



## **ROMA RIGHT TO EDUCATION IN THE CZECH REPUBLIC AND SLOVAKIA**

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LL.M. SHORT THESIS

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## **Abstract**

This thesis is dedicated to the protection of Roma rights and Roma access to education, a major, present problem of that minority. The issue is studied and analyzed in the context of situation in the Czech Republic and in Slovakia.

The main purpose is to compare the present situation in both countries in light of current legislation, with the purpose of identifying the main problems and solutions introduced by governments. Additionally, attention is paid to the work of non-governmental organizations and to their projects aimed at the improvement of Roma access to education. Finally, the only relevant case before the European Court of Human Rights is analyzed for its significance to the future development and the attitudes of authorities.

## Introduction

Being Europe's largest and most vulnerable minority, the Roma have resided in many countries of Europe since the Middle Ages without having a historical homeland.<sup>1</sup> Furthermore, the Roma population is still growing. Yet, contrary to the expectation that they would assimilate through the course of time, they have maintained a significant part of their cultural, social, and linguistic autonomy, which causes problems in their coexistence with majority population.

One of the crucial fields deserving attention is the upbringing and education of Roma. It is important, as education is not only a basic precondition of development of human society, but is also necessary for the personal growth of each individual preparing for life and integration into society. This is especially true for Roma, as a majority of their population underestimates the importance of education. They do not realize that education can be the way how to escape from poverty and obscurity.

Before the transition process to a market economy in Slovakia and the Czech Republic in 1989, the level of education was not a crucial factor determining standard of living because Roma traditionally worked as unskilled workers.<sup>2</sup> After 1989, the general opinion on the need for formal education has changed markedly, and as a result, the percentage of educated people has increased.<sup>3</sup> However, this was true only for the majority population; the awareness process took place differently in the Roma community. Consequently, the transition process caused many Roma to lose their jobs, as they became unable to compete with the majority population that regards education and the working experience highly.<sup>4</sup>

<sup>1</sup> D. Ringold, M. A. Orenstein, E. Wilkens, *Roma in an Expanding Europe* (Washington, D.C.: The World Bank, 2005), 3

<sup>2</sup> Rosinsky, R, *Prierez socio-kultúrnymi vrstvami identity Rómov (Cross-section into sociocultural layers of Roma identity)* (Nitra:Constantine the Philosopher University in Nitra, 2006), 110

<sup>3</sup> *Id.*

<sup>4</sup> Ringold, Orenstein, Wilkens, *supra* note 1 at 3

The education of the Roma is a broad and complex topic, and it is difficult to differentiate accurately between discrimination and the outdated, non-functional educational system in Slovakia and the Czech Republic.<sup>5</sup> The segregation of Roma students is probably the most significant area in which Roma are excluded from educational process. The significance of the problem relates to the fact that their exclusion influences not only the educational process of Roma students, but also has a demonstrably negative impact also on their integration and their ability to find employment success in the Labor market.

The European Roma Rights Center<sup>6</sup> in Budapest and ROCEPO – Roma Educational Center<sup>7</sup> in Presov (in Slovakia) publish studies on this topic. The European Roma Rights Center explored the status of the Roma and their access to education in a general sense, regarding Slovakia and the Czech Republic, as well as other countries with similar problems: Romania, Bulgaria, Hungary, and others. ROCEPO analyzed the situation in Slovakia by conducting surveys on the status of students from socially disadvantaged environments in the educational system in Slovakia. Furthermore, ROCEPO issued a publication on use of special strategies to eliminate the functional illiteracy of Roma students.

The European Roma Center regularly publishes a journal dealing with different aspects of Roma issues. This journal has discussed the segregation and desegregation of the Roma, as well as child protection and particularly the Czech system of child protection. One report,

<sup>5</sup> L. Horňák, “Impact of educational system on marginalization and integration of Roma students”, in: *Romska marginalita (Romani marginality)* ed. D. Scheffel, A. Musinka (Presov: Collection from the international conference, Center for Anthropological Research, 2004), 193-194

<sup>6</sup> “The *European Roma Rights Center (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.”

Available from <http://www.errc.org/>, accessed 2 March 2009

<sup>7</sup> ROCEPO as “an integral part of the Methodological-Pedagogical Center in Presov is established on the basis of the letter of the General Director of the Section for International Cooperation and European Integration, the PHARE Section Director of the Ministry of Education Nr. 499 – 82 of 4 December 2001. The aim of ROCEPO is to respect the needs and conditions of the Roma minority with an emphasis on effective education, information, documentation and advisory services, especially for the teachers at schools with a high concentration of Roma children and pupils.”

Available from <http://www.rocepo.sk/modules/aboutus/>, accessed 2 March 2009

entitled “A special remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic” (from 1999) is devoted especially to assignment of Roma students to special schools called. More recent coverage of this issue is the 2008 discussion of *DH v Czech Republic*, which focuses on the reaction of relevant Czech authorities and consequences of the decision. The European Roma Rights Center also published *Legal analysis of national and European anti-discrimination legislation* for the Czech Republic and Slovakia where it critically compares existing national legislation with the requirements of the EU Race Equality Directive & Protocol No. 12.<sup>8</sup>

In addition to the publications issued by Roma Centers, a publication by Ringold, Orenstein and Wilkens entitled “Roma in an Expanding Europe: Breaking the Poverty Cycle” is worthy of mention. The article discusses and analyzes the origins of Roma poverty and difficulties as regarding education, housing and health. In his “Cross-section into sociocultural layers of Roma identity” Rostinsky, noted expert on Roma, focuses on the anthropological and cultural differences that constitute what he considers to be the main problem of Roma access to education. Finally, in “Romani marginality,” Scheffel and Musinka provide insight into the marginalization of Roma students, discussing the impact of the educational system on the integration of Roma students and acceptance of Roma teacher assistance by pedagogic society.

The Roma situations in Slovakia and the Czech Republic, two countries with a common history, will also be examined. Both countries have had to face the same problems with the Roma minority in comparable conditions, and similar solutions are therefore applicable to a large extent. Nevertheless, the status of Roma in the Czech Republic has always been

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<sup>8</sup> B. Bukowska and L. Taylor, *Legal analysis of national and European anti-discrimination legislation, A comparison of the EU Racial Equality Directive & Protocol No. 12 with anti-discrimination legislation in Czech Republic* (European Roma Rights Center, 2001)

considered better than that in Slovakia. The situations in both countries will be compared and analyzed, and solutions shall be posed.

Common problems in relation to the education of Roma in these countries, the work of non-governmental agencies, and governmental projects aimed at improving the situation of Roma will also be discussed as will a case study of the only relevant case tried before the European Court of Human Rights, *DH v Czech Republic*. Since no relevant case has been brought against Slovakia, the tendencies of national courts in both countries will also be compared.

## 1. Different Aspects of Access to Education

Upbringing and education are basic attributes of the development of each civilized society, which contribute significantly to the increase in the educational and cultural forwardness and social development of the population. A majority of experts dealing with Roma problems agrees that the basic problem of the Roma population has roots in the lower overall education level of the Roma population.<sup>9</sup>

This chapter will analyze different aspects regarding the access to education of the Roma population. Before doing so, it will briefly discuss Roma status in both Slovakia and the Czech Republic, as well as common problems that Roma have to face related to their low level of education.

