

Roma school segregation patterns. Applications of the lessons learned to the Spanish Educational Model

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Case Study of the Region of Murcia

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“Education is an important element in the struggle for human rights. It is the means to help our children and our people rediscover their identity and thereby increase their self-respect. Education is our passport to the future, for tomorrow belongs only to the people who prepare for it today.”

Malcolm X, *By Any Means Necessary* (1970)

I. INTRODUCTION

The present work aims to confront the problem of school segregation of Roma in Europe. Far from carrying out a socio-anthropological work, the aim is to shed light on the segregationist educational models against the Roma established in European countries, looking for the origins that support these models and the effectiveness and efficiency of corrective remedies carried out in recent decades. Although the attempts through recommendations explicitly emphasized the grounds of discrimination that had motivated the educational policies carried out so far,¹ these efforts did not finish materializing in a substantive change of the status quo represented by the empire of a eugenicist approach that maintains the absolute connection between belonging to the Roma community and the presentation of intellectual and learning difficulties. These deeply racist preconceptions and reasoning are profoundly rooted in European society's ideology, representing a triple problem:

- The perpetuation of discriminatory stereotypes and prejudices manifested in a cross-cutting manner in different areas (housing, education, health, and employment)² and that promote hate expressions.
- The aggravation of the situation of social exclusion of the Roma community. Besides, as it will be demonstrated later, the conjunction of discriminatory and assimilating practices promotes the construction of a defensive attitude by the Roma community towards the majority society. Roma is conceived as an alien, problematic, and different in their own country. At the same time, the historical maintenance of this racist and stereotyped discourse and its encouragement has led to its internalization and

¹ Council of Europe (COE) Committee of Ministers, «Recommendation CM/Rec(2009)4 of the Committee of Ministers to Member States on the Education of Roma and Travellers in Europe», *IB*, 17 June 2009, <https://tandis.odhr.pl/handle/20.500.12389/20787>.

² Main areas currently identified and worked on international strategies and recommendations

performance by the Roma community, since permanently over time, it becomes their sole source of information about their own community.

- Finally, taking into account the situation described, a crucial problem is the failure to observe the implications and effects that this racist discourse and ideology which, as it has stated, are deeply rooted in the ideology of European society, may have on the editors and managers of policies and measures to alleviate this situation. This aspect will acquire an essential relevance in the chapter dedicated to the Spanish situation.

Since the arrival of the Roma communities on the European continent, they have been subject to discrimination, violence, persecution, genocide, as well as practices aimed at ethnic cleansing.³ Although each European country has a different historical relationship against Roma, all of them have agreed in the application of discriminatory policies and measures. Having its origin in India and dating its entry to the European continent in the early fourteenth century, the Roma community represents the most significant ethnic minority in Europe, reaching an estimated total of 10-12 million throughout Europe.⁴

The admission of Central and Eastern countries to the European Union gave rise to a set of standards and precepts in order to combat discrimination against the Roma, or what is known as anti-gypsyism,⁵ due to the considerable increase in the number of Roma in the European Council area. However, the Roma population is not representative only in the countries of Central and Eastern Europe.

Spain is the second country with the largest Roma population in Europe.⁶ Despite having a historic legislative record against the Roma and presenting a general situation of poverty, which is structural and systematic, Spain has not developed any anti-discrimination legislative body explicitly addressing racial discrimination against Roma. Focusing on the issue of work in school segregation and emphasizing the legal reasoning given by the European Court of Human

³Alejandro Martínez Dhier, «La condición social y jurídica de los gitanos en la legislación histórica española. (A partir de la Pragmática de los Reyes Católicos de 1499)», 2007, <https://digibug.ugr.es/handle/10481/1616>.

⁴ «Roma Integration in the EU», Text, European Commission - European Commission, accessed 18 June 2020, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-and-eu/roma-integration-eu_en.

⁵«Anti-Gypsyism / Discrimination», Roma and Travellers, access on 20 June 2020, <https://www.coe.int/en/web/roma-and-travellers/anti-gypsyism/-discrimination>.

⁶ «Roma and Travellers», Roma and Travellers, accessed on 18 June 2020, <https://www.coe.int/en/web/roma-and-travellers/home>.

Rights regarding this issue on other countries (since the jurisprudence on this matter is utterly absent in Spain), the main goal will analyze its correlation and congruence with the educational model applied to the Roma community in Spain.

II. ADDRESSING THE TROUBLE OF SEGREGATION

INSUFFICIENT PROMPT BUT A LATE RESPONSE

Between the end of the 20th century and the beginning of the 21st century, the Council of Europe had the objective of directly confronting the situation of discrimination of the Roma communities in Europe. Although this was not the first time its bodies had focused their work on Roma-related issues, in 1993, the Parliamentary Assembly recognized Roma communities as a European minority.⁷ In 2000 the Committee of Ministers explicitly recognized the reasons behind it to the deprivation of Roma children's right to education.

“Noting that the problems faced by the Roma / Gypsies in the school field are considered due to the long-followed educational policies, which have led to the assimilation or segregation of Roma / Gypsy children in school with the excuse that they suffered a sociocultural disability.”⁸

This recognition was in line with the stated objective of the European Commission against Racism and Intolerance (ECRI) to “vigorously combat all forms of school segregation towards Roma / Gypsy children and ensure the effective enjoyment of equitable access to education.”⁹ ECRI was founded as a unique human rights monitoring body specializing in issues related to the fight against racism, discrimination, xenophobia, anti-Semitism, and intolerance in Europe. Both in terms of discrimination in general and discrimination against the Roma (anti-gypsyism)¹⁰ in particular, this body has been playing a crucial role.

⁷«PACE - Recommendation 1203 (1993) - Gypsies in Europe», accessed on 18 June 2020, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=15237&lang=en>.

