within the Law on Primary Education (LPE) which establishes the inclusion of students with special educational needs (Article 3) and also their segregation in special schools and classes (Article 10);<sup>21</sup>
- Systematic segregation of students with special educational needs in special primary schools and special classes within mainstream primary schools (LPE, Article 10);
- Lack of a legal definition of the “students with special educational needs;”
- Imprecise regulations on assessing physical and psychological development difficulties and the work of categorisation commissions;<sup>22</sup>

11 Огнен Спасовски, Анализа на образоването на Ромите во Република Македонија, ФООМ, 2011, available at <http://soros.org.mk/dokumenti/analiza-na-obrazovanieto-na-romite.pdf>.

12 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/mk\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf).

13 ERRC, ERRC submission to the European Commission on Macedonia, May 2011, available at: <http://www.errc.org/cms/upload/file/ecprogress-macedonia-2011.pdf>.

14 <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=177&CM=1&DF=10/02/2010&CL=ENG>

15 <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=&DF=&CL=ENG&VL=1>

16 <http://www.un.org/disabilities/countries.asp?navid=17&pid=166>

17 [http://hurlink.org/tools/Summary\\_Human\\_Rights\\_Framework\\_for\\_Macedonia.pdf](http://hurlink.org/tools/Summary_Human_Rights_Framework_for_Macedonia.pdf)

18 Article 9 of the Constitution of the Republic of Macedonia (“Official Gazette of the Rep. of Macedonia” No. 52/1991)

19 Art.3 and Art. 4 of the Law on Prevention of and Protection against Discrimination (“Official Gazette of the Rep. of Macedonia” No. 50/2010)

20 European Court of Human Rights, *D.H. and others v. The Czech Republic*, Application no. 57325/00, 13 November 2007, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256>

21 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.)

22 Law on Social Protection (“Official Gazette of Rep. of Macedonia” No. 79/09 from 24.06.2009., 36/11, 51/11) and Rulebook on assessing specific needs of persons with physical or mental development difficulties (“Official Gazette of Rep. of Macedonia” No. 30/2000 from 19.04.2000.)

- Imprecise regulation on primary education of students with development difficulties;<sup>23</sup>
- Overlap and unclear application of rulebooks relating to education of students with development difficulties and assessing specific needs of persons with physical or psychological development difficulties;
- Lack of clear guidance on provision of adequate information to parents and procedures for informed consent;
- Inadequate assessment tools;
- Failure to adopt regulation on the manner and conditions for enrolling students with special educational needs in the primary schools as stipulated in Article 51(2) of the Law on Primary Education;
- Unclear processes and responsibilities for monitoring, re-categorisation and class transfer of children with special educational needs and development difficulties;
- Educational negligence (asocial behavior) and offensive behavior are grounds for placement in special education intended for children with psychological development difficulties regardless of the absence of physical or mental impairment.

In line with the legal commitment of the Macedonian Government to guarantee all children the right to education without discrimination and the above referenced gaps in the existing regulatory framework, the ERRC and NRC urge you to:

- Stop the placement of children in special education while the relevant regulations are being adopted or revised;
- Adopt legislation explicitly mandating the desegregation of Macedonian education system;
- Develop a comprehensive policy with specific targets, measures, funding and a set timeline for achieving inclusive education in mainstream schools for all children and where needed, provide adequate educational support for pupils with special educational needs within such schools;
- Prohibit the enrolment of children without mental development difficulties in schools and classes designed for children with mental disabilities, regardless of parental consent or request, and provide the opportunity for parents to take legal action against school officials who enable the wrongful placement of non-disabled children in such schools;
- Design a system of incentives for mainstream schools that accept children from special schools or special classes in order to facilitate transfer of children from special to standard schools;
- Clearly define the “students with special educational needs” category;
- Provide targeted financial support to civil society organisations to carry out information campaigns among Romani parents about their roles and rights as the primary decision makers regarding their child’s education and the benefits of integrating children from special into mainstream education;
- Provide assistance to Romani parents in enrolling their children in integrated schools;
- Secure reliable and regular ethnically disaggregated data collection at the school and national level by education authorities and government statistical services in accordance with the national, EU and international standards on data protection.

The ERRC and NRC would welcome the opportunity to further discuss the above stated issues with the respective Ministries and other stakeholders, as well as the opportunity to participate in any working groups established to improve the educational legal and policy framework.

Sincerely,

Dezideriu Gergely  
Executive Director  
European Roma Rights Centre

Asmet Elezovski  
President of CSO  
National Roma Centrum

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<sup>23</sup> 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.)