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RIGHT TO EDUCATION WITHOUT DISCRIMINATION

POLICY BRIEF TO THE
SLOVAK GOVERNMENT

MAKE OUR
RIGHTS LAW

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INTERNATIONAL**



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The Center for Civil and Human Rights is a non-profit organisation based in Kosice, Slovakia. The organisation focuses its activities on human rights in Slovakia with emphasis on minority rights and protection from racial discrimination. It conducts strategic litigation, advocacy and educational activities in this field. It litigates the first case of segregation of Roma children in school system before the domestic court in Slovakia

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RIGHT TO EDUCATION

Amnesty International and the Centre for Civil and Human Rights (Poradňa pre občianske a ľudské práva) submit this briefing to provide policy guidance to the Ministry of Education of Slovakia on the right to education without discrimination, as interpreted by the United Nations Committee on Economic, Social and Cultural Rights and other human rights monitoring bodies. Amnesty International and the Centre for Civil and Human Rights understand that the Ministry of Education is currently working on a draft Concept of Regional Education, which will introduce reforms to both primary and secondary education. The adoption of the new Concept is an important opportunity to put into practice the commitment of the government of Slovakia to eliminate segregated schooling on the basis of ethnic origin.¹ Amnesty International and the Centre for Civil and Human Rights consider that the adoption of comprehensive measures to desegregate education is a matter of urgency. Those affected by this form of human rights violations are children, for whom every school year is vital.

Amnesty International has documented discrimination against and segregation of Romani children in education in Slovakia since 2006. The segregation involves the separation of Romani children in Roma-only mainstream classes or schools as well as de facto segregation of Romani pupils in 'special classes' or special schools established for children with 'mild mental disabilities'. In the cases of segregation that have been documented and researched by Amnesty International, Romani children were offered inferior education to the education provided in classes attended primarily by non-Roma children. Amnesty International has also documented segregation in kindergartens and school cafeterias.²

Amnesty International and the Centre for Civil and Human Rights call on the government of Slovakia, in particular the Ministry of Education, to ensure that the principles of equality and non-discrimination and the best interests of the child are at the heart of the Concept of Regional Education, as well as other relevant policy documents.

RIGHT TO EDUCATION

The authorities in the Slovak Republic are bound to respect, protect and fulfil the right to education without discrimination under a number of international human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child. Under these standards, education must be accessible to all, including the most vulnerable groups, in law and fact without discrimination.³

BASIC PRINCIPLES

Education has a vital role in the promotion of human rights and democracy and is a 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.⁴ By becoming a party to the ICESCR, states, including Slovakia, have agreed "that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among... all racial, ethnic or religious groups..."⁵ The UN

Committee on Economic, Social and Cultural Rights, which provides authoritative interpretations of obligations under the ICESCR, has clarified that primary education must be:

- Compulsory and available free to all.⁶ Education must be adequate in quality, relevant to the child and must promote the realization of the child's other rights;
- Accessible – physically and economically – to everyone, without discrimination;
- Acceptable – i.e. relevant, culturally appropriate and of good quality;
- Adaptable to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.⁷

THE BEST INTERESTS OF THE CHILD

As a party to the Convention on the Rights of Child, Slovakia is obligated to ensure that in all actions concerning children – including administrative decisions of schools – the best interests of the child shall be a primary consideration.⁸ Under the Convention, Slovakia is bound to ensure that the education of the child shall be directed to, among other things, the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.⁹ Such understanding of education goes beyond formal schooling; it embraces the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.¹⁰ Amnesty International and the Centre for Civil and Human Rights believe that effective inclusion of Romani children in integrated mainstream education together with non-Roma children will lead to a model of education which meets the above-mentioned values.

PROTECTION FROM DISCRIMINATION

International law recognizes that differential treatment, including enforced separation of persons, based solely on ethnicity and in the absence of an objective and reasonable justification is a particular form of racial discrimination which violates human rights.¹¹ Discrimination in access to education based on racial or ethnic origin – of which segregation is a specific form – is explicitly prohibited.¹² Article 14 of the European Convention on Human Rights requires the authorities to ensure that people within Slovakia enjoy the right to education without discrimination on any ground including, among others, race or social origin, birth or other status. Discrimination in education based on racial or ethnic origin is also prohibited by the EU Race Equality Directive.¹³

The prohibition against discrimination has to be implemented immediately – it is neither subject to progressive realization nor the availability of resources.¹⁴

