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Re: Breaches of Directive 2000/43 resulting from segregation of Romani children in the Romanian education system

Dear Commissioner Jourová,

1. We are writing to encourage the Commission to initiate an investigation into breaches of Directive 2000/43 (“the Racial Equality Directive”) resulting from the segregation of Romani children in the Romanian education system. This letter proceeds as follows:

I. Introduction

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VI. Violation of the Racial Equality Directive

I. Introduction

2. The European Roma Rights Centre (“the ERRC”) is an international public interest law organisation working to combat anti-Romani racism and human rights abuses against Roma through strategic litigation, research and policy development, advocacy and human rights education. Combating school segregation, a grave and persistent form of discrimination in education, is one of the ERRC’s main activities. The ERRC has played a significant role as representative of Romani plaintiffs in the landmark school segregation cases decided by the European Court of Human Rights, including *D.H. and Others v the Czech Republic*, *Oršuš and others v Croatia*, and *Horváth and Kiss v. Hungary*.
3. Romani CRISS is a Romanian NGO established in 1993, dedicated to defending the rights of Roma as well as preventing and combating anti-Roma discrimination. It has engaged in extensive desegregation litigation and project work in education as detailed throughout this submission.
4. Recently, both the ERRC and Romani CRISS were partners in the European Commission-funded DARE-Net project: Desegregation and Action for Roma in Education-Network, a project aiming to develop an International Roma Civil Society Network in order to disseminate the good practices in the field of school desegregation of Romani children. Its aim is to encourage a stronger commitment from educational institutions for the integration of Romani children and students, through desegregation and providing quality education.¹
5. The purpose of this briefing is to draw attention to the persistent segregation of Romani children in the Romanian education system, in particular by emphasising how the national legal framework on combating and preventing segregation in Romania is improperly implemented and ineffective. We believe the evidence set out below provides the basis in particular for the European Commission to request further information from the Romanian authorities as to whether they are complying with their obligation under EU law (particularly Directive 2000/43/EC) to prohibit race and ethnicity discrimination in education.

II. Background information on Romani people in Romania

6. According to the Romanian National Statistics Institute, based on the latest Population and Housing Census which was conducted in 2011, there are 621,600 Roma living in Romania (3.3% of the total population).² There has been a notable increase in the Romani population since the 2002 census when the number of Roma living in Romania was 535,140 (2.46% of the total population).³ According to the Council of Europe’s Roma and Travelers Division estimates, Romania appears among the countries with the highest Romani population, with some 1.85 million Roma.⁴
7. According to the 2002 census, some 47% of Roma in Romania were 19 or younger, while 36% were 14 or younger.⁵ This age distribution is likely to have persisted.
8. According to the 2011 census, the mother tongue spoken by Roma is Romanian for some 55%, Romanes for 39%, and Hungarian for 5%.
9. The distribution of the highest level of education completed for the major ethnic groups in Romania in accordance with the 2011 census⁶ is as follows:

¹ You can find more information about the project at <http://www.dare-net.eu/>.

² Institutul Național de Statistică, *Recensământul populației și locuințelor - 2011* (2011), 9, available at: <http://www.insse.ro/cms/files/publicatii/pliante%20statistice/04-recensamantul%20populatiei.pdf> (accessed 18 May 2016).

³ Ibid.

⁴ Council of Europe, *Estimates and official numbers of Roma in Europe* (2012) available for download at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680088ea9> (accessed 18 May 2016).

⁵ Institutul Național de Statistică, *Recensământul populației și locuințelor – 2002, Vol. IV Structura etnică și confesională* (2002), Table 17, available for download at: <http://www.insse.ro/cms/files/RPL2002INS/vol4/tabele/t17.pdf> (accessed 18 May 2016).

Ethnic group	University	High school or non-college education	Middle school	Primary school	No school completed
Romanians	14.8%	42.3%	26.6%	13.8%	1.6%
Hungarians	10.2%	46.2%	30.5%	11.1%	2.1%
Roma	0.7%	9.2%	35.7%	34.2%	20.2%

