

FROM EXCLUSION TO INCLUSION: RIGHT TO EQUAL AND
ADAPTABLE EDUCATION OF ROMANI CHILDREN IN PRIMARY
SCHOOLS IN SLOVAKIA, CZECH REPUBLIC AND UNITED KINGDOM

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To my grandparents and future me.

EXECUTIVE SUMMARY

Right to education is a universal right, to which all the children are entitled to. Nevertheless, the practice in many countries show that the pillars on which the education laws and policies are built exclude parts of the children and thus violate their right to equal education. Romani children are an example of education policies gone badly, repeating and recreating discrimination, segregation, racism and prejudice.

The object of this research is therefore to compare and analyse the laws and practices that shape the fulfillment or non-fulfillment of the right of the Romani children to inclusive education. It analyses different sorts of segregation and direct and indirect discrimination of Romani children in Slovakia and Czech Republic, in comparison with the more adaptable and equal education system in the United Kingdom. The main areas analysed include the differences between segregation and inclusion in education, assessment of best practice and recommendations to the relevant governments. The findings show that the change in paradigm is needed in order to change the education system to tackle specific needs of Romani children and children with disabilities.

The thesis uses an internal schema that goes from universalistic to particular, or from big picture to small, ordinary illustrations. Nevertheless the main idea that the right to education is universal and has to be equally benefited by all the children stays as an underlining view. Going from what law says and how it can be adjudicated, the thesis compares inclusive education as just and going to the very merits of the idea of education while contrasting it to the idea of segregated education as recreating human rights violations in the small, concrete settings.

Last, but not least, the focus is put on the idea that once the system changes for being more inclusive, the implications show that all children benefit from the system. Inclusive education is therefore a vital need for every school and needs to form a basis of education in all countries.

TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER 1: RIGHT TO EDUCATION	3
1.1 RIGHT TO EDUCATION AS A HUMAN RIGHT UNDER THE CESCR: A SOCIAL AND ECONOMIC RIGHT?	3
1.2 RIGHT TO EDUCATION AS INTERPRETED BY THE GENERAL COMMENT NO. 13...6	
1.3 STATE OBLIGATIONS REGARDING THE RIGHT TO EDUCATION	10
1.4 AIMS OF EDUCATION	11
1.5 DISCRIMINATION IN EDUCATION UNDER INTERNATIONAL LAW	12
1.6 ADJUDICABILITY OF THE RIGHT TO EDUCATION AND REMEDIES UNDER INTERNATIONAL LAW	18
CHAPTER 2: RIGHT TO EDUCATION IN SLOVAKIA, CZECH REPUBLIC AND UNITED KINGDOM	21
2.1 RELEVANT INTERNATIONAL AND DOMESTIC CASE LAW	21
2.1.1 Case of Šarišské Michaľany primary school	21
2.1.2 D.H. and Others v. the Czech Republic	25
2.1.3 Horváth and Kiss v. Hungary	28
2.2 INCLUSION VERSUS SEGREGATION	30
2.2.1 What is inclusion? Why inclusive education?	30
2.2.2 Possible scenarios for segregation of Romani children	35
2.3 RIGHT TO EDUCATION OF ROMANI CHILDREN IN SLOVAKIA: SEGREGATION UNDER CLOSED EYES AND BEHIND THE CLOSED DOORS	38
2.4 RIGHT TO EDUCATION OF ROMANI CHILDREN IN THE CZECH REPUBLIC: SIX MORE YEARS, HOW MANY MORE YEARS?	43
2.5 RIGHT TO EDUCATION IN THE UNITED KINGDOM: MORE DIFFERENCES, MORE INCLUSIVENESS?	50
CHAPTER 3: POSITIVE DEVIANCE	57
3.1 POSITIVE DEVIANCE - GOOD PRACTICE	57
3.2. CONNECTING THE DOTS TOGETHER – RECOMMENDATIONS	63
CONCLUSION	67
BIBLIOGRAPHY	69

INTRODUCTION

“I do not accept segregation. My child should be given the same education as a non-Romani child. There is no compromise.”¹

The introductory quote shows the frustration of many parents, whose children have been enrolled into segregated all-Romani class or into the special education stream. Both of the situations are discriminatory and racist, based on the presumption that Romani children are inferior, less-capable, that their cultural or ethnic background should be 'fixed' as much as possible. The right to equal and adaptable inclusive education of Romani children in Central-Eastern European countries is being systematically violated and the education system does not change the status quo despite the states' international and domestic obligations and the jurisprudence of the European Court of Human Rights.

The aim of this thesis is to analyze the situation Romani families face in order to get equal education for their children and to get reasonable accommodation for their children's needs (thus education being adaptable). By comparison of the two Central European countries, Czech Republic and Slovakia who share similar histories of segregation, social exclusion and violation of human rights of the Roma for centuries, I aim to underline the injustice of the system and state policies that still systematically violate rights of this minority in the contemporary modern European states. As another comparator, a country with education system that shows to be more inclusive and responsive to the needs of children coming from different backgrounds, the thesis will underline the good practice of the education system in the United Kingdom. By showing the good practice that can be exported and applied in the Central European Region and by showing that the very same children that have once been assessed as 'less-capable' may suddenly excel, if the system changes, this thesis with the help of the publications from various NGOs studying the topic of Romani

¹ Romani mother from Levoča, whose child has been enrolled into the all-Romani class. In: Amnesty International 2013, p. 2

inclusion, aim to erase the myth that it is the children who are failed and not the school that is failing them.

I therefore posed myself a research question that I answer in detail in my foregoing chapters:
What distinguishes the approaches taken by Slovakia, Czech Republic and United Kingdom to fulfill their obligations to ensure that Romani children can exercise their right to adaptable and equal education?

In addition to comparative analysis of the international law, case law and the primary education systems of the three countries, this thesis uses qualitative research based on the publications and articles of academics and NGOs doing valuable research in the studying of inclusive education. In addition, I studied implementation of various projects of local NGOs working with Romani children that helped me to understand the difficulties of fighting against the system that is blind or unwilling to change segregation of Romani children, yet show how the simple projects can change the daily education experience for the children. Finally, I am using specific case studies in order to illustrate how segregation or inclusion practice can translate into daily life at school.

The thesis is divided into three chapters. The first chapter analyzes right to education under international law and its adjudicability in the international for a. My second chapter introduces the most relevant case law of the domestic courts and European Court of Human Rights that set precedence for the negative and positive actions of the state in order to end segregation of Romani children in education. Further, it explains what inclusion means and what it does not, to finalize with analysis and comparison of the right to education of Romani children in Slovakia, Czech Republic and the United Kingdom. The last chapter aims to be somehow optimistic: showing the good practice and how the things can be done, if only there is a will to choose inclusion instead of segregation – that is what states are indeed obliged to do, but nevertheless continue violating the rights of their smallest citizens of Romani origin.

CHAPTER 1: RIGHT TO EDUCATION

1.1 RIGHT TO EDUCATION AS A HUMAN RIGHT UNDER THE CESC: A SOCIAL AND ECONOMIC RIGHT?

“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”²

The right to education can be seen as a second-generation right, a part of social and economic rights family. Therefore it can be argued that as a right, that is a subject to progressive realization, as understood by the ICESCR (Art.2/1): *“Each State Party,..., undertakes to take steps,..., to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”³*

Anchoring right to education as a second generation right may therefore posing harder task to its advocates (as it cannot be judicially enforceable) and lighter task to the states claiming having no resources to provide education of equal quality to all. The Committee on Social, Economic and Cultural Rights however specifies what it means by 'all appropriate means' and specifies that discrimination in education is impermissible under any justifications (while still allowing for affirmative action legislation).⁴The progressive realization of economic and social rights is also subject to periodical reviews as well.

² Art. 13/1 of the International Covenant on Economic, Social and Cultural Rights

³ Art. 2/1, ICESCR

⁴ As according to *CESCR General comment 3*, para. 32: *“The adoption of temporary special measures intended to bring about de facto equality men and women and for disadvantaged groups is not a violation of the right to non-discrimination..”*

Manfred Nowak claims the right to education as being understood as a cultural right, while at the same time interrelated to other human rights: education being both precondition for exercise and aiming at strengthening other rights, such as right to choose work and equal pay⁵. Since the human rights are interdependent and indivisible, he further claims⁶ the right to education might be the only one which may fall into category of all generations, including development rights. Looking at education as not a clear-cut social and cultural right might help us in interpretation of the right while trying to litigate the rights of the subject, as well as claim for the obligations of the state⁷.

Katarina Tomaševski, the former UN special rapporteur on the right to education sees its place in between: “[t]he right to education straddles the division of human rights”⁸ between the first and second generation of rights.

On the other hand, some authors advocate for the right to education not be understood in terms of the generation of rights at all. For example, Eide and Rosas do not agree with labeling rights into clear-cut categories at all⁹. The reason for this is that all rights are interconnected, including civil and political rights and economic, social and cultural rights. They provide an example of the right to education, as enshrined in Protocol No.1 of the ECHR, which is understood as a political rights convention¹⁰. They are therefore looking at education from the same point of view as Nowak, however coming to different conclusion.

But why is the classification of the right to education important at all? Although there are differences between the first two generations of rights, concerning the role of the states in

⁵ Nowak in Eide, Krause and Rosas, 1995, p.189

⁶ Ibid., p. 196

⁷ Ibid., p.196. To illustrate the understanding of education as a first generation right, Nowak uses example of ECHR negative wording of the right to education, or understanding education as defined by ideas of freedom of science and teaching in Germany or non-interference of parents' rights under the Constitution of the United States. He also argues for education as a third generation right, as concerning international cooperation in combating illiteracy in developing countries. (p. 196)

⁸ Tomaševski 2011, In Smith 2012, p.330

⁹ Eide and Rosas, In Eide, Krause and Rosas, 1995, p.16

¹⁰ Ibid., p. 16

implementing them: whether a passive (non-interference) or active (providing for)¹¹, such understanding is to some views exaggerated and mistaken¹². Economic and social rights are being often viewed as either not 'real rights' at all, or on the other hand hierarchically higher to the civil and political ones¹³. The debate in classification does however do not serve for the analysis or protection of the rights themselves, but rather for political purposes¹⁴, advocating smaller or larger responsibility of the state and its further legal enforceability. Vierdag argues that it is often repeated that civil and political rights are guaranteed to be 'absolute' and 'immediate', and the social rights being 'programmatic' and therefore not rights at all¹⁵. Both Covenants of 1966 however work "*side by side*."¹⁶ Some international instruments, such as the Convention for the Rights of the Child does indeed place so-called social rights, such as a right to education (Art.28) would be among other rights, perceived as civil and political, such as freedom of expression (Art.13) and freedom of thought, conscience and religion (Art. 14), as rightly put by Eide¹⁷.

Nevertheless, positive rights (second generation rights) are also to some views "justicable"¹⁸. For example, Eiden and Rosas claim that "*While it is fully possible to give concrete legal relevance to economic, social and cultural rights, it cannot be overlooked that there are many quarters ideological aversion towards such an approach*."¹⁹ The reason for this might be that those rights imply a "*commitment to social integration, solidarity and equality, including tackling the question of income distribution,..., with the protection of vulnerable groups*."²⁰ Eide further claims that the component of state's obligations as regards the economic, social and cultural rights is the 'obligation to protect', and therefore the legislation put into the existence in order to fulfill such

¹¹ Ibid., p.17

¹² Ibid., p.23

¹³ Ibid., p.17

¹⁴ Ibid., p.17

¹⁵ Vierdag, 1978, In: Eide, Krause and Rosas, 1995, p. 22

¹⁶ Eide and Rosas, In Eide, Krause and Rosas, 1995, p.24

¹⁷ Ibid.

¹⁸ Ibid., p.17

¹⁹ Ibid.

²⁰ Ibid.

obligations²¹ “*becomes manageable for judicial review, and therefore belies the argument that economic and social rights are inherently non-justiciable.*”²² Although it may be seen that the rights under the CECSR were “*drafted as obligations of result rather than obligations of conduct,*”²³ and therefore at their higher general level cannot be easily judicable, the obligation of the state still exists and cannot be neglected²⁴.

In addition, the **violations** of state’s obligation under the CESCR are according to Ssenyonjo²⁵ justiciable, with relevant jurisprudential examples. The justiciability in the specific case of the right to education and the remedies to its violations will be assessed in sub-chapter 1.6.

1.2 RIGHT TO EDUCATION AS INTERPRETED BY THE GENERAL COMMENT NO. 13

The UN Committee on Economic, Social and Cultural Rights defines several necessary traits while adding additional interpretation to the right to, also primary, education as defined by ICESCR (Art. 13/2) : “*education in all its forms and at all levels shall exhibit the following interrelated and essential features: a) availability; b) accessibility; c) acceptability; and d) adaptability.*”²⁶

The terms are understood to apply in accordance with Committees analytical approach to adequate housing and food, as well as the interpretation as put by the Special Rapporteur on the right to education, as regards primary education²⁷.

²¹ Ibid., p.37

²² Ibid.

²³ Ibid., p.38

²⁴ Ibid.

²⁵ Ssenyonjo 2009, p.391

²⁶ CESCR General comment 13, para. 6

²⁷ CESCR General comment 3, para. 9

By '**available**', the Committee means in terms of quantity and all necessary functioning availability, including buildings, teachers or sanitary facilities²⁸. It may be largely relevant in assessing equality in education, while some schools in practice benefit more from the state support schemes than the others. Therefore there may be big differences between the technical equipment of primary schools within the state, in some instances even largely inadequate (without proper sanitation f.e.) and therefore unable to provide quality education. The number of the teachers, their salaries and educational background may be relevant (and indeed problematic) as well.

The education is '**accessible**' if it can be available to everyone within the state's jurisdiction without discrimination²⁹. This element includes non-discrimination, physical (reach) and economic accessibility (primary education is acc. to Art. 13/2 of the ICESCR free to all)³⁰. The non-discrimination principle is particularly relevant: *“education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.”*³¹ The Comment therefore clearly signals the non-acceptability of de facto discrimination, that can consist also in unavailability of close schools, or inaccessibility of the public transportation from the outskirts of the towns.

'**Acceptability**' of education means that *“the contents of the education”*³² have to be *“relevant, culturally appropriate and of good quality.”*³³

²⁸ CESCR General comment 13, para. 6/a

²⁹ CESCR General comment 13, para. 6/b

³⁰ CESCR General comment 13, para. 6/b

³¹ Ibid.

³² CESCR General Comment 13, para. 6/c

³³ Ibid.

The 'acceptable' teaching methods should be also flexible, so to accommodate various needs of pupils, as the Comment means by the term '**adaptability**': "*respond to the needs of students within their diverse social and cultural settings.*"³⁴

Therefore the adaptability criterion is closest to my understanding of inclusion, thus taking into account child's specific needs and their background and adapting the school curricula to his/her needs, and not vice versa (thus child needing to integrate to the mainstream education practice). Taken altogether, I perceive all four components of the education as what accounts to education as 'equal'.