The United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education, to which Slovakia is a party, clarifies that establishing separate institutions – including separate classes – for persons or group of persons violates the principle of equal treatment and constitutes discrimination.¹⁵ The principle that separate education is inherently unequal was articulated more than 50 years ago in the United States of America. In the case of *Brown v Board of Education*, the US Supreme Court held that segregation of children in public schools solely on the basis of race deprives children of the

minority group of equal educational opportunities, even though the physical facilities and other "tangible" factors may be equal.¹⁶

Although international law recognizes that in some circumstances, separate educational systems or institutions – such as schools established for religious or linguistic reasons – shall be deemed not to constitute a breach of prohibition of discrimination,¹⁷ such separation must be *optional*; and the education offered must conform to standards for education of the same level laid down by competent authorities.¹⁸ Similarly, the Council of Europe recognized that members of minorities have a right to carry on their own educational activities, including the maintenance of schools. However, as the Convention against Discrimination in Education specifies, this right should not be exercised in a manner which prevents the members of the minorities from understanding the culture and language of the community as a whole and from participating in its activities. Moreover, students and their families should have the option either of attending such schools or enrolling in other state schools.¹⁹

EUROPEAN COURT OF HUMAN RIGHTS JURISPRUDENCE ON DISCRIMINATION AGAINST ROMA IN EDUCATION

In cases related to the right of Romani children to an education without discrimination, the European Court of Human Rights has clarified that “discrimination means treating differently without an objective and reasonable justification, persons in relatively similar situations.”²⁰ The Court defined a discriminatory difference in treatment as one which does not pursue a “legitimate aim”.²¹ The obligation to provide education without discrimination also includes a positive duty to prevent discriminatory practices. Under the Convention on the Elimination of All Forms of Racial Discrimination Slovakia is bound to “particularly condemn racial segregation [...] and undertake to prevent, prohibit and eradicate all practices of this nature[...].”²² In order to do so, Slovakia is obliged to closely monitor education – including all relevant policies, institutions, programmes, spending patterns and other practices – so as to identify and take measures to address any *de facto* discrimination. The authorities should collect data in the field of education disaggregated by the prohibited grounds of discrimination, including gender and ethnicity.²³

The European Court of Human Rights has recognised that providing separate institutions to separate groups of people based on ethnicity or similar grounds violates the European Convention on Human Rights. Segregated education of Romani pupils was denounced by the European Court of Human Rights in the case of *Sampanis v Greece* in 2008. The European Court of Human Rights did not accept the Greek government’s contention that the difference in treatment between Romani and non-Romani children was due to “an objective and reasonable justification and that there was a reasonable proportionate relationship between the means and the intended objective.” In particular, the European Court of Human Rights held that, notwithstanding the intention of the authorities to educate Romani children, the different methods for registration of Romani children and their assignment to segregated preparatory classrooms – in an annex to the school’s main building – effectively resulted in discrimination.²⁴

In the case of *D.H. and Others v. the Czech Republic* in November 2007 the Grand Chamber of the European Court ruled that the placement of Romani children in special schools for children with mild mental disabilities, where an inferior curriculum was taught, and where no adequate procedures existed to challenge erroneous placement or to bring about eventual

transfer back into mainstream education, amounted to discrimination. The European Court concluded that the schooling arrangements for Romani children had not been attended by safeguards that would ensure that the state had taken into account the special needs arising from their disadvantaged position. As a result, Romani children had been placed in special schools and had received an education which compounded their difficulties. There was thus indirect discrimination in that a theoretically neutral measure to assess educational needs had a discriminatory impact on Romani pupils.

INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES

Amnesty International and the Centre for Civil and Human Rights have focused on discrimination and segregation in education, in particular through the separation of Romani children in Roma-only mainstream classes or schools as well as the de facto segregation of Romani pupils in 'special classes' or special schools established for children with 'mild mental disabilities'. Our research has not focused on children with disabilities but it is important that any review of the government's policy on education also ensures that the rights of children with disabilities to education are fully realised.

The Convention on the Rights of Persons with Disabilities (CRPD), to which Slovakia is a party requires states parties to "ensure an inclusive education system at all levels..."²⁵ It further requires that "States Parties shall ensure that: (a) Persons with disabilities are not excluded from the general education system on the basis of disability,..."²⁶ States are required to provide reasonable accommodation of each individual's requirements and to ensure that persons with disabilities receive the support required, within the general education system, to facilitate their effective education.²⁷ States are required to enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community.²⁸ The UN Department of Economic and Social Affairs, the Office of the High Commissioner for Human Rights and the Inter-Parliamentary Union have published a handbook for parliamentarians which states that the CRPD promotes inclusive education in response to a "growing body of evidence" that demonstrates the benefits of integration.²⁹ The handbook states that "inclusive educational settings are generally less expensive than segregated systems" and "experience has shown that as many as 80 to 90 % of children with specific education needs, including children with intellectual disabilities, can easily be integrated into regular schools and classrooms".³⁰

