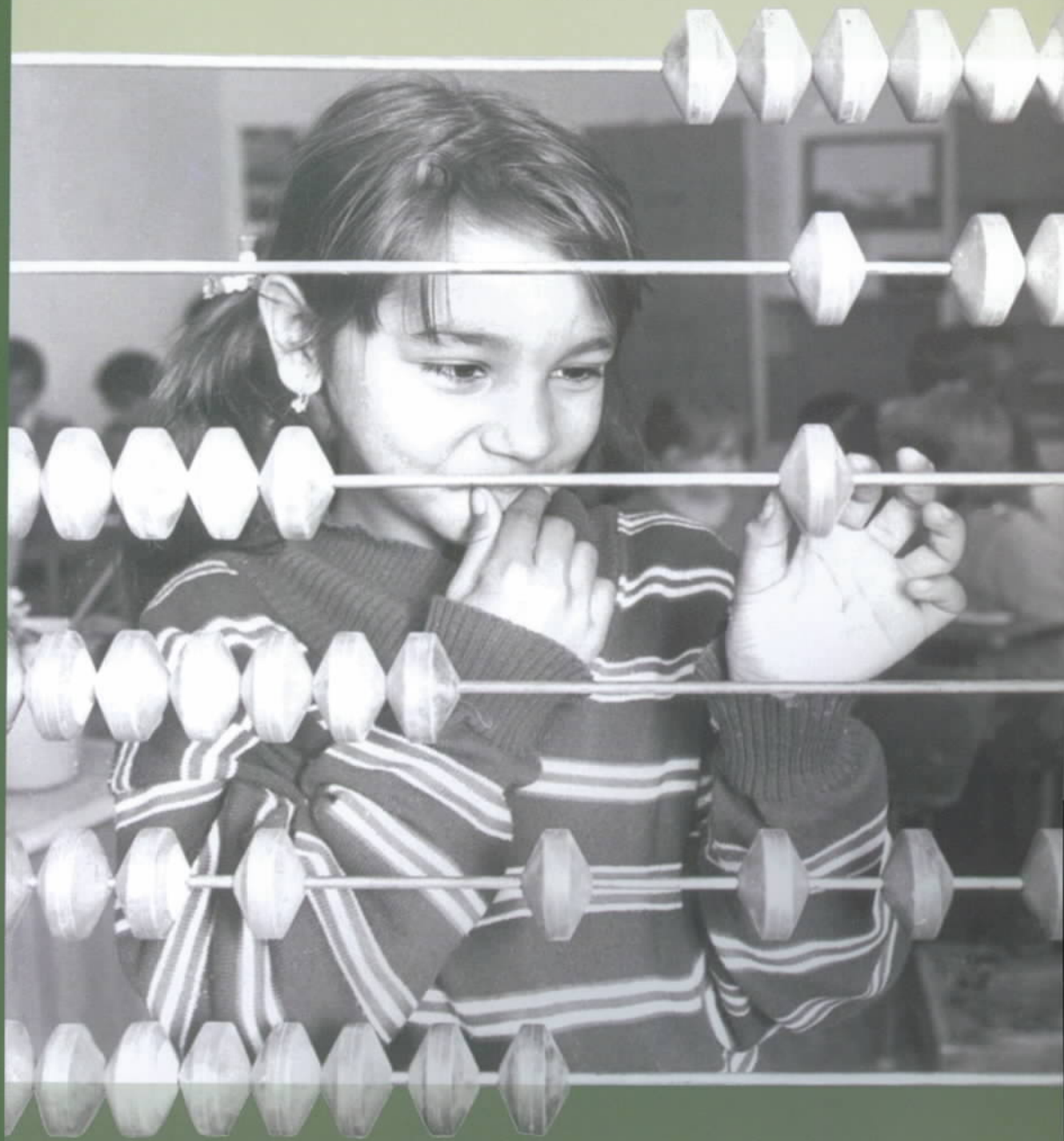
Public Interest Law Initiative

SEPARATE AND UNEQUAL

COMBATING DISCRIMINATION AGAINST ROMA IN EDUCATION



Source Book

COLUMBIA LAW SCHOOL

Separate and Unequal:
Combating Discrimination against Roma in Education

A Source Book

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Combating Discrimination against Roma in Education

A Source Book

EDITED BY
Edwin Rekosh and
Maxine Sleeper

Public Interest Law Initiative
Columbia University Budapest Law Center
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Public Interest Law Initiative/Columbia University Budapest Law Center, Szent István tér 11/c, 7th floor, 1051 Budapest, Hungary, Tel: +36 1 327-3878, Fax: +36 1 327-3879
Public Interest Law Initiative/Columbia Law School, Mail Code 3525, 435 West 116t Street, New York, NY 10027, USA, Tel: +1 212 851-1060, Fax: +1 212 851-1064

E-mail: pili@pili.org
Web: www.pili.org

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Acknowledgments

Separate and Unequal draws from an engagement by the Public Interest Law Initiative (PILI) on the critical issue of educational segregation of Roma, beginning with a week-long Summer Seminar on Combating Discrimination in Education held in June 2003 in cooperation with the Roma Participation Program of the Open Society Institute. The seminar brought together young Romani NGO leaders from various countries throughout Central and Eastern Europe. In addition, a diverse group of experts, advocates and human rights lawyers served as resource persons in seminar discussions and helped run the accompanying skills training workshop. Each and every participant contributed a distinctive voice to the seminar, creating a serious, intellectually exciting and passionate atmosphere, ultimately advancing our collective understanding of the issues. This publication is very much a result of that process, and PILI is grateful to all those involved. Many of them have contributed articles included here.

The tireless effort of conceptualizing and putting together this volume was led by PILI Research Fellow Maxine Sleeper under the overall supervision of PILI Executive Director Edwin Rekosh. Other PILI staff who contributed significantly to the editorial process include Barbara Bedont, Dan Doghi, Lusine Hovhannisian, Enikő Szigeti and consultant Mona Nicoară**.** PILI Executive Assistant Enikő Garai managed the publication process, and design assistance was provided by Gábor Deák of WebGrafika Stúdió. Richard Slovak provided his usual expert and dedicated copyediting assistance.

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But perhaps most importantly, PILI is forever grateful to the contributors, each of whom adds a unique and valuable perspective that makes this source book a true collaboration – one which spans the globe and presents the thematic breadth necessary to approach this complex topic.

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FOREWORD

The Roma, an ethnic or racial minority without a national homeland, constitute up to 10 percent of the population in some countries of Central and Eastern Europe. Abused for centuries, they suffer from a host of disadvantages: very high unemployment, miserable housing, a lack of municipal services, inadequate health care, little or no access to credit, under-representation in the political process, over-representation in the criminal justice system, and poor education. All of these are linked to one another. Without jobs, for example, it is hardly likely that the Roma will get better housing. Without more of a role in politics, the chances that municipal services will improve are negligible. And so on. So where do we begin if we want to overcome the legacy of mistreatment, exclusion, and discrimination suffered by the Roma?

Clearly, the battle to make it possible for the Roma to count equally must be fought on many fronts. Yet if there is one campaign that must be pursued most assiduously, it is the struggle for equal education. And, as is apparent when one thinks about the links between education and other aspects of disadvantage, equal education means desegregated education. For, self-evidently, segregated employment is not possible. That is not the way the economy works. To get the same jobs as others, it is essential that Roma should attend the same schools and classes. Racial mingling will not begin in the workplace. It must start much earlier.

The essays that have been collected in this volume document the struggle for desegregation of the schools in Central and Eastern Europe. They describe the legal, political, and educational strategies of the proponents of desegregation and provide comparative accounts of the struggle waged by other minorities who have suffered severe discrimination, such as blacks and Native Americans in the United States and nonwhites (that is blacks, Indians, and those designated as "colored") in South Africa. There are similarities and also differences between the effort to desegregate the schools attended by these minorities and those involving the Roma. One of the differences is that, at this late date, midway through the first decade of the twenty-first century, there is still debate over whether desegregating Romani education should be a public prior-

ity. Elsewhere, there is often still a long way to go in actually achieving desegregation, but it has largely been accepted as a matter of principle. Few question whether desegregation is an essential way to achieve educational equality. The fact that the debate continues in Central and Eastern Europe underscores both the difficulty of the task and the urgency of the effort. That is what makes the publication of this volume so valuable a contribution.

Aryeh Neier
President
Open Society Institute

New York
June 2004

PREFACE

In late 1997, the first event held by the then newly formed Public Interest Law Initiative at Columbia Law School was a Workshop on Legal Defense of the Roma (Gypsies) in Central and Eastern Europe. In April 1998, my preface to the report from that meeting included the following:

> The Roma are the most discriminated against minority in Europe, and in recent years, they have increasingly become subject to extreme prejudice and even violent attack. The principal purpose of the meeting was to familiarize an American audience, particularly representatives of the U.S. civil rights community, with the egregious human rights abuses perpetrated against Roma, and with the legal and advocacy strategies being used to address them. While there is no simple equation between the civil rights movement in the United States and the defense of Roma rights in Europe, the organizers understood the relevance of many civil rights tactics, as well as some of the unresolved tensions: courtroom advocacy vs. political organizing, short-term strategic victories vs. long-term cultural prejudice, and so on. . . .

Now, writing six years later, I am struck both by what has changed and what has remained the same. Roma activists have become far more organized, strategies to combat discrimination have grown more sophisticated, and the on-going discrimination and other human rights violations suffered by Roma in Europe is certainly much more widely recognized within civil rights circles in the US and around the world.

But what remains the same are some of the trade-offs between courtroom advocacy and political organizing, between short-term strategic victories and long-term cultural prejudice. Nothing could be truer for the vexing issue of educational segregation. In Europe, unlike the United States, the progress made so far has been more the result of community activism and political change than of legal challenges. Yet, it is quite clear

that advances can only be sustained with an unequivocal understanding that eradicating segregated education of Roma is not just a matter of long-term aspiration but of on-going human rights violation. What is equally clear is the need for better information, analysis and understanding of this complex issue and the various means for addressing it, as well as extended public dialogue, from the international arena to local communities.

As a step toward fostering such dialogue, the Public Interest Law Initiative has collected here, in one place, a diverse set of materials – some reprinted, some revised, and some drafted originally for this purpose. Taken together, they aim to elucidate the complexity of the phenomenon of educational segregation, its relationship to discrimination, early efforts to integrate education in Bulgaria and Hungary, tools for advocating change and pedagogical issues. Contributors include both Romani and non-Romani leaders of the first desegregation efforts in Europe and a wide range of other experts.

In this year, which marks the 50th anniversary of the landmark U.S. Supreme Court decision *Brown v. Board of Education* ordering racial desegregation of American schools, it seems particularly appropriate to be publishing *Separate and Unequal: Combating Discrimination Against Roma in Education*. In the American civil rights imagination, *Brown* is more than just a legal case; it represents a turning point at which rights-based principles, as safeguarded by the revered institution of the Supreme Court, triumphed over decades of entrenched cultural prejudice.

Educational integration, and the American legal battles that have been fought to secure it, has particular resonance at Columbia University. Professor of Law Jack Greenberg – a contributor to this volume – was on the legal team that argued *Brown v. Board of Education* back in 1954 and later became the leader of the prominent NGO that brought the case: the NAACP-Legal Defense Fund. More recently, Lee Bollinger, the President of Columbia University, went all the way to the Supreme Court to defend affirmative action policies of the University of Michigan, where he was previously President. (A summary of the 2003 decision of *Grutter v. Bollinger* can be found in this source book.)

Next year will mark the beginning of the Decade of Roma Inclusion – an initiative endorsed by the World Bank, European Union, Open Society Institute and the gov-

ernments of Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Montenegro, and Slovakia. In parallel, the World Bank is initiating a Fund for Roma Education. As James Wolfensohn, President of the World Bank has said: "Without better education, Roma aspirations for equal opportunities and a better life cannot be met. Breaking the cycle of social exclusion and discrimination requires active support for education as the single best way out of the Roma's current impasse."

This month, the European Union Network of Experts in Fundamental Rights published a recommendation to adopt a "Directive specifically aimed at encouraging the integration of Roma." If adopted, such an EU Directive would demonstarte an unparalleled commitment to combating discrimination and segregation throughout Europe.

