

# **EQUALITY IN PRACTICE IN THE CASE OF ROMA IN HUNGARY**

**HOW TO OVERCOME SCHOOL SEGREGATION?**

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## **Abstract**

Improving the educational situation of the Roma has been an on the agenda of the Hungarian Government for decades. There have been policies, frameworks, and strategies devised by the European Union and by the Hungarian Government for the inclusion of the Roma. A key element of these measures is to tackle school segregation. This thesis focuses on the educational situation of the Roma in Hungary, specifically on school segregation. I hypothesize that the Hungarian Government's legal commitment to non-discrimination and protection of discriminated groups are insufficient and obscure. Furthermore, I hypothesize that fighting against school segregation of the Roma, although it is claimed in the National Strategy for Social Inclusion to be eradicated, is not practically promoted by the Hungarian Government, therefore social inclusion of the Roma is hindered on the state level. After analyzing relevant legal documents, including strategies for social inclusion presented in my interviews with national experts on inclusive education, I argue that even though the legal framework for protection against discrimination in general is present, there is a need for targeted legal protection against discrimination of the Roma. Furthermore, I argue that a specifically Roma focused Hungarian national strategy for social inclusion need to be devised, which should be followed by targeted state-led and monitored actions for inclusion of the Roma. In the last part of this thesis work, I provide policy recommendations to the European Union and to the Hungarian Government in which I focus on those targeted measures with particular attention to quality enhancement of education, which ultimately lead to reducing discrimination and school segregation of the Roma.

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## I. Introduction

In Hungary, the Roma minority is the most populous ethnic minority group. There is an extensive literature which argues that the Roma are highly discriminated in Hungary, that they suffer from oppression and marginalization. The European Commission has recognized that targeted measures are required to tackle discrimination and exclusion and has issued the ‘Framework for National Roma Integration Strategies’ (EU Framework 2011). Several states – including Hungary – have elaborated on and implemented the ‘National Strategy for Social Inclusion’ (Hungarian Strategy 2011). This strategy includes four main areas – education, health, housing and employment.

The EU Framework argues that the gap between the Roma and the non-Roma students regarding their achievements in schools is wide. It calls on the Member States to reduce this gap, by improving the education of the Roma students, ensuring their access to education, reducing early school leaving and tackling school segregation (EU Framework 2011).

As Marius Taba and Andrew Ryder (Taba and Ryder 2012, p. 7) argue, segregated education of Roma students in most cases means lower level of the quality of education, stigmatization from the majority society and therefore limited opportunities on the job market. They also show that the expectations of teachers in segregated schools and classes are much lower. I hold that this is partly a consequence of mistakenly identifying the Roma with the ‘culture of poverty’ – explained in Section VI.1.

Although the Hungarian Government implemented a national strategy for social inclusion in 2011 and the Fundamental Law of Hungary – hereinafter FLH – incorporates the notion of non-discrimination and has also administered the so-called ‘Act CXXV of 2003 on Equal Treatment

and the Promotion of Equal Opportunities’ – hereinafter Act 2003 – school segregation of the Roma is still a serious concern in Hungary. Studies show – will be detailed in Section VI.2.2. – that there is an increasing number of Roma children in Hungary who study in segregated education. Havas and Lisko (Havas and Lisko 2005) found 170 schools out of the 553 schools assessed in their research has more than 50 % Roma students.

Despite the Hungarian legal framework of protection against discrimination and the Hungarian strategy for social inclusion, discrimination against Roma is persistent in Hungary. I argue that the Hungarian Government’s legal framework and the Hungarian Strategy need to be revisited by involving national experts on inclusive education, representatives from the Roma minority and the knowledge of the Hungarian civil society.

This thesis begins with a theoretical overview of discrimination of the Roma and antigypsyism, which is followed by exploring the Hungarian legal framework of minority protection and the strategy for social inclusion with a concentration on the field of education. The thesis continues with analyzing the educational situation of Roma in Hungary with special focus on school segregation. The analysis of relevant texts and practices is followed by the analysis of my interviews with experts. In the last part, I provide recommendations for the Hungarian Government in which I focus on those targeted measures, with particular attention to the quality enhancement of education, which ultimately leads to reducing discrimination and school segregation of the Roma.

## II. Discrimination of Roma, Antigypsyism

### II.1 European condition

In Europe the Roma minority is one of the most populous minority groups. Roma face prejudice and experience discrimination and marginalization in several fields. Markus End defines the term antigypsyism as follows: “

Antigypsyism is a historically emerging and self-stabilizing social phenomena combined of 1) a homogenizing [sic] and essentializing [sic] perception and description of certain social groups under the stigma of 'Gypsy' or other related terms 2) an attribution of specific deviant characteristics to the stigmatized 3) and discriminating social structures and violent practices that emerge against that background (End 2012, p. 4-5).

Jonathan Fox specifies that the Roma are one of the most discriminated groups in Europe. He highlights that the Roma are usually perceived by others as “dirty, lazy...people who are prone to crime. That they are often active in the black market and prostitution and are disproportionately involved in recorded crimes perpetuates this stereotype” (Fox 2001, 3).

Ian Hancock points to the historical records showing that the persecution of Roma people started way before Nazi Germany.

In 1721 Emperor Karl VI ordered the extermination of all Roma everywhere; it was not illegal to murder a Rom, and there were sometimes "Gypsy hunts," in which Roma were tracked down and killed like wild animals. Forests were set on fire, to drive out any Roma who might have been hiding there. (Hancock 1997, p.1)

As Hancock describes, in the 1920s Roma were not allowed to go to public baths and public parks and after 1925 unemployed Roma were placed in work camps. Hancock also refers to ‘The Central Office for the Fight Against the Gypsies in Germany’ established in 1933 that introduced that “government officials in Burgenland called for the withdrawal of all civil rights from the Romani



people” (Hancock 1997, p. 4). He also elaborates on how the Roma were forbidden to marry a German and how they were classified as second-class citizens.

Between June 12th and June 18<sup>th</sup>, 1938, Gypsy Clean-Up Week took place throughout Germany which, like Kristallnacht for the Jewish people that same year, marked the beginning of the end. Also in 1938, the first reference to "The Final Solution of the Gypsy Question" appeared, in a document signed by Himmler on December 8th that year. In January, 1940, the first mass genocidal action of the Holocaust took place when 250 Romani children were murdered in Buchenwald, where they were used as guinea-pigs to test the efficacy of the Zyklon-B crystals, later used in the gas chambers. In June, 1940, Hitler ordered the liquidation of "all Jews, Gypsies and communist political functionaries in the entire Soviet Union. (Hancock 1997, p. 3)

Aiden McGarry argues that the ways Roma are seen, and their problems are represented in Europe has several distinctive aspects – such as socio-economic and political exclusion – and that there is no agreement on universal definitions, narratives and methodology of tackling the Roma issue. Therefore, policymakers cannot draw a common conclusion a common plan for integration of the Roma. McGarry uses the term representation in terms of “how the community is understood by itself as well as by others” (McGarry 2014, p. 756). McGarry argues that the Roma have little influence on their representation in the public media. He claims that the Roma have aspirations to shape this public image in order to reduce stereotypes and discrimination, but these attempts are not adequate (McGarry 2014).

## **II.2 Discrimination of the Roma in Education, Health and Employment**

According to Andrew Ryder, misrecognition of the Roma is the result of stereotypes and stigmatization, which in turn, lead to exclusion and marginalization. The Roma have no equal access to resources, which further widens the gap between the Roma and the majority. This process clearly shows a structural model for the marginalization and exclusion of the Roma. Integrating the Roma into the society would mean that the Roma are guaranteed equal access to services – for

example, educational and health services – equal opportunities on the job market and equal position in resource redistribution processes. Furthermore, successful integration of the Roma entails reduction of racism, hate speech and stigmatization. In order to reduce these, there is a crucial need for changing the perception of the whole society and that the majority recognizes that the Roma have to be provided with equal access of services and resources (Ryder n.d).

The marginalization, exclusion and demonization that ethnic groups like the Roma are subject to is based on racism, ‘othering’ and projection of stereotypes that constitutes cultural ‘misrecognition’; and this is compounded by ‘maldistribution’ or what can be termed as a lack of services and resources, which further marginalizes groups like the Roma (Ryder n.d).

Different academics have approached distinctive areas of discrimination. Ann Hyde elaborates on the discrimination of the Roma in the labor market. She refers to an interview-based research conducted by the European Roma Rights Center (ERRC). The study highlights that there is ‘systematic discrimination’ in the labor market regarding the Roma. She argues that the low educational level and therefore the lack of specific skills of the Roma, play an important role in their high rate of unemployment, besides she holds that discrimination is a crucial factor as well. According to her, discrimination “significantly aggravates the situation and causes systemic exclusion from employment for vast numbers of working-age Roma.” (Hyde 2006).

Another important level of discrimination is in the field of education. Helen O’Nions argues that education and social inclusion are inseparable and consecutive. She notes that “structural inequality and entrenched discriminatory attitudes are the main obstacles to Roma inclusion” (O’Nions 2015, 103). She emphasizes that this should be tackled by promoting and enforcing changes in legal and social norms. She urges that the cooperation and dialogue between various EU institutions and the European Court of Human Rights should be strengthened in order to reach

a common ground in formulating narratives, aims and policy changes. She uses the example of the Czech Republic to show that many Roma children are systematically being sent to special schools, which amounts to systemic exclusion. She argues that there is a need for targeted measures which enforce desegregation and integration. She adds that “the curriculum needs modification to reflect the diverse cultural historical experiences of the student body and minority language teaching must be improved in order to enable access” (O’Nions 2010, 20). She also shows that this problem is present in several European countries. (O’Nions 2015)

The Amnesty International also addresses this systemic discrimination and segregation problem in the Czech Republic in their report ‘Must Try Harder, Ethnic discrimination of Romani children in Czech schools’, as they demonstrate, Romani families and Roma children “struggle through to receive equal, inclusive and quality education.” (Amnesty International 2015, 5). The report identifies three main levels of discrimination against the Roma as follows: “the over-representation of Romani pupils in so-called practical schools (primary schools designed for pupils with mild mental disabilities); the segregation of Roma in mainstream schools and classes; and various other forms of differential treatment in mixed mainstream schools.” (Amnesty International 2015, 5). As the report argues the measures by the Czech Government, designed to target these problems have failed because they have not recognized that the source of discrimination is in the prejudices towards Roma (Amnesty International 2015).

The Roma Health Report (European Commission 2014) also highlights discrimination towards Roma. It points out that the Roma experience ‘intense discrimination’ in several areas. The report specifies Roma health inequalities, which can be defined as “differences in health status or in the distribution of health determinants between different population groups. For example, differences in morbidity between elderly people and the younger population or differences in

mortality rates between people from different social classes.” (Roma Health Report 2014, 8). Many Roma do not have access to health care services. Furthermore, as the Roma Health Report indicates, the gap in the mortality rate between Roma and non-Roma is significant (Roma Health Report 2014).

