Policy recommendations to combat segregation in education

In the context of the 2022 European Roma Week's event regarding the segregation of Roma children in education, the Center for Advocacy and Human Rights – CADO together with organising partners, including the Amalipe association in Bulgaria, Fundación Secretariado Gitano in Spain, ERGO Network and the Council of Europe compiled a list of joint recommendations for EU Member States and EU Institutions in order to prevent and combat segregation in education.

While the Racial Equality Directive expressly forbids segregation in education, it persists in many member states of the European Union, affecting particularly Roma children. In some countries, the chances of Roma children being enrolled in a special school have been 27 times higher than for non-Roma children. Roma children are frequently enrolled in Roma-only schools or schools with a disproportionate concentration of Roma children, where in most cases they receive less demanding and often substandard education.

A survey carried out in 2016 by the European Union Fundamental Rights Agency in nine EU member states shows that 33% of Roma children were attending schools in which most pupils were Roma, and 13% were in Roma-only schools. Segregation also occurs within mainstream school premises, where Roma children can be assigned to separate classes and can be prevented from using common playgrounds or dining halls.

In 2017, the Parliamentary Assembly of the Council of Europe invited member States to ensure, in particular, that all Roma children have real access to early education; that school segregation is eliminated, and an inclusive environment is created for these children in the educational system. (Resolution 2153 (2017) regarding the Promotion of the inclusion of Roma and Travellers, 27.01.2017, point 4.3.) In a similar resolution, the Parliamentary Assembly requested member States to adopt concrete measures to eliminate school segregation and promote inclusion through public policies that put into practice long-term commitments to inclusive education through national and local action plans, accompanied by financial, legal and administrative measures and the request to local authorities to develop desegregation plans. (*Resolution 1927 (2013) on Ending discrimination against Roma children, 23.04.2013, point 7, 7.3. para 7.3.3.)*

The European Commission against Racism and Intolerance (ECRI) of the Council of Europe has recommended that the governments of the member States take urgent measures, including legal and political, to stop the segregation to which Roma children are subjected in schools, and to integrate them into the schools they attend by the majority population. (*General policy recommendation no. 13 regarding combating anti-gypsyism and discrimination against Roma, 24.06.2011, point 4 letter d.*)

In previous recommendations, ECRI called on governments to adopt anti-racial discrimination legislation that would recognize segregation as a form of discrimination. Segregation is the act by which a (natural or legal) person separates other persons on the basis of one of the enumerated grounds without an objective and reasonable justification, in conformity with the proposed definition of discrimination. (*General policy recommendation no. 7 on national legislation to combat racism and racial discrimination, 13.12.2002, amended 7.12.2017, III. Civil and administrative law, point 6, Explanatory Memorandum, paragraph 6 of the recommendation, point 16*)

Also in 2020, at the level of the Council of Europe, the Committee of Ministers emphasized the fact that the Roma continue to be victims of various forms of discrimination, including school segregation,

and the importance of inclusive education and ensuring the legal prohibition of policies and practices of school segregation. (*Strategic Action Plan for the Inclusion of Roma and Travelers (2020-2025), point 5.3*)

At the level of the European Union, the European Commission has launched infringement proceedings against three European Union member states, breaching the prohibition of discrimination in education set out in the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Council Directive 2000/43/EC).

In 2020, the European Commission invited the Member States to include in their national strategic frameworks for Roma equality inclusion and participation ambitious commitments, among other things, to present a plan or a set of measures to prevent and combat negative attitudes towards the Roma and discrimination, segregation in the education sector, as well as anti-Roma prejudices and stereotypes. (*A Union of Equality: The EU strategic framework for Roma equality, inclusion and participation, 2020-2030, point 3.1.*) Previously, the European Commission requested that Member States should ensure that all Roma children have access to a quality education, and that they are not subject to discrimination or segregation. (European Commission, An EU framework for national Roma integration strategies until 2020, point 3).

In 2020, the European Parliament invited Member States to ensure that all schools and inspectorates effectively fulfil their legal obligation to combat segregation in schools and also to commit to collecting and publishing annually reports on the situation of school segregation at all levels, including by sanctioning those who do not follow the rules; encouraged Member States to share best practices on setting up, empowering and funding a ministerial anti segregation commission to support schools that want to tackle segregation and sanction those that do not comply. (*European Parliament resolution on the implementation of National Roma Integration Strategies: combating negative attitudes towards people with Romani background in Europe, 17.09.2020, points 34, 35.*).