III. Factual information on segregation

III.1 Prevalence of school segregation

10. Data collected by the Ministry of Education in 2006 suggested that between 37.9% and 45.4% of Romani pupils in Romania were subject to some form of school segregation, in 444 schools.⁷ No official data was subsequently made public, as described below. However according to the data taken into account in the latest National Roma Inclusion Strategy (NRIS) there are approximately 1,680 schools with a Romani population of at least 15% Romani pupils⁸, compared to a total of some 4,000 primary and lower secondary schools.⁹
11. A 2008 UNICEF-supported study¹⁰ found some form of segregation of Romani children in 67% of the schools it surveyed: 31.6% of these schools were majority Roma, while 35.3% (non-majority Romani schools) placed Roma in segregated classes.
12. The study was carried out soon after the entry into force of the main piece of desegregation legislation, Ministerial Order no.1540/2007. At that time 63% of the schools surveyed were not aware of or did not implement this order.
13. The situation did not improve significantly in the subsequent years. In 2011, according to another UNICEF-supported study,¹¹ at primary school level, 64.5% of Romani students attended majority Romani classes (the study does not distinguish whether these were in majority Roma schools or not) and at middle school level the percentage was 53%. The same report reveals segregation was more common in rural areas (68.6%) than in urban areas (47.6%). In the same way, children speaking Romani are more segregated (64%) than those from Romanian-speaking households (48.3%).¹²
14. A 2012 United Nations Development Programme report based on Roma survey results from 2011 found that 27% of Romani children aged seven to 15 were in a segregated class, whether in a Roma-majority school or not.¹³ The UNDP study calculated the percentage of segregated Romani children in relation to the total number of Romani children in that age group (regardless of whether they are in school or not), rather than in relation to the total

⁶ Institutul Național de Statistică, *Recensământul populației și locuințelor - 2011 (2011) Tabel 18 - Populația stabilă de 10 ani și peste pe sexe, după etnie și nivelul de educație – categorii de localități* available at: http://www.recensamantromania.ro/wp-content/uploads/2013/07/sR_TAB_18.xls (accessed 18 May 2016).

⁷ Open Society Institute, *Equal Access to Quality Education for Roma* (2007), 362, available at: https://www.opensocietyfoundations.org/sites/default/files/2roma_20070329_0.pdf (accessed 18 May 2016).

⁸ *Strategia Guvernului României de Incluziune a Cetățenilor Români aparținând Minorității Rome pentru perioada 2014-2020* (2014) available at: http://www.anr.gov.ro/docs/Site2014/Strategie/Strategie_final_18-11-2014.pdf (accessed 18 May 2016).

⁹ Institutul Național de Statistică, *Unitățile de învățământ primar și gimnazial publice și private (normale)* available at: <http://colectaredate.insse.ro/metadate/viewStatisticalResearch.htm?locale=ro&researchId=4088> (accessed 19 May 2016).

¹⁰ Laura Surdu, *Monitorizarea aplicării măsurilor împotriva segregării școlare în România* (MarLink, 2008) available at: <http://www.unicef.ro/wp-content/uploads/monitorizarea-aplicarii-masurilor-impotriva-segregarii-scolare-in-romania.pdf> (accessed 18 May 2016).

¹¹ Laura Surdu coord., Enikő Vincze and Marius Wamsiedel, *Roma School Participation, Non-Attendance and Discrimination in Romania* (2011), 9, available at: http://www.unicef.org/romania/Roma_school.pdf (accessed 18 May 2016).

¹² Ibid.

¹³ Christian Brüggemann, *Roma Education in Comparative Perspective. Analysis of the UNDP/World Bank/EC Regional Roma Survey 2011*, (Bratislava: United Nations Development Programme, 2012), available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/Roma-Education-Comparative-Perspective-UNDP.pdf> (accessed 18 May 2016).

number of Romani children in school, as the previous studies did. This explains the lower figure of 27%. The UNDP study is therefore indicative of the alarming number of Romani children who are not in school at all, as opposed to any reduction in school segregation.

15. School segregation persists to this day. Recent research¹⁴ in North-Eastern Romania alone¹⁵ found that 81 schools out of 394 for which data was available displayed some form of segregation of Romani children. In half of the 112 municipalities surveyed there was at least one school that had a segregation issue.
16. In contrast, a recent official analysis¹⁶ estimates that there are only 33 segregated schools nationwide.
17. School segregation does not appear to be explained primarily by residential segregation. A UNICEF-supported study¹⁷, focusing more heavily on urban areas, found that 33% of all schools surveyed presented some form of segregation: 14% of all schools were majority-Roma schools less than one kilometre away from a Romani community, while 19% of all schools were non-majority Roma schools, more than one kilometre away from a Romani community, which had segregated Roma classes. The 2008 study by Surdu¹⁸ looked at the proximity between segregated and mixed schools and found that 28% of segregated schools were less than one kilometre away from a mixed school, while another 60% were between one and three kilometres away from mixed schools, supporting our view the conclusion that school segregation is not determined by residential segregation.
18. Experts have identified various forms of segregation: children from compact Romani communities are directed to schools traditionally and informally identified as “Roma schools” (even though mixed schools exist nearby); Romani children are arbitrarily directed to special schools; Romani pupils are placed in separate classes in mixed schools, ostensibly on ability or merit, or based on the pretext of their late enrolment or failure to have previously attended kindergarten.¹⁹
19. All these practices are specifically forbidden by Romanian law²⁰ as detailed below in section IV.
20. According to the World Bank, the refusal of non-Romani parents to mix their children with Romani children, which often contributes to the placement of Romani children in separate classes, may be seen in part as a way to secure better access to the limited resources of an under-funded education system.
21. There is a consensus across the above-mentioned studies that Romani pupils in segregated classes or schools have significantly worse learning conditions than their peers in mixed facilities: buildings are often in a state of disrepair and more often lack heating and access to electricity and sanitation than mixed schools. Their teachers more often lack the qualifications required by law and suffer from poor morale.