### **II.3 Hungarian condition**

Agnes Kende uses the term ‘otherness’ to summarize the condition of the Roma in Hungary. She explains that the “otherness of Gypsies in Hungary means that they are deprived of opportunities for improvement, and of economic, political, and cultural capital as well.” (Kende 2000, 200). She argues that the Roma have limited opportunities for personal development, they are not adequately represented in political life and have lesser chances to express and preserve their cultural specificities (Kende 2000).

The Policy Solutions – a non-governmental, political research institute – in their policy analysis about the Roma in Hungary argues that the Roma minority have been facing ever more serious problems in several areas. The policy analysis points out that many Roma became unemployed after the regime change at the end of the twentieth century. This resulted in Roma families’ severe income reduction, adding a major obstacle to the integration of the Roma. The analysis also elaborates on the educational situation of the Roma. It is shown that many Roma were put into classes of special needs, identified as disadvantageous, because that is how the Roma were segregated in schools. (Policy Solutions – A magyarországi romák helyzete 2012).

Erzsébet Sándor Szalayné – Deputy Commissioner for Fundamental Rights Ombudsman for the Rights of National Minorities – argues that the negative attitude towards Roma, hate speech, hate crimes are not just a matter of the past, but are very much present nowadays as well. She states

that “neo-Nazi, new fascist, and paramilitary groups' anti-Roma actions, and even attacks are observable and in many cases these attacks end in death” (Szalayné 2017). She refers to six Roma victims killed by a serial killer group in Hungary in 2009. There was also a five-year-old Roma child among the victims, whom the attackers brutally executed with a shotgun. His father was executed at the same time, with the same brutality (Szalayné 2017).

As the literature explained above shows, the Roma face deeply rooted discrimination not only on the level of individuals, but on the societal level as well. Discrimination arises from several factors, such as prejudice and misconceptions about the Roma and transpires in different areas of everyday life, such as education, health and employment. I argue that this deeply rooted discrimination experienced by the Roma partially determines the Romani group identity. Experiencing hate speech, stigmatization and refusal by the society on an everyday basis makes it unavoidable to reflect on them for those Roma people when they intend to capture their Romani identity. Protection from prejudice, hate speech, stigmatization and discrimination is a common need for the whole Roma community, since they have a direct impact on Romani identity itself.

#### **II.4 Recapitulating the literature review**

Antigypsyism is thriving in Europe. Discrimination and the systematic exclusion of the Roma are present in several aspects of their everyday life. The gap between the Roma and the non-Roma, especially in the field of education, employment and health is widening. Stereotypes, prejudice and hatred towards Roma lead to marginalization and discrimination. The Roma do not have enough power to effectively fight against these stereotypes, since they are oppressed by the majority society.

The majority society has the power to shape the public perception about the Roma, therefore have the power to shape the Romani identity. Romani identity is affected by the persecution and genocide experienced by Roma communities. I do hold that protection from genocide is a commonly desired value for Romani people. The Genocide of the Roma did not affect only individual lives and identities, but also impacted the collective Romani identity (Baar 2010). The Roma Genocide is a frightening and terrific memory for the entire Roma community, a psychological burden for the Roma, handed down/passed on from one generation to another.

In Hungary, the Roma are excessively discriminated. The prejudice and marginalization of the Roma mean depriving them of opportunities in several fields of their everyday life. The representation of the Roma minority in Hungary is inadequate; instead the majority society has an ultimate power to shape pre-conceptions and prejudices toward Roma. The persecution of the Roma is not a matter of the past in Hungary. The serial killings of Roma in 2009 represents that the anti-Roma violence in Hungary may lead to disasters.

Based on the discussion about antigypsyism, prejudice, marginalization and discrimination that the Roma have been facing for such a long period, I argue that the Roma need special attention from governments with well-designed and targeted policies for mitigating the discrimination and marginalization they suffer from, and that governments should also be pro-active in promoting the social inclusion of the Roma. To understand the current governmental effort to fight the discrimination of the Roma, below, I am exploring the Hungarian legal framework for minority protection, focusing on the FLH, the Act 2003 and case law on school segregation.

### III. METHODOLOGY

#### III.1 Research question

Despite having school segregation and the improvement of the educational situation of the Roma on the agenda of the European Union and of Hungary, school segregation is still a critical issue. Why school segregation of Roma does not show decreasing tendency, as it is expected after introducing different strategies, law and projects? How to overcome school segregation?

#### III.2 Hypotheses

1. The Hungarian Government's legal commitment to non-discrimination and protection of discriminated groups are insufficient and obscure.
2. Fighting against school segregation of the Roma, although it is claimed in the National Strategy for Social Inclusion to be eradicated, is not practically promoted by the Hungarian Government, therefore social inclusion of the Roma is hindered on the state level.

#### III.3 Type of analysis

##### III.3.1 Legal analysis

I choose legal analysis because it allows me to explore and understand applicable law. In this process limitations and shortcoming of each acts can be pointed out, which is necessary in finding possible answers to the puzzle, explored above in this section. The process of legal analysis: after analyzing the facts – European and Hungarian condition of school segregation -, relevant acts are identified and explored in its relation to school segregation. The next step is to compare the content of the law with the facts – manifestation of school segregation – and see if there is any violation of the rule of law. Further step is to assess relevant acts whether they are sufficiently and efficiently

prohibit school segregation. Thereafter, providing recommendations for revisiting the law, in light of the findings of the legal analysis.

### III.3.2 Semi-structured interviews

I use semi-structured interviews in my research since it allows dialogue between the interviewer and the interviewee about the topic. There were broad questions prepared, though most of the questions were raised during the interview.

The national experts on social inclusion for the interviews are:

- Academics, researchers, who have conducted research and published in the field of school segregation of Roma in Hungary.
- Representatives of the civil society, whose work is closely related to educational situation of Roma in Hungary.
- Lawyers, who have experience in litigations against segregated education of Roma in Hungary.

I have conducted five semi-structured interviews for this thesis research. The aim of the interviews is to identify patterns of segregated education of Roma in Hungary, to discuss former and current legislation which protects against school segregation and to discuss former and current actions, and strategies to fight against school segregation. The length of the interviews is between 30 and 60 minutes. Selection of interviewees happened through personal connections and supervisor advice. To ensure safety and data protection for the interviewees, I anonymized the interviews and use codes SEGR.HU.01 - 05 – for reference.



I have three groups of national experts on social inclusion for my interviews. Firstly, two academics and researchers who have conducted research and published in the field of school segregation of Roma in Hungary. Secondly, two representatives of the civil society, whose work is closely related to the educational situation of Roma in Hungary. Thirdly, a lawyer with experience in litigations against the segregated education of Roma in Hungary.

### **III.4 Limitations**

This thesis work uses exploratory and qualitative methods. Limitation of the thesis is that it does not encompass field research in educational institutions. Data about the extent of school segregation is limited to exploring the relevant literature available and conducting the interviews with experts.

#### IV. Legal framework of minority protection – school segregation

##### **IV.1 International protection against school segregation**

(Danka and Rostas 2012) The Council of Europe adopted the ‘Framework Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR 1995) – entered into force in 1998, which is the first legally binding convention that protects national minorities. “The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities” (ECHR 1995, Article XII.3.) The following legally binding treaties are the most relevant and some of them specifically target racial segregation: “UNESCO Convention Against Discrimination in Education (CDE), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention of the Rights of the Child (CRC)” (Danka and Rostas 2012, p. 51).

These documents ensure every child to be educated to “his/her fullest potential, without discrimination (Danka and Rostas 2012, p. 53). In terms of this, right to education means right to ‘quality education’. Segregated education deprives children to participate in quality education. Thus, segregated education violates fundamental rights, such as “right to education, the right of non-discrimination in the enjoyment of protected rights or the right not to be treated in a degrading manner” (Danka and Rostas 2012, p. 54). School segregation of Roma is a form of discrimination – explained in Section V.1. The CDE is an ‘internationally binding instrument’ which prohibits racial segregation. CDE holds that “establishing or maintaining separate educational systems or institution for persons or groups of persons” based on “race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education” is a form of discrimination, and it is

prohibited. (CDE Article I. c). Although, the CDE defines lawful separation based on sexes, religious or linguistic reasons, and allow the establishment of private educational institutions; it explicates that the quality of education should not be lower in these institutions and the purpose of separation should not be exclusion of any groups.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) “condemns segregation in general as a distinct harm” (Danka and Rostas 2012, p. 64). The ICERD holds that “State Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction” (ICERD Article III). Danka and Rostas note that the normative standing of ICERD Article III was further developed by the ‘United Nations Committee on the Elimination of Racial Discrimination in its General Recommendation 19, The prevention, prohibition and eradication of racial segregation and apartheid’ announcing that it includes ‘racial segregation and apartheid’ as well and obliging Member States to eliminate consequences of these processes. Danka and Rostas also point out General Recommendation 29, which calls the Member States to take steps to eliminate ‘residential, educational and employment discrimination’ (Danka and Rostas 2012).

Danka and Rostas highlight that the European Commission against Racism and Intolerance (ECRI) in 2002 recommended the Member States to ‘treat segregation as a specific form of discrimination’. The ECRI defines segregation as follows: “the act by which a person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification” (ECRI Recommendation 2002, Para XVI). Besides, Danka and Rostas point to the ‘OSCE Action Plan on Improving the Situation of Roma and Sinti’, which calls Member State to

act to integrate Roma into the mainstream education, ensure access to mainstream education on each level, while being sensitive to cultural differences (Danka and Rostas 2012).

The Action Plan formulates recommendation, such as ensuring that “national legislation includes adequate provisions banning racial segregation and discrimination in education and provides effective remedies for violations of such legislation” (OSCE Action Plan 2003, Recommendation 67) and developing “comprehensive school desegregation programs aiming at: (1) discontinuing the practice of systematically routing Roma children to special schools or classes (e.g., schools for mentally disabled persons, schools and classes exclusively designed for Roma and Sinti children); and (2) transferring Roma children from special schools to mainstream schools” (OSCE Action Plan 2003, Recommendation 73). The Action Plan also holds that it is crucial to educate teachers in multicultural education and teaching in ‘ethnically mixed classes (OSCE Action Plan 2003).

The Council of the European Union has adopted the Race Equality Directive (RED 2000), which calls Member States to implement the “principle of equal treatment between persons irrespective of racial or ethnic origin” (Council Directive, RED 2000). The purpose of the Directive is to provide a framework for fighting racial and ethnic discrimination. The Directive covers both direct – “one person is treated less favorably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin” (Council Directive RED, Article II/2/a) and indirect discrimination “an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary” (Council Directive RED, Article II/2/b). The

RED recognizes the important to eliminate racial discrimination in the field of education, though it does not specify targeting school segregation.