In application of these criteria, children's best interest is a guiding principle³⁵. Who should evaluate such best interest is however not explained. The best interest of the child is also an underlining principle in the Convention on the Rights of the Child (Art. 3). Whereas the child does not bear legal capacity, it may be understood that it is on its parents, the school or the state to decide what is best for them. However, such underlining principle puts a primary focus on the child and not on the authority. I would therefore argue that the best interest principle argues for inclusion in education as well. This is because we may presume that knocking down barriers, and making a welcoming, non-discriminating and understanding school environment, as well as flexible curricula is in the best interest of the child and his education. In contrast, limiting and obstructing children from attending the best education possible would certainly be against the spirit of the equality of education and the best interest principle. Such shift in perception is needed from the beginning when thinking about approaches to education. In reality, the Slovak or Czech attitude stays primarily anchored in the uniformity of the education system, unwilling to adapt to the specific needs of the pupils, or even obstructing some categories of children from equal chances in life. The English approach to education might be perceived as more focusing on a specific children's needs, and if the pupil is failing at school, it is a failure of the school, and not the child³⁶.

³⁴ CESCR General Comment 13, para. 6/d

³⁵ CESCR General Comment 13, para. 7

³⁶ CAHROM 2012, p.18

In spite of the well-assessed criteria of what education needs to include in order to be really equal for every child, the Committee leaves enough space for discretion “*upon the conditions prevailing in a particular country*”³⁷ while applying the terms. The discretion is understood largely by financial matters and context of development³⁸ in the country, therefore can be claimed with less success by developed countries (such as Slovakia, Czech Republic and the United Kingdom).

The General Comment 3 of the Committee also reacts on the experience gained over state’s reports on the misinterpretation of the 'progressive realization': the concept of the phrase means that while drafting the CESCR, the Committee was aware that the rights included in the Convention cannot be fully achieved quickly and be effective immediately, as different from rights under the ICCPR, which have an immediate effect³⁹. Nevertheless, such realization over time (which reflects the realities of the world) does not mean the social, economic and cultural rights should not be “*misinterpreted as depriving the obligation of all meaningful content*”⁴⁰ whereas their full realization (“*as expeditiously and effectively as possible*”⁴¹) is the *raison d’être* of the Covenant and the states are obliged to read the rights in such a spirit⁴². Therefore, the burden of proof lays on the state while showing it used all resources (financial, legislative, social, technical) possible in order to show, why it failed to provide, f.e. accessible education to everybody⁴³.

A state, in which large proportion of children will be deprived with at least a minimum essential education will therefore be in a *prima facie* violation of its obligations under the Convention⁴⁴.

Underlined again, discrimination in education can however never be justified by lack of resources. What may be also assessed from the General Comment, is that even if all children in

³⁷ CESCR General comment 3, para. 2

³⁸ Requirement of function, f.e. does depend on the developmental context of the country, therefore some schools can provide only necessary requirements to functioning and other can include f.e. libraries and computers, para. 6/a

³⁹ CESCR General comment 3, para. 9

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid., para. 10

⁴⁴ Ibid., para. 10

Slovakia will be provided with free primary education of a certain quality, inhibiting a large proportion of children of specific ethnic and social background (children from segregated Romani communities) would be a *prima facie* violation of the countries obligation under the ECSCR, as well as a *prima facie* discrimination. The state would therefore need to provide very heavy reasons why the primary education in the country is de facto (in some instances also de iure) discriminative towards specific category of children in the country. To my view, the country would find no reasonable justification and therefore is under the immediate obligation to take all necessary positive obligations to secure equal and inclusive education to all children.

1.3 STATE OBLIGATIONS REGARDING THE RIGHT TO EDUCATION

The states' obligation towards the right to education (and not limited to), as according to (and not limited to) the General Comment 13 imposes on states the "*obligation to respect, protect and fulfill*."⁴⁵ The obligation to respect forbids the states to prevent the persons under its jurisdiction from enjoying the right to education⁴⁶. At the same time, the states are obliged to protect the right from interference of the third parties, including parents⁴⁷. The obligation to fulfill means the parties are under the obligation to provide the education⁴⁸. The latter may in practice mean that the countries take positive measures to provide acceptable – culturally appropriate education for minorities⁴⁹. This provision would mean that the states are not only encouraged, but obliged to provide inclusive education for minorities.

⁴⁵ CESCR General comment 13, para.46

⁴⁶ Ibid., para. 47

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid., para. 50

The states are also under obligation to provide curricula that aim to available, accessible, acceptable and adaptable education and provide for independent monitoring mechanisms⁵⁰. Therefore the whole system of education in primary schools should be reformed in order to provide inclusive environment and culturally and socially sensible curricula The education system should be also transparently monitored in order to assess its efficiency.

In addition, according to Recommendation No. R(2004) of the Committee of Ministers of the Council of Europe on education of Roma/Gypsy children recommends the states that “*Appropriate support structures should be set up in order to enable Roma/Gypsy children to benefit, in particular through positive action, from equal opportunities at school.*”⁵¹ Therefore positive action is asked from the states as a necessary prerequisite for narrowing the gap between the Roma and non-Roma populations, including, inter alia, temporary compensatory mechanisms⁵².

1.4 AIMS OF EDUCATION

The aims of the education in international instruments are most detailed in the provisions of the Convention on the Rights of the Child (CRC), which has been ratified by all states (except Somalia and the United States), therefore can be viewed as “*the most universally accepted standard in this field.*”⁵³ Its Art. 29/1 states that the aim of the children’s education is to develop children’s personality to its fullest potential⁵⁴, develop respect for human rights⁵⁵, for his parents and children’s cultural identity and language⁵⁶, respect for national values and respect for other civilizations, respect for natural environment⁵⁷ and the “*preparation of the child for responsible life*

⁵⁰ Ibid., para. 49

⁵¹ In: Horváth and Kiss v. Hungary, para. 72

⁵² Slovak republic in its latest amendment to the Anti-discrimination Act (Act No. 32/2013 Coll. amending Act No. 365/2004 Coll.) allows such mechanisms take in place, however those are not being yet put into practice in the case of primary education.

⁵³ Nowak, In” Eide, Krause and Rosas, 1995, p. 194

⁵⁴ Convention on the Rights of the Child, Art. 29/1/a

⁵⁵ Ibid., Art. 29/1/b

⁵⁶ Ibid., Art. 29/1/c

⁵⁷ Ibid., Art. 29/1/e

in a free society , in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples...”⁵⁸ The development of a child’s personality and tolerance for others is widely presented in other international documents as well.

For example, according to the very wording of the Article 13/1 of the CESCR, the aim of education is *“the development of the child’s personality and dignity.”*⁵⁹ Education also enables the person in full and effective participation in the society and promotes respect for human rights and tolerance⁶⁰ between *“all nations and all racial, ethnic or religious groups.”*⁶¹ Even without profound analysis, it is evident that segregated education, not mentioning that it is discriminatory, is against the very spirit of the ECSCR. Numerous authors link the education to the dignity and self-awareness of the child. The Committee on the Rights of the Child argues that discrimination in education is therefore *“offensive to the human dignity of the child, possibly even 'destroying the capacity of the child to benefit from educational opportunities.’”*⁶² Traditionally, the children with disabilities and HIV/AIDS are being heavily discriminated against, with new categories of discrimination in education based on religious grounds⁶³.

According to the World Bank, education is also seen as a *“ticket out of poverty,”*⁶⁴ and thus is seen as a way of combating it.

1.5 DISCRIMINATION IN EDUCATION UNDER INTERNATIONAL LAW

It is true, that the right to education, as understood by the 1966 Convention on Economic, Social and Cultural Rights is subject to 'progressive realization', due to limited resources of states. Nevertheless, the States have *“various obligations which are of immediate effect.”*⁶⁵

⁵⁸ Ibid., Art. 29/1/d

⁵⁹ Ibid., Art. 13/1

⁶⁰ Ibid.

⁶¹ Art 13/1, *International Covenant on Economic, Social and Cultural Rights*

⁶² In Smith 2012, p. 332.

⁶³ Smith 2012., p. 332

⁶⁴ Smith 2012, p.332

⁶⁵ Scheinin, In: Eide, Krause and Rosas, 1995,p. 43, as according to *CESCR General comment 3*, para.1

*“States parties have immediate obligations in relation to the right to education, such as the guarantee that the right ' will be exercised **without discrimination of any kind**' (art.2 (2)) and the obligation ' to take steps' (art. 2 (1)) towards the full realization of article 13. Such steps must be ' deliberate, concrete and targeted' towards the full realization of the right to education. ”⁶⁶*

The non-discrimination principle is further explained in the paras. 31-37 of the General Comment 13. The most important note being that *“the prohibition against discrimination enshrined in article 2(2) of the Covenant is **subject to neither progressive realization nor the availability of resources**; it applies fully and immediately to all aspects of education and encompass all internationally prohibited grounds of discrimination. ”⁶⁷*

The separate educational institutions for specific groups (pupils of two sexes, religious or linguistic reasons, private education), is not understood as a breach of the Covenant, providing they offer same-level education⁶⁸. This provision is interpreted as in compatibility with the 1960 UNESCO Convention against Discrimination in Education. The 1999 General Comment thus does not tackle contemporary challenges for discrimination in education, namely special education for disabled children and simply takes the terms of the UNESCO Convention. It may therefore be viewed that special educational institutions for children with disabilities constitute a discrimination. After the adoption of the adoption of the UN Convention on the Rights of the Persons with Disabilities, that recalls the disability as a prohibited ground for discrimination and binds the states for inclusive education in general education systems⁶⁹.

According to General Comment No. 3, states are generally willing to take legislative measures in order to show the fulfillment of the obligations, however, the attainment of the right 'by

⁶⁶ CESCR General comment 13 , para. 43, as according to CESCR General comment 3, para. 2, emphasis added

⁶⁷ CESCR General comment 13, ,para. 31, emphasis added

⁶⁸ CESCR General comment 13, para. 15

⁶⁹ CRPD, Art. 24

all appropriate means' may include also judicial and other effective remedies (in order to remedy discrimination in education)⁷⁰. Those countries, which are also bound by the ICCPR (and all three countries I compare are parties to both Conventions) are also under an obligation to ensure an **immediate effective remedy** to anybody, whose rights have been violated (as the non-discrimination clause of the ICCPR is not limited to the provisions under the ICCPR, it includes also right to education)⁷¹. By anybody, the Committee means also children.

According to the Committee, discrimination in education is impermissible on every stage of the application of the right to education, including failure to take necessary steps in providing for the right⁷². Examples of violation of the right to education then include “*the introduction or failure to repeal the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds,*”⁷³ including de facto discrimination⁷⁴.

Katarina Tomaševski argues that non-discrimination is the starting point and the main principle in the implementation of any second generation rights⁷⁵. Both 1966 Conventions have non-discrimination principles included as a starting point, while the Art. 2 of the ICCPR guarantees general prohibition of discrimination (de iure and de facto)⁷⁶. Therefore “*any unreasonable distinction based on race, sex, social origin or any other criteria,..., relating to the law and/or practice of education (access to education, dismissal, tuition and fees, subsidies, contents and quality of education etc.) constitutes a violation of Article 26 of the CCPR.*”⁷⁷

⁷⁰ CESCR General comment 3, , para. 5

⁷¹ CESCR General comment 3, , para. 5, emphasis added

⁷² CESCR General comment 13, , para 58

⁷³ CESCR General comment 13, para. 59

⁷⁴ CESCR General comment 13, , para. 59

⁷⁵ Nowak in Eide, Krause and Rosas, 1995,p. 201

⁷⁶ Ibid.

⁷⁷ Ibid.

The 1960 UNESCO Convention refers to 'education' in various term, including types of and access to education, its quality and conditions of education.⁷⁸ The aim of the document (according to Art. 1) is to “*eliminate practices of **depriving** any person or group access to education, of limiting any person or group to education of an **inferior standard**, of establishing or maintaining **separate educational systems** and of inflicting on any person or group conditions which are **incompatible with human dignity**.*”⁷⁹

Other international standards dealing with discrimination in education include Art. 5 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination, Art. 10 of the Convention on the Elimination of All forms of Discrimination against Women, Article 28 of the Convention on the Rights of Children, or, under the recent jurisprudence, also Art. 14 in conjunction with the Art. 2 of the First Protocol to the European Convention on Human Rights.

Rhona K.M. Smith argues that the discrimination in education leads to denial of access to employment, as well as access to effective participation in the society, thus may turn as second-class citizens⁸⁰.

Indeed, the children may themselves become second-class children⁸¹, unimportant to the state and denied equal education opportunities and thus circumventing their further participation in public life.

Rhona K.M. Smith further points out that the “*denial of education is one of the most effective methods of circumventing rights. If education is one necessary to allow States to develop, it is surely in the best interest of those States to ensure that all sections of the population receive that education and thus can contribute towards the development of the State.*”⁸²

⁷⁸ Convention against Discrimination in Education Art. 1/2

⁷⁹ Nowak in Eide, Krause and Rosas, 1995, p.202

⁸⁰ Smith 2012, p. 332

⁸¹ *Second-class Kids* is the title of the article by Jan Stojaspal that talks about the treatment of Romani children in Czech schools.

⁸² Smith 2012, p.332

In practice however, state administration may perceive minorities as a threat and therefore promote nation-building policies that disable full participation of the minorities in public life. In the case of Romani minority in Slovakia, their participation in the public life is perceived as a negative phenomenon, or indeed as a threat to Slovak nation, as claimed by the Slovak Prime Minister Fico⁸³. While perceiving a specific category of children through such discourse, it might therefore not be surprising that the state's performance willingness to provide equal education and condemning any discrimination in education is poor. In contrast, the recent development in Slovak government's discourse shows the tendency of the state to blame international human rights system from disabling the state to use the "*extreme measures*"⁸⁴ that are apparently needed to 'tackle the problem' with children from segregated Romani communities⁸⁵. In his speech⁸⁶, the Prime Minister, while using the eugenic rhetoric, 'warned' against the possibility that Romani minority might 'outgrow' the Slovaks in regional political representation, which he perceives as a "*catastrophe*."⁸⁷ The Slovak political discourse on segregation in education will be further addressed in the second chapter.

Manfred Nowak also points out to such disparity between the perceived valued aim of participation of all citizens in the public life and the practical experience from the part of the state administration⁸⁸. He argues that "*governments tend to use the system of education as a means to systematically discriminate against ethnic, religious and linguistic minorities as well as other vulnerable groups.*"⁸⁹ The discrimination in education (such as denial of equal access or segregation to schools with lower educational standards) is one of the most efficient means how to prevent specific groups of citizens from equal participation in public life (political, social, cultural or

⁸³ Pažitková, 2013

⁸⁴ Kern and Pažitková 2013, para. 3, the PM suggests the opening of boarding schools, thus segregated institutions out-of-family for Romani children.

⁸⁵ Ibid.