Inclusive education should be the goal of educating children with disabilities.³¹ The UN Committee on the Rights of the Child has stated that "At its core, inclusive education is a set of values, principles and practices that seeks meaningful, effective, and quality education for all students, that does justice to the diversity of learning conditions and requirements not only of children with disabilities, but for all students"³². The Committee has encouraged states parties which have not yet begun a programme towards inclusion to introduce the necessary measures to achieve this goal.³³ It has also emphasised that "Children with disabilities have the same right to education as all other children and shall enjoy this right without any discrimination and on the basis of equal opportunity as stipulated in the Convention. For this purpose, effective access of children with disabilities to education has to be ensured to promote "the development of the child's personality, talents and mental and physical abilities to their fullest potential."³⁴ The Committee has also stressed that "It is essential that children with disabilities be heard in all procedures affecting them and that their views be respected in accordance with their evolving capacities."³⁵

The Revised European Social Charter (1996), to which Slovakia is a party, recognises the right of persons with disabilities to independence, social integration and participation in the

life of the community.³⁶ States parties are obliged to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies.³⁷

SLOVAK LEGISLATION

Existing legislation in Slovakia prohibits discrimination in the field of education in two acts – the Anti-Discrimination Act and the Schools Act³⁸. The Anti-Discrimination Act adopted in 2004³⁹ transposed the equal treatment directives of the European Union⁴⁰ and introduced the principle of equal treatment and prohibition of discrimination. It prohibits discrimination based on, among other grounds, race, nationality or ethnic origin in education as well as other areas including social security, employment, healthcare, and provision of goods and services.

The Slovak Schools Act prohibits all forms “of discrimination, especially segregation” (para. 3[d]) and guarantees equal access to education for all children or pupils (para. 144[1]d).

CONCLUSION AND RECOMMENDATIONS

Despite the legislative framework which prohibits discrimination in education, Amnesty International and the Centre for Civil and Human Rights remain concerned over de facto discrimination against Romani children in education. Such a practice is illegal under both international and Slovak law and results in a denial of equal treatment and the right to education of Roma. It has far-reaching consequences for thousands of Romani children. It traps them in a cycle of poverty and marginalization. The commitment of the Slovak government to prohibit segregated schooling of Romani children in August 2010 was an important step to address this serious human rights problem. In order to do so, however, the Ministry of Education needs to adopt comprehensive measures to desegregate education in practice as a matter of urgency. Those affected by this form of human rights violations are children, for whom every school year is vital.

Amnesty International and the Centre for Civil and Human Rights call on the Minister of Education to ensure that the best interests of the child and the principles of equality and non-discrimination – summarized in this brief – are at the core of the new Concept on Regional Education, and that the government’s commitment to adopt measures in order to end segregation on the basis of ethnic origin is adequately reflected in this new tool. In that regard, Amnesty International and the Centre for Civil and Human Rights call on the Ministry of Education to ensure the following recommendations are reflected in the Concept on Regional Education and further tools and policies developed by the Ministry.

The Ministry of Education should immediately make and widely publicize a clear and unequivocal political commitment to eradicate and reverse segregation in education. This commitment should be the guiding principle in all education policies impacting on Romani people. Specifically, it should:

- Develop a plan of desegregation with a clear identification of bodies responsible and timeline with yearly targets for its implementation;
- In line with the CERD’s recommendation⁴¹, introduce a clear duty on all schools to desegregate education. Such a duty should be accompanied by effective support for schools

to desegregate and by financial and other incentives for the local authorities to develop comprehensive action plans aimed at desegregation in education;

- Empower the State School Inspectorate, in cooperation with the Slovak National Centre for Human Rights, to fulfil its function to prevent, prohibit and eradicate segregation in education through provision of: adequate financial and human resources, robust, detailed guidelines and procedures on how to identify, monitor and combat segregation in practice, the ability to impose sanctions for violations of the ban on discrimination and segregation, and training for its staff on the issue of discrimination and the principle of equal treatment in education;
- Through the Institute for Information and Prognosis in Education systematically gather data disaggregated on the basis of gender and ethnicity in relation to education, with due regard to European standards concerning the protection of personal data and the right to self-identification, in order to monitor and ensure that there is no segregation in education in practice. Data should be collected on school enrolment (including type of school), attendance, drop-outs, class repetition, and other fields; based on the data collected, monitor closely the ethnic composition of classes in schools to ensure that there is no racial segregation;

The Ministry of Education should further ensure that any review of the government's policy on education will provide guarantees that the right of children with disabilities to education is fully realised.