III.2 International recognition of the school segregation problem in Romania

¹⁴ Eugen Crai et al., 2016, *Raport de monitorizare privind segregarea / incluziunea școlară a elevilor romi în regiunea Nord-Est*, available at: <http://www.cado.org.ro/segregare-scolara-in-regiunea-nord-est-moldova.html> (accessed 19 May 2016).

¹⁵ In five of Romania's 41 counties: Botoșani, Iași, Neamț, Suceava and Vaslui counties, which comprise some 14% of the total population.

¹⁶ Ministry of European Funds, *Analiză socială desfășurată în județele din România* (October 2015), available at: http://www.fonduri-ue.ro/images/files/transparența/romi/23.03/Analiza_judetelor_RO.pdf (accessed 19 May 2016).

¹⁷ Gelu Duminiță, Ana Ivasiuc *One school for all?: access to quality education for Roma children : research report* (2010) available at: http://www.unicef.org/romania/One_school_for_all_pt_WEB.pdf (accessed 19 May 2016).

¹⁸ Laura Surdu, *Monitorizarea Aplicării Măsurilor împotriva Segregării Școlare în România*.

¹⁹ Enikő Vincze and Hajnal Harbula, *Strategii Identitare și Educație Școlară Raport de cercetare despre accesul copiilor romi la școală* (Cluj: Editura Fundației pentru Studii Europene 2011) *EDUMIGROM / România*, Available at <http://sparex-ro.eu/wp-content/uploads/strategii-identitare-si-eduatie-scolara-Volum-2011.pdf>.

²⁰ Education Minister's Order no. 1540/2007 on the prohibition of school segregation of Romani children and the approval of the methodology for the prevention and elimination of school segregation of Romani children.

22. The persistent ways in which the Romanian educational system fails Romani children, particularly the problem of school segregation of Romani children, have drawn the attention of different international bodies.
23. In 2009 the UN Committee on the Rights of the Child highlighted the issues that Romani children are faced with. According to the Committee, enrolment in primary school has decreased and the number of school dropouts has increased significantly in the preceding years affecting children of Romani origin. They have a significantly lower pre-school and primary school enrolment rate; many experience some form of school segregation, have lower school attendance rates, and may be wrongly enrolled in special schools as families cannot afford education-related costs.²¹
24. In 2010 the UN Committee on the Elimination of Racial Discrimination took note of the numerous measures taken by Romania to improve the situation of the Roma, and also to prevent and combat racial discrimination against them. However, the Committee expressed its concerns regarding the situation of Roma who continue to be the victims of racial stereotyping and racial discrimination in access to education and in the quality of education — including through segregation of Romani children — as well as in access to housing, care, health services, social services and employment.²² Among the Committee's recommendations was that Romania should ensure that Romani children have access to education, and also that the ministerial order of July 2007 banning segregation be disseminated among teachers and Romani parents, and properly implemented.²³
25. In 2014 the UN Committee on Economic, Social and Cultural Rights pointed in its concluding observations on the combined third to fifth periodic reports of Romania²⁴ to the high percentage of Romani children who have no formal education and the high dropout rates, despite the measures Romania has taken in this regard. The Committee was also concerned at cases that indicate that the practice of segregating Romani children and children with disabilities persists in the school system.

IV. National legal and policy framework on school desegregation

IV.1 Education law and 2007 Ministerial Order on Desegregation

26. School segregation remains a critical issue for Romani children in Romania even though the Romanian state took steps to align the national legislation with Directive 2000/43 and other international legislation in anti-discrimination matters in the educational field. That national legislation includes Law no.1/2011 (Law on Education) and Education Minister's Order no.1540/2007 (on the prohibition of school segregation of Romani children).
27. The Romanian education system is governed by the Law on Education. According to article 2.4, all Romanian citizens have equal rights of access to all levels and forms of secondary and higher education and lifelong learning without any form of discrimination. Article 3 lists non-discriminatory access to learning, social inclusion and equal opportunity among the various principles governing all forms of education in Romania. However, the law does not make any reference to school segregation or its prohibition.

²¹ United Nations Committee on the Rights of the Child, *Concluding observations of the Committee on the Rights of the Child: Romania* (2009) available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fROM%2fCO%2f4&Lang=en (accessed on 19 May 2016).

²² United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination* (2010) available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fROU%2fCO%2f16-19&Lang=en (accessed on 19 May 2016).

²³ Ibid.

²⁴ United Nations Committee on Economic, Social and Cultural Rights, *Concluding observations on the combined third to fifth periodic reports of Romania* (2014) available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fROU%2fCO%2f3-5&Lang=en (accessed on 19 May 2016).