### 1.1. Status of Roma and their marginalization

The majority of Roma people lives under terrible conditions in the Czech Republic and Slovakia. According to a published by the European Roma Rights Center, most “live on the outskirts of villages, towns and cities in Slovakia” often suffering from lack of utilities and public services.<sup>10</sup> The housing situation in the Czech Republic is better than in Slovakia, because there are no Roma settlements that represent the poorest group of Roma population in Slovakia.<sup>11</sup> However, in larger cities, Roma ghettos show similar problems in both countries.<sup>12</sup>

Another problem closely linked to poor accommodation is the health condition of the Roma population. Seeing that Roma homes are often overcrowded, there are often

<sup>9</sup> Rosinsky, supra note 2 at 91

<sup>10</sup> European Roma Rights Center, *Time of the Skinheads: Denial and Exclusion of Roma in Slovakia* (Country Reports Series, No. 3, 1997), 57

<sup>11</sup> Milan Šimečka Foundation, *Kam kráčaš? (Where are you going?), collection of texts from workshop cycle called “S Rómami žiť budeme,, Ide o to ako”(We will live with Roma.. What matters is how..)* (Bratislava: Milan Šimečka Foundation, 2001), 170

<sup>12</sup> *Id.*



insufficient sanitary conditions. As a result, the Roma population suffers more from communicable diseases. Furthermore, “life expectancy and mortality data for Roma indicate significantly worse health conditions than for the rest of the population.”<sup>13</sup>

The primary source of Roma poverty is the labor market marginalization that causes their exclusion from the common standard of living. According to the Ministry of Labor, Social Affairs, and Family of the Slovak Republic,, the unemployment rate is near 100 percent in some Roma settlements.<sup>14</sup> This perpetually-high unemployment rate results in a devastation of human capital and an overall decline of work habits. It seems that unemployment is the area where discrimination against Roma is the most visible, as conventional stereotypes influence potential employers to discourage them from employing Roma people.<sup>15</sup> Conventional stereotypes cast Roma as unreliable employees lacking morals, discipline, and motivation. Thus Roma are usually the lowest priority job applicants.

It is necessary to mention these aspects of the life of the Roma population in order to understand the marginalization in the area of education, as these facts are closely linked.. Low standards for housing and insufficient sanitary conditions are connected to inappropriate behavior and poor sanitary habits.<sup>16</sup> Health conditions of the Roma population also contribute to poor school attendance. Finally, a high rate of unemployment causes Roma children not to have positive role models in their parents, and thus their motivation to attend the school is low.<sup>17</sup>

<sup>13</sup> Ringold, Orenstein, Wilkens, supra note 1 at 48

<sup>14</sup> <http://www.caplovic.vlada.gov.sk/5587/vystupenie-na-medzinarodnej-konferencii-organizovanej-ministerstvom-prac-e-socialnych-veci-a-rodiny-sr-s-nazvom-romovia-a-trh-prace.php> (mentioned in the speech performed by the Minister of Labor, Social Affairs and Family of the Slovak Republic at international conference organized by the Ministry of Labor, Social Affairs and Family of the Slovak Republic called Roma at Labor market), accessed 5 March 2009

<sup>15</sup> I. Pogany, “Legal, Social and Economic Challenges Facing the Roma of Central and Eastern Europe”, *Queen’s Papers on Europeanization*, No. 2/2004, p. 18

<sup>16</sup> Horňák, supra note 5 at 192

<sup>17</sup> Horňák, supra note 5 at 192

As a result, Roma are facing such problems in the field of education such as frequent assignment to the schools for mentally handicapped children (so-called special schools). Also, there are special problems concerning the establishment of Roma schools. Finally, Roma children who attend regular schools often suffer from discrimination and a hostile environment at school.

## **1.2. Discrimination, hostile environment, and school attendance**

Discrimination in this context has not yet been adequately explored and is difficult to prove. Indeed, many segregation practices are easily rationalized by the existing educational system. The segregation of Roma students is only a small part of the overall problem that the entire educational system is simply inadequate to deal with the education of marginalized groups.<sup>18</sup> Eliminating segregation would itself solve only a part of the problem until the system is updated to allow for integration.

Due to the fact that the Roma are a minority in the Czech Republic and in Slovakia, the educational system involves many cultural stereotype about them. The dominant reason for the failure of Roma students is considered to be difference between traditional upbringing in the Roma community and the official educational system. This is because the official system is markedly structured and directed towards the fulfillment of school duties. A Roma child is largely not able to adjust to such a system.<sup>19</sup> Thus eliminating special Roma classes and a cessation of the practice of assigning them to special schools would not entirely solve the problem. There is also serious discrimination involved in

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<sup>18</sup> E. Kriglerová, *Diskriminácia Rómov v prístupe k vzdelávaniu* (Euractiv, posted on 24 November 2004, accessed 6 March 2009), available from <http://www.euractiv.sk/rovnost-sanci/analyza/diskriminacia-romov-v-pristupe-k-vzdelavaniu>

<sup>19</sup> Rosinsky, *supra* note 2 at 96

establishing curricula and in grading, areas where Roma students are clearly disadvantaged.

Another issue is the difference in the respective attitudes if of Roma and non-Roma toward education and educational institutions. Few Roma are aware of relationship between education and economic and social success.<sup>20</sup> Education received can even be an obstacle in a home environment where education is a resented and distrusted.<sup>21</sup> Thus, education loses value and social importance for many Roma.

Furthermore, the educational system is based largely on memorizing theoretical texts in both countries, which causes the few practically oriented Roma to fail.<sup>22</sup> Many Roma fail because of insufficient preparation for classes unless they receive special support and help from educational institutions. The failure of a student has a cumulative effect, and it can result in early termination of school attendance in the aggregate.<sup>23</sup>

The negative attitude of Roma children toward education may also stem from their culture, which teaches them to fear anything new.<sup>24</sup> They are also affected by parents' prior bad experience in school, so to them, school represents a place of discomfort. This preconception is only heightened by the negative attitudes of classmates. Research in Slovakia confirms the existence of prejudices toward Roma even among young school

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<sup>20</sup> J.Tancos, *Vzdelávanie Rómov dnes a zajtra (Education of Roma today and tomorrow)* (Nitra, PF UK, 2001), 55

<sup>21</sup> Rosinsky, *supra* note 2 at 97

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Tancos, *supra* note 19 at 56

children.<sup>25</sup> Though no similar study has been conducted in the Czech Republic, given the cultural similarity between the two countries, the result would likely be similar.<sup>26</sup>

The effect of these factors is that Roma children feel uncomfortable in school, and their attendance is irregular. An effort to resolve the problem of poor attendance in Slovakia is the Act on Child Allowance,<sup>27</sup> which mandates that parents who fail to secure regular attendance of their child will not receive a government child allowance for that child. This solution was introduced only in Slovakia and has no counterpart in the Czech Republic. The act also has some shortcomings. While the financial sanction probably secures Roma presence in school, it cannot ensure their motivation or interest.<sup>28</sup> It is, however, a good starting point, leaving room for other initiatives to improve the attitude of Roma toward schools.