⁸ «COUNCIL OF EUROPE» Recommendation No R (2000) 4 of the Committee of Ministers to member states on the education of Roma/Gypsy children in Europe, accessed on 18 June 2020, <https://rm.coe.int/09000016805e2e91>.

⁹ «ECRI General Policy Recommendation N°3», European Commission against Racism and Intolerance (ECRI), accessed on 18 June 2020, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.3>.

¹⁰«Anti-Gypsyism / Discrimination», Roma and Travellers, access on 20 June 2020, <https://www.coe.int/en/web/roma-and-travellers/anti-gypsyism/-discrimination>.

This role is carried out through the General Policy Recommendations addressed to the governments of all Member States, as well as through the work of Country monitoring, through which ECRI analyzes the situation carefully in each of the Member States and makes recommendations to face any problem of racism and intolerance identified. Both the general recommendations and the Country monitoring reports will have particular relevance in the next paragraphs.

Taking this ground into account, it is plausible to think that among the aim and targets of Directive 2000/43 on Racial Equality,¹¹ hereinafter RED, was to provide response and protection to the Roma community and to initiate plans aimed at eliminating school segregation since it was conceived as “the main legal instrument to combat discrimination in the EU Member States.”¹² RED's main objective was to establish a framework to combat discrimination based on racial or ethnic origin, specifically, to prohibit any discrimination, direct or indirect, by reasons of racial or ethnic origin in the areas protected by it. In pursuing this objective, RED establishes a double categorization of discrimination.

On the one hand, it establishes that it must be understood as direct discrimination when a person, for reasons of racial or ethnic origin “is treated less favorably than he or she, has been treated as another in a comparable situation.”¹³ Instead, indirect discrimination is observed when “an apparently neutral provision, criterion or practice puts persons of a particular racial or ethnic origin at a particular disadvantage with respect to other persons.”¹⁴ However, this indirect discrimination can be justified based on the search for a legitimate purpose. Regarding its application in educational matters, an area covered by this Capstone, article 3.1.g) RED is clear when establishing that “this Directive will apply to all persons, both in the public and private

¹¹ «COUNCIL OF THE EUROPEAN UNION» Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, accessed on 18 June 2020 <https://eurlex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32000L0043&from=ES>

¹² «Report on Discrimination of Roma Children in Education | Migration Policy Group», accessed on 18 June 2020, https://www.migpolgroup.com/_old/portfolio/report-on-discrimination-of-roma-children-in-education/.

¹³ «COUNCIL OF THE EUROPEAN UNION» Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 2.2.a), accessed on 18 June 2020 <https://eurlex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:32000L0043&from=ES>

¹⁴ Ibid. Article 2.2.b)

sectors, including public bodies, in relation to education.”¹⁵ Its inclusion in the articles responds to materializing the objectives already marked and expressed in the preamble.¹⁶

In order to safeguard the objectives emanating from RED, it articulates the empowerment in each Member State of an Equality Bodies, which will be “responsible for the promotion of equality of all persons without discrimination based on their racial or ethnic origin.”¹⁷ These Equality Bodies acquire a crucial role taking into account the absence of a direct horizontal effect of the directive. Emphasize in this regard that the materialization of the Equality Bodies and the obligatory nature of their creation by the Member States, has responded to the conjunction of forces the EU’s equal treatment Directives,¹⁸ as well as the Policy Recommendation General N°2 of the European Commission against Racism and Intolerance.¹⁹

DEFINING THE TYPES OF SEGREGATION

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.²⁰ Further refining the educational situation of the extreme and precarious situation of the European Roma communities is evident and has been endorsed by numerous studies nationally and internationally. In the educational field, discrimination against Roma has materialized through segregation. Such is the problem presented by the Roma communities in the educational field that the European Commission,

¹⁵ Ibid. Article 3.1.g)

¹⁶ Ibid. Preamble, point 12 “To guarantee the development of democratic societies and tolerant in which everyone can participate, regardless of their racial or ethnic origin, specific action in the field of discrimination on the basis of these reasons must go beyond access to the activity self-employed or employed and cover areas such as education”

¹⁷ Ibid. Article 13

¹⁸ Article 13 of Directive 2000/43 / E.C. which deals with discrimination on the grounds of racial or ethnic origin and article 12 of Directive 2004/113 / E.C., Article 20 of the Directive 2006/54 / E.C. and article 11 of Directive 2010/41 / E.U. on Gender

¹⁹ «ECRI General Policy Recommendation N°2 Revised», European Commission against Racism and Intolerance (ECRI), accessed on 18 June 2020, <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2>.

²⁰ U.N. Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E / C.12 / 1999/10, available at <https://www.refworld.org/docid/4538838c22.html> [accessed 18 June 2020].

with the launch of the EU Framework for National Roma Integration Strategies up to 2020²¹ and with it being an educational field one of its four areas of action, the objective set was “ensure that all Roma children complete at least primary school.”²² Although among the strategy's ambitions is to reduce segregation rates, the objective set until 2020 is to ensure at least the primary education of Roma children. In this way, the Framework's efforts aimed at the schooling of Roma children and the completion of the primary stage, with attendance in primary education compulsory in all Member States. The lack of emphasis on the part of the Framework to promote the establishment of de-segregationist measures is surprising, taking into account the amount of data and reports previously collected and published by ECRI, as well as by the case-law of the European Court of Human Rights regarding segregation school of Roma so far.²³ As asserted above, the relations of the Member States with the Roma communities have been different, and the manifestations of discrimination have been based on different racist speeches and models. Considering all the knowledge developed around the types and patterns of segregation against the Roma and according to their manifestations, four types of forms can be categorized: intra-school segregation, intra-class segregation, individual segregation, and inter-school segregation.²⁴

Intra-school segregation is characterized by the articulation of separate classrooms within the same school, intended for Romani students. The formation of separate study groups characterizes intra-class segregation made up of the Roma students in the class, which have a lower-level curricular educational program than that established for the rest of the class. On the other hand, the segregation is a form of alleged homeschooling or total exclusion from school. Far from being anecdotal in its appearance, it is also a widespread type of segregation. Lastly, the last way is the inter-school segregation. The latter form, in addition to presenting

²¹ «EUROPEAN COMMISSION National Roma Integration Strategies: a first step in the implementation of the EU Framework /* COM/2012/0226 final */- 52012DC0226 - EN», text/html; charset=UTF-8 (OPOCE), accessed 18 June 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0226&from=EN>.

