

**EQUAL ACCESS TO QUALITY EDUCATION OF ROMA CHILDREN IN
HUNGARY: STRATEGIC LITIGATION AS A TOOL FOR SOCIAL CHANGE**

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Executive Summary

This thesis focuses on the equal access of Roma children to quality education in Hungary as a human rights concern. It is building on the fact that school segregation of Roma children is a widespread practice in many countries across Europe, but especially in Central and Eastern Europe. The reasons of this discriminatory practice are complex and interrelated, but basically rooted in the general marginalized status and social exclusion of the Roma. And the consequences are always severe. Among others, it grievously affects the psychological well-being and the future opportunities of the Roma children. In addition, it has several negative effects on the societies as well, such as ruined intergroup relations and economic losses.

The situation of Roma has been part of the European agenda in the past few decades with varying intensity and success. Despite education is considered to be a high priority, school segregation still prevails. However, there is an ongoing strategic litigation both before the European Court of Human Rights and before Hungarian courts that tries to abolish the practice of school segregation by using this legal tool to achieve a wider impact. This thesis introduces the most important cases of this constant struggle and then analyzes some of the outcomes by focusing on the remedies offered by the courts and their implementations.

List of Abbreviations

CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFCF	Chance for Children Foundation
CJEU	Court of Justice of the European Union
Committee	Committee of Ministers of the Council of Europe
CRC	UN Convention on the Rights of the Child
Decade	EU Decade of Roma Inclusion
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR, the Court, Strasbourg Court	European Court of Human Rights
ERRC	European Roma Rights Centre
FRA	European Union Agency for Fundamental Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
KLIK	Klebensberg Institution Maintenance Centre
RED	Racial Equality Directive 2000/43/EC
UDHR	Universal Declaration of Human Rights

Introduction

The Roma are the largest minority in Europe and also the most disadvantaged one. They face with prejudices, discrimination and marginalization in most of the societies they live in. There are severe problems on the areas of housing, health, education and employment that are strongly interrelated.

This thesis focuses on the primary education of the Roma, which is considered to be a crucial element in providing better opportunities for the next generations. Education in general can provide a way out of poverty and it can lead to active citizenship and empowerment. It can enable individuals and minority groups as well to challenge the dominant narratives and the existing power structures within the society. Although a malfunctioning education system can be counter-productive by trapping marginalized groups, such as the Roma, in vicious circles and reproduce their disadvantaged situation from generation to generation.

In the past few decades regional and national commitments raised attention to our “joint responsibility to improve the lives of the EU’s Roma citizens.”¹ On the legal field, not only domestic cases were brought before courts, but also European Court of Human Rights decisions held against the discriminative educational practices, such as school segregation. Despite great successes of strategic litigation on this field and a seeming common understanding that school segregation is an unacceptable practice, in reality it seems that not much has changed. Notwithstanding the fact that discrimination and social exclusion of the Roma has become a consistent part of the European and national agendas, there is still a lot remaining to be done for their equal access to quality education.

¹ European Commission, 'EU and Roma' (2015) <http://ec.europa.eu/justice/discrimination/roma/index_en.htm> accessed 29 October 2015

This is the situation in Hungary as well, where the education of Roma has been historically troubled and still marked by many controversies in the country. One of the biggest problems is school segregation which might varies in forms, but always results in unequal opportunities and lower quality education. Besides Roma-only schools and classes, they are also over-represented in special schools, with inferior curriculums, originally established for children with mental disability but used “as a collective dustbin for children who are deemed not fit for real schooling.”²

This thesis aims to assess strategic litigation before the European Court of Human Rights and Hungarian courts, as a tool to fight school segregation in Hungary. The limitations of this thesis do not enable a comprehensive analysis of the impacts of strategic litigation. Thus it will look at the impacts in a narrow sense by analyzing the remedies and sanctions offered by the courts and their implementation. After an overview of the relevant cases this thesis argues that the courts must define the concrete measures to be taken otherwise the decisions will not have real effects.

² European Roma Rights Center 'Roma and the Right to Education - Roma in the Educational Systems of Central and Eastern Europe' (1998) <<http://www.errc.org/article/roma-and-the-right-to-education--roma-in-the-educational-systems-of-central-and-eastern-europe/53>> accessed 29 October 2015

1 The Roma in Europe

1.1 Who are the Roma

Roma is an umbrella term which includes various groups of Romani people living mainly in Europe under different social, economic and cultural conditions.³ According to the Council of Europe definition of Roma, the term refers to several groups of people describing themselves as Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti, and other self-ascriptions.⁴ Some of these groups are identified as Roma by the mainstream society, although their self-identification might differ.⁵ The Roma community is extremely diverse with several subgroups which share some similarities, such as linguistic communality, historical roots, and the experiences of prejudices and discrimination from majority groups.⁶

The origins of Roma are widely debated, but the most common interpretation is that they migrated from Northern India to Europe between the 9th and the 14th century.⁷ Their arrival to the continent was followed by their enslavement under the desire for a large and unpaid labor force. However, their dehumanization did not stop with the end of slavery a few centuries later.⁸ Attitudes and practices of racial discrimination and persecution constantly reproduced their pariah status throughout the history. It has serious effects even until today; the structural social and political weakness of Roma is still significant.⁹

³ Rita Izsák, *Report of the Special Rapporteur on Minority Issues* (A/HRC/29/24, 2015) p3

⁴ John Bennett, *Roma Early Childhood Inclusion: The RECI Overview Report* (2012) p19
<<https://www.opensocietyfoundations.org/sites/default/files/Roma-Early-Childhood-Inclusion-Report-20120813.pdf>> accessed 12 September 2016

⁵ Márton Rövid, “‘One Size Fits All Roma’? On the Normative Dilemmas of the Emerging European Roma Policy’ (Hungarian Institute of International Affairs, 2009) p7

⁶ Rita Izsák, *Report of the Special Rapporteur on Minority Issues* (A/HRC/29/24, 2015) p3

⁷ Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (The World Bank, 2005) p3 <<https://openknowledge.worldbank.org/handle/10986/14869>> accessed 12 March 2016

⁸ Ian Hancock, ‘The Consequence of Anti-Gypsy Racism in Europe’ (Other Voices, v.2, n.1, 2000)
<<http://www.othervoices.org/2.1/hancock/roma.php>> accessed 11 November 2016

⁹ Dimitrina Petrova, ‘The Roma: Between Myth and the Future’ (ERRC, 2004)
<<http://www.errc.org/cikk.php?cikk=1844>> accessed 16 April 2016

1.2 The Situation of the Roma

Roma is the largest and the most marginalized ethnic group in Europe. Even though the reasons of this marginalization and extreme social exclusion are complex, one of the biggest problems Roma need to face is severe poverty. They have historically been amongst the poorest people, but their situation, especially in Central and Eastern Europe got worse since the early 90's. The transition from planned to market economies brought a significant increase in formal unemployment. Roma were more affected by this change than the rest of the society due to their low level of education, exacerbated by their discrimination.¹⁰

According to the findings of a 2014 survey of the European Union Agency for Fundamental Rights (FRA) focusing on 11, mainly Central and Eastern European countries,¹¹ 90% of the Roma surveyed have an income that is below the national poverty lines. Another distressing finding of the survey is that around 40% of the Roma live in households where they are constantly struggling to buy satisfactory amount of food. In these households it had happened that somebody had to go to bed hungry at least once during the month prior to the survey because of the insufficient amount of food available.¹²

This poverty has several interrelated causes reinforcing each other and putting Roma in a vicious circle. The lack of quality education, poor access to the labor market, inadequate health care and geographic isolation are compounded by stigmatization and discrimination.¹³

Roma are facing with several systemic problems. In education, pre-schooling is usually missing from the educational experiences of Roma children. According to the

¹⁰ Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (The World Bank, 2005) overview, pXV.

<<https://openknowledge.worldbank.org/handle/10986/14869>> accessed 12 March 2016

¹¹ The FRA study was conducted in Bulgaria, the Czech Republic, France, Greece, Italy, Hungary, Poland, Portugal, Romania, Slovakia, and Spain.

¹² European Union Agency for Fundamental Rights, *The Situation of Roma in 11 Member States: Survey Results at a Glance* (2012) p12 <http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf> accessed 19 October 2016

¹³ Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (The World Bank, 2005) p30 <<https://openknowledge.worldbank.org/handle/10986/14869>> accessed 12 March 2016

previously mentioned FRA study, only half of the Roma children attend kindergarten. In addition, school attendance during compulsory school age is often problematic. Furthermore, only 15% of the surveyed young Roma adults completed secondary or vocational schools.¹⁴

Consequently, the unemployment rates are also high and the number of Roma being in paid employment is low. On average, less than one out of three surveyed people had a paid job. The rest of them reported that they were either home-makers, retired or self-employed. In addition, some of them were limited in their capacities to work due to health problems.¹⁵

Health conditions of Roma are generally poor. Health services are hardly accessible for many of them. According to the 2014 FRA survey 20% reported that they do not have medical insurance or at least they do not know about it.¹⁶ Another alarming indicator of the health status of the Roma is their shorter life expectancy compared to the mainstream population. In certain countries, the gap might be a decade or even more.¹⁷

Many Roma people also lack adequate housing with sufficient personal space and basic amenities. It is common that more than two people share one room. Almost half of the Roma households lack some basic necessities, such as indoor kitchen, toilet, shower or bath and electricity. These figures are significantly higher than amongst the non-Roma average.¹⁸

1.3 The Challenges of the Collection of Statistical Data

This 2014 FRA survey used a random sampling approach; those were interviewed, who identified themselves as Roma. However, it is important to note that survey data always has its limitation, especially when it is focusing on such a diverse group as the Roma. Not just

¹⁴ European Union Agency for Fundamental Rights, *The Situation of Roma in 11 Member States: Survey Results at a Glance* (2012) p12-14 <http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf> accessed 19 October 2016

¹⁵ *ibid.* p16

¹⁶ *ibid.* p21

¹⁷ European Commission, *Roma Health Report Executive Summary* (2014) p5 <https://ec.europa.eu/health/social_determinants/docs/2014_roma_health_report_es_en.pdf> accessed 16 November 2016

¹⁸ European Union Agency for Fundamental Rights, *The Situation of Roma in 11 Member States: Survey Results at a Glance* (2012) p22-23 <http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf> accessed 19 October 2016

the diversity but also the sensitive manner of the ethnic data poses several challenges on data collection.

There can be huge discrepancies between official data and unofficial estimations. Partially, this is a consequence of legal, political and ethical concerns, such as (the misinterpretation of) data protection laws and the constitutional right to the free choice of ethnic identity, which put obstacles in the way of the collection of ethnical data.¹⁹ Furthermore, many Roma do not identify themselves as such in censuses because of the fear from the stigmatization of their identity.²⁰ As official statistics are often built on these censuses, an additional challenge is that in many countries there are no options for indicating multiple identities.²¹ Therefore, we only have an estimated number of the Roma in Europe, which is 10-12 million.²²

This issue of ethnic data collection is often subject of heated debates. The European Commission against Racism and Intolerance (ECRI) first acknowledged the importance of comprehensive ethnic data for developing effective anti-discrimination laws and policies in its 1996 General Policy Recommendation. In this document, ECRI recommended the Council of Europe Member States to implement a system of equality monitoring by collecting ethnic data. However, not all states welcomed this initiative. The data collection practices still vary from country to country. These differences mainly derive from contrasting interpretations of the same data protection laws. Some interpret these laws in a prohibitive manner while others refer to specific provisions of the same laws to collect ethnic data.²³

¹⁹ Dimitrina Petrova, 'The Roma: Between Myth and the Future' (ERRC, 2004) <<http://www.errc.org/cikk.php?cikk=1844>> accessed 16 April 2016

²⁰ Galina Kostadinova, 'Minority Rights as a Normative Framework for Addressing the Situation of Roma in Europe' (Oxford Development Studies, v.39, n.2, 2011) p164

²¹ Rita Izsák, *Report of the Special Rapporteur on Minority Issues* (A/HRC/29/24, 2015) p16

²² European Union Agency for Fundamental Rights, *The Situation of Roma in 11 Member States: Survey Results at a Glance* (2012) p3 <http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf> accessed 19 October 2016

²³ Pavee Point Traveller and Roma Centre, *Research Report: Policy and Practice in Ethnic Data Collection and Monitoring* (2016) p8 <http://www.paveepoint.ie/wp-content/uploads/2016/04/Counting-Us-In-A4_WEB.pdf> accessed 22 November 2016

1.4 The Roma within the European Union

According to the best estimates, almost half of the 10-12 million Roma live in the Member States of the European Union and most of them are EU citizens.²⁴ The problems that Roma face had become part of the European Union's agenda in the late 20th century. However, the main catalyst for the EU's policy-making arena was the (future) accession of Central and Eastern European countries in 2004 and 2007.²⁵

The EU's concern for the Roma was first manifested in the 1993 Copenhagen criteria, which called prospective Member States to bring their policies in alignment with the EU standards.²⁶ However, Vermeersch argues that at the time of the introduction of these criteria the EU's attention to the Roma issue was rather limited, but it had gradually increased. He mainly attributes this change to the growing media attention, the work of international advocacy organizations and the increasing number of Central European Roma asylum seekers arrival to the EU.²⁷

By the time the EU's Eastern enlargement happened, the situation of the Roma had become one of the central issues.²⁸ In 2005, the Decade of the Roma Inclusion 2005-2015 (Decade) was introduced. This policy initiative tried to remedy the inconsistent results of the previous decade of mainly donor supported programs in Central and Eastern Europe.²⁹ As part

²⁴ Laura Cashman, "'Put Your Own House in Order First': Local Perceptions of EU Influence on Romani Integration Policies in the Czech Republic' (Journal of Contemporary European Research, v.4, n.3, 2009) p195

²⁵ Countries joined the EU in 2004: Cyprus, the Czech Republic, Estonia, Hungary, Latvia Lithuania, Malta, Poland, Slovakia and Slovenia; in 2007: Bulgaria and Romania

²⁶ Eva Sobotka and Peter Vermeersch, 'Governing Human Rights and Roma Inclusion: Can the EU be a Catalyst for Local Social Change?' (Human Rights Quarterly, v.34, n.3, 2012) p803

²⁷ Peter Vermeersch, 'Minority Policy in Central Europe: Exploring the Impact of the EU's Enlargement Strategy' (The Global Review of Ethnopolitics, v.3, n.2, 2004) p8

²⁸ Márton Rövid, "'One Size Fits All Roma'? On the Normative Dilemmas of the Emerging European Roma Policy' (Hungarian Institute of International Affairs, 2009) p3

²⁹ Svjetlana Curcic, Maja Miskovic, Shayna Plaut and Ciprian Ceobanu, 'Inclusion, Integration or Perpetual Exclusion? A Critical Examination of the Decade of Roma Inclusion, 2005-2015' (European Educational Research Journal, v.13, n.3, 2014) p257

of the Decade, each of the 12 participating countries³⁰ were required to develop a National Action Plan in order to advance the situation of the Roma population and to end their social exclusion. The four priority areas of the Decade were housing, health care, employment and education.³¹

On the field of education, for instance, the Roma Education Fund (REF) was established as part of the Decade with the mission of closing the gap in educational performances between Roma and non-Roma by supporting policies and programs focusing on desegregation and quality education for the Roma.³²

The Decade brought about some good and bad, but in general, it could not live up to most of the expectations that were set towards it. In 2011, the European Commission adopted an EU Framework for National Roma Integration Strategies up to 2020, as part of its wider Europe 2020 strategy for growth.³³ This EU Framework might be seen as a legacy of the Decade, but by making all Member States participate and create their National Plan, it finally moved the issue out from the enlargement concerns and placed it in the internal EU agenda.³⁴ The outcome of these set of measures is still unclear, but the usual discrepancy between political will and commitment on paper and in reality leaves little space for optimism.³⁵

³⁰ Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Montenegro, Romania, Serbia, Slovakia and Spain

³¹ Svyetlana Curcic, Maja Miskovic, Shayna Plaut and Ciprian Ceobanu, 'Inclusion, Integration or Perpetual Exclusion? A Critical Examination of the Decade of Roma Inclusion, 2005-2015' (European Educational Research Journal, v.13, n.3, 2014) p257

³² John Bennett, *Roma Early Childhood Inclusion: The RECI Overview Report* (2012) p7
<<https://www.opensocietyfoundations.org/sites/default/files/Roma-Early-Childhood-Inclusion-Report-20120813.pdf>> accessed 12 September 2016

³³ Bernard Rorke, 'The End of a Decade: What Happened to Roma Inclusion?' (2015)
<<https://www.opendemocracy.net/can-europe-make-it/bernard-rorke/end-of-decade-what-happened-to-roma-inclusion>> accessed 11 February 2016

³⁴ Eva Sobotka and Peter Vermeersch, 'Governing Human Rights and Roma Inclusion: Can the EU be a Catalyst for Local Social Change?' (Human Rights Quarterly, v.34, n.3, 2012) p808

³⁵ Bernard Rorke, 'Roma Rights 2013: National Roma Integration Strategies: What Next?' (2014)
<<http://www.errc.org/article/roma-rights-2013-national-roma-integration-strategies-what-next/4238/2>> accessed 10 November 2016

1.5 The Roma in Hungary

1.5.1 Who are the Roma

Identifying who is Roma is challenging also in Hungary. First of all, the Roma population can be divided into three different groups based on their native language. The majority of the Roma speaks Hungarian as their mother tongue. Based on some estimation, their proportion is around 80%. The rest speaks either Romani or Boyash, a dialect connected to Romanian.³⁶ This high level of (not only) linguistic assimilation makes it even more difficult to define who the Roma are.

Since 2001, censuses and researches estimated the Roma population of Hungary to be between 190.000 and 650.000, which consists 2-6% of the overall Hungarian population.³⁷ This relatively big discrepancy between the estimations derives from the previously mentioned obstacles of determining the exact number of Roma. The first challenge we face is the different approaches towards the identification of Roma.

In Hungary, before 1993 ethnic classification was not based on self-identification. Even at schools, teachers registered the children with Romani origin and they evaluated their school progress separately. It also meant that the evaluation was basically up to the teachers rather than to the individuals concerned or their families. The estimated number of Roma was calculated based on this data and it showed a huge inconsistency with the number deriving from the census, where ethnic origin has been based on self-definition.³⁸

The conflict between these two methods of identification shed the light on heated theoretical debates. Many scholars disagree on which approach to follow. The more common

³⁶ István Kemény, Béla Janky and Gabriella Lengyel, *The Hungarian Roma, 1971-2003. [A magyarországi cigányság, 1971-2003.]* (Gondolat – MTA Kisebbségkutató Intézet, 2004) p98

³⁷ Anikó Bernát, 'Increasing Gaps: The Situation of the Roma in Hungary [Leszakadóban: A romák társadalmi helyzete a mai Magyarországon]' in Tamás Kolosi and István György Tóth (eds), *Társadalmi Riport 2016* (TÁRKI, 2016) p248

³⁸ Ferenc Babusik, 'Legitimacy, Statistics and Research Methodology: Who is Romani in Hungary Today and What are We (not) Allowed to Know about Roma?' (Roma Rights Quarterly v.9, n.2, 2004) p14

approach seems to be the self-definition of the individuals. However, many scholars believe in the importance of the judgment of the external environment. They argue that discrimination generally happens because someone is perceived to be Roma by others, not by their own community. Scholars conduct social research based on both approaches; usually tailor their preference to the research question and the methodology.³⁹ However, the legal field gives a bit more concrete answer for this question.