### 1.3. Segregation and Special Schools

There is a tendency in both the Czech Republic and Slovakia to segregate Roma students or to allocate them to special schools.<sup>29</sup> According to the European Roma Rights Center, “Roma are at least fifteen times more likely to be placed in remedial special schools than non-Roma.”<sup>30</sup>

<sup>25</sup> In the Czech Republic, a study concerning intolerance and racism was performed among older children (5<sup>th</sup> – 9<sup>th</sup> grade), and it disclosed racism and xenophobia, even though it turned up that older children are more tolerant and they have fewer racist reactions than younger children.

B. Koubová and E.-Kundráto, *Charakteristiky štruktúry etnicky zmiešaných tried ZŠ (Features of the Structure of Ethnically Mixed Classes of Elementary Schools)* (Bratislava: VÚDPaP, 1990), 20

<sup>26</sup> T. Šišková, *Výchova k tolerancii a proti rasizmu (Upbringing for Tolerance and against Racism)* (Praha: Portál, 1998), 57

<sup>27</sup> See Section 12 of the Act No. 600/2003 Coll. on Child Allowance and on amendment and supplement of the Act No. 461/2003 Coll. on Social Insurance

<sup>28</sup> Slovak Governance Institute, *Under Experts Current Measures of Government Do Not Solve the Reasons of Absence of Roma Children at Schools* (Posted on 7 April 2003, accessed 11 March 2009), available from <http://www.governance.sk/assets/files/interfaceSPRAVODAJ%20001n.htm>

<sup>29</sup> Special schools are assigned for mentally handicapped „with less emphasis on mathematics, science and language, and more on music and applied art. In the Czech special schools system, the educational standards for a given school class correspond to those of two classes lower: a pupil who has graduated from e.g. 4th grade in the special school can demonstrate scholastic achievement expected of 2nd class of normal school.”

D. Petrova, “Defence of Desegregation”, *Roma Rights Quarterly Journal of the European Roma Rights Center, Segregation and Desegregation*, Numbers 3 and 4, 2002, p. 7

<sup>30</sup> European Roma Rights Center, *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic* (County Reports Series, No. 8, 1999), 11

This number is alarming, as assignment to a special school carries with it not only lower quality of teaching, but also has serious consequences on the students' futures because of limited opportunities for graduates from such schools.<sup>31</sup>

There are many causes for the distorted assignment of Roma to these special schools. One is the “culturally-biased diagnostic method”<sup>32</sup> used in student placement. The current educational system does not take cultural differences between Roma and majority population into account, and thus, the preliminary tests that serve as decisive factor in determining whether child placement are based on educational and cultural environment of the middle class.<sup>33</sup> Furthermore, the socioeconomic status of Roma parents makes the social provisions involved in special schools attractive: free housing and meals are often provided.<sup>34</sup>

A child can be enrolled in a special school in Slovakia only with consent of the parent and based on the recommendation of psychologist.<sup>35</sup> In the Czech Republic, the recommendation of a psychologist is not even necessary.<sup>36</sup> Some Roma parents make this decision even before their child starts school, sending children directly to the special schools.

There are two different issues at play here: the consent of parents and the attitudes of psychologists. Parental consent is often not properly elicited, as the information provided them is often insufficient. Occasionally, parents are forced to consent under pressure that amounts to undue influence or even duress.<sup>37</sup> As Roma parents are often not educated and are

<sup>31</sup> Ringold, Orenstein, Wilkens, *supra* note 1 at 46

<sup>32</sup> European Roma Rights Center, *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* (Budapest: European Roma Rights Center, 2007), 41

<sup>33</sup> Horňák, *supra* note 5 at 196

<sup>34</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, *supra* note 31 at 41

<sup>35</sup> Ringold, Orenstein, Wilkens, *supra* note 1 at 46

<sup>36</sup> Ministry of Education, Youth and Sports of the Czech Republic, *Minister wants more Roma children in Elementary schools*, posted on 6th of June 2008, accessed 8 March 2009, available from <http://www.msmt.cz/ministerstvo/ministr/lidove-noviny-ministr-chce-vic-romskych-deti-v-zakladnich-skolach?lred=1>

<sup>37</sup> *A Special Remedy: Roma and Schools for the Mentally Handicapped in the Czech Republic*, *supra* note 29 at 42

unaware of their legal rights, it is difficult for them to make informed decisions on these issues. Psychologists tend to advice in favor of assigning Roma to the special school.

Legislation on this issue is itself a problem. In the Czech Republic, the governing law is the 2005 Education Act.<sup>38</sup> Although the Act has abolished special schools as institutions, it has not stopped the segregation of Roma students, and special schools have been replaced by practical training schools.<sup>39</sup> Furthermore, mentioned Act “lack[s] provisions aimed at eliminating physical separation of Romani children at school.”<sup>40</sup> As a result, children can still be placed in separate Roma classes with less-demanding curricula.

Finally, “overall conceptual vagueness and lack of consistency” cause difficulties regarding the application of certain provisions of the Education Act.<sup>41</sup> For example, under the Act, “child, pupil and student with special educational needs” are defined as a “disabled person, or a person disadvantaged in terms of health conditions or social position.”<sup>42</sup> The term “social position” is interpreted to mean “a family environment with a low social and cultural status, threat of pathological social phenomena.”<sup>43</sup> This provision provides legal basis for assignment Roma children without any mental disability to practical training school.

In Slovakia, legislation concerning special schools and segregation is similar to that of the Czech Republic. The relevant legislation is the School Act.<sup>44</sup> This law is new, and some provisions have yet to come into force, but there is some positive development regarding the protection of Roma rights. Unlike the Czech Education Act, the Slovak School Act does not

<sup>38</sup> See Act No. 561/2004 on Pre-school, Basic, Secondary, Tertiary Professional and Other Education that entered into effect on 1<sup>st</sup> January 2005 except for some provisions which entered into effect on 1<sup>st</sup> September 2007

<sup>39</sup> “The practical training schools are lower secondary schools (5-9 grades) and are established for primary school graduates of special remedial or auxiliary schools.”

*The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 42

<sup>40</sup> *Id.*, p. 43

<sup>41</sup> *Id.*, p. 43

<sup>42</sup> See Section 16 Paragraph 1 of the Education Act

<sup>43</sup> See Section 16 Paragraph 4 of the Education Act

<sup>44</sup> See Act No. 245/2008 Coll. on Upbringing and Education (the School Act) and on changes and amendments to some acts as amended, some provisions came into force on 1<sup>st</sup> January 2009, the rest will come into force on 1<sup>st</sup> September 2009 or 1<sup>st</sup> January 2011

allow the assignment of a child to a separate class simply on a socioeconomic basis..<sup>45</sup> This makes the creation of segregated classes for Roma unlawful. Of course, the effectiveness and implementation of such provisions still remains to be seen, especially as there is the possibility to side-step this provision by the use of tests of ability, which Roma children may be potentially unable to cope with. However, this is at least a first step to stopping segregation in the mainstream schools.

Regarding the identification of socially disadvantaged of students, the Slovak School Act suffers many of the same shortcomings as the Czech Education Act. The group of children with special needs is described similarly as in the Czech Act. The group is divided into three subcategories: children with mental disabilities, children with health difficulties, and children coming from socially disadvantaged environment.<sup>46</sup>

Non-governmental agencies have made some efforts to exclude children coming from socially disadvantaged environment from the group of children described as having special needs. They also lobbied to include a clear distinction between mental disabilities and social disadvantage. However, these efforts were not taken into account in drafting the Act.