²² Ibid.

²³ «ORSUS AND OTHERS v. Croatia».; «SAMPANIS AND OTHERS v. GREECE - [English Translation] by European Roma Rights Centre “ERRC”», [https://hudoc.exec.coe.int/eng#{%22EXECDocumentTypeCollection%22:\[%22CEC%22\],%22EXECAppno%22:\[%2215766/03%22\],%22EXECIdentifier%22:\[%22004-10085%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Sampanis%20and%20Others%20v.%20Greece%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-86798%22]}., «ORSUS AND OTHERS v. Croatia»., <a href=). Accessed on 18 June 2020

²⁴ Lilla Farkas, «Racial Segregation: A Realistic or Fatally Opportunistic Political Decision?», s. f., 11.

subcategories, is the most common and most manifest form of segregation in the different Member States. Furthermore, it has been subject to prosecution by the ECtHR numerous times.

Inter-school segregation is characterized by the segregation of Roma students in centers other than the mainstream. Among the manifestations of inter-school segregation, we can highlight two main subcategories:

- The segregation of Roma students in individual schools for the mentally disabled.

It has been a widespread practice in Central and Eastern European countries to systematically assign Romani students to particular classes or schools due to their mental and intellectual difficulties. This pattern is materialized through the establishment of intellectual tests that are biased, not taking into account the cultural and linguistic differences of the Roma students and, in a discriminatory way, they are assigned as intellectually disabled. As will be seen in the next section, this type of segregation has been declared illegal because it is discriminatory by the ECtHR. Similarly, studies show that this trend and overrepresentation of Roma students in schools and special classes result from the authorities' efforts to convince parents of students to enroll them in this type of school centers.²⁵

- The segregation of Roma students in ghetto schools.

Roma ghetto schools are another type of inter-school segregation. This is characterized by the concentration of Roma students in educational centers of low or inferior educational quality. While there is a unique educational model applicable to the mainstream schools, schools have been created on the outskirts of each city that provide students with a much lower and more basic educational curriculum. Furthermore, they are characterized by poor infrastructure and materials, as well as unqualified teaching staff. The creation of these ghetto schools arises from the confluence of two factors. On the one hand, the residential discrimination of the Roma, which in many cases is fostered and established through public housing policies. On the other hand, the ghettoization of schools encourages the rejection of non-Roma students to enroll in

²⁵ «Parallel worlds: Romani and non-Romani schools in Bulgaria», Text, European Roma Rights Centre (European Roma Rights Centre), Hungary, access on 20 June 2020, <http://www.errc.org/roma-rights-journal/parallel-worlds-romani-and-non-romani-schools-in-bulgaria>.

them, opting for mainstream schools.²⁶ This phenomenon aggravates the ghettoization of the school. This type of segregation model is especially important in the case of Spain, as it will be explained later.

JUDICIALIZATION OF SEGREGATION

Although till today, the school segregation of the Roma has not been reviewed by the European Court of Justice, and therefore, the opportunity to materialize the application of the RED in this area has not been given; the ECtHR has indeed had the opportunity on numerous occasions to review this significant problem.

Among the ECtHR jurisprudence dealing with the school segregation of the Roma, we find the following six cases: *D.H. and Others v. the Czech Republic*;²⁷ *Sampanis and Others v. Greece*;²⁸ *Oršuš and Others v. Croatia*;²⁹ *Sampani and Others v. Greece*;³⁰ *Horváth and Kiss v. Hungary*;³¹ and *Lavida and Others v. Greece*.³² In all of them, the ECtHR appreciates segregation as discrimination, judging in favor of Roma students. Although in the reasoning of the judgments, the Court does not develop the grounds established by RED and the development of the concepts of direct and indirect discrimination, its influence is noted. However, the joint reading of articles 14 of the European Convention on Human Rights and Article 2 of Protocol No.1 has led the Court to prosecute and find discrimination in the problems of school segregation of the Roma brought.

²⁶ Sina Van den Bogaert, *Segregation of Roma Children in Education: Addressing Structural Discrimination Through the Framework Convention for the Protection of National Minorities and the Racial Equality Directive 2000/43/EC* (BRILL, 2018). Pages 30-44

²⁷ «Grand Chamber judgment *D.H. and Others v. the Czech Republic* 13.11.07».

²⁸ «*SAMPANIS AND OTHERS v. GREECE* - [English Translation] by European Roma Rights Centre “ERRC”».

²⁹ «*ORSUS AND OTHERS v. Croatia*».

³⁰ «*SAMPANI AND OTHERS v. GREECE* - [English Translation] by European Roma Rights Centre “ERRC”», access on 18 June 2020, [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%22CASE%20OF%20SAMPANI%20AND%20OTHER%20v.%20GREECE%20-%20\[English%20Translation\]%20by%20European%20Roma%20Rights%20Centre%20%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-115493%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%22CASE%20OF%20SAMPANI%20AND%20OTHER%20v.%20GREECE%20-%20[English%20Translation]%20by%20European%20Roma%20Rights%20Centre%20%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-115493%22]}).