Let us hope that this era is remembered as a turning point 50 years from now in the same way that the *Brown* case is remembered in the United States today. In publishing this volume, the Public Interest Law Initiative hopes to make its own modest contribution to making that promise a reality by informing discussion and furthering constructive change on this essential public interest issue.

Edwin Rekosh
Executive Director
Public Interest Law Initiative
Columbia University

Budapest
June 2004

Separate and Unequal:
Combating Discrimination against Roma in Education

A Source Book

One
The Nature of Educational Segregation

Patterns of Segregation of Roma in Education in Central and Eastern Europe

by Savelina Danova[1]

The European Roma Rights Center (ERRC) carried out a study mapping common practices of segregation of Romani schoolchildren in five countries—Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia. As a result of the research, the ERRC also sought to propose policy measures for desegregation programs in these countries. The studies showed segregation in many forms across the region: Romani students are often placed in special schools for the mentally disabled; separate schools may result from residential segregation; Romani students studying in mainstream schools may be placed in classes with inferior curricula and teaching staff. Depending on the different histories and demographic factors, one or more of these forms of segregation are apparent in each country. This article outlines the main findings of the ERRC study.

1. Introduction

Racial segregation of Romani children in education, whether intentionally imposed or resulting from other processes, is an egregious form of discrimination and violates the commitments of states to guarantee the dignity and the equality of all. Governments are obliged to eradicate all practices that result in segregation as well as the consequences of such practices. Committed to speeding up the process of desegregation of Romani education in Central and Eastern Europe, the European Roma Rights Center (ERRC) has undertaken to challenge segregation

both by taking legal action[2] and by proposing policy measures for the desegregation of Romani education.

This article outlines the main findings of research that the ERRC carried out in 2002–2003 in five countries: Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia.[3] The goal of the research has been to map out common practices of segregating Romani children in education and, on this basis as well as on the basis of successful examples of recently implemented desegregation programs,[4] to propose policy measures for desegregation of the school systems in these countries.

The research revealed the existence of a variety of practices, the effect of which has been to confine Romani children to separate and substandard educational facilities. Such practices include: the placement of Roma into special schools for the mentally handicapped, the separation of Roma in Roma-only classes within the mainstream schools, and the maintaining of Romani ghetto schools located in the Romani ghettos or formed as a result of the withdrawal of non-Roma from Roma-majority schools. Depending on the specific historical, demographic, and social factors, one or more patterns of segregated education of Roma are characteristic for each country. Segregation of Romani children into special schools for mentally handicapped, for example, is prevalent in the Czech Republic, Hungary, and Slovakia. According to the Czech government's own estimates, "around 75 percent of Romani children are transferred to or directly enrolled in remedial special schools."[5] Disproportionate allocation of Romani children to schools for the mentally handicapped, however, is also evident in Bulgaria and Romania. In Bulgaria, for example, the research conducted by the ERRC in partnership with the Bulgarian Helsinki Committee (BHC) showed that, in the country's seventy-five schools for children with a slight mental handicap, Roma are grossly over-represented, constituting between 80 and 90 percent of the entire student body.

Separate classes for Roma within the mainstream schools also exist everywhere. This practice is especially widespread in Hungary. In a 2001 study conducted by the Hungarian Institute for Educational Research, 192 Hungarian elementary schools were examined, where on average 40 percent of the school population was Romani.[6] In the examined schools, the researchers found 157 classes with only non-Romani children and 311 classes with only Romani children. Estimates based on this study suggest that on the national level, 10 percent of Romani children attend homoge-

neous Romani classes and another 6 to 7 percent attend classes where Romani children are the majority.

Romani ghetto schools also exist everywhere in the five countries, but they are most prevalent in Bulgaria, Romania, and Slovakia. According to the Bulgarian Ministry of Education and Science, for example, in that country there are 105 schools in which the student body is 100 percent Roma.[7] These schools are located in or close to the segregated ghetto-like Romani neighborhoods. According to experts' estimations, about 70 percent of the Romani children of school age are currently educated in Romani ghetto schools.

A major obstacle in assessing the situation of segregated education of Roma is the absence of comprehensive and accurate data about Romani education. This fact renders the assessment of the status of Roma in the educational systems of the countries a very difficult task. Policies based on nonexistent or scarce educational data are bound to fail. Where statistical data about the state of Romani education exist, the information is usually very inaccurate, underestimating the real numbers of Roma by several times.[8] The data collected by the ERRC during the research are varied in terms of the sources and scope: some data were provided by official statistical sources and are based on self-identification of Roma; other data came from the institutions of the local or central government and rely on the identification of Romani children by teachers and school directors; still a third type of data were collected by the ERRC researchers during their field research in the five countries and are based on the researchers' own impressions.

2. Segregation of Roma in special schools for the mentally handicapped

In each of the five countries subject to the ERRC research, apart from the mainstream schools, there is a parallel system of primary and secondary schools for children with physical and mental disabilities. Children with slight mental disabilities are educated in special primary schools or in special classes within the regular primary schools that do not offer education of a standard equal to that of the regular schools. Special schools permit the adjustment of the regular curriculum to a level considered appropriate for those children.

A number of estimates from various sources, including the governments themselves, indicate that the system of remedial special schools functions as a *de*

facto parallel substandard system of education for Roma.[9] A complex of systemic deficiencies in the structure and procedures of the educational system, racially biased assignment to special educational facilities, and widespread anti-Romani racism at various levels of society reinforce one another, with the effect of denying Roma equal education. Mainstream schools fail to integrate Romani children due to the lack of institutional mechanisms ensuring that Roma have equal opportunities when they start school. Instead of creating conditions for Roma to learn the language of mainstream education before school and help disadvantaged Roma to acquire the social skills that the majority children have acquired, the educational system assigns them to substandard education. Racially disproportionate effects generated by the educational system are compounded by the individual racism of teachers and school authorities who refuse to educate Roma and knowingly segregate them in remedial special schools. On many occasions, Romani parents and educationists have described to the ERRC situations indicating that Romani children were routed to the remedial special schools as a result of conscious efforts by teachers and psychologists to keep them out of the mainstream schools.

In all of the surveyed countries, IQ tests are used to determine whether the child has a mental disability. Apart from undermining the dignity of the child, the system of intelligence testing has also been proved to produce racially disparate results. A majority of Romani children who are subjected to these tests return results that place them in the category of mentally disabled. Many educationists and psychologists have admitted that the tests used, and even the process of testing itself, do not account for the linguistic and cultural difference of Romani children, and hence do not provide reliable information about the Romani child's capacities.

Many Roma begin their education in remedial special schools without even having the chance to start at a regular school. Others who manage to enroll in the regular primary schools face serious barriers to continuing their school careers there. Regular schools do not provide adequate individualized care to meet the needs of the Romani children. On the other hand, neglectful and denigrating attitudes by teachers and non-Romani schoolmates alike at the mainstream schools often force the child to enroll in a special school where, among the majority Romani student body, he or she would feel more comfortable.

Despite the fact that in some countries measures, such as preparatory classes, have been introduced to ensure an equal start for the Romani children at school, these actions have failed to provide any significant results so far. Moreover, in some cases these measures have proved to stimulate the enrollment of children in the special schools rather than deter such enrollment. This occurs in the Czech Republic because about one-third of the preparatory classes for Romani children there are established in remedial special schools.[10] After some time spent in a remedial school, these Romani children are more likely to continue their education in an environment that is already familiar to them.

The disproportionate enrollment of Romani children in remedial special schools also results from the conscious efforts of the authorities in these schools to persuade Romani parents to enroll their children there. Such efforts are motivated by the desire to preserve the student body of the remedial school and, accordingly, its teaching staff and the financial benefits that the state offers. ERRC/BHC research in Bulgaria found that Romani neighborhoods are the primary target of the enrollment campaigns launched by the remedial special school authorities. According to some special schools' teachers and psychologists, authorities at the special schools try to attract pupils by providing additional services such as dormitories, free meals, and textbooks.

Although parental consent to the placement in, or transfer of a child to, a special school is obligatory according to the legal regulations on special education in all five of the countries studied, freedom of choice in the case of Romani parents is often a hollow concept. In many instances, Romani parents appear to voluntarily enroll their children in the remedial schools, but their "choice" is not free of the coercive effect of such factors as poverty, neglect of Romani children by teachers in the mainstream schools, and racial harassment of the Romani children in those schools.

3. Separate classes for Roma in the mainstream schools

In every one of the countries the ERRC surveyed, all-Romani classes within the mainstream schools have been in existence for some time. These classes are defined by various criteria: some are special classes following the curriculum of the schools for mentally handicapped children; other classes are set up on the basis of the students' individual ability, with school officials introducing more

advanced classes for talented pupils and catch-up classes for students who are having difficulties in keeping pace with the regular curricula. In many places, however, school officials admitted they maintain classes that are predominantly non-Romani in order to meet the requirements of non-Romani parents, who will then agree to keep their children in the school. In Romania, for example, the school management of the basic School No. 6 in Alexandria, Teleorman County, justified the organization of classes with a reduced number of Romani children as a response to the preferences of non-Romani pupils for specific teachers. By transferring the Romani students out of those classes and granting the preferences of the Romanian parents, the school is able to avoid the transfer of non-Romani pupils to other schools. Elena Otelea, vice-director of the school, told the ERRC: "We have to consider the preferences of the [non-Romani] parents. Otherwise they go to other schools."[11]

In the case of Hungary, the implementation of legal provisions for the education of national minorities has sometimes been reduced to a mechanism of segregating Roma from non-Roma. The implementation of Hungary's Decree No. 32/1997 of the Ministry of Culture and Public Education[12] on the education of national minorities resulted in the formation, country-wide, of large numbers of homogeneous Romani classes. In many schools throughout Hungary, the motivation for establishing the so-called catch-up classes for Roma rarely had to do with teaching an ethnically based program or helping Romani students catch up and stay level with the regular curriculum.[13] Rather, such classes were used to segregate Roma from their non-Romani peers.[14]

4. Segregated Romani ghetto schools

High numbers of Romani students attend inferior-quality schools in which the overwhelming majority of children are Romani (hereinafter called "Romani ghetto schools"). Although there is no legal distinction between the Romani ghetto schools and the rest of the schools, there is a marked difference in the quality of education provided in the two types of schools. Romani ghetto schools, usually known locally as "Gypsy schools," are generally inferior in material conditions and quality of education—school buildings are run-down and ill-equipped to provide for quality education, teachers lack basic qualifications, textbooks are out-of-date, and teaching aids are lacking. The low quality of edu-

cation in the ghetto schools is also caused by a prevalence of unqualified teachers in these schools. Research data in Romania demonstrated that in 1998, unqualified teachers were present in every rural school with a student body that was more than 50 percent Roma. There was a correlation between the percentage of Romani pupils in a school and the ratio of unqualified teachers. For example, the prevalence of unqualified teachers ranging between 50 and 75 percent per school was approximately three times higher in schools with more than 50 percent Romani children than in the rural system as a whole; in schools where Roma make up nearly the entire population, this ratio was roughly five times higher than in the total rural school system. A rate of unqualified teachers of more than 75 percent per school was approximately four times higher in schools with more than 50 percent Romani students than in the system as a whole and about ten times higher in schools where Roma make up nearly the entire population than for the rural school system as a whole.[15]

Romani ghetto schools have emerged as a result of two general factors: residential segregation of Roma and the withdrawal of non-Romani students from schools where the percentage of Roma is high. The process of ghettoization of public schools is also influenced by the racially motivated denial of access of Roma to regular schools. In response to racial prejudice and abuse, many Romani parents now prefer to send their children to schools where the majority of the student body is Romani.

Romani ghetto schools located in the Romani ghettos exist in cities, towns, and villages. Many urban Roma live in ghettos on the margins of towns and cities or in the inner parts. Although there are various reasons for the appearance of the urban Romani ghettos, in all countries they have common characteristics: they are overcrowded and have substandard housing facilities.

Another process that conditions the emergence of ghetto schools, especially in the rural areas, is the increase in the percentage of Roma among the local population as a result of demographic trends and economic migration, mainly of non-Roma, from the rural areas. The increase of Roma among the general population is reflected in the student body of village schools, many of which are gradually becoming predominantly Romani in composition. Such is the case, for example, with many Bulgarian and Slovak schools in rural areas.