Although the legal provisions are flawed in both countries, this is not the main problem at issue. Even though both countries have implemented all relevant European directives on discrimination, additional steps must be taken. For example, a new, culturally-neutral test for the assessment of mental disability must be introduced. Under the European Union's PHARE project, such testing is still not mandatory.<sup>47</sup>

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<sup>45</sup> See Section 28 of the School Act

<sup>46</sup> See Section 2 Subparagraph i) of the School Act

<sup>47</sup> Amnesty International, *Still Separate, Still Unequal: Violation of the Right to education of Romani children in Slovakia* (accessed 11 March 2009), 21  
available from <http://www.amnesty.org/en/library/info/EUR72/001/2007>

## 1.4. Establishment of Roma Schools

According to the European Roma Rights Center, nearly 70 percent of all Roma in Slovakia speak Romani as their native language.<sup>48</sup> The number is likely nearly the same in the Czech Republic. The situation of the Roma and their access to education is even more complicated if children are forced to study in a non-native language. Yet most Roma children in Czech and Slovak language schools in their respective countries.

At present, there are also some Roma schools in both countries, but these schools have insufficient resources and limited coverage of material, and thus cannot be independent in either the Czech Republic or Slovakia.<sup>49</sup> Schools of this nature have been established in Kosice (the Private Roma Grammar School and the School of Music), in Bratislava (the Roma Grammar School) and in Zvolen (the Gandhí Grammar School) in Slovakia. In the Czech Republic, there is only one, in Kolín (the Social Roma High School). This is a surprisingly small number of Roma schools, considering the fact that national minority status was granted to the Roma in 1992 in both countries.<sup>50</sup> This means, theoretically, that Roma are entitled to enjoy rights of national minorities and ethnic groups under Slovak and Czech Constitutions, one such right being the right to education in one's own language.<sup>51</sup>

However, even though the Roma have a right to be educated in their own language, setting up a complete system of Roma schools is logistically problematic. Even if the political will to establish more Roma schools existed, it would be difficult to find enough teachers who speak the Romani language. Furthermore, the designation Roma has stigmatic properties in both countries, and Roma themselves shun the designation. These tendencies are quite visible on

<sup>48</sup> European Roma Rights Center, *Time of skinheads: Denial and Exclusion of Roma in Slovakia* (Country Reports Series, No. 3, 1997), 54

<sup>49</sup> Rosinsky, *supra* note 2 at 92

<sup>50</sup> *Id.*

<sup>51</sup> Article 34 Paragraph 2 Subparagraph a) of the Slovak Constitution, Article 25 Paragraph 2 Subparagraph a) of Declaration of Basic Rights that is part of the Czech Constitution



the results of national census in both countries because these numbers do not say a lot about real numbers of Roma.<sup>52</sup> Under estimations there are 15 000 – 300 000 Roma in the Czech Republic and almost 400 000 Roma in Slovakia, whereby children under 14 represent 43 percent of population.<sup>53</sup> When the number of Roma in Slovakia is compared with the number of Hungarians (the largest minority in Slovakia -- approximately 500 000 under the same census -- the difference is small, though the Hungarian minority has its own complete educational system in Slovakia, from kindergarten to university. Therefore, the creation of Roma system of schools is justified.

However, the effect of establishment of broad system of Roma schools can also lead to even more extensive segregation of Roma students. For this reason, a majority of experts advocate the integration of Roma students into mainstream schools, rather than the establishment of a separate educational system for Roma. There is, however, no clear-cut solution, as the preservation of Roma culture and education in Roma history would be lost if the Roma were integrated. While these would be preserved in Roma schools, the separate schools could potentially suffer diminished reputation, making it difficult for Roma coming from these schools to find employment in mainstream society.

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<sup>52</sup> Under census performed in 2001 almost 12 000 Roma were recorded in the Czech Republic and almost 90 000 in Slovakia

Office of the Plenipotentiary of the Slovak Government for Roma Communities, *Fakty o Rónoch (Facts on Roma)* (accessed 9 March 2008), available from <http://romovia.vlada.gov.sk/3548/fakty-o-romoch.php>  
 Government of the Czech Republic, *Rómská národnostní menšina (Roma national minority)* (accessed 9 March 2008), available from <http://www.vlada.cz/scripts/detail.php?id=16149>

<sup>53</sup> *Id.*

## 2. Governmental Projects and Work of Non-Governmental Organizations

In the Czech Republic and Slovakia, several projects have been implemented during recent years that show progress toward a positive solution to problem of unequal Roma access to education. Many of these projects are widely known and have been included in legislation as nationwide projects.

Amnesty International concluded that “a legal prohibition of discrimination is inadequate; Slovakia should systematically identify and address factors which prevent Romani children from realizing their right to education.”<sup>54</sup> Prohibition of discrimination itself does not solve anything, and further action is required by both the government and by non-governmental organizations in order to achieve absolute equality in access to education.

This chapter will discuss measures performed by governments to enhance Roma access to education. Steps concerning preschool education and introduction of teaching assistants will be highlighted, as they are among the most significant measures taken in recent years. After this, the work of non-governmental organization will be discussed.

### 2.1. Teaching assistants

The incorporation of a member the Roma’s ethnic group into teaching procedure is an important means directed toward improving Roma children’s access to education. The widespread low levels of education among the Roma pose an obstacle to staffing hiring qualified Roma teachers are an obstacle to hiring actual Roma teachers, . Teaching assistants that come from the same environment as Roma students are a possible solution. Such

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<sup>54</sup>Amnesty International, *Still Separate, Still Unequal: Violation of the Right to education of Romani children in Slovakia* (posted on 15 November 2007, accessed 12 March 2009), 29 available from <http://www.amnesty.org/en/library/info/EUR72/001/2007>

assistants have lower education requirements, and thus it is easier to find enough Roma teaching assistants than teachers. Roma assistants are thus members of pedagogic team that keeps in touch with children and their parents and should come from the same Roma community in order to gain confidence of the children and parents.

At present, the status of a teaching assistant is regulated by law in both the Czech Republic and Slovakia.<sup>55</sup> In both countries, the general act on education does not specify detailed requirements for the position of assistant, or for the assistant's workload or duties. These acts only introduce the possibility of such an employee schools, with details specified by special decrees<sup>56</sup> issued by the respective Ministry of Education. The specifications of the degree concerning age (minimum 18 years) and moral fitness (no criminal record) are almost the same under the decrees of both countries.

The only significant difference concerns educational requirement. While Czech teaching assistants are obliged to have accomplished only elementary education, Slovak teaching assistants needs to have secondary school education. This condition causes several problems in practice, though under current legislation in Slovakia teaching assistants will be obliged to fulfill the education requirement beginning in 2011. Until that time, they can work as teaching assistants also without secondary school exit examinations.