⁸⁶ Pažitková, 2013

⁸⁷ Ibid.

⁸⁸ Nowak in Eide, Krause and Rosas, 1995, p.202

⁸⁹ Ibid.

economic)⁹⁰. The author uses the examples of discrimination of girls in education in some countries , segregation of black students in the US history or Apartheid in South Africa which were all linked to the racial segregation in schooling as means to undermine the possibilities of specific groups of society from participation in public life⁹¹.

This is a very strong argument which might help to understand the rhetoric of the Slovak Prime Minister (whether he is aware of such link or not) as well and connects the segregation of Romani children in education with the unequal distribution of powers within the state. Indeed, there is a resemblance between the segregation of Romani children in CEE countries and the segregation of black students in the US's 50ies. Some authors⁹² claim the D.H. vs. Czech Republic case on segregation was the countries Brown v. Board of education moment. Whether it is really the case will be further analysed in foregoing sub-chapters.

In addition, the **retroactivity of measures is impermissible**⁹³. Such prohibition is highly relevant in cases, where the country adopts measures, which provide for further segregation, such as financing new segregated schools in the outskirts of towns.

What follows from the analysis of the 1966 Conventions as clarified by the General Comments, the right to education without discrimination has immediate effect and no country can justify segregation in education by lack of financial resources. The states are also in such view provided to show statistically what has been done progressively towards the fulfillment of the equal education of every child within its jurisdiction. How the states such as Slovakia, Czech Republic and United Kingdom fulfill such obligations will be evaluated in the second chapter.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² F.e., the assessment of the similarities between the cases was analysed by Morag Goodwin.

⁹³ *CESCR General comment 13*, para. 45

1.6 ADJUDICABILITY OF THE RIGHT TO EDUCATION AND REMEDIES UNDER INTERNATIONAL LAW

Adjudicability of the right to education (as a second generation right)

The right to education primarily encompasses the right of the child to receive education, which is provided by the state⁹⁴. Nevertheless, the right includes other bearers and interests (such as parents and teachers), therefore may turn into a complex web of legal relationships⁹⁵.

What is interesting from the perspective of possible litigation, the core of the right to education from the perspective of international law⁹⁶ is a children's right to *receive* education, as put by Nowak⁹⁷. The author argues that the provisions in international conventions create obligations ('to fulfill') and obligations of positive actions form the part of the state⁹⁸. He differentiates between 'obligations of result', which flow from most of the international treaties concerning right to education (UDHR, CESCR, CRC) and 'obligation of conduct' (Art. 14 of the CESCR)⁹⁹. The former encompasses, inter alia, the obligation of the state to make primary education free and compulsory and eliminate illiteracy¹⁰⁰. The former obligations provide necessity to adopt specific action (such as providing a detailed plan of how the country will tackle the access of all children to education)¹⁰¹. The non-compliance of the country with its 'obligations of result' are harder to litigate for, since the non-compliance of states is able to be established only "*if there is a clear proof that the State concerned did not take steps to the maximum of its available resources...*"¹⁰² Since it needs reliable indicators, which might be controversial because there is a

⁹⁴ Nowak in Eide, Krause and Rosas, 1995, 190

⁹⁵ Ibid.

⁹⁶ Nowak gives examples of Art. 26 of the UDHR, Art. 13&14 of the CESCR, Art. 28&29 of the CRC or Art. 13 of the Protocol of San Salvador, Nowak in Eide, Krause and Rosas, 1995, p. 198

⁹⁷ Nowak in Eide, Krause and Rosas, 1995, p.198

⁹⁸ Nowak in Eide, Krause and Rosas, 1995, p.199

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

need to differentiate between the unwillingness of the country from the incapacity¹⁰³. Any progress in the country has to be assessed contextually and cross-temporarily (indicators may include raise of literacy, school enrollment, drop-out rates, pupil-teacher ratio as well as comparative public expenditures).¹⁰⁴

After careful assessment of the indicators over several years, it might be established whether country complies with or violated its obligations under the international law¹⁰⁵. The “*root causes of violation*”¹⁰⁶ than have to be specified: there is a difference between the strategies when dealing with poverty as a root or systemic discrimination of specific groups as a root. While there may be several actors involved, it is only the state itself that is a subject in international law’s right to receive education.

Martin Scheinin adds that in addition to state obligations stemming from the ratification of international treaties, many states incorporate those in their domestic legal orders and therefore are domestically legally valid¹⁰⁷. The problem with adjudication of socio-economic rights is therefore not in their validity, but rather applicability¹⁰⁸. He argues that at least some of the provisions under the CESCR, as interpreted by the Limburg Principles, are able to be applied by courts, however any basis for a case must be thoroughly assessed from the position of international and domestic interplay of laws¹⁰⁹. The author identifies the main weakness “*in the very wording of the second generation rights provisions and relatively weak international monitoring mechanisms under the treaties in question.*”¹¹⁰ The lack of international jurisprudence than leads to denial of even the domestic applicability¹¹¹.

¹⁰³ As put by Tomaševski in Nowak, in Eide, Krause and Rosas, 1995, p.199

¹⁰⁴ Nowak, in Eide, Krause and Rosas, 1995, p.199

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Scheinin, in Eide, Krause and Rosas, 1995, p. 42

¹⁰⁸ Nowak, in Eide, Krause and Rosas, 1995, p.199

¹⁰⁹ Scheinin, in Eide, Krause and Rosas, 1995, p. 42

¹¹⁰ Ibid., meaning ICECSR

¹¹¹ Alston in Scheinin, in Eide, Krause and Rosas, 1995, p.43

The main shortcoming is also the non-existence of an Optional Protocol to the CESCER that would introduce individual complaint mechanisms, such as is the case of the CCPR¹¹². Notable exception exists in the case of discrimination in any of the second generation rights under the CCPR or Art, 14 of the CERD¹¹³. He claims most of the cases on economic and social rights under the Council of Europe jurisdiction are being adjudicated through the right to fair trial provision (Art. 6 of the ECHR)¹¹⁴, however as will be discussed further, the right to education has become adjudicable directly.

Scheinin further adds examples of future development towards possibility of international adjudication in the second generation rights, such as the developments under the *direct effect* principle in the law of the European Union law or under domestic laws¹¹⁵. The legal protection of right to education under EU law, jurisprudence of the ECHR and under domestic legislation of three countries (Slovakia, Czech Republic and United Kingdom) will be assessed in foregoing sub-chapters.

¹¹² Scheinin, in Eide, Krause and Rosas, 1995 , p.43

¹¹³ Ibid.

¹¹⁴ Scheinin, in Eide, Krause and Rosas, 1995, p. 45

¹¹⁵ Scheinin, in Eide, Krause and Rosas, 1995 , p. 57, 59

CHAPTER 2: RIGHT TO EDUCATION IN SLOVAKIA, CZECH REPUBLIC AND UNITED KINGDOM

2.1 RELEVANT INTERNATIONAL AND DOMESTIC CASE LAW

This subchapter will provide relevant international case law as decided by the European Court of Human Rights. Firstly it will provide an overview and importance of the *D.H. And Others v. the Czech Republic*, followed with the more recent case of *Horváth and Kiss v. Hungary*. In the case of the Slovak Republic, this section will provide the important decision from of the Regional Court in Prešov on the illegality of the segregation of Romani children in primary school in Šarišské Michalany and its possible consequences. By using a comparison with the *Brown v Board of Education* case, it will try to provide argumentation that the Central European Countries have indeed reached their '*Brown v Board of Education moment*'. More sceptically, this subchapter will also address the lacking implementation of the decisions from the states, thus lacking the proves that this important case law, although very important, had a real effect on segregation of Romani children in primary education.

2.1.1 Case of Šarišské Michalany primary school

The (so-far) most important decision in the Slovak domestic case law comes from the decision of the Regional Court in Prešov from October 2012, that affirmed the decision of the lower court. The higher Court ruled that the primary school in Šarišské Michalany segregated the Romani children¹¹⁶. The Court therefore ruled that segregating children in different classes on the basis of their ethnicity is illegal¹¹⁷. It has been the first decision on racial segregation in schools in the history of modern Slovakia and followed international standards in protection of fundamental rights in view of anti-discrimination legislature.¹¹⁸

¹¹⁶ Centre for Civil and Human Rights 2012, para.1

¹¹⁷ Ibid., para.2

¹¹⁸ Ibid.

Vanda Durbáková, lawyer for the NGO that filed the case to the Regional Court, sees the importance of the decision in that it has a strong potential as being a basis for “*suits in the public interest in protection against discrimination that are a new institution in the Slovak Republic as a law allowing to take legal action against human rights violations of numerous groups in our society.*”¹¹⁹ The case has been taken to the Court by the NGO and not the actual victims of the action of the school, thus acting in a public interest under the Anti-discrimination Act. The NGO claimed that the primary school segregated the pupils on the basis of their ethnic origin in separate classes and on a separate floor¹²⁰. The pupils attending 'normal' classes with their peers from the majority have been taken away from those and transferred to those separated classes as well¹²¹. The touched school justified their creation by claiming the separate classes are created for Romani children coming from disadvantaged backgrounds¹²², thus allowing the teachers to approach them on an individual basis (which nevertheless according to the Act on State Administration in Education¹²³ has to be directed towards every pupil) and thus having a character of a 'compensatory measure' in order to diminish the effect of their disadvantaged background¹²⁴. The school therefore claimed the segregation being a sort of a measure of a positive discrimination. However, even if the school might be claiming to act in a good faith¹²⁵, it does not justify the segregation of the pupils on the premise of their ethnic background. Further, Slovak Republic allowed the 'positive measures' to be taken in order to equalize the pupils only by the latest amendment of the Anti-discrimination Act¹²⁶, that has not been valid at the time of the suit. At the same time, segregation is still illegal, and therefore it would follow that the school cannot segregate the individual pupils even with the aim of such 'compensatory measures'.

¹¹⁹ Ibid., para. 3

¹²⁰ Ibid., para. 4

¹²¹ Ibid.

¹²² Ibid., para. 5

¹²³ Art. 144/1/b

¹²⁴ Centre for Civil and Human Rights 2012, para. 5

¹²⁵ Centre for Civil and Human Rights 2012, para. 6

¹²⁶ According to the Art. 8a/1

Štefan Ivanko, another lawyer for the touched NGO further stated that this judgment is an important signal to other schools that would segregate the pupils, even in a good faith, because it disables the right to equal access of all children to education¹²⁷. The international law, including the case law of the European Court of Human Rights does give, according to his views, only very small limited area for separating pupils: such separation *“has to be in the best interest of the child , has to be temporary and has to lead necessarily to the most rapid integration of the child into the mainstream education.”*¹²⁸ Therefore such cases have to be judged *“as cautiously as possible.”*¹²⁹ He further claimed that this judgment will stop the practice in Slovak schools” to segregate Romani children from the disadvantaged backgrounds, that has been widespread tolerated. He claimed that *“this decision is actually a sort of a legal interpretation that the development of inclusive education is not a choice for our society, but an absolute necessity.”*¹³⁰ He also stated that the necessity and advantage of inclusive education has to be a part of a larger school education strategy in the country, while pushing the bodies responsible for education in the region towards such aim, while also advocating inclusive education in the general public and thus promoting the values of social cohesion¹³¹. In addition, he added that the work that has been, and still has to be done in Šarišské Michaľany towards the inclusion of all pupils can become an example for others, as it was in the case of desegregation in the United States’ history¹³².

This decision is important in sending the message to schools that separating pupils to different classes on the basis of their ethnicity on whatever justification constitutes an illegal segregation¹³³. Indeed, many directors of school claim such segregation has nothing to do with the fact the children are coming from the Romani families, but justify the separation on the basis of their

¹²⁷ Centre for Civil and Human Rights 2012, para. 6

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid., para. 7

¹³¹ Ibid.

¹³² Ibid., para. 8

¹³³ Ibid., para. 7

'unpreparedness/untidiness/rudeness', claiming they have 'special needs' and thus disguising racial segregation as an 'advantage' for the children coming from the disadvantaged backgrounds.

The existence of 'special classes in 'normal' schools, in which the students are segregated because of the legal gap in the system, allows to segregate children with 'special education needs' (after assessment by the specialised school psychologist) into separate classrooms, while claiming the children follow 'individualised' education curricula. A joint NGO report for the 82nd Session of the Committee on Elimination of Racial Discrimination indeed alerted that there is a gap in such hidden form of segregation: *“Even though the child is supposed to attend such school only for the necessary limited period, it has been reported that at many schools such classes are utilised to factually and permanently segregate Roma children within the system of mainstream education.”*¹³⁴

Therefore, the schools put the failure of the school on the backs of the pupils themselves. What is also problematic and obstruct successful integration or inclusion of the Romani children with special education needs into 'normal' classes (note the discourse difference between 'normal' or 'special/Romani' classes that already per se presumes something is wrong with the children from the disadvantaged backgrounds) is the existence of, to my view, highly problematic provision of the Education Act (No. 245/2008 Coll.) claiming that the *“enactment of the rights of a pupil with special educational needs cannot limit the rights of other pupils in the education process.”*¹³⁵ At the same time, the Education Act states that primary and secondary education is free (Art.3/b), based on the principle of equality with regards to the specific education needs of individuals and his co-responsibility for his/her education (Art. 3/b) with the prohibition of all forms of discrimination, in particular the segregation (Art. 3/d). The school attendance is according to the Act compulsory (Art. 19) for 10 years.

¹³⁴ Centre for Civil and Human Rights and People in Need Slovak Republic 2013, p. 5

¹³⁵ Art. 29/11 of the Education Act

According to the Act on State Administration in Education¹³⁶, all children in Slovakia have the right to equal access to education (Art. 144/1/a), individualised approach according to their skills, talents and health (Art. 144/1/b), respect for his nationality, religion or ethnic background (Art. 144/1/g), education in safe environment with satisfactory sanitary conditions (Art. 144/1/i), personal dignity and safeguards against physical, mental or sexual violence (Art. 144/1/k). The interpretation of all rights in the law has to be in accordance with the Anti-discrimination Law (Art. 145/1), and the parents and their children have a right for legal protection in case they feel the school acts against the anti-discrimination legislature (Art. 145/3).

There is therefore still a tension between the negative and positive obligations of the schools: they are prohibited to discriminate between the pupils and segregate them, but at the same time they are not under the positive obligation to do everything for a successful inclusion of children with special education needs. It is important to note that the terms Romani children with 'special education needs' and Romani children from 'disadvantaged backgrounds' are often confused. While the former term presupposes that the child has a disability, and according to the Slovak law can be segregated to special schools, the latter term does not mean that the children has a disability. Such confusion is not only purely technical, but in many instances makes a causal link: because the Romani child is being from the disadvantaged background, it *per se* means it has a disability, and thus can be segregated into specialized schools. The European Court of Human rights has dealt with this issue in the case of *D.H. and Others* that would be analyzed in the foregoing paragraphs.