The introduction of the 1992 Data Protection Act⁴⁰ imposed strict safeguards on ethnic data and the 1993 Act on the Rights of National and Ethnic Minorities⁴¹ made the ethnic classification the right of the individual. Thus, ethnicity from a legal perspective is a question of self-identification.⁴²

1.5.2 The Situation of the Roma in Hungary

The situation of the Roma in Hungary is unfortunately very similar to the previously described. According to a 2003 survey, the average monthly income of Roma households is less than half of the national average and 56% of these incomes are not coming from official salaries.⁴³

As a part of the Roma Inclusion Decade, the Roma Inclusion Index 2015⁴⁴ project tried to measure the gaps between Roma and the rest of the population in the participating countries and also tried to identify the trends and the progress, if any.⁴⁵ Based on the results,

³⁹ Anikó Bernát, 'Increasing Gaps: The Situation of the Roma in Hungary [Leszakadóban: A romák társadalmi helyzete a mai Magyarországon]' in Tamás Kolosi and István György Tóth (eds), *Társadalmi Riport 2016* (TÁRKI, 2016) p248

³⁴ Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest

⁴¹ Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

⁴² Ferenc Babusik, 'Legitimacy, Statistics and Research Methodology: Who is Romani in Hungary Today and What are We (not) Allowed to Know about Roma?' (Roma Rights Quarterly v.9, n.2, 2004) p15

⁴³ István Kemény, Béla Janky and Gabriella Lengyel, *The Hungarian Roma, 1971-2003. [A magyarországi cigányság, 1971-2003.]* (Gondolat – MTA Kisebbségkutató Intézet, 2004) p120

⁴⁴ The study was built on existing data collected either officially by governments or by international organizations and civil society.

⁴⁵ Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015* (2015) p7

<<http://www.romadecade.org/news/roma-inclusion-index-2015/9810>> accessed 11 February 2016

the main conclusion concerning Hungary was that the overall situation of the Roma has worsened. According to the available data, two-third of the Roma population lives at the risk of poverty and half of them live in absolute poverty. The proportion of those who ever felt discriminated is also very high; two-third of them felt discriminated because of their ethnic origins at least once in their lives.⁴⁶

Education is also a critical issue with serious setbacks. Besides segregation, what will be discussed later in this thesis, secondary education is a crucial problem. There is a huge difference in the proportion of children who finish secondary education in the Roma and non-Roma population, as only 19% of the Roma finish secondary school comparing to the 69% of the total population. And the gap is constantly increasing. In addition, university attendance amongst Roma is only 1%.⁴⁷

⁴⁶ Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015* (2015) p19

<<http://www.romadecade.org/news/roma-inclusion-index-2015/9810>> accessed 11 February 2016

⁴⁷ *ibid.* p44-46

2 School Segregation

2.1 The Practice of School Segregation

Education provides the necessary knowledge, skills and attitudes that enable personal fulfillment of each individual. Education is also a tool to create active citizens; thus quality education has fundamental importance for the society as a whole. Furthermore, it has a very critical role for minority groups, such as the Roma, as it gives them the opportunities to take part in the mainstream social, economic and political life.⁴⁸ Education can empower marginalized children and adults to lift themselves out of poverty and break the cycle of social exclusion.⁴⁹ Thus the investments in the education of Roma are investments into a better functioning society.⁵⁰

Education can be a powerful tool, but a malfunctioning education system can easily reinforce the existing societal gaps. This is why providing quality education to all is extremely important. Thus education systems must meet certain minimum standards. It is hard to define exactly all these criteria; however, according to the United Nations International Children's Emergency Fund (UNICEF) there is a considerable consensus regarding some basic principles. It includes for example healthy, well-nourished learners, safe learning environment with adequate resources and facilities and a high quality curriculum. Furthermore, the outcomes of quality education should enable children for "positive participation in the society".⁵¹

⁴⁸ UNICEF Serbia, *Breaking the Cycle of Exclusion: Roma Children in South East Europe* (2007) p33 <https://www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf> accessed 13 March 2016

⁴⁹ Lilla Farkas, 'Report on Discrimination of Roma Children in Education' (2014) p5 <http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf> accessed 13 March 2016

⁵⁰ Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe* (Council of Europe, 2012) p123 <https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf> accessed 14 November 2016

⁵¹ UNICEF, 'Defining Quality in Education' (2000) p3 <<https://www.unicef.org/education/files/QualityEducation.PDF>> accessed 12 November 2016

Unfortunately in reality the fulfillment of these criteria often seems remote. The education of the Roma is especially worrying in Central and Eastern Europe. According to the findings of a 2014 FRA survey Roma need to face several systemic problems. The most critical areas are “low preschool attendance; a high risk of segregated schooling compounded by prejudice and discrimination; high drop-out rates before completing secondary education; and low literacy rates”.⁵² These are all very complex problems, which could be analyzed at great length, but this thesis is focusing on school segregation.

The concept of segregation on the basis of race has been mainly associated with the practice of separating African-American children in the schools of the United States (US). According to an American dictionary, “racial segregation is the separation of people by race.”⁵³ “In the field of education it refers to the isolation of students by race due to either segregation by law or segregation from action for which the government is not directly responsible.”⁵⁴

In the United States, this practice of school segregation was legalized by different laws across the country until the 1950’s. The famous decision in the *Brown v. Board of Education of Topeka*⁵⁵ case outlawed the ‘separate but equal’ principle and prohibited the school segregation of African-American children.⁵⁶ However, Central and Eastern Europe is a regrettably good example that school segregation can occur even if it is not imposed by law. In that region this practice is a consequence of several factors, such as residential segregation,

⁵² European Union Agency for Fundamental Rights, *Education: the Situation of Roma in 11 Member States* (2014) p11 <http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf> accessed 20 March 2016

⁵³ Jeffrey A. Raffel, *Historical Dictionary of School Segregation and Desegregation: The American Experience* (Greenwood Press, 1998) p238

⁵⁴ *ibid.*

⁵⁵ *Brown v. Board of Education of Topeka*, Kansas 347 U.S. 483 (1954) 349 U.S. 294 (1955)

⁵⁶ Jeffrey A. Raffel, *Historical Dictionary of School Segregation and Desegregation: The American Experience* (Greenwood Press, 1998) p37

discriminatory practices or facially neutral government policies.⁵⁷ Regardless of the reasons, racial or ethnic segregation of Roma children in education is a serious form of discrimination what deprives them of their dignity and equality.⁵⁸

2.2 Types of School Segregation

School segregation of Roma children basically happens through two main processes. One form is when Roma pupils are channeled into special schools, originally established for children with physical and mental disabilities. The other main form is when they are enrolled in regular schools where Roma make up the majority of the student body.⁵⁹ In addition, individual segregation is a relatively less significant but also an important type of segregation. It might happen with total exclusion from school or in the form of an alleged home schooling, typical in Hungary⁶⁰, when enrolled students absolved from attending school on a daily basis but have to pass final examinations in the school concerned.⁶¹

2.2.1 Disproportionate Placement of Roma Children in Special Schools and Classes

The streaming of Roma children into special schools or sometimes into special classes is a widespread practice in Central and Eastern Europe. Roma are overrepresented in the special school system, often comprising 80-90% of the entire student body.⁶² According to a 2011 regional survey, Roma children aged between 7 to 15 “who attend or have been

⁵⁷ Kalina Arabadjieva, ‘Challenging the School Segregation of Roma Children in Central and Eastern Europe’ (The International Journal of Human Rights, v.20, n.1, 2016) p35

⁵⁸ Savelina Danova, ‘Patterns of Segregation of Roma in Education in Central and Eastern Europe’ in Edwin Rekosh and Maxine Sleeper (eds), *Separate and Unequal: Combating Discrimination against Roma in Education* (Public Interest Law Initiative, 2004) p3

⁵⁹ Christian Brüggemann, *Roma Education in Comparative Perspective. Analysis of the UNDP/World Bank/EC Regional Roma Survey 2011* (Roma Inclusion Working Papers. Bratislava: United Nations Development Programme, 2012) p63

⁶⁰ This status was originally created for exceptionally talented students or for those whose health conditions unable them to attend school on a daily basis. However, home schooling had become a widespread practice to absolve Roma students from attending schools. In spite of parents supposed to apply for this status officially, in practice schools often initiate the proces to get rid of students with „behavioral problems”. It leads to high drop out.

⁶¹ Lilla Farkas, ‘Report on Discrimination of Roma Children in Education’ (2014) p5

< http://ec.europa.eu/justice/discrimination/files/roma_childddiscrimination_en.pdf > accessed 16 March 2016

⁶² Marius Taba and Andrew Ryder, ‘Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations’ in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p10

attending special schools (not including special classes) exceeds 5% in Hungary, Serbia and Croatia, and 10% in the Czech Republic and Slovakia.”⁶³

The system of special primary schools exists parallel with mainstream schooling but the curriculum is reduced to a level which is considered to be appropriate for those children.⁶⁴ As a consequence of the lower teaching quality and the often substandard infrastructure it is very unlikely for the students to enter the mainstream school system or find appropriate employment.⁶⁵

This disproportionate placement of Roma children in these schools results from discriminatory practices. Both research and court cases found that it is mainly a consequence of culturally biased testing.⁶⁶ The tests used, and also the testing process itself is unable to take into account the linguistic and cultural differences of Roma children. As a result of this misdiagnosis, many Roma children start their school career in remedial education. However, also those who get enrolled in regular primary schools face with several challenges and barriers as these schools rarely provide adequate individualized care to react on the needs of Romani children.⁶⁷

2.2.2 Segregation in the Mainstream Education: Ghetto Schools and Roma-only Classes

School segregation in the mainstream education may take the form of inter-school segregation, when Roma students attend inferior-quality schools or classes where the majority

⁶³ Christian Brüggemann, *Roma Education in Comparative Perspective. Analysis of the UNDP/World Bank/EC Regional Roma Survey 2011* (Roma Inclusion Working Papers. Bratislava: United Nations Development Programme, 2012) p69

⁶⁴ Savelina Danova, ‘Patterns of Segregation of Roma in Education in Central and Eastern Europe’ in Edwin Rekosh and Maxine Sleeper (eds), *Separate and Unequal: Combating Discrimination against Roma in Education* (Public Interest Law Initiative, 2004) p5

⁶⁵ Christian Brüggemann, *Roma Education in Comparative Perspective. Analysis of the UNDP/World Bank/EC Regional Roma Survey 2011* (Roma Inclusion Working Papers. Bratislava: United Nations Development Programme, 2012) p68

⁶⁶ European Union Agency for Fundamental Rights, *Education: the Situation of Roma in 11 Member States* (2014) p13 <http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf> accessed 20 March 2016

⁶⁷ Marius Taba and Andrew Ryder, ‘Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations’ in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p6

of the pupils are Roma. Intra-school segregation can occur in the form of Roma-only classes. Furthermore, intra-class segregation may take place when students in the same class are divided into separate study groups with different curricular standards.⁶⁸

All these practices are widespread in Central and Eastern Europe. According to the 2014 FRA study the proportion of Roma children attending segregated schools or classes is the highest in Slovakia with 58%.⁶⁹ However, the number is significant in many other countries in the region: Hungary: 45%, Greece: 35%, Czech Republic: 33%, Bulgaria: 29%, Romania: 26%.⁷⁰

Although there is no legal distinction between the ghetto schools and the rest of the schools, there is a significant difference in the quality of the education. In general, the material conditions are inferior, the schools operate in run-down buildings and the quality of teaching is poor.⁷¹ Ghetto schools are mainly the results of residential segregation exacerbated by the ‘white flight’ phenomenon, when non-Roma parents transfer their children from schools with a high proportion of Roma students.⁷²

The situation is very similar in the case of the Roma-only classes as well. They are usually separated under the pretext of ‘catch-up’ classes with the alleged aim of social and academic preparation. In other cases it is the result of ‘negotiations’ between the school

⁶⁸ Lilla Farkas, ‘Report on Discrimination of Roma Children in Education’ (2014) p5
< http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf > accessed 16 March 2016

⁶⁹ The survey question refers to all/many of classmates being Roma.

⁷⁰ European Union Agency for Fundamental Rights, *Education: the Situation of Roma in 11 Member States* (2014) <http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf> accessed 20 March 2016

⁷¹ Savelina Danova, ‘Patterns of Segregation of Roma in Education in Central and Eastern Europe’ in Edwin Rekosh and Maxine Sleeper (eds), *Separate and Unequal: Combating Discrimination against Roma in Education* (Public Interest Law Initiative, 2004) p8

⁷² Marius Taba and Andrew Ryder, ‘Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations’ in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p8

authorities and the non-Roma parents to separate ‘disruptive’ Roma students.⁷³ Classroom segregation often leads to the spatial separation of the Roma students and their placement in ill-equipped facilities. Additionally they might be deprived of the access to certain facilities (e.g. swimming pool, IT room).⁷⁴

2.3 Consequences of School Segregation

The previous subchapter discussed the general types of school segregation, concrete examples from legal cases will also be provided later in this thesis. All these examples prove the great variety of the forms how school segregation may occur. However, the negative consequences are severe in all these cases both on the Roma students and the society at large.

School segregation almost always comes with lower quality of education thus it deeply affects the future perspectives of Roma children. However, this is not the only problem: segregation causes irreversible psychological harms to the children. The judgment in the *Brown* case also highlighted this effect by stating that the separation of African-American children “from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone”.⁷⁵ Segregation has serious impacts on the dignity of the segregated children as it stigmatizes them and causes feeling of lack of self-worth. Furthermore, it deprives these children the opportunity to be raised in a multicultural environment. They have no interaction with their peers which is a great loss both for the Roma and non-Roma children.⁷⁶

⁷³ Kalina Arabadjieva, ‘Challenging the School Segregation of Roma Children in Central and Eastern Europe’ (The International Journal of Human Rights, v.20, n.1, 2016) p34

⁷⁴ Marius Taba and Andrew Ryder, ‘Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations’ in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p12

⁷⁵ *Brown v. Board of Education of Topeka*, Kansas 347 U.S. 483 (1954) 349 U.S. 294 (1955)

⁷⁶ Kalina Arabadjieva, ‘Challenging the School Segregation of Roma Children in Central and Eastern Europe’ (The International Journal of Human Rights, v.20, n.1, 2016) p38

School segregation inevitably effects intergroup relations within a society. The lack of contact between the individual members of different groups in their childhood reduces the likelihood of a peaceful coexistence in their adulthood; pupils miss out an opportunity to learn empathy and tolerance. Furthermore, it is a breeding ground of distrust, stereotypes and prejudices towards the other group.⁷⁷ Integrated schooling provides long-term and stable opportunities for contact between Roma and non-Roma, disadvantaged and non-disadvantaged students. Thus education has the potential to improve intergroup relations and support social integration. But school segregation maintains the vicious circle and keeps Roma marginalized and excluded from the society.⁷⁸ It is damaging both for the mainstream society and Roma communities as it reinforces prejudices and racism towards each other.⁷⁹ School segregation comes at a great economic cost for the society as a whole because of the high unemployment rates what also enforce the reliance on welfare benefits.⁸⁰

2.4 The Hungarian Education System

It is important to take a brief look at the Hungarian education system in order to be able to completely understand school segregation in the country. This thesis is principally concentrating on the primary education, thus problems related to this area will be in focus.

The majority of the Hungarian schools are state maintained, public schools. Parents and their children have free school choice, which means that they have some discretion over which primary school to attend.⁸¹ Schools are obliged to enroll all the students belonging to

⁷⁷ Gordon W. Allport, *The Nature of Prejudice* (Originally published in 1954, Doubleday Anchor Books edition, 1958) p250, p292-294, p404

⁷⁸ Gábor Kertesi and Gábor Kézdi, 'Primary School Segregation in Hungary after the Millennium [Általános iskolai szegregáció Magyarországon az ezredforduló után]' (Közgazdasági Szemle, v.56., 2009) p960

⁷⁹ Lilla Farkas, 'Report on Discrimination of Roma Children in Education' (2014) p6
<http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf> accessed 13 March 2016

⁸⁰ Kalina Arabadjieva, 'Challenging the School Segregation of Roma Children in Central and Eastern Europe' (The International Journal of Human Rights, v.20, n.1, 2016) p35

⁸¹ Gábor Kertesi and Gábor Kézdi, 'School Segregation, School Choice and Educational Policies in 100 Hungarian Towns [Iskolai szegregáció, szabad iskolaválasztás és helyi oktatáspolitikai 100 magyar városban]' (Budapest Working Papers On The Labour Market, 2014) p6
<<http://www.econ.core.hu/file/download/bwp/bwp1406.pdf>> 16 October 2016

their school districts, but if they have available places, they can select between students.⁸² The education system was decentralized until 2012, when the centralization process has started.⁸³ Until 2012 schools were maintained by the local governments, after that the Klebelsberg Institution Maintenance Centre (Klebelsberg Intézményfenntartó Központ, KLIK) took over most of its competence and responsibilities.⁸⁴

An ideal education system provides equal chances and equity for all students; however, the Hungarian system is far from being ideal. There are equal chances if students have equal access to quality education services regardless of their socio-economic backgrounds. In contrast, equity focuses on educational performances and aims to reduce the gaps between students in this regard. These two approaches might include different policy considerations; but they are rather complementary and interdependent. For example, the lack of access to early childhood education will lead to equity problems, such as lower literacy at a later stage.⁸⁵

The Hungarian education system has several shortcomings from both perspectives. The inequality within the system mainly derives from the high selectivity and the low capacity to compensate for disadvantages. The latter problem is also proven by the results of the Program for International Student Assessment (PISA) surveys which showed that within the surveyed OECD countries Hungary is the last in providing opportunities for children

⁸² Gábor Havas and János Zolnay, 'Sysiphus' Account [Sziszifusz számvetése] (Beszélő Online, v.16, n.6, 2011) <<http://beszelo.c3.hu/cikkek/sziszifusz-szamvetese>> accessed 24 November 2016

⁸³ Open Society Justice Initiative, *Strategic Litigation Impacts: Roma School Desegregation* (2016) p27 <<https://www.opensocietyfoundations.org/sites/default/files/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>> accessed 23 May 2016

⁸⁴ Gábor Kertesi and Gábor Kézdi, 'School Segregation, School Choice and Educational Policies in 100 Hungarian Towns [Iskolai szegregáció, szabad iskolaválasztás és helyi oktatáspolitikai 100 magyar városban]' (Budapest Working Papers On The Labour Market, 2014) p6 <<http://www.econ.core.hu/file/download/bwp/bwp1406.pdf>> 16 October 2016

⁸⁵ Haza és Haladás Közpolitikai Alapítvány, *Education for Employability, Equity and Flexibility: White Paper on Education [A Foglalkoztathatóságot, a méltányosságot, és az alkalmazkodóképességet szolgáló oktatás: Fehér könyv az oktatásról]* (2013) p58

coming from poor families.⁸⁶ It is clear, that the Hungarian system constantly fails to provide educational successes to disadvantaged children. Roma are especially inflicted, because of the widespread poverty in most of the Roma communities.

When the socio-economic differences between children reach a certain level, traditional teaching methods inevitably fail. Hungarian teachers are generally not equipped with methods to react on individual needs due to the shortcomings of their training. In addition, the education system is built on middle class standards and expects a “basic knowledge” what disadvantaged children often lack. These expectations lead to a Pygmalion effect; lowers the personal ambitions of disadvantaged children and leads to their school failure.⁸⁷ A recent Hungarian study also showed that even the teaching materials in the schools often lack diversity, ignore the different cultural and historical perspectives and support the dominant narratives.⁸⁸ Consequently, high performing students are those, who are not “different” from the majority culture and can be taught by traditional teaching methods: children of middle-class families.