³¹ «*HORVÁTH AND KISS v. HUNGARY*», Accessed on 18 June 2020, [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22001-116124%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22001-116124%22]}).

³² «*Lavida and Others v. Greece - school placements for Roma children*», Accessed on 18 June 2020, [https://hudoc.echr.coe.int/eng-press#{%22itemid%22:\[%22003-4378378-5255719%22\]}](https://hudoc.echr.coe.int/eng-press#{%22itemid%22:[%22003-4378378-5255719%22]}).

Although article 14³³ does not differentiate between direct or indirect discrimination, it generally establishes the prohibition of discrimination on the grounds of “sex, race, color, language, religion, political or other opinions, national or social origin, belonging to a national minority, fortune, birth or any other situation.” Likewise, Article 2 of Protocol No.1 establishes that “no person shall be denied the right to education.”³⁴ The application of this reasoning to the cases mentioned has led to the establishment of applicable and observable standards in cases of discrimination against Roma, which are homologous. Analyzing the importance, relevance, and transcendence of the judgments, the following three cases will be examined in this section:

- Case of D.H. and Others v. the Czech Republic.

This case is of particular interest since it was the first case of Roma's school segregation appreciated by the ECtHR. The facts of the case are based on the application submitted by eighteen Czech Roma students who were assigned to individual schools for children with mental disabilities. These special schools offered a significantly lower educational curriculum than that offered in mainstream schools.

Far from being an individual and specific problem, the Court appreciated the problems brought to the Court by the applicants as an individual problem but responds to a pattern of racial discrimination within a common and systematic practice³⁵. Furthermore, this pattern is not only appreciated in the specific case, but segregation is observed as a common characteristic of many of the Member States of the Council of Europe.³⁶ It is newsworthy that we are facing the first judgment on this regard. The puerility of the Court at this extreme is denoted in its intention to continue in the wake of the RED and resume the work of categorizing indirect discrimination. In addition to assuming RED's definition, the Court emphasizes the disproportionate discriminatory effects of measures conceived as neutral.³⁷ Moreover, deepening in the historical consequences of discrimination carried out by different European countries against the Roma, it gives this community an extraordinary degree of protection due to its consequent characterization as a disadvantaged and vulnerable minority. In addition to what has been

³³ «European Convention on Human Rights», s. f., 34. Article 14

³⁴ «European Convention on Human Rights». Article 2 of Protocol No.1

³⁵ «Grand Chamber judgment D.H. and Others v. the Czech Republic 13.11.07». point 79

³⁶ Ibid, point 77

³⁷ Ibid, point 193

described so far, it is also important to change the burden of proof in cases of denunciation of measures or practices with a discriminatory effect, passing the burden of proof to the State; as well as the importance of statistics such as means of testing to assess the impact of the discriminatory measure.³⁸

The overrepresentation of Roma in special education classes had already been reported by ECRI in its Second Report monitoring the Czech Republic in 2002.³⁹

- Case of Oršuš and Others v. Croatia

This case was brought before the Court by fourteen Croatian Roma students who were assigned to special classes whose students were exclusively Roma, based on the difficulties in language learning presented by the Roma students. Furthermore, these classes offered a much lower educational curriculum than that offered in the mainstream classes. The peculiarity of this case is the development of the judicial procedure. Firstly, the Court did not find a violation of Article 14 read in conjunction with Article 2 Protocol No. 1 since, in its opinion, the case was about a problem of language skills and not discrimination. That is why the case was referred to the Grand Chamber, which established that such practice violated article 14 read in conjunction with article 2 Protocol No. 1. However, the said decision was made with the dissenting vote of eight judges.⁴⁰

Analyzing the reasoning of dissenting votes, and bearing in mind that this was the third case it knew about Roma segregation, the lack of consolidation of the concept of indirect discrimination and the disproportionate detrimental effects of relatively neutral measures on an ethnic minority is troubling. Thus, the position of understanding the segregation of the Roma as a reasonable measure is surprising, on the basis that the problem is linguistic based, without any discrimination being observed in any of its dimensions. Furthermore, the over-responsibility and guilt placed on Roma students' parents are reluctant, which presents an educational situation exponentially lower than that of their children.

³⁸ Ibid, point 136

³⁹ ECRI, Second Report monitoring-Czech Republic, 2002

⁴⁰ «ORSUS AND OTHERS v. Croatia».

In the Second Report of Country Monitoring of Croatia, ECRI pointed out the serious problem Roma children experienced in the educational field, even warning that “there are regions where not a single Roma / Gypsy child attends school.”⁴¹

- Case Horváth and Kiss v Hungary

In this case, being the penultimate case facing the school segregation of the Roma, the Court found that Hungary had violated article 14 read in conjunction with article 2 Protocol No. 1 misdiagnosing the two applicant Roma students of suffering a mental disability due to their ethnic origin. Due to the misdiagnosis, they were enrolled in special segregated schools, instead of going to a mainstream school. The importance of this case lies in the Court's emphasis on studying the historical background to understand the dimension and scope of discrimination. Like the first case, in this, the Court determines that “the State has specific positive obligations to avoid the perpetuation of past discrimination or discriminative practices disguised in allegedly neutral tests.”⁴² The absence of case-law in ECJ related to this problem has left the ECtHR with all the leading role and responsibility to play an important role in finalizing the segregation of Roma children.⁴³ For this reason, this judgment becomes essential, in which the Court requires positive actions to be taken, leading to the end of the discrimination. Already in the Second Report of Country monitoring in Hungary,⁴⁴ the ECRI alarmingly expressed its concern about the educational situation of the Roma in Hungary. In particular, ECRI warned that in Hungary and the phenomenon of inter-class segregation, there was also a tendency to channel Roma children to schools or classes for children with mild mental retardation.