Even though it seems that high-school education will be appropriate, the Slovak education requirements may cause several problems,, as many assistants have only elementary education, while secondary school education requires an additional four years. Furthermore,

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<sup>55</sup> See Sections 55 and 56 of the Czech Education Act, Sections 28, 30, 47, 95, 99, 104 of the Slovak School Act

<sup>56</sup> In **Slovakia** it is the Methodological Decree for the Introduction of the Profession of Teaching assistant in the Upbringing and Education of Children and Pupils with Special Upbringing and Education Needs in Pre-School Facilities, in Primary Schools, and in Special Schools No. 184/2003-095, issued by the Ministry of Education of the Slovak Republic on 6<sup>th</sup> of December 2003 with effect from 1<sup>st</sup> January 2004

In **the Czech Republic** it is the Methodological decree of the Ministry of Education, Youth and Physical education of the Czech Republic for establishing preparatory classes for children with a social disadvantage and on establishing a position of a pedagogical worker - teacher' assistant, No. 25 484/2000-22

in both countries teaching assistants have to pass 2-year long pedagogic training from a specialized institution.

Funding is another problem to the introduction of Roma teaching assistants, as they are not “part of per student normative provided from the central budget, therefore school maintainers have to apply separately for in which creates an additional administrative burden and a disincentive.”<sup>57</sup> This is also one of the reasons why schools usually offer them only short-term contracts and do not pay them during summer breaks, in contrast to other education professionals.<sup>58</sup> Apart from insecurity, another disadvantage is increased migration of employees.<sup>59</sup> Migration is a logical consequence of short-term contracts, but it can have a negative impact on the quality and the attitude of the teaching assistant’s work and rapport with teacher’s, students, and communities.

An important pre-condition for efficiency on behalf of a teaching assistant is effective cooperation with teachers. Research of the Methodological-Pedagogical Center in Presov in Slovakia has confirmed that the teaching profession generally accepts the presence of teaching assistants during educational process.<sup>60</sup> The same study also concluded that education professionals appreciate the work of teaching assistant, though not so much regarding communication with students, but more so regarding individual work with challenged students.

Though it is a good solution, the teaching assistant cannot solve all problems. It does, however, encourage Roma integration into mainstream schools.<sup>61</sup> The project has, however,

<sup>57</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 54

<sup>58</sup> The Slovak Governance Institute, *How to Finance and What Kind of Education to Require from Teaching assistants* (Interface, 2007, accessed 12<sup>th</sup> March 2009), at 3, Available from [http://www.governance.sk/index.php?id=204&searched=interface&highlight=ajaxSearch\\_highlight+ajaxSearch\\_highlight1](http://www.governance.sk/index.php?id=204&searched=interface&highlight=ajaxSearch_highlight+ajaxSearch_highlight1)

<sup>59</sup> *Id.*

<sup>60</sup> V. Onderčová and V. Žigmund, “Acceptance of Teaching assistant by Teaching Society”, in: *Romska marginalita (Romani marginality)* ed. D. Scheffel, A. Musinka (Presov: Collection from the international conference, Center for Anthropological Research, 2004), 192

<sup>61</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 55

been criticized for the stigmatizing effect it has on Roma children. It tends to support the widespread stereotype that Roma are unable to cope with the regular curriculum.<sup>62</sup> Nonetheless, it is indisputable that the presence of teaching assistants has many advantages in facilitating the work of teachers. This individualized approach to otherwise challenged definitely helps them to adjust faster to the school environment. Additionally, it provides an employment opportunity for Roma adults.

## 2.2. Pre-School Education

Starting school is a major change for each child, and it carries with it additional requirements and expectations for all children. All at once, children are expected to cope with multiple tasks, with long-term concentration, with skills acquisition, and with the absence of parents.<sup>63</sup> These issues are faced by children from mainstream society, but pose a special obstacle to Roma children.

It is undisputed that Roma enrollment in pre-school and kindergarten is particularly low. However, there is a general consensus that “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.”<sup>64</sup>

As such, the government of the Czech Republic and Slovakia are taking steps to encourage Roma enrollment in kindergarten.<sup>65</sup> One such effort in the field of pre-school education is the “Mother and Child” project of the Ministry of Education in Slovakia. The goal is to facilitate communication between kindergartens and Roma by involving mothers in the daylong

<sup>62</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 54

<sup>63</sup> I. Trochtová, *Rozvojový program pre Rómske deti (Development Language Project for Roma Children)* (Prešov: Rokus, 2002), 28

<sup>64</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 51

<sup>65</sup> Number are available only for Slovakia – among total number of 154 232 children attending kindergartens only 3,4% represent Roma children. In 82 kindergartens proportion of Roma children is from 50 to 100% and 31 kindergartens in Slovakia are attended only by Roma children.

K. Ondrášová, *Súčasný stav vo výchove a vzdelávaní rómskych detí a žiakov (Current condition in upbringing and education of Roma children and pupils)* (Prešov: Rokus, 2003), 53

education process.<sup>66</sup> The PHARE fund has provided financial support to approximately 50 kindergartens with high proportions of Roma children to facilitate the project.<sup>67</sup>

As requiring parents to pay for this project was thought to dissuade participation in pre-school education,<sup>68</sup> both the Czech Republic and Slovakia have introduced measures to make the last year or kindergarten free of charge for everyone. While in force, this measure has not brought the results in the Czech Republic. When the most recent amendment of the Education Act was adopted, there were efforts to re-impose fees for the last year of kindergarten because the number of children attending had not increased.<sup>69</sup> On the other hand, kindergartens are overcrowded in both countries, to the point that many applicants are refused. This could account for the lack of increase in enrollment.

In response, the Czech government decided that on a program of priority of admission. If it is not “possible to admit a child due to reasons of capacity, the municipality where the child has permanent residence shall ensure that the child in question shall be admitted to another nursery school.”<sup>70</sup> However, this provision applies not only to children of Roma origin, but to everyone.

Furthermore, in both countries kindergarten is not yet mandatory. The Slovak Parliament discussed making it mandatory in 2007. Under this proposal, kindergartens would be incorporated into the regular school system. Ultimately, the proposal was not adopted for financial reasons,<sup>71</sup> and the last year of kindergarten remains free but not mandatory.

<sup>66</sup> European Monitoring Center on Racism and Xenophobia, *Správa o národnej stratégii menšinového vzdelávania (Accompanying Report on National Strategy of minority education)*, 2004, at 11

<sup>67</sup> *Id.*

<sup>68</sup> Monthly fee is not high - it is approximately 30 EURO in the Czech Republic and Slovakia, but for parents on a low income it is still a lot because most of them is unemployed

<sup>69</sup> Public Finance, *Free Last Year of Kindergartens Still Goes On* (Posted on 18 February 2009, accessed 14 March 2009), available from

<http://www.obecnifinance.cz/clanek/bezplatny-posledni-rocnik-ms-trva/>

<sup>70</sup> See Section 34 Paragraph 4 of the Education Act

<sup>71</sup> Roma New Letter – independent Roma magazine, *Čaplovič is Saying - Obligatory kindergartens are needed* (posted on 10 October 2007, accessed 14 March 2009)

<http://www.rnl.sk/modules.php?name=News&file=article&sid=8256>

“An alternative to mandatory pre-school education are the zero grades classes introduced in the Slovak education system in 2002.”<sup>72</sup> Zero grades are another means to help children to adjust better to the new school environment and to enable faster personal development for each child.<sup>73</sup> However, establishment of zero grade classes is not obligatory for schools. The government attempts to motivate elementary schools to adopt zero grade classes by offering of 170% of the per student funds received from the central budget.<sup>74</sup> However, school motivation is only one issue; schools have additional higher expenses on zero grades that need to be covered.<sup>75</sup>

The situation in the Czech Republic is similar to some extent. Elementary schools are entitled to establish preparatory classes for children “who are socially disadvantaged and where there is a presumption that their inclusion in such a preparatory class may balance out their development.”<sup>76</sup> Naturally, there are some differences between practice in the Czech Republic and Slovakia concerning the issue of preparatory classes.