A consequence of this tendency is a constant pressure within the Hungarian education system to create homogeneous classrooms. This pressure to separate is strengthened by the prejudices towards the Roma. In addition, it is exacerbated by continuous policy failures leading to institutionalized selection even at very early stages. Despite the Hungarian system is originally an 8+4 system, the 6+6 and 4+8 school designs had become more and more widespread during the last decade.⁸⁹ This is pushing the first official selection point even

⁸⁶ Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p219

⁸⁷ Haza és Haladás Közpolitikai Alapítvány, *Education for Employability, Equity and Flexibility: White Paper on Education [A Foglalkoztathatóságot, a méltányosságot, és az alkalmazkodóképességet szolgáló oktatás: Fehér könyv az oktatásról]* (2013) p78, p86

⁸⁸ Mátyás Binder and Dóra Pálos, 'The Representation of Roma in Schoolbooks and Curricula [Romák a kerettantervekben és a kísérleti tankönyvekben]' (2016)
<<http://cfcf.hu/sites/default/files/Binder%20P%C3%A1los%20-%20ROMA.TK.KUT.%202016.pdf>> accessed 17 February 2016

⁸⁹ The first number refers to the length of primary school education and the second number refers to the length of secondary school education (e.g. 8+4 means 8 years long primary, and 4 years long secondary school education).

lower than before. However, there are also non-official selections such as the system of specialized classes⁹⁰. These classes often require additional application criteria than the rest of the classes within the same school. Thus these classes can easily create divisions between the students based on their social status (and ethnicity).⁹¹

This high selectivity of the system and the constant pressure towards homogeneous classrooms does not only lead to an unequal distribution of the children but also the teachers and the resources. Thus schools with a high proportion of disadvantaged children are often end up with less qualified teachers and ill-equipped facilities.⁹²

The government made some attempts to remedy this situation, especially after 2002. One of the most important measures was the introduction of the category of „multiply disadvantaged” children. The equal chances of children falling in this category were set as a priority. In addition, the maximum age for entering compulsory education was lowered to age 5. In spite of these attempts, this period had its failures, as well as its successes.⁹³ In 2010, however, a new government started its ruling. Some of the Hungarian cases discussed later will provide some brief insights in this new area of governance.

⁹⁰ These classes have a different curriculum, often adding extra focus for example on foreign languages or Information Technology.

⁹¹ Péter Radó, ‘Educational Inequality in Hungary [Oktatási Egyenlőtlenségek Magyarországon]’ (Esély, v.4, 2007) <http://www.esely.org/kiadvanyok/2007_4/RADO.pdf> p31

⁹² Haza és Haladás Közpolitikai Alapítvány, *Education for Employability, Equity and Flexibility: White Paper on Education [A Foglalkoztathatóságot, a méltányosságot, és az alkalmazkodóképességet szolgáló oktatás: Fehér könyv az oktatásról]* (2013) p80-83

⁹³ Gábor Havas and János Zolnay, ‘Sisyphus’ Account [Sziszfusz számvetése]’ (Beszélő Online, v.16, n.6, 2011) <<http://beszelo.c3.hu/cikkek/sziszfusz-szamvetese>> accessed 24 November 2016

3 Strategic Litigation in School Segregation Cases

3.1 Definition of Strategic Litigation

Strategic litigation is a legal action which aims to create a broader social change by using courts.⁹⁴ In these cases the plaintiffs not only sue because of their own interests, but also to provide justice for a wider group of people. Strategic litigation attempts to combat systemic violations by obliging governments to adopt or amend policies and legislations in order to end discriminative or humiliating practices against underprivileged groups.⁹⁵ It is also called impact litigation since the main concerns of these cases are their societal impacts.⁹⁶ Strategic litigation falls into the category of public interest litigation; however, the latter is generally understood as a wider term which incorporates not only litigation but also legal aid to provide access to justice.⁹⁷

Successful strategic litigation generally achieves its objectives by setting precedents for similar future cases to succeed.⁹⁸ This litigation induces courts to interpret the law, to redefine rights in constitutions and treaties, and to apply favorable laws that are underused or ignored.⁹⁹ Another favorable effect of strategic litigation might be that it stimulates public discourses, formulates public opinion, inspires public demands and mobilizes citizens. Thus it has an important educational and awareness-raising role as well.¹⁰⁰ Furthermore, it is capable

⁹⁴ Interights, 'Strategic Litigation of Race Discrimination in Europe: From Principles to Practice' (ERRC, 2004) p35 <http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/strategic_manual.pdf> accessed 24 October 2016

⁹⁵ European Roma Rights Centre 'Knowing Your Rights and Fighting for Them: A Guide for Romani Activists' (2004) p166 <<http://www.errc.org/cms/upload/media/00/D6/m000000D6.pdf>> accessed 22 October 2016

⁹⁶ Aengus Carroll, 'Make It Work: Six Steps to Effective LGBT Human Rights Advocacy' (ILGA Europe, 2010) p93 <http://www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf> accessed 22 October 2016

⁹⁷ Interights, 'Strategic Litigation of Race Discrimination in Europe: From Principles to Practice' (ERRC, 2004) p35 <http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/strategic_manual.pdf> accessed 24 October 2016

⁹⁸ Aengus Carroll, 'Make It Work: Six Steps to Effective LGBT Human Rights Advocacy' (ILGA Europe, 2010) p95 <http://www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf> accessed 22 October 2016

⁹⁹ Public Interest Law Initiative, 'Pursuing the Public Interest: A Handbook for Legal Professionals and Activists' (2001) p81

<[file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20\(1\).pdf](file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20(1).pdf)> accessed 22 October 2016

¹⁰⁰ *ibid.*

of empowering underprivileged communities. According to Jacquot and Vitale strategic litigation is an effective tool for the weak, as it has the possibility to challenge the ones in power.¹⁰¹

Strategic litigation may have beneficial effects even if the decision in a certain case is not favorable.¹⁰² For example, it can still provide a basis for further litigation. Even those arguments which are unable to win that time, might lead to success in the future. From this perspective dissenting opinions are especially important.¹⁰³ In addition, strategic litigation can raise the level of human rights literacy of the judiciary, educate and mobilize the public. Another important aspect of these cases is that they are well-documenting institutionalized injustices and abusive practices.¹⁰⁴ Consequently, not only successful cases can be considered victories; however, a negative result in a case might also be destructive. For instance, it might reaffirm a harmful law or practice. However, losing the litigation might be an unfortunate but necessary step in the long run towards a lasting social change. It can encourage public interest groups to widen their range of tools to pursue their goals and develop a more comprehensive approach.¹⁰⁵

One of the first examples of strategic litigation is the *Brown* case which was part of a social movement in the United States addressing the segregation in education of the African-Americans. The National Association for the Advancement of Colored People (NAACP) and

¹⁰¹ Sophie Jacquot and Tommaso Vitale 'Law as a Weapon of the Weak? A Comparative Analysis of Legal Mobilization by Roma and Women's Groups at the European Level' (Journal of European Public Policy, v.21,n.4, 2014) p597

¹⁰² Interights, 'Strategic Litigation of Race Discrimination in Europe: From Principles to Practice' (ERRC, 2004) p37 <http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/strategic_manual.pdf> accessed 24 October 2016

¹⁰³ Jules Lobel, 'Losers, Fools & Prophets: Justice as Struggle' (Cornell Law Review, v.80, n.5, 1995) p1345

¹⁰⁴ Interights, 'Strategic Litigation of Race Discrimination in Europe: From Principles to Practice' (ERRC, 2004) p37-38 <http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/strategic_manual.pdf> accessed 24 October 2016

¹⁰⁵ Public Interest Law Initiative, 'Pursuing the Public Interest: A Handbook for Legal Professionals and Activists' (2001) p83
<[file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20\(1\).pdf](file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20(1).pdf)> accessed 22 October 2016

its Legal Defense Fund (LDF) initiated this public interest campaign in the 1930s. The NAACP-LDF convinced and supported many people to claim their rights before courts in order to assure that courts declare segregation unconstitutional. This campaign led to the *Brown* case step by step, although it took 16 years.¹⁰⁶

As the lessons were learnt from the early strategic litigations, in recent campaigns lawyers strive to plan ahead and control the process. Public interest lawyers and organizations attempt to carefully consider potential cases before they initiate the actual proceedings. This deliberation includes the review of the available resources.¹⁰⁷ Strategic litigation can be extremely costly with hardly predictable legal fees and expenses. In addition, the side that loses might need to cover the legal costs of the opposition.¹⁰⁸ And it is a time-consuming process, especially if strategic cases are not settled by national courts. They can end up before regional or international courts after exhausting domestic remedies.¹⁰⁹ For example, strategic litigation before the European Court of Human Rights (ECtHR, the Court, and Strasbourg Court) often takes 5 to 10 years.¹¹⁰

Besides the financial aspect and the timeframe, there are several further considerations. One of the most important questions is who files the lawsuit. The answer partially derives from the actual jurisdiction and its requirements for the standing. But in many cases, lawyers have to search for and recruit their clients. The appropriate selection of

¹⁰⁶ Public Interest Law Initiative, 'Pursuing the Public Interest: A Handbook for Legal Professionals and Activists' (2001) p84-85

<[file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20\(1\).pdf](file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20(1).pdf)> accessed 22 October 2016

¹⁰⁷ *ibid.* p87

¹⁰⁸ Aengus Carroll, 'Make It Work: Six Steps to Effective LGBT Human Rights Advocacy' (ILGA Europe, 2010) p94 <http://www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf> accessed 22 October 2016

¹⁰⁹ International Lesbian, Gay, Bisexual, Trans and Intersex Association 'Strategic Litigation' <<http://www.ilga-europe.org/what-we-do/our-advocacy-work/strategic-litigation>> accessed 12 February 2016

¹¹⁰ Aengus Carroll, 'Make It Work: Six Steps to Effective LGBT Human Rights Advocacy' (ILGA Europe, 2010) p94 <http://www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf> accessed 22 October 2016

the plaintiffs based on the actual circumstances and their characteristics can be crucial to the case.¹¹¹

3.2 Strategic Litigation in Central and Eastern Europe

In Central and Eastern Europe public interest law was an unfamiliar concept until recently, even though it has existed in the United States for long decades.¹¹² In fact, public interest litigation occurred in the region during the democratic transitions in the early '90s. It arose as part of a broader change in Central and Eastern Europe which consolidated the rule of law. It was further strengthened by the EU accession. In these new regimes there were places for differing opinions and opposition groups, for whom public interest litigation has provided an effective tool to counterbalance the majority opinion. However, according to Goldston, this favorable environment in itself would not have been enough for the real growth in strategic litigation. As the pro bono publico tradition is almost entirely missing in the region, the appearance of financial resources coming from outside donors had a huge importance.¹¹³

Considering this late arrival of strategic litigation in the region, it is not surprising that lawyers and activists are currently facing several problems that lawyers in the United States faced during the time of the previously mentioned *Brown* case. Such as “the courts’ resistance to handling controversial “political” cases, inexperience in ordering non-traditional remedies, and an unwillingness to accept statistical evidence.”¹¹⁴ Besides this, Goldston highlights that strategic litigation has some special characteristics in Central and Eastern Europe mainly

¹¹¹ Child Rights Information Network, ‘Children’s Rights: A Guide to Strategic Litigation’ (2009) p17-18 <https://www.crin.org/en/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf> accessed 14 November 2016

¹¹² Edwin Rekosh, ‘Who Defines the Public Interest? Public Interest Law Strategies in Central and Eastern Europe’ (Sur. Revista Internacional de Direitos Humanos, v.2, n.2, 2005)

¹¹³ James Goldston, ‘Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges’ (Human Rights Quarterly, v.28, n.2, 2006) p496

¹¹⁴ Public Interest Law Initiative, ‘Pursuing the Public Interest: A Handbook for Legal Professionals and Activists’ (2001) p84

deriving from the lack of common-law tradition in the region. Thus the judgments might have persuasive, but not strictly binding effects.¹¹⁵

¹¹⁵ James Goldston, 'Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges' (Human Rights Quarterly, v.28, n.2, 2006) p493-494

4 Legal Framework

4.1 Equal Access to Education as a Human Right

4.1.1 International and Regional Documents on the Right to Education

Education is a fundamental human right which enables individuals to exercise all other human rights. It is an inherent tool for the “full development of the human personality” and for “strengthening the respect for human rights and fundamental freedoms”¹¹⁶ as it advances “understanding, tolerance and friendship among all nations, racial or religious groups.”¹¹⁷

Concerning its enormous importance, it is not surprising, that it is protected by several international documents, most importantly by the Universal Declaration of Human Rights (UDHR) under Article 26, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹⁸ under Article 13 and 14 and the Convention on the Rights of the Child (CRC)¹¹⁹ under Article 28 and 29. All these documents emphasize that elementary education shall be free and compulsory. The basic principles of the required quality of education are further highlighted in Article 29 of the CRC, which puts emphasis on the equality criteria. Thus states are obliged to guarantee accessible education, free of discrimination.

In addition, the Committee on Economic, Social and Cultural Rights (CESCR) provides a more detailed interpretation of Article 13 of the ICESCR in its General Comment No. 13.¹²⁰ This document lays down some essential features of education in a “4A Scheme”.¹²¹ Education must be available, accessible, acceptable and adaptable. While

¹¹⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art26(2)

¹¹⁷ *ibid.*

¹¹⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, v.993, p.3

¹¹⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, v. 1577, p.3

¹²⁰ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10

¹²¹ Anita Danka and Iulius Rostas, ‘Setting the Roma Policy Agenda: The Role of International Organizations in Combating School Desegregation’ in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p55

availability means that functioning educational institutions¹²² must be available in a sufficient number, accessibility refers to the non-discrimination criteria. It states that education must be accessible to everyone, both in law and in fact. It requires schools to be in a reasonable distant and schooling to be affordable to all. Acceptability means that curricula and teaching methods must be good quality, relevant and culturally appropriate, thus acceptable to all students. Last but not least, education must be able to adapt to the student diverse cultural settings and to the constantly changing societies.¹²³

On European level, within the realm of the Council of Europe the right to education is enshrined in the European Convention on Human Rights (ECHR)¹²⁴ complemented by the European Social Charter¹²⁵. The former contains the provision about the right to education in its First Protocol under Article 2. However, it does not explicitly state the Member States' responsibility to provide fundamental education free of charge. But it is included in the revised European Social Charter under Article 17. Another relevant document is the Charter of Fundamental Rights of the European Union¹²⁶, which states the right to education under Article 14.

4.1.2 Non-discrimination and the Right to Education

The right to education is closely linked to non-discrimination and it is extremely important when we are talking about school segregation. Anti-discrimination legislation is an inherent part of both the international and the European legal order. The UDHR prohibits racial discrimination under Article 2 and 7.

¹²² "What [these institutions] require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology." *General Comment No. 13*, E/C.12/1999/10, p2-3

¹²³ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, par6

¹²⁴ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)* 4 November 1950

¹²⁵ Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163

¹²⁶ European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹²⁷ defines racial discrimination as:

Any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹²⁸

The Committee on the Elimination of Racial Discrimination (CERD) reiterates the ICERD's prohibition on racial discrimination in its General Recommendation.¹²⁹ It interprets the prohibition including both direct (by purpose) and indirect (by effect) discrimination.¹³⁰

Moreover, the right not to be discriminated against in education is also enshrined in the ICESCR and the CESCR previously mentioned commentary.¹³¹ Additionally to the accessibility criteria of the 4A Scheme, the document also emphasizes that a state's failure to take the necessary steps to "address de facto educational segregation" is a violation of Article 13.¹³²

The ECHR prohibits discrimination on grounds under Article 14, using an open-ended list, which means that any ground of discrimination is prohibited.¹³³ In addition, the most important documents regarding racial discrimination on EU level are the Charter of Fundamental Rights and the Racial Equality Directive (RED).¹³⁴ In spite of the Charter is drawing on important human rights documents, such as the ECHR, it is limited in its scope.

¹²⁷ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, v.660, p.195

¹²⁸ *ibid.* art1(1)

¹²⁹ UN Committee on the Elimination of Racial Discrimination, *CERD General Recommendation No.14: Definition of Discrimination*, 22 March 1993, Gen. Rec. No. 14. (General Comments) art1(1)

¹³⁰ Anita Danka and Iulius Rostas, 'Setting the Roma Policy Agenda: The Role of International Organizations in Combating School Desegregation' in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p58

¹³¹ UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, par59

¹³² *ibid.* par59

¹³³ Dragoljub Popovic, *European Human Rights Law - a Manual: An Introduction to the Strasbourg Court and Its Jurisprudence* (Eleven International Publishing, 2013) p294

¹³⁴ European Union, *Council Directive 2000/43/EC* of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, O.J. L180

Article 51 determines that the Charter only applies to Member States when they are implementing EU law. Otherwise, it basically applies to the acts of the EU institutions.¹³⁵ The RED, however, provides practical legal tools.

The RED defines racial discrimination as either direct or indirect discrimination. Direct discrimination refers to a situation where one person is treated less favorably than another in a comparable situation based on racial or ethnic origin. Compared to this, indirect discrimination occurs when persons of ethnic origin are placed in a disadvantaged situation as a consequence of a facially neutral provision or practice, unless this provision or practice can be objectively justified.¹³⁶

The RED in wording and aims is similar to the ICERD but it goes further in terms of enforcement as it is directly incorporated in the national level.¹³⁷ According to Article 13 of the document, states are obliged to establish national equality bodies in order to monitor the implementation. Furthermore the Member States can also turn to the Court of Justice of the European Union (CJEU) for clarification on the interpretation of the EU law under the preliminary ruling procedure.¹³⁸

According to the European Roma Rights Centre (ERRC) referring cases to the CJEU through the preliminary ruling can contribute to the strategic process of fighting segregation. Besides it can clarify the equality legislation it can also shed the light on the issue. As Article 15 of the RED stresses that sanctions for discriminative practices must be “effective, proportionate and dissuasive” the Luxemburg Court could have a huge effect with strong

¹³⁵ European Parliament, *The Interpretation of Article 51 of the EU Charter of Fundamental Rights: the Dilemma of Stricter or Broader Application of the Charter to National Measures* (2016) p14
<[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556930/IPOL_STU\(2016\)556930_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556930/IPOL_STU(2016)556930_EN.pdf)>
accessed 23 November 2016

¹³⁶ *Council Directive 2000/43/EC* art2(2)

¹³⁷ Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelties: Actio Popularis Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p182

¹³⁸ Adam Weiss, 'Can We Litigate Strategically in the Court of Justice of the European Union?' (2015)
<<http://www.errc.org/blog/can-we-litigate-strategically-in-the-court-of-justice-of-the-european-union/75>>
accessed 24 March 2016

interpretations of the provision in the right kind of cases. Thus the ERRC argues that it is very important to refer as many cases to the CJEU as possible.¹³⁹

There are further tools under the RED to support the enforcement of the provisional rights that Member States are obliged to implement. One of these tools is the *actio popularis*, which provides standing for NGOs before courts.¹⁴⁰ In Hungary, this mechanism had become an important element of the strategic litigation in school segregation cases.