2.1.2 D.H. and Others v. the Czech Republic

The milestone in the case law of Council of Europe came in the 2007 decision in the case of *D.H. And Others v the Czech Republic*. In this case, the Court ruled on the violation of Art. 14 taken in conjunction with Art. 2 of Protocol No. 1., thus for the first time ruled on the case of

¹³⁶ Act on State Administration in Education (No. 596/2003 Coll.)

discrimination in the right to education. *“When this case was brought, Roma children in the Czech Republic were 27 times more likely to be placed in “special schools” for the mentally disabled than non-Roma children. In 2007, the European Court of Human Rights ruled that this pattern of segregation violated nondiscrimination protections in the European Convention on Human Rights.”*¹³⁷ Such disproportionate enrollment of Romani children in *“special schools without objective and reasonable justification”*¹³⁸ constituted an indirect discrimination, as according to the judgment of the Grand Chamber. By claiming the indirect discrimination, the Court also shifted the burden of proof on the state to provide a reasonable justification of difference in treatment between the children¹³⁹. The state was therefore ordered to end the discrimination by generalized and individualized *“measures in order to put an end to the violation found by the Court and to redress so far as possible the effects.”*¹⁴⁰

The widespread segregation of Romani children in special schools due to their ethnic origin (there has been established a bias in the entry testing), and thus subjecting them to inferior education was not the only way of discrimination in the country¹⁴¹. According to the Council of Europe, other practices included ghetto schools, special separated classes (such as was in the case of Šarišské Michaľany) and denial of Romani children in mainstream schools¹⁴². The Court claimed that by placing the applicants to schools for children with disabilities, thus with inferior education and isolated from other pupils of their age¹⁴³. At the same time, it may be argued that the Court might have gone further. While claiming the inferiority of the education in specialized schools, the question can go further: why an inferior education may be justified for *any* children, including children with disabilities. Such was the criticism led by the Mental Disability Advocacy Center¹⁴⁴.

¹³⁷ Open Society Foundations 2012, para. 1

¹³⁸ Ibid., para. 12

¹³⁹ Ibid.

¹⁴⁰ Ibid., para. 13

¹⁴¹ Ibid., para. 3

¹⁴² In Ibid., para. 3

¹⁴³ D.H. And Others v. the Czech Republic, para. 207

¹⁴⁴ Inclusion International, Inclusion Europe and Mental Disability Advocacy Center 2013, para. 1, recently the

The Grand Chamber noted also in its reasoning, that *“no difference in treatment which is based exclusively or to a decisive extent on a person’s ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures.”*¹⁴⁵ Roma in Europe can be, according to Court understood as a *“disadvantaged and vulnerable minority,”*¹⁴⁶ thus requiring *“special protection.”*¹⁴⁷ It might be compared to the terminology of U.S. Supreme Court in *Brown v. Board of Education* ruling, where the Court claimed that *“[w]here a State has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms.”*¹⁴⁸

However, since the ruling of the European Court, there has been numerous criticism posed on the country for not implementing it and therefore not changing much in the life of actual Romani pupils. Amnesty International and ERRC report showed that five years after the D.H. case, Romani children are still over-represented in special education classes, due to the *“shortcomings in the Czech educational system that obstruct the inclusion of Romani children in integrated mainstream education.”*¹⁴⁹ According to the organizations, the Czech government has failed to *“end racial segregation,..., or effectively implement its own, more inclusive education policies...”*¹⁵⁰ In addition to segregation of Romani children in special schools, all-Romani schools exist that constitute another sort of segregation¹⁵¹. The report provided examples of individual children, that by the virtue of the inferior education lost their chances for pursuing careers they would wish¹⁵². The special/practical schools thus hinder chances for more-successful lives (*“become somebody”*¹⁵³) for an entire generation. The education for lot of Romani children is continuing to be inferior and

MDAC issued a joint statement with the ERRC calling for abolition of segregation for all children, including non-Romani children with disabilities. See MDAC November 2013

¹⁴⁵ D.H. And Others v. the Czech Republic, para. 176

¹⁴⁶ Ibid., para. 182

¹⁴⁷ Ibid., para. 182

¹⁴⁸ Brown. V Board of Education, para. 492

¹⁴⁹ Amnesty International and ERRC 2012, p. 1-2

¹⁵⁰ Ibid., p. 2

¹⁵¹ Ibid.

¹⁵² Ibid., p.10

¹⁵³ Ibid., p. 19

segregated¹⁵⁴, even if it might be seen as equal (in terms of 'separate but equal' sort of discrimination). The states supports unequal education also by the spatial segregation and under-financing of schools that Romani children attend¹⁵⁵.

2.1.3 *Horváth and Kiss v. Hungary*

Another leading case after the D.H., in which the European Court ruled on violation of Art.2 of Protocol 1 of the ECHR in conjunction with the non-discrimination provision of Art. 14 was the case of *Horváth and Kiss v. Hungary* in 2013. The facts of the case were similar to the Czech case: applicants were assessed of having mild mental disability, and thus were enrolled to a specialised school¹⁵⁶. The facts showed that Hungary has also a problem in over-representation of Romani children in special schools¹⁵⁷. The applicants successfully showed the shortcomings and bias in the entry testing itself, which has been agreed upon also by the touched government¹⁵⁸.

The most important step further from the D.H. case constitutes in the fact that the European Court ruled on positive measures that has to be taken in order to end segregation of Romani pupils in specialized schools. Such positive measures include the case of how to interpret¹⁵⁹ the right to education itself, and in general, as well positive measures that a state has to apply in order for bringing the justice and equality for groups that have been subject to longtime discrimination¹⁶⁰ and thus eliminating the inequality in their opportunities¹⁶¹. The Court specifically noted that “[i]n the context of the right to education of members of groups which suffered past discrimination in education with continuing effects, structural deficiencies call for the implementation of positive measures in order;

¹⁵⁴ Ibid., p. 17

¹⁵⁵ Ibid., p. 23

¹⁵⁶ Case of *Horváth and Kiss v. Hungary*, para.6

¹⁵⁷ Ibid., para. 10

¹⁵⁸ Ibid., para. 12

¹⁵⁹ Ibid., para. 103

¹⁶⁰ Ibid., para. 104

¹⁶¹ Ibid., para. 39

inter alia, to assist the applicants with any difficulties they encountered in following the school curriculum."¹⁶² In addition, the state has to apply positive measures in order to "*avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests.*"¹⁶³

Comparison, or what way for future?

The recent developing of jurisprudence of the European Court of Human Rights might be perceived as similar to the Supreme Court decision-making in *Brown I. And Brown II*. The *D.H. Case* showed that the states need to put an end the discriminatory practices in segregation of Romani children under neutrally-looking laws. The *Horváth and Kiss* put another important layer on the right to education: the need to bring positive measures in order to put equality in practice. The Regional Court in Slovakia argued that segregation of Romani children based on their ethnicity cannot be tolerated, even in the case the schools acts in good faith. All of those cases are very important and have the potential to become Central European '*Brown v. Board of Education* moments.' Indeed, the circumstances of the cases show to be similar to the institutionalised segregation of children of different ethnic origin, that has been perceived perfectly 'normal', according to the law or 'separate but (somehow) equal.' What leads to scepticism is the reaction of the governments and public to those cases. As the report of Amnesty International showed, the Czech government has not done necessary steps since the judgment in 2007, neither has Hungary much reacted on the ruling of the recent ECHR case. The public pressure for condemning discriminatory practices in segregation of Romani children is incomparable to the wide support of Civil Rights Movement in the United States. Therefore the future for Romani children shows to be more problematic, and more left on the willingness of the government to obey and implement the rulings of the Council of Europe. It might be suggested that more strategic litigation in front of the domestic courts may be needed in order to strengthen the equal access to education for Romani children.

¹⁶² Ibid., para. 104

¹⁶³ Ibid., para. 116

2.2 INCLUSION VERSUS SEGREGATION

2.2.1 What is inclusion? Why inclusive education?

Inclusion in the society is an important aspect of one's full enjoyment of rights on par with others through full accessibility to services, institutions and day-to-day sharing of space with others. It also fully strengthens one's perception of being an equal member of the society, a human being of the same intrinsic value. The aspect of inclusion in the society and its services has currently become not only an aim of minority rights activism (including children's rights, disability movement and migration studies), but unequivocally and most importantly a human right.

Right to inclusive education has been pronounced a human right by both international and domestic players, however the right is still being constrained and not put into practice for many children around the world, that are being segregated spatially, administratively or through inferior school curricula. Segregation might sometimes seem justified and for the benefit of the children needing special attention, as actively justified by politicians, teachers or parents. Nevertheless, using segregation as means to put individualised education in practice has been rightly shown as a wrong and unjust practice (whether with or without special needs).

Inclusive education can be best explained as *"a way of looking at the world that enacts the fundamental meaning of education for all children: full participation, full membership, valued citizenship... Inclusion is what we make it, and what we make it is what we wish our culture to be."*¹⁶⁴ Therefore, the inclusive education embraces the idea that are children are welcome in a mainstream educational setting on an equal basis with others¹⁶⁵. This approach values differences and supports the full participation possible for everyone, free from discrimination, prejudice, demeaning attitudes and ableism¹⁶⁶.

¹⁶⁴ Kliewer 1998, p. 320 in Kologon 2013, p. 14

¹⁶⁵ Kologon 2013, p. 6

¹⁶⁶ Ibid.

Now, education being inclusive cannot withstand simple renaming of society's attitudes to the education: the paradigm shift has to be put into practice: looking at the ends and effects of the educational approach- thus changing the philosophy of education.

a) Philosophy of the inclusive education

Inclusive education stems from the “*main human rights principles of equality, justice and respect for intrinsic value of every child notwithstanding their psycho-social, intellectual, social, emotional, language, or other abilities,*”¹⁶⁷ thus human rights model as opposed to medical-psychological model. In other words, inclusion means the problem is not 'in the child' that deviates from 'normalcy', but in the system that is not able to include them¹⁶⁸. At the same time, inclusive system supports participation and erases barriers for all pupils, with the main idea that all children are equal and should equally benefit from the education system¹⁶⁹.

In such a way it may be argued that if a child cannot fully benefit from system, to its fullest potential and on an equal basis with others, the education system violates its right to education: therefore the child has the right to adaptable and inclusive education environment, laws and policies.

UNICEF's report on inclusive education mentions several underlining values of the inclusion: valuing all lives equally, promoting participation of pupils in learning, reducing exclusion and barriers, letting everyone feel the sense of belonging, improving schools for all (including parents and teachers), building positive school communities and understanding the difference between the children's and adult's worlds.¹⁷⁰ Importantly, inclusive education values difference, as opposed to the medical model that labels difference or deviance from normalcy as something that should be treated instead of understood.

¹⁶⁷ Singh 2009, p. 13 In: Lajčáková 2012 In: Kriglerová and Gažovičová 2012, p. 13

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ 2012, p. 12

b) Inclusion is not special schooling

“Inclusive education is part of a human rights approach to social relations and conditions. The intentions and values involved are an integral part of a vision of the whole society of which education is a part. Therefore the role education plays in the development of an inclusive society is a very serious issue. It is thus important to be clear in our understanding that inclusive education is not about ‘special’ teachers meeting the needs of ‘special’ children ...it is not about ‘dumping’ pupils into an unchanged system of provision and practice. Rather, it is about how, where and why, and with what consequences, we educate all pupils.”¹⁷¹

In opposition to inclusion, special education systems work with the medical model and violate the right to inclusive education, as Lajčáková adds¹⁷². Although there exist numerous arguments for the benefit of the special schools/classes for children with special education needs (noting that in case of Romani children ethnic and social background is being considered a disability), the counterarguments for inclusion look at the philosophy of education and its purpose as a whole, stemming from the principle of equality. Lajčáková answers the main arguments against special education as such¹⁷³:

- a) education in special schools gives children the type of education they need → children’s educational capabilities are lowered by low expectations
- b) children with special education needs have to be protected from the outside world and bullying → diversity and tolerance in school that welcomes all children are a better precaution against further marginalization of the minorities, inclusive education helps to further tolerance
- c) children that need special attention would hinder the education of ‘normal’ children → stems from the authority of a dominant teacher, inclusive education model rather puts objective to the children

¹⁷¹ Barton 1997, p. 234 In: Cologon 2013, p. 18

¹⁷² Lajčáková 2012 In: Kriglerová and Gažovičová 2012, p. 13

¹⁷³ Lajčáková 2012 In: Kriglerová and Gažovičová 2012, p. 14

themselves and the teacher plays a role of a coordinator and motivator

d) special schools have qualified teachers educated to deal with special education needs → those teachers can be employed in the mainstream schools for the benefit of all children and play a role of the coordinator of teachers and teaching assistants

e) special schools are economically the most effective → the financial needs are higher than in a mainstream schools¹⁷⁴

c) Inclusion is not integration/assimilation

Integration, as opposed to physical segregation means the pupil with special needs is present in the mainstream class¹⁷⁵. Nevertheless, the model of integration stems from the principle that the pupil is not fully welcomed, but rather a 'visitor': individual measures do not change the system itself¹⁷⁶. Inclusion presupposes not only physical presence, but only transformation of the schools, curricula, grading and education methods¹⁷⁷.

As Armstrong adds “ *A common misperception is that inclusive education requires a child (who is being 'included') to change or to adjust to fit in within a setting – as a notion of assimilation rather than inclusion.* ”¹⁷⁸ Perception that a child has to 'earn' to be included, or questioning the possibility of his/her inclusion is demeaning and dehumanizing¹⁷⁹. Conditionality of which pupil can benefit from the mainstream education is therefore seen as against the principle of equality¹⁸⁰: in terms of inclusion, every child is welcome, and has to feel so.

Integration therefore does not change the paradigm: it only alters the existing system of segregation, yet is an important step towards the full inclusion of Romani children and their right to

¹⁷⁴ All points: Ibid.

¹⁷⁵ Lajčáková 2012 In: Kriglerová and Gažovičová 2012, p. 17

¹⁷⁶ Mitchell 2005, p. 4-10 In: Lajčáková 2012 In: Kriglerová and Gažovičová 2012, p. 17

¹⁷⁷ Ibid.

¹⁷⁸ Armstrong et al. 2011 In: Cologon 2013, p. 15

¹⁷⁹ Curcic 2009, p. 532 In: Cologon 2013, p. 15

¹⁸⁰ Rietveld 2010, In: Cologon 2013, p. 15

full and equal education. With this perspective in mind, it is then visible that the arguments for existence of 'special classes' for Romani children that are seen as 'incompetent'/unable enough to deal with curricula in the mainstream class does not withstand as a form of inclusion, not even integration (because such policy is not temporary and the children often spend all their education in such classes), but a matter of segregation and discrimination.

d) Inclusion is not a non-adaptive system

Inclusive education is not an inclusion on paper: in order the system to be inclusive, it has to change, provide necessary accommodation to children with specific needs by making the school open for all and accessible. As mentioned by the relevant jurisprudence, f.e. in the case of Horváth and Kiss, the school has to provide 'reasonable accommodation' or 'positive measures' to children with specific needs¹⁸¹. Although, the term of 'reasonable accommodation' is not used specifically in the case and is rather a term of disability rights movement, enshrined in the CRPD (Art. 2), yet the influence of the CRPS on the case is visible¹⁸² and the concept might be presumed to further develop in the implementation of inclusive education.

e) Inclusion in opposition to segregation

Inclusive education can be put as a juxtaposition to a *segregated* education: for Romani children, segregation may be followed in various forms: a) Roma only schools b) Roma classes within mainstream schools, c) segregation in special schools for children with disabilities or d) special classes within mainstream schools.¹⁸³ I will provide possible scenarios for how such segregation may look in practice in the next paragraphs.