In 2021, the Council of the European Union recommended that Member States ensure that all Roma have effective equal access to and are able to participate in all forms and stages of education. In the opinion of the Council, Member States must improve equal access to quality education for Roma students, including through: measures to prevent and eliminate any form of segregation in education; measures to prevent and eliminate misdiagnosis leading to inappropriate placement of Roma pupils in special needs education; recognizing and redressing inequities in education, including segregation, inappropriate placement of Roma pupils in special needs education and unequal treatment; measures to promote inclusion and diversity in the educational system. (*Recommendation regarding the equality, inclusion and participation of the Roma, 12.03.2021, Secondary objectives, Access to education including quality, points 5 and 6*). The Council of the European Union adopted a similar recommendation in 2013 when it requested the Member States to adopt measures for eliminate any form of school segregation of Roma children and ensure that national regulations do not encourage segregation practices (*Council Recommendation of December 9, 2013 regarding measures for the effective integration of Roma in the Member States, point 1.3.)*

Compilation of recommendations to EU Member States

- **A clear and comprehensive legal framework is necessary as school segregation is often the result of indirect discrimination, that is apparently neutral measures that have a disproportionately negative impact on some groups of children without objective and reasonable justification.** Recognising the difficulty in establishing indirect discrimination, in

its case law on discrimination in the area of education the European Court has established that less strict evidential rules should apply in cases of alleged indirect discrimination. In particular, when statistics show a disproportionate impact of a measure on a given group of children, it is for the respondent party to show that such impact is the result of objective factors that are unrelated, for instance, to ethnic origin. Moreover, it is important to ensure that segregation is explicitly considered as a form of discrimination, as recommended by the European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 7 on national policies to combat racism and racial discrimination and in conformity with the International Convention on the Elimination of All Forms of Discrimination (ICERD), which condemns in Article 3 apartheid and racial segregation and obliges parties to 'prevent, prohibit and eradicate' these practices in territories under their jurisdiction and includes "an obligation to eradicate the consequences of past policies of segregation, and to prevent racial segregation arising from the actions of private individuals.". The legislation should also establish, in compliance with the provisions of the UNCRPD, that the failure to provide reasonable accommodations to persons with disabilities is a form of discrimination. Under the UNCRPD, reasonable accommodation is defined as the necessary adjustments to ensure that persons with disabilities can enjoy all human rights on an equal basis with others. In addition, rules prohibiting segregation within mainstream schools must be in place to prevent the setting up of separate groups for children from ethnic minorities or children with disabilities within schools or classes.

- **A high degree of clarity in the legislation prohibiting discrimination is required to secure the rights of vulnerable children to and in education effectively.** The right to inclusive education should be clearly enshrined in domestic legislation and a system of targeted sanctions should be in place against decisions and measures which infringe on this right.
- **Member States should adopt comprehensive desegregation strategies with clear targets, sufficient resources to implement them and a clear and an ambitious timetable.** The commitment to desegregation should be supported at the highest level of state authorities. Moreover, it is a substantial waste of financial and human resources. Thus, it is essential to ensure that the process is carried out in a sustainable manner with clear, long-term objectives. Sustainability must also be ensured through clear ownership by the national authorities, as the process cannot be left in the hands of NGOs and other private actors or local authorities. Desegregation strategies must include awareness-raising campaigns, measures to overcome specific vested interests of different educational actors, and actions to ensure high expectations of all children and high-quality education for all of them. They also require funding arrangements to ensure that all schools have the professional expertise and the necessary means to implement inclusive education. The authorities should make full use of available funding sources, notably funds provided within the framework of the European Union, while making sure that such funds are effectively used to implement desegregation measures. Strategic plans for desegregation should also include effective monitoring and evaluation mechanisms. In addition, it is essential for the authorities to collect on a regular basis reliable and up-to-date statistical data that is disaggregated by ethnicity, disability and gender in order to develop a solid basis from which to work towards fairer and more inclusive education systems. Moreover, strong monitoring mechanisms involving all the relevant stakeholders could contribute to the development of evidence-based policies.
- **Ensuring quality of education in all schools is necessary**. Schools with a high concentration of disadvantaged students often become "bad" schools. High concentrations of poverty and academic difficulties tend to lower expectations which teachers and families may have regarding the learning possibilities of children. Teachers have no incentive to remain in such schools, which in turn generates high levels of staff turnover and makes it more difficult for schools to design quality educational projects. The authorities do not always make all the