To sum up, legally binding international documents, such as the Framework Convention for the Protection of Human Rights and Fundamental Freedoms and the UNESCO Convention Against Discrimination (CDE) in Education oblige Member States to promote equal opportunities for access to education for national minorities and ensure every child to be educated to “his/her fullest potential, without discrimination. The CDE prohibits racial discrimination, as well as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). United Nations Committee and the European Commission against Racism and Intolerance (ECRI) calls Member States to support the integration of Roma in the mainstream education. Recommendations also cover that teacher training regarding ethnic diversity is essential. The Race Equality Directive (RED) obliges Member States to implement the principle of equal treatment and fight racial discrimination.

## **IV.2 Non-discrimination laws in Hungary**

Hungary has shown its commitment to minority protection by incorporating it into the FLH and enacting the Act 2003. Below, I am discussing these legal frameworks, especially focusing on school segregation of Roma in Hungary.

### **IV.2.1 Ambiguous status of the core constitutional principles**

In this section, I analyze the basic principles of the FLH: human dignity, non-discrimination, equality in rights, and protection of minorities. The aim is to point to their controversial formulations.

As Catherine Dupre (Dupre 2012) points out, human dignity was incorporated by the 1989 Constitution, in article 54 (1), according to which “in the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights” (XXXI. tv, 1989). The FLH also recognizes human dignity stating that “human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the fetus shall be protected from the moment of conception” (FLH 2011, p. 12).

Dupre (Dupre 2012) argues that a democratic constitution must meet the following criteria: separation of powers, rule of law, human rights protection with special focus on human dignity. She holds that the FLH does not meet the requirements of ‘European constitutionalism’. Dupre points to, article R (3) – according to which “the provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historical constitution” (FLH 2011, p. 8) – instrumentalize human dignity by enforcing pre-defined values, stated in the preamble of FLH. This is not supportive of individual autonomy, freedom, equality and dignity. The preamble holds that the whole nation and its unity is based on Christianity and the on the values of Christianity and ‘Christian families’.

The Hungarian Government enacted the ‘Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities’ As it is stated in the Act...

“...the Parliament, acknowledging every person’s right to live as a person of equal dignity, determined to provide effective legal protection to those suffering from negative discrimination, stating that the promotion of equal opportunities is principally the duty of the State” (Act CXXV 2003).

Kriszta Kovacs (Kovacs 2012) argues that the 1989 Constitution departs from the ideas of democracy and equal protection of all. The FLH “changes the characteristics of Hungarian

constitutionalism, abandoning the idea of a secular state based upon liberty, equality and democracy. Kovacs argues that the FLH has an ‘anti-egalitarian’ character, which is also reflected in the lack of clear definition of affirmative action. This is a step back compared to the 1989 Constitution. “The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever” (1989 Constitution Article 70/A/1). Affirmative action was recognized by the 1989 Constitution as follows: “The Republic of Hungary shall endeavor to implement equal rights for everyone through measures that create fair opportunities for all. (1989 Constitution Article 70/A/3). The FLH Article XV (3) holds that “by means of separate measures, Hungary shall promote the achievement of equality of opportunity and social inclusion, and Article XV (4) states that “by means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities” (FLH 2011, Article XV 3-4). According to these articles, affirmative action as a state duty is recognized only concerning those groups listed in FLH Article XV (4). Other highly discriminated groups, such as Roma, LGBTIQ, single parents are excluded. Limiting the scope of protected groups in the FLH means that the government refuses its duty to assess situation of social groups in terms of inequality of opportunities.

The FHL puts emphasis on equality and rejects any kind of prejudice. As it is written in the document “we hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse” (FLH 2011, p. 3) It also incorporates the idea of non-discrimination. It states that “Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, color, sex, disability, language, religion, political or other opinion, national or

social origin, property, birth or any other status” (FLH 2011, p. 15). The FHL does not specify the duty of the state to identify minority groups – except those addressed in FHL Article XV – that would enjoy protection, rather it pre-defines values which need protection – explained above in this Section.

The FHL does not only incorporate the theory of non-discrimination, but also explicates that the state has a duty to fight for social justice and inclusion. The Hungarian Government has to appoint a ‘Commissioner for Fundamental Rights’, whose main responsibility is protecting fundamental rights. “The Commissioner for Fundamental Rights shall inquire into any violations related to fundamental rights, that come to his or her knowledge, or have such violations inquired into, and shall initiate general or specific measures to remedy them” (FLH 2011, p. 40). The FHL Article XXX. regulates that the ‘Commissioner for Fundamental Rights’ has to be elected for six years by two-thirds of the votes of the ‘Members of the National Assembly’.

#### IV.2.2 Rights to education

The United Nations adopted the ‘Universal Declaration of Human Rights’ in 1948, which recognizes education as a human right. Article 26 holds that,

“everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace” (Universal Declaration of Human Rights 1948)

Hungary has been a member state of the United Nations since 1955, therefore all treaties, which articulate binding rules – including the Universal Declaration of Human Rights must be respected



and adopted. The Hungarian Government's official website (Official Website of the Hungarian Government, 2018) also recognized the importance of the Universal Declaration of Human Rights, as a foundation of the development of human rights. The 'Human Rights Working Group', founded by the Hungarian Government in 2012 has a duty to 'validate and promote' the content of the Universal Declaration of Human Rights.

Article XI of the FLH specifies the fundamental right to education. It holds that not solely the right to education for all citizens is ensured and facilitated by the Hungarian State, but it incorporates the duty of the Hungarian State to ensure that all citizens have the right to study in primary, secondary and higher educational institutions, 'according to his or her abilities'. By including this duty in the FLH, the Hungarian State assures all citizens to participate in quality education. This implies that students in all educational institutions have to be supported with an environment of study, where they can most effectively develop their skills and capabilities.

Article XII specifies the right to work. As it is written in the FHL:

"Everyone shall have the right to freely choose his or her work, occupation and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and possibilities. Hungary shall strive to create the conditions ensuring that everyone who is able and willing to work has the opportunity to do so" (FHL Article XII).

The content of this article is closely related to the previous article. Having the right to 'freely choose' our work, occupation 'in accordance with our abilities' is fundamentally impacted by the quality of our educational background. I hold that segregated education of the Roma undermines the content of Article XII, since people who participate in education in which they are deprived of the right to most effectively develop their skills and capabilities are also deprived of the 'free

choice’ to choose their work, occupation, and therefore deprived of the opportunity to ‘contribute to the enrichment of the community through their work, in accordance with his or her abilities and possibilities’, which is indicated as a duty of all.

#### IV.2.3 Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities – focusing on school segregation

Based on the Race Equality Directive (RED) the Hungarian Government has enacted the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. The Act involves the principle of non-segregation and identifies different practices that lead to segregation as unlawful: “direct negative discrimination, indirect negative discrimination, harassment, unlawful segregation, retribution and any orders issued for those mean a violation of the principle of equal treatment” (Act CXXV 2003). Discrimination is defined by the Act as “provisions that result in a person or a group is treated less favorably than another person or group in a comparable situation because of his/her – sex, racial origin, color, nationality, national or ethnic origin, mother tongue...” (Act CXXV 2003). The Act defines unlawful segregation as,

“a conduct that separates individuals or groups of individuals from other individuals or groups of individuals in a similar situation on the basis of their characteristics as defined in Article 8, without any law expressly allowing it” (Act CXXV 2003).

It is important to observe that specific laws may allow segregation in certain exceptional situations.

These exceptions are defined as follows:

“The principle of equal treatment is not violated if, a) in public education, at the initiation and by the voluntary choice of the parents, b) in institutions of higher education, by the students’ voluntary participation, such education based on religious or other ideological conviction, or education for ethnic or other minorities is organized whose objective or program justifies the creation of segregated classes or groups; provided that this does not result in any disadvantage for those participating in such an education, and the education complies with the requirements approved, laid down and subsidized by the State. (3) Any legal act may divert from the provisions of Article

27(2)a) in respect of educational institutions serving the protection of linguistic or cultural identity, or in respect of educational institutions of churches, ethnic, national or other minorities” (Act CXXV 2003).

The Act implies that segregation is lawful if it is the voluntary choice of the parents. In theory, organizing education by voluntary choice of parents may exist, however formulating such a ‘proof of bypassing the law’ should be more precisely approached. Allowing such a statement disregards the fact, that minorities – in many cases, for instance the Roma minority – face deeply rooted prejudice and marginalization and experience discrimination and exclusion from the majority. Voluntary choice of parents in choosing an educational institution for their children can be approached from the angle of Roma families, and can be portrayed as choosing a school for their children where they can receive education in Romani language and nurture their culture. However, it can be also portrayed as the Roma parents who choose segregated school for their children, where they may not experience prejudice and discrimination from the majority. In that case we cannot disregard the fact that antigypsyism is present in Hungary and the effect of antigypsyism may influence Roma parents’ choice in choosing.

Voluntary choice of parents in choosing educational institutions should be also approached from the perspective of the non-Roma parents. Non-Roma parents – who have the financial and infrastructural resources – may decide to enroll their children in schools outside their residence. There could be several reasons here for such a decision, such as the low-quality standards of the school, however we cannot disregard the fact that antigypsyism is present in Hungary. Several non-Roma families decide to choose a school outside their municipality because they do not want their children to study in an institution with high a percentage of Roma students. This process is commonly called ‘white flight’. The more ‘white flight’ happens, the higher the percentage of the

Roma students in the school. Roma families who cannot afford to choose schools for their children outside their residence enroll their children in the nearest institution. This process ultimately results in segregated education. In that case Roma families do not have a choice between segregated or non-segregated education. They are forced to enroll their children where there is no other possibility than segregated education. Voluntary choice of parents therefore should not be regarded as a given practice according to which the principle for equal treatment is not violated.

The Act also implies that education of minorities may be segregated, if it intends to serve the objectives of the educational institution and simultaneously does not put students at a disadvantage and meets the state requirement of education. I argue that this passage is not carefully formulated therefore allows educational institutions to abuse. The Act should clearly state those specific cases for lawful segregated education. These cases should be linked to group-specific rights, for example, right to education of minorities in their own language. I also argue that the category in which students are put at a disadvantage has to be explored in detail by the Act. The fact that Roma children are forced – due to ‘white flight’ explained above – and have no other chance than participating in segregated education is a disadvantage in itself. These exceptions are problematic and make unjustified segregation of Roma lawful. I also argue that providing this ‘loophole’ for segregation does not promote equal opportunities and social justice, it rather hinders it on different levels.

#### IV.2.4 Disguised school segregation

Although, the 2003 Act prohibits school segregation, religious schools and schools organized by voluntary choice of parents are exempt from this prohibition. The Hungarian Parliament in 2014 accepted and enacted the T/2085 proposal for amendment of the Act CXCV of 2011 on National

Public Education, proposed by Zoltan Balog, former Minister of Human Capacities. This amendment authorizes the Minister to give exemptions – prohibiting school segregation in the 2003 Act – to certain schools, on the ground of religious freedom and nationality education. (Zemandl 2018). Tímea Szabó, independent representative of the Parliament has proposed a modification (T/2085/3) for the T/2085 amendment –to eliminate the section which grants exemption for religious schools on school segregation – however Zoltan Balog’s modification was passed and came into force on January 1, 2015 (Zemandl 2018). Therefore, at present school segregation of Roma takes place under the disguise of religious freedom and nationality education. In the next Section, I introduce the situation of school segregation of Roma in Hungary, analyzing existing patterns of school segregation.