¹⁸¹ Case of Horváth and Kiss v. Hungary, para. 104,

¹⁸² as according to the lead lawyer for the case, Mrs. Farkas (personal notes, 2013)

¹⁸³ ERRC, Milan Šimečka Foundation and CVEK 2013, p. 6

2.2.2 Possible scenarios for segregation of Romani children

a) Roma only schools

Romani children are being segregated spatially in Roma-only schools either in schools built directly in the areas with numerous Romani population (often in the outskirts of towns or directly in segregated Romani settlement communities) or in once-integrated schools after leaving of children from majority population.

States are directly supporting such spatial segregation either by tolerating and justifying their existence or even by using public or EU funding for renovation, rebuilding or building new segregated schools. In such a way, seemingly inclusive/integration policies may easily end in more segregation.

*Illustration/case study*¹⁸⁴: Kežmarok city in the Eastern Slovakia is surrounded by many smaller towns that include high percentage of population of Romani origin. Some of the families live in the centre of small towns, some population lives in the spatially segregated 'Romani settlements.' Almost all children of Romani origin attend the village schools and the 'white' children attend schools in Kežmarok, thus traveling to school everyday. Since the village schools were not built to include many pupils, they become overcrowded. The directors of schools and mayors of towns being desperate, they ask for funding to enlarge the schools or build new ones directly in the settlements (since also parents of the children are for the idea of having the school in the vicinity of the house). In some cases, the schools, unable to resolve the overcrowding problem, lease the so-called "allocated classrooms" in the old buildings, often in appealing conditions. The schools in Kežmarok city seem to have enough places, but only for the children from the 'majority' population¹⁸⁵. In addition, the parents of Romani children are not given enough information about what can segregation mean to their children, that public transportation for their children is free in

¹⁸⁴ This fact-finding mission has been conducted by myself during my internship with the ERRC, the case is yet unpublished.

¹⁸⁵ This has not been proven as a fact, but the official data on how many children and from what areas attend the classes and the unofficial interviews seem to show the directors of schools in the city centre differentiate between which pupils to take in and whose not according to their ethnicity.

case of the school not having enough place to take their child¹⁸⁶ (often parents are afraid their children will be attacked in public transportation). This case illustrates how the Romani children are automatically offered inferior education in sometimes appealing conditions and the segregating system is being systematically reproduced under the pretext of following parent's or town's wishes.

b) Roma classes within mainstream schools

Much too often, children are segregated within mainstream schools into the classes based on their ethnicity, under pretext of separating children that need 'special focus'. Even if their curricula is like everyone else's, Romani children in some schools are visibly separated into classes, or even whole floors. The same result ends with the presumably good practice: after following so-called 'zero classes' (preparation classes before starting primary schools), Romani children from class 0 end together in different class than the others (f.e. Romani children from zero grade follow into class 1A and other kids start in class 1B) along the same segregation lines as they were created¹⁸⁷.

Illustration/case study: The best illustration case of ethnic segregation found illegal was the precedential case of Šarišské Michaľany in Slovakia (analysed in the previous subchapter). The Romani children were being educated in segregated floor, eating in segregated premises (not given any hot meals like others at all). After the Court ordered desegregation, the director of the school worried the school will become all-Roma 'anyhow'¹⁸⁸, which has not become the case after school started to apply more inclusive and individualized approach with the help of Edu-Roma NGO, pedagogical assistance and volunteers changing the school's reputation from a segregated environment to a school starting to show good practice¹⁸⁹.

¹⁸⁶ According to Art. 8/6 of the Slovak Law on State Administration in Education, No. 596/2003 Coll.

¹⁸⁷ Gallová, Gažovičová In: *Minority Policy in Slovakia* 2012/1, para.9

¹⁸⁸ Jesenský 2012, para. 6

¹⁸⁹ Jesenský 2013, para. 5

c) segregation in 'special' schools for children with disabilities or 'special classes' within mainstream schools

As seen by contemporary human rights movements (the most actively in case of the disability rights movement), segregation in education has no justification and is illegitimate and immoral, even for the sake of being 'individualised' and 'special' (thus a nicer word for discrimination) in the case of children with disabilities. Even if the ECHR has not yet made any judgment on the segregation in education of children with disabilities, the Court dealt with the question of indirect discrimination of Romani children while being over-represented in specialised school for children with disabilities. Such form of segregation based on ethnicity stays in practice for a lot of Romani children. Whether the children do or do not actually have some disability (physical, psycho-social or other), the human-rights based policy approach in education and sensitive inclusion practices work for the enhancement of right to quality education for all children.

Lot of schools in Central European region have practice in maintaining 'special' classes within mainstream schools, therefore creating a smaller 'special' school in a 'normal' schools. Under the pretext of integration/inclusion, such classes are nothing more than a segregated environment, following the same inferior curricula as would be followed in a school for children with disabilities and often exist only to 'put away' 'problematic' Romani children.

Illustration/case study: There are numerous cases with a similar scenario as in the D.H. Case or Kiss and Horváth case. Amnesty International Slovakia reported a representative case¹⁹⁰ of Jakub, a 16 year old who has been an excellent student until his fifth grade. After dispute with his teacher, he was sent for an assessment and he was transferred to the special class for 'slow' pupils without any consent from his parents. The official justification was that Jakub was considered 'hyperactive' to the astonishment of his parents and his other teacher who considered him rather a 'genius'. This case shows how easily a life of a child can be ruined without proper assessment,

¹⁹⁰ Amnesty International 2010, p. 6

without consent from child's parents under the pretext of a Romani child having some troubles in school (whether they are imagination or prejudice stemming from the child's teachers or they are real)¹⁷⁵.

Another important motivation behind maintaining special schools and classes lays in better financial incentives: special schools in Slovakia get almost 50% higher normative¹⁹¹ for a pupil than a mainstream school. Elementary school in Krivany, Slovakia reportedly created a special school out of the school where *"in the past, the 'blacks' (referring to the Roma) were educated together with the 'whites' ¹⁹²."* After the parents of non-Romani children moved their children to other school, director of the Krivany school decided to make the school special, in order to save it (meaning to get higher financial incentives). In addition to the striking fact that a state licensed a school to be a school for children with disabilities out of a pure fact that the children were Romani (therefore very easily creating an equation of Romani = problematic, unintelligent, slow...), this shows a systemic flows in control of the segregation in education.

2.3 RIGHT TO EDUCATION OF ROMANI CHILDREN IN SLOVAKIA: SEGREGATION UNDER CLOSED EYES AND BEHIND THE CLOSED DOORS

*"According to a report by the United Nations Development Program,²³ one in five Romani children of primary school age attends a school operating under the special education framework. Every sixth Romani child between the ages of seven and 15 attends a special elementary school designed for children with mental disabilities."*¹⁹³

*"I do not understand those from Amnesty International, that they come here in Slovakia and do not look at concrete problems in their countries. In reality, where there are five, six Roma in class, it is okay, but when it starts to change and the aggression rises and the teacher's influence is not enough, he can have an assistant, it is a normal situation."*¹⁹⁴

¹⁹¹ Ministry of Education, Science, Research and Sport of the Slovak Republic 2013, 1

¹⁹² Amnesty International 2010, p. 7

¹⁹³ ERRC, Milan Šimečka Foundation and CVEK 2013, p. 6

¹⁹⁴ Slovak Minister of Education Dušan Čaplovič reacting on an Amnesty International report on segregation of

*“With regard to segregation, if it was based on the fact that this is Ruthenian and he cannot go with Slovak children, or this is Roma, it would not be okay. But if it is on the basis that the child has special education needs, then there is a big difference.”*¹⁹⁵

Spokesperson for the Ministry of Education and co-responsible for the state programme of 'Romani reform', Michal Kaliňák protested against the claims there is systemic and widespread segregation in Slovak schools¹⁹⁶. He claimed the cases Amnesty International reported are scarce and result of individual prejudice and discrimination: “[S]egregation is not the result of majority’s attitude to the persons of different colour...”¹⁹⁷ but rather a problem of behavior of the pupils who themselves prevent the integration process by “certain attacks and bullying”¹⁹⁸, thus behaviour that is according to Ministry not a matter of ethnicity or colour.

Recent Slovak state administration in education often uses tactics of blaming the NGOs, international organizations and even the ombudsman for 'attacking' the Ministry for political and calculated motives.

The Slovak Ombudsperson, Jana Dubovcová has been working on the cases of hate crimes against Roma by the Slovak police, human rights abuses in institutions and segregation in education as her priorities for 2013. However, the state administration deliberately refuses¹⁹⁹ to take her findings into consideration. The Ombudsperson Dubovcová issued a report²⁰⁰ on segregation of Romani children in 2013, in which she refers to numerous deficiencies in education for children with special needs that amount to suspicion of an ongoing discrimination of Romani children, referring to domestic and international criticism²⁰¹.

Romani children in Slovakia (Amnesty International 2013), In:
SITA 2013a, para. 1

¹⁹⁵ Former Slovak Minister of Education Martin Fronc reacting on Amnesty International report on segregation of Romani children in Slovakia (Amnesty International 2013), In:
SITA 2013 a, para. 3

¹⁹⁶ SITA 2013b, para. 8

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Sivý 2013, para. 3

²⁰⁰ Office of the State Ombudsperson 2013

²⁰¹ Ibid., p. 9. The Ombudsperson lists 18 reports from organizations such as European Roma Rights Center, Amnesty

The ongoing injustice for Romani children is happening despite numerous state policies and programs in the area of education or in the area of Roma rights²⁰²: Revised National Action Plan for Roma Decade or Conceptions of integrated education for Romani children. Governments happen to understand the need for state policies in integration in education for Romani children. The current state administration is thus not 'blind', but is rather blindly supporting the ongoing segregation by doing nothing, supporting discriminative practices covered as integration practices,²⁰³ blaming the Romani children themselves or denying segregation²⁰⁴ in the first place.

The Ombudsperson also advocated for an inclusive approach to education based on *“individual approach, development of empathy, tolerance, tactfulness and responsibility.”*²⁰⁵ Inclusive education would according to Dubovcová open a way to understanding differences not as a burden, but a way to develop respect for others and self²⁰⁶ – which is a core notion of the idea of inclusion. The Ombudsperson therefore clearly understands inclusion not only as a way out from the current injustice in children’s education, but as a basis for everyday lives and interactions between majorities and minorities in the country²⁰⁷. Such stance is based also on state’s international human rights commitments, such as the Roma Decade, or CRPD that require full inclusion in all aspects of life,²⁰⁸ as well as against the domestic law, particularly Slovak Constitution that guarantees right to education for all citizens without discrimination²⁰⁹ and Anti-discrimination Law.

International, UNDP, Roma Education Fund or Centre for the Research of Ethnicity and Culture.

²⁰² Ibid., p. 10

²⁰³ f.e. So-called “Zero grades” that often result in segregation in special classes in primary schools, as analysed further in the thesis

²⁰⁴ As shown in the previous paragraphs from the position of the Ministry of Education in 2013

²⁰⁵ Office of the State Ombudsperson 2013, p. 11

²⁰⁶ Office of the State Ombudsperson 2013, p. 11

²⁰⁷ Ibid.,

²⁰⁸ Ibid., p. 12

²⁰⁹ Art. 42/1 guaranteeing compulsory school attendance and fundamental right to education, Art. 12/2 guaranteeing fundamental rights without discrimination on the basis of sex, race, colour, language, belief and religion, national, social or ethnic origin, property, descent or on any other grounds

Main findings of Dubovcová show²¹⁰ (as also according to the malpractice shown by D.H. Case law) indirect discrimination of Romani children by their disproportional overrepresentation in the special education system, without practical possibility for future reassignment (thus predetermining their inferior education and largely decreasing their opportunities in the future, employment choices as well as their inclusion into society²¹¹). In addition, the Ombudsperson showed proofs of low pre-entry services available for Romani children (maternity schools) and their discrimination based on ethnicity: f.e. the school in Šarišské Michaľany (party in the aforementioned case) ordered only the Romani children (38 out of 50 first class pupils) to take part in the diagnostics/assessment²¹². Much critically also, there is no primary school in Slovakia offering education in Romani, in violation of Art. 34/2²¹³ of the Slovak Constitution.

The results of Ombudsperson's investigation thus shown that international and domestic criticism is based on truth: Romani children in Slovakia are being systematically segregated, discriminated against and their right to equal and adaptable education is being violated. As Jana Dubovcová added²¹⁴, whatever is the basis of such status quo (numerous factors including state practice, unpreparedness of the educational system to encounter difference, inability of the children's families to help their children with education), status quo is intolerable and level of indirect discrimination alarming²¹⁵.

Slovak Republic encounters all types of segregation and racial discrimination in the education system as previously noted: overrepresentation in the special education system (or existence of special education per se), segregation in special classes in mainstream education,

²¹⁰ Office of the State Ombudsperson 2013, p. 21

²¹¹ Ibid.

²¹² Ibid., p. 20

²¹³ Guaranteeing national minorities the right to be educated in their language, right to use their language in official communication and to participate in decision-making affecting minorities' matters: constitutional right almost completely ignored in the current Slovak situation with no primary schools educating in Romani (Art. 34/2 of the Slovak Constitution!). Similarly, The Education Act of the Czech Republic provides the right of the national minorities to be educated in their language (Sec. 14 of the Act, under condition of having at least ten children of the same nationality in class), yet also ignored. The only exception is an existence of teaching assistants that speak Romani (for Czech Republic see f.e. Červenka et al. 2010, p. 7)

²¹⁴ Office of the State Ombudsperson 2013, p. 26

²¹⁵ Ibid.

creation of parallel education in separate classes or buildings and creation of new segregated schools in outskirts of towns.

Notably, the system of special classes in mainstream education is being used rather arbitrarily: in contrast to special schools assessment, it is the director of the school that orders reassignment of the pupil to the special class on the basis of teacher's or educational adviser's recommendation, with the informed consent of the pupil's parents (such an informed consent has been proven problematic also by the ECtHR in the D.H. case)²¹⁶.