efforts required to ensure quality standards in all schools. All too often, allowing the existence of "ghetto schools" serves the purpose of avoiding potential conflicts with families which do not want their children to be educated together with children from vulnerable or minority groups.

- **School choice per se does not inevitably generate discrimination**. A high number of education systems provide education under quasi-market conditions, allowing for school choice under specific circumstances. As pointed out by the OECD, the key for a fair education system is not whether the system offers more or less choice, but whether choice is regulated, especially with a view to mitigating the impact of social, cultural, economic and other factors which may result in discriminatory patterns. Thus, in order to fight school segregation, school choice must be governed. States must establish clear rules regulating choice and must balance the principle of school choice with the need to consider and meet all education needs. In principle, this includes measures such as defining school catchment zones, reserving places for students with special needs and limiting ratios of children from some disadvantaged groups in certain schools. In cases of excessive demand for certain schools, it can also involve taking into consideration income and other social factors as elements to determine school access.
- **School admissions should be regulated and monitored. Regulations on school admissions differ among European national education systems**. Some systems allow for high levels of school choice, while others allocate students to the nearest school. Similarly, while some systems provide clear procedures for regulating school admissions in cases of oversubscription, others grant schools a high degree of discretion in selecting students. The softer the rules for managing school admissions, the higher the likelihood that discriminatory practices may take place in school districts or in schools themselves. States must make use of their competence to regulate school admissions while taking into account the principle of inclusiveness. To this end, school admission procedures should establish priorities of access for students with special needs and students belonging to disadvantaged groups. Other positive practices that promote integration of students from vulnerable groups into mainstream schools include the introduction of means-tested systems and reserved places for students from certain disadvantaged groups. However, setting up clear rules regarding processes of admission will be ineffective unless robust monitoring mechanisms are in place. The authorities must introduce clear standards and strong inspection mechanisms to ensure that school admissions are carried out in full compliance with the law. In addition, a system of sanctions should be established to prevent and deter fraud in the process.
- **The education system must rest on the assumption that all children can learn and have the potential to be educated.** This means that states must take measures to ensure that economic, social, cultural or personal circumstances do not turn into sources of discrimination preventing some children from benefitting from a satisfactory learning experience on an equal footing with others.
- **Systematically monitor and end school and class segregation or testing and misdiagnosis of children, particularly Roma children.** Member States should prohibit testing as a selection tool. It has been a common practice in some countries to use testing to channel Roma children to special schools for children with intellectual or psycho-social disabilities and to avoid having to integrate them into mainstream schools. The prohibition of enrolment based on testing is the best way to ensure that such tests are not used as a tool to discriminate against students.
- **It is essential to develop a comprehensive and effective system of assessment of students' social and educational needs**. Needs assessment should be carried out using validated and objective indicators that are derived exclusively from the children's educational needs. They include, inter alia, language difficulties, notably in terms of the language of schooling, any learning difficulties or disabilities and individual circumstances which can hinder a child's

possibilities of learning in adequate conditions and on an equal footing with others. The ethnic origin, nationality or socio-economic background of children should never be used as proxies for these objective indicators and that assigning children to certain schools on these grounds is in breach of anti-discrimination standards. Such a system should be independent from schools and its work should be carefully and regularly monitored by the authorities. As stated above, in no way can school enrolment tests be considered as a valid means of assessing children's needs.