¹³⁹ Adam Weiss, 'Can We Litigate Strategically in the Court of Justice of the European Union?' (2015) <<http://www.errc.org/blog/can-we-litigate-strategically-in-the-court-of-justice-of-the-european-union/75>> accessed 24 March 2016

¹⁴⁰ Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelties: *Actio Popularis* Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p185

5 The Case Law of the European Court of Human Rights

5.1 Right to Education under the ECHR Jurisprudence

5.1.1 Article 2 of Protocol No. 1: The Right to Education

The right to education is incorporated in the Convention under Article 2 of Protocol No. 1 that is stated as follows:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

This provision constitutes a whole, dominated by the first sentence, which guarantees an individual right to education. Article 2 of Protocol No. 1 has a negative wording, thus there is no positive obligation on the Contracting Parties under this provision to create a public education system or to subsidize it.¹⁴¹ However, the States still have a positive obligation to ensure respect for this right. The right to education is not an absolute right; States enjoy a certain margin of appreciation. But the imposed restrictions cannot impair the very essence of the right or curtail its effectiveness. Thus the restrictions must be foreseeable and have a legitimate aim, and the means and the aim must be proportionate.¹⁴² However, this provision does not contain an exhaustive list of legitimate aims.¹⁴³

5.1.2 Article 14: The Prohibition of Discrimination

Furthermore, Article 2 Protocol No. 1 might be connected to Article 14 when discrimination in education occurs. Article 14, the prohibition on discrimination is as follows:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹⁴¹ See the *Case „relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium* App no 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (ECHR, 23 July 1968)

¹⁴² See *Leyla Sahin v Turkey* App no. 44774/98 (ECHR, 10 November 2005) par 154

¹⁴³ European Court of Human Rights, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to Education* (2015) p5
<http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf> accessed 24 November 2016

As it was mentioned previously, this non-exhaustive list of the Convention ensures the prohibition of discrimination on any ground. Discrimination under Article 14 means a differential treatment comparing to persons in a relevantly similar situation without an objective and reasonable justification.¹⁴⁴ If a difference in treatment arises, it must have a legitimate aim and it must be proportionate.¹⁴⁵

Article 14 has the limitation of being a “parasitic” provision. It means that it can only be claimed in conjunction with other, substantive provisions.¹⁴⁶ The application of Article 14 must be linked to another provision of the ECHR, otherwise the Court will not assess it independently.¹⁴⁷ However, a violation of Article 14 might be found by the Court even if a violation was not established regarding the other provision(s) claimed.¹⁴⁸

5.2 Cases

In 2007, the first groundbreaking case, the *D.H. and Others v. the Czech Republic*¹⁴⁹ was decided by the European Court of Human Rights concerning school segregation of Roma children. This decision soon was followed by five important decisions: *Sampanis and Others v. Greece* (2008)¹⁵⁰, *Orsus and Others v. Croatia* (2010)¹⁵¹, *Sampani and Others v. Greece* (2012)¹⁵², *Horváth and Kiss v. Hungary* (2013)¹⁵³, *Lavida and Others v. Greece* (2013)¹⁵⁴. The Court ruled in favor of the applicants in all cases and found a violation of Article 2 of

¹⁴⁴ Charilaos Nikolaidis, *The Right to Equality in European Human Rights Law: The Quest for Substance in the Jurisprudence of the European Courts* (Routledge, 2015) p55

¹⁴⁵ See *Altinay v. Turkey* App no 37222/04 (ECHR, 9 October 2013) par41-46 and par60

¹⁴⁶ *ibid.* p54

¹⁴⁷ See the Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium App no 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (ECHR, 23 July 1968) par9 of the „The Law: Interpretation adopted by the Court” part

¹⁴⁸ David Harris, Michael O’Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009) p580

¹⁴⁹ *D.H. and Others v. the Czech Republic* Application no. 57325/00 (ECHR, 2007)

¹⁵⁰ *Sampanis and Others v. Greece* App no 32526/05 (ECHR, 5 June 2008)

¹⁵¹ *Orsus and Others v. Croatia* App no 15766/03 (ECHR, 16 March 2010)

¹⁵² *Sampani and Others v. Greece* App no 59608/09 (ECHR, 11 December 2012)

¹⁵³ *Horváth and Kiss v. Hungary* Application no. 11146/11 (ECHR, 2013)

¹⁵⁴ *Lavida and Others v. Greece* App no 7973/10 (ECHR, 30 May 2013)

Protocol No. 1 (right to education) in conjunction with Article 14 (prohibition of discrimination).

5.2.1 D.H. and Others v. the Czech Republic (2007)

The *D.H.* case¹⁵⁵ concerned 18 Roma children as applicants who were enrolled in special schools designed for children with mental deficiencies in the city of Ostrava. The applicants claimed that their enrollment was not a result of their mental capacities rather than a consequence of biased tests which disproportionately affected Roma children.¹⁵⁶ To support their argument they submitted statistical data which revealed that half of Romani children attended special schools compared to 1.8% of non-Roma. According to this data, it was 27 times more likely for a Roma child to be placed in a special school than to a non-Roma.¹⁵⁷

Based on this statistical evidence, the applicants claimed a prima facie case of indirect discrimination, thus a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 1. They argued that the burden of proof should shift to the Government to provide satisfactory explanation.¹⁵⁸ In contrast, the Czech Government argued that the applicants need to establish the difference in treatment based on racial origins. They further argued that the placement of the children in special schools followed their best interest as proven by the consent of the parents. This parental consent was highly questioned by the applicants due to the poor educational background and lack of information of the parents.¹⁵⁹

The applicants never claimed the invidious intent of the authorities. However, they argued that it is not a necessary condition for establishing indirect discrimination.¹⁶⁰ It is

¹⁵⁵ *D.H. and Others v. the Czech Republic* App no 57325/00 (ECHR, 13 November 2007)

¹⁵⁶ Jennifer Devroye, 'The Case of D.H. and Others v. the Czech Republic' (Northwestern Journal of International Human Rights, v. 7, n.1, 2009) p82

¹⁵⁷ *D.H. and Others v. the Czech Republic* (2007) par18

¹⁵⁸ James A. Goldston, 'Ending Racial Segregation in Schools: The Promise of D.H.' (Roma Rights Journal, n.1, 2008) p4

¹⁵⁹ Jennifer Devroye, 'The Case of D.H. and Others v. the Czech Republic' (Northwestern Journal of International Human Rights, v.7, n.1, 2009) p90

¹⁶⁰ *D.H. and Others v. the Czech Republic* (2007) par129

enough that the applicants had been “treated less favorably than other children in a comparable situation without any objective and reasonable justification.”¹⁶¹

Following the Chamber’s decision, which did not find a violation, the Grand Chamber finally held by 13 votes to 4 that there had been a violation amounting to indirect discrimination against the Roma children. In its assessment the Court acknowledged that “discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations”.¹⁶² “The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group”.¹⁶³ The Court used a heightened scrutiny as a case concerned racial discrimination against Roma, a historically disadvantaged and vulnerable minority who require special protection.¹⁶⁴

To establish the difference in treatment the Court relied on the statistical data submitted by the parties. The burden of proof shifted to the Government, who - according to the Court - failed provide a justification.¹⁶⁵ The Court further stated that an uninformed and incapable parental consent cannot be the waiver of the right not to be discriminated against.¹⁶⁶

5.2.2 Sampanis and Others v Greece (2008)

11 applicants living in a Romani settlement in Greece brought the *Sampanis* case¹⁶⁷ against the authorities claiming that they failed to provide schooling for their children during the 2004-2005 school year and then placed their children in separate classes in an annex to the

¹⁶¹ *D.H. and Others v. the Czech Republic* (2007) par124

¹⁶² *ibid.* par175

¹⁶³ *ibid.* par184

¹⁶⁴ Jennifer Devroye, ‘The Case of D.H. and Others v. the Czech Republic’ (Northwestern Journal of International Human Rights, v. 7, n.1, 2009) p92

¹⁶⁵ *D.H. and Others v. the Czech Republic* (2007) par196

¹⁶⁶ *ibid.* par202

¹⁶⁷ *Sampanis and Others v. Greece* App no 32526/05 (ECHR, 5 June 2008)

main building of the school.¹⁶⁸ The separation of the children was the consequence of the protest of non-Roma parents against the admission of Roma children.¹⁶⁹ The educational authorities tried to deal with the situation by transferring Roma children in a separate building. The applicants finally gave their consent to the transfer of the children; however, according to them, it happened under pressure.¹⁷⁰

The Court found a violation of Article 14 in conjunction with Article 2 of Protocol 1 with accepting the applicants' argument that Roma students were treated less favorable than the non-Roma. The Government failed to provide an objective and reasonable justification. The Court rejected the Government's argument about the parental consent. Furthermore, it highlighted the racist character of the protest of the non-Roma parents and it concluded that these events had an influence on the authorities' decision to place the children in a segregated building. In addition, the students were separated without any assessment testing, thus the separation was purely based on ethnic origin.¹⁷¹

5.2.3 Orsus and Others v. Croatia (2010)

The 14 applicants of the *Orsus case*¹⁷² attended mainstream schools in three different Croatian villages, but they were put in separate Roma-only classes due to their alleged language difficulties.¹⁷³ The applicants submitted statistics showing the high drop-out rates of Roma children. In one of the schools the proportion of Roma students completing their primary education in 2006/07 was 16% comparing to 91% in the total student body. They further presented statistical evidence proving that the majority of Roma children end up in

¹⁶⁸ European Roma Rights Centre, 'ERRC Welcomes European Court Judgment on Segregated Education of Roma in Greece' (2008) < <http://www.errc.org/article/errc-welcomes-european-court-judgment-on-segregated-education-of-roma-in-greece/2956> > accessed 21 March 2016

¹⁶⁹ William S. New, 'Sampanis v. Greece: Discrimination, Disrespect, and Romani Identity on the EU Frontier' (Diaspora, Indigenous and Minority Education, v.6, n.3, 2012) p130

¹⁷⁰ Martinus Nijhoff, 'Sampanis and Others v. Greece' (Human Rights Case Digest, v.18, 2007-2008) p934

¹⁷¹ *ibid.* 935-937

¹⁷² *Orsus and Others v. Croatia* App no 15766/03 (ECHR, 16 March 2010)

¹⁷³ *ibid.* par9-10

separated classes in the county (59%) and especially in the villages concerned (83% and 88%)^{174 175}.

The applicants claimed that the curriculum was severely reduced in the separated classes, thus the pupils there received lower quality education. Besides they suffered emotional and psychological harm deriving from the feeling of inferiority. In spite of the Government's claim that the separation aimed to reduce language barriers between the Roma and non-Roma students, there was no special program introduced to reach this goal. The applicants further claimed that the authorities failed to take specific measures to reduce the gaps between the students and establish procedures to channel Roma pupils back to mainstream classes.¹⁷⁶

The Court reiterated several principles used in the previous cases. As Roma is a vulnerable group, it requires a special protection, especially in case of the children's right to education which has a "paramount importance".¹⁷⁷ It acknowledged the applicants' argument that the placement of Roma pupils to separate classes means a difference in treatment which amounts to discrimination.¹⁷⁸ The Government failed to present an appropriate justification. The separate placement of children aiming to improve their language skills would not necessarily amount to a violation, but the authorities did not provide adequate safeguards and special language programs, and applied inappropriate tests. So they violated both of the previously mentioned articles.¹⁷⁹

¹⁷⁴ The data concerns the 2001/02 school year.

¹⁷⁵ *Orsus and Others v. Croatia* (2010) par18

¹⁷⁶ Martinus Nijhoff, 'Orsus and Others v. Croatia' (Human Rights Case Digest, v.18, 2007-2008) p1146

¹⁷⁷ *Orsus and Others v. Croatia* (2010) par147

¹⁷⁸ *ibid.* par191

¹⁷⁹ *ibid.* par180-186

5.2.4 *Sampani and Others v. Greece* (2012)

The *Sampani case*¹⁸⁰ was brought before the Court by 140 Greek nationals of Roma origin, mainly children and some parents or guardians belonging to 38 families. Some of them were applicants also in the 2008 *Sampanis case*. The applicants complained that they or their children were victims of school segregation violating their right under Article 14 in conjunction with Article 2 of Protocol No. 1. They further relied on Article 46 which concerns the binding force and execution of the judgments. They claimed that the authorities failed to implement the 2008 *Sampanis* judgment.¹⁸¹

The Chamber of the Court confirmed the 2008 *Sampanis* judgment and noted that there had been no significant change in the situation of Roma regarding school segregation in Greece.¹⁸²

5.2.5 *Horváth and Kiss v. Hungary* (2013)

The *Horváth and Kiss case*¹⁸³, the only Hungarian school segregation case before the ECHR, was decided in 2013. The two applicants got enrolled in a special school in the city of Nyíregyháza as they were both diagnosed with mild mental disability.¹⁸⁴ The parents did not consent to the placement of their children and they were not informed about their opportunities of appeal.¹⁸⁵

Statistical data was also presented in the case. It revealed that 8.7% is the proportion of Roma pupils attending primary school in the city and around 40 – 50% of them are enrolled

¹⁸⁰ *Sampani and Others v. Greece* App no 59608/09 (ECHR, 11 December 2012)

¹⁸¹ European Court of Human Rights Press Release, 'Failure of the authorities to integrate Roma children into the ordinary education system amounted to discrimination against them' (2012) p1-2 <http://www.aedh.eu/plugins/fckeditor/userfiles/file/Discriminations%20et%20droits%20des%20minorit%C3%A9s/Chamber%20judgment%20Sampani%20and%20Others%20v_%20Greece%2011_12_2012.pdf> accessed 4 October 2016

¹⁸² *ibid.* p3

¹⁸³ *Horváth and Kiss v. Hungary* App no 11146/11 (ECHR, 29 January 2013)

¹⁸⁴ *ibid.* par6

¹⁸⁵ *ibid.* par13

in special schools.¹⁸⁶ According to the applicants, it is a consequence of the assessment based on paper-based, culturally biased, standardized tests.¹⁸⁷

The Court found problematic that the Hungarian authorities set IQ 86 as a border value comparing to the IQ 70 WHO standard.¹⁸⁸ The Court stated that there is a real danger that the tests are biased; however, it is not in its competence to decide on the validity of the tests.¹⁸⁹ In addition, the Roma is considered to be a vulnerable minority as a result of their “turbulent history and constant uprooting”.¹⁹⁰ Therefore they require a special protection and special consideration must be given to their different lifestyle.¹⁹¹ The Court said that „the State has specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests”.¹⁹² As the State failed to provide adequate safeguards, the Court found a violation.¹⁹³

5.2.6 *Lavida and Others v. Greece (2013)*

The applicants of the *Lavida* case¹⁹⁴ were residents in a different town of Greece than the applicants in the *Sampanis* and the *Sampani* cases. However, this case reinforced the pattern of school segregation of Romani children in Greece. The 23 applicants complained that they were placed in a school reserved for Roma children. Furthermore, they claimed that the authorities failed to act despite that the situation was brought to their attention.¹⁹⁵

¹⁸⁶ *Horváth and Kiss v. Hungary* (2013) par7

¹⁸⁷ Chance for Children Foundation, 'The Case of Horváth and Kiss v. Hungary [Horváth and Kiss kontra Magyarország ügy]' <<http://cfcf.hu/horv%C3%A1th-%C3%A9s-kiss-kontra-magyarorsz%C3%A1g-%C3%BCgy>> accessed 8 October 2016

¹⁸⁸ *Horváth and Kiss* (2013) par13-14

¹⁸⁹ Chance for Children Foundation, 'The Case of Horváth and Kiss v. Hungary [Horváth and Kiss kontra Magyarország ügy]' <<http://cfcf.hu/horv%C3%A1th-%C3%A9s-kiss-kontra-magyarorsz%C3%A1g-%C3%BCgy>> accessed 8 October 2016

¹⁹⁰ *Horváth and Kiss* (2013) par102

¹⁹¹ *ibid.*

¹⁹² *ibid.* par116

¹⁹³ *ibid.* par121

¹⁹⁴ *Lavida and Others v. Greece* App no 7973/10 (ECHR, 30 May 2013)

¹⁹⁵ European Court of Human Rights Press Release 'School Placement of Roma Children must not amount to Ethnic or Racial Segregation' (2013) p1-2

The Court refused the Government's argument about the absence of the parents request to transfer their children to another school. As the Government was unable to provide any further justification, the Court found a violation despite of the lack of discriminatory intent.¹⁹⁶

5.3 The Importance of the Cases

This series of cases established a firm case law of the ECtHR in school segregation. The judgments were groundbreaking from several aspects. The Court established and re-affirmed important principles.

First of all, the Court stated in the *D.H.* judgment that school segregation of Roma is a widespread practice in Europe and the Czech Republic is not the only country who must tackle this problem.¹⁹⁷ This was the first occasion when the Court found a violation of Article 14 in connection with a pattern of racial discrimination in a particular sphere of public life. It is important, that the Court underscored that the Convention can address also systemic racial discrimination, not only specific acts.¹⁹⁸ To support the systemic nature of school segregation, the Court accepted reliable statistical data as evidence.¹⁹⁹ Providing statistical data is not just an effective way to prove segregation, but this approach of the Court is favorable for strategic litigation as the focus goes beyond the individual cases.

Secondly, the Court clarified that segregation is a form of discrimination which violates Article 14, the prohibition of discrimination.²⁰⁰ However, the type of this discrimination seems uncertain in most of the cases. Despite the Court clarified the first time

¹⁹⁶ European Court of Human Rights Press Release 'School Placement of Roma Children must not amount to Ethnic or Racial Segregation' (2013) p3

¹⁹⁷ *D.H. and Others v. Czech Republic* (2007) par205

¹⁹⁸ European Roma Rights Centre, 'D.H. and Others v. the Czech Republic' (2015) <<http://www.errc.org/article/dh-and-others-v-the-czech-republic/3559>> accessed 4 October 2016

¹⁹⁹ Desegregation an Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p49 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁰⁰ *ibid.*

that a difference in treatment which arises from seemingly neutral policies or measures may amount to indirect discrimination,²⁰¹ it only used the indirect discrimination test in the misdiagnosis cases. Otherwise it ran a unified test and seemed reluctant to clarify the exact type of discrimination. It might suggest that those cases are viewed by the Court as direct discrimination, but it refrained from writing that down. Although the judgments also highlighted that the discriminatory intent of the authorities is not required.²⁰²

Thirdly, in case of alleged indirect discrimination the burden of proof shifts to the Government if the applicant is able to establish a rebuttable presumption about the discriminatory effect of the measure or practice. Then the state is obliged to provide a justification for the difference of treatment.²⁰³

Furthermore, the Court also acknowledged the vulnerability of the Roma community deriving from their historically disadvantaged situation. They require special protection and stricter scrutiny.²⁰⁴ Because of their vulnerability, the importance of the prohibition of discrimination and the principle of the best interest of the child, the parental consent cannot be accepted as a waiver to this right. As the Court noted, in most of the cases this consent was not informed and parents lacked the necessary knowledge to make such a serious decision.²⁰⁵

²⁰¹ Desegregation an Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p50 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁰² Lilla Farkas, 'Report on Discrimination of Roma Children in Education' (2014) p39 <http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf> accessed 13 March 2016

²⁰³ European Roma Rights Centre, 'D.H. and Others v. the Czech Republic' (2015) <<http://www.errc.org/article/dh-and-others-v-the-czech-republic/3559>> accessed 4 October 2016

²⁰⁴ Desegregation an Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p50 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁰⁵ *ibid.*

5.4 Remedies Offered by the ECtHR

5.4.1 General Overview

The Court has the competence to afford just satisfaction based on Article 41, if a breach of the Convention occurs and the domestic law allows only partial reparation. However, awarding just satisfaction is not an automatic consequence of a finding. In addition, the exact meaning of “just” can vary on a case by case basis. For instance, in some cases the Court may consider the finding of a violation in itself a sufficient and just satisfaction. But in other cases it may give financial compensations.²⁰⁶

The Court awards this compensation both for pecuniary and non-pecuniary damages. In case of pecuniary damages, the Court in principle attempts to place the applicant financially in a position as similar as possible to the one he or she would be if the violation had never occurred. For the non-material harm suffered, such as physical or mental injury, pain, stress, feelings of anxiety and humiliation, the applicant can still receive money; however, it is much harder to calculate the exact sum. Furthermore, the Court can order the reimbursement of the costs of the litigation paid by the applicant(s). This system of compensation principally aims to indemnify the applicant for the damages suffered as a consequence of the violation, and not to punish the Contracting Party.²⁰⁷

Besides that the Court can offer declaratory relief and/or financial compensation to the applicants, it can also oblige states to take further general or individual measures in order to stop the violation concerned. General measures can be, for example, legislative or regulatory amendments or changes in administrative practices. While individual measures may include striking out an unjustified criminal conviction from the criminal records or to grant a

²⁰⁶ Julia Laffranque, ‘Can’t Get Just Satisfaction’ in Anja Seibert-Fohr and Mark E. Villiger (eds), *Judgements of the European Court of Human Rights – Effects and Implementation* (Ashgate, 2014) p92

²⁰⁷ *ibid.* p82-87

residence permit.²⁰⁸ However, the Court generally gives discretion to the States to choose the most appropriate ways to remedy the situation. It is rare that the Court indicates what types of corrective measures should be taken by a state.²⁰⁹ In groundbreaking cases, it is even less likely that the Court will specify the measures, as favoring the applicant and finding a violation is already considered to be a big step.²¹⁰

5.4.2 Remedies in School Segregation Cases

In the school segregation cases mentioned above, the applicants received compensation for non-pecuniary damages if they filed damages claims for „the humiliation and frustration caused by the indirect discrimination”²¹¹. But the effects of these compensations are questionable.