28. School segregation is forbidden by Education Minister's Order no. 1540/2007 on the prohibition of school segregation of Romani children and the approval of the methodology for the prevention and elimination of school segregation of Romani children (hereinafter the Ministerial Order and the Methodology).²⁵
29. School segregation is defined in the Methodology (art.2.2) as being "*a serious type of discrimination consisting of physical separation with or without intention, of minority children from the rest of the children in groups, classes, buildings, institutions and other educational facilities, so that the proportion of minority children in light of the total number of children in the particular unit is disproportionate when compared to their proportion in that age group within the total population in the relevant administrative unit*". It is noteworthy that the standard employed refers to the ethnic proportion in the administrative unit (i.e. town or village) rather than the particular catchment area of the school.
30. The Ministerial Order prohibits the following practices:
- Forming predominantly Roma classes upon initial enrolment (first and fifth grades);
 - teaching Romani children in residentially segregated schools, defined as in or near a compact Romani settlement, without another nearby school and where a large percentage of pupils are Roma;
 - directing Romani children towards segregated kindergartens/schools near Romani neighbourhoods when mixed establishments are available;
 - placing all children who have not attended kindergarten in the same class in first grade;
 - deliberately placing Romani children in mixed schools into groups, classes, buildings or other facilities exclusively destined to them;
 - separation resulting from such practices as placing in the same class all children who have enrolled late or transferring Romani children from a segregated school to a mixed one but keeping them all in the same class in their new school;
 - placing Romani children diagnosed with learning difficulties or special education needs in the same group/class or in a separate school.
31. The Order mandates the establishment of a commission within the Ministry of Education which would elaborate proposals for planning, organising, coordinating and monitoring the implementation of the Ministry of Education's strategy in the field of improving the quality of education for Roma, as well as analysing discrimination situations in schools and in particular cases of school segregation, in order to ensure the principle of non-discrimination is applied in the Romanian educational system. However, the Commission was not founded in 2009 as intended, as a result of bureaucratic issues and because of political changes within the Ministry of Education. The whole advocacy process had to be restarted; and as of today, it appears there is still no political will to found this commission.²⁶
32. On the positive side, a new ministerial order no. 5.115/2014 approving the internal rules of schools mandates in its article 77 the creation of desegregation commissions at school level. The extent to and the delay with which this new provision will be complied remains to be ascertained.
33. The Ministerial Order provides for the obligation of schools to report on desegregation measures to county school inspectorates, who are supposed to centralise the data and inform the Ministry of Education, which in turn is under an obligation to include this information in its annual report on the state of education in Romania.
34. The reporting process envisaged by the ministerial order appears to be broken at every step.

²⁵ Education Minister's Order No.1540/2007.

²⁶ Romani CRISS et al., *NGO Report on the third to fifth periodic reports of Romania concerning the International Covenant on Economic, Social and Cultural Rights in preparation for the 53rd Session of the Committee on Economic, Social and Cultural Rights Geneva, 10-28 November 2014*, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fROU%2f18427&Lang=en (accessed 19 May 2016).

35. During the 2007-2008 school year when Romani CRISS was monitoring the application of the desegregation Order No. 1540/2007, they noticed that teachers did not know about the Order's existence; not even all interviewed school directors knew about it. Romani parents did not know that school segregation was prohibited by law, either.²⁷
36. It has been suggested that the provisions of the ministerial order are not implemented by schools or school inspectorates, who take advantage of the absence of precise and severe sanctions.²⁸ The order envisages a full-range of sanctions: disciplinary, civil and even criminal. However, no specific sanction is provided for any particular failure. An account of the Ministry's efforts between 2007 and 2014 to implement the order and obtain information on desegregation measures is available from various sources. Apparently these consisted of repeatedly reminding school inspectorates of their obligations, without any indication of any sanctions being adopted.
37. In any case, the Ministry appears to have finally obtained some data. It has reportedly compiled an "Analysis of the stage of segregations/ desegregations [sic] in the school year 2012-2013" dating from 19 July 2013 and further data was transmitted by county school inspectorates between January and April 2014 which was included in an internal document of the ministry intended for analysis and action.²⁹
38. The Ministry has not complied with its own obligation of publicising data on desegregation either in its general annual report or in any other form. The latest Annual Report on the State of Education in Romania was published in 2010,³⁰ and contains no data about school segregation. The only point relevant for Romani children is mentioned in the section EU Funded Projects - a project which was intended to prevent and correct early school leaving among children between 5-8 years in 420 disadvantaged communities with a high percentage of Roma.³¹
39. Between January and February 2015, Romani CRISS requested information from the Ministry of Education, the National Agency for Roma, and all the 42 county-level school inspectorates on the implementation of the ministerial order, in particular on the current status of school segregation and plans to address it. The Ministry of Education and the National Agency for Roma have failed to respond to the request.³²
40. Nor is it apparent that the Ministry has at least shared its data with other state authorities: a 2014 assessment on NRIS implementation available on the webpage of the National Roma Agency³³ describes various communication problems with the Ministry of Education and explicitly states that no data has been communicated on the reduction of cases of school segregation, the number of schools/classes desegregated or the number of desegregation plans drafted and monitored.