Ghetto schools also emerge as a result of the withdrawal of non-Romani children by their parents from schools where the percentage of Romani children is

high. High numbers of Romani students in a school are associated with lower levels of education. In Slovakia, for example, the ERRC visited ten out of sixty-three primary schools in Bardejov district, Prešov region. The ten schools visited enrolled 27 percent of all students in the district.[16] According to estimates provided by the school authorities in these schools, the Romani students in them constituted about 84 percent of all Romani students in the district. ERRC research established that Romani children constitute 100 percent of the student body in two schools, and in five others the proportion of Roma was higher than 50 percent. In the remaining three schools, the proportions of the Romani students were 4.7, 17, and 29.6 percent, respectively. The ghettoization of these schools in the Bardejov district is mainly the result of the flight of non-Romani children from schools where many Romani children attend.

In some countries, ERRC research established the phenomenon of the formation of Romani ghetto schools within the mainstream schools. This is the case of mainstream schools that have more than one building. The existence of two or more buildings has made it possible for school authorities to separate Romani children in the frequently older, unrenovated building. Such is the case of the school in the village of Hermanovce, in eastern Slovakia. The school had a single building up until 1990. After that, a new building was constructed and all non-Romani children were transferred to the new building, while the Romani children remained in the old one. The two buildings are located next to each other and are known locally as the "black one" and the "white one." These buildings differ significantly in material conditions, the "black one"—with the Romani children—being much worse.

5. Conclusion

The ERRC asserts that desegregation of Romani education should be at the core of all measures aimed at achieving equality of opportunity for Roma in education. While desegregation of Romani education may take various forms, depending on the demographic and other factors specific to each country, a number of principles apply to all countries. First, desegregation of Romani education should be a comprehensive action carried out by the governments, involving all relevant actors within the state apparatus and the civil society. All programs implemented should be based on solid data about the status of Roma in the educational system. Second,

desegregation should be a voluntary process based on the informed consent of Romani parents to send their children to integrated schools. Finally, desegregation should be carried out with the participation of Roma themselves in the design and implementation of all programs.

NOTES

1 The author is the research and policy coordinator at the European Roma Rights Center.

2 For major ERRC legal action challenging educational segregation of Roma, see *The ERRC Legal Strategy to Challenge Racial Segregation and Discrimination in Czech Schools,* 1 Roma Rights (2000), at: http://errc.org/rr_nr1_2000/legalde1.shtml; Branimir Pleše, *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action,* 3–4 Roma Rights (2002), at: http://errc.org/rr_nr3-4_2002/ legal_defence.shtml; and Margarita Ilieva and Daniela Mihaylova, *Court Action against Segregated Education in Bulgaria: A Legal Effort to Win Roma Access to Equality,* 4 Roma Rights (2003).

3 The full findings of the research and the policy recommendations are contained in a report the publication of which is forthcoming.

4 For details about the first desegregation actions led by Romani organizations, see Donka Panayotova, *Successful Romani School Desegregation: The Vidin Case,* 3–4 Roma Rights (2002), at: http://errc.org/rr_nr3-4_2002/noteb8.shtml.

5 See Committee on the Elimination of Racial Discrimination, CERD/C/372/Add. 1, 14 April 2000, *Reports Submitted by States Parties under Article 9 of the Convention: Fourth Periodic Report of States Parties Due in 2000,* Addendum Czech Republic, 26 November 1999, para. 134.

6 See Gábor Havas, István Kemény, and Ilona Liskó, *Cigány gyerekek az általános iskolában* (Budapest: Oktatáskutató Intézet, 2001).

7 See Yosif Nunev, *Analiz na sastoianieto na uchilishtata, v koito se obuchavat romski detsa,* in *Strategii na obrazovatelnata politika* 117 (Sofia: Ministerstvo na obrazovanieto i naukata, 2001). The data of the ethnic origin of the students are based on identification by schools directors and/or teachers.

8 In Hungary and the Czech Republic, for example, the absence of ethnically disag-

gregated data is justified by the prohibition on collecting such data as provided under Hungary's data protection laws. In Slovakia, some ethnically disaggregated data on education exist. This information is based on the self-identification of Roma and is widely held to be inaccurate, underestimating the numbers of Roma. This inaccuracy stems from the reluctance of many Roma to reveal their identity, because belonging to the Romani ethnicity is associated with the worst stigma in Slovak society. The inaccuracy of the data is conditioned by failure to ensure that Roma freely declare their identity.

9 See for example, for the Czech Republic, Committee on the Elimination of Racial Discrimination, *Reports Submitted by States Parties under Article 9 of the Convention: Fourth Periodic Report of States Parties Due in 2000,* Addendum Czech Republic, 26 November 1999, para. 134; for Hungary, see *Annual Report of the Parliamentary Commissioner for National and Ethnic Minority Rights, 1 January–31 December 1999*, part 5, "Negative Discrimination in Education: The Findings of the Ombudsman in Relation to the Segregation in School and Education in Schools with Different Curriculum," at: http://www.obh.hu/nekh/en/reports/reports.htm.

10 According to information provided to the ERRC by the Czech Ministry of Education, in the academic year 2001–2002, 33 percent of the total number of 109 preparatory classes were established at the remedial special schools.

11 ERRC interview with Elena Otelea, 14 November 2002, Alexandria. Class 1B had twenty-five pupils, six of them Roma; 1A had sixteen students, of whom fourteen were Roma; and 1C had seventeen pupils, seven of them Roma.

12 No. 32/1997. (XI. 5.) MKM Decree issued by the Ministry of Education, on the issuance of the Guideline on the Education of Children of National and Ethnic Minorities in Kindergarten and the Guideline on the Education of Members of National and Ethnic Minorities in School.

13 Parliamentary Commisioner for National and Ethnic Minorities list of problems with Roma minority education. In particular, many of applications of the programs lacked any ethnic-based teaching, and even the catch-up teaching was applied in a haphazard way, often pushing such subjects as foreign language and technology off the syllabus. Teachers were found to be unqualified, and the separate classes where the programs were taught were often the most dilapidated and unlighted in the school. Moreover, although the establishment of the classes required the consent of the parents, this was regularly not sought, and in one case the program was organized without the knowledge of the parents. Where consent was sought, details were rarely provided. See *Report on the Activities of the Parlia-*

mentary Commissioner for the Rights of National and Ethnic Minorities, 2000, section 3.3, at: http://www.obh.hu/nekh/en/reports/reports.htm.

14 For details, see *Snapshots from around Europe/Hungary,* 2 Roma Rights (2002), at: http://errc.org/rr_nr2_2002/snap14.shtml.

15 Mihai Surdu, *The Quality of Education in Romanian Schools with High Percentages of Romani Pupils,* 3–4 Roma Rights (2002).

16 See *Ústav informácií a prognóz školstva. Separát štatistickej ročenky školstva SR 2001* (Bratislava: 2001).

Desegregation of Romani Education: Challenges and Successes

by Rumyan Russinov

Over the past ten years, governments and non-governmental organizations (NGOs) have increasingly focused on the problem of discrimination in Romani education. Most attempts to raise the educational status of Roma, however, have not succeeded. Recently, efforts by NGOs through local initiatives have successfully begun a process of desegregation. A project in Bulgaria, the first of its kind, has fought to overcome many of the misconceptions that have stood in the way of Romani integration in schools. Now in its fourth year, Bulgaria's school integration program can provide essential lessons for desegregation programs in countries all over Central and Eastern Europe.

In the past decade, Romani education has always been one of the problems that governments and non-governmental organizations (NGOs) across Central and Eastern Europe have tried to solve. After more than a decade, however, even the most serious, the most well funded, and the most comprehensive attempts to raise the educational status of Roma have not succeeded. The worst tendencies affecting Romani education—high dropout rates, low educational achievement, and exclusion from school—have persisted. The general status of Romani education has not improved; on the contrary, it has deteriorated. As a result, the prospects for Roma to overcome social exclusion have dwindled.

In examining the approaches to Romani education over the years, a simple explanation for this situation has become clear: most of the educational initiatives, whether governmental or non-governmental, have operated within the status quo of segregated educational systems. Intentionally or not, these initiatives have been striving to breathe life into a long-dead concept—the concept that separate can be equal. This has continued despite the all-too-obvious results of separate educational systems for Roma: an ever-growing number of uneducated Roma, an ever-increasing number of Roma excluded from the life opportunities available to non-Roma, and an ever-deepening division in society along ethnic lines. Money and human resource have poured into the segregated schools for the Roma—both the all-Romani ghetto schools and the schools for the mentally disabled. This funding has allowed these schools to survive, keeping the Romani

children segregated and, as a result, increasing from year to year the numbers of uneducated Roma.

In recent years, however, a new movement has been gaining ground in Europe. This movement has identified the segregated education of Roma as the root cause of their lack of equal educational opportunities. Efforts are therefore under way to channel the numerous yet haphazard initiatives for Romani education toward the dismantling of the segregated educational systems. It is no wonder that the leaders of this movement are Roma who themselves enjoyed the benefits of integrated education. Their voices are becoming sharper, and their message is unequivocal: Romani education should be desegregated. Most recently, during the Open Society/World Bank conference "Roma in an Expanding Europe," Romani representatives from seven countries in Central and Eastern Europe addressed their governments and the international community with a declaration: "In education, we want to integrate the school systems, to desegregate the schools and the classrooms, and to provide equal and quality education to Roma in the domestic school systems from preschool to university."

Romani NGOs have provided a crucial impetus to the integration movement by demonstrating in practice how to address the problem of Romani education. In the 2000–2001 school year, the Open Society Institute's Roma Participation Program (RPP) initiated a pilot desegregation project led by a local Romani NGO in Vidin, Bulgaria. The goal of the project was to ensure equal education for the Romani children of the Vidin Nov Pat Romani settlement by transferring them to the Vidin's mainstream schools. The project started with the busing of approximately 300 Romani children from the Romani ghetto school. This number grew in the following two years, reaching more than 700 children in the 2003–2004 school year, or more than 70 percent of all children attending school in the Romani neighborhood of Vidin. In the meantime, the RPP supported another six desegregation initiatives in Bulgaria based on the Vidin model. Beyond their own value in ensuring equal education for more than 2,000 Romani children in Bulgaria, these projects also have a strategic goal: to demonstrate that the desegregation of the Romani ghetto schools in Bulgaria is a feasible undertaking that, if carefully planned and executed, prevents the further exclusion of Romani children from the educational system without causing societal upheaval or interethnic collisions. Romani NGOs and human rights activists are now using the successful

implementation of these desegregation projects to pressure the Bulgarian government to adopt and implement a process of desegregating Romani education throughout the country. In other words, the grass-roots desegregation initiatives are aimed at achieving a long-term, nationwide effect on the educational status of Roma by providing a model for governmental policies on Romani education.

For four years, the success of the desegregation projects in Bulgaria has dispelled the fears and misconceptions accompanying the public debate about integrating Romani children in education. Prior to the Vidin desegregation project, the following misconceptions existed:

- *Romani parents will not allow their children to attend school outside the Romani neighborhoods.* Many people argued that because of fears of racially motivated harassment and attacks on the Romani children in the majority environment, the Romani parents would refuse to participate in the desegregation efforts. Others asserted that due to their low educational aspirations, Roma are indifferent to the quality of education that their children receive and would have no motivation to send them to a school outside their neighborhood solely to obtain higher-quality education. The desegregation initiatives in Bulgaria, however, have shown that when Romani parents are certain their children will be cared for and protected outside the Romani neighborhoods, they are willing to move their children from an all-Romani ghetto school to a better one elsewhere—even when that school is far from their homes. Furthermore, it became clear that when Romani parents are aware of the inferior quality of ghetto school education and the resulting disadvantages for their children, they do not object to desegregation. Many Romani parents did not need to be persuaded that their children would have a better future if they attended school together with non-Romani children; all they needed was support to transfer their children to non-Romani schools.
- *Romani children will not be accepted in non-Romani schools.* Although such fears were not unreasonable, hostility of non-Roma toward Roma at school has proved to be simply an obstacle that can be controlled and overcome. Incidents of racially motivated harassment of the

Romani children have been the exceptions; with the involvement of the Romani supervisors placed in each school by the Romani NGOs, such incidents have been prevented or, when necessary, remedied, and their occurrence has not discouraged Romani children from continuing their education in the integrated schools.