The ERRC conducted interviews with some of the applicants of the *D.H.* case or with their relatives in 2010, 2.5 years after the judgment. These interviews revealed a sorrowful reality. Denesa Holubova, one of the applicants said that although she was working as a chef, she was the only one out of the 18 applicants who had a job. Other applicants stressed that their children are still facing the same problems as they did back then. The case lasted for 7 years, and by the time it was decided, most of the applicants were not part of the school system anymore.²¹² They did not receive adequate education and they were deprived of their future opportunities. Taking this into consideration, the financial compensation what they received seems insignificant.

²⁰⁸ David Harris, Michael O’Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009) p875-878

²⁰⁹ *ibid.* p862

²¹⁰ Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, First Edition, 1999) p290

²¹¹ *D.H. and Others v. the Czech Republic* Application no. 57325/00 (ECHR, 2007) par217

²¹² Lydia Gall and Robert Kushen, ‘Implementation of Judgments: What Happened to the Promise of *D.H.*?’ (2010) <<http://www.errc.org/article/roma-rights-1-2010-implementation-of-judgments/3613/5>> accessed 19 April 2016

The situation of István Horváth and András Kiss seems to be very similar. Dr. Lilla Farkas, the attorney of the CFCF at the time of the case, and Erzsébet Mohácsi, an activist and human rights defender and the president of the Foundation at that time, talked about the two applicants in an interview in 2013. According to them, István planned to be a car mechanic, but from his special school he had no chances. István was still hoping to change his future at the beginning of the case before the domestic courts. However, 8 years later when the case was decided by the Strasbourg Court, he was already 20 years old. István currently lives in Budapest and makes his living from seasonal jobs. There is no information about the current situation of András.²¹³

It seems that financial compensation has no or little effect neither on the individual applicants' lives nor on school segregation at large. This partially derives from the limited competencies of the ECtHR and the length of the proceedings, but also from the systemic nature of school segregation which cannot be effectively tackled on an individual basis. In addition, in school segregation cases the person or the entity that made the initial decision to segregate (or ignored spontaneous segregation), might not be the one who pays for the compensation. Thus its deterrent effect is debatable regarding similar future choices.²¹⁴

At the beginning of this ongoing strategic litigation on school segregation the Court was more reluctant to specify any measure to be taken related to the structural nature of the issue. Later, for example in the *Horváth and Kiss* judgment the Court stressed that the State has „specific positive obligations to avoid the perpetuation of past discrimination or

²¹³ Bundula István ‘Without the Will of the State Segregation Remains: Interview with Lilla Farkas, Attorney and Erzsébet Mohácsi, Human Rights Defender [Ha az állam nem akarja, a szegregáció nem szűnik meg: interjú Farkas Lilla ügyvéddel és Mohácsi Erzsébet jogvédővel]’ (*Magyar Narancs Online*, 2013) <<http://magyarnarancs.hu/belpol/farkas-lilla-mohacsi-erzsebet-strasbourg-a-szegregacio-nem-szunik-meg-83497#>> accessed 12 September 2016

²¹⁴ Jack Greenberg, ‘Report on Roma Education Today: From Slavery to Segregation and Beyond’ (Columbia Law Review, v.110, n.4, 2010) p943

discriminative practices disguised in allegedly neutral tests.”²¹⁵ This was missing from the *D.H.* decision.

Another good example is the series of the Greek cases, which shows that the continued non-compliance urged the Court to impose more structural remedies. In the 2008 *Sampanis* case there were no required measures specified. But in the 2012 *Sampani* case the Court specified that the applicants who are still of school age should be enrolled in an integrated school and the rest of the applicants should be enrolled at a second chance school. It can be argued, that in the *Lavida* case the Court went even further by establishing that the duty to desegregate is an inherent element of the right to education free of discrimination.²¹⁶

5.5 Execution of the Judgments of the ECtHR

5.5.1 General Overview

In case the Court finds a violation of any of the Convention provisions, it calls for further steps to ensure the proper implementation of its judgment on the national level. However, the Court is not self-executing and has no power to enforce its own judgment.²¹⁷ It is stated in Article 46 (2) of the ECHR that “the final judgment of the Court shall be transmitted to the Committee of Ministers” (Committee), who is responsible for the supervision of the execution. The Committee, as an executive organ, is separated from the judicial power of the Court and composed of the Ministers of Foreign Affairs of all Member States.²¹⁸ However, there is only one annual meeting on ministerial level. The permanent representatives are the Ministers’ Deputies.²¹⁹

²¹⁵ *Horváth and Kiss v. Hungary* Application no. 11146/11 (ECHR, 2013) par116

²¹⁶ Lilla Farkas, ‘Report on Discrimination of Roma Children in Education’ (2014) p10

<http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf> accessed 13 March 2016

²¹⁷ David Harris, Michael O’Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009) p180

²¹⁸ *Statute of the Council of Europe*, 5 May 1949, ETS 001, Article 14

²¹⁹ David Harris, Michael O’Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009) p872

The Committee may adopt two types of resolutions. Final resolutions are adopted when the Committee finds that the state concerned executed the judgment of the Court. Interim resolutions may be adopted to seek for information on the execution of the judgments or express the Committee's concerns towards the progress of the execution. In its supervision process the Committee gives priority to those judgments, where the Court found a systemic problem as set in Rule 4 (1).²²⁰

During this supervision, the Committee first requires the state to inform it about its measures taken or planned to be taken to remedy the violation. Then the Committee examines whether the just satisfaction awarded has been paid and whether individual and/or general measures have been taken. A developing practice is that the Committee invites the Member State right after the final judgment to submit an action plan within six month. The Committee might support this process by making suggestions for possible measures and by discussing the final action plan after its submission.²²¹

In case a state fails to abide by the final judgment, the readmission of a case might be possible under rare circumstances.²²² A more likely solution is that the Committee refer the case back to the Court under Protocol 14. However, it does not mean the reopening of the original question of the case, thus it cannot lead to further compensation. If a Court finds a violation of Article 46 (1), it refers the case back to the Committee. The final sanction is provided by Article 8 of the Statute of the Council of Europe. Based on this, the voting rights of the State concerned might be suspended. In addition, the termination of a membership is also possible. However, it seems unlikely that any of these sanctions will be used.²²³

²²⁰ David Harris, Michael O'Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009) p873

²²¹ *ibid.*

²²² See the *Case of Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland* App no 32772/02 (ECHR, 30 June 2009)

²²³ *ibid.* p884

5.5.2 The Implementation of the Concrete Cases

In terms of implementation of the judgments, just satisfaction offered by the Court is rarely problematic. But states often fail to take appropriate further steps to stop the violation despite that they usually enjoy a wide margin of appreciation concerning the measures based on the principle of subsidiarity.²²⁴

School segregation cases are posing specific challenges because of the structural nature of the problem which would require structural solutions. Based on the recommendations of the ERRC and the Open Society Justice Initiative, several actions and reforms must be taken in the same time. They suggest, amongst others, to reform the collection of statistical data, to enact appropriate legislation, to improve the early childhood education system's capacity to compensate for disadvantages, to introduce culturally sensitive assessment and most importantly, to allocate sufficient financial resources.²²⁵ The complexity of the required measures is obvious; however, it does not exempt the governments to act against school segregation.

In 2011, the Committee of Ministers closed the examination on the execution of the *Sampanis* judgment as it concluded that Greece took sufficient measures (e.g. abolition of special preparatory classes, enrollment of the applicants in a newly-built school and dissemination of information).²²⁶ However, a year later the Court held Greece liable again in the *Sampani* judgment highlighting that there had been no significant changes regarding

²²⁴ Dia Anagnostou, 'Introduction: Untangling the Domestic Implementation of the European Court of Human Rights' Judgments' in Dia Anagnostou (ed), *The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy* (Edinburgh University Press, 2013) p1

²²⁵ European Roma Rights Centre, 'Implementation of Judgments of the European Court of Human Rights in Discrimination of Romani Children in Education (Croatia, Greece, Czech Republic)' (Working Session 7 - Tolerance and Non-discrimination I, Review Conference Warsaw, 30 September - 8 October 2010) <<http://www.osce.org/home/71928>> accessed 21 November 2016

²²⁶ Open Society Justice Initiative, *Strategic Litigation Impacts: Roma School Desegregation* (2016) p30 <<https://www.opensocietyfoundations.org/sites/default/files/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>> accessed 23 May 2016

school segregation in the country.²²⁷ This was reiterated by the *Lavida* case as well. In both rulings Greece was subjected to more specific measures, mainly the transfer of the Roma children to integrated schools and the closure of the segregated ones.

Learning from the previous mistakes made after the *Sampanis* judgment, the Greek authorities introduced not only soft measures, but also binding administrative acts after *Sampani*. From the segregated school of the *Sampani case* the applicants and other Roma pupils were transferred to mainstream schools, and the school is listed to be closed. An order authorizing transfers from the school of the *Lavida* case was issued; although its implementation is awaiting. The segregated school is still operating.²²⁸ A report published by the European Commission against Racism and Intolerance (ECRI) in 2015 also acknowledged the attempts of the Greek authorities. However, they also stressed that there is still a lot to be done as Greece continues to fail in providing equal education for all students.²²⁹

The situation seems more challenging in the Czech Republic. The government has taken some smaller steps to eliminate segregation of the Roma after the *D.H.* judgment, but there has been no significant change. The high hopes after the ruling that new laws and policies will be introduced faded away because of the political unwillingness.²³⁰ According to the Roma Inclusion Index published in 2015, in spite of the slight improvement in the situation, the school segregation of Roma is still widespread as 40% of the Roma students

²²⁷ European Court of Human Rights Press Release, 'Failure of the authorities to integrate Roma children into the ordinary education system amounted to discrimination against them' (2012) p3 <http://www.aedh.eu/plugins/fckeditor/userfiles/file/Discriminations%20et%20droits%20des%20minorit%C3%A9s/Chamber%20judgment%20Sampani%20and%20Others%20v_%20Greece%2011_12_2012.pdf> accessed 4 October 2016

²²⁸ Open Society Justice Initiative, *Strategic Litigation Impacts: Roma School Desegregation* (2016) p41-42 <<https://www.opensocietyfoundations.org/sites/default/files/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>> accessed 23 May 2016

²²⁹ European Commission against Racism and Intolerance, *ECRI Report on Greece (Fifth Monitoring Cycle)*(2015) p32 <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf>> accessed 18 October 2016

²³⁰ Vivien Brassói, *Infringement Procedures against Czech Republic, Slovakia, Hungary for Segregating Romani Children* (Romedia Online, 2016) <<https://romediafoundation.wordpress.com/2016/08/12/infringement-procedures-against-czech-republic-slovakia-hungary-for-segregating-romani-children/>> accessed 18 November 2016

have studied in a segregated school.²³¹ As a consequence of this constant failure to remedy the situation, the European Union launched an infringement procedure against the Czech Republic in 2014, because the state is in breach of the EU anti-discrimination legislation.²³² As a response, the government launched a new action plan and introduced several new measures to advance integrated education in 2015, but the real outcome of these measures is not clear yet.²³³

Unfortunately, the situation in Hungary has several similarities with the Czech Republic. The Hungarian authorities despite the request of the Committee of Ministers failed to collect and submit disaggregated data regarding the number of Roma children channeled into special schools. Thus it is hard to judge the state of the implementation of the *Horváth and Kiss* judgment. But based on the report of the ERRC and the CFCF it seems that culturally biased testing is still in use all around the country and there is no effective monitoring of the expert panels.²³⁴

The seriousness of the situation is also clear from the fact that the European Commission initiated an infringement procedure against Hungary as well in 2016.²³⁵ The failed implementation of the *Horváth and Kiss* judgment is not the only reason which led to this procedure. In the following subchapter, we will look at the reasons why the infringement procedure was launched despite the relatively successful domestic litigation.

²³¹ Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015* (2015) <<http://www.romadecade.org/news/roma-inclusion-index-2015/9810>> accessed 11 February 2016

²³² Open Society Justice Initiative, *Strategic Litigation Impacts: Roma School Desegregation* (2016) p61 <<https://www.opensocietyfoundations.org/sites/default/files/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>> accessed 23 May 2016

²³³ Vivien Brassói, *Infringement Procedures against Czech Republic, Slovakia, Hungary for Segregating Romani Children* (Romedia Online, 2016) <<https://romediafoundation.wordpress.com/2016/08/12/infringement-procedures-against-czech-republic-slovakia-hungary-for-segregating-romani-children/>> accessed 18 November 2016

²³⁴ Bernard Rorke 'Segregation in Hungary: The Long Road to Infringement' (2016) <<http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>> accessed 8 September 2016

²³⁵ Roma Sajtóközpont, 'An Infringement Procedure is Launched against Hungary because of School Segregation [Kötelezettségszegési eljárás indul Magyarország ellen az iskolai elkülönítés miatt]' (2016) <<http://romasajtokozpont.hu/kotelezettsegszegesi-eljaras-indul-magyarorszag-ellen-az-iskolai-elkulonites-miatt/>> accessed 15 November 2016

6 Strategic Litigation in School Segregation Cases in Hungary

6.1 The Relevant Legal Framework

As Hungary is part of the European Union, its legislation is directly incorporated in the national legal system.²³⁶ Based on the RED, domestic courts can turn to the CJEU for clarification on the interpretation of the EU law under the preliminary ruling procedure.²³⁷ This procedure can be used to buttress the strategic aims of fighting school segregation by referring as many cases to the CJEU as possible. Besides raising attention to the issue, it can also clarify the equality legislation.²³⁸

The RED provides further instruments to support its enforcement. In case of Hungary, one example is the Equal Treatment Authority, which was established by the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Equal Treatment Act) based on the principles enshrined in the RED. An important element of this Act is that it explicitly prohibits segregation under Section 7.

As the Act prohibits racial discrimination the Authority's task is to conduct investigation either ex officio or for the request of the injured party in case of an alleged discrimination. If it finds a violation of the principle of equal treatment, it can "order that the situation constituting a violation of law be eliminated, prohibit the further continuation of the conduct constituting a violation of law, publish its decision establishing the violation of law or impose a fine".²³⁹ However, the competence of the Authority is relatively limited, for example it cannot provide financial compensation.²⁴⁰

²³⁶ Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelties: Actio Popularis Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p182

²³⁷ Adam Weiss, 'Can We Litigate Strategically in the Court of Justice of the European Union?' (2015) <<http://www.errc.org/blog/can-we-litigate-strategically-in-the-court-of-justice-of-the-european-union/75>> accessed 24 March 2016

²³⁸ *ibid.*

²³⁹ Equal Treatment Act Section 16

²⁴⁰ The Equal Treatment Authority <<http://www.egyenlobanasmod.hu/article/index/home>> accessed 30 March 2016

Besides turning to the Equal Treatment Authority, there is another option for those whose right to equal treatment was violated. Section 76 of the Hungarian Civil Code²⁴¹ states that “any breach of the principle of equal treatment [...] shall be deemed as violations of personality rights”. Section 84 provides those, whose personality rights were violated with the opportunity to turn to court, and:

Demand a court declaration of the occurrence of the infringement, demand to have the infringement discontinued and the perpetrator restrained from further infringement [...] the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator file charges for punitive damages [...].

In addition, an important novelty in the Hungarian system is the possibility for *actio popularis* claims. *Actio popularis* is a legal instrument which allows third parties (such as NGOs) to bring a lawsuit in the interest of the public welfare. It provides standing for organizations representing a public interest before courts.²⁴² It derives from Article 7 (2) of the RED and incorporated in the domestic legislation through Section 20 (1) of the Equal Treatment Act. This Section states that:

A lawsuit can be initiated before the court under personal or labor law *because of a violation of the principle of equal treatment* before the court can be initiated by a) the Public Prosecutor, b) the Authority, or c) *the social and interest representation organization, if the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and the violation of law affects a larger group of persons that cannot be determined accurately.*

In Hungary this opportunity has been used in several occasions regarding school segregation. In most school segregation cases the victims were represented by the Chance for

²⁴¹ *Civil Code* (Hungary), Act IV of 1959, 1 May 1960, Section 76

²⁴² Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelties: *Actio Popularis* Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p185

Children Foundation (CFCF), a civil organization founded with the mission to fight for equal access to education for Roma children.²⁴³

6.2 Hungarian Cases

The following part is an introduction to the main cases of the school segregation litigation in Hungary. It will discuss the constant struggle leading to great successes and to dispiriting setbacks with the focus on the remedies offered by the courts and the implementations of the judgments.

6.2.1 Cases Concerning Separate Schools (*Miskolc, Nyíregyháza, Kaposvár, Győr*)

The first case filed by the CFCF concerning school segregation was against the local municipality of *Miskolc* in 2005²⁴⁴. In this period, the widespread residential segregation of the Roma population in the city resulted in an extremely segregated school system. Despite the local municipality's attempt to administratively and economically integrate the local primary schools the previous school districts were untouched.²⁴⁵ Thus in reality the segregated schools remained segregated depriving most of the Roma children from access to schools providing high quality education.

The CFCF argued that the municipality's decision to keep the previous school districts unchanged contributed to the segregation of Roma and multiply disadvantaged children.²⁴⁶ After the rejection of the claim by the first instance court the case ended up before the Debrecen Regional Court of Appeal. The key question for both courts was whether the invidious intent of the defendant is necessary for discrimination. In contrast to the first instance court, the appeal court stressed that the defendant's intent is negligible, the outcome

²⁴³ Chance for Children Foundation 'About Us' <<http://www.cfcf.hu/en/about-us>> accessed 28 March 2016

²⁴⁴ *Miskolc case*: Borsod-Abaúj-Zemplén County Court, 13.P.21.660/2005/16.; Debrecen Regional Court of Appeal, Pf.I.20.683/2005/7.

²⁴⁵ Borsod-Abaúj-Zemplén County Court, 13.P.21.660/2005/16. p6

²⁴⁶ Chance for Children Foundation, 'The Desegregation Case of Miskolc [Miskolci deszegregációs per]' <<http://cfcf.hu/miskolci-deszegreg%C3%A1ci%C3%B3shttp://cfcf.hu/miskolci-deszegreg%C3%A1ci%C3%B3s>> accessed 6 September 2016

is what matters. Thus the court found a violation of equal treatment as guaranteed by the Equal Treatment Act.²⁴⁷

As in *Miskolc*, also in *Nyíregyháza* and *Kaposvár* the school segregation was a consequence of the residential segregation of the Roma. However, these cases were concerning two schools operating on the brink of two Romani settlements. Despite both cities had several primary schools; the schools concerned almost exclusively enrolled Roma students from the nearby settlement partially as a consequence of the school districts.