There are also suspicions of "*an ongoing indirect racial segregation in the Slovak school system (artificially created school districts to include mainly Romani children)*".²¹⁷ or creating separate classes for children from a "*socially unprivileged background and pupils without such background*".²¹⁸

In addition, the overrepresentation of Romani children in special education system is witnessed to be an act of 'first and last resort' when the school is not able/not willing to deal with the children needing special attention/assistance²¹⁹. This is not to say that the system does not include many willing and competent special education teachers and assistants working with "*great ambition, individualized and professional attitude*",²²⁰ a counterargument argument against possible claims that teaching children with special education needs within mainstream, all-inclusive school would be impossible.

Racial segregation in Slovak schools is therefore happening despite its illegality, unconstitutionality, existing jurisprudence ordering its abolishment, desegregation and inclusive

²¹⁶ Office of the State Ombudsperson 2013, p. 22

²¹⁷ Ibid. , p. 24

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

education (case of Šarišské Michal'any Primary school) and existence of various state education policies ordering to “...consistently ensure compliance with the Anti-discrimination Act”²²¹ and aim “... to eliminate undesirable phenomena such as spatial, organizational, physical and symbolic exclusion or segregation of Roma children due to their ethnicity (often in combination with social disadvantage) from other students.”²²²

In addition, the racist rhetoric of being inferior, incapable, aggressive, loud or other labels put on Romani children from the early age resolve in internalized feeling of such inferiority²²³: one school in Košice having a swimming pool in its premises allows only non-Romani students to swim inside²²⁴. After being asked, whether the Romani children go swim too, they answered: “*What do you think, everyone would jump out [sic!].*”²²⁵

Even perceiving some children as 'capable' or 'clever' may be perceived as offensive, since it is, according to the Artur Ivatts, consultant to the Minister of Education in the United Kingdom, “*implicitly talking about other children, which should then be labeled as incompetent or stupid, as an opposite of word wise. And if we do so, it is contrary to human rights, being demeaning to the child.*”²²⁶

2.4 RIGHT TO EDUCATION OF ROMANI CHILDREN IN THE CZECH REPUBLIC: SIX MORE YEARS, HOW MANY MORE YEARS?

The situation of Romani children in the Czech Republic is similar to those in Slovakia: being segregated in all-Romani schools, special classes in mainstream schools or overrepresented in the special education system. The D.H. case meant a lot for recognizing the injustice of overrepresentation of Romani children in the special education system as a violation of a right to

²²¹ Ministry of Education 2012 In: Office of the Ombudsperson 2013, p. 24

²²² Ibid.

²²³ Lajčáková In: Gallová Kriglerová and Gažovičová 2012, p. 29-30

²²⁴ Ibid., p.29

²²⁵ Ibid.

²²⁶ In: Vančíková and Kubánová, eds., 2011, p. 42

education in conjunction with the prohibition of discrimination²²⁷. Importantly, the Court understood the problem of discrimination of Romani children in education as not an individual act, happening in an individual Czech school, but clearly pointed out the history of systemic discrimination of Roma in the country (and Europe)²²⁸.

The Court in the D.H. case recognized the “*efforts made by the Czech authorities to ensure that Roma children receive schooling*”²²⁹ and that “*the new legislation has abolished special schools and provides for children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.*”²³⁰ The amended Education Act No. 561/2004 Coll. indeed introduced changes in special education system: enabling children with special education needs (disability or disadvantage, including social disadvantage²³¹) attending all forms of education (primary, secondary and tertiary) within the mainstream education system.²³² In addition the Act provides for necessary and free reasonable accommodation for children with special education needs,²³³ including also education assistants, preparation and additional classes for children from unprivileged background (similarly to Slovak 'zero grade' or individual education plans²³⁴). However, the special education system is not abolished completely, leaving a space for children with more severe disabilities to be educated in a segregated settings (special primary school, special class or group)²³⁵, though the new law makes a step forward for a larger inclusion.

In addition to forbidding any discrimination based on ethnicity or health status²³⁶, the Education Act states the aim of the education including, inter alia, “*mutual respect, deference, toleration of*

²²⁷ D.H. and Others v. the Czech Republic, para. 221/2

²²⁸ D.H. and Others v. the Czech Republic, para. 182 stating Roma were a disadvantaged community with a turbulent history and Horváth and Kiss v. Hungary, para. 104 noticing the past and continuing discrimination of Roma in education, with structural deficiencies.

²²⁹ D.H. and Others v. the Czech Republic, para. 208

²³⁰ Ibid.

²³¹ Acc. To Section 16/4 of the Education Act, a social disadvantage means, inter alia, “*a family environment with a low social and cultural status, threat of pathological social phenomena*”

²³² Education Act No. 561/2004 Coll., Section 16/ 6

²³³ Ibid., Section 16/7

²³⁴ Ibid., Section 16, Section 47

²³⁵ Ibid., Section 16/8, further underlined by the amendment of the Education Act no. 49/2009 Coll.

²³⁶ Ibid., Section 2/1/a

opinions, and dignity of all parties in education.”²³⁷

Before coming to the analysis of the *de facto* situation of the right to education of Romani children in the Czech Republic, I wish to address the presumably inclusive-looking and remedial effect of the preparatory classes for Romani children.

Do Czech Preparation class and Slovak zero grades create segregation?

Preparation classes are created for children starting the compulsory education in the foregoing year, in order to help them gain necessary skills they may be lacking. Both in Czech Republic and Slovakia, such classes are created specifically for Romani children.

In Czech Republic, such classes are established 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*,”²³⁸ on the basis of a request of the child’s representative and the school advisory facility²³⁹. In law, in addition to “*a family environment with a low social and cultural status, threat of pathological social phenomena*,”²⁴⁰ social disadvantage also means children under protective education or asylum seekers²⁴¹. However, according to the report of Amnesty International and ERRC²⁴², as much as 97,5 per cent of the children are from a socially disadvantaged background – a common code for ‘Roma’²⁴³.

“*Preparatory classes in both mainstream and practical schools thus function as collecting points for Romani children and facilitate segregation, and children from preparatory class often continue studying together as they progress through the school.*”²⁴⁴ In addition, many preparatory

²³⁷ Ibid., Section 2/1/c

²³⁸ Education Act No. 561/2004 Coll., Section 47/1

²³⁹ Ibid., Section 47/2

²⁴⁰ Ibid., Section 16/4/a, although does not providing what does “low cultural status” mean (hidden racist perception of Romani families)

²⁴¹ Ibid., Section 16/4/b-c

²⁴² *Five more Years of Injustice. Segregated Education for Roma in the Czech Republic*, November 2012

²⁴³ Czech School Inspectorate 2012, p. 5 In: Amnesty International and ERRC, November 2012, p. 21

²⁴⁴ Agency for Social Exclusion 2012, In: Amnesty International and ERRC, November 2012, p. 21

classes exist as a kind of enrolling place-of-first-contact for special schools²⁴⁵. Amnesty International and ERRC thus recommend to abolish such classes, with a proper policy that enables access to available kindergartens for all children²⁴⁶.

In Slovakia, so-called 'zero classes' are also meant to be remedial for children from the socially disadvantaged background²⁴⁷, but in practice end in segregation, as the pupils from the preparation classes end together in the segregated class²⁴⁸. According to Lajčáková, the research in zero grades shown the aim of the preparation class to 'civilise' the 'backward' Romani children²⁴⁹. The author points out that in practice, the key of 'social disadvantage' and 'unpreparedness' quickly transform into pure criterion of ethnicity, an introduction to the segregation stream of Romani children from as soon as the age of 5²⁵⁰.

*“Zero grade replaces what is expected that children learn from their parents. Such an approach sees the children as victims of their family environment and constructs them as someone passive, that should be 'escaped from' or 'saved'. The teachers involved in the research do not take the fact that children are equal and autonomous beings who should be able to have a say in the process of their learning.”*²⁵¹ The author therefore claims zero grades in practice are in opposition to inclusion.

In conclusion, it has been shown that in both countries, what at the first glance seem as a remedial/inclusive state policy in practice only perpetuates the stereotypes and prejudice against the Romani children and enables exclusion and segregation from the very young age. This further underlines the need for inclusion in all stages of education and in all aspects of society in order that the Romani children can access fully equal and available education in par with others.

²⁴⁵ Amnesty International and ERRC, November 2012, p. 21

²⁴⁶ Ibid. p. 22

²⁴⁷ *Education Act No. 245/2008 Coll., as amended (Slovakia), Art. 19/6*

²⁴⁸ Lajčáková 2012 in Gallová Kriglerová and Gažovičová 2012, p. 60

²⁴⁹ Ibid., p. 58

²⁵⁰ Ibid., p. 59

²⁵¹ Lajčáková 2012 in Gallová Kriglerová and Gažovičová 2012, p. 60

From law to practice

The Education act changed prior to D.H. and Others case and the Court recognized that²⁵². The law is in place, abolishing special education system for pupils with milder disabilities (though not for all children with disabilities) that now should follow a mainstream education with accommodations for adjusting their chances for equality. The D.H. judgment is pronounced, afterward the Horváth and Kiss judgment as well, asking for positive action²⁵³ from the states to be done in order to end indirect discrimination of Romani children in education. In order to implement the Court's judgment, the Czech government adopted the National Action Plan on Inclusive Education, however without concrete steps and funding, therefore failing the opportunity for a real change in lives of Romani pupils²⁵⁴. In 2011, the Government also committed itself to "*transform the practical schools by 2017.*"²⁵⁵

However, six years after the judgment, the injustice for Roma children still prevail, with even backward steps taking place.

The Report of Amnesty International and ERRC show that the changes in law indeed have not been transposed into practice: changes in the names of schools from 'special' to 'practical' elementary schools showed to be only cosmetic in practice, calling it a "*new name, old problems*"²⁵⁶. The report showed that the children attending the practical schools are given inferior education, focusing on practical skills instead of general knowledge, thus from the beginning narrowing children's future possibilities for further education of their choice- the same kind of education formerly known as special education²⁵⁷. In practice, becoming, for example a car mechanic, attending grammar school or then university becomes practically impossible²⁵⁸.

Numerous international organizations therefore criticized the fact that the government is non-

²⁵² D.H. and Others v. the Czech Republic, para. 208

²⁵³ Horváth and Kiss v. Hungary, para. 104

²⁵⁴ Amnesty International and ERRC November 2012, p. 7

²⁵⁵ Nant 2012 In Amnesty International and ERRC November 2012, p. 7

²⁵⁶ Ibid., p. 3

²⁵⁷ Ibid.

²⁵⁸ Amnesty International and ERRC, November 2012, p. 6

willing to operate practical schools and kindergartens and lack of progress in inclusive education six years after the judgment as a 'backward step'.²⁵⁹ The same criticism also came from the (at that time) head of the Council of Europe Human Rights Commission, Thomas Hammarberg in November 2010: *“At the moment, however, there appear to have been hardly any changes on the ground. (...) In certain areas, Roma children are up to 27 times more likely to attend [practical] schools, i.e., the same proportion which served as basis for the findings of the Strasbourg Court.”*²⁶⁰

The Czech Ombudsperson (similarly to its Slovak counterpart) also concluded overrepresentation of Romani children in Czech practical schools, with the highest percentage, 41% in the surroundings of Ostrava, city of the D.H. case²⁶¹: *“Ostrava’s educational system is characterized by the failure to include pupils of different abilities and backgrounds, such as Roma, in mainstream education. Romani children also continue to be racially segregated in practical schools and classes.”*²⁶² Such parallel inferior educational system also exists without proper monitoring and inspection²⁶³ and without the awareness of the government on the number of pupils educated in such segregated environment²⁶⁴.

In addition to practical schools, Romani children in Czech Republic continue being racially segregated in officially mainstream, but Roma-only schools - the system that is unable to cope with differences thus responds by creating 'Roma-friendly' schools²⁶⁵: *“Rather than integrating ethnically and socially diverse pupils in mixed schools and classes, these schools try to accommodate their differences in segregated schools.”*²⁶⁶

Of course, there are still schools that try to change their policies that create supportive environment for their pupils and engage with the parents, however, the parents are perceived as having

²⁵⁹ ERRC, Open Society Justice Initiative and Amnesty International, 22 April 2013, para. 1-2

²⁶⁰ Council of Europe 2011 (3), para. 6 In: Equality and the Roma Education fund 2011, p. 6

²⁶¹ Ibid., p. 7

²⁶² Ibid.

²⁶³ Ibid., p. 8

²⁶⁴ Representative of the Czech State Ombudsperson In: Amnesty International and ERRC, November 2012, p. 7

²⁶⁵ Amnesty International and ERRC, November 2012, p. 13

²⁶⁶ Ibid., p. 13-14

to choose between racially segregated schools or practical schools with benefits or mainstream mixed schools without them²⁶⁷. The same dilemma then forces parents in Slovakia to choose a segregated school in the outskirts of the village for providing such benefits as closeness to home (without safe transportation for their children, most problematic in winters), free meals or general feeling of acceptance in school. The report indeed talks about a level of 'marketing' of segregation, with financing of practical schools twice as much per pupil than in mainstream schools²⁶⁸, similarly to Slovakia, therefore putting incentives for further segregation, in contrast to need for desegregation. The level of bullying of Romani children also becomes a highly problematic aspect of desegregation: some parents then rather choose a segregated environment for their children²⁶⁹.

Czech Republic, similarly to Slovakia is therefore failing another generation of Romani children²⁷⁰, with the attempts to change the situation insufficient, non-coherent with larger inclusive and anti-discrimination policies and not implemented into the daily lives of the children and their future possibilities, repeating the same mistakes all over again. This is particularly worrying also in view of the level of intolerance and hate crimes against the Roma in Central Europe, countries in whose the Roma lack larger positive support, recognition and access to justice in the state system and the leading governments. Michal Havran, a journalist nicely summarized the recent winning of a leader of a neo-Nazi group in regional elections in Slovakia: *"It was not Marian Kotleba, who dragged intolerance and racism to public discourse. Most of the mainstream politicians, left and right, tinkered with anti-Roma sentiments, prejudices and myths. None of the previous administration did anything with rising social exclusion of Roma and a lethal combination of poverty and deeply embedded racism. Failures of lukewarm (or plainly wrong-headed) 'integration strategies' were assigned, obviously, to 'inadaptable gipsies'. Society traumatised by rising inequality, socio-economic pressures, and forced into ever weaker and narrower definition of solidarity, has become ready to obliterate the scapegoats."*²⁷¹

²⁶⁷ Amnesty International and ERRC, November 2012, p. 14

²⁶⁸ Ibid., p. 18

²⁶⁹ Ibid., p. 15

²⁷⁰ Ibid., p. 23

²⁷¹ Havran and Geist, 20 November 2013, para. 5

Foregoing subchapter will analyse the inclusiveness of the primary education in the United Kingdom and compare it to the education experiences in the former two countries.