### V.1 European framework for social inclusion-focusing on education

In 2011, the European Commission issued the ‘Framework for National Roma Integration Strategies’ up to 2020. The EU Framework departs from the insight that “many of the estimated 10-12 million Roma in Europe face prejudice, intolerance, discrimination and social exclusion in their daily lives. They are marginalized and live in very poor socio-economic conditions...this is not acceptable in the European Union (EU) at the beginning of the 21st century” (European Commission 2011, 2). The EU Framework focuses on four main areas of inclusion: education, housing, health and employment. It argues that “Member States should ensure that all Roma children have access to quality education and are not subject to discrimination or segregation, regardless of whether they are sedentary or not.” (European Commission 2011, 5). It also specifies that Member States should ensure that all children finish at least the primary school and should encourage youths to continue their studies after primary school. The Framework holds that Roma people have to be provided equal access to vocational training programs, as well as equal access to the job market and should be encouraged and supported by individual initiatives. It contains recommendations about ensuring equal access to quality health care services, with special attention to women and children. Furthermore, “Member States should promote non-discriminatory access to housing, including social housing.” (European Commission 2011, 5).

In this Section, I focus on the EU Framework in the field of education. Access to education and fighting segregation are pivotal issues. “Educational achievement within the Roma population is much lower than the rest of the population... Roma children tend to be over-represented in special education and segregated schools” (European Commission 2011, 5). The Member States

which accepted and internalized the strategy are expected to take steps toward enhancing the access to education for the Roma and to reduce or eliminate segregated education.

In her critical analysis of the Framework, Anna Mirga points out that the main weakness is its legally non-binding character. Because of the ‘soft policy character of the Framework’ Member States can evade to design a Roma-specific strategy. In addition, Mirga also reflects on the lack of clearly defining the target group and the absence of exploring the importance of targeting ‘anti-discrimination’ (Mirga 2017).

Defining who is Roma is crucial in devising a strategy for social inclusion of the Roma. The European Commission defines the Roma in their official website as follows: “The Roma are Europe’s largest ethnic minority. Many Roma in the EU are victims of prejudice and social exclusion, despite the fact that EU countries have banned discrimination. The term Roma encompasses diverse groups, including Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti and Boyash.” (EU Commission – Who are Roma n.d).

Fighting discrimination should be legally defined and devised. Relying exclusively on socio-economic factors is inadequate; the Framework should reflect on anti-discrimination from the perspective of fundamental rights.

“Implementation of the EU Roma Framework should be linked to the question of EU principles on fundamental rights, more specifically on EU anti-discrimination legislation. In other words, fulfilment of commitments with regards to the EU Roma Framework should not rely solely on the socio-economic inclusion approach, but should be assessed from the perspective of compliance with human rights standards in member-states” (Mirga 2017, p. 12)

Mirga (Mirga 2017) highlights the importance of the infringement procedures launched by the EU. In May, 2016 the European Commission launched an infringement procedure against

Hungary because of the systemic discrimination against Romani children in the educational system. Đorđe Jovanović, President of the European Roma Rights Centre said: “Despite the European Court of Human Rights explicitly telling Hungary to ‘undo a history of racial segregation’ in its schools against Roma like myself, Hungarian authorities willfully continue to marginalize thousands of our children within a prejudicial education system” (2016, ERRC). Mirga states that the discrimination of Roma children in schools continued after the infringement procedures. The impact of these procedures needs to be monitored. She identifies some modest progress in the educational situation of Roma in several Member States – specifically in terms of increasing the participation. However, “school segregation of Roma children continues to be high: 20% in Hungary, 26% in Bulgaria, 27% in Romania, 40% in the Czech Republic and 51% in Slovakia” (Mirga 2017, p. 20).

The ‘Report on the Evaluation of the EU Framework for National Roma Integration Strategies’ (Evaluation Report 2018) provides a critical follow-up on the EU Framework. The Evaluation Report summarizes the findings of an ‘open public consultation’ – involving ‘National Roma Contact Points’, an organization from the civil society and individuals from the Member States; and an evaluation – ‘Accelerating the Process of Roma Integration’ – of the 2011-17 period. The report warns that it is not sufficient to tackle the four main areas, but also there is a need for fighting discrimination and antigypsyism, limited political commitment, lack of Roma participation, limited capacities of institutions and insufficient funding” (Evaluation Report 2018, p. 2). The Report also states that it is expected from Member States to put more effort into “community building between Roma and non-Roma, non-discrimination and Roma inclusion training for public officials, or making Roma history and culture part of school curricula” (Evaluation Report 2018, p. 2).



To sum up, the recognition of the need for such framework targeting Roma inclusion and the fact that several Member States have implemented a strategy for social inclusion of Roma was an important step in advancing the social inclusion of the Roma in Europe. The EU Framework has provided a guideline for the Member States to elaborate on national strategies, however the lack of precisely devising the EU Framework, including the target group, key concepts and the lack of attaching the aims to fundamental rights resulted in imprecise and void national strategies. Improvement in the four main fields of the strategies, recommended by the EU, may be observable after the implementation of the national strategies, however the ‘EU Framework’ as well as the national strategies should tackle deeply rooted discrimination and prejudice towards Roma and antigypsyism.

## **V.2 Hungarian strategy for social inclusion – focusing on education – assessing the strategy**

Hungary has recognized the recommendations of the EU Framework and implemented the ‘National Strategy for Social Inclusion 2011-2020’ (Hungarian Strategy 2011) targeting extreme poverty, child poverty and the Roma.

The Hungarian Strategy offers a broad, ‘all-round’ approach, both in terms of areas addressed and the target groups. Treating extreme poverty and Roma inclusion under one umbrella and targeting these separate issues with common strategies result in ill-founded and inefficient measures and provides the soil for increased discrimination. Being Roma and facing discrimination because of being Roma is more complex than being poor. Linking the terms ‘extreme poverty’ and the ‘Roma’ contributes to the prevalence of existing prejudice towards the Roma and feeds irrational feelings towards the Roma, which ultimately increases antigypsyism. There is a high risk that the Roma culture will be ultimately attached to poverty – explored more in Section V.1.

Therefore, separate and specifically targeted strategy for social inclusion of the Roma need to be designed.

A national strategy for social inclusion starts with elaborating on those terms, areas, which need to be tackled by the strategy: prejudice, discrimination and marginalization. Antigypsyism is not included. Eliminating the irrational prejudices against the Roma is vitally important in the strategy for social inclusion. Initiating changes on the level of dominant culture, eliminating the oppression of the dominant culture should be simultaneously handled. The lack of recognizing this notion hinders the success of social inclusion of the Roma in all fields defined by the national strategy.

As we have shown above, the EU Framework has incorporated four main areas of social inclusion of the Roma: education, health, employment and housing. The Hungarian Strategy also recognizes these fields. Before I analyze the education element of the strategy, I hold that a crucial element of the inclusion strategy would be affirmation and promotion of cultural specificities of the Roma minority. I propose the four areas of social inclusion recommended by the EU Framework to be supplemented with a fifth area, namely recognition. Recognition specifically focuses on the claims – cultural, participatory, historical – of the Roma. This fifth part should be a part of the national strategy, which is closely related to aims, initiatives explored in the section of education.

The aims of the Hungarian Strategy in the field of education mostly focus on ensuring access to education and reducing early school leaving. It offers a short reference to promoting Roma cultural studies in schools; and supporting Roma and pro-Roma non-governmental organizations and initiatives. However, school segregation of the Roma is not adequately targeted. This problem

has two sides. Segregation occurs when the number of Roma students in an institution is unreasonably high, and also occurs in ‘non-segregated institution’ by creating a segregated class. As it is explained in Section V.2.1. the FLH does not allow racial school segregation. The FLH incorporates the idea of non-discrimination. The strategy should incorporate both aspects of school segregation of the Roma, with special focus on assessing schools with possible school segregation and on revisiting the so-called ‘catch-up classes’ in which Roma students are systematically put in a separate class, which means segregation inside a ‘non-segregated institution’.

Elaborating on the content of a strategy for social inclusion of Roma is critical. A policy design should be systematically developed and must incorporate different stages of this development. Below, I am proposing a development flow which can be effectively used in revisiting the strategy for social inclusion of the Roma. Each policy targets different problems. A very first idea of policy design is to recognize those problems in the society. Defining the problem should be followed by in-depth research on the extent of those specific problems and identifying the stakeholders. This research phase is followed by formulating the goals of the policy. Defining the objectives should not only be based on identifying the problems, but also should include involving advisors, experts from the Roma minority who can represent the Roma and articulate their claims. This phase is followed by elaborating the core of the strategy for social inclusion of the Roma with collaboration with the experts who represent the Roma minority. The ‘action plan’ part of the strategy should be devised by reflecting on the previously mentioned research phase and by reflecting on the assumed impact of those initiatives. I also recommend involving Roma and pro-Roma non-governmental organizations both in the research phase and in the action plan because they have experience with working with the target group and can provide useful information and connections which can be used to boost the efficiency of the strategy. An inevitable element of the

policy design is the reconciliation with the legal system. Policies in the strategy for social inclusion of Roma should be in correlation with the current jurisdiction. Those regulations which undermine the success of the policies need to be revisited as well. Inclusion of the Roma has to be manifested also in changes in the jurisdiction. The legal system of the country has to fully support and facilitate the success of the measures devised in the strategy.

Although the Hungarian Strategy reflects on such initiatives, state duties and support for related civil organizations are not clearly devised. Critical also is that the Hungarian Government's current political influence makes it impossible for these non-governmental organizations to operate in Hungary. On 13 June 2017, the Hungarian Parliament enacted the Act LXXVI 2017, 'Transparency of Organizations Supported from Abroad'. As the European Center for Non-profit Law states (ECNL 2018), this act creates a new legal status for organizations: "organization supported from abroad". This status stands for "Hungarian associations and foundations that receive funding from any foreign sources (e.g., individuals, foundations, government aid agencies, direct EU funding) above 7.2 million HUF (approx. €23,500) in a tax year" (ECNL 2018, p.1). As the briefing paper of ECNL argues, these organizations have to be registered in court and need to use the label 'organization supported from abroad' in their websites, publications and also their status will be published online in an electronic database system maintained by the Ministry of Human Capacities.

"Whilst the Law has been adopted in an atmosphere where human rights groups are particularly targeted, it will likely have an effect on civil society broadly, including organizations working on social service delivery, humanitarian aid, and environmental protection – all of whom also receive foreign funds" (ECNL 2018, p.1).

The Hungarian Government should rather facilitate local and foreign entrepreneurs to invest in supporting these organizations. With these possible financial resources –which unfortunately the Hungarian State makes impossible to receive– effective initiatives targeting social inclusion of Roma could be organized.