- Conduct a comprehensive review of the schooling system to assess the need for a separate curriculum and schools for pupils with 'mild mental disabilities' to ensure compliance with international and regional standards on education and non-discrimination which encourage inclusive education and at all times ensuring the best interests of the child.

ENDNOTES

- 1 Government Programme 2010 – 2014, Section 3(4) Education, Science, Youth and Sport.. Available at: <http://www.government.gov.sk/data/files/6257.pdf>
- 2 Still Separate, Still Unequal: Violations of the right to education for Romani children in Slovakia", Amnesty International, EUR 72/001/2007; "A Tale of Two Schools: Segregating Roma in special education in Slovakia", Amnesty International, EUR 72/007/2008.
- 3 CESCR. General Comment No. 13, The Right to Education, E/C.12/1999/10, para. 6(b).
- 4 CESCR. General Comment No. 13, para. 1.
- 5 International Covenant on Economic, Social and Cultural Rights, Art. 13 (1).
- 6 CESCR, General Comment No. 13, Right to Education, E/C.12/1999/10, para. 10.
- 7 CESCR, General Comment No. 13, para. 6.
- 8 Convention on the Rights of Child, Art. 3(1).
- 9 Convention on the Rights of Child, Art. 29(1)d.
- 10 Committee on the rights of the Child, General Comment no. 1, The Aims of Education, CRC/GC/2001/1, para. 2.
- 11 CESCR, General Comment no. 20, Non-discrimination in Economic, Social and Cultural Rights, para. 19, CERD, General Recommendation XXVII, Discrimination Against Roma, 16/08/2000, para. 18.
- 12 Art. 26: of the International Covenant on Civil and Political Rights states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and Article 2(1) requires "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- 13 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Article 3(1)g.
- 14 CESCR. General Comment No. 13, para 31.
- 15 Convention against Discrimination in Education, Art. 1(1)c.
- 16 *Brown v Board of Education of Topeka*, US Supreme Court, 347 U.S. 483 (1954).
- 17 CESCR. General Comment No. 13, para. 33.
- 18 UNESCO Convention against Discrimination in Education, Article 2.
- 19 Convention against Discrimination in Education, Art. 5(1)c(iii).
- 20 *D. H. v Czech Republic*, App.No. 57325/00, 2007-Xii ECtHR, para. 175, *Oršuš and others v Croatia*, judgment of the Grand Chamber of the European Court of Human Rights, para. 149.
- 21 *Larkos v Cyprus*, App. no. 29515/95, ECHR 1999-I, para. 29; *Stec and others v UK*, App. nos. 65731/01 and 65900/01. ECHR 2006-IV; *D.H. and others*, para. 196.
- 22 Convention on the Elimination of All Forms of Racial Discrimination, Article 3.
- 23 CESCR. General Comment No. 13, para. 37.

24 Sampanis and others v Greece, App.No. 32526/05, 2008-IX ECtHR para. 96.

25 Article 24 (1).

26 Article 24 (2) (a).

27 Article 24 (2) (c) and (d).

28 Article 24 (3).

29 Department of Economic and Social Affairs, Office of the United Nations High Commissioner for Human Rights, Inter-Parliamentary Union, From Exclusion to Equality: Realising the Rights of Persons with Disabilities: Handbook for parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2007), p. 82-3.

30 Ibid, p.84-5.

31 Committee on the Rights of the Child, General Comment 9 'The rights of children with disabilities' (2006), para. 62.

32 Ibid, para 67.

33 Ibid, para. 66.

34 Ibid, para 62.

35 Ibid., para 32.

36 European Social Charter (Revised) (1996), Article 15.

37 Ibid, Article 15 (1).

38 The Schools Act (No. 245/2008), Section. 7, Art. 3(d).

39 The Act was further amended in 2008.

40 Council Directive 2000/43/EC on equal treatment of persons irrespective of racial origin ("Race Directive") and Council Directive 2000/78/EC on equal treatment in employment and occupation.

41 Under CERD General Recommendation no. 27, Discrimination Against Roma, states are recommended to support the inclusion in the school system of all children of Roma origin (Art. 3.17); to prevent avoid as much as possible the segregation of Roma students (Art. 3.18); to act with determination to eliminate any discrimination or racial harassment of Roma students (Art. 3.20); to ensure that programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women (Art. 3.22); to act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.



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