2.5 RIGHT TO EDUCATION IN THE UNITED KINGDOM: MORE DIFFERENCES, MORE INCLUSIVENESS?

2.2.4.1 Main Legislation Concerning Right to Education in the UK

United Kingdom has ratified all of the international legislation relevant to the right to education analysed in the Chapter 1 (including all relevant UN and EU Conventions²⁷² and the ECHR, incorporated into the domestic law by the Human Rights Act of 1998). In addition, the country has several important laws and policies concerning right to education and non-discrimination legislature, the most important being UK Equality Act of 8 April 2010 with the main responsible body for its implementation, the Equality and Human Rights Commission (with a specific body covering Northern Ireland to which the Act does not, with several exceptions, apply). The Equality Act prohibits discrimination on the basis of, inter alia, ethnic and national origin, colour, nationality or disability²⁷³. The direct relevance for the Equality Act of 2010 for the right to inclusive education will be analysed in the next paragraphs.

The Equality Act of 2010 prohibits schools from discriminating (whether directly or indirectly) against any person in the admission process²⁷⁴, prohibiting schools from not admitting a pupil²⁷⁵ or in the way it affords pupils access to benefits or facility²⁷⁶, the way it provides education²⁷⁷ or “*by subjecting the pupil to any other detriment.*”²⁷⁸ The schools have also a duty to

²⁷² ICESCR, CRPD, UNCRC, UNESCO Convention against Discrimination in Education and the Salamanca Statement, ICERD, EU Social Charter

²⁷³ Equality Act 2010 Part 2, Chapter 1, Article 4: Protected Characteristics; race includes ethnicity and nationality, (Article 9) disability includes physical or mental impairment (Article 6)

²⁷⁴ Equality Act 2010, Part 6, Chapter 1, Art. 84

²⁷⁵ Equality Act 2010, Part 6, Chapter 1, Art. 85/1

²⁷⁶ Ibid., Art. 85/2/b

²⁷⁷ Ibid., Art. 85/2/a

²⁷⁸ Ibid., Art. 85/2/f

provide “*reasonable adjustments*”²⁷⁹ to their pupils. In addition, the public bodies have a duty to advance the equality of opportunities, good relationships and eliminate discrimination²⁸⁰ and prejudice²⁸¹ through positive action, in cases where a person shares a protected characteristic (that includes race/ethnicity and disability)²⁸² and in connection to that characteristic, they “*suffer a disadvantage*,”²⁸³ “*have needs different from the needs of persons who do not share it*,”²⁸⁴ or the “*participation in an activity by persons who share a protected characteristic is disproportionately low*.”²⁸⁵ In such cases, positive action is then needed in order to enable or encourage²⁸⁶ those persons to “*overcome or minimise that disadvantage*,”²⁸⁷ meet their needs²⁸⁸ or participate in activities. Schedules for the Act also ask for timely strategy for providing accessibility to all schools for pupils with disabilities²⁸⁹ and provision of reasonable accommodation in education²⁹⁰.

Equality Act 2010 therefore provides a detailed account of not only what forms of discrimination in education can take, but provides duties as how to tackle disadvantage, prejudice or low participation of pupils of different ethnicity or students with disability in education. Such enumeration of positive action is particularly outstanding in contrast to Slovak or Czech anti-discrimination legislature, with also larger opportunities for the law’s enforcement. It is indeed why the Act is said to contain “*measures described as transformative equality, extending positive duties on public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different groups*.”²⁹¹ Such shift from negative to

²⁷⁹ Ibid., Art. 85/6

²⁸⁰ Equality Act 2010, Part 11, Chapter 1, Art. 149/1 a-c

²⁸¹ Ibid., Art. 149/5/a

²⁸² Equality Act 2010, Part 11, Chapter 2, Art. 158

²⁸³ Ibid., Art. 158/1/a

²⁸⁴ Ibid., Art. 158/1/b

²⁸⁵ Ibid., Art. 158/1/c

²⁸⁶ Ibid., Art. 158/2/a

²⁸⁷ Ibid., Art. 158/2/a

²⁸⁸ Ibid., Art. 158/2/b

²⁸⁹ Equality Act 2010, Schedule 10

²⁹⁰ Ibid., Schedule 13

²⁹¹ Hepple 2011, p. 1

positive action is according to Hepple indeed an equality law²⁹² of which anti-discrimination law is “essential but not exclusive part.”²⁹³

Right to inclusive education for Romani children in the United Kingdom

Policies and laws in the United Kingdom make the school system more inclusive and tackling inequality stemming from differences, however, the country did not abolish its special schools: “some disabled pupils and pupils with a statement of “special educational needs” may be segregated in special schools.”²⁹⁴

How schools in the United Kingdom are tackling the issue of equality for their pupils coming from different backgrounds is then showing the level of schools’ inclusiveness. The Swann Report²⁹⁵ shown that Roma/Travellers pupils encounter “racism and discrimination, myths, stereotyping and the need for more positive links between Gypsy Traveller Parents and their children’s schools,”²⁹⁶ similarly an issue for children coming from other ethnic minority backgrounds²⁹⁷. There is evidence that the process of inclusion is working and the situation is improving²⁹⁸, although “there is still a long way to go”²⁹⁹ and focus put on how to raise achievement of the pupils in schools³⁰⁰. Such perspective seems much more bound on the perspective of inclusiveness of schools: helping children to achieve good results, putting onus of their achievement on the school and not on the pupils themselves only (as often perceived in Slovakia and Czech Republic).

The reasons for (sometimes unintended) discrimination that the schools in United Kingdom

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Centre for Studies on Inclusive Education, para. 2

²⁹⁵ DfES Committee of Enquiry into the Education of Children from Ethnic Minority Groups, Education for All, (The Swann Report), 1985 In: DfES 2003, p. 3

²⁹⁶ DfES 2003, p. 3

²⁹⁷ Ibid.

²⁹⁸ DfEE Annual Reports on Traveller Education Summary 1997/8 In: DfES 2003, p. 3

²⁹⁹ DfES 2003, p. 3

³⁰⁰ Ibid.

experience and have to tackle include: racism and social exclusion stemming from practice in schools, lack knowledge of the teachers on the pupil's cultures or low expectations on the pupils³⁰¹. In contrast, the schools that provide staff training to educate them on the cultures of their students and raising of expectations and providing welcoming atmosphere for both students and parents and peer support show to be more inclusive³⁰².

In addition, it has been shown that *“raising the profile of race equality within the school will lead to more effective practice for all pupils and promote respect for minority ethnic groups.”*³⁰³

British supportive programs for children that are in a pre-school age include 'Sure Start'³⁰⁴ programs for children from disadvantaged areas with the *“key requirement”*³⁰⁵ of being *“non-stigmatizing, culturally appropriate and sensitive to particular families’ needs”*.³⁰⁶ Other specific programs included pre-school and Early Years Education³⁰⁷ and financing programs (The Vulnerable Children Grant).

The Department of Education (Northern Ireland) also put together a summary report for inclusion in education and special education needs³⁰⁸. The report is a response to the research finding in consultation with stakeholders involved in state education (such as primary schools, special schools, parents, carers, local councils, nursery schools and social care sector) of the state program 'Every School a Good School'³⁰⁹. and a set of propositions for high politics³¹⁰. The key principles of the program include: promotion of an 'inclusive ethos', a 'whole school approach', inclusion of all children facing barriers (whatever the reason), continuing and timely support, quality and tailored intervention and cooperation between schools and social care sectors³¹¹.

³⁰¹ Ibid., p. 4. The Report also includes specific problems of Gypsy Travellers children that travel often from place to another.

³⁰² Ibid.

³⁰³ Ibid., 4

³⁰⁴ Ibid., p. 8

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Ibid., p. 9

³⁰⁸ Department of Education 2012

³⁰⁹ Department of Education 2012, p. 6

³¹⁰ Ibid., p. 2

³¹¹ Ibid., p. 2

Czech and Slovak Roma in British Education

With the policies set in place and British schools being generally more inclusive than ones in the Central-Eastern European Region (although still allowing for segregation of children with 'special education needs'), this section will provide a 'test' for inclusion and its impact on a quality education for Romani children: a research done by the NGOs Equality and the Roma Education Fund³¹². The research followed the period after the D.H. case and the non-implementation of the judgment in the real life, with the ongoing overrepresentation of Romani children in practical schools³¹³. Having inferior education in Czech Republic and Slovakia, the NGOs followed stories of the pupils that have been enrolled in special schools or Roma-only schools, once their families left for the United Kingdom, where they attended mainstream primary schools³¹⁴: *“The same children, some of whom had minor hearing or sight problems, speech impediments, physical disability, or other learning difficulties, were studying in mainstream schools in the UK. This fact was substantiated by the other findings of the mapping survey which showed that many Roma families had decided to move to the UK because they wanted equal opportunities for their children, particularly in the field of education.”*³¹⁵ The research showed that the education was essential in children's and their families' *“social inclusion and well-being,”*³¹⁶ therefore being a key factor in other important aspects of everyday lives: *“Evidence from the study showed that the more the Roma pupils were integrated within classes and schools, the fewer problems existed both in and out of school in terms of community cohesion.”*³¹⁷

The main findings of the project indicate that only a small fraction of the students (2-4%) that have been assessed as in need of special education in the Czech Republic and Slovakia (85% of the pupils participating in the project) have been assessed as pupils with special education needs in

³¹² Equality and the Roma Education Fund, 2011

³¹³ Ibid., p. 6

³¹⁴ Ibid., p. 7

³¹⁵ Equality and the Roma Education Fund, 2011, p. 7

³¹⁶ Ibid.

³¹⁷ Ibid., p. 59

the United Kingdom³¹⁸. This fact was found to be remarkable also by the British teachers being aware of the practice of the indirect discrimination in the CEE countries³¹⁹.

Secondly, the high percentage of the pupils reported of having experienced racist bullying and abuse by their classmates and discrimination and physical abuse by their teachers in their home countries, in contrast to the British teachers, who were said by them to be helpful and kind and working with the pupils on an individual basis³²⁰. Therefore the Roma pupils reported to prefer the UK schools because of the absence of racism and equality in opportunities³²¹.

In addition, the parents also reported overall satisfaction with the British schools for their atmosphere, perception of being welcomed and promotion of equal opportunities important for their children's future studies and employment³²².

By comparison of the pupils' achievements and well-being and the differences in the treatment by the schools and professionals, the research proved that the way how Roma pupils are educated in Czech Republic and Slovakia is *“not justified by their educational, social, or cognitive abilities. In fact, all of the Roma children who participated in this study and had been sent to special or de facto segregated schools in Slovakia and the Czech Republic were successfully studying in mainstream schooling in the UK.”*³²³

The research therefore showed that the very same children that once were assessed as in need of special (and segregated) education can change their achievement by providing quality inclusive education, individualised approach, good practice and expertise and cooperation with the social care sector³²⁴. Inclusive education for Romani children is therefore not only a human right, but also a form of justice and overcoming of social exclusion, racism and prejudice.

³¹⁸ Ibid. p. 7

³¹⁹ Ibid., p. 8

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid.

³²³ Equality and the Roma Education Fund, 2011, p. 60, emphasis added

³²⁴ Ibid,

While conducting a research on the benefits of the inclusive education on the achievements of the Slovak and Czech Roma pupils in the United Kingdom, the Slovak Governance Institute highlighted several good practices that made the British education system more inclusive.³²⁵ The policies included a 'Sure Start', an accessible, complex and community-based program working with unprivileged families with small children; inclusion on all aspects of state policy administration, with external control of level of inclusion; cooperation and sharing of good practice between the schools (particularly missing in the Slovak context); changing of curricula to include minority ethnic communities' cultures; cooperation with families and ethnic data collection³²⁶.

In addition, the starting point of the philosophy of education, mirrored both in the state policies and rhetoric of the education practitioners supports the idea of inclusion³²⁷: *“Every child matters”*³²⁸ and *“Narrow the gap in achievement between learners from disadvantaged background and their peers.”*³²⁹

³²⁵ Kubánová and Vančíková eds. 2011, p. 7

³²⁶ Ibid., p. 7-8

³²⁷ Ibid., p. 39

³²⁸ Ibid., p. 39

³²⁹ Kubánová and Vančíková eds. 2011, p. 39

CHAPTER 3: POSITIVE DEVIANCE

3.1 POSITIVE DEVIANCE - GOOD PRACTICE

Positive deviance is a term originating from nutritionists, later developed by Jerry and Monique Sternin working for the Chance for Children Foundation in Vietnam in 1991³³⁰. Sternins followed the problematic of children malnutrition: having the same resources, some children were nevertheless better nourished than the others³³¹. The reason for this was simply that some mothers did something better, by adding supplements into their children's food, such as crabs and shrimps and using hygienic precautions, thus making their children healthier than others³³².

The term is from then being applied to other areas in need of behavioral and social change including the problematic of public health, child care or education³³³: *“Positive Deviance is based on the observation that in every community there are certain individuals or groups (the positive deviants), whose uncommon but successful behaviors or strategies enable them to find better solutions to a problem than their peers. These individuals or groups have access to exactly the same resources and face the same challenges and obstacles as their peers.”*³³⁴

Some schools are positive deviants too: having the same laws at hand and sometimes the very same resources, some schools in Slovakia and Czech Republic seem to tackle the problem of segregation of Romani children in a different way than the others: positive deviancy becomes good practice. I will look on some of such positive deviants in the next paragraphs.

³³⁰ Positive Deviance Initiative: History, para. 2

³³¹ Sternin and Choo, 2000, para. 3

³³² Ibid., para. 5

³³³ Positive Deviance Initiative: History, para. 3

³³⁴ Positive Deviance Initiative: Concept of Positive Deviance, para. 1

A) Following the English example

Primary school in Trmice, a town of 3000 in the North-West of Czech Republic, recently introduced a plan to implement the inclusive education in their school in cooperation with the school in Leicester³³⁵.

Trmice is a town fighting with social exclusion, high unemployment or drug dealing.³³⁶ 60% of children going to the local primary school are Roma and non-Roma from a 'socially unprivileged background' (low social status, one-parent family)³³⁷. Attending workshop on the British model of inclusive education did not really make a big success, but once the schools from Czech Republic and Britain started with exchange of the teachers, the things started to progress³³⁸. The director of the school, Mrs. Gotfrieddová, explained the low success of the workshop by misunderstanding of the British part and 'overgeneralizing'³³⁹ (it is visible that both Slovak and Czech authorities in the education area do not like to hear the truth on segregation in their own schools).

The main differences that the Czech School found and introduced was the different approach of the teacher, being more of a partner than a mentor and inclusion of all pupils without selecting them into different groups, including children with disabilities³⁴⁰: “ *A teacher should know what the child needs and try to meet their needs as much as possible . Nevertheless, they cannot select the children. They have to create an environment in which all the children, including those that are more or less smart, will cooperate.* ”³⁴¹

The school also includes seven teaching assistant, 2 of them Romani, focusing on children that need support³⁴². There are 25 children with disabilities in the primary school that are included in every

³³⁵ Dobrá praxe, 10 November 2013, para. 1

³³⁶ Štefáníková, November 5 2013, photo 1/31

³³⁷ Ibid., photo 2-3/31

³³⁸ Dobrá praxe, 10 November 2013, para. 1

³³⁹ Štefáníková, November 5 2013, photo 6/31

³⁴⁰ Ibid., photo 11/31 and 13/31

³⁴¹ 1st grade teacher in Trmice, In: Štefáníková, November 5 2013, photo 17/31

³⁴² Ibid., photo 21/31

part of the education process, including joint physical education³⁴³: children in such a way learn how to help each other in everyday situations³⁴⁴. The school claims to have problems with racism rather from the part of the parents³⁴⁵.