To sum up, a revisited strategy for social inclusion of the Roma in Hungary is necessary. There are several content and process related shortcomings of the current strategy which need to be addressed. The recommendations above regarding the content of the strategy include core principles to be considered. Using terms, defining the target group, incorporating the concept of antigypsyism and formulating clear objectives – with considering the claims of the Roma as well – in each of the four areas are vitally important. Preserving cultural specificities of the Roma in the area of education is an initial step, however I propose that a new, a fifth area of recognition to be added. Inclusion of the Roma does not mean assimilation to the dominant culture, but rather initiating an inclusive, supportive environment for the Roma by allocation resources, ensuring access and trigger changes on societal level. The process of designing a strategy for social inclusion of Roma needs to be well developed and closely monitored. This time-consuming process should include cooperation from the representatives of the Roma minority. The Hungarian Government should also recognize the power of the civil society. Knowledge, experience, expertise and connections all contribute to the success of the Hungarian Strategy.

## VI. School segregation of the Roma

### VI.1 School segregation of Roma as source of discrimination

School segregation of the Roma means depriving students of participating in quality education. Marius Taba and Andrew Ryder highlight the European Roma Rights Center's views on school segregation, according to which

“In such schools, Romani children do not earn a diploma preparing them for life in a democratic society and competitive labor market. Quite the contrary: they are denied the right to education and emerge stigmatized as ‘stupid’ and ‘retarded’. They will live out their adult lives under-educated, unemployed or condemned to low-paying, menial jobs. They will be unable to realize fundamental rights, and will be deprived of basic dignity” (Taba and Ryder 2012, p. 7).

Children participating in segregated education have extremely few opportunities to actively participate in the job market and become active citizens. Those students are put in an exceedingly hard situation, from which it is very difficult, or in many cases, impossible to break out. They are usually categorized as a ‘lower category’ by the society and by the job market, therefore even for those exceptional students who have a chance to participate in secondary school education and vocational training program have to face prejudice and discrimination in several areas of their everyday life.

Prejudice and discrimination are not only fueled by society, but are in many cases enhanced by teachers.

“When the share of disadvantaged children increases in a school, it becomes a difficult place, so that it cannot attract good teachers. The lack of motivated teachers and supportive (or demanding parents) often leads to a deterioration of educational facilities and services as well, not only to a decrease in teaching quality and in some cases, even lack of teaching staff” (Budapest Institute 2011, p. 3).

School segregation also affects the quality of education in such institutions. Prejudice from the teachers often results in low teaching standards. Teachers in segregated institutions may leave these institutions, and therefore children studying in these schools may have to adapt to ever new teachers with different expectations and teaching standards. Low quality education, low expectations of the new teachers are accumulating, therefore a freshly hired teacher in such an institution has to specifically target this accumulated disadvantage – which requires commitment of the teachers and support from the institution and from the government.

Taba and Ryder (Taba and Ryder 2012) argue that teachers in segregated schools have lower expectations from Roma students, with the reasoning that they live in the ‘culture of poverty’ and therefore “normal intellectual development and achievement is not possible for Romani children, who in their minds have been socialized in a sub-culture which promotes limited aspirations” (Taba and Ryder 2012, p. 14). According to them, these views support segregated schools with the reasoning that “segregated education is seen as the best tool to achieve the integration of Roma pupils into mainstream society” (Taba and Ryder 2012, p. 14).

As I have mentioned above there is a risk for mistakenly attaching the Romani culture to poverty. Can we really talk about the ‘culture of poverty’? To discuss this question, first we have to define what poverty is and discuss the factors which have crucial roles in resulting poverty. Amartya Sen (Sen 1981), argues that poverty has two basic dimensions: a biological dimension, which refers to physical needs, access to basic nutrition; and the inequality dimension, which explores social stratification. Sen argues that poverty arises when people lack – are deprived of – key capabilities which result in inadequate income and lack of access to different public services. Following Sen, I use the definition of poverty as a multi-dimensional deprivation in well-being.

Oscar Lewis also discusses the concept of ‘culture of poverty’. He argues that “culture of poverty is not just a matter of deprivation...it is a culture of a traditional anthropological sense in that it provides human beings with a design for living” (Lewis 1966, p. 19). I do agree that poverty may result in similar consequences for different people, for example lack of financial resources, access to quality education and healthcare, however Identifying poverty as culture is problematic. It is problematic because poverty and specific races are often mistakenly regarded as parallel. This misconception may lead the society to the false analogy as if poverty is consecutive with being Roma. It is important to deal with this issue because of the deeply rooted prejudice and discrimination in the society. Identifying a group of people’s actions, behavior and lifestyle as culture, defined by poverty is not satisfying, since it disregards several other dimensions of culture. Justifying the need of segregated education with the misconception that Roma culturally have ‘limited aspirations’ and therefore segregated education with lower educational standards is needed is ill-founded. Segregated education does not help Roma students to perform as outstandingly as they can, but it rather deprives students of development. Referring to Amartya Sen’s capability approach, segregation does not mitigate poverty, but rather contributes to it.

“In many schools in the region a mono-cultural and teacher-centered curriculum predominates, leading many Roma pupils to cultural and educational alienation” (Taba and Ryder 2012, p. 14). Despite this fact Roma communities are usually blamed for failing to reach the expected educational outcomes. Taba and Ryder refer to the educational scientist Arthur Ivatts, who argues that “fundamental issues being faced are primarily concerned with changing majority society attitudes, structures and professional practice that currently are the real hindrance to the successful inclusion of the Roma/Gypsies into schools and the society at large” (Taba and Ryder 2027, p. 14). They argue that inclusive education brings a ‘human-rights based approach’ to



education. They hold that the difference brought by this approach is that students not only need to be provided access to education, but the quality of education also matters. In terms of this, inclusive education brings quality in it.

“Such an approach embraces interculturalism, acknowledging the traditions of Roma students and incorporating into the curriculum opportunities to celebrate Roma culture but also space for the learning practices that some Roma are accustomed to, namely oral and interactive learning approaches, approaches which tend to be stifled in the teacher-centered classroom” (Taba and Ryder 2012, p. 15).

To sum up, segregated education does not meet the requirements of ‘quality education’. As Taba and Ryder (Taba and Ryder 2012) agree as well, there is a need for change in the mainstream education system. Segregating Roma students will not contribute to the inclusion of the Roma. Re-designing existing institutional and teaching practice patterns should be done in a manner that supports an inclusive education system and recognizes the need of incorporating the Roma culture and history in the mainstream educational curricula. By doing so, Roma students would have the opportunity to nourish and learn their own culture, and non-Roma students will have the opportunity to extend their knowledge on Roma, re-think prejudice and misconceptions about Roma, which ultimately leads to a more successful social inclusion. Segregated education of the Roma is a form of discrimination. Students attending such schools have no other chance than studying in an environment which sets lower educational standards, reduced content of the curriculum and has outdated and ineffective teaching styles. Of course, we have to acknowledge those committed teachers who have a passion to work with the students in such institutions, and who aim to develop the students’ skills and capabilities as effectively as possible, however literature shows that the majority of segregated schools and segregated classes do not provide quality education.

## **VI.2 Educational situation of Roma in Hungary**

### **VI.2.1 School segregation**

School segregation of the Roma in Hungary is a practice that questions the normative foundations of the FLH. Fundamental rights – universal rights, assured to all – regarding education, work and occupation, are violated by the practice of school segregation. Roma children participating in segregated education – in a segregated institution, or in segregated classes – are deprived of their fundamental right to participate in an education in which they can study ‘according to their abilities’. These students are not provided with a supportive environment to develop their skills but are rather put in a situation where there are limited opportunities for development. It means that the right to ‘quality education’ is not universal in Hungary. The Hungarian Government by allowing the practice of school segregation in the territory of Hungary, allows discrimination, which is prohibited by the FLH.

There are different patterns of school segregation. Segregation of the Roma in Hungary has happened through organizing segregated schools and segregated classes, putting Roma students in private education – means that student in private education do not have the obligation to participate in everyday education in the school, and organizing segregated sub-institutions under one ‘umbrella institution’ – means that the percentage of Roma students considering the whole institution is lower, though in the sub-institution is high. (Rostas, private consultation 2019). Segregation of the Roma in Hungary at present has two main forms – segregated educational institutions and segregation of the Roma in non-segregated institutions by organizing segregated classes. Below, I explore both aspects by relying on relevant literature and interviews with experts on the Hungarian situation of school segregation. Experts interviewed are lawyers, scholars,

activists and representatives of non-governmental organizations. To ensure anonymity of the interviewees I use codes – SEGR.HU.01 - 05 – for reference.

Segregation of the Roma is difficult to measure since accessible data are scarce. In Hungary, it is prohibited to collect ethnic data in schools and store records of ethnic data of students. The only legal way to have such information is based on self-declaration – which is important in terms of applying for educational and scholarship programs specifically for Roma students. Therefore, the number of Roma students in one institution can hardly be communicated. “There are some estimations provided by the principals of schools, but these data are very problematic...there have been no accessible valid data for a long time...the last accessible data is from Kertesi (see below). School segregation in Hungary is thriving. The desire of the majority society about the segregation of the Roma basically appeared when Roma appeared in school, I would say that it was around the 90s” (SEGR.HU.03) One of the classic ways to segregate Roma children is classifying them as disabled. This type of segregation is not dominantly prevalent in Hungary anymore.

“One of the greatest positivity of the ‘Bálint Magyar type measures’ – former Minister of Education between 1996-1998 and between 2002 and 2006 – in 2003 he wrote a letter to ‘expert committees – who decide on whether a child is disabled or not’ that above IQ 70 it is not permitted to put children into special schools...this was not enacted as a law, but the power of the Minister of Education initiated changes leading to the segregation of Roma children by classifying them as disabled almost disappeared” (SEGR.HU.03).

There are no data about which form is more prevalent currently in Hungary. The number of catch-up classes decreased with the measure that terminates the financial support for such classes. In 2004, the financial support was re-designed to support integration called ‘financial support for integration’ and ‘financial support for ability development’. “Those schools were eligible for the ‘financial support for ability development’ which were segregated schools through no fault of their

own...schools in Roma settlements were eligible for ‘financial support for integration’ where the maximum difference between children with and without multiple disadvantages is 25 percent” (SEGR.HU.03).

To sum up, two main forms of segregation of the Roma in Hungary are between schools and in schools. Due to the lack of ethnic data, the extent of school segregation is only estimated. Governmental measures have the power to decrease school segregation, as it happened after the measures of Bálint Magyar, however further measures are needed to tackle school segregation.