The CFCF initiated proceedings against the municipalities of the two cities because they were the ones that maintained these schools. The case concerning *Nyíregyháza* was finally dropped by the plaintiff in 2007, as following the negotiations the municipality agreed to close the school, enroll the current students in 6 different schools of the city and support them with school buses.²⁴⁸

Concerning *Kaposvár*, the case²⁴⁹ started in 2008 and by 2010 the Supreme Court held that the municipality failed to fulfill its obligation of equal treatment by maintaining the school segregation.²⁵⁰ It was reiterated by the Supreme Court that the spontaneous nature of the segregation and the lack of an invidious intent do not exempt the authorities from their responsibilities to act against segregation. They fail their obligations of equal treatment simply by maintaining the situation.²⁵¹

Both the *Nyíregyháza* and the *Kaposvár* cases later continued with further litigation; however, with very different results.

²⁴⁷ Debrecen Regional Court of Appeal, Pf.I.20.683/2005/7. p1

²⁴⁸ Desegregation and Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p40 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁴⁹ *Kaposvár I. case*: Somogy County Court, 24.P.21.443/2008/35.; Pécs Regional Court of Appeal, Pf.I.20.061/2010/7.; Supreme Court, Pfv.IV.21.568/2010/5.

²⁵⁰ Supreme Court, Pfv.IV.21.568/2010/5. p1

²⁵¹ *ibid.* p9

In *Nyíregyháza*²⁵², students were transferred to their new schools and the integration process had started. But the lack of preparatory programs made this process rather challenging. In 2011, the Greek Catholic Church supported by the new mayor reopened the old school next to the Romani settlement and the municipality stopped the school bus service. It resulted in school segregation again.²⁵³

The CFCF took the local municipality and the Greek Catholic Church to court, and claimed that the contract between the two was invalid because school segregation as a result was foreseeable. An interesting element of the case was that Zoltán Balog, the Hungarian Minister of Human Resources testified in favor of the defendants, argued for the separate but equal principle. He claimed that a “benevolent” segregation in the form of special Roma classes enable students to catch-up with their non-Roma peers.²⁵⁴

In February 2014, the first instance court refused the defendants argument that the religious nature of the school can justify the segregation. The court concluded that the decision of the local municipality to stop the school bus system and give the school building for free to the Greek Catholic Church makes the municipality responsible for the foreseeable segregation.²⁵⁵ The decision was upheld by the Debrecen Regional Court of Appeal.²⁵⁶ However, in April 2015, the Curia overruled the previous decision and did not find a violation referring to the religious nature of the education and the free choice of school of the parents.²⁵⁷

A few days after the appeal court’s decision a new draft Act amending the Act CXCV of 2011 on National Public Education was submitted to the Parliament by Zoltán Balog. Section

²⁵² *Nyíregyháza Case*: Nyíregyháza Court, 10G.15.13.040.099/22.; Debrecen Regional Court of Appeal, Gf.I.30.347/2014/10.; Curia, Pfv.IV.20.241/2015/4.

²⁵³ Desegregation and Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p40 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁵⁴ Index, ‘Balog Believes in the Benevolent Segregation [Balog a szereteteli szegregációban bízik]’ (2013) <http://index.hu/belfold/2013/04/26/balog_a_szereteteli_szegregacioban_bizik/> accessed 13 October 2016

²⁵⁵ Nyíregyháza Court, 10G.15.13.040.099/22. p1-5

²⁵⁶ Debrecen Regional Court of Appeal, Gf.I.30.347/2014/10. p1

²⁵⁷ Curia, Pfv.IV.20.241/2015/4. p1-2

94 (4z) of the Public Education Act entered into force on the 1st of January, 2015.²⁵⁸ It gives authorization to the government to decide over the specific conditions of equal treatment in a resolution regarding religious schools. This provision basically empowers the government to allow segregation in certain religious schools.²⁵⁹

In *Kaposvár*²⁶⁰, the CFCF initiated new proceedings in 2013 as the 2010 Supreme Court judgment was not followed by any attempts to solve the situation of the segregated school. Based on the official minutes of the County Council, it was proven that the topic was not subject of any discussion. It didn't change after 2013 either, when a new maintainer, the KLIK took over the school. The school had been still segregating the Roma children living in residential segregation. The students' performances on the central competency tests were much lower than the national average, which showed that the quality of the education was low.²⁶¹

The Pécs Regional Court of Appeal made a strong statement in this case in October 2016 when it ordered the authorities to close the school gradually. It condemned not only the maintainer of the school, but also the Hungarian Ministry of Human Resources, which – according to the Court – did not do everything in its capacities to change the situation of the school.²⁶²

A case with similar facts was filed in *Győr* in 2010²⁶³, where 2/3 was the proportion of the Roma and the disadvantaged children in one of the city's primary school.²⁶⁴ Despite the

²⁵⁸ Kozák András 'About the Actual Changes of the Public Education Act [A köznevelési törvény aktuális változásai]' (2015) p28 <http://ame.hu/wp-content/uploads/2015/01/A-ko%CC%88znevele%CC%81si-to%CC%88rve%CC%81ny-aktua%CC%81lis-va%CC%81ltoza%CC%81sai_2015.pdf> accessed 16 October 2016

²⁵⁹ HVG, 'The Public Education Act Allowing Segregation has been Accepted [Elfogadták a szegregációt engedő köznevelési törvényt]' (2014) <http://hvg.hu/itthon/20141216_Elfogadtak_a_szegregaciot_engedo_koznevel> accessed 22 October 2016

²⁶⁰ *Kaposvár II. Case*: Kaposvár Court, 11.P.21.553/2013.; Pécs Regional Court of Appeal, Pf.III.20.004/2016/4.

²⁶¹ Pécs Regional Court of Appeal, Pf.III.20.004/2016/4. p2-5

²⁶² *ibid.* p1-2

²⁶³ *Győr Case*: Győr-Moson-Sopron County Court, 3.P.20.950/2008/36.; Győr Regional Court of Appeal, Pf.V.20.416/2010/3.; Curia, Pfv.IV.20.068/2012/3.

²⁶⁴ Győr-Moson-Sopron County Court, 3.P.20.950/2008/36. p3

local government restructured the school districts, the situation did not change as a consequence of an intensive white flight. The first instance court established that segregation is unlawful even if the quality of the education does not differ from other schools.²⁶⁵ Furthermore, the court also found a violation not only because of ethnical segregation but also segregation based on the socio-economic background of the students. In 2012, this decision was upheld by the Curia^{266, 267}.

6.2.2 Cases Concerning Separate School Buildings (*Jászladány, Hajdúhadház*)

One of the most notorious school segregation cases of Hungary is the case of *Jászladány*²⁶⁸. Jászladány is a small town which had only one primary school until 2003, operating in two separate buildings, a renovated and a run-down one. This year, following the mayor's initiative, a private school was established and maintained by a local foundation, where the mayor also had a membership. Based on a rental contract between the municipality and the foundation, the new school started to operate in the renovated building of the old primary school which was rented by the foundation for a symbolic price.²⁶⁹

As a consequence, those mainly Roma and multiply disadvantaged children who could not afford to pay for a tuition fee attended the old school while the rest of the children got enrolled in the new school. After several authorities tried to act against the establishment of the private school unsuccessfully, the CFCF and a local civil organization, the Roma Civil Rights Movement in Jászság initiated proceedings against the local government and the foundation.²⁷⁰ A violation was found by the Supreme Court in 2011, because the local

²⁶⁵ Győr-Moson-Sopron County Court, 3.P.20.950/2008/36. p20

²⁶⁶ The Supreme Court of Hungary was renamed to Curia in 1 January 2012 without any significant change in its function or operation.

²⁶⁷ Curia, Pfv.IV.20.068/2012/3. p8

²⁶⁸ *Jászladány Case*: Jász-Nagykún-Szolnok County Court, 16.P.20.812/2007/70.; Debrecen Regional Court of Appeal, Pf.I.20.095/2010/6.; Supreme Court, Pfv.IV.20.037/2011/7.

²⁶⁹ Jász-Nagykún-Szolnok County Court, 16.P.20.812/2007/70 p3-8

²⁷⁰ Chance for Children Foundation, 'Still Jászladány [Jászladány - Még Mindig]' <<http://cfcf.hu/j%C3%A1szlad%C3%A1ny-m%C3%A9g-mindig>> accessed 7 March 2016

municipality failed to act against the situation which was a consequence of the rental contract.²⁷¹

The *Hajdúhadház* case²⁷² concerned the two primary schools of the town, which operated in six different buildings. In 2006, the CFCF filed actio popularis claim against the municipality because the number of Roma children was very low in the well-equipped main buildings comparing to the run-down others, where there was no library, gym or IT room. The different level courts disagreed on the necessity of the invidious intent, but the Supreme Court overturned the previous decision and found a violation.²⁷³ Furthermore, the Supreme Court also highlighted, that the segregation cannot be justified by the education of the Roma culture as it could be easily inserted in the curriculum of an integrated school as well.²⁷⁴

6.2.3 A Case Concerning Roma-only Classes (*Gyöngyöspata*)

In 2011, following paramilitary anti-Roma activities in Gyöngyöspata, the Parliamentary Commissioner for National and Ethnic Minority Rights²⁷⁵ published a report on the town.²⁷⁶ This report shed the light on the practice of physically segregating Roma and non-Roma students in the local primary school. The same-aged students were separated into two classes, one with only Roma pupils. While in the other class there were only a few Roma children despite that half of the student body was of Roma origins. In addition, the Roma-only classrooms were on the ground floor, physically segregated from the rest of the school. They

²⁷¹ Supreme Court, Pfv.IV.20.037/2011/7. p1-2

²⁷² *Hajdúhadház Case*: Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8.; Supreme Court, Pfv.IV.20.936/2008/4.

²⁷³ Supreme Court, Pfv.IV.20.936/2008/4. p1

²⁷⁴ *ibid.* p17

²⁷⁵ The Office of the Parliamentary Commissioner for National and Ethnic Minority Rights does not exist anymore. Until the Act CXI of 2011 on the Commissioner for Fundamental Rights entered into force in 1 January 2012 Hungary had four Parliamentary Commissioners, one of them was responsible for ethnic and minority rights. As currently Hungary has only one Commissioner, this position was terminated and its competence and responsibilities were merged in the Office of the Commissioner for Fundamental Rights.

²⁷⁶ The report is available in Hungarian at <<http://www.kisebbségiombudsman.hu/data/files/203198066.pdf>> (accessed 22 November 2016)

were also deprived of further educational services provided for non-Roma students, such as swimming classes.²⁷⁷

Based on this report, the CFCF filed a case against the local municipality, and in addition, against the school, as this time segregation occurred within the school. The first instance court ruled in favor of the Foundation, and this decision was upheld by the later judgments as well, reiterating the unlawfulness of the segregation exacerbated by lower quality of education.²⁷⁸

6.2.4 Cases Concerning the Misdiagnosis of Roma Children (*Kecskemét, Nyíregyháza*)

There were two main cases in Hungary about the misdiagnosis and placement of Roma children into special schools. The plaintiffs were supported by the CFCF in both cases. The first case concerned three children who were diagnosed with mild mental disability and enrolled in a special school in Kecskemét²⁷⁹. The plaintiffs filed a claim for damages in 2008 claiming that their placement in the special school was the consequence of their ethnicity.²⁸⁰ Both the Bács-Kiskun County Court and the Szeged Regional Court of Appeal rejected their claim as according to the courts, and to independent experts, the misdiagnosis of the children could not have been proven. Furthermore, the courts rejected the argument about the culturally biased testing.²⁸¹

²⁷⁷ Chance for Children Foundation, ‘School Segregation Case of Gyöngyöspata [Gyöngyöspatai szegregációs per]’ <<http://cfcf.hu/gy%C3%B6ngy%C3%B6spatai-szegreg%C3%A1ci%C3%B3s>> accessed 11 March 2016

²⁷⁸ *Gyöngyöspata Case*: Eger Court, 12.P.20.351/2011/47.; Budapest-Capital Regional Court of Appeal, 2.Pf.20.305/2013/20.; Curia, Pfv.IV.20.097/2015/3

²⁷⁹ *Misdiagnosis Case of Kecskemét*: Bács-Kiskun County Court, 12.P.20.392/2008/21.; Szeged Regional Court of Appeal, Pf.III.20.627/2008/3.

²⁸⁰ Bács-Kiskun County Court, 12.P.20.392/2008/21. p10-12

²⁸¹ *ibid.* p4 and Szeged Regional Court of Appeal, Pf.III.20.627/2008/3. p5

A very similar case was filed in the same year concerning two young Roma children living in the Romani settlement of Nyíregyháza²⁸², who were enrolled in special schools. This was the case of *Horváth and Kiss*, which ended up before the Strasbourg Court.

As it was mentioned previously, the applicants claimed that their enrolment in remedial schools was the result of discrimination and misdiagnosis. They alleged that the testing system is culturally biased and it is failing the disadvantaged children. They further claimed that even though the panel of experts was free to choose which test to apply, they used one which was very likely to lead to misdiagnosis. They also complained that the County Council was unable to effectively control the experts' panel.²⁸³

The Szabolcs-Szatmár-Bereg County Court accepted the plaintiffs' argument and found a violation of equal treatment, therefore ordered 1.000.000 HUF in damages. But the Debrecen Regional Court of Appeals overturned the decision regarding the special school and the County Council with accepting their argument that they only enrolled the applicants according to the panel of experts' decision. The Supreme Court upheld this judgment.²⁸⁴ In addition, it is important to note that the Supreme Court in its decision imposed a severe limitation on itself. It said that there is a need to remedy the systemic errors of the diagnostic system, which is the obligation of the state, but this question exceeds the Court's competence. The Supreme Court itself advised the plaintiffs to turn to the ECtHR, which finally happened.²⁸⁵

²⁸² *Misdiagnosis Case of Nyíregyháza*: Szabolcs-Szatmár-Bereg County Court, 3.P20.035/2008/20.; Debrecen Regional Court of Appeal, Pf.II.20.509/2009/10.; Supreme Court, Pfv.IV.20.215/2010/3.

²⁸³ Szabolcs-Szatmár-Bereg County Court, 3.P20.035/2008/20. p4

²⁸⁴ Supreme Court, Pfv.IV.20.215/2010/3. p1

²⁸⁵ *Horváth and Kiss v. Hungary* Application no. 11146/11 (ECHR, 2013) par35-54

6.3 Further Considerations of the Cases

6.3.1 The Ethnic Dimension of School Segregation

It was discussed before, that the identification of the Roma is challenging due to both data protection concerns and the fear of discrimination. Furthermore, self-identification and the perception of others might differ. In spite of this, the arguments of the plaintiffs in the cases mentioned above were based on the assumption that the separation of the children in the schools concerned was based on their ethnicity. This was accepted by the courts in all the cases despite the lack of official statistics. Thus it is a valid question, how did the plaintiffs prove that the segregation happened because of the students' ethnicity?

A common argument of the defendants was a reference to the Act LXXVII of 1993 on the Rights of National and Ethnic Minorities Article 7 (1) which proclaims that the ethnical identification is the exclusive right of the individual (e.g. *Hajdúhadház*²⁸⁶ and *Miskolc*²⁸⁷ cases). The counter-argument of the CFCF was that segregation is mainly based on the perception of others about one's ethnicity rather than the individuals' real identity, thus personal identification is not important in this regard.²⁸⁸ In addition, the courts have never accepted the defendants' argument because the appropriate methods of analyzing the proportion of Roma students ensures anonymity and does not require individual identification, thus does not violate the law.

The CFCF mainly used the pedagogical programs of the schools as a proof of the high number of Roma students in the schools. In addition, studies by independent education experts and sociologists were also widely used, such as in the *Hajdúhadház*²⁸⁹ and the

²⁸⁶ Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8. p4

²⁸⁷ Borsod-Abaúj-Zemplén County Court, 13.P.21.660/2005/16. p7

²⁸⁸ Desegregation and Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p50 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁸⁹ Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8. p5

*Nyíregyháza*²⁹⁰ cases. Moreover, the *Gyöngyöspata* case was built on the study of the Parliamentary Commissioner for National and Ethnic Minority Rights. The opinion of the Roma Minority Self-Governments (RMSG) was also often taken into consideration. In the *Miskolc* case, for example, the fact that the school asked feedback for its pedagogical program from the RMSG was also accepted as evidence.²⁹¹ In *Hajdúhadház* case, the education expert worked in close cooperation with the RMSG.²⁹²

6.3.2 Involvement of the Parents

The question of the parents' involvement is important in the cases as it was used by the defendants as an argument several times in several ways. For example, in the *misdiagnosis case of Nyíregyháza* the authorities argued that the students attended the segregated school based on the parents' conscious decision to educate their children in a religious institution.²⁹³ However, it was proven that most of the parents were not even aware of the school's religious nature.²⁹⁴ A similar argument was raised in the *Kaposvár I. case*, when the defendants said that the separation of the children is deriving from different curricula necessary because of the additional Roma ethnic and cultural education provided by the school. According to them, as the parental approval of this ethnic education meant an approval of the separation as well, but this view was never accepted by the courts.²⁹⁵

Attempts to terminate certain cases were also built on the alleged opinion of the parents. For example, in the *Hajdúhadház* case the statements of the parents' disagreement with the case were submitted aiming the termination of the case.²⁹⁶ However, later it was proven that most of the parents signed these statements without being aware of their actual

²⁹⁰ Nyíregyháza Court, 10G.15.13.040.099/22. p2

²⁹¹ Desegregation and Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) p50 <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016

²⁹² Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8. p3

²⁹³ Szabolcs-Szatmár-Bereg County Court, 3.P20.035/2008/20. p4

²⁹⁴ *ibid.* p6

²⁹⁵ Supreme Court, Pfv.IV.21.568/2010/5.

²⁹⁶ Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8. p17

content. In the *Győr* case some parents collected signatures questioning the standing of the CFCF. The courts concluded that as the CFCF is not representing individuals, but litigating on its own right, the objection of some Roma parents cannot deprive the CFCF from its standing guaranteed by Article 20 of the Equal Treatment Act.²⁹⁷ Thus, the Hungarian courts, just as the ECtHR acknowledged that the alleged parental intention cannot be used as an argument in favor of school segregation.

6.4 Remedies Offered by the Courts

Based on the previously introduced judgments we might conclude that strategic litigation seems to be an effective way to tackle school segregation in Hungary. Despite some courts' disagreement, the Supreme Court/Curia almost always found a violation. In spite of the lack of binding case law, there tends to be a pattern concerning certain elements of the cases. As it was mentioned above, it seems that the courts do not accept anymore the lack of invidious intent or parents' consent as a justification for the authorities' failure to remedy school segregation.