- *Non-Romani parents will withdraw their children from the schools that accept Romani children.* In fact, no "white flight" of any significant proportions has taken place. Despite tensions in the first months after the transfer of the Romani children to the integrated schools, the non-Romani parents did not react by withdrawing their children. After the first year, the protests of non-Romani parents against the increasing number of Romani children in the schools disappeared. There were similar experiences with the teachers in the integrated schools. Although some of these teachers had reservations regarding the quality of the educational process after the enrollment of the Romani children, and some of them even treated those children in a discriminatory manner, the timely and adequate involvement of Romani NGO representatives solved these problems.
- *Romani children will not be able to meet the higher academic standards of the mainstream schools.* Fears that the Romani children would fail to meet the higher standards in the integrated schools has proved unjustified. With adequate academic support, most of the Romani children reached the level of their non-Romani peers and, by the end of the first year, achieved academic success comparable to that of the non-Romani children.

The desegregation projects in Bulgaria have operated within the specific context of educational segregation existing in that country. In Bulgaria, the prevalence of all-Romani ghetto schools based in the Romani ghettos led to the *de facto* school segregation. The Bulgarian model can be implemented in other countries where ghetto schools exist, such as Romania and Slovakia. Other forms of segregated education, such as the special schools for mentally disabled children or the all-Romani classes in mainstream schools, require different types of action. The Bulgarian model, however, provides some essential rules, which are applicable to all countries regardless of the patterns of segregation existing there:

- *Romani-led desegregation action.* In each desegregation initiative, Romani organizations took the lead in carrying out the desegregation activities. This made it possible to build relations of trust with the Romani parents and eventually to convince them to enroll their children in schools outside the Romani settlements. That the Romani individuals in these NGOs themselves served as role models for the community was also important for the process. The leading role of the Romani organizations in the desegregation process also had the significant effect of promoting the value of Romani participation in the implementation of policies regarding the Romani community. It was essential to show the public at large that Roma are taking responsibility for decisions affecting their lives.
- *An all-inclusive desegregation campaign and action.* The process of desegregation has a direct impact on a number of groups in society. In addition to Romani parents and children, desegregation affects the lives of non-Romani parents, children, and teachers. All these groups should be prepared to undertake and actively participate in the process. Romani parents and children, non-Romani parents and children, teachers in the integrated schools, and teachers in the segregated schools were all approached separately and well in advance of the beginning of the desegregation actions. First, it was necessary to persuade Romani parents to enroll their children in the mainstream schools. Second, the desegregation initiatives had to overcome the resistance of non-Romani parents to the placement of Roma in schools where there previously had been none. Third, successful desegregation of Roma can take place only if the schools that the Romani children will attend are prepared to accept them. Even if a school formally allows Romani children to enroll, teachers and non-Romani children have to be sensitized and involved in activities that challenge the stereotypes and prejudice against Roma.
- *Continuous support for the Romani children transferred from segregated into integrated schools.* Given the inferior quality of the education that Roma have received in the segregated schools, it is not realistic to expect them to immediately achieve the same results as their non-Romani peers without any support. The mere transfer of the children to the integrated

schools without any further care for their adaptation could be counterproductive and undermine the success of the desegregation process. Academic support should come from the schools themselves, in the form of supplementary academic programs.

Like any process that shakes the foundations of a *status quo*, the desegregation of Romani education has provoked strong opposition from various circles in society. For the most part, such opposition has come from groups with vested interests in preserving the all-Romani schools. Among the most outspoken opponents of the desegregation programs have been the teachers (usually non-Romani) in the all-Romani schools. Many of the misconceptions about desegregation were injected into the public discourse by these teachers, because desegregation runs against their interest in preserving the student body of the all-Romani schools and their jobs. Much of this opposition stems from the absence of a comprehensive government policy on desegregation, which, among other things, should deal with the problem of the teachers who lose their jobs as a result of desegregation. Lack of support, and even active opposition to desegregation, has also come from NGOs that conduct projects in the all-Romani schools. For these groups, desegregation could mean losing projects and funding.

The social tensions and conflicts generated by desegregation, however, should not blind us to the fact that it is in the public interest to do away with a system that generates inequality and dependency and thus increases the burdens on the whole society. The new movement toward the desegregation of Romani education is committed to making clear to the public and politicians alike this interdependence of the educational status of Roma and the prosperity of the whole society. This movement seeks to mobilize political will at different levels to desegregate Romani education. We are aware that desegregation of Romani education is not the only solution to the problems facing Roma in education. But desegregation is the only solution that makes a rapid difference—the difference between good education and inferior education; the difference between life with dignity and life in humiliation; and, finally, the difference between equality and inequality.

From Segregated to Integrated Education of the Roma in Europe

by Dimitrina Petrova

The experience of the Roma in education has been one marked by racial segregation – not a separation of their own choosing, but rather a forced segregation that has been imposed regardless of the wishes of the Roma community. The segregated settlements and schools of the Roma population represent an assault on human dignity and is condemned by international law. This article presents the patterns of segregation as they exist in various countries around Central and Eastern Europe, and proposes mechanisms for desegregation. The adoption and implementation of anti-discrimination laws must lay the foundation for combating separate educational facilities that are inherently unequal. Civic action along with governmental and legal action can also be employed in the development of desegregation programs and policies. The author argues that it is a misguided policy to work toward assuring school success for Romani children in the racially segregated schools and to define such success as a prerequisite for the integration of the Roma in the mainstream society. On the contrary, school desegregation is the first step, and the stepping-stone of Romani integration.

In November 2003, I visited, together with colleagues, the Romani ghetto school in Kyustendil, near a southwestern border checkpoint in Bulgaria. Located in the middle of an impoverished Romani neighborhood, the small building had two floors, and no more than ten classrooms. In theory, it was supposed to educate more than 500 Romani students a year, mainly from the surrounding neighborhood, though attendance is never anywhere close to the recorded numbers. Having looked in advance at the budgets and expenditure sheets of the dozen primary schools in the town, we were struck by the fact that in the last few years for which we had obtained data, the Romani school had been receiving from the local administration much lower funding than other schools, both in absolute and per student terms.

The school director explained that he had not requested higher levels of funding to pay for facilities and infrastructure improvement, for example, because the school—unlike any other in that town—had no central heating and its electricity supply was primitive, not allowing sufficient power for adequate lighting in the classrooms. All other schools had central heating that incurred higher facilities costs; the budget provided to his school

was enough to maintain the medieval wood- or coal-burning stoves. As for capital investment to upgrade the heating system, he explained, funding would have to exceed both the financial limits and the decision-making competence of the municipal educational authorities: it had to be planned and authorized by the mayor. And he doubted whether it made sense to finance such an undertaking at all, if it would be more expensive than to build a new school. Our subsequent visit to the municipal department of education confirmed that funding responsibility was allocated at a higher level, providing an excuse for the local administrators to do nothing. We were nervously ridiculed for even trying to compare the Romani school with the others: where did we come from? Did we not know that Roma are different, and how could we want the Romani school to be as well equipped as the elite schools in the center that educate the children of the newly rich customs officers?

Whatever the reasons, the Romani ghetto school was a cold, dirty, and horrible place. The classrooms were extremely run down, with the paint of the walls, floors, ceilings, and windows looking as if it had been exposed to both the deterioration of time and vandalism for at least a decade. The desks and the blackboards were a parody of furniture, all broken and decaying. The only sink, in the corridor of the first floor, had only ice-cold water. The toilets were clogged and overflowing. There were neither toilet bins nor toilet paper. Actually, only a small portion of the pupils enrolled in the school studied in this bleak but at least solid building. The majority were accommodated in additional thin-walled, shanty-like "temporary" structures made of a type of cardboard and situated in what should be the schoolyard, where heating was also by small coal-burning stoves whose maintenance is messy and unhygienic. The director of the school was a well-meaning educator—motivated to improve the conditions, praising the devotion of the teachers, and committed to racial equality—but failed by the whole hierarchical system of authorities above his head. He had written letters that no one had heeded, and he was accumulating fines levied against him by the sanitary authorities for failing to maintain the interior of the dilapidated building at a minimum temperature of 18° C, when the outside temperatures dropped well below 0° C.

What did he believe should happen to this school, we asked him, thinking of the dozens of equally sickening destinations across the country. He said the school was due to be desegregated, according to a recent governmental instruction, just

received. The following year was supposed to be one of zero admissions. Would desegregation work? He did not know. Children from his school would be distributed to other, non-Romani schools—but how many days would they attend? If they stopped showing up, would the Bulgarian school— considering that its funding is based on the number of students enrolled, but not on educational attendance or success—acknowledge and address the issue? Would Romani children be able to afford clothes and school supplies? Would they catch up and have normal grades? Or would the teachers just let them pass, in order to maintain the numbers? In a place like Vidin, in the northeast of the country, desegregation had reportedly worked well. He, like hundreds of educators in Bulgaria, wanted to know how, and how much it would cost.

Many minorities around the world inhabit separate, more or less isolated physical and social spaces. Compared with others, the case of the European defies simple characterization in terms of separation, whether in housing, education, or other areas. The proportion of Roma studying in separate schools or classes varies according to country and region. The degree of separation also varies, from slight over-representation of Romani pupils in the classroom to their high concentration in certain schools where they make up more than 50 percent of the student body, and from single special classes in the regular schools to the Roma-only ghetto schools, the bleak realms of extreme poverty. There are minorities that are much more separated from the majority than are the Roma of Europe today. There are minorities that are striving to create or maintain their separate, parallel institutions according to a vision of autonomous existence (for example, the Hungarians in Romania and Slovakia, and the Russians in Estonia and Latvia), as there are minorities so fully integrated as to have lost most of their distinctiveness and even their description as a minority (such as the Jews in Hungary).

The Roma are a political reality *sui generis*. If we insist on a scholastic categorization of types of minorities along the autonomy/assimilation axis, the Roma would have to be a single member box, at least in the European framework. In this box, the ethnic identity "Roma" would have to stand for a great variety of patterns. However, these would have one thing in common: they would be patterns not just of separation but of *racial segregation*. The latter is defined by two major facts: (1) it is not the choice of the Roma themselves, as all evidence suggests that regardless of what Roma them-

selves want, they are widely considered unwanted as neighbors, schoolmates, or colleagues in the workplace; (2) the segregated settlements and schools are not just separate, they are generally much poorer in quality. In the case of the Roma, these facts, seen in the context of entrenched, harsh racist attitudes against this pariah minority, are a manifestation of racial segregation: a particularly egregious form of racial discrimination, an assault on human dignity condemned by international human rights law. Racial discrimination against the Roma is an expression of anti-Gypsyism, a form of racism that is five centuries old.[1]

Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides: "States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." In its General Recommendation XIX (1995), the Committee on the Elimination of Racial Discrimination stipulates that "the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State." The Committee further observes that "while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons." The case of residential and educational segregation of Roma in Europe falls within the sphere of discrimination which is at least in part racially based, as in the Committee's interpretation: "In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds."

Racial segregation of Roma in the educational system exists in a variety of forms. The various patterns of segregated schooling in Europe can be divided into two main types: (1) Roma studying in "special schools" or "special classes" for the mentally retarded, where the official curricula are based on inferior academic standards; and (2) Roma studying in separate schools or classes, or in schools and classes where they are significantly overrepresented as compared to their share in the community, and where the quality of education is lower, even though the official curricula are supposedly followed. In

the latter case, residential segregation of Roma is one of the factors of school segregation, but it is not sufficient to explain its existence. Social distance is at least as important a factor as physical residential distance.[2]

In the last few years, the Romani movement in Bulgaria, Hungary, and other countries has identified school segregation as an obstacle to accessing rights and is fighting to eradicate it. The European Roma Rights Center (ERRC), the Open Society Institute (OSI), and the Public Interest Law Initiative participate in this effort in a number of ways—engaging in research, advocacy, litigation, policy formulation, training and education.