#### VI.2.2 Segregated education of Roma in segregated institutions

Kertesi and Kezdi (Kertesi and Kezdi 2014) argue that school segregation of the Roma has been increasingly growing since the 1980s. They hold that the possibility for parents to freely choose schools for their children contributes to this increasing trend. According to them, parents with ‘higher social and economic status’ tend to choose schools outside their communities and in these communities the school segregation of the Roma is higher. The educational policy of the municipality, region also plays an important role in school segregation, however the effect of parents choosing schools for their children freely is more salient. Kertesi and Kezdi’s research – involving 100 cities in Hungary – shows that school segregation has almost doubled since the 1980s. According to a research conducted by Havas and Lisko, the 170 schools out of the 553 schools assessed in the research have more than 50 % Roma students. The table below shows the findings of Havas and Lisko’s about the ‘N’- number of schools (second column), in relation with the proportion of Roma students in the institution (first column).

Percentage of Roma students	N	%	Culmulative %
above 80%	44	8.0	8.0
50.1-80%	126	22.8	30.7
40.1-50%	67	12.1	42.9
25.1-40%	140	25.3	68.2
10.1-25%	110	19.9	88.1
-10 %	66	11.9	100.0
In total	553	100.0	

Research on school segregation 2004, school questionnaires (Havas and Lisko 2005, p. 11).

Taba and Ryder (Taba and Ryder 2012) point out that “in many cases the schools are restricted to Roma by local practices or tacit understanding...if non-Roma schools are to be located near Roma neighborhoods, Roma are banned from enrolling by school authorities on the ground that no places are available to enroll more children” (Taba and Ryder 2012, p. 9). The Act CXC of 2011 on National Public Education states that “children are said to be of school age in the calendar year when they turn six years of age by 31st August, or in the following year at latest. A child for whom it is recommended, on the basis of the expert opinion of a committee of experts, to stay in pre-school for one more year, shall be involved in pre-school education for another year and become of school age subsequently” (Act CXC 2011. 45. § (1)). The 20/2012. (VIII. 31.) 22. § (2) Decree of the Hungarian Ministry of Human Capacities states that children who reach the beginning of age of compulsory education must be enrolled in the designated school of the vicinity of his/her residence or in other school of choice. The Decree also explicates that if the principle of the chosen school denied the acceptance of the children, the parents must enroll their child to the designated school of the vicinity. In terms of this, primary school principals have the power to choose between students to be accepted. If Roma children’s admission is systematically denied to schools other than the designated one for the vicinity, there is an increased risk that the compulsory designated schools become segregated. Taba and Ryder argue on the reasons that educational

institutions intend to discriminate and refuse the acceptance of Roma students is that they are afraid that the educational standard of the institution will be negatively impacted by enrollment of the Roma students. They also highlight the process of ‘white flight’, when non-Roma parents choose other schools in a nearby community and leaving the Roma students in one institution. According to them, these practices of segregation are persistent in all the analyzed countries – Bulgaria, Czech Republic, Hungary, Romania and Slovakia.

The legal case – initiated by CFCF – of Kaposvár is an example for segregated education. (SEGR.HU.02) There is a huge segregated area in Kaposvár with a primary school – ‘Pécsi Utcai Általános Iskola’ – in which there is segregated education for Roma, since the Roma are going to study there from the nearby Roma settlement. The CFCF has launched two litigations.

“The first litigation was successful – in 2011 –, however the Supreme Court did not define how to terminate the practice of segregation in that school, only declared the infringement of law. Instead the Supreme Court expected the CFCF to prepare such a plan...since the school became subject to the state reservation the litigation was against the ‘Klebensberg Központ’ and against the Minister of Human Capacities...they did not even answer to us... The second litigation was launched in 2013 and we also asked an expert – Norbert Szűcs – to prepare a plan for desegregation...we asked the court to consider this plan to be executed...finally we won this case in 2017 in the Supreme Court...they did not accept the plan devised by Szűcs, however desegregation started with prohibiting new students to be accepted in the school” (SEGR.HU.02)

This case is an example of a series of litigation with the outcome of legally proving segregation. Although the operation of the school has been restricted by prohibiting accepting new students, there is a concern that a newly segregated institution will emerge.

“Instead of taking Roma children to new schools in the region, they simply started to bring their children into the nearest possible school...we have seen the possibility of this...and indicated this to the EU...there is a new inclusion project of the EU, called ‘In School, which offers assets for inclusive education...we have succeeded in introducing this project in this school at Kaposvár” (SEGR.HU.02).

The segregated education at Huszar settlement of Nyíregyhaza is another example for the segregated education of the Roma in a segregated institution. The operation of an elementary school at the Huszar settlement in Nyíregyhaza was terminated in 2007 because of desegregation processes; however, its operation was re-launched in 2011 by the Greek Catholic Church. After a battle of litigation – initiated by the Chance for Children Foundation (CFCF) – the school was given the right to continue its educational services. (Supreme Court IV.20.241 2015). This example is a clear case which shows that even though Hungary made a commitment to support social inclusion – with the implementation of the strategy for the integration of the Roma – there are state-set, legal boundaries of putting social inclusion into practice.

#### VI.2.3 Catch-up classes – hidden segregation

Segregation of the Roma also occurs in schools where the number of Roma students is not saliently high. Segregation in these institutions occurs through creating segregated classes. Establishing such classes is justified by the claim that those students need special attention to improve their school performance. Although, there is no direct ethnic linkage communicated regarding the ‘catch-up classes’, the number of Roma students is usually disproportionately high. (Szalai 2010). The students in the catch-up classes may have some classes and/or extra-curricular activities with the other students, but there are cases when the contact between the majority of students and the students of the ‘catch-up classes’ is unreasonably limited.

Taba and Ryder (Taba and Ryder 2012) call this type of segregation ‘intra-school segregation’, according to which teachers of the institution decide to separate students into a ‘catch-up class’, based on their academic performance and ‘social preparation’. They hold that the teaching standards in these catch-up classes are much lower. These classes do not fulfill the

function of serving as transition to mainstream classes. Students in these classes tend to dropout from schools. Another crucial disadvantage of these segregated classes – as Taba and Ryder highlight – is that the quality and language for instruction of the teachers are much less sophisticated than in mainstream classes, therefore children who participate in catch-up classes cannot catch-up with the instructions used in mainstream classes.

Viktoria Mohacsi, ‘Commissioner for Education in the Ministry of Education’ in Hungary between 2002 and 2004 –explained in an interview with Iulius Rostas.

“The-so called catch-up program was elaborated in 1993-1994 by the same liberal minister of education, Bálint Magyar, who supported my initiatives in terms of desegregation in 2002-2004. The goal of the catch-up program was to raise the average level of quality of education for Romani children, but it failed, because it generalized all Romani students...and put them into segregated education” (Rostas 2012, p. 203).

In consequence, the program increased the gap between the Roma and the non-Roma students. Mohacsi explains that the catch-up program was changed to an integration program, although the Ministry of Education knew that “98 percent of the population opposes integrated classes” (Rostas 2017, p. 209). Therefore, Mohacsi captured segregation as a violation of human rights and successfully proposed an amendment to prohibit segregation and promote integration. Although the catch-up program was terminated shortly after its announcement, this program was the kick-off of those catch-up classes which are present in today in the Hungarian educational system (Rostas 2012).

Officially terminating such catch-up programs is important but insufficient. The practice of organizing catch-up classes, mostly with irrationally high numbers of Roma children needs to be tackled too. Terminating the catch-up programs on policy level does not mean that the schools will



re-organize their classes and make only integrated classes. This process needs to be led and monitored by the Hungarian Ministry of Education.

“The addressees and content of catch-up classes have never been defined by governments, but rather the practice which has an important role. Teachers will decide who will be put into catch-up classes. Of course, the Roma will be there” (SEGR. HU.01).

Principals and teachers have the power to organize their classes. In many cases there is more than one class in each grade. These classes are often organized according to the previous achievements of the children. The classification of student into different classes usually happens in the first grade and lasts until the final, eighth grade of primary school. Roma children in many cases do not have other chance than studying in the ‘lowest quality class’. Another critical issue is that classifying children at the age of 6-7 and creating classes based on their performance does not make sense. There is not enough information for assessing one’s abilities and incentives at that age, in order to put them in different quality classes for eight school years.

Andras Ujlaki, Chairman of the Board of Trustees of the Chance for Children Foundation, in an interview to Népszava compared the Hungarian catch-up classes to apartheid. He also added that there are no documented cases of an apartheid system with positive results (Juhász 2017). Havas and Lisko have conducted a comprehensive research about the segregation inside schools. Their findings show that there were 1253 classes only with Roma students and there were 3064 classes out of 9227 classes in Hungary in which the proportion of Roma students were higher than 50 % in 2004. (Havas and Lisko 2005).

“In many cases, litigations against institutions with segregated education hold that they do not know that who is Roma. From 1994 it is not allowed to gather ‘ethnic data’ in schools. The plaintiff must prove the fact of segregation as ‘probable’. The defendant

has the right to claim an excuse for why they offer segregated education. This excuse could be offering special services, such as ethnic, cultural education” (SEGR.HU.01)

The case of Miskolc was an example for this. The defendant – Miskolc city with county rights – in that case referred to ‘color blindness’ and hold that they do not know who are Roma, therefore they cannot segregate Roma children. (SEGR.HU.01) “The County Court of first instance rejected the claim by the Foundation in November 2005. On June 9, 2006 the Debrecen Court of Appeals established the violation of the equal treatment principle in relation to Romani children. It declared that no targeted action is needed on the part of the defendant to establish legal responsibility for segregation” (CFCF-Miskolc Desegregation Case, n.d).

Color blindness – claiming that one cannot decide who are Roma – is crucial issue in discussing segregation of the Roma. The Hungarian State does not define who are the Roma, but in these legal cases the courts have role in doing so. The Hungarian Government rather uses ‘proxies’ (SEGR.HU.01), such as children with disadvantage, or children with multiple disadvantages. In many cases these categories are the basics of segregation – catch-up classes, see above, however in legal cases these categories can help the court to decide on the case, whether it is segregation, or not. (SEGR.HU.01). It is also important that the Hungarian Government has made the accessibility of these categories more difficult for parents. “From 2011, the Hungarian Government has changed the definition of ‘Children with multiple disadvantaged’ and it is based on self-declaration” (SEGR.HU.01). Requirements for getting the status of disadvantage are: those children who are eligible for ‘Regular Child Protection Allowance’ and either low educational level (maximum 8<sup>th</sup> grade in primary school), or unemployment of the parents, or inadequate housing environment (areas which is declared in the municipality’s strategies for community development,

as segregated spaces). Multiple disadvantage can be required if two of the criteria above are met, or for children in care or in ‘after-care’ (1997. évi XXXI. tv, 67/A. §).

“Making these requirements more difficult to meet and making the process of requesting these statuses less accessible are not a coincidence, they are rather the result of prudent and malicious actions. We cannot do affirmative action without defining the target group. Target group should be defined on the same basis as discrimination.” (SEGR.HU.01).