In spite of the courts frequent favorable judgments, they generally fail to provide adequate remedies. Even in those cases (e.g. *Győr* and *Kaposvár I.*), where the CFCF, as plaintiff, submitted concrete desegregation plans. The courts usually refused these demands based on the assumption that the necessary remedies are belonging to the sphere of public law, thus civil courts are unable to order them. This is a widespread approach in Europe that courts do not make decisions with policy concerns, as it is believed to interfere with the separation of powers.²⁹⁸

In the *Miskolc* case, for example, the Debrecen Regional Court of Appeal rejected the request of the plaintiff to oblige the defendant to stop school segregation by integrating the

²⁹⁷ Győr-Moson-Sopron County Court, 3.P.20.950/2008/36. p9-10

²⁹⁸ Lilla Farkas, Personal Interview, 15 November 2016

Roma children with the support of the non-segregated schools in the area. The court used the above mentioned argument that it is unable to order the necessary course of action because of the public law character of the claim. In addition, the involvement of the schools, who were not subjects of the litigation, would make it impossible to execute and monitor the judgment.²⁹⁹

In the *Kaposvár I.* case, the petition of the CFCF, which requested the closure of the school, was rejected for the same reasons. The Supreme Court concluded that the measures, such as the transfer of the children to other schools, or the closure of the school cannot be executed through the judiciary. As the plaintiff failed to determine other, more realistic solutions therefore its petition was rejected.³⁰⁰

However, the *Kaposvár II.* case brought a different result. The Pécs Regional Court of Appeal stressed that the first instance court failed to provide effective remedies to the victims and possible victims of school segregation represented by the plaintiff. It added that the repetitive declaration of violation without appropriate sanctions violates the right to effective remedies under the RED (Article 15).³⁰¹ Consequently, the appeal court obliged the defendants to close the school by not enrolling new students from the upcoming (2017/2018.) school year. In addition, it obliged the defendants to take this into consideration when assigning the new school districts. They are also requested to prepare a detailed desegregation plan with the help of an educational expert in order to prepare all parties to the integration process. The appeal court also highlighted that this desegregation plan must reflect on the local circumstances thus the authorities have certain discretion when deciding about the exact measures.³⁰²

²⁹⁹ Debrecen Regional Court of Appeal, Pf.I.20.683/2005/7. p10

³⁰⁰ Supreme Court, Pfv.IV.21.568/2010/5. p11

³⁰¹ Pécs Regional Court of Appeal, Pf.III.20.004/2016/4. p6

³⁰² *ibid.* p19-20

In the *Gyöngyöspata* case it was also defined how the practice leading to segregation must be abolished even before the *Kaposvár II.* judgment. The first instance court obliged the defendants to rearrange the class assignment of the students.³⁰³ This decision was approved by the later judgments as well. However, this is a very specific case as segregation occurred within the school; the rearrangement of the classes did not require neither the transfer of the students, nor the closure of the school.

In the *Jászládány* case, the Supreme Court, once again, failed to order concrete measures. The Supreme Court referred back the case to the first instance court to initiate new proceedings and to decide on appropriate measures to end school segregation. However, by then the school maintained by the foundation were shut down, thus the proceeding was terminated.³⁰⁴

Another shortcoming of the judgments is that the courts not only refrain to define concrete steps but they do not set deadlines either. An exception was the decision of the first instance court in the *Hajdúhadház* case, when the defendants were obliged to stop the violation in 4 months.³⁰⁵ But this deadline was erased by the Supreme Court.³⁰⁶ Thus this case ended in the same way as the previous ones, the court order to stop the violation lacks the concrete measures to be taken and also the timeframe.

As an attempt to find a solution to the lack of effective remedies, the CFCF initiated to reference both the *Kaposvár II.*³⁰⁷ and *Jászládány*³⁰⁸ cases for preliminary ruling to the CJEU.

³⁰³ Eger Court, 12.P.20.351/2011/47. p20

³⁰⁴ Chance for Children Foundation, 'Still Jászládány [Jászládány - Még Mindig]' <<http://cfcf.hu/j%C3%A1szlad%C3%A1ny-m%C3%A9g-mindig>> accessed 7 March 2016

³⁰⁵ Chance for Children Foundation, 'Segregation Case of Hajdúhadház [Hajdúhadházi Szegregációs Ügy]' <<http://cfcf.hu/hajd%C3%BAhad%C3%A1zi-szegreg%C3%A1ci%C3%B3s-%C3%BCgy>> accessed 15 November 2016

³⁰⁶ Supreme Court, Pfv.IV.20.936/2008/4. p23

³⁰⁷ The request for preliminary ruling is available in Hungarian at: <http://cfcf.hu/sites/default/files/Gal%C3%A9ria/elozetesdotes_kaposvar_0513_final.pdf> accessed 22 October 2016

As it was mentioned in a previous chapter, this procedure enables national courts to ask for non-binding recommendations from the CJEU on the interpretation and application of European law.³⁰⁹ The CFCF requested the proceeding court to ask for a preliminary ruling concerning Article 15 of the RED in order to resolve the paradox situation of the Hungarian cases of finding a violation without providing remedies. More precisely, the Foundation asked for recommendations whether the courts can oblige the authorities to take concrete measures when the national courts find violation of the RED's non-discrimination principle by school segregation. However, these requests for preliminary rulings were rejected in both cases by the Hungarian courts.³¹⁰

Another attempt of the CFCF was a constitutional complaint following the case of *Győr*. The reason was that the Curia reinforced once again the decision made in the *Kaposvár I.* case to reject the plaintiff's petition of desegregation. The court did not prohibit enrolling new children in the school, because this would inevitably result in the closure of the school and it would interfere with the right of the parents to free choice of school. In the courts' opinion, a civil court cannot issue a decision which would lead to such consequences.³¹¹ Consequently, The CFCF filed a constitution complaint claiming that this decision makes it unable to effectively combat school segregation which often requires the closure of the school concerned. The Constitutional Court rejected the complaint because of the lack of standing of the CFCF without examining it on merits.³¹²

³⁰⁸ Chance for Children Foundation, 'Still Jászladány [Jászladány - Még Mindig]' <<http://cfcf.hu/j%C3%A1szlad%C3%A1ny-m%C3%A9g-mindig>> accessed 7 March 2016

³⁰⁹ Court of Justice of the European Union, *Recommendations to National Courts and Tribunals in Relation to the Initiation of Preliminary Ruling Proceedings* (Official Journal of the European Union, C 338, 6 November 2012)

³¹⁰ Kaposvár Court, 11.P.21.553/2013. p10 and Supreme Court, Pfv.IV.20.037/2011/7. p9

³¹¹ Child Rights Information Network, 'Children's Rights: A Guide to Strategic Litigation' (2009) p66 <https://www.crin.org/en/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf> accessed 14 November 2016

³¹² Constitutional Court, 3133/2013. (VII. 2.), 17 June 2013

6.5 Implementation of the Judgments

When considering the impacts of strategic litigation, one of the most important questions is the implementation of the judgments. As we saw previously, in most of the cases the courts ruled in favor of the CFCF finding a violation of the principle of equal treatment. This relatively positive picture is however overshadowed by several doubts concerning the remedies offered by the courts. As it was discussed above, Hungarian courts are often refraining from ordering concrete measures to remedy school segregation, and they are especially reluctant to support the closure of the schools, except in the latest *Kaposvár II.* judgment. Thus it is basically up to the political will and the maintainers of the schools how they try to tackle the situation.

Our question in this subchapter is whether strategic litigation is able to put enough pressure on the political actors, the schools and their maintainers - initially the local governments and currently the KLIK - to implement the judgments and find a way to end school segregation. However, it is not easy to find answer to this question as there are no official records about the integration processes, even if they exist. The closure of any school can be detected by using the official educational database. Otherwise it is challenging as investigations must be based on field visits, and on the follow-up of the children's educational career.³¹³

In *Miskolc*, the segregated school was maintained by the local municipality in spite of the decision of the Debrecen Regional Court of Appeal. In 2007, a year after the judgment, following the failed negotiations with the authorities, the CFCF brought the local government before court again. Finally, in 2010, the local councilors ordered the closure of the school, thus the case was terminated at the trial stage.³¹⁴

³¹³ Lilla Farkas, Personal Interview, 15 November 2016

³¹⁴ Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelties: Actio Popularis Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p191

In the *Jászladány* case the school maintained by the foundation was closed, but a new Catholic school was opened in 2013 in the building previously used by the foundation. As the maintainers had changed, the contract is now between the KLIK and the church, however the situation seems to be similar to the previous one; Roma students are still barely attending the church maintained school.³¹⁵ Before the school opened, Roma parents were not informed about the new opportunity. Thus Roma students were not enrolled in the school despite that the school has no tuition fee.³¹⁶

There is very little information available regarding the situation in *Gyöngyöspata*. The CFCF helped 63 Roma students to file a claim for damages because of the segregation they experienced during their school years. As a result of the low quality education what they received in the Roma-only classes, most of them ended up being communal workers.³¹⁷ However, the current situation in the school is not clear. Some articles suggest, that despite the judgment, there were only a few steps taken, and those as well were rather pretentious than aiming for real results. For example, some Roma students were transferred to the non-Roma class, but there was no sufficient preparation, so it strengthened the white flight from the school.³¹⁸

As it was mentioned above, in the *Nyíregyháza* case the Curia held against the plaintiff, thus it could not be expected that the authorities make attempts to change the situation of school segregation. The *Kaposvár II.* case is too fresh to judge its implementation.

³¹⁵ Chance for Children Foundation, 'Still Jászladány [Jászladány - Még Mindig]'

<<http://cfcf.hu/j%C3%A1szlad%C3%A1ny-m%C3%A9g-mindig>> accessed 7 March 2016

³¹⁶ Index, 'Roma Students were not Informed about the New School [Nem szóltak a cigány gyerekeknek az új iskoláról]' (2013) <http://index.hu/belfold/2013/09/03/nem_szoltak_a_ciganygyerekeknek_az_uj_iskolarol/> accessed 13 November 2016

³¹⁷ HVG, 'Gyöngyöspata, where Roma Children Claim Millions for Damages [Gyöngyöspata, ahol százmillióra perelik a cigány gyerekek az államot]' (2016)

<http://hvg.hu/itthon/20160212_Gyongyospata_ahol_szazmilliora_perelik_a_ciganygyerekek_az_allamot> accessed 7 December 2016

³¹⁸ Articles: Neuberger Eszter 'Non-Roma are escaping from Roma Classmates [Kimenekítik a gyerekeket a Roma osztálytársak közül]' (Abcúg, 2015) <<http://abcug.hu/kimenekitik-a-gyerekeket-a-roma-osztalytarsak-kozul/>> accessed 15 November 2016 and Ónody-Molnár Dóra 'Roma-only Classes: Can the Lost Years be Compensated? [Cigány osztályok: forintosíthatók-e a kárba vesztett évek?]' <[http://168ora.hu/papiros-szeretet-cigany-osztalyok-forintosithatok-e-karba-vesztett-evek/](http://168ora.hu/papiros-szeretet-cigany-osztalyok-forintosithatok-e-karba-veszett-evek/)> accessed 7 December 2016

And there was no information found on the case of *Győr*, however the school concerned is still opened according to its website.³¹⁹ There was no information found on *Hajdúhadház* either.

6.6 Infringement Procedure against Hungary

The previously mentioned legislative amendment in the *Nyíregyháza* case led to an infringement procedure against Hungary. The European Commission initiated the procedure in May 2016, after the Czech Republic and Slovakia. The Commission expressed its concerns regarding the Hungarian legal and administrative practices resulting in disproportionate placement of Roma students in special schools or their placement in segregated mainstream schools.³²⁰

The Commission is especially concerned about the new tendency of using religious schools as an excuse for segregation. Since the centralization of the education system in 2012, several schools had become church-maintained and this number is constantly growing. Previously, religious schools were mainly attended by the elite, however, in past couple of years an opposite trend started to prevail.³²¹

It seems that this latest trend was only the final straw for the European Commission. In June 2015, the Commission had already issued a Communication on the implementation of the EU Framework for National Roma Integration Strategies. It noted that in Hungary 45% of Romani children are placed in segregated schools or classes, which is one of the highest numbers within the EU.³²²

³¹⁹ The website is available at: <<http://kossuthgyor.hu/>> accessed 22 November 2016

³²⁰ European Commission, 'Fact Sheet – May Infringements' Package: Key Decisions' (2016) <http://europa.eu/rapid/press-release_MEMO-16-1823_en.htm> accessed 15 November 2016

³²¹ Roma Sajtóközpont, 'An Infringement Procedure is Launched against Hungary because of School Segregation [Kötelezettségszegési eljárás indul Magyarország ellen az iskolai elkülönítés miatt]' (2016) <<http://romasajtokozpont.hu/kotelezettszegesi-eljaras-indul-magyarorszag-ellen-az-iskolai-elkulonites-miatt/>> accessed 15 November 2016

³²² Bernard Rorke 'Segregation in Hungary: The Long Road to Infringement' (2016) <<http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>> accessed 8 September 2016

Conclusions

According to Ujlaky András, the former president of the CFCF, the *Kaposvár II.* judgment is highly significant as a Hungarian court provided the first time an effective remedy against school segregation by ordering the gradual closure of a school.³²³ Based on the cases discussed above, this statement is definitely valid. Before this judgment, domestic courts were reluctant to order concrete measures to be taken. They failed to do so despite that the violation of equal treatment because of school segregation was regularly found.

This thesis concludes that the Hungarian courts must follow the example of the Pécs Regional Court of Appeal regarding the *Kaposvár II.* case. Strategic litigation on school segregation achieved the phase when the proclamation of the unlawfulness of the practice cannot be considered a success in itself. Effective remedies must be provided by the courts. Even the ECtHR within its limited possibilities seems to admit in its latest judgments, that without concrete structural measures such systemic problem as school segregation cannot be handled.

In addition, the judgments must be more effectively implemented and monitored. However, unfortunately the biggest issue in terms of implementation seems to be the political will as Hungarian political leaders advocate for “benevolent segregation” or try to deny the problem.³²⁴ Of course, the implementation of the *Kaposvár II.* judgment cannot be guaranteed yet, and great optimism might be unrealistic. However, this should be another warning sign for the courts to use their capacities as much as possible to circumvent the lack of political willingness to eliminate school segregation.

³²³ Roma Sajtóközpont, ‘Precedent School Closure because of the Segregation of Roma Children [Először zárnak be iskolát roma gyerekek szegregációja miatt]’ (Index, 2016) <http://index.hu/belfold/2016/10/18/eloszor_zarnak_be_iskolat_a_roma_gyerekek_szegregacioja_miatt/> accessed 12 November 2016

³²⁴ Vivien Brassói, *Infringement Procedures against Czech Republic, Slovakia, Hungary for Segregating Romani Children* (Romedia Online, 2016) <<https://romediafoundation.wordpress.com/2016/08/12/infringement-procedures-against-czech-republic-slovakia-hungary-for-segregating-romani-children/>> accessed 18 November 2016

Bibliography

Books, Articles and Online Sources

- Adam Weiss, 'Can We Litigate Strategically in the Court of Justice of the European Union?' (2015) <<http://www.errc.org/blog/can-we-litigate-strategically-in-the-court-of-justice-of-the-european-union/75>> accessed 24 March 2016
- Anita Danka and Iulius Rostas, 'Setting the Roma Policy Agenda: The Role of International Organizations in Combating School Desegregation' in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p49-91
- Aengus Carroll, 'Make It Work: Six Steps to Effective LGBT Human Rights Advocacy' (ILGA Europe, 2010) <http://www.eidhr.eu/files/dmfile/advocacy_manual_www1.pdf> accessed 22 October 2016
- Anikó Bernát, 'Increasing Gaps: The Situation of the Roma in Hungary [Leszakadóban: A romák társadalmi helyzete a mai Magyarországon]' in Tamás Kolosi and István György Tóth (eds), *Társadalmi Riport 2016* (TÁRKI, 2016) p246-264
- Bernard Rorke 'Segregation in Hungary: The Long Road to Infringement' (2016) <<http://www.errc.org/blog/segregation-in-hungary-the-long-road-to-infringement/106>> accessed 8 September 2016
- Bernard Rorke, 'The End of a Decade: What Happened to Roma Inclusion?' (2015) <<https://www.opendemocracy.net/can-europe-make-it/bernard-rorke/end-of-decade-what-happened-to-roma-inclusion>> accessed 11 February 2016
- Bernard Rorke, 'Roma Rights 2013: National Roma Integration Strategies: What Next?' (2014) <<http://www.errc.org/article/roma-rights-2013-national-roma-integration-strategies-what-next/4238/2>> accessed 10 November 2016
- Bundula István, 'Without the Will of the State Segregation Remains: Interview with Lilla Farkas, Attorney and Erzsébet Mohácsi, Human Rights Defender [Ha az állam nem akarja, a szegregáció nem szűnik meg: interjú Farkas Lilla ügyvéddel és Mohácsi Erzsébet jogvédővel]' (*Magyar Narancs Online*, 2013) <<http://magyarnarancs.hu/belpol/farkas-lilla-mohacsi-erzsebet-strasbourg-a-szegregacio-nem-szunik-meg-83497#>> accessed 12 September 2016

- Chance for Children Foundation ‘About Us’ <<http://www.cfcf.hu/en/about-us>> accessed 28 March 2016
- Chance for Children Foundation, ‘The Case of Horváth and Kiss v. Hungary [Horváth and Kiss kontra Magyarország ügy]’ <<http://cfcf.hu/horv%C3%A1th-%C3%A9s-kiss-kontra-magyarorsz%C3%A1g-%C3%BCgy>> accessed 8 October 2016
- Chance for Children Foundation, ‘Segregation Case of Hajdúhadház [Hajdúhadházi Szegregációs Ügy]’ <<http://cfcf.hu/hajd%C3%BAhadh%C3%A1zi-szegreg%C3%A1ci%C3%B3s-%C3%BCgy>> accessed 15 November 2016
- Chance for Children Foundation, ‘The Desegregation Case of Miskolc [Miskolci deszegregációs per]’ <<http://cfcf.hu/miskolci-deszegreg%C3%A1ci%C3%B3shttp://cfcf.hu/miskolci-deszegreg%C3%A1ci%C3%B3s>> accessed 6 September 2016
- Chance for Children Foundation, ‘Still Jászládány [Jászládány - Még Mindig]’ <<http://cfcf.hu/j%C3%A1szlad%C3%A1ny-m%C3%A9g-mindig>> accessed 7 March 2016
- Chance for Children Foundation, ‘School Segregation Case of Gyöngyöspata [Gyöngyöspatai szegregációs per]’ <<http://cfcf.hu/gy%C3%B6ngy%C3%B6spatai-szegreg%C3%A1ci%C3%B3s>> accessed 11 March 2016
- Charilaos Nikolaidis, *The Right to Equality in European Human Rights Law: The Quest for Substance in the Jurisprudence of the European Courts* (Routledge, 2015)
- Child Rights Information Network, ‘Children’s Rights: A Guide to Strategic Litigation’ (2009) <https://www.crin.org/en/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf> accessed 14 November 2016
- Christian Brüggemann, *Roma Education in Comparative Perspective. Analysis of the UNDP/World Bank/EC Regional Roma Survey 2011* (Roma Inclusion Working Papers. Bratislava: United Nations Development Programme, 2012)
- Commissioner for Human Rights, *Human Rights of Roma and Travellers in Europe* (Council of Europe, 2012) <https://www.coe.int/t/commissioner/source/prems/prems79611_GBR_CouvHumanRightsOfRoma_WEB.pdf> accessed 14 November 2016
- David Harris, Michael O’Boyle, Ed Bates and Charla Buckley, *Law of the European Convention on Human Rights* (Oxford University Press, Second Edition, 2009)

- Decade of Roma Inclusion Secretariat Foundation, *Roma Inclusion Index 2015* (2015) <<http://www.romadecade.org/news/roma-inclusion-index-2015/9810>> accessed 11 February 2016
- Dena Ringold, Mitchell A. Orenstein and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (The World Bank, 2005) <<https://openknowledge.worldbank.org/handle/10986/14869>> accessed 12 March 2016
- Desegregation and Action for Roma Education Network, *Guide for Documenting and Monitoring School Segregation in Hungary* (2014) <<http://www.dare-net.eu/cms/upload/file/guide-for-monitoring-and-documenting-school-segregation-hungary-english-2014.pdf>> accessed 11 March 2016
- Dia Anagnostou, 'Introduction: Untangling the Domestic Implementation of the European Court of Human Rights' Judgments' in Dia Anagnostou (ed), *The European Court of Human Rights: Implementing Strasbourg's Judgments on Domestic Policy* (Edinburgh University Press, 2013) p1-27
- Dimitrina Petrova, 'The Roma: Between Myth and the Future' (ERRC, 2004) <<http://www.errc.org/cikk.php?cikk=1844>> accessed 16 April 2016
- Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, First Edition, 1999)
- Dragoljub Popovic, *European Human Rights Law - a Manual: An Introduction to the Strasbourg Court and Its Jurisprudence* (Eleven International Publishing, 2013)
- Edwin Rekosh, 'Who Defines the Public Interest? Public Interest Law Strategies in Central and Eastern Europe' (Sur. Revista Internacional de Direitos Humanos, v.2, n.2, 2005) p147-187
- European Commission 'EU and Roma' (2015) <http://ec.europa.eu/justice/discrimination/roma/index_en.htm> accessed 29 October 2015
- European Commission, 'Fact Sheet – May Infringements' Package: Key Decisions' (2016) <http://europa.eu/rapid/press-release_MEMO-16-1823_en.htm> accessed 15 November 2016
- European Commission, *Roma Health Report Executive Summary* (2014) <https://ec.europa.eu/health/social_determinants/docs/2014_roma_health_report_es_en.pdf> accessed 16 November 2016