The "special schools" with over-representation of Roma are typical in the Czech Republic, Hungary, and Slovakia, but they can be found in a number of other countries as well. In the Czech Republic, about 75 percent of all Romani children of school age go to the inferior special schools and are stigmatized for life as mentally handicapped. Although the Czech government has acknowledged the dimensions and gravity of the problem of the special schools,[3] it is dragging its feet on abolishing the system. The figures for Slovakia and Hungary are also very high but less clearly established. In Hungary, Romani children constitute more than 50 percent of all students in remedial special education. In schools where the number of Romani children is more than 25 percent, the proportion of Romani children in special education is 77 percent.[4] In the Czech special schools system, the educational standards for a given school class correspond to those of two classes lower: for example, a pupil who has graduated from fourth grade in the special school can demonstrate scholastic achievement expected of a second-grade class in a regular school. There is less emphasis on mathematics, science, and language, and more on music and applied art.

The situation in Slovakia is similar: "My daughter was transferred to special school after the first grade—she is there already for two years and doesn't even recognize the letters of the alphabet. If she were in the primary school, I am sure she would already have learned that," said one Romani mother from Letanovce to the ERRC in October 2002. In Hungary, the ERRC has documented cases of abuse of parental consent in enrolling Romani children in special schools. On 13 September 2002, a Romani mother told the ERRC: "My daughter started primary school in a normal class, but she felt that she received no attention from teachers as opposed to her non-Romani classmates. Due to the negligence of the

teacher, she failed one time. She was taken to the remedial special class immediately. I was not even asked or informed about it in time, only after the transfer. They said that she could not keep up with the others, so they transferred her. I suffered because my child felt very bad. She was labeled stupid, although she might have just needed some more attention."

The testing procedure for special schools is not racially neutral. A non-Romani teacher in a remedial special school in Budapest stated to the ERRC on 18 November 2002: "Romani children are usually enrolled in remedial special school without seeing the normal school. The transfer, in fact, is often based on the single opinion from the thirty-minute-long examination of the expert committee. Non-Romani children usually get two or three chances and have already failed the second or third year of the school several times when they are transferred to a remedial special school. Many Roma are placed there immediately."

With regard to the "special schools" for the mentally handicapped, the ERRC advocates legislative reform abolishing this type of schooling altogether. Even if special schools as they currently exist in Central and Eastern Europe were racially neutral, and were segregating only those who indeed suffer from light to medium mental disability, they would still be objectionable. Mental disability rights advocates and educators have convincingly argued that children with mental disabilities are not well served by a system of separate educational facilities. Such children would better fulfill their own developmental potential in an integrated schooling environment, enhanced by adequate social services for their families and schools. Accordingly, Romani children with light to medium mental disabilities can be integrated into regular schools, provided this policy is combined with proper specialized support. Aware of the risks of abrupt transfer to regular schools, such a policy should be based on the principle of individualized approach: determining the academic achievement level of each pupil and providing specific support measures to facilitate adaptation.

The second form of segregated schooling is made up of a variety of segregation patterns: classes or schools following the official national curriculum for regular education, but in which Roma are clustered in proportions significantly higher than their share in the surrounding community, up to fully mono-ethnic, Roma-only ghetto schools usually located in or near Romani ghettos. In Bulgaria in 2000–2001, an estimated 70 percent of the Romani students attended ghetto

schools.[5] Bulgaria had, as of 2001, more than 100 all-Romani schools and more than 300 schools in which Roma were more than 50 percent of the student body.[6] In Hungary, researchers have estimated that there are approximately 700 Roma-only classes in the country, suggesting that between 6,000 and 8,000 Romani children in the regular school system study in a completely segregated environment.[7]

To desegregate the Romani ghetto schools and the various separate Romani classes in the regular schools, new antidiscrimination legislation is needed that would acknowledge the harm done by racial segregation and outlaw schooling that is segregated on racial or ethnic grounds as *inherently unequal*, and therefore in violation of the equal protection provisions of the states' constitutions and international law.[8] ERRC lawyers argue, in litigation challenging segregated classes in Bulgaria, Croatia, and the Czech Republic, that in the field of public education, separate educational facilities are inherently unequal.[9] We want to see European courts agree with the reasoning of the US Supreme Court fifty years ago when it decided the case of *Brown v. Board of Education*: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. . . . To separate . . . [children] . . . from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Desegregating the Romani schools can begin with direct civic action, from below, without relying at first on state sanction, as in the case of the first successful demonstration project in Vidin in 2000–2001, followed by projects in six other cities in Bulgaria. In these projects, designed by OSI Roma Participation Program director Rumyan Russinov, teachers, educators, Romani and non-Romani experts, and activists have actively cooperated in the provision of appropriate educational support that is ensuring successful integration of the children. The success is evident in the academic grades of Romani children in their new schooling environment. But to eradicate segregated schooling, the governments of the countries where Roma live must develop and implement comprehensive national action plans for the transfer of Romani children from all types of segregated schools and classes to mainstream, regular schools and classes, with accompany-

ing support programs to ease the transition and adaptation process. Governments must also ensure that adequate resources are allocated for school desegregation action.

It is also of critical importance to introduce, in countries where this has not yet been done, free, mandatory, and integrated pre-school programs for all children, which would obviously have a positive impact on the desegregation process by ensuring an equal start for disadvantaged children.

Unlike the special schools, the "normal" schools, in which Roma are either over-represented or constitute the only ethnic group, mostly follow the same mandatory national curricula and should apply the same standards of academic achievement. But even in cases where the standard curriculum is rigorously applied, the proven fact is that such schools provide worse education due to a less qualified and less motivated teacher body, crowded classrooms, worse material basis, and racial prejudice as regards the Romani attitudes to education. Interviews with principals and teachers confirm the low level of education provided by segregated classes and schools attended by Romani pupils, even though the official standards may be the same as the national norm. Romani pupils are usually blamed for this situation, because of their alleged low interest in school.

The former Hungarian government, which exited the scene in April 2002, was in complete denial with regard to both special schools and other forms of racial segregation. In the current center-left government of Hungary, desegregation is being promoted, and a former ERRC staff member, Viktória Mohácsi, is in charge of implementing it. Prime Minister Péter Medgyessy declared that ending segregation would be a policy priority. In Bulgaria, the Ministry of Education and Science, in its Instruction for Integration of Minority Children and Pupils of 9 September 2002, demanded an end to the placement of children in segregated schools in Romani neighborhoods.

According to many educational experts, politicians, and activists, it is all right to send children to a separate, ethnically homogeneous primary educational institution, provided this is based on free and well-informed parental choice, and the quality of education is sufficiently high. In general, international equality standards do not prohibit such schooling practices and do not qualify them as racial segregation. With respect to Roma, however, it is very unlikely that somewhere in Central and Eastern Europe such a primary school exists. The ERRC has not come across such a case in its several years of research on educational patterns.

Some educational experts claim that the segregated ghetto schools should be preserved, at least temporarily, in order to prepare the non-Romani community for desegregation action. Otherwise, according to them, the surrounding community and the classroom atmosphere may be too hostile for the Romani children's well-being. They claim that young children should not carry the burden of the failure of the adult community to deal with racism. This position is questionable in that it may be read as a recommendation to delay desegregation unnecessarily and for an indefinite period of time.

Racially segregated schooling is inherently bad and a violation of a basic constitutional right, that of equal treatment. As in many human rights abuse cases, outsiders claim that it is the choice of victims themselves to preserve the situation of disadvantage. In our view, Roma are coerced into accepting racial segregation that undermines and further disadvantages them. As in so many other rights abuses involving Roma—from sterilization of Romani women to an acceptance of substandard housing to parental signatures agreeing to assign a child to a school for the mentally handicapped, actual well-informed consent is absent. The latter implies knowledge about the consequences of a choice, including the availability of alternatives. Only when integrated education becomes an available option for Romani children, along with the option of a high-quality monoethnic schooling, will the choice of school by Roma meet the standards of being free and informed.

Unfortunately, substantial funds have been spent in Central and Eastern Europe, by inertia from communism but also due to the interests of educational lobbying groups, on all kinds of educational programs for Roma that, citing the complexity of issues surrounding the education of Romani children, advocate a "comprehensive approach" involving everything other than desegregation. If the only policy goal with regard to Romani education were an improvement in the quality of education, it would be justified to fund projects to improve the Romani ghetto schools, in terms of both teacher qualifications and infrastructure, to enlighten Romani parents and the Romani community about the benefits of sending children to school, and to train teachers to be more tolerant. But such a policy would be a delusion as long as it fails to see that without equality in dignity and rights there is no quality education. The policy of desegregation should undoubtedly include educational support components such as teacher training, curriculum development, anti-bias and anti-racism training for a variety of actors,

extracurricular assistance, community awareness raising, and so on. But its backbone should be enrolling Romani children in mixed schools and keeping them there.

Opposition to a policy of improving Romani ghetto schools should not be interpreted as opposition to separate ethnic schools as such. Arguably, if ethnically homogeneous schools express a demographic inevitability—in other words, if they serve the needs of an ethnically homogeneous community, provide high-quality education, and operate on the basis of free and informed choice—they might not represent a case of racial segregation. Improving bad mono-ethnic schools, therefore, may be a legitimate policy in certain contexts. But the current Romani ghetto schools are not just bad mono-ethnic schools that would benefit from a policy of upgrading. They are to a degree institutions of illegal racial segregation. Analogies with other minorities and regions can be instructive but not compelling. The Romani ghetto schools illustrate the uniqueness of European anti-Gypsyism and can best be dealt within the context of the struggle against anti-Gypsy racism.

An overwhelming number of both governmental and non-governmental activities on Romani education over the past decade have failed to challenge the *status quo* of segregated education. Nor have such projects prevented further segregation. The opponents of desegregation have made every effort to present it as a mechanistic busing of children from one place to another, while the handful of advocates who are making a real difference by effectively desegregating Romani schools have been ridiculed as narrow-minded and impatient activists. Such struggles were quite intense in Bulgaria, for example, as well as at the level of international philanthropy.

It is a misguided policy to work toward assuring school success for Romani children in the racially segregated schools and to define such success as a prerequisite for the integration of the Roma in the mainstream society. On the contrary, school desegregation is the first step, and the stepping-stone of Romani integration. Without it, school success in a ghetto school would not make much difference for the Romani child, because of the stigma attached to Romani schools. The ghetto schools can be "improved" only if they are brought to a level where they would not be seen as ghetto schools any longer. This is to say that ghetto schools as such ought to be eliminated in a short period of time. Eliminating the current educational disadvantage of the Roma created by segregated schooling must be addressed as a

matter of urgency. Teaching tolerance first and applying the knowledge only after the lesson is learned is an old-fashioned enlightenment illusion. Societies as well as individuals will not learn to be more tolerant before they start to act as if they are. The best project of ethnic tolerance training is the lived experience of the enforcement of anti-discrimination laws and policies.

Recently, the desegregation policy approach has come under criticism by some Western European scholars and activists, who have charged that it would end up in the assimilation of the Roma.[10] This criticism mostly rests on the misconception of the issue of the language of instruction. It assumes that desegregation would mean denying Roma the opportunity to study in their own language and force them into schools that teach in the official national language. According to these critics, people's development is best ensured when elementary school education takes place in one's mother tongue (late immersion theory). However, the overwhelming majority of Roma in all European countries in our time are either bilingual from their earliest childhood or are more fluent, by the age of six, in the language of the country where they live. Integrated education should not be opposed to an accompanying policy of preserving one's own culture and language. Minority members have the right to demand such a supplementary educational programming, based on Article 27 of the UN International Covenant on Civil and Political Rights (ICCPR). National educational policy should therefore balance the need to train each student in competitive national language skills with the claimed right of minority students to the enjoyment of their own culture and the instruction in their own language.

In July 2002, the Open Society Institute and the World Bank launched an initiative for a Roma Inclusion Decade, supported by ten Central and Eastern European governments and the European Union. It created the political will to do something, which will speed up progress on Romani issues and set targets for governments to hold themselves accountable by measuring that progress quantitatively. The Decade seeks to address systemic sectoral reform in a few critical areas: education, employment, health, and housing, with gender, discrimination, and income poverty as cross-cutting issues. It will take place at the country level under the aegis of national governments. It is critical that desegregation policies in the field of education are drafted and implemented to ensure a transition from segregated to integrated education of all Romani students. When integrated edu-

cation is an option for Romani parents, the right to equal access to educational opportunity will be fully guaranteed.