⁴¹ ECRI, Second Report monitoring-Czech Republic, 2000

⁴² «HORVÁTH AND KISS v. HUNGARY». Point 116

⁴³ Sina van den Bogaert, Roma Segregation in Education: Direct or Indirect Discrimination? *ZaöRV* 71 (2011), 727

⁴⁴ ECRI, Second Report monitoring-Hungary, 2000

III. THE EDUCATIONAL SITUATION OF THE SCHOOL SEGREGATION OF ROMA IN SPAIN. SPECIAL ATTENTION TO THE PRACTICAL CASE OF THE REGION OF MURCIA

Being clear about the framing of the problem of school segregation of Roma children from a global perspective and, taking into account the previously mentioned standards, the following chapter is devoted to the analysis of school segregation of Spanish Roma children.

Statistics and reports analyzing this problem in Spain, yields data that completely contradict or oppose. Following the methodology applied so far, reviewing the ECRI reports, I observe that, firstly, monitoring Spain does not mention any term similar to segregation in the education of the Roma. However, it is true, in the second report, that is detected a “high concentration of Roma / Gypsy children in certain schools.”⁴⁵

In this sense, and the search for monitoring activity regarding Roma in Spain, the Second Cycle is notable within the framework of country-specific monitoring of the implementation of the Framework Convention for the Protection of National Minorities.⁴⁶ In it, the Advisory Committee expressed its concern about the increasing concentration of Roma and migrant students in schools classified as “academically poor.” In response to this statement, the Government of Spain clarified that “it was necessary to clarify that in the national field, there are no “special or academically poorer schools” for the socially or economically disadvantaged population, all schools having the same academic consideration. So convincing was the response that, starting with the fourth report of the ECRI monitoring Spain, one begins to mention the “uneven distribution of migrant and Roma pupils and continued existence of ghetto schools.”⁴⁷

Taking this panorama into account, the reality is that Spain has been applying a dual educational model to the Roma, which finds its roots in Spanish historical legislation. Far from being able to be called a model country or an example of success, the factual reality that Spain presents is the structuring of segregated neighborhoods or ghettos throughout all Spanish cities and areas. Through public housing processes and the eradication of shantytowns and the sedentarization

⁴⁵ ECRI, Second Report monitoring-Spain, 2003, p. 44

⁴⁶ COUNCIL OF EUROPE, Framework Convention for the Protection of National Minorities, 1 February 1998

⁴⁷ Ibid, Second Cycle Spain, 2004

of the Roma community, a network of ghetto neighborhoods has been built throughout the country. The conjunction of these data with the configuration of a regulated educational system under a residential approach, the absence of a strong and independent Equality Body,⁴⁸ the lack of legal instruments for the development of anti-discrimination law regarding Roma and the absolute consent of case-law regarding this topic; all of them have led to the standardization and ghettoization of the residential and educational model applied to the Roma in Spain.

Although in Spain, given the Spanish Constitution's configuration, the Roma are not a national minority, they have the same legal status and citizenship rights as the rest of the Spanish majority society. Likewise, the Spanish Constitution establishes a principle of equality before the law,⁴⁹ prohibiting discrimination,⁵⁰ and conceiving the right to education as a universal right.⁵¹ Furthermore, the Education Law⁵² provides basic education for both primary and secondary education and presents a compulsory and free character, comprising this obligation within a period of six to sixteen years. In addition to this, the educational law conceives the establishment of "compensatory education policies that will reinforce the action of the educational system to avoid inequalities derived from social, economic, cultural, geographic, ethnic or other factors" as a way of doing effective the principle of equality in the exercise of the right to education.

Considering the outlined general situation, in the next point, this study will analyze the educational models applied in particular to the Roma by the Spanish public authorities chronologically. The revision and chronological verification of these models will help me to find the roots and causes that have led to the configuration of this inter-segregation school system.

⁴⁸«Spain Should Create a Strong Equality Body and Improve Education of Roma and Migrants – Equinet», accessed on 18 June 2020, <https://equineteurope.org/2019/spain-should-create-a-strong-equality-body-and-improve-education-of-roma-and-migrants/>.

⁴⁹ Spanish Parliament, Spanish Constitution (1978), Article 9

⁵⁰ Ibid, Article 14

⁵¹ Ibid, Article 26

⁵²«BOE.es - Documento consolidado BOE-A-2006-7899», accessed on 18 of June 2020, <https://www.boe.es/buscar/act.php?id=BOE-A-2006-7899>.

CHRONOLOGICAL DEVELOPMENT OF EDUCATIONAL MODELS APPLIED TO THE SPANISH ROMA POPULATION

The entry of the Roma to Spain dates from the end of the 14th century. The first historical document shows this is the safe-conduct issued by Alfonso V the magnanimous, King of Aragon to D. Juan, Count of Egypt Minor in 1425.⁵³ Only 74 years lasted the cordial relationship of the kingdoms of Spain with the Roma community. It is from 1499, with the Pragmatics of the Catholic Monarchs, which opens the door to persecution, punishment, genocide, extermination and assimilation practices carried out by the different Spanish governments and regimes with those known as “Eqypcianos or Gitanos.”⁵⁴ Although these directly discriminatory anti-Roma measures will last until the overthrow of the Franco dictatorship and the establishment of Spanish parliamentary democracy,⁵⁵ it was from the end of the 19th century when the first segregated educational school centers for Roma began to develop. From now on, the different special educational models for Roma applied by Spain will be explained. As noted, all of them are conceived by representatives of the Catholic Church.

Ave Maria Schools, 1899⁵⁶

Father Andrés Manjón founded the Ave María Schools in the caves of the Sacred Mount of Granada (Andalusia), a historic settlement of the Roma community. Father Andrés Manjón applied an educational model based on a Catholic pedagogy. Among the extracts published by the founder under the title “Against the phenomenon of the gypsy race, something that tends to heal or eliminate it,” the discriminatory and assimilating character of the approach of Father Andrés Manjón can be clearly discerned.