IV.2 National Roma Inclusion Strategy

²⁷ Ibid.

²⁸ Romani CRISS, *Segregarea Școlară, Sub Lupa Societății Civile* (2011) available at: http://www.romanicriss.org/Brosura_segregare_pasi%20strategici%20educatie%202009-2011.pdf (accessed 17 May 2016).

²⁹ Luminița Costache, Gheorghe Sarău and Ion Sandu, *Rromanipen educațional* (București: UNICEF, 2014) available at http://www.unicef.ro/wp-content/uploads/Ghid.Rromanipen.web_.pdf (accessed on 19 May 2016).

³⁰ Andrei Macsut, *Topul Transparenței. De la primării de sector, consilii județene sau ministere, instituțiile statului nu se grăbesc să le spună contribuabililor ce-au făcut un an întreg* (2015) available at: <http://www.romaniacurata.ro/topul-transparenței-de-la-primării-de-sector-consilii-județene-sau-ministere-instituțiile-statului-nu-se-grăbesc-să-le-spuna-contribuabililor-ce-au-făcut-un-an-întreg/> (accessed on 19 May 2016).

³¹ Ministry of Education and Research, *Raport asupra Stării Sistemului Național de Învățământ - 2010*, available at: <http://www.edu.ro/index.php/articles/15128> (accessed on 19 May 2016).

³² Romani CRISS, *Implementarea Măsurilor privind Incluziunea Socială a Romilor – Domeniul Educație* (2015), 40 available at: <http://www.dare-net.eu/cms/upload/file/shadow-report-on-roma-segregation-in-education-romania-romanian.pdf> (accessed on 19 May 2016).

³³ Agenția Națională pentru Romi, *Analiza Implementării Strategiei Guvernului nr.1221/2011* (2014) 20-21 available at: <http://www.anr.gov.ro/docs/Site2014/Strategie/Analiza%20implementării%20strategiei%20Guvernului%20nr.%201221%20din%202011.pdf> (accessed on 19 May 2016).

41. The most recent version of the NRIS³⁴ from early 2015 envisages the following actions: “12. *put in place an effective system to identify, monitor and intervene in order to eradicate the cases of discrimination and school segregation. 13. supplement current legislation with sanctions and mandatory actions applicable when school segregation is identified*”.
42. It was envisaged that by the end of 2016 all counties will have developed desegregation plans and the legislation will have been amended, while by 2020 segregation will have been eradicated.
43. The NRIS mentions 1,680 schools where the number of Romani children and students is at least 15%, but contains no explicit data on the current size of the school segregation problem.³⁵
44. One other measure to be taken, aimed at increasing access to early education, is creating day-care centres and kindergartens in Romani communities. The ERRC and Romani CRISS are concerned that this might entrench existing patterns of segregation. These developments highlight the need for detailed safeguards applicable to well-meaning but potentially segregating measures in the field of education. This need is not acknowledged in the NRIS.
45. According to the European Commission's Assessment on the National Roma Inclusion Strategies (2014) further efforts are needed towards inclusive education and desegregation, including through the enforcement of legislation in place and active desegregation measures. All new measures in education should be carefully assessed and monitored for their potential impact on sustaining segregation.³⁶

V. Anti-discrimination law and National Council for Combating Discrimination practice in segregation cases

46. The main anti-discrimination law in Romania is the Government's Ordinance no. 137/2000 (the Anti-discrimination Law or ADL). It sets the general legal framework on combating discrimination in Romania, establishes the competence of the National Council for Combating Discrimination (NCCD) competence and provides sanctions for acts of discrimination.
47. The ADL devotes a single article to education (art. 11) according to which it is considered a misdemeanour to deny an individual or group access to the public or private education system, to any degree or level, because of their belonging to a particular race, nationality, ethnicity, religion, social category or to a disadvantaged category, or because of the beliefs, sex or sexual orientation of the persons concerned. The ADL does not contain specific provisions regarding school segregation.
48. However, even if school segregation was not clearly defined as a form of discrimination, it is considered that this aspect is covered under the anti-discrimination legislation. The term “segregation” is associated with education according to the practice of the National Council for Combating Discrimination, the body that implements the provisions of this ordinance.
49. According to the ADL, the NCCD is competent to receive complaints regarding discrimination on any ground. The NCCD may apply the following sanctions: fines, warnings and order the party that committed the acts of discrimination to publish a summary of the judgment in the media.