Recommendations

It is recommended that the national policy on Romani education should be *a rights-based policy of desegregation, based on the following principles:*

1. *Non-discrimination:* All children must enjoy their right to equal treatment in the area of education.
2. *Positive action:* Governments should take special measures to eliminate the disadvantage of Roma in education, and to maintain these measures as long as is necessary to achieve equality of opportunity.
3. *Free and informed choice:* Romani parents should enjoy the opportunity to freely choose a school for their child, on the basis of clear and full information regarding all available options that are not a breach of the child's fundamental rights.
4. *Roma participation:* In drafting and implementing educational policy at the national and local levels, Roma should not only be consulted but also be involved as key decision-makers.
5. *Equal start:* Free and mandatory pre-school education should be available to all children, and pre-school institutions should meet exit criteria for school preparedness.
6. *Use of race/ethnicity statistics:* Educational policies must be based on accurate and reliable demographic and educational statistics disaggregated on the basis of ethnicity, as well as gathered and processed in compliance with laws protecting personal data.
7. *Comprehensive approach:* To ensure a coherent and sustainable effect, policy reform should include and specify roles for all relevant actors, such as Romani students and their families, local and central authorities, teachers and pedagogues, social workers, scholars, non-Romani classmates and non-Romani families, the media, and so on.
8. *Educational support:* Desegregation must not be approached as a mechanical enrollment or transfer of Roma in ethnically mixed schools, but instead must be implemented only as part of a package containing relevant educational support programs, such as teacher training, anti-bias education of teachers and the community, cur-

riculum development, mediation, social work, involvement of teacher assistants, extracurricular support to those in need including homework assistance, and community awareness raising.

9. *Adequate resources:* Governments should create by law a specific funding mechanism molded to meet local needs, stimulate public institutions and private associations to work toward the desegregation policy goals, and ensure the financial sustainability of desegregation projects.
10. *Independent evaluation:* To counteract actions by stakeholders in the desegregation process that pursue their own institutional interests in ways contrary to the success of the policy reform, and to measure the progress of its implementation, independent evaluation must be performed on an ongoing basis.

NOTES

1 On the historical and social construction of anti-Gypsyism, see Dimitrina Petrova, *The Roma between a Myth and the Future,* 70/1 Social Research (spring 2003).

2 See Mihai Surdu, *The Quality of Education in Romanian Schools with High Percentages of Romani Pupils,* 3–4 Roma Rights 11 (2002).

3 Committee on the Elimination of Racial Discrimination, CERD/C/372/Add. 1, 14 April 2000. Reports submitted by states parties under Article 9 of the Convention. Fourth periodic report of states parties due in 2000. Addendum Czech Republic, 26 November 1999, para. 134.

4 Ferenc Babusik, *Survey of Elementary Schools Educating Romani Children* (Budapest: Delphoi Consulting, 2000); also available at: http://www.delphoi.hu/aktual.htm.

5 Yosif Nunev, "Analiz na sastoyanieto na uchilishtata, v koito se obuchavat romski detsa," in Ministerstvo na obrazovanieto i naukata, *Strategii na obrazovatelnata politika* (Sofia, 2001). (The data on the ethnic background of the students are based on identification by school directors or teachers.)

6 Dimitar Denkov, Elitsa Stanoeva, and Vasil Vidinski, *Roma Schools in Bulgaria 2001* (Sofia: Open Society Foundation, 2001); also available at: http://romaschools.osf.bg/en/index.html.

7 Gábor Havas, István Kemény, and Ilona

Liskó, *Cigány gyerekek az általános iskolában* (Budapest: Oktatáskutató Intézet, 2001).

8 Article 29 (1) of the Bulgarian Protection against Discrimination Act, adopted on 16 September 2003, prohibits racial segregation in the educational system and obliges the Ministry of Education and local government bodies to take measures as necessary to eliminate racial segregation in educational institutions. Unofficial translation by the ERRC.

9 See, e.g., *The ERRC Legal Strategy to Challenge Racial Segregation and Discrimination in Czech Schools,* 1 Roma Rights (2000); Branimir Plese, *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action,* 3–4 Roma Rights 129–37 (2002).

10 See, for example, the conference paper of Professor Tove Skutnabb-Kangas on "The Status of Minority Languages in the Education Process," at the Council of Europe conference entitled "Filling the Frame: 5th Anniversary of the Entry into Force of the Framework Convention on the Protection of National Minorities," Strasbourg, 30–31 October 2003. On her linguistic rights views, see also Tove Skutnabb-Kangas, "The Relevance of Educational Language Rights in the EU Enlargement Debate" (2000), at: http://www.ecmi.de/activities/minority_congress_2000_speeches.htm.

ROMA IN ITALIAN CLASSROOMS[1]

Although Roma have lived in Italy since the fifteenth century, they continue to be treated as foreigners and remain marginalized in Italian society. Estimates of the number of Roma in Italy vary from 110,000 to 130,000, approximately two-thirds of whom are Italian citizens. Nevertheless, the authorities responsible for the affairs of the Romani population in Italy are located within government offices that deal with immigrants.

The Roma in Italy are physically segregated from other Italians through a system of authorized and unauthorized camps. Italy has a history of placing those it considers outsiders in camps located on the periphery of Italian cities. In both authorized and unauthorized camps, Roma live in conditions of squalor and are kept at arm's length from mainstream Italian society.

This system of camps has the effect of denying Romani children their right to education, as provided under Italian law. The Italian Constitution states that "schools are open to everyone." In addition, a 1986 Memorandum of the Ministry of Public Education provides that "all those who reside on Italian territory have full access to the various types and levels of Italian schools, even if they are not Italian nationals; any hostility toward them, or reluctance, constitutes a manifest breach of the civil and constitutional principles of the Italian state."[2]

Despite these legal guarantees, the segregation of Roma in camps deprives Romani children of equal access to education. Many camps are located too far from schools and from proper public transportation systems. Some, though not all, municipalities have established programs to bus children from the camps to schools. In other municipalities, *ad hoc* classes are taught within the camps by unqualified teachers. Children attending these classes do not receive official grades and do not qualify for secondary school. When there are accessible schools, other obstacles come into play. For example, Italian policy requires a birth certificate to register at a school. Many Romani families, particularly those from the former Yugoslavia, do not have birth certificates for their children.

Problems also arise from frequent raids of the Romani camps by Italian police. During these raids, the police ransack homes, sometimes in the middle of the night, searching for illegal residents to deport from Italy. The children in these camps have their school

supplies destroyed and their lives disrupted, making it difficult to pursue their studies.

The poverty of the Roma creates a further barrier to accessing the Italian educational system. Often, Romani parents do not have money to buy proper clothes or school supplies for their children. Fearing that their children will be taunted and rejected, some Romani parents do not send their children to school. For the newly arrived Roma, language barriers present yet another problem. There are no national programs for teaching Italian to children from foreign countries, but only disorganized and makeshift efforts in certain communities, often undertaken by non-governmental organizations.

Romani children who do attend school are subject to harassment both by school authorities and by other students. Some teachers stereotype Romani children as having poor intelligence and bad hygiene. School authorities also face pressure from non-Romani parents who do not want their children to go to school with Romani children. These circumstances, unfavorable for acquiring a good education, result in a high dropout rate for Romani students.

Prepared by Barbara Bedont

NOTES

1 Sources for this material are *Campland: Racial Segregation of Roma in Italy,* report of the European Roma Rights Center (2000); and "Written Comments of the European Roma Rights Center concerning Italy for consideration by the United Nations Committee on the Rights of the Child," 32nd session, 13–31 January 2003.

2 Ministry of Public Education, Memorandum 207, 16 July 1986.

The Segregation of Roma in Spain's Educational System[1]

Article 27 of the Constitution of Spain proclaims an equal right to education, and Spain is also a party to the Convention against Discrimination in Education, the Convention on the Rights of the Child, and the International Covenant on Economic, Social, and Cultural Rights. Within the domestic framework, all children in Spain—even those with irregular legal status—are guaranteed equal and free access to education, through the first four years of secondary school. In addition, public authorities are obliged to ensure the attendance of all children in school during these years. The National Education Act (LOGSE) even established the obligation of the state to ensure *de facto* equality of opportunity. Despite these international commitments and their incorporation into domestic law, Romani children in Spain face significant obstacles in gaining equal access to education. Although the situation varies in different parts of the country, the Roma suffer from discrimination and segregation within much of the educational system.

Although levels of enrollment of Romani children in schools in Spain have improved during the past twenty years, evidence remains of high dropout rates and poor attendance. Many Romani students do not attend school on a regular basis, sometimes missing classes for long periods of time—three or more months per year. A recent study of absenteeism reports that most Romani students with irregular attendance have justified this with reasons such as the work of their parents, which may require them to travel during certain seasons. The government of Spain has failed to develop any strategy or policy for improving access to education for students whose families are involved in seasonal work that requires travel.

Disparities in access to education are evident as early as the pre-school level. Only 59 percent of Romani children have access to kindergartens, compared with the national average of 94 percent. To explain this under-representation, some non-governmental organizations have cited discriminatory eligibility requirements, as well as uneven territorial distribution of kindergartens in Spain. A recent case illustrates the impact that racial discrimination has on equal access to education. In the spring of 2002, a television program using a hidden camera documented the attempts of a Romani woman to enroll her child in various kindergartens in Valencia. At each one, she was told that no places were avail-

able. Yet a non-Romani child who attempted to enroll in the same schools was admitted immediately. One owner of a private kindergarten explained that he refuses to admit Romani children because when he did so once in the past, he received angry letters from parents threatening to withdraw their children from the school if the Romani child was allowed to stay.

In Spain, there are three types of educational institutions: public, private, and *colegios concertados,* schools that receive both public and private funding. Despite provisions aimed at ensuring adequate integration of all students, Roma are over-represented in public schools, and increasingly "ghettoized" in public schools near Romani neighborhoods, while they are often prevented from attending private schools or *colegios concertados*. Romani children are often excluded from *colegios concertados* through so-called neutral selection criteria that have a discriminatory impact. Children whose brothers, sisters, or parents have studied at a particular school are favored for admission; further, many of these schools are located in more expensive neighborhoods and are therefore not convenient for children living in isolated areas.

Some regions have attempted to address the *de facto* segregation. In Madrid, for example, the Ministry of Education has required all schools with any public financing (including *colegios concertados*) to enroll at least two immigrants, Roma, or children from marginalized neighborhoods in every class. There has been significant opposition to this provision, however, with groups claiming that it is insufficient to balance the existing inequalities. Even so, early indications show that this provision is being inadequately enforced, if enforced at all.

The government of Spain has developed two types of programs to respond to discrimination and segregation in education. The first, a compensatory program, is designed to promote equal opportunity for disadvantaged children by providing extra assistance to students with poor academic performance, scholarships for food and books, vaccinations, and courses in hygiene. The second consists of intercultural programs that are aimed at the entire population and seek to promote diversity and tolerance in mainstream curricula. However, as there is currently no framework for their implementation, intercultural programs have yet to be put into practice. Mainstream curricula continue to reflect the majority culture exclusively.

Information for this sidebar is taken from "The Situation of Roma in Spain," in *Monitoring the EU Accession Process: Minority Protection,* Open Society Institute, 2002.

Prepared by Ina Zoon

NOTES

1 The Spanish Roma referred to in this article are not recent immigrants from Central and Eastern Europe. Rather, the Spanish Roma, known as Gitanos, are citizens of Spain whose forebears have lived in the country for more than 500 years.

The Fight Against Segregation in the United States[1]

by Jack Greenberg and Maxine Sleeper

The case of Brown v. Board of Education *ruled that separate but equal schools were unconstitutional in the United States. In the years following* Brown, *the United States witnessed significant levels of desegregation and improvement in black education and academic performance. However, once the U.S. Supreme Court began to revisit the question of what responsibilities each school district has to ensure racial integration in its schools, the force of* Brown *began to weaken. This article outlines the path of desegregation in the United States, with its many obstacles and struggles, and provides a comparative look at the European approach to desegregation. As the United States is now undergoing trends toward re-segregation, the European approach may provide valuable lessons for those looking to restore the legacy of* Brown *in American society.*

1. Introduction

Our starting point in this monograph is *Plessy v. Ferguson* (1896),[2] the U.S. Supreme Court decision that held constitutional a Louisiana law requiring segregated railroad cars and which became the constitutional justification for segregated schools. Several subsequent attempts were made to fight segregation in the courts, but all were unsuccessful. The Court decided that the issue was settled. However, the simmering discontent expressed recognition that equality and segregation simply could not coexist.