- **Regulating classroom ratios in schools located in disadvantaged areas and ensuring that late-arriving students are equally distributed among schools in the reference area are measures that can prevent high concentrations of students from a disadvantaged background and with specific educational needs in particular schools**.
- **Introducing a comprehensive system of professional incentives could attract highly qualified teachers in schools in socially and economically deprived areas, which in turn could make these schools more attractive to families that would normally refuse to enrol their children in such schools**. Additionally, teachers working in such schools should be provided with specific training (initial and in-service) and support (including practices such as teachers' assistants) so as to be able to adapt teaching methods and adequately respond to their students' needs. Useful guidance can be found, inter alia, in the Committee of Ministers Recommendation on strengthening the integration of children of migrants and of immigrant background.
- **Parental involvement in the school and the community should therefore be an essential component of inclusive education policies.** States should create conditions to ensure that all families are welcomed in the school and the community at the local level and have their voice heard and taken into account in decision-making processes. Positive practices include school or community mediators, who often play an important role in closing the gap between schools and families.
- **Designing desegregation interventions should include mapping of segregated educational facilities and neighbourhoods.** It can be already part of the national policy framework or local, regional development strategies. It requires predefined indicators and data collection and regular analysis on segregation, which can be carried out by the national statistical offices or other independent institutions1. The definition of segregated services and spatial isolation can also serve to monitor and evaluate ESI Funds measures.
- **In the context of segregation in education facilities, a segregation index needs to be kept** regarding: high percentage of pupils with low-income and low educational level parents in educational facilities (both at individual class and school level); and a dissimilarity index: deviation from the "fair-share" of the children belonging, to a marginalised group across all school facilities of the locality.
- **Both call for proposals and projects targeting desegregation of marginalised communities should be designed and implemented with the direct involvement of representatives of the communities in all stages of the process**.
- **Member States should ensure that schools are obliged to incorporate the fight against racism and racial discrimination as well as respect for diversity into the way that they are run**[1]:

a) by ensuring that the fight against such phenomena in schools, whether they emanate from pupils or educational staff, is part of a permanent policy;

b) by setting up a system to monitor racist incidents at school and compile data on these phenomena in order to devise long-term policies to counter them;

[1] ECRI General Policy Recommendation No. 10

c) by adopting, in order to combat incidents of racism or discrimination which do not cause physical harm, educational measures such as, for example, non formal education activities in organisations dealing with victims of racism and racial discrimination;

d) by treating incitement to racial hatred in schools and any other serious racist act, including the use of violence, threats or damage to property, as acts punishable by suspension or expulsion or any other appropriate measure;

e) by encouraging within schools, the adoption of a code of conduct against racism and racial discrimination for all staff;

f) by favouring measures (such as special anti-racism days or weeks, campaigns or competitions) to foster awareness among both pupils and parents of racism and racial discrimination issues and the relevant school policies.

- **Education curricula should be revised in order to combat bias and eradicate stereotypes that lead to discrimination today**. The history of European minorities should be included in relevant studies. Authors, historians, scientists, artists and other figures from diverse racial and ethnic backgrounds should be included in key educational materials
- **Member States should use ESIF resources to invest primarily into sustainable structural changes in the education system**, rather than in the daily operation of the schools, i.e. the development of inclusive education and teacher training as conditions for an effective desegregation policy; address anti-bullying measures and anti-Roma bias among teachers within school legislation and accompanied by inclusive and anti-discrimination teacher training. With regards to Roma children, Member States should include clear commitments to non-discrimination, and to desegregation, in line with the objectives agreed in: the EU Roma strategic framework for equality, inclusion and participation 2020-2030 and the corresponding Council Recommendations; as well the EU Anti-Racism action plan 2020-2025.

The European Union should:

- Continue to implement the Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation
- Monitor closely the allocation and implementation of EU funds in line with fundamental rights and non-discrimination principles. EU Funds should not be used to funds projects contributing or reinforcing segregation in education.
- Step up support to desegregation projects through Cohesion funds.
- With the help of the Fundamental Rights Agency map the situation of segregation in education at national level – as a baseline for achieving the target of reducing segregation in education under the EU Strategic Framework for Rom Equality, Inclusion and Participation.
- Re-activate the process of infringement proceedings launched against Hungary, Czechia and Slovakia on the right to education of Roma children under the Race Equality Directive, while closely assessing the situation of segregation in education in other Member States and the possibility of launching infringements proceedings against them (ex. Romania).
- Use CERV to support the capacity building of Roma NGOs and civil society organisations to monitor segregation in education of Roma children and engage in strategic litigation to combat segregation and help amend the national equality legislation and other primary and secondary related legislation.