- European Commission against Racism and Intolerance, *ECRI Report on Greece (Fifth Monitoring Cycle)* (2015) p32 <<https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf>> accessed 18 October 2016
- European Court of Human Rights, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to Education* (2015) <http://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf> accessed 24 November 2016
- European Court of Human Rights Press Release, 'Failure of the authorities to integrate Roma children into the ordinary education system amounted to discrimination against them' (2012) <http://www.aedh.eu/plugins/fckeditor/userfiles/file/Discriminations%20et%20droits%20des%20minorit%C3%A9s/Chamber%20judgment%20Sampani%20and%20Others%20v_%20Greece%2011_12_2012.pdf> accessed 4 October 2016
- European Court of Human Rights Press Release 'School Placement of Roma Children must not amount to Ethnic or Racial Segregation' (2013)
- European Parliament, *The Interpretation of Article 51 of the EU Charter of Fundamental Rights: the Dilemma of Stricter or Broader Application of the Charter to National Measures* (2016) p14 <[http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556930/IPOL_STU\(2016\)556930_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556930/IPOL_STU(2016)556930_EN.pdf)> accessed 23 November 2016
- European Roma Rights Centre, 'D.H. and Others v. the Czech Republic' (2015) <<http://www.errc.org/article/dh-and-others-v-the-czech-republic/3559>> accessed 4 October 2016
- European Roma Rights Centre, 'ERRC Welcomes European Court Judgment on Segregated Education of Roma in Greece' (2008) <<http://www.errc.org/article/errc-welcomes-european-court-judgment-on-segregated-education-of-roma-in-greece/2956>> accessed 21 March 2016
- European Roma Rights Center 'Roma and the Right to Education - Roma in the Educational Systems of Central and Eastern Europe' (1998) <<http://www.errc.org/article/roma-and-the-right-to-education--roma-in-the-educational-systems-of-central-and-eastern-europe/53>> accessed 29 October 2015
- European Union Agency for Fundamental Rights, *The Situation of Roma in 11 Member States: Survey Results at a Glance* (2012) <http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf> accessed 19 October 2016

- European Union Agency for Fundamental Rights, *Education: the Situation of Roma in 11 Member States* (2014) <http://fra.europa.eu/sites/default/files/fra-2014_roma-survey_education_tk0113748enc.pdf> accessed 20 March 2016
- European Roma Rights Centre, 'Implementation of Judgments of the European Court of Human Rights in Discrimination of Romani Children in Education (Croatia, Greece, Czech Republic)' (Working Session 7 - Tolerance and Non-discrimination I, Review Conference Warsaw, 30 September - 8 October 2010) <<http://www.osce.org/home/71928>> accessed 21 November 2016
- European Roma Rights Centre 'Knowing Your Rights and Fighting for Them: A Guide for Romani Activists' (2004) <<http://www.errc.org/cms/upload/media/00/D6/m000000D6.pdf>> accessed 22 October 2016
- European Roma Rights Center 'Roma and the Right to Education - Roma in the Educational Systems of Central and Eastern Europe' (1998) <<http://www.errc.org/article/roma-and-the-right-to-education--roma-in-the-educational-systems-of-central-and-eastern-europe/53>> accessed 29 October 2015
- Eva Sobotka and Peter Vermeersch, 'Governing Human Rights and Roma Inclusion: Can the EU be a Catalyst for Local Social Change?' (Human Rights Quarterly, v.34, n.3, 2012) p800-822
- Ferenc Babusik, 'Legitimacy, Statistics and Research Methodology: Who is Romani in Hungary Today and What are We (not) Allowed to Know about Roma?' (Roma Rights Quarterly v.9, n.2, 2004) p14-18
- Gábor Havas and János Zolnay, 'Sisyphus' Account [Sziszfusz számvetése]' (Beszélő Online, v.16, n.6, 2011) <<http://beszelo.c3.hu/cikkek/sziszfusz-szamvetese>> accessed 24 November 2016
- Gábor Kertesi and Gábor Kézdi, 'School Segregation, School Choice and Educational Policies in 100 Hungarian Towns [Iskolai szegregáció, szabad iskolaválasztás és helyi oktatáspolitikai 100 magyar városban]' (Budapest Working Papers On The Labour Market, 2014) <<http://www.econ.core.hu/file/download/bwp/bwp1406.pdf>> 16 October 2016
- Gábor Kertesi and Gábor Kézdi, 'Primary School Segregation in Hungary after the Millennium [Általános iskolai szegregáció Magyarországon az ezredforduló után]' (Közgazdasági Szemle, v.56., 2009)
- Gordon W. Allport, *The Nature of Prejudice* (Originally published in 1954, Doubleday Anchor Books edition, 1958)

- Haza és Haladás Közpolitikai Alapítvány, *Education for Employability, Equity and Flexibility: White Paper on Education [A Foglalkoztathatóságot, a méltányosságot, és az alkalmazkodóképességet szolgáló oktatás: Fehér könyv az oktatásról]* (2013)
- HVG, 'Gyöngyöspata, where Roma Children Claim Millions for Damages [Gyöngyöspata, ahol százmillióra perelik a cigány gyerekek az államot]' (2016) <http://hvg.hu/itthon/20160212_Gyongyospata_ahol_szazmilliora_perelik_a_ciganygyerekek_az_allamot> accessed 7 December 2016
- HVG, 'The Public Education Act Allowing Segregation has been Accepted [Elfogadták a szegregációt engedő köznevelési törvényt]' (2014) <http://hvg.hu/itthon/20141216_Elfogadtak_a_szegregaciot_engedo_koznevel> accessed 22 October 2016
- Ian Hancock, 'The Consequence of Anti-Gypsy Racism in Europe' (Other Voices, v.2, n.1, 2000) <<http://www.othervoices.org/2.1/hancock/roma.php>> accessed 11 November 2016
- Index, 'Balog Believes in the Benevolent Segregation [Balog a szeretetteli szegregációban bíz]' (2013) <http://index.hu/belfold/2013/04/26/balog_a_szeretetteli_szegregacioban_bizik/> accessed 13 October 2016
- Index, 'Roma Students were not Informed about the New School [Nem szóltak a cigány gyerekeknek az új iskoláról]' (2013) <http://index.hu/belfold/2013/09/03/nem_szoltak_a_ciganygyerekeknek_az_uj_iskola_rol/> accessed 13 November 2016
- Interights, 'Strategic Litigation of Race Discrimination in Europe: From Principles to Practice' (ERRC, 2004) <http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/strategic_manual.pdf> accessed 24 October 2016
- International Lesbian, Gay, Bisexual, Trans and Intersex Association 'Strategic Litigation' <<http://www.ilga-europe.org/what-we-do/our-advocacy-work/strategic-litigation>> accessed 12 February 2016
- István Kemény, Béla Janky and Gabriella Lengyel, *The Hungarian Roma, 1971-2003. [A magyarországi cigányság, 1971-2003.]* (Gondolat – MTA Kisebbségkutató Intézet, 2004)
- Jack Greenberg, 'Report on Roma Education Today: From Slavery to Segregation and Beyond' (Columbia Law Review, v.110, n.4, 2010) p919-1001
- James A. Goldston, 'Ending Racial Segregation in Schools: The Promise of D.H.' (Roma Rights Journal, n.1, 2008) p1-5

- James A. Goldston, 'Public Interest Litigation in Central and Eastern Europe: Roots, Prospects, and Challenges' (Human Rights Quarterly, v.28, n.2, 2016) p492-527
- Jeffrey A. Raffel, *Historical Dictionary of School Segregation and Desegregation: The American Experience* (Greenwood Press, 1998)
- Jennifer Devroye, 'The Case of D.H. and Others v. the Czech Republic' (Northwestern Journal of International Human Rights, v. 7, n.1, 2009) p81-102
- John Bennett, *Roma Early Childhood Inclusion: The RECI Overview Report* (2012) <<https://www.opensocietyfoundations.org/sites/default/files/Roma-Early-Childhood-Inclusion-Report-20120813.pdf>> accessed 12 September 2016
- Jules Lobel, 'Losers, Fools & Prophets: Justice as Struggle' (Cornell Law Review, v.80, n.5, 1995) p1331-1420
- Julia Laffranque, 'Can't Get Just Satisfaction' in Anja Seibert-Fohr and Mark E. Villiger (eds), *Judgments of the European Court of Human Rights – Effects and Implementation* (Ashgate, 2014) p75-115
- Kalina Arabadjieva, 'Challenging the School Segregation of Roma Children in Central and Eastern Europe' (The International Journal of Human Rights, v.20, n.1, 2016) p33-54
- Kozák András 'About the Actual Changes of the Public Education Act [A köznevelési törvény aktuális változásai]' (2015) p28 <http://ame.hu/wp-content/uploads/2015/01/A-ko%CC%88znevele%CC%81si-to%CC%88rve%CC%81ny-aktua%CC%81lis-va%CC%81ltoza%CC%81sai_2015.pdf> accessed 16 October 2016
- Laura Cashman, "'Put Your Own House in Order First": Local Perceptions of EU Influence on Romani Integration Policies in the Czech Republic' (Journal of Contemporary European Research, v.4, n.3, 2009) p193-208
- Lilla Farkas, 'Limited Enforcement Possibilities under European Anti-Discrimination Legislation – A Case Study of Procedural Novelty: Actio Popularis Action in Hungary' (Erasmus Law Review, v.3, n.3, 2010) p181-196
- Lilla Farkas, 'Report on Discrimination of Roma Children in Education' (2014) <http://ec.europa.eu/justice/discrimination/files/roma_childdiscrimination_en.pdf> accessed 13 March 2016
- Lydia Gall and Robert Kushen, 'Implementation of Judgments: What Happened to the Promise of D.H.?' (2010) <<http://www.errc.org/article/roma-rights-1-2010-implementation-of-judgments/3613/5>> accessed 19 April 2016

- Mátyás Binder and Dóra Pálos, 'The Representation of Roma in Schoolbooks and Curricula [Romák a kerettantervekben és a kísérleti tankönyvekben]' (2016) <<http://cfcf.hu/sites/default/files/Binder%20P%C3%A1los%20-%20ROMA.TK.KUT.%202016.pdf>> accessed 17 February 2016
- Marius Taba and Andrew Ryder, 'Institutional Responses to Segregation: The Role of Governments and Non-Governmental Organizations' in Iulius Rostas (ed), *Ten Years After: A History of Roma School Desegregation in Central and Eastern Europe* (The Roma Education Fund and Central European University Press, 2012) p7-49
- Martinus Nijhoff, 'Orsus and Others v. Croatia' (Human Rights Case Digest, v.18, 2007-2008) p1145-1149
- Martinus Nijhoff, 'Sampanis and Others v. Greece' (Human Rights Case Digest, v.18, 2007-2008) p933-938
- Márton Rövid, "'One Size Fits All Roma'? On the Normative Dilemmas of the Emerging European Roma Policy' (Hungarian Institute of International Affairs, 2009)
- Open Society Justice Initiative, *Strategic Litigation Impacts: Roma School Desegregation* (2016) <<https://www.opensocietyfoundations.org/sites/default/files/strategic-litigation-impacts-roma-school-desegregation-20160407.pdf>> accessed 23 May 2016
- Péter Radó, 'Educational Inequality in Hungary [Oktatási Egyenlőtlenségek Magyarországon]' (Esély, v.4, 2007) <http://www.esely.org/kiadvanyok/2007_4/RADO.pdf> p24-36
- Peter Vermeersch, 'Minority Policy in Central Europe: Exploring the Impact of the EU's Enlargement Strategy' (The Global Review of Ethnopolitics, v.3, n.2, 2004) p3-19
- Public Interest Law Initiative, 'Pursuing the Public Interest: A Handbook for Legal Professionals and Activists' (2001) <[file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20\(1\).pdf](file:///C:/Users/Kriszti/Downloads/Pursuing%20the%20Public%20Interest%20Article%20(1).pdf)> accessed 22 October 2016
- Rita Izsák, *Report of the Special Rapporteur on Minority Issues* (A/HRC/29/24, 2015)
- Roma Sajtóközpont, 'An Infringement Procedure is Launched against Hungary because of School Segregation [Kötelezettségszegési eljárás indul Magyarország ellen az iskolai elkülönítés miatt]' (2016) <<http://romasajtokozpont.hu/koteleztsegszegesi-eljaras-indul-magyarorszag-ellen-az-iskolai-elkulonites-miatt/>> accessed 15 November 2016
- Roma Sajtóközpont, 'Precedent School Closure because of the Segregation of Roma Children [Először zárnak be iskolát roma gyerekek szegregációja miatt]' (Index, 2016)

<http://index.hu/belfold/2016/10/18/eloszor_zarnak_be_iskolat_a_roma_gyerekek_sze_gregacioja_miatt/> accessed 12 November 2016

- Savelina Danova, 'Patterns of Segregation of Roma in Education in Central and Eastern Europe' in Edwin Rekosh and Maxine Sleeper (eds), *Separate and Unequal: Combating Discrimination against Roma in Education* (Public Interest Law Initiative, 2004) p3-15
- Sophie Jacquot and Tommaso Vitale 'Law as a Weapon of the Weak? A Comparative Analysis of Legal Mobilization by Roma and Women's Groups at the European Level' (Journal of European Public Policy, v.21,n.4, 2014) p587-604
- Svjetlana Curcic, Maja Miskovic, Shayna Plaut and Ciprian Ceobanu, 'Inclusion, Integration or Perpetual Exclusion? A Critical Examination of the Decade of Roma Inclusion, 2005-2015' (European Educational Research Journal, v.13, n.3, 2014) p257-267
- UNICEF, 'Defining Quality in Education' (2000)
<<https://www.unicef.org/education/files/QualityEducation.PDF>> accessed 12 November 2016
- UNICEF Serbia, *Breaking the Cycle of Exclusion: Roma Children in South East Europe* (2007) <https://www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf> accessed 13 March 2016
- Vivien Brassói, *Infringement Procedures against Czech Republic, Slovakia, Hungary for Segregating Romani Children* (Romedica Online, 2016)
<<https://romediafoundation.wordpress.com/2016/08/12/infringement-procedures-against-czech-republic-slovakia-hungary-for-segregating-romani-children/>> accessed 18 November 2016
- William S. New, 'Sampanis v. Greece: Discrimination, Disrespect, and Romani Identity on the EU Frontier' (Diaspora, Indigenous and Minority Education, v.6, n.3, 2012) p127-140

International and European Treaties and Documents

- Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)* 4 November 1950
- Council of Europe, *European Social Charter (Revised)*, 3 May 1996, ETS 163

- Court of Justice of the European Union, *Recommendations to National Courts and Tribunals in Relation to the Initiation of Preliminary Ruling Proceedings* (Official Journal of the European Union, C 338, 6 November 2012)
- European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02
- European Union, *Council Directive 2000/43/EC* of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, O.J. L180
- *Statute of the Council of Europe*, 5 May 1949, ETS 001
- UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10
- UN Committee on the Elimination of Racial Discrimination, *CERD General Recommendation No.14: Definition of Discrimination*, 22 March 1993, Gen. Rec. No. 14. (General Comments)
- UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, v. 1577, p.3
- UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, v.993, p.3
- UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, v.660, p.195
- UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

Hungarian Legislation

- Civil Code, Act IV of 1959, 1 May 1960
- Act CXC of 2011 on National Public Education
- Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities

- Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest
- Act LXXVII of 1993 on the Rights of National and Ethnic Minorities

Cases

- *Altinay v. Turkey* App no 37222/04 (ECHR, 9 October 2013)
- *Brown v. Board of Education of Topeka, Kansas* 347 U.S. 483 (1954) 349 U.S. 294 (1955)
- *Case „relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium* App no 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64 (ECHR, 23 July 1968)
- *D.H. and Others v. the Czech Republic* Application no. 57325/00 (ECHR, 2007)
- *Gyöngyöspata Case*: Eger Court, 12.P.20.351/2011/47.; Budapest-Capital Regional Court of Appeal, 2.Pf.20.305/2013/20.; Curia, Pfv.IV.20.097/2015/3.
- *Győr Case*: Győr-Moson-Sopron County Court, 3.P.20.950/2008/36.; Győr Regional Court of Appeal, Pf.V.20.416/2010/3.; Curia, Pfv.IV.20.068/2012/3.
- *Hajdúhadház Case*: Debrecen Regional Court of Appeal, Pf.I.20.361/2007/8.; Supreme Court, Pfv.IV.20.936/2008/4.
- *Horváth and Kiss v. Hungary* Application no. 11146/11 (ECHR, 2013)
- *Jászladány Case*: Jász-Nagykun-Szolnok County Court, 16.P.20.812/2007/70.; Debrecen Regional Court of Appeal, Pf.I.20.095/2010/6.; Supreme Court, Pfv.IV.20.037/2011/7.
- *Kaposvár I. Case*: Somogy County Court, 24.P.21.443/2008/35.; Pécs Regional Court of Appeal, Pf.I.20.061/2010/7.; Supreme Court, Pfv.IV.21.568/2010/5.
- *Kaposvár II. Case*: Kaposvár Court, 11.P.21.553/2013.; Pécs Regional Court of Appeal, Pf.III.20.004/2016/4.
- *Lavida and Others v. Greece* App no 7973/10 (ECHR, 30 May 2013)

- *Leyla Sahin v Turkey* App no. 44774/98 (ECHR, 10 November 2005)
- *Misdiagnosis Case of Kecskemét*: Bács-Kiskun County Court, 12.P.20.392/2008/21.; Szeged Regional Court of Appeal, Pf.III.20.627/2008/3.
- *Misdiagnosis Case of Nyíregyháza*: Szabolcs-Szatmár-Bereg County Court, 3.P20.035/2008/20.; Debrecen Regional Court of Appeal, Pf.II.20.509/2009/10.; Supreme Court, Pfv.IV.20.215/2010/3.
- *Miskolc Case*: Borsod-Abaúj-Zemplén County Court, 13.P.21.660/2005/16.; Debrecen Regional Court of Appeal, Pf.I.20.683/2005/7.
- *Nyíregyháza Case*: Nyíregyháza Court, 10G.15.13.040.099/22.; Debrecen Regional Court of Appeal, Gf.I.30.347/2014/10.; Curia, Pfv.IV.20.241/2015/4.
- *Orsus and Others v. Croatia* App no 15766/03 (ECHR, 16 March 2010)
- *Sampani and Others v. Greece* App no 59608/09 (ECHR, 11 December 2012)
- *Sampanis and Others v. Greece* App no 32526/05 (ECHR, 5 June 2008)
- *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland* App no 32772/02 (ECHR, 30 June 2009)

A **personal interview** was conducted with Dr. Lilla Farkas, attorney, who represented the CFCF in the cases listed above. (15 November 2016)