The main difference regards the fact that, in the Czech Republic, the authorities empowered to decide on preparatory classes are the municipalities, the union of municipalities, or the region (with the prior consent of the regional authorities). In Slovakia, the director of the elementary school makes the decision after consultation with the relevant municipality. A second difference is that elementary schools in the Czech Republic do not get extra money for establishment of the preparatory classes.

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<sup>72</sup> *The Impact of Legislation and Policies on School Segregation of Romani Children*, supra note 31 at 52

<sup>73</sup> Roma Education Fund, *Advancing Education of Roma in Slovakia, Country Assessment and the Roma Education, Fund's Strategic Directions* (accessed 14 March 2009), 10

Available from [http://demo.itent.hu/roma/portal/downloads/Education%20Resources/Slovakia\\_report.pdf](http://demo.itent.hu/roma/portal/downloads/Education%20Resources/Slovakia_report.pdf)

<sup>74</sup> Section 4 Paragraph 2 of the Government Decree No. 2/2004 stipulating the details of the assignment of funds from the state budget for primary schools, secondary schools, applied training Centers, primary schools of arts and school facilities

<sup>75</sup> E.Gallová-Kriglerová, *Dopad opatrení na zlepšenie situácie rómskych detí vo vzdelávaní (The impact of measures aimed at improvement of the situation of Roma children in education)* (Slovak Governance Institute, 2006), 6

<sup>76</sup> Sections 34, 47 and 123 of the Czech School Act regulates the issue of preparatory classes. In Slovakia zero grade classes are stipulated by the Sections 19 and 29 of the Slovak Education Act.

### 2.3. Work of Non-Governmental Organizations

The active participation of civil society in observing and protecting human rights and fundamental freedoms is supposed to be regular, not exceptional. Non-governmental organizations have become main actors in supervising the fulfillment of legal obligations arising under both national legislation and international conventions. This is also the case regarding Roma rights to education. However, the development of the proposals to equalize an access of Roma to education, to eliminate discrimination, and to enhance motivation and involvement of parents in education process is still main domain of non-governmental sector.

In the Czech Republic and Slovakia, several non-governmental projects have occurred in recent years in a positive effort to improve equal access to education. Some of these, such as zero grade classes or teaching assistants, are well-known at the present time and have already been included in legislation.

The nature of the involvement of non-governmental organizations varies. Regarding the teaching assistant project, the Young Roma Association<sup>77</sup> in cooperation with Head Office of Labor, Social Affairs and Family of the Slovak Republic assisted in the requalification of chosen applicants, assisting them to gain employment in selected elementary schools. During the implementation of the project, the Young Roma Association was responsible for the coordination, financial management, and activities related to the status of the employer. This included payroll accounting and fund raising.<sup>78</sup> Furthermore, before this project was launched, it was verified experimentally by a project called “Acceleration of the success of Roma students,” conducted by another non-governmental organization called Škola doktorán (Wide

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<sup>77</sup> Young Roma Association is non-governmental organization founded in 1999 in accordance with Act No. on Association of Citizens as amended. Aim of the organization is to uniform intellectual potential of young Roma generation. The organization develops systematic effort to influence Roma population with emphasis on upbringing, education, counselling and employment.

More information available at webpage of the organization: <http://www.youngroma.sk/> accessed 19 March 2009

<sup>78</sup> <http://www.youngroma.sk/> accessed 19 March 2009



Open School Foundation).<sup>79</sup> The project took three year and was completed in 2001.<sup>80</sup> For verification, various pedagogical methods were used to achieve personal student development through the participation of Roma teaching assistants.<sup>81</sup>

Another civic association involved in the protection of Roma rights is the Way of Hope.<sup>82</sup> This group undertook many activities aimed at Roma in different spheres of life. The most relevant to the sphere of education is a project called “Improvement of the School Performance of Roma Pupils via Tutoring,” which was aimed at improving of performance of Roma students through tutoring in elementary schools.<sup>83</sup> “In total, approximately 100 [students from 7 to 15 years] participated in the project.”<sup>84</sup>

The Pro Futura Foundation<sup>85</sup> launched the project concerning pre-school education, known as “Education of Roma children of pre-school age.” The project was designed to prepare Roma children for school attendance. The content and curriculum were the same as in mainstream kindergartens, but children were also taught sanitary habits and they received snacks, shoes, and clothes.<sup>86</sup> The project took five years, involving twelve to fifteen children each year.<sup>87</sup>

<sup>79</sup> Wide Open School Foundation is non-governmental organization with the scope of the competence over the whole territory of the Slovakia. It is a member of net of 30 independent organizations aimed at initiatives in the field of education and upbringing of children of pre-school and school age. It operates usually in localities with higher proportion of Roma community and children from socially disadvantaged environment. available from [http://www.skoladokoran.sk/kto\\_sme.htm](http://www.skoladokoran.sk/kto_sme.htm) , accessed 19 March 2009

<sup>80</sup> Annual Report 2001 of the Wide Open School Foundation, accessed 19 March 2009, at 20 available from [http://www.skoladokoran.sk/files/Vyrocnna\\_sprava\\_2001.pdf](http://www.skoladokoran.sk/files/Vyrocnna_sprava_2001.pdf)

<sup>81</sup> Annual Report 2001 of the Wide Open School Foundation, accessed 19 March 2009, at 20 available from [http://www.skoladokoran.sk/files/Vyrocnna\\_sprava\\_2001.pdf](http://www.skoladokoran.sk/files/Vyrocnna_sprava_2001.pdf)

<sup>82</sup> “The Way of Hope Žiar nad Hronom was established on January 25, 1999 by registering at the Ministry of Interior of the Slovak Republic. The establishing members of the Association were young Roma and Non-Roma people from Žiar nad Hronom and one legal body Nadácia Škola dokorán – Wide Open School Foundation. Mission statement of the organization is realizing activities benefiting the disadvantaged groups of inhabitants of Slovakia in order to improve the quality of their living.”

Available from: [http://www.cestanadeje.sk/index\\_e.html](http://www.cestanadeje.sk/index_e.html) accessed 19 March 2009

<sup>83</sup> [http://www.cestanadeje.sk/index\\_e.html](http://www.cestanadeje.sk/index_e.html) accessed 19 March 2009

<sup>84</sup> *Id.*

<sup>85</sup> Pro Futura Foundation is non-governmental organization established in 1997 „to develop spiritual values, to implement and protect human rights or humanitarian goals, to protect and form environment, to preserve natural and cultural values and to support health and education in the East Slovak region.“ (unofficial translation) available from [http://www.profutura.sk/index.php?option=com\\_frontpage&Itemid=1](http://www.profutura.sk/index.php?option=com_frontpage&Itemid=1) accessed 19 March 2009

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

Several projects have also been undertaken by non-governmental agencies in the Czech Republic. One quite successful project was completed by the IQ Roma Service civic group in October of 2008.<sup>88</sup> The project took three years and involved more than 2000 people aged thirteen to eighteen. One goal of the project was to keep Roma youth in the school as long as possible. The project succeeded in this aim, as approximately 80 percent of students of the last year of elementary schools involved in the project applied for admission to high schools and actually started to attend the high school the following year.<sup>89</sup> The project was conducted through individual meetings with applicants and individual counseling.