To sum up, the so-called ‘catch-up classes’ are not advancement of the educational system to support inclusive education, but rather these classes pose barriers for students. Launching a catch-up class in an educational institution are highly dependent on the leadership and the teachers of the school. If there is such a class in an institution, the practice shows that mostly they fill the classroom with Roma students, with the reason that they provide special attention and special curricula for the students. Special attention rarely means formulating aims and applying revolutionary teaching methods to advance the students’ school performance and social inclusion, but rather entails less quality teaching standards and – as Taba and Ryder write – ‘reduced curricula’. Lower teaching standards and reduced curricula cannot help students to develop their skills and capabilities in order to be prepared for education in the mainstream system. These students not only deprived from the possibility to perform according to their talent and expectancy, they are also segregated from the non-Roma students which ultimately hinders social inclusion.

### **VI.3. Attempts to overcome discrimination in the field of education**

#### **VI.3.1 Measures before 2011**

The Integrated Pedagogical System – hereinafter IPS – is a pedagogical framework that aims to foster equal opportunities in education and inclusion from 2003. The Hungarian Government

supports different mentoring, tutoring activities, activities that help integration and different development programs in kindergartens, besides offers financial incentives for teachers, participating in the program. As the European Center for Development of Vocational Training (CEDEFOP) communicates the Hungarian IPS relies on three pillars. These are: legislative support, financial incentives and methodological support. Legislative support means that the introduced “2003 amendments to Act No. 79/1993 on education made segregation more difficult” (CEDEFOP n.d). The financial support means allocating funds for educational institutions who work with disadvantaged students and providing financial support for teachers participating in programs organized in the framework of the IPS. Regarding methodological support, “one of the key elements of the IPS is the compulsory human capacity building, as special courses are offered to teachers. In addition, external mentorship and regular follow-ups also serve to support the implementation of the learned methods” (CEDEFOP n.d)

Anikó Fehérvári (Fehérvári 2011) explores different types of funding allocated to education by the Hungarian Government between 2000 and 2009, as part of the IPS. From the beginning of 2001, primary schools – from first grade to eight grade – could apply for financial support from the government, based on the number of children with special needs in their institution. Similarly, from 2001, financial support was available for schools based on the number of disadvantaged students – those students who were eligible for regular child protection allowance – to organize ‘catch-up education’ for them. This meant organizing extra classes, mentoring, personality development and talent management programs. This funding per capita changed in 2003 – with the introduction of the IPS to support ‘children in special situation’, which meant four categories: funding for organizing education for disadvantaged children, children who need ‘catch-up education’, funding for developing skills and ‘integration per capita funding’. For skills

development the double of the basic amount of funding and for the integration element of the program, three times of the basic funding was available. From 2004, the four categories – explained above – remained, however the double of the basic amount of funding per capita was relocated to the category of disadvantaged students. From 2006, the integration element category was the only distinguished category in the funding system, the remaining three categories were only eligible for basic funding.

The Hungarian Ministry of Human Capacities launched the ‘Útravaló Scholarship Program’ in 2005, for advancing the school performance of disadvantaged students, furthermore, promoting talented students with interest towards natural sciences. The scholarship program has four sub-programs supporting students from primary school up to students in the higher education. In the academic year of 2014/2015, 12815 students received financial support in the framework of this program. The ultimate aims of the scholarship program are defined by the Hungarian Ministry of Human Resources as follows: reducing early school leaving, supporting disadvantaged students to successfully finish their studies and earn qualifications, and ensuring students to participate in quality education. (Emberi Erőforrás Támogatáskezelő n.d).

The ‘Tanoda Program’ is a non-formal educational program, an after-school program, which provides tutoring and different extra-curricular activities for its students. Financial support – EU funds – for the program are available from 2005 (Mind Campus 2015, p. 3). As Szilvia Nemeth explores there are ‘Tanoda like programs’ since 1998 in Hungary, mostly initiated by the civil society, with the aim to support disadvantaged students. Nemeth describes, the Hungarian Government issued a supplement of teaching methods for the Tanoda programs, according to which the Tanoda is an institution, which helps disadvantaged students in a framework of extra-curricular

activities with the aim to support those students who experience discrimination, to boost their school performance and advance their development, which will contribute to raise their opportunities in the job market and help social inclusion. Nemeth reveals that some of the aims, formulated by local Tanoda programs are to fight against discrimination and school segregation and promote inclusive education. Until 2019 there were 280 Tanoda programs, involving approximately 6000 students, administered by the Hungarian Government, and there is approximately 2.5 Billion HUF dedicated in the budget to support these initiatives in 2019. (Eduline.hu 2019).

Zsuzsanna Vidra and Margit Feischmidt (Vidra and Feischmidt 2011) argue that the impact of the IPS is positive in terms of improvement in school performance and opportunities to continue education on higher level, though they hold that the extent of school segregation was not significantly impacted by this program – see Havas and Lisko in Section V.2.2. Balázs József Fejes and Norbert Szűcs (Fejes and Szűcs 2018) argue that the IPS was an important step toward re-organizing the Hungarian educational system in terms of advancing inclusive education, since it aimed to support disadvantaged children by allocating financial resources to educational institutions. They argue that this Program was the only program in Hungary which had the potential to initiate system level changes in the educational system. Aranka Varga (Varga 2018) explores that in the 2011/2012 school year there were almost 95000 disadvantaged/multiply disadvantaged children in the program with more than 2200 educational institutions involved and approximately 3.2 billion HUF financial support allocated. This means that more than half of the total number of public educational institutions were involved in the project to improve the educational situation of disadvantaged children. The total number of students participating in the project was 38724 in 2003, which increased to 94903 in 2011 (Varga 2018, p. 74). Varga argues that creating an

inclusive environment in educational institutions is crucial. The attitude of teachers is a “fundamental criterium of success” (Varga 2018, p. 83) for building that environment and reach the set aims for improving children’s school performance. She holds that the inclusive attitude of the teachers enhances the use and development of pedagogical tools and methods which ensures the environment for inclusive education. One of the key elements of the IPS is to provide these tools for the teachers and encourage them to incorporate these tools in their everyday work. Fejes and Szűcs – referring to Aranka Varga, explained above – introduce that despite the positive effects of the IPS was empirically proven the last year of open call for application for schools was the year of 2011.

The educational system of Hódmezővásárhely before 2007 represents a segregated educational system. The number of children with multiple disadvantages was extremely high in several institutions in the municipality. The Szántó Kovács János Primary School was the most ‘advanced’ in terms of segregation, since the percentage of children with multiple disadvantages was 39% in 2006 (Fejes and Szűcs 2013, p. 60). Fejes and Szűcs explore that the leadership of the municipality decided to take radical steps to re-design the structure and content of the local educational system. The operation of 10 public schools out of 11 was terminated and 5 new schools were founded. The two most segregated schools were absolutely liquidated – including the use of the buildings – and children were directed to the newly founded schools. Teachers of the old schools had to participate in a quality assurance evaluation, and those were employed in the new schools whom performed better results. The evaluation consisted of four parts: self-evaluation, evaluation of the colleagues, evaluation of the principals and evaluation of the parents. The development in the educational service included incorporating the IPS. (Fejes and Szűcs 2013). The results of the desegregation act in Hódmezővásárhely were the following: the disproportionate

distribution of children with multiply disadvantages was balanced, the competency measurement tests showed significantly better results (Szűcs n.d).

#### VI.3.2 Measures after 2011

The Hungarian Government with the implementation of the ‘National Strategy for Social Inclusion’ has launched some initiatives, advancing the educational situation of the Roma. The most important governmental programs aim to develop a more inclusive educational system in Hungary, are the ‘Bridge Programs’ and the foundation of the Anti-segregation Roundtable.

The Bridge Programs was launched in 2013 with the aim to reduce early school leaving. Children who did not get accepted to secondary schools have the opportunity to participate in this program, which aims to prepare them for successful application to secondary schools and vocational training programs. Balázs József Fejes and Norbert Szűcs (Fejes and Szűcs 2017) state that there is not enough information about the success of these programs. They argue that since the education in these programs takes place in segregated classes, it is impossible to make effective compensation for the disadvantage of the students (Fejes and Szűcs 2017).

The Hungarian Ministry of Human Capacities founded the Anti-segregation Roundtable in 2013 with the involvement of public servants, public and civil institutions and educational experts. Fejes and Szűcs (Fejes and Szűcs 2017) claim that there were no clear aims set for this forum. They argue that even though there were some aspirations to create desegregation programs in two municipalities by setting up a working group, these aspirations decayed, and further steps were not taken (Fejes and Szűcs 2017).



Agnes Kende (Kende PhD dissertation draft 2019) argues that the changes in 2011 in the educational system by Hungarian Government is a step back in meeting the recommendations of the European Union and in social inclusion. She holds that the new system strengthens the selection of students and increases inequalities. Kende recognizes the importance of changing the compulsory start age of kindergarten education from 5 years to 3 years, however she also claims that reducing the age of compulsory public education from 18 years to 16 years did not help social inclusion of the Roma. She also recognizes the opportunities in the state centralization of public school – from January 1, 2013 – as reducing the financial source inequalities among municipalities, however she states that instead of allocating additional resources to schools, the system reduced state support, therefore those schools who received support from the municipalities were put in worse financial situation. Kende claims that this change initiated a process of wealthier parents to find other schools – such as religious schools, which receive more financial support from the Government. This enhanced the process of ‘white flight’ – explained in Section V.2.2.

To sum up, the outcome of introducing the IPS in 2003 is positive in terms of improvement in school performance and opportunities to continue education on higher levels. The desegregation case of Hódmezővásárhely in 2007 resulted in balancing the disproportionate distribution of children with multiply disadvantages and improving school performance. The changes of the educational system in 2011 have not reached the anticipated results. The Bridge Programs seem powerless to promote social inclusion. The Anti-segregation Roundtable has not initiated considerable changes in school segregation. The centralization of public school did not bring results in the development of educational situation of the disadvantaged. The increased financial support for religious schools did not reduce school segregation, rather enhanced the process of ‘white flight’.

#### **VI.4 Summarizing the findings of the interviews**

Segregation of the Roma in public education is persistent and showing an increasing standard in Hungary. School segregation of the Roma is present since the 1990s. Geographically the most affected areas are North- and East Hungary, however other areas are affected as well. The most effected group of school segregation is Roma students in primary school, since Roma students are underrepresented in secondary education. In Hungary, at present, the two main types of school segregation of the Roma are inter-school segregation and in-school segregation. Segregation of the Roma based on disability status has not been eliminated totally, however it is not considered specific to Hungary.

Participating in segregated education means lower level of educational standards, reduced curricula and lower expectation of the teachers from the students. This type of education does not provide students an environment where they can develop their skills and competences according to their abilities. Generally, there is a lack of motivation of the teachers in segregated schools and classes and this has demotivating effects on the students as well.

The legislature clearly forbids segregation based on race, however there are loopholes which result in segregation of the Roma. Crucial issue is to define Roma. Institutions which were defendant in litigations because of school segregation of Roma have used the loophole of ‘color blindness’, arguing that they do not know who is Roma, since ethnic data collection is not allowed. School segregation has been enhanced by the Hungarian Government by financially supporting parochial schools, since these institutions tend to offer higher quality education and attract the wealthier middle-class; leaving the public schools for the less wealthy. This process is the so-called ‘white flight’, which leads to segregation.