Although they call their education alternative, according to the director of the school, inclusive approach to education should be perceived as normal: “[S]chool should not be classified as inclusive or non-inclusive. Principles of such education should be a part of every school.”³⁴⁶

This quote really goes into the merits: inclusive education should not be only a positive deviance, but indeed a norm.

B) Pre-school education as a good start.

Rudňany, East Slovakia: experience of the Roma Education Initiative (REI) showed that the access to kindergartens makes a real difference for the future education of Romani children and should be available to every child³⁴⁷.

The project was responding to the issue that Romani parents who are unemployed have a much lower chance of getting their children enrolled in state kindergartens, even more in the areas with a low availability of pre-schools³⁴⁸. The Wide Open School Foundations established alternatives to kindergartens, operating as pre-school clubs in the areas with high Romani populations from an unprivileged backgrounds in 4 towns in eastern Slovakia³⁴⁹. By educating the teachers and assistants, the REI project succeeded in creating environments with a more child-focused approach, improving attendance of the small children (3-6 years), learned to accept children’s needs and supporting them in being more communicative, independent and brave³⁵⁰. However, the

³⁴³ Ibid.

³⁴⁴ Ibid., photo 19/31

³⁴⁵ Štefaníková, November 5 2013, photo 24/31

³⁴⁶ Ibid., photo 12/31

³⁴⁷ Baduríková, In: Roma Education Initiative 2007

³⁴⁸ Ibid., p. 33

³⁴⁹ Ibid.

³⁵⁰ Ibid, p. 36, comment of external observer, Eva Wagnerová

kindergartens were less inclusive *“due to the specific conditions in each of the kindergartens.”*³⁵¹ reasons being objective and subjective: transportation of the children from the settlement that was more far away from the center of the village was not possible or subjective objections of so-called 'better' Romani families to integrate their children with children from other Romani families³⁵². However, *“[a]t the same time, the project did make some steps toward the inclusion of Romani children. Teachers became more aware that integrated education from early childhood was necessary.”*³⁵³ In addition, the projects brought together local communities, NGOs and official institutions³⁵⁴ and continues to use a *“Step-by-Step methodology, involve parents in school activities and make kindergartens open for the community.”*³⁵⁵ As a result, 80% of the children that attended the kindergartens were enrolled in the mainstream primary school in contrast to those that, without any early support were enrolled into the special education stream³⁵⁶.

The supplementary question however stays open: Should it not be for the state itself to provide inclusive and free pre-school education for all Romani children and provide free and save transport to mainstream kindergartens, in view that the enrollment in kindergartens largely helps the children into enrollment in mainstream education? Although the work of the NGOs working directly in the Romani settlements is beneficial and should be supported, organizations such as Roma Education Initiative should not be expected to substitute the role of the state in providing inclusive education to all children in the country.

The same conclusion for the Czech Republic is claimed by the report of Roma Early Childhood Inclusion assessing that the *“early development of Roma children, during infancy and the pre-kindergarten period, is not sufficiently supported.”*³⁵⁷ The reason for the lack of support from the part of the state is twofold: general under-estimation of necessity of special programs for

³⁵¹ Ibid., p. 38

³⁵² Baduríková In: Roma Education Initiative 2007, p. 38

³⁵³ Ibid., p. 39

³⁵⁴ Ibid., p. 39

³⁵⁵ Ibid.

³⁵⁶ Ibid.

³⁵⁷ Bennett 2012, p. 34

children under 3 years old and lack of financing and support for larger social and healthcare policies that affect small children³⁵⁸.

Secondly, the outcomes of projects, such as REI's is show that Romani children are being largely underestimated in their capabilities, the phenomenon that changes after they are given necessary support and pre-school supportive environment. In addition, research of Lajčáková showed that simply non-understanding of Slovak language as a language of instruction results Education in mother tongue (Romani) is a constitutional right that is not being observed in any of Slovak primary school: which is a systemic problem on a state level and not a problem of any individual child (although using Romani language as a justification for segregation would not be desirable)³⁵⁹. Romani language is perceived also by Romani parents and schools as something undesirable, something you need to 'get rid of' quickly, in order to be successful, even something you should be ashamed of³⁶⁰. In such a way it creates another sort of internalized inferiority educated at primary schools.

Thirdly, the system that does not create enough support (such as providing free pre-school education before the age of 5, social and healthcare support for the families or provision of information on parent's rights) creates indirect discrimination by non-providing equal opportunities for all parents to enroll their children in the inclusive kindergartens.

C) Good practice in the East of Slovakia: it just needs a good director sometimes

Spišský Hrhov, Eastern Slovakia. Primary school in the small town in the Eastern part of the country serves as an example of good practice in inclusive education for its emphasis on preparation for secondary school and using of several projects for its students (51% of whom are of Romani

³⁵⁸ Bennett 2012, p. 34

³⁵⁹ Lajčáková In: Gallová Kriglerová 2012, p. 97

³⁶⁰ Ibid.

origin)³⁶¹. The projects that have been acclaimed include individual tutoring of selected Romani students (though only the gifted ones)³⁶², afternoon activities with the families and Romani community in Roškovce, cultural activities and projects supporting inclusive school environment (An equal Chance Project)³⁶³. The director of the school is used as an example for knowing all the pupils by name, using positive feedback in solving the disputes, creating motivational atmosphere, using the structural funds and cooperation with the NGOs, connecting Romani and non-Romani families together by afternoon activities³⁶⁴ or enabling pupils that once left the school (f.e. pregnant girls or pupils with large absenteeism) to return back with being given support³⁶⁵.

The school thus used an inclusive approach to education using the very same resources other schools have too, if they wished to follow the good practice of Spišský Hrhov in order to create a school as a place for integration of larger communities together.

D) One ordinary English School

Drighlington Primary School, West Yorkshire, England. The school recognized the need to reach isolated Gypsy, Traveller and Roma families in the town and introduced a program supported by Gypsy Roma Traveller Achievement Service in Leeds, UK³⁶⁶. In order to create a safe and welcoming environment, free of prejudice, the school included education on Romani cultures in their curriculum, and provide information packages for both teachers at schools and parents of the Roma Traveller children³⁶⁷. The activities led according to the school representatives to increased self-esteem, achievements and school attendance of the children and positive relationships between the school and the families³⁶⁸.

³⁶¹ Council of Europe: *Good Practice No. 24*, .p. 3

³⁶² Ibid., p. 4

³⁶³ Ibid.

³⁶⁴ Ibid., p. 5

³⁶⁵ Ibid., p. 3

³⁶⁶ Hall 2011, p. 11

³⁶⁷ Ibid.

³⁶⁸ Hall 2011, p. 11

E) Traveller Education Support Service, Scotland

Traveller Education Support Service is a program aiming at creating equal opportunities, raising achievement of Gypsy Traveller children and promotion of their cultures in schools and larger communities³⁶⁹. The project's activities include creating relationship and contact between the families and the schools, introducing positive resources about Traveller cultures into the curriculum, connecting schools together and creating distance learning possibilities to enable continuing education while families are traveling and individual supporting mechanisms and guidance in issues such as bullying or communication skills³⁷⁰.

3.2. CONNECTING THE DOTS TOGETHER – RECOMMENDATIONS

While changing the environment of an individual schools may change the inclusiveness of the school to a large extent, as well as while non-action or support for segregation may change the future possibilities of the very same children, individual schools or education personnel cannot possibly change the situation for all children in the country, even with the best practice: that being the role of the state. The British approach of exchanging good practice and information is highly beneficial, though the inclusive education could not work without systemic introduction of equality law into equality practice.

Czech NGO Liga Lidských Práv (Human Rights League) recently introduced a map of inclusive schools in the country through the individual stories of children with special education needs attending mainstream primary school.³⁷¹ It aims to connect together the dots of the good practice by sharing how the inclusion 'can be done' as opposed to negative approach of 'how impossible/hard it is' due to whatever reasons.³⁷² Such approach would be beneficial for the state representatives responsible for education as well, without mentioning right to inclusive education through positive action would not only be a practice in 'good faith', but full introduction of inclusive

³⁶⁹ Council of Europe: Good Practice No. 42, p. 2

³⁷⁰ Ibid., p. 2-3

³⁷¹ Liga Lidských Práv, para. 2

³⁷² Ibid., para. 3

education for all children into practice is a state's obligation under domestic and international law and relevant judgments of the ECtHR.

While researching the cases of Czech and Slovak Romani students in British schools, Equality and Roma Education Fund put together recommendations that are highly relevant, due to the specific nature of the experience of Romani pupils while given opportunity for a good school environment, in which their right for equal and adaptable education is fulfilled³⁷³:

- a) stopping the myth that segregated education and de-facto indirect discrimination is in the interest of the Roma through informing of the education personnel³⁷⁴ (SK and CZ)
- b) use effective early childhood education programs in order to enable successful inclusion into primary schools³⁷⁵ (SK and CZ)
- c) disseminate good practice and include Romani mediation programs to all towns having Romani populations (UK)

In addition to these, Slovak Ombudsperson recommends several changes in public policy (that may be important in the case of Czech Republic as well):

- d) amend the legislation in order to specifically forbid *“spatial, organization, physical or symbolic exclusion or separation of Romani pupils on the basis of their ethnicity (often in combination with their social disadvantage).”*³⁷⁶
- e) enable accessible education (including secondary and tertiary) to all children with special education needs³⁷⁷
- f) establish free pre-school education for all Romani children coming from the disadvantaged background in the Slovak or Romani language (according to the best interest of the child)³⁷⁸
- g) ensure quality teachers and teaching assistants for children that need support (speaking Romani if

³⁷³ Equality and REF 2011, p. 62

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Office of the State Ombudsperson 2013, 26

³⁷⁷ Ibid., p. 27

³⁷⁸ Ibid.

in the best interest of the child)³⁷⁹

h) ensure free education tools in and out of class³⁸⁰

However, as according to the research done by the Centre for the Research of Ethnicity and Culture,³⁸¹ the change has to come from the education paradigm itself in order that the policies become fully inclusive: the changes in education policy have to go hand in hand without the overall inclusion of Roma in state policies³⁸². The author describes current (and past) education policies as “based on the paradigm of a dominant culture”³⁸³ that perceive the majority as a norm and rule-giver, intensified by holding all the decision-making powers in the state.³⁸⁴ In order that Romani children can become fully included, the children has to be stopped being perceived as incapable/deviant from the norm: “*The learning difficulties do not mean that the children are unable to learn. It means that they are not able to learn in a manner that the contemporary school requires.*”³⁸⁵ Therefore even the programs that are considered as positive for Roman children (such as zero grades and preparation classes), in reality create segregation and (language/cultural) assimilation³⁸⁶. Policies that try to 'fix' the children and alleviate them as much possible from their family/social/cultural background are not inclusive, but assimilationist³⁸⁷ (the most extreme from those are the propositions of the high state representative to create boarding schools for Romani children). It is important to change the paradigm of a 'failure in child' to a 'failure in school'.³⁸⁷

The author therefore proposes changes that might help to include Romani children (sometimes without much effort): use of Romani language (f.e. o the school boards)³⁸⁸, introduction of curricula that support human rights and multicultural education³⁸⁹, using individual integration in

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Gallová Kriglerová In: Gallová Kriglerová and Gažovičová 2012, p. 73

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Gallová Kriglerová In: Gallová Kriglerová and Gažovičová 2012, p. 73

³⁸⁶ Ibid., p. 77

³⁸⁷ Ibid.

³⁸⁸ Ibid., p. 78

³⁸⁹ Ibid.

daily life (in order to support the children with special needs and not only to tolerate them at class without help)³⁹⁰ and changing of financing of education policies (that, even if, unintentionally help to create segregation, such as benefits for Romani parents if they choose a special school).³⁹¹

Last, but not least, the ratification of the CRPD in all the compared countries, as well as the change in the paradigm of how we understand rights of the persons with disabilities and recommendations of international organizations (such as UNICEF³⁹²) presuppose a shift from parallel and inferior special education settings into the full inclusion of children with special education needs and disabilities into the mainstream inclusive education with necessary support in the form of reasonable accommodation³⁹³ – therefore enabling right to equal and adaptable education to all children.

³⁹⁰ Ibid., p.79

³⁹¹ Ibid.,

³⁹² UNICEF 2012, see f.e. p. 16, p. 18

³⁹³ See f.e. Art. 24 of the CRPD on the education

CONCLUSION

With what has been analysed in the thesis, one can understand how inclusion in education is both contextual and universal. Different examples have shown that the education system has not only to reflect individuality of the children, but also create a stable system that is easily replicable and works for the benefit of all. Inclusive education does not only benefit the children themselves, but indeed educates the peers, families and communities how to build themselves on the basis of justice, tolerance and help. Whatever the context, the need for inclusive education has been underlined as a universal right, to which every child is entitled to.

By using comparative analysis of the right to inclusive education for Romani children, this thesis has shown serious shortcomings of the Slovak and Czech education system and the inability of the status quo to address violations of the right to equal and adaptable education of Romani children.

Secondly, the paper has achieved its aim to propose realistic and adaptable outcomes of the comparison of education systems in Slovakia, Czech Republic and the United Kingdom in assessing what can be done in order to improve the education environment that is more inclusive for all. Different case studies helped to illustrate that if inclusive education is implemented in daily lives, it clearly helps to create an open and adaptable education environment that is open for all children, notwithstanding their status. It has therefore proved that inclusive education is not only being beneficial for educating the values of an open and just society and enabling better futures for children, but also showed how inclusive education is a right. What then distinguishes the three countries is the change of the paradigm in the United Kingdom towards implementing equality in education and creating more inclusive schools and environments for learning.

Indeed, by looking at the possibilities of adjudicability of the right to inclusive education in the domestic and international courts, the thesis has showed the universality of the right to education and its interpretation in the current political settings. If this thesis should underline only one finding it is that the inclusive education is not only a need, but indeed a 'must' in order to address and remedy past injustice and racism in the European context that should not be repeated on another generation of Romani children and children with disabilities.

It would be more than satisfactory if this thesis provided some new ideas and insights on the education practice in the countries covered and inspired thoughts on how the right to inclusive education is vital for boys and girls in the future world.

The importance of the thesis therefore lies in its comparative setting: showing how things can be done with the change of the paradigm that takes every child as a unique human being with its individual needs, wishes, dreams and talents. To enable quality and inclusive education for all of them does not only fulfill the merits of the universal right to education, but is a vital need for every society that wants to be built on the ideas of equality and justice for all its citizens.

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