Perhaps the most significant project, “Step by Step,” was implemented not only in the Czech Republic and Slovakia, but also in Bulgaria and Hungary as well. The project is aimed at the reintegration of children from the disadvantaged environment of special schools into mainstream schools. In the Czech Republic, the organization responsible was Step by Step Česká Republika,<sup>90</sup> while Open Wide School Foundation was involved in Slovakia.

Step by Step method uses a methodological approach oriented at the individual child, respecting the cultural and linguistic differences of particular children. The project attempts to educate children on individual grounds of potential, ability, and need.<sup>91</sup> The results of the students from the special schools taught under curricula of special schools were compared

<sup>88</sup> „The IQ Roma Service Civic Group has been active in Brno since 1997. In terms of its professional activities, the group's aim is to stimulate and support possibilities, opportunities, activity, and sheer will for socially weaker families and individuals along the road to their comprehensive social development and growth, to protect their rights and maintain their dignity, and to increase their level of knowledge and readiness for action.” more information available from <http://www.iqrs.cz/verze/en/>, accessed 19 March 2009

<sup>89</sup>The South Moravia Region, *IQ Roma Servis accomplished the project on education of Roma from Brno* (posted on 22<sup>th</sup> October 2008, accessed 19<sup>th</sup> March 2009) <http://jihomoravsky.topregion.cz/index.jsp?jsessionid=3E5934B7CD82765ABCD9AD730BF2600D?articleId=40431>

<sup>90</sup> “Step by Step Česká Republika is non-governmental organization established in 2001. It operates as Center for development and introduction of the project called „To Begin Together“ and other projects aimed at reform of education system and development of civil society.” (unofficial translation) S. Rona and L.E.Lee, *Report on „Step by Step“ project – Roma Initiative*, (accessed 19 March 2009), at 42, available from <http://www.sbscr.cz/dokumenty/ab2fc949a942b49b8ef90d3c61a48566.pdf?PHPSESSID=f0473c885f19dff84a99c164142a19f>

<sup>91</sup>Euroactiv, *Diskriminacia Rómov v prístupe k vzdelávaniu (Discrimination of Roma in access to education)* (posted on 24 November 2004, accessed 19 March 2009) <http://www.euractiv.sk/rovnost-sanci/analiza/diskriminacia-romov-v-pristupe-k-vzdelavaniu>

with the results of the pupils from the special schools that are taught under curricula of mainstream schools. It turned out that the program helped students to achieve better results in all fields, and a high percentage of students in pilot classes were able to study under the curricula of mainstream elementary schools.<sup>92</sup>

These were only a few examples of the activities of non-governmental organizations in both countries. The activities of these organizations (even with major projects like Step by Step) are mostly based on individual work with children and their parents. This is likely the only truly effective way to overcome differences between majority and Roma population, governmental measures should be accompanied by such activities in order to be successful.

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<sup>92</sup> S. Rona and L.E.Lee , *Report on „Step by Step“ project – Roma Initiative*, (accessed 19 March 2009), at 45, available from <http://www.sbscr.cz/dokumenty/ab2fc949a942b49b8ef90d3c61a48566.pdf?PHPSESSID=f0473c885f19dff84a99c164142a19f>

### 3. Case Law

Although the Roma have endured discrimination in different areas of life in the Czech Republic and in Slovakia, only a few have been tried before the courts. In the matter of education of Roma pupils, the situation seems to be even complicated, especially with evidentiary issues. Another related problem is the legal awareness of Roma minority is usually low, a side-effect of their low level of education.

Consequently, Roma typically do not enforce their rights before courts or other authorities, even though antidiscrimination legislation has been in force in both countries for a few years.<sup>93</sup>

The only cases in the area of education tried before the courts or other authorities have regarded children's assignment to special schools. One such case in the Czech Republic even reached the European Court of Human Rights – *D.H. and others v. Czech Republic*. The case is seen as an important victory for all Roma.

This chapter will discuss this case in more detail, explaining its consequences for national courts and the approach of national authorities. As there has not yet been a similar before the European Court of Human Rights involving Slovakia, no comparison is possible, but national examples of such problem in Slovakia will be discussed instead.

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<sup>93</sup> In both countries there is single anti-discrimination act and besides that some legal provisions on discrimination are dispersed in several acts.

### 3.1. D.H. v Czech Republic – judgment of the ECtHR

The disproportionate presence of Roma students in special schools was reality in the Czech Republic for many years. A case on this issue reached the European Court of Human Rights (ECtHR) in 2000, when group of eighteen Roma children from the Southeastern Czech town of Ostrava (represented by the European Roma Rights Center) complained to the ECtHR of being assigned to special schools for the mentally disabled and receiving inferior education.

The applicants turned to ECtHR after their case was dismissed by the Czech Constitutional Court as unfounded. The Czech Constitutional Court did not recognize statistics alone as sufficient evidence to prove a discriminatory practice; the Court also claimed it lacked jurisdiction to hear the case.

The Grand Chamber of ECtHR decided the case in favor of the applicants, thus confirming that the segregation of Roma students in special schools for mentally retarded is a form of illegal discrimination contrary to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the “Convention”). The Convention also prohibits discrimination in connection with Article 2 of Protocol No. 1, which guarantees the right to education.

The decisive factor in reaching this decision was concept of indirect discrimination.<sup>94</sup> The Convention itself does not distinguish between direct and indirect discrimination. The Court thus looked elsewhere, and incorporated a legal provision of the European Union. There are

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<sup>94</sup> “Indirect discrimination shall be taken to occur 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”.

See Article 2(2) of the Council Directive No. 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (so-called Anti-discrimination directive)

several applicable EU directives, though the Anti-discrimination directive is the most relevant, as it prohibits discrimination based on racial or ethnic origin.

Though there were issues of direct discrimination involved in the case, particularly because school directors and psychologists that had undisputable role in assignment of children, these were difficult to prove conclusively.<sup>95</sup> Indirect discrimination, however, could be demonstrated through statistics showing that, that even though psychological tests were apparently neutral, the number of Roma students in the special schools was disproportionately high. By recognizing these statistic data as evidence, the Grand Chamber came to different conclusion than the Czech Constitutional Court and the Chamber of the Second Section.