The Hungarian Government's commitment to advance the educational situation of the Roma and fight against school segregation were visible in the 2002-2006 governmental period, by introducing the IPS, including introducing funds – per capita – for the development of disadvantaged children and funds for inclusive education. The most representative case of desegregation measures is the Hódmezővásárhely desegregation case, where the operation of segregated schools was terminated and the whole educational system was re-designed. Currently, there are no effective governmental measures for reducing school segregation in Hungary.

The interviews revealed a debate between experts about treating school segregation in Hungary. One vision explores that segregated schools should be immediately shut down, another vision claims that terminating the operation of these institutions will not solve the problem, since there is a high risk that a nearby school will become segregated as the parents will enroll their children into the nearest school.

The interview analysis also revealed that school segregation of the Roma is not only disadvantageous because of the lower school performance of the students. It is also crucial to raise the socialization aspect, according to which segregated education does not promote social inclusion, since it does not provide a space for Roma and non-Roma students to study together. This is a two-sided problem, since those students from the majority society who study in selective religious, private and other schools where there are no Roma students – from the socialization aspect – are in the same situation as segregated Roma students. Everyday contact in school between Roma and non-Roma students are crucial in social inclusion.

Considering the voice of the Roma – through civil society and representatives from Roma communities – is essential in devising a strategy for social inclusion. School segregation of the

Roma cannot be tackled successfully without listening to voices of Roma communities. Educational experts from the Government have to work together with NGOs – who have connections with Roma communities – to create a space for discussion.

To sum up, the interview analysis reflects that – despite reducing school segregation of the Roma has been on the agenda from decades – school segregation is still a serious concern in Hungary. Studying in segregated schools means lower level of educational standards, reduced curricula and lower expectation of the teachers from the students. The current legal system recognizes the protection of minorities and prohibits school segregation based on race, however educational policies – such as increased financial support for religious schools and the lack of an inclusion strategy to tackle school segregation – allow segregation to stay persistent in Hungary. There are different viewpoints of educational experts about how to tackle school segregation of the Roma, however they all agree that the desegregation case of Hódmezővásárhely can serve as a model for further initiatives. Fighting school segregation of the Roma should not solely target improving the school performance of Roma students, but also should consider the ‘socialization approach’ – explained above in this Section. These initiatives should also reflect the voice of representatives of Roma communities. Discussion between experts from the Government and representatives of the Roma should be urged by the Hungarian Government.

## VII. Recommendations

### **VII.1 Policy recommendations to the European Union**

1. The EU Framework for Roma Integration should clearly define that target group. The Framework should state that the target group also include those, who are victims of antigypsyism.
2. The EU Framework for Roma Integration should change its solely soft-policy character, by introducing mandatory measures. These measures should oblige Member States to devise a Roma specific national strategy for social inclusion.
3. Fighting against discrimination should be defined and devised. Relying exclusively on socio-economic factors is inadequate; the EU Framework should reflect on anti-discrimination from the perspective of fundamental rights.
4. The process of infringement in case of not meeting the mandatory measures should be devised in the EU Framework as well. I recommend the impact of these procedures to be monitored. The process of monitoring should also be part of the EU Framework.
5. I propose that the four areas of social inclusion, recommended by the EU Framework to be supplemented with a fifth area called recognition, which specifically focuses on the claims – cultural, participatory, historical – of the Roma.

### **VII.2 Legal recommendations to the Hungarian Government**

1. The Fundamental Law of Hungary should protect and ensure dignity to all members of the Hungarian society, regardless of religion, family status, or other pre-defined values. Binding rules in the Fundamental Law of Hungary applies to all, as well as human dignity

2. The Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities' allows segregated education if it intends to serve the objectives of the educational institution and simultaneously does not put students in a disadvantaged situation, and meets the state defined requirement of education. This clause of the Act should be re-visited and formulated by being specific on the cases of lawful segregation. The Act should also define what is a disadvantaged situation.

### **VII.3 Policy recommendations to the Hungarian Government**

1. Treating extreme poverty and Roma inclusion under one umbrella and targeting these separate issues with common strategies result in ill-founded and inefficient measures and provides the soil for increased discrimination. Separate and specifically targeted strategy for social inclusion of the Roma need to be designed.

2. Discussing the concept of antigypsyism should be included in the National Strategy for Social Inclusion of Roma.

3. A fifth area of recognition, which specifically focuses on the claims – cultural, participatory, historical – of the Roma. This fifth part should be a part of the Strategy.

4. The Hungarian Government should terminate the Act LXXVI 2017, 'Transparency of Organizations Supported from Abroad'. Government should facilitate local and foreign entrepreneurs to invest in supporting these organizations. With these possible financial resources, effective initiatives targeting social inclusion of the Roma could be organized.

5. The aims of the Strategy in the field of education mostly focuses on ensuring access to education and reducing early school leaving. School segregation of the Roma is not adequately targeted in

the strategy. Targeting school segregation of the Roma is crucial and should be included in the National Strategy for Social Inclusion, since it has direct effects on early school leaving.

6. Defining the objectives of the Strategy should include involving experts, community leaders from the Roma minority who can represent the Roma and articulate their claims as well.

7. I recommend involving Roma and pro-Roma non-governmental organizations in devising the Strategy. Their experience, knowledge and connections with Roma communities could be effectively used in the process.

#### **VII.4 Desegregation specific policy recommendations to the Hungarian Government**

1. A national desegregation plan should be devised by the Hungarian Government by involving educational experts. The Hódmezővásárhely desegregation case could serve as a model for devising the action plan, as well involving the experts worked on that desegregation process would advance the effectiveness. Experts from the Anti-segregation Roundtable should be also invited for collaboration.

2. In those cases where the Hódmezővásárhely model is not feasible, the quality of educational service of the segregated school should be dramatically improved. This means allocating extra financial and professional support for the institution to devise a developed pedagogical program both for the students and for the teachers as well. This practice is not only a matter of ‘harm-reduction’, by ensuring excellent quality education to the students, but also can be attractive to other parents for enrolling their children, which ultimately reduce segregation.

3. The practice of organizing catch-up classes should be forbidden. Those children participating in education in segregated classes – for different reasons, such as catch-up, mentoring, or talent

management – should be integrated into mainstream education and teachers should be trained for delivering classes for diverse groups of children. Extra-curricular activities for mentoring and talent management may be organized, but the percentage of participating in such classes should be maximized.

4. Fighting school segregation of the Roma should not solely target improving the school performance of Roma students, but also should consider the ‘socialization approach’. Segregated education of the Roma should be handled as a disadvantage for the Roma and for the majority society as well. Social inclusion is only possible by ensuring inclusive environment in schools. Both the Roma and the non-Roma students benefit from this inclusive environment since they can work together for reaching common goals and they can listen to and understand each other’s narratives.

5. Training teachers to teach in ethnically diverse classes is crucial. Teachers need to be educated to use pedagogical tools, practices to foster social inclusion of Roma students.



## VIII. Conclusion

This thesis work focuses on the educational situation of the Roma in Hungary, most specifically on the school segregation of the Roma. Social inclusion of the Roma has been targeted by different strategies and projects both on EU level and in Hungary, however it is still a serious concern of the Hungarian educational system. Antigypsyism is thriving in Europe. Roma face deeply rooted discrimination, especially in the field of education. There are legally binding international documents, treaties that oblige Member States to promote equal access to education, and there are recommendations for training teachers to teach in ethnically diverse classes. The Fundamental Law of Hungary highlights the importance of equality and rejects any kind of prejudice. It also incorporates the idea of non-discrimination and recognizes the duty of the state to promote inclusion and social justice. Hungary has also enacted the ‘Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities’, which outlines the principle of non-segregation and identifies different practices that leads to segregation as unlawful. This Act implies that segregation is lawful if it is the voluntary choice of the parents, however this leads to the so-called white-flight, which ultimately leads to segregation of the Roma. The Hungarian Government – in its ‘T/2085 proposal for amendment of the Act CXC of 2011 on National Public Education’ gave exemptions to schools on the ground of religious freedom and nationality education, as they are not subject to the 2013 Act in terms of school segregation. School segregation of the Roma under the disguise of religious freedom is present in Hungary. The European Commission issued the ‘Framework for National Roma Integration Strategies’ in 2011, which promotes inclusive education and calls for reducing school segregation of the Roma. Hungary has also elaborated on a National Strategy for Social Inclusion, however this strategy is not specific to the Roma, and it treats the Roma and deep

poverty under one umbrella. It also lacks referring to antigypsyism, which is curial to understand to effectively fight against discrimination.

There are two main forms of school segregation of the Roma in Hungary: between schools and in schools. The so-called ‘catch-up class’ for Roma students is the most prevalent form of in-school segregation. There are only estimations available about the extent of school segregation of the Roma in Hungary, however the literature review and the interview analysis show that school segregation of the Roma is still persistent in Hungary.

There were different projects introduced by the Hungarian Government, such as the Integrated Pedagogical System, the Útravaló Scholarship Program, the Tanoda Programs and the Bridge Programs, however the efficiency of these programs was pronouncedly questioned by the interviewed experts. There were also attempts to eliminate school segregation, such as the case of Hódmezővásárhely, which can be role model for further work, since it successfully eliminated school segregation in that specific area.

The findings of the interview analyses show that the extent of school segregation of the Roma is not only persistent, but showing an increasing standard in Hungary. The experts also agree that Roma students are underrepresented in secondary and higher education, since they do not have the access to quality education, where they can develop their skills according to their capabilities. Segregated education means lower level of educational standards, reduced curricula and lower expectations. The legal protection against racial segregation – although it is present in Hungary – is obscure in some parts and allows ‘loopholes’ for school segregation, which seem to be used by school principles. This is a two-sided problem in terms of socialization. Both Roma and non-Roma students get advantage by studying in an ethnically diverse class.

There is a need for revisiting and re-constructing the legal system of protection against discrimination in Hungary. The Fundamental Law of Hungary should ensure dignity and protection to all, regardless of pre-defined values. The 2003 Act should be specific about defining the cases of lawful segregation. Both the EU Framework and the Hungarian Strategy should be revisited and should define clearly the target group, refer to antigypsyism, devise objectives and regulate the process and monitoring of infringement procedures. Hungary should also act on devising desegregation plans, to eliminate school segregation of the Roma. NGOs, experts, academics and representatives of the Roma communities should also be involved in this process. It is also critical to support NGOs, which aim to improve the educational situation of the Roma. Currently, there is a lack of supporting these organizations by the Hungarian Government, in fact, the new legislation about the transparency of these organizations makes even more difficult for them to act. New legislation regarding the support of these organization need to be devised. Based on the literature review, the legal analysis and the semi-structured interviews with national experts on social inclusion, both hypotheses are proven.

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