“The gypsy race, unknown in its origins and inexplicable in its existence through the centuries, without assimilating or civilizing itself in contact with educated peoples, is another of our difficulties.”

⁵³«Salvoconducto para un romaní (1425)», accessed on 18 of June 2020, <http://www.culturaydeporte.gob.es/archivos-aca/actividades/documentos-para-la-historia-de-europa/gitanos.html>.

⁵⁴ Martínez Dhier, «La condición social y jurídica de los gitanos en la legislación histórica española. (A partir de la Pragmática de los Reyes Católicos de 1499)».

⁵⁵ Spanish Parliament, promulgation of Spanish Constitution, 1978

⁵⁶ Jesús Salinas Catalá, «Un viaje a través de la historia de la escolarización de las gitanas y gitanos españoles», *Anales de Historia Contemporánea*, n.º 25 (2009): 167-88.

“As they are today, it is a degenerate race, and this degeneration is hereditary and extends to its physical, intellectual, and moral part. Gypsies are born dark, they live skinny, there are many weak and deformed, they live in pigsties, they stay from waste, randomly, they waste life, and they get old before their time. “His intelligence, obtuse for spiritual and abstract ideas, runs marvellously as it addresses animal and instinctual life, and his cunning and shrewd for lies and deception, which seems to it innate.”

“The gypsies, who are beggars by race,”, “The gypsies live here, a degenerate, uneducated, lazy race, with a procacious tongue and angry life, without a safe domicile or a known profession, who thus bless as they curse, and often flaunt their impudence and shamelessness in their gestures and actions.”

“Are gypsies, we repeat, able to be educated?”, “Gypsies must be civilized like Indians, carrying their defects, treating them like poorly educated children, demanding little effort, (...) |See what a good continuous education achieves to improve degenerate races and peoples and to improve those who are not so much.” “The alms of good teaching is one of the best, if not the best and greatest of charities. Among the works of mercy, the first of which refers to the soul is to teach the one who does not know. “Will it be an excessive period of forty or more years to civilize an entirely fallen people and for centuries and centuries abandoned?”⁵⁷

Far from confirming the methodology of an excellent pedagogue, education for the Roma is built on a discriminatory and stereotypical basis and with an assimilating and eugenic objective. Ideas formulated by Father Andrés Manjón continue to be the prevailing thoughts of the Spanish majority society, including the project leaders and ideologists themselves. Concepts such as lazy, ineducable, migrants, the configuration of social policies on an approach of charity and not of solidarity and social justice, ..., are not concepts that today are outdated, on the contrary. For example, the maintenance and conjunction of the meaning of gypsy as a synonym for a person who uses lies and deceits is striking. So much so, that the Dictionary of the Royal Spanish Academy lists it among one of its definitions.⁵⁸

⁵⁷ Ibid, see also Obras selectas de D.Andrés Manjón / Lo que son las Escuelas del Ave María, pp. 22-33.

⁵⁸ RAE- ASALE y RAE, «gitano, gitana | Diccionario de la lengua española», «Diccionario de la lengua española» - Edición del Tricentenario, accessed on 18 June 2020, <https://dle.rae.es/gitano>.

Suburb Board Schools, 1940

Although the educational model was prefixed for the Roma in the previous case, this is not the case. The surprise that in the first stage of Francoism, whose policy of escorting the Roma was null,⁵⁹ this type of school had as a target the Roma children. Although the legislator had in mind the configuration of these schools to respond to the rural exodus that occurred at that time, in which people living in towns moved to the suburbs of cities. Despite the lack of intent, schools in some neighborhoods and settlements were almost exclusively inhabited by Roma, and their graduate and mixed schools were occupied exclusively by Roma. However, this type of school only occurred in the city of Madrid.⁶⁰

The Bridge Schools 1967-1986

The conception of the Bridge Schools acquires immense importance. This segregationist educational model, created exclusively for Roma children, originates from the last stage of the Franco dictatorship. It was the result of the agreement reached in the Catholic Church (Gypsy Secretariats and the parish Caritas) and the Ministry of Education.⁶¹ Among the arguments that justify its creation, if the founders observed that there was an institutional disinterest in escorting Roma children, they found as their main argument the “disinterest in education on the part of parents and rebellion on the part of children before all that suppose subjection.”⁶²

The fruit of this agreement was the establishment throughout Spain of unitary classrooms that concentrated students of all ages under the guidelines of a single teacher. This meant that the classes were completely inefficient and impeded the school progress of the Roma students. That is why, on the occasion of the end of the dictatorship and the establishment of democracy, the promoters of these classrooms asked the Ministry of Education to draw up an agreement to replace the unitary classrooms already created by graduate and mixed schools, which would come to be known with Bridge Schools. This agreement is especially striking since it represents the only exception to the legislation of an educational policy specifically and expressly

⁵⁹ Quite the contrary, it maintained a behavior of legal persecution through the Law of Vagos and Malleantes «A04862-04862.pdf», accessed on 18 June 2020, <https://www.boe.es/datos/pdfs/BOE/1954/198/A04862-04862.pdf>.

⁶⁰ Catalá, «Un viaje a través de la historia de la escolarización de las gitanas y gitanos españoles».