Black leadership, notably in the early 1930s, wrestled with what to do about deplorable black schooling. The National Association for the Advancement of Colored People (NAACP) commissioned a study, known as the Margold report,[3] that argued equality never would be achieved without destroying the "heart of the evil," segregation. Politics was ineffective so long as blacks could not vote. Margold, therefore, proposed lawsuits as the only way to bring about a change. But with limited resources, lawsuits could equalize only a few segregated schools, which would then slip back into inequality. Therefore, separation had to end for blacks ever to enjoy the same education as whites.

A major debate among black leadership in 1935 considered alternatives and came to the same conclusion. It addressed whether to follow W.E.B. Du Bois, who argued for equalizing segre-

gated buildings, libraries, teaching staff, and the like,[4] or to seek integration, as urged by Charles Thompson, dean of the Graduate School of Education at Howard University. Du Bois argued that black children would be unwelcome and ill treated by white teachers and classmates, and he believed that black schools would be more nurturing. Thompson disagreed. He thought that black schools and white schools were equally capable of being hospitable or unfriendly. He argued, as did Margold, that equalization of segregated facilities would be difficult to achieve and, if ever achieved, could not be maintained. There were insufficient resources to keep equalizing thousands of schools continuously. More important, even if schools were equalized in physical facilities, segregation isolates minorities from power and prestige and thus diminishes a sense of one's own worth. The NAACP, which was the dominant black leadership group, chose the path of seeking integration.

In the United States today, we can look back on a half century during which segregation has been unconstitutional and many schools have been desegregated, although often under far from ideal conditions. Over the same time, some minority-populated school systems have been equalized in terms of budgets and physical facilities. The overall record under desegregation has been one of clear improvement of education in formerly segregated systems, but there has been a struggle to maintain equality as schools are now becoming more segregated. Equalization between resources provided to minority urban schoolchildren and those for students in white suburbs has rarely been achieved. Where it has occurred, as in Detroit and Kansas City, there has been no demonstration of better educational outcomes. Usually, when courts have ordered equalization of measurable physical facilities, legislatures have not appropriated the funds, or they have been dilatory and have not appropriated enough. As it has been difficult to maintain integration, it also has been difficult to impossible to achieve equality of funding and facilities between urban (mainly black) and suburban (mainly white) schools.[5] In recent years, proponents of better education and educational equality have created or proposed creative measures.

2. *Plessy v. Ferguson* and the Destruction of Reconstruction

Plessy dealt with segregation in railroad cars, but it was written expansively enough to encompass all of life, includ-

ing education. Indeed, in upholding a law that required segregation in railroad cars, the Supreme Court cited cases that upheld segregated schools as constitutional and spoke of a difference that it had conceived of between "social" and "political" rights. *Plessy* sealed into constitutional law the end of Reconstruction,[6] the earlier political effort of the post–Civil War Congress to admit African-Americans to full citizenship and participation in American society.

Plessy was not an abstract constitutional decision; it had real consequences. It imbedded dominant political values of its time into the life of the nation. In an extremely close election in 1876, the Republican Rutherford B. Hayes had defeated the Democrat Samuel J. Tilden, even though Tilden received more popular votes and, scholars now generally believe, should have been awarded the majority of electoral votes. In order to resolve the disputed election outcomes in three Southern states, Hayes promised Southerners that in exchange for their electoral votes, he would remove Northern troops from the occupied South and direct federal funds toward that region to assist in its recovery from defeat in the Civil War. Historians believe that the Compromise of 1877 accepted his Southern supporters' theft of the election for Hayes. After he took office, Hayes removed Northern troops and invested in the region as promised. Segregation, which had not been ubiquitous during the decade of Reconstruction, spread throughout the South.[7] By the time *Plessy* was decided, the majority opinion expressed the standards of the white world in which the justices lived: the Fourteenth Amendment "in the nature of things could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguishable from political equality, or a commingling of two races upon terms unsatisfactory to either."[8]

Constitutional law in the United States is derived from text, history, precedent, and other conventional legal sources. But when the law is vague, as in a phrase susceptible to various meanings such as "equal protection of the laws," the Court often implicitly factors into decision-making its assessment of the spirit of the times. Plessy's lawyers knew it and made futile, ineffectual moves to counteract the anti-egalitarian ethos of the post-Reconstruction period, such as starting a newspaper dedicated to changing public opinion, but predictably they failed.[9] *Brown* was argued in times far more sympathetic to its aspirations than was *Plessy*. By the time of *Brown,* the world had been through World War II; segregation was compromising Ameri-

can foreign policy concerns about the Cold War and colonialism; and the Supreme Court already had struck down segregation in higher education, though nominally under the separate-but-equal rubric. Demographics and politics disposed the Court, if not yet the country, to aspire to ending segregation. The lawyers who argued *Brown* made a compelling case based on precedent and conventional legal sources—but for all their persuasiveness, they would have lost *Plessy*. On the other hand, the lawyers who represented *Plessy* could have won *Brown*. There was nothing the lawyers could have said or written that could have won them the case in *Plessy* at the time and in the political climate it was decided.

3. *Brown v. Board of Education: Plessy* overthrown

By 1954, the values of a large part of the country, and indeed the world, had changed from those that prevailed in 1896. "Equal protection of the laws" in 1954 had to be redefined in the light of World War II, the Holocaust, the dawn of black political power, the Cold War, the waning years of colonialism, and a new age of egalitarianism. *Brown* embodied that transition. At the same time, it did not, and did not have the power to, completely sever itself from the past. It recognized that past in the second *Brown* decision, decided in 1955. *Brown II* provided for desegregation "with all deliberate speed."[9] These four words provided the flexibility for those who would be implementing the *Brown* decision to delay or neglect their duties under the Court's decision. The "all deliberate speed" doctrine did not cause lingering racism, but surely recognized its existence.

Just as law caught up with the times in 1954, the world continued to change. Fifty years after *Brown,* the United States has become a very different place for African-Americans and, indeed, everyone. *Brown* gave rise to the civil rights movement of the 1960s. In 1969, the Court overruled *Brown II* in *Alexander v. Holmes County Board of Education*.[11] *Alexander* expunged "all deliberate speed" from the vocabulary of desegregation. The 1970s were an early period of an era of expanding rights, not only for blacks but also for women, our many ethnicities, the disabled, older persons, those of different sexual orientation, and other groupings. Nevertheless, the world has not become *completely* different. The legacy of slavery and segregation hangs on and continues to work its influence, not least in education.

The nearness of our time to the era of *Plessy* may be illustrated if one were to

consider the life of a black boy or girl following *Alexander*. Born in 1964 in the South, where most blacks lived, that child would have entered desegregated first grade in 1970, when six years old. (This is, indeed, an assumption; in fact, relatively few blacks entered desegregated schools as early as 1970.) High school graduation followed twelve years later, in 1982, at age eighteen. Four years of college and, say, three years of professional school later, the person would be twenty-five. Assume that our subject has a child two years later, in 1991. That child would be twelve years old and in sixth grade now, not likely to be immune from the parent's formative past. For this typical African-American, we are not much more than one educational generation removed from when most blacks lived under apartheid.

4. Was "all deliberate speed" responsible for the delay?

Southern opposition to *Brown* was so intense that, while it is impossible to know for sure, many claim that had the Court ordered immediate desegregation, the result would not have been very different. A small number of school districts did have token integration after 1954. A few others might have integrated if the Court had said "immediate." But *Brown II* implicitly acknowledged what had become manifest in 1954. The range and bitterness of the attacks on the Court were immense: one hundred—all but three—of the U.S. senators and representatives from the South signed the Congressional Manifesto that denounced the Supreme Court; "Impeach Earl Warren" campaigns against the chief justice became popular; State Sovereignty Commissions were created to oppose federal intervention; state and even federal judges and state attorneys general denounced the Court's rulings; school closings and pupil assignment laws raised impassable procedural obstacles to integration; civil rights organizations and civil rights lawyers were prosecuted, and efforts were made to disbar some of civil rights attorneys. All these forms of resistance and protest challenged the legitimacy of the courts and the *Brown* decision.

When, notwithstanding this onslaught, a black person or the black community demanded integration, as some did, rarely was there a way to achieve it. Southern school districts did not integrate voluntarily. Southern white lawyers would not file integration suits, for fear of reprisal. Northern white lawyers were not interested. Black lawyers in any part of the

country were few and far between; in some southern states there was only one, and in no southern state was there more than a handful. The Department of Justice had no power to bring desegregation suits. Many southern judges, federal and state alike, were racists. The Supreme Court was isolated. There was little effective national support. The NAACP Legal Defense Fund soldiered on, but it had only about six staff lawyers as well as the few southern black lawyers who worked with the organization as cooperating attorneys.[12]

Although President Dwight D. Eisenhower never issued a formal statement in opposition and, indeed, insisted that all Americans must obey the law, he made clear his distaste for the *Brown* decision. The last gasp of physical resistance to elementary and high school desegregation occurred in 1957 in the Little Rock school case in Arkansas.[13] Eisenhower called upon federal troops to quell armed opposition to the court order requiring Little Rock High School to admit (a number that was ultimately reduced to) nine black students.[14] To the president, ultimately, it was more important that the law be obeyed than that white southern racial social mores be upheld.

In 1960, presidential candidate John F. Kennedy aligned himself with the Court and endorsed *Brown*. Yet during his presidency, violent opposition flared up sporadically, as with resistance at the University of Mississippi to the admission of James Meredith in 1962, and similar resistance at the University of Alabama in 1963.[15]

Inspired by *Brown,* the civil rights movement eventually moved Congress to join the president and the Court by passing the Civil Rights Acts of 1964 and 1965. Then all three branches of the federal government spoke with a single voice against racial discrimination. The Court expressed this national consensus by issuing orders in the late 1960s and early 1970s that implemented the precepts of 1954. The early 1970s then saw a surge in school integration throughout the South.[16]

Historians may debate whether without *Brown* the changes African-Americans experienced would have occurred at that time, how they might have been brought about, or whether they would have arrived later. But there is no question that without *Brown,* the civil rights movement would not have occurred when it did and perhaps not in the form it took. We do know that the line of descent from *Brown* to the movement and to the Civil Rights Acts is clear. Dr. Martin Luther King Jr. held a prayer pilgrimage annually on May 17, the anniversary of *Brown*. The first Freedom Rides, start-

ing in Memphis, were scheduled for arrival in New Orleans on May 17. The first sit-in demonstrators cited *Brown* as their inspiration. Rosa Parks and her husband were NAACP officials, steeped in the significance of *Brown,* when she precipitated the Montgomery bus boycott in Alabama.[17] Dr. King's support of that boycott invoked the Supreme Court. The boycott finally succeeded when a court order, based on *Brown,* prohibited enforcing the bus segregation law that the boycott protested.[18] The boycott might not have succeeded without that court order.

The Supreme Court made clear that *Brown* covered the world beyond elementary and high schools. Shortly after *Brown,* the Court prohibited segregation in higher education and in a park, a theater, and a golf course, citing *Brown.*[19] Still, passive resistance and stalling litigation ensured that the *status quo* would pretty much persist for another decade.

5. Desegregation following the Civil Rights Acts

In the 1970s, the federal government promoted a substantial level of school integration through Title VI of the 1964 Civil Rights Act, which prohibits discrimination in activities that receive federal funds. Desegregation law evolved to set the stage for many of the dilemmas of public education that confront the country today. How to desegregate school systems in rural areas and small towns was not complicated; there were not many children and not many schools. In rural areas, residences were not severely segregated; in towns, there were few schools and often not a great distance between where blacks and whites lived. Integration often could be achieved simply by assigning children to schools nearest their homes, sometimes referred to as a neighborhood school policy. But in areas of residential segregation, typical of larger cities, a neighborhood school policy translated into school segregation. Something more would be necessary if black and white children were to attend school together.

The Supreme Court, in *Swann v. Charlotte-Mecklenburg Board of Education*[20] in 1971, approved a model for integration in such situations through "pairing" or "clustering" schools. A school in a white residential area might be designated to contain, for example, grades one through three. A "paired" school in a black residential area might contain grades four through six. Black children would attend grades one through three with white children who lived near the white neighborhood school; white children would attend

grades four through six with black children from the neighborhood of the black school. All grades in both schools, therefore, would be integrated.