The Grand Chamber concluded that, even though “statistics can constitute evidence, [...] they could not in themselves disclose a practice which could be classified as discriminatory.”<sup>96</sup> Therefore, it was a task of the Government to show the disproportionate placement “is the result of objective factors unrelated to any discrimination on the grounds of ethnicity.”<sup>97</sup> Consequently, the Grand Chamber concluded that as the statistics seemed to be reliable and significant (they were even supported by some reports of non-governmental organizations), they “will be sufficient to constitute the prima facie evidence the applicant is required to produce” and therefore, “the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory.”<sup>98</sup>

The Grand Chamber went even further, expressing its opinion that, given that relevant legislation had a “disproportionately prejudicial effect on the Roma community,” each

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<sup>95</sup> D. Strupek, “Before and After the Ostrava Case: Lessons for Anti-discrimination Law and Litigation in the Czech Republic”, *Roma Rights - Roma Education: The Promise of D.H Time of skinhead*, (Journal of the European Roma Rights Center, Number 1, 2008), 42

<sup>96</sup> Para 180 of the Grand Chamber Judgment

<sup>97</sup> *Id.*

<sup>98</sup> Paras 188 and 189 of the Grand Chamber Judgment

applicant had certainly suffered the same discriminatory treatment, and thus there was no need to analyze individual cases.<sup>99</sup>

One question raised by this decision is whether a government can rebut the presumption of discrimination in any case. The opinion of the Court hints that such discriminatory practice would be irrebuttable even concerning objectively mentally disabled children. Such an explanation could have serious consequences for future cases where actual mentally disabled Roma children among those ones allocated in the special school. Hopefully, the absurdity that the Court would grant the compensation without even weighing particular circumstances can be avoided.

### **3.2. D.H. v Czech Republic – consequences**

The judgment of Grand Chamber raised many discussions, as the result generally considered a surprise. Naturally, the case has attracted attention from the national authorities, and their attitude unsurprisingly quite negative.

Since the decision, discussions have naturally continued further, and some questions are still unresolved. One such question concerns the application of the decision at the present time, since special schools have abolished. Does this mean that the system is functioning now and no further remedies are needed?

Although the Government took some steps to eliminate segregation in the schools, it unquestionably still exists in the education system in the Czech Republic. Some efforts were developed even before the *D.H.* judgment, including the Education Act, which ultimately came into force in 2005. This Act was aimed at eliminating segregation in schools, and it

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<sup>99</sup> Para 209 of the Grand Chamber Judgment

introduced some new elements to the Czech legal system, such as teaching assistants and preparatory classes.

Despite this school reform and the judgment of the ECtHR, segregation still persists, and there is still a disproportionately high number of Roma students in the successors of the special schools, now known as practical training schools. Unfortunately, either ECtHR did not make clear recommendation on what should occur as a result of the *D.H.* decision.<sup>100</sup>

Withy regards to the current situation in the Czech Republic, the European Roma Rights Center, in cooperation with Roma Education Fund, performed a study in 2008, confirming that segregation is still present in Czech schools.<sup>101</sup> In most of cases, Roma children are transferred from ordinary school to practical training schools in the end of the first grade based on the recommendation of the school management. The research also shows that Roma students placed in practical training schools are almost never transferred back to the ordinary schools. The only exception to this was five children, four of whom came from the same school as applicants in the *D.H.* case.

Additionally, children attending practical training school still study the curricula of the mentally disabled, and thus they are significantly disadvantaged in the area of education. The framework education program does not mandate that the curricula of practical training schools shall be equal to those of ordinary schools. On the contrary, science education on practical training schools places more emphasis on the development practical skills. The only visible improvements are the introduction of English language instruction and art instruction.

<sup>100</sup> Strupek, supra note 95 at 46

<sup>101</sup> Report on segregation of Roma children in the Czech schools by European Roma Rights Center and Roma Education Fund, available from: [http://www.osf.cz/konference/images/file/Executive\\_Summary\\_CZ.pdf](http://www.osf.cz/konference/images/file/Executive_Summary_CZ.pdf) Under that report in 8 out of 19 practical training schools Roma children represented more than 80 percent of pupils., in 6 out of 19 schools Roma children represented 50 – 79 percent of pupil and only in 5 of them Roma children represented less than 50 percent of pupil, whereby the lowest proportion of Roma children was 14 percent that is still quite a high number when we take into account that under unofficial estimations Roma population represent approximately 2,9 percent of the whole population in the Czech Republic.



Another improvement is that a higher number of teachers takes classes of special pedagogy aimed at instruction of children with special education needs.

Therefore, despite the *D.H* decision, there is still a prevalent practice of assigning Roma children to classes schools with sub-standard curricula. Counseling psychology still operates under pre-*D.H* methodology. The evaluations of psychologists are not subject to oversight by any authority, and there is no legal duty to reevaluation child placement in a practical training school unless parents request such reassessment. Most Roma children thus remain in the practical training schools until the end of the compulsory school attendance period, after which time they typically leave school.

The Czech Government did begin to admit openly the insufficiencies in the system, and it performed some positive preliminary steps to remedy them. Besides the changes in the legal framework, the number of preparatory classes has increased recently. On the other hand, it seems that these classes could also serve as a tool for the ongoing segregation of Roma and their placement in practical training schools. The fact that two years after *D.H.* was handed down, a disproportionally high number of Roma children still remained in practical training schools shows that the practice in Czech Republic does in fact eliminate segregation of children in schools.

No relevant Slovak case has been tried before the ECtHR, so a direct comparison is not possible. Given the situation in Slovakia, it would not be surprising if a case eventually reached the ECtHR, though. A recent scandal surprised Slovak public in 2007, when the State School Inspection officially found out that in the east Slovak village of Pavlovce nad Uhom, seventeen Roma children should not objectively have been placed in a local special school.

Under the conclusions of the State School Inspection, the principal of the school accepted students who had not been diagnosed at all, or whose diagnostics was incomplete or

inconclusive.<sup>102</sup> The principal was merely fined for his misconduct and instructed to take measures to eliminate the problems that had been discovered. However, damages were not awarded to any concerned family because no family had brought the case even before a national court.

In spite of relevant legislation and the efforts of governments, these problems still persist. It seems that the best solution would be complete integration of Roma students, but this is impractical at present.

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<sup>102</sup>Amnesty International Report: Slovakia: A tale of two schools: Segregating Roma into special education in Slovakia, p. 10, available from:  
[http://www.amnesty.sk/article\\_files/AI\\_SK\\_Report\\_Pavlovce\\_SK.pdf](http://www.amnesty.sk/article_files/AI_SK_Report_Pavlovce_SK.pdf)

## Conclusion

This paper has discussed several aspects of Roma access to education in the Czech Republic and Slovakia, including the attitude of responsible authorities. It also covered the limited case law, focusing on *D.H. v Czech Republic*. It seems that, although both countries have implemented European provisions on discrimination, and the governments of both countries have taken steps to eliminate discrimination, there are ongoing problems with the application of these provisions and measures in practice.

This issue has been shown to be quite complex. Although the most visible problem is the still-present segregation of Roma in both countries, it is also necessary to deal also with other problems such as poor school attendance and discrimination.

In this regard, the governments of both countries should consider whether it is really necessary to have a category of special schools or practical training schools. The separate education of mentally disabled children is not in principal problematic, but experience of both countries shows that it is subject to being turned into a vehicle of de facto discrimination against minorities, particularly the Roma.

Therefore, the governments of both countries should communicate more with non-governmental organization, experts, and deputies of local authorities and to set up clear strategic plan with concrete steps to secure integration of Roma children. Through legislation, the governments of both countries should include more detailed provisions to prevent segregation of Roma children and their discrimination in the area of education. Perhaps a mandatory, culturally unbiased test for assessment of capabilities should be implemented. Increased oversight of the process of student placement might also be effective.

Furthermore, the governments should support changes in educational system in favor of multi-cultural education and implement effective steps to combat against prejudice and stereotypes in educational system. Only in that matter, there is a chance that Roma minority will have once the same access to education as anyone else.

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