³⁴ *Strategia Guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2015-2020, din 14.01.2015*, available at: <http://lege5.ro/Gratuit/guytsnzwgm/strategia-guvernului-romaniei-de-incluziune-a-cetatenilor-romani-apartinand-minoritatii-rome-pentru-perioada-2015-2020-din-14012015> (accessed on 19 May 2016).

³⁵ Ibid.

³⁶ Ibid.

50. According to the latest Shadow Report for the Committee on the Elimination of Racial Discrimination submitted by Romani CRISS and the Roma Civic Alliance of Romania,³⁷ the relatively large percentage of NCCD complaints involving discrimination based on ethnicity is not an indicator of an increased awareness of the Romani population on available remedies and protection against forms of discrimination. They emphasised that members of Romani communities are not fully aware of the existence of the National Council for Combating Discrimination, or of the legal options available to them if they face discrimination as most of the complaints are filed by specialised NGOs who are aware of the forms of protection against discrimination due to their activity.³⁸ People who are aware of the activity of NCCD are sceptical regarding its actions and its efficiency in solving the discrimination cases in Romania, since there is a political influence due to the affiliation of members of the Steering Board to different political parties.³⁹
51. The NCCD's practice left room for criticism of its effectiveness in combating segregation. Although the NCCD has ruled in many cases on segregation, the sanctions have mostly been warnings and recommendations instead of fines. Also, as stated in a Constitutional Court decision in 2008, the NCCD is unable to issue binding decisions that could stop the legal effects of discriminatory actions. The NCCD only has the ability to detect discriminatory normative acts and to provide recommendations which do not have the legal power to change the discriminatory normative acts which will continue to produce their discriminatory effects.
52. Not only the sanctioning system was criticised but also the reasoning in emitting decisions, the use of a limited definition of segregation provided by the Ministry of Education, the effectiveness of its work in combating school segregation and public information campaigns and finally the failure to comply with the statutory period of 90 days in solving cases.⁴⁰
53. Reportedly the NCCD also considers the following sanctions available under Romanian law: suspension of a licence to operate; removal of right to receive public funding; and the obligation to implement anti-discrimination policies/plans.⁴¹ However, none of these have ever been applied in school segregation cases. In the experience of Romani CRISS, the NCCD has issued recommendations or warnings in segregation cases, only once resorting to a fine.
54. 181 petitions on racial discrimination in education have been submitted to the NCCD between 2007-2012.⁴² Brief summaries of the relevant cases brought mostly by Romani CRISS are presented below in a chronological order.
55. **Romani CRISS v. Cehei School (Decision 218 / 23.06.2003).**⁴³ The decision is the first by a public Romanian institution to acknowledge that segregation of Romani children in school is discrimination. The school in Cehei, Sălaj County, placed Romani children in a run-down annex adjacent to the main building where non-Romani children were studying. The NCCD emphasised that such a separation cannot be justified by the pupils' grades. Moreover the physical conditions in the principal school were much better than in the annex where Romani children were studying. The NCCD warned the school to stop this differential treatment of Romani students. In its decision, the NCCD underlined that segregation is "a severe form of discrimination".

³⁷ Romani CRISS and Alianța Civică a Romilor din România, *Shadow Report for the Committee on the Elimination of Racial Discrimination* (2010) available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fROU%2f7%2f9960&Lang=en (accessed on 19 May 2016).

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ European Commission against Racism and Intolerance, *Fourth Report on Romania* (2014) available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Romania/ROM-CbC-IV-2014-019-ENG.pdf> (accessed 19 May 2016).

⁴¹ Equinet, the European Network of Equality Bodies, *The Sanctions Regime in Discrimination Cases and Its Effect* (2015) available at: <http://www.equineteurope.org/The-Sanctions-Regime-in> (accessed 19 May 2016).

⁴² European Commission against Racism and Intolerance, *Fourth Report on Romania*.

⁴³ Ibid.