⁶¹ «BOE.es - Documento BOE-A-1983-13484», access on 18 June 2020, <https://www.boe.es/buscar/doc.php?id=BOE-A-1983-13484>. O.M. de 23 enero de 1967

⁶² Report by Cáritas Diocesana de Palencia (1967).

formulated for the Roma since the establishment of the democratic State. Although it lasts eight years until its declaration of unconstitutionality, during these years, 182 classrooms present in 47 cities were enabled. However, the promise of abandoning the unitary character of the classroom was not kept throughout its development (only 7% of the classrooms were not unitary).⁶³

In order to justify the existence of these segregated schools, the Fundación Secretariado Gitano (at that time called Asociación Secretariado General Gitano) requested a report from the Institute of Applied Sociology. In it, the following appears: “Gypsy children come to school with a double disadvantage. His innate intelligence is underdeveloped in certain aspects essential to succeed in our educational system as it is currently organized, and his personality is unsuitably structured to deal with school. They have a very general notion of what the future is and is unable to set long-term goals. These children seem to think that success is based on luck and not on rigorously planned work. On the other hand, they have a concrete and immediate vision of things; that is, they are used to descriptive rather than analytical processes, tending to see events as isolated, not as forming a whole with a global meaning.”⁶⁴

The persistence of eugenic arguments that determine the natural mental disability of the Roma continues to persist in the policymaker ideology. Emphasizing on this aspect, since this ideology responds and takes root in the educational models preceded applied in Spain, although from now on through apparently neutral regulations. With the repeal of the Bridge Schools in 1986, the educational policy towards the Roma was subsumed within the Compensatory Education,⁶⁵ which was focused on the alleviation of the disadvantages produced by reason of residence, social and economic level in access and permanence in the education system. This policy was maintained until 1996, the change of which will be studied in depth in the following section, dedicated to the practical case of the Region of Murcia.

⁶³ Catalá, «Un viaje a través de la historia de la escolarización de las gitanas y gitanos españoles».

⁶⁴ Sociological Study, INSTITUTO DE SOCIOLOGÍA APLICADA: Los gitanos españoles 1978. Madrid: Ed. Asociación Secretariado General Gitano. 1978, pp. 139-142.

⁶⁵«BOE.es - Documento BOE-A-1983-13484».

PRACTICAL CASE: THE REGULATION OF THE EDUCATIONAL SYSTEM IN THE REGION OF MURCIA

The analysis of the last legislative decades of a specific Autonomous Community acquires particular importance. Familiarizing with the configuration of Spain, it is configured as a decentralized state, similar to the federal State's model, divided under the Autonomous Communities.⁶⁶ Among the decentralized powers and transferred to the Autonomous Communities, this means that, although the educational model is consistent throughout the country, these present peculiarities with respect to the region we are talking about. The Region of Murcia was selected as a study case because, although it is not the region with the largest Roma population in Spain, Murcia is the second region with the highest population intensity in relation to housing.⁶⁷ Such an aspect favors the proliferation of ghetto neighborhoods, traditionally occupied by Roma, and which in recent decades have mixed with migrant communities. In an interview with a public employee from the Region of Murcia in charge of the equality department, the employee admitted the following:

“I am aware that the schools with a majority of migrants and Roma are subject to a special categorization, but I do not know exactly which one to tell you;” also, concerning the coverage of teacher positions, she said “that the situation of teachers in these educational centers showing less qualification than teachers in other mainstream schools is due to the establishment of Calls for the provision of independent positions to the General Calls.”⁶⁸

Taking into account the information obtained by the public employee, it is necessary to frame the origin of this special categorization of educational centers located in segregated neighborhoods or ghettos. Firstly, at the national level and following in the wake of the previously applied educational models, Royal Decree 299/1996,⁶⁹ of February 28, is enacted to

⁶⁶«Estado autonómico», accessed on 18 June 2020, <http://www.enciclopedia-juridica.com/d/estado-autonomico/estado-autonomico.htm>.

⁶⁷ MINISTRY OF HEALTH, CONSUMPTION AND SOCIAL WELFARE, Report “Estudio-Mapa sobre Vivienda y Población Gitana 2015” (2018) p 103 https://www.msbs.gob.es/ssi/familiasInfancia/PoblacionGitana/docs/INFORMECOMPLETO_STUDIO-MAPA-VIVIE-Y_P_G.pdf, accessed on 18 June 2020

⁶⁸ Interview taken on 23 March 2020

⁶⁹«BOE.es - Documento BOE-A-1996-5696», accessed on 18 June 2020, <https://www.boe.es/buscar/doc.php?id=BOE-A-1996-5696>.

order actions aimed at compensating for inequalities in education. In it, bound in the Actions of educational compensation in infant and primary education, it states that “in these stages, the actions of educational compensation will be preventive and will be governed by the principle of normalization, avoiding the adoption of organizational formulas of the segregating teaching/learning process [...]”⁷⁰ Then it states that “Centers that develop educational compensation actions will be considered preferential care centers for general educational and psycho-pedagogical guidance teams and early care.”⁷¹ Before continuing to explore the model of inter-school segregation, I would like to emphasize specific excerpts from Murcian regional regulation to denote the previous and legislative convictions in educational matters regarding Roma.

Resolution of September 13, 2001,⁷² organization of educational compensation actions in the stage of Compulsory Secondary Education “[...] students with educational compensation needs will be considered to be those who present two or more years of lag between their level of curricular competence and that of the course in which they are actually enrolled, if this is due to their belonging to a culturally disadvantaged ethnic or cultural minority or other socially disadvantaged groups.”

Decree No. 359/2009, of October 30,⁷³ establishing and regulates the educational response to student diversity in the Autonomous Community of the Region of Murcia, states that “[...] actions of a compensatory nature will be conducted to students with specific educational support needs for presenting unfavorable situations that suppose an initial educational disadvantage and inequality derived [...] from social, economic, cultural, geographic, ethnic or other factors.”

Resolution of July 20, 2018,⁷⁴ of the General Directorate of Attention to Educational Diversity and Quality, dictates instructions for the identification and educational response to students with specific needs for educational support associated with a lack of knowledge of Spanish or significant curricular gap. Due to backward integration into the educational system or due to personal conditions or school history, in centers supported with public funds in the Region of Murcia that teach Primary Education or Compulsory Secondary Education. “The

⁷⁰ Ibid, Article 12

⁷¹ Ibid.