56. **NCCD v. Schools no.1 Glina, and no. 3 Bobești-Glina.**⁴⁴ The NCCD found that School no.1 Glina, in Ilfov County, segregated Romani children by creating two separate classes of fourth grade pupils within the same building of the same school. One class contained exclusively Romani children and the other only non-Romani children. The principal explained that since the Romani children all came from the same kindergarten and already knew each other, they should continue their studies together. The NCCD rejected this justification and issued a warning.
57. In contrast, the NCCD did not find any discrimination in School no.3 Bobești-Glina, where all children were of Romani origin. The language of instruction is Romani, and the children learn about Romani traditions and history based on an agreement with their parents. The Ilfov County Education Inspectorate defended these arrangements which it attributed to residential segregation as historically, the area had been inhabited only by Roma and thus only Roma attended the local school. On this basis, the NCCD concluded that there was no discrimination in School no.3.
58. **NCCD v. Măcin School, ex officio investigation (Decision 75/02.03.2006).**⁴⁵ The NCCD's own investigation uncovered segregation in Măcin, Galați County, where separate classes for Romani children had been created. A warning was issued to the school principal.
59. **Romani CRISS v. Auto Professional School (Decision 103/24.06.2007).**⁴⁶ The NCCD found that the formation of classes on ethnic grounds, in this school in Dolj County, amounted to discrimination and recommended that the school management and the school inspectorate adopt the necessary measures to achieve desegregation.⁴⁷ In separate court proceedings finalised by a judgment of the Craiova Court of Appeal on 13 September 2010⁴⁸, Romani CRISS secured moral damages of 1 RON and an order for the school to issue an apology. However, the court of appeal refused to order the redistribution of the Romani children into other classes.
60. **Romani CRISS v. School no. 3 Roman (Decision 338/03.09.2007).**⁴⁹ The NCCD found that at the beginning of the school year two exclusively Roma classes were created in this school in Neamț County. This violated the Convention for the Protection of Children Rights, as well as the International Convention for the Elimination of all Forms of Racial Discrimination. It emphasised that forming separate classes based on ethnicity affects the quality of and access to education, amounting to direct discrimination, which was prohibited by the ADL and also by Order 1540/2007 against segregation. The NCCD issued a recommendation to end segregation.
61. **Romani CRISS v. Jósika Miklós School (Decision 330/27.03.2008).**⁵⁰ In the school year 2006-2007, 97 out of 155 (56%) students at this school in Atid (Harghita) were Roma. In the second year of study, the pupils were separated into two classes. Eight out of 14 pupils in class IIA were Roma and in class IIB, all of the pupils were Roma. The principal claimed that the pupils had been separated based on their performance, rather than their ethnicity. While recognising this as a case of segregation, the school inspectorate justified it based on the students' academic performance and needs.

⁴⁴ Adél Kegye and Crina Elena Morteau, Handbook on Tackling the Segregation of Roma Children in Nursery and Primary Schools (Budapest: Chance for Children Foundation, 2013) available at:

http://arhiv.cfcf.hu/images/stories/pdf/Handbook_FINAL_PART%202013.11.05.pdf (accessed 19 May 2016).

⁴⁵ Romani CRISS et al., *Guide for documenting and monitoring school segregation in Romania* (Dare-net Project, 2014) available at: <http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-romania-english-2014.pdf> (accessed 19 May 2016).

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Case details available at: http://portal.just.ro/54/SitePages/Dosar.aspx?id_dosar=540000000095259&id_inst=54 (accessed 27 May 2016).

⁴⁹ Adél Kegye and Crina Elena Morteau, Handbook on Tackling the Segregation of Roma Children in Nursery and Primary Schools (2013).

⁵⁰ Ibid.

The NCCD held that the separation of Romani children constitutes discrimination within the meaning of Ordinance 137/2000 and asked the school authorities to remedy the situation. The NCCD issued a recommendation to end segregation.

62. **Romani CRISS v. Special School Group (Decision 733/11.06.2008).**⁵¹ The case concerned the transfer of Romani children from the mainstream school to a school for children with intellectual disabilities in Dumbrăveni, Sibiu County. Children who repeated a grade two or three times in the mainstream school were subjected to an intellectual disability assessment and subsequently transferred to the special school. Over 90% of children attending the special school were Roma. The NCCD found that enrolment in the special school was mainly based on socio-economic grounds, rather than an actual disability. It also noted that the assessment system was not fair and had a disproportionate impact on Romani children. It ruled that this amounted to indirect discrimination and that parental consent could not waive the right not be discriminated against.

63. **Romani CRISS and Roma in Europe v. “Constantin Brăiloiu” High School**⁵² Romani CRISS and the Roma in Europe Association monitored Romani children’s situation from the first, second and fifth grades at this school in Târgu Jiu, Gorj County. In the first grade there were two classes: class 1A, with one Romani student out of 25 total. In class 1B, 11 of the 17 students were Roma. For the second grade, class 2A had 17 pupils, one of which was Roma, while in class 2B, out of 20 students, 10 were Roma. In the fifth grade, class 5A had 26 non-Romani pupils and no Roma; class 5B was made up of 23 students, 19 of whom were Roma. Romani CRISS instituted court proceedings requesting that the school inspectorate and the school pay 1 RON in moral damages for discrimination and desegregate the classes. By a final decision of 5 June 2008, the Gorj County Court dismissed the Romani CRISS’s application, finding that it had not proven the existence of segregation. This is contrary to the reversal of the burden of proof in discrimination cases as set out in the Racial Equality Directive, as well as in the national anti-discrimination law.

64. **Romani CRISS and Amaro Suno v. School no. 19 (Decision 234 of 20.06.2011).**⁵³ In 2006 Romani CRISS and Amaro Suno filed a complaint with the NCCD indicating that the Romani pupils from the first, third and fifth grades in this school in Craiova, Dolj County, had been segregated. The complaint was initially dismissed by the NCCD. This decision was later overturned by the supreme court which found that the NCCD had failed to carry out any analysis. Upon reconsideration, the NCCD found indirect discrimination in the formation of the classes in the first grade and direct discrimination in the ethnic make-up of classes in the second, third and fifth grades. They ordered as a sanction the warning of the school management.

65. **Romani CRISS v. “Ioniță Asan” High school (Decision 559/ 12.12.2012).**⁵⁴ The separate classroom intended for the first-grade Romani children was poorly cared for, had no floor and the walls were dirty. The NCCD found that this constituted discrimination and fined the school and the school inspectorate, 2,000 RON each.

66. Romani CRISS and the ERRC are not aware of any follow-up by the Romanian authorities to ensure that the discrimination found by the NCCD has ended. We strongly encourage the Commission to ask the Romanian government for specific information about the current situation in each of the schools set out above.

VI. Violation of the Racial Equality Directive

⁵¹ Romani CRISS et al., *Guide for documenting and monitoring school segregation in Romania* (Dare-net Project, 2014).

⁵² Ibid., 56

⁵³ Adél Kegye and Crina Elena Morteau, *Handbook on Tackling the Segregation of Roma Children in Nursery and Primary Schools* (2013).

⁵⁴ Romani CRISS et al., *Guide for documenting and monitoring school segregation in Romania* (Dare-net Project, 2014).

67. The Racial Equality Directive entered into force in respect of Romania upon accession, on 1 January 2007. Romania was at the time and continues to be in breach of key provisions of the directive due to the persistent segregation of Romani pupils either in separate schools or separate classes.
68. By its very nature segregation amounts to “less favourable”, as that term is used in Article 2(2)(a) of the Directive. Copious research shows that segregation is harmful to Romani pupils, who end up in worse and often humiliating learning facilities, with underqualified and demoralised teachers manifesting low-attainment expectations towards their Romani pupils,⁵⁵ leading them to worse educational outcomes, including high rates of early school leaving and functional illiteracy.⁵⁶
69. Contrary to what school authorities often claim, surveys show that a vast majority of Roma want their children in mixed schools and classes. Taken together with the dire material conditions of some of the segregated facilities and the alienation experienced by Romani children towards their non-Romani peers, from whom they are artificially separated, this may meet in specific examples the definition of harassment under the directive.
70. It is also well established, in the case law of the NCCD and otherwise, that the segregation of Romani pupils is in fact based on race, amounting to direct discrimination under the directive. A large number of practices and pretexts commonly used by the segregators, be they teachers, education officials or non-Romani parents, have been discredited to the point where they are specifically outlawed by the 2007 ministerial order, thus denying them any plausible appearance of neutrality. Even if the Commission is not convinced that direct discrimination can be proved, there is enough evidence to show indirect discrimination. There can be no justification for policies that result in relegating Romani children to Romani-only classrooms, with deleterious effects on their education and on race relations in Romanian society as a whole.
71. The directive requires the prohibition of discrimination, including school segregation. Such prohibition must not be merely theoretical. The 2007 ministerial order is clearly not fit for purpose. While it prohibits school segregation on paper, in practice the authorities have continuously failed to even discharge their organisational and reporting obligations, let alone actually roll back segregation. (The ministry has not managed to create an internal commission or publish its own report on the matter). We encourage the Commission to view the failed implementation of the 2007 ministerial order as a failure to implement the Racial Equality Directive in terms of prohibiting race discrimination in education.
72. We also believe Romania is breaching its obligation under article 15 of the directive to provide for and actually impose when necessary, effective, proportionate and dissuasive sanctions.
73. The vast experience of Romani CRISS in challenging school segregation shows that general anti-discrimination tools provided by Government Ordinance no. 137/2000 are no more dissuasive than the apparatus envisaged by the 2007 ministerial order: In all but one of the school segregation cases brought before the NCCD, the outcome was a recommendation or a warning to the segregating school. Nor is the ADL effective in addressing school segregation, as it has been unable to obtain a binding desegregation order from either the NCCD or the courts.

⁵⁵ Gelu Duminiță, Ana Ivasiuc *One school for all?: access to quality education for Roma children : research report* (2010).

⁵⁶ Roberta Gatti et al., *Being Fair, Faring Better: Promoting Equality of Opportunity for Marginalized Roma* (Washington, DC: World Bank, 2016) available at: http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2016/01/27/090224b084103a5f/2_0/Rendered/PDF/Being0fair00fa0or0marginalized0Roma.pdf (accessed 19 May 2016).

74. The deficiencies of the ADL tools were foreshadowed in C-81/12 Accept and are even more glaring when having to deal with discriminatory practices such as school segregation which are perpetrated by state authorities themselves.
75. To conclude, the continued segregation of significant numbers of Romani pupils in schools raises significant issues about Romania's compliance with the Racial Equality Directive, in particular under articles 2.2a, 2.2b, 3.1.g and 15.

Yours sincerely,

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