⁷² «CARM.es - Compensación Educativa e Interculturalidad».

⁷³ Martínez Dhier, «La condición social y jurídica de los gitanos en la legislación histórica española. (A partir de la Pragmática de los Reyes Católicos de 1499)».

⁷⁴ Ibid.

specific educational compensation support may be aimed at students who present any of these profiles: a) Students with late integration into the educational system b) Students with no knowledge of the language of instruction c) Students with educational compensation: students enrolled in the stages compulsory that presents a significant curricular gap, because they are in situations of socio-educational disadvantage derived from their belonging to ethnic minorities [...].”

Of all these extracts, and taking into account the historical development of this field, it is more than worrisome the maintenance of eugenic ideas at the base of the argumentation of educational policy regarding Roma. Beyond a deep understanding of the grounds and intersecting layers of discrimination and the obstacles and barriers (historically forged)⁷⁵ established against the Roma, it seems that the ideas embodied in the 1978 report⁷⁶ continue to persist in the legislator's mind. Besides, relative to the last extract, the instrumentality of these measures is denoted to the students belonging to the ghetto - Roma and migrant schools.

Recovering the topic of the preferential care centers, it should be noted that the Law on Educational Quality⁷⁷ states that, “the schooling of students who present learning difficulties will be governed by the principles of normalization and inclusion and will ensure their non-discrimination and effective equality in access and permanence in the educational system.”⁷⁸ The Region of Murcia materializes for the first time in 2009⁷⁹ the base of the schools of preferential educational action. They are configured as “those who present educational performance needs derived from the personal, family and social conditions of the student body, as well as the geographical, socioeconomic and sociocultural characteristics of the place where educational centers are located.” In addition to endowing the educational center with power over the adaptation of the educational curriculum responding “to the conditions and circumstances of the students,” a specific call for the provision of places in these schools is established, under the title of “positions of the difficult designation.”⁸⁰

⁷⁵ Martínez Dhier, «La condición social y jurídica de los gitanos en la legislación histórica española. (A partir de la Pragmática de los Reyes Católicos de 1499)».

⁷⁶ Sociological Study, INSTITUTO DE SOCIOLOGÍA APLICADA: Los gitanos españoles 1978. Madrid: Ed. Asociación Secretariado General Gitano. 1978, pp. 139-142.

⁷⁷«BOE.es - Documento consolidado BOE-A-2013-12886», access on 18 June 2020, <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12886>.

⁷⁸ Ibid, Article 79, bis

⁷⁹ Decree No. 359/2009, of October 30, establishing and regulates the educational response to student diversity in the Autonomous Community of the Region of Murcia

⁸⁰ Ibid.

Taking into account the competitiveness and the number of applications to obtain a teaching position in a public school, it is plausible to think that the empowerment of specific calls to cover ghetto school places will give rise to two applicants: a) those who intend to cover the position for a short period, thus accumulating points to obtain a place later through the general call, b) those applicants with a lower average score to compete through the general call. Reviewing the order that articulates the provision of positions, the absence of reference to specialized training on the grounds of discrimination and interculturality is denoted. Further, at the end of the order, the third appendix is dedicated to Annex III⁸¹ to expose the schools that maintained the category of positions of preferential educational attention. It is more than striking, or logical that all of them are ghetto segregated neighborhoods - the majority of the Roma and migrant population.⁸²

CONCLUSIONS

After all that is covered in this Capstone, it is surprising that even official reports still do not appreciate models of segregation in Spain.⁸³ The history of persecution carried out against the Roma in Spain and their direct discrimination in the educational field forces Spain to take positive measures aimed at remedying the eradication of indirect discrimination measures currently in force. Although, such an indirect categorization would be worthy of other work. The highest concern of this Capstone is that despite the efforts of three decades of work, and endless social projects, even a country like Spain has not challenged the status quo of systematic discrimination. Not only has it not challenged it, but it has also been used to strengthen and perpetuate the inter-school segregation model through its financing by the European Social Fund.

Among the recommendations that emerge to respond to this situation:

⁸¹Order of July 3, 2015, of the Ministry of Education, Culture, and Universities: Center Town Municipality «CARM.es - Compensación Educativa e Interculturalidad».

⁸² CEIP ANÍBAL Los Mateos Cartagena, CEIP ASDRÚBAL Lo Campano Cartagena CEIP LOS ROSALES El Palmar Murcia CEIP NTRA. SRA. DEL MAR Santa Lucía Cartagena CEIP RAMÓN Y CAJAL Águilas Águilas CEIP STELLA MARIS Cartagena Cartagena IES SANTA LUCÍA Santa Lucía Cartagena CEIBAS SALZILLO Espinardo Murcia

⁸³EUROPEAN COMMISSION, Roma and the enforcement of anti-discrimination law (2017)

At the Spanish level,

It would drive litigation and case-law production. At the same time, said jurisprudence should be included within the Racial Equality Directive.

At European level,

Monitor and learn from the results obtained after the Framework of Roma Inclusion. Beyond social policies, which are totally necessary to alleviate the general poverty situation of the Roma communities, the empowerment and development of the European Anti-Discrimination Law regarding Roma is completely necessary.

At the Council of Europe level,

Promote and review the work carried out by the Council of Europe in general, and by the ECtHR in particular. While prosecutions are a source of tools to combat and detect discrimination, it is still not enough. Up to this day, most Roma children are violated their individual right to education on the grounds of structural discrimination.

At a general level,

Until today enough data has been collected to perfectly frame and understand the problems faced by the Roma in European countries. The non-use of this data, even its inefficient use, generates the feeling of permissiveness before the violation of millions of individual rights and not that of a collective right.

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