This technique gave rise to other issues. Which schools and grades should be paired? What proportion of blacks and whites should be assigned to each school? How should the students travel to school? What if, despite pairing schools, the system ended up with some all-black or all-white schools? What if an assignment scheme were to integrate schools but then shifts in residential patterns were to re-segregate them? How long should such assignments and possible re-assignments continue?

The Supreme Court held that school authorities in Charlotte, North Carolina, had the affirmative duty to take whatever steps might be "necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."[21] Using pairing as a means of integrating, it prescribed, though it did not require, a quota of black and white children for each school, which would approximate the black-white school population ratio: "School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole."[22] The Court approved busing for children to attend schools out of their neighborhoods, noting that, nationally, busing was a common way of traveling to school, although sometimes the trip might be onerous and would have to be limited. As a consequence, some all-black or all-white schools might result, which would be tolerated. As populations shifted, plans might have to be rewritten to maintain desegregation.

In their conference following the *Swann* argument, a majority of the justices, Chief Justice Warren Burger among them, at first disapproved such affirmative action as a means of desegregation. But with further discussion, the justices other than Burger concluded that pairing, busing, and quotas were appropriate for desegregating schools. Had Burger chosen to dissent, he would not have been able to assign the writing of the opinion. He therefore joined the majority, creating unanimity and retaining the power to assign the opinion. In fact, he was able to write into the opinion specific passages within which lie the seeds of returning desegregated systems to segregation.[23]

His opinion observed that systems would become unitary someday, and judicial supervision should then come to an

end. A unitary system would be one in which no vestiges of segregation remained, although the meaning of "vestiges" has not yet been well defined. In effect, however, it means that where a school system has integrated by pairing and busing, and segregated practices no longer exist, a court could conclude that vestiges of segregation no longer exist. Then the court order may be dissolved and, if the school system so chose, busing would end. Unless housing also had become desegregated, of course, a neighborhood school system then would return to segregation. But since the segregation at that point would not be attributable to the state (although, realistically, the state's influence surely was there), the segregation would not be unconstitutional. Indeed, desegregation is now eroding in conformity with the final passages of *Swann.*

With some exceptions, school systems throughout the South instituted *Swann*-type plans. Not long after deciding *Swann,* the Supreme Court made clear that *Brown* also applied to northern school systems, even though they had not been segregated by statute. In *Keyes v. School District No. 1, Denver,*[24] the Court decided that although the equal protection clause applied only where the state had made racial distinctions, school board or administrative decisions that brought about segregation also warranted the requirement to desegregate; it was not necessary for the segregation to have been created by statute. Moreover, a school board that segregated in some part of its system created a presumption that it had produced racial segregation elsewhere. Based upon the "*Keyes* presumption," courts required the desegregation of many northern school systems.

6. The Court confines integration within district boundaries

In metropolitan areas both north and south, most blacks are concentrated in separate neighborhoods in center-city school districts, while whites live on the periphery or in suburban school districts. While some states, such as Florida and North Carolina, may include both the city and suburbs in a single school district, most district boundaries separate city and suburbs and blacks from whites. Ordinarily, therefore, metropolitan area children (often all or mainly black) cannot be desegregated without busing between city and suburbs. But in 1974, the Supreme Court, in *Milliken v. Bradley,*[25] held that courts have no power to impose desegregation remedies across the dividing line between districts unless city and

BROWN V. BOARD OF EDUCATION, 347 U.S. 483 (1954) [BROWN I]

[excerpts]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson.* Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later

professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

To separate [students] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

"Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

Whatever may have been the extent of psychological knowledge at the time of *Plessy* v. *Ferguson,* this finding is amply supported by modern authority. Any language in *Plessy* v. *Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment.

It is so ordered.

Brief Summary of *Brown v. Board of Education*, 349 U.S. 294 (1955) [*Brown II*]

- The Court held that school authorities have the primary responsibility for identifying and solving problems in the schools. The courts are the bodies which will determine whether the action of the local school authorities is actually an implementation of governing constitutional principles.
- The Court recognized that in order for the plaintiffs to gain admission to public schools on a nondiscriminatory basis (as ruled in the first *Brown* case [May 17, 1954]), certain obstacles must be removed. "[T]he courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." Courts were allowed to consider problems such as transportation, revision of local laws, and personnel to determine whether more time was needed to desegregate.
- The Supreme Court ruled that the lower courts were responsible for giving orders and making rules which "are necessary and proper to admit [the plaintiffs] to public schools on a racially nondiscriminatory basis *with all deliberate speed*" [emphasis added].

suburban districts had collaborated in creating or maintaining segregation. (An example would be a situation in which the white suburbs allowed urban white students to transfer to suburban schools while allowing suburban black students to transfer to city schools.)

Among obstacles proffered by opponents of inter-district desegregation were that parents have less political influence with remote boards in a different political jurisdiction; distance is an impediment to participating in school activities; and budgets would become difficult to allocate and administer. It appears that in response to such

objections, and conforming to the desires of many suburban dwellers to insulate themselves from minority school populations, the Court confined desegregation within metropolitan districts because the metropolitan districts had populations that were largely black, the Court's ruling led to little or no desegregation at all. "Inter-district violations" that justify "inter-district remedies" have been rare. City schools, therefore, usually end up all or preponderantly black.

Not long after *Milliken* was decided, in a second decision, *Milliken II*,[26] the Supreme Court required the state to compensate city schools that had been segregated, and which had suffered from underfunding related to the segregation, in order to bring them to parity with whites. This was a remedy for segregation that did not take the form of requiring desegregation. It amounted to attempts to equalize where desegregation was not legally feasible. The remedy of appropriating funds instead of desegregating took this form in *Jenkins v. Missouri*.[27] The *Jenkins* decision was that the Kansas City schools had suffered from state-imposed segregation, but that the suburbs had not been complicit in bringing it about. Since there was no inter-district violation, there could be no inter-district remedy of desegregation. But the trial court did order the state to appropriate increased funding for city schools to make up for inadequate state funding during years of segregation under a state segregation statute. The District Court also viewed increased funding as a way to enhance the city schools so that they might attract suburban students, and it called this "desegregative attractiveness." Pursuant to this order, the state spent $1.5 billion on city schools. This approach to equalization of funding was terminated in 1996 when the Supreme Court held that the federal courts had no power to promote "desegregative attractiveness."[28]

The ultimate outcome of the desegregation decisions, from *Brown* to today, is that courts continue to require desegregation in a diminishing number of systems. To the extent that suburbs become whiter and cities become blacker, desegregation becomes less and less feasible. To the extent that desegregation has been successful, systems may be declared "unitary." When that happens, desegregation decrees may be dissolved, and systems will continue to return to segregation. In metropolitan areas, where housing segregation creates school segregation, and there are separate city and suburban school districts, an increasing number of black

children go to school only with black children or with few white children. White children go to school mainly with white children. The city boundary has become a racial boundary for school assignment, except in rare instances where courts have found an "inter-district violation."

7. Europe's approach to segregation

Countries in Central and Eastern Europe have also been forced to address grave inequalities in their educational systems over the past decade. The Romani (Gypsy) population is currently experiencing discrimination and segregation in education at levels that rival the American South prior to *Brown*. It is common for Romani children to be forced into separate schools, separate classrooms, and schools for the mentally disabled. Many Romani children are forced out of the education system entirely through new policies on "home schooling"—a schooling option designed for the especially gifted, but used most often for students who misbehave in the classroom. The segregation of the Roma is only exacerbated by the racism and discrimination that exists inside the schools and classrooms themselves. Teachers often have lower achievement expectations for Romani students, and they often design curricula that are irrelevant to local employment opportunities. Since the fall of communism, the inequalities in all spheres of life—and especially education—have become more pronounced. Government and non-governmental initiatives aimed at integrating schools are now becoming a reality throughout this region.

In Bulgaria, for example, a local non-governmental desegregation initiative in the small town of Vidin has grown to include seven cities and towns (including the capital of Sofia) and is providing a model for many other desegregation programs in the region. Educational advocacy organizations are conducting studies showing that the vast majority of Romani students channeled to schools for the mentally disabled are inappropriately placed there. Domestic and international advocacy efforts have been effective in pushing governments to recognize the importance of equal education for all students and to take remedial action.

All over Europe, people look to their governments to provide more than just police, courts, and the protection of property rights. Human

rights organizations, however, are beginning to look instead to strategic litigation in domestic and regional courts (such as the European Court of Human Rights) to redress discrimination and inequality in education.[29] But litigation cannot be the entire solution. The legal culture and role of the judiciary in Europe require that litigation be supplemented by, and in most cases remain secondary to, local and national initiatives that combine educational programming, community outreach, and social support in the effort to integrate schools. The human rights approach throughout Europe is reflective of a more holistic approach to legal protection.

Although the original movements toward desegregation in the United States were very different from those taking place now in Central and Eastern Europe, the United States would be wise to look to Europe as a possible model in developing innovative approaches to integrating American schools. In the 1950s, segregation was ripe for litigation since government policies dictated that African-Americans and whites study separately in American schools and universities. In today's world, the causes of segregation in our schools are more subtle and reflect growing economic inequalities that run along racial and ethnic lines. In looking beyond the traditional approach to desegregation, one may realize that litigation alone can no longer be the whole solution. Litigation must be one component of a more comprehensive approach to school integration. Any true solution to the issue of re-segregation must consider all relevant factors, including residential segregation, discrimination, and the role of pedagogical models in racially and ethnically diverse classrooms.

8. Conclusion

A half century after *Brown v. Board of Education,* the United States is a vastly better country than it was in 1954. *Brown* served first and foremost to smash a Berlin Wall of apartheid that confined African-Americans in an oppressive regime. The Reconstruction following that liberation continues, not least in the realm of education. The gains have been immense. But vestiges of past years remain at all levels. Indeed, they not only retain force but have been reasserting themselves, particularly at the elementary and high school levels. There are some signs of new approaches to educational equality, but they are too new to gauge how

effective they will be. A recent victory for affirmative action in higher education[30] soon will be attacked again, not only in the courts but politically. While the advances of years past are too deeply entrenched ever to be reversed, the front remains uneven; progress in one realm does not readily translate into another. Attaining equality has been a struggle throughout our history, but our experience and sharpened vision must be the guide as the struggle continues.

NOTES

1 Portions of this article were adapted from Jack Greenberg's article to be published in The Right Side of History, Lessons from Brown, Southern Education Foundation (2004).

2 163 U.S. 537 (1896).

3 The report, completed in 1931, was financed by the Garland Fund and conducted by Nathan Ross Margold.

4 See the debate between W.E.B. Du Bois and Charles Thompson in the 1935 Journal of Negro Education: W.E.B. Du Bois, *Does the Negro Need Separate Schools?*, 4/3 J. Negro Educ. 328 (July 1935); C.H. Thompson, *Court Action the Only Reasonable Alternative to Remedy Immediate Abuses of the Negro Separate School*, 4/3 J. Negro Educ. 419 (July 1935).

5 See Adam Cohen, *The Supreme Struggle*, New York Times, January 18, 2004.

6 Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877* (Perennial, 2002).

7 See C. Vann Woodward, *The Strange Career of Jim Crow* (2001); Lonnae O'Neal Parker, *Days of Jim Crow*, Washington Post, February 9, 2002, at C01.

8 *Plessy*, 163 U.S. at 544.

9 Charles A. Lofgren, *The Plessy Case* (Oxford University Press, 1987).

10 *Brown v. Board of Education*, 349 U.S. 294 (1955).

11 396 U.S. 1218 (1969).

12 Generally, see Jack Greenberg, *Crusaders in the Courts* (Basic Books, 1994).

13 *Cooper v. Aaron*, 358 U.S. 1 (1958).

14 Ibid.

15 See *Meredith v. Fair*, 328 F.2d 586 (5th Cir. 1962); *Lucy v. Adams,* 8 Race Relations Law Reporter 452 (1963); E. Culpepper Clark, *Schoolhouse Door: Segregation's Last Stand at the University of Alabama* (Oxford University Press, 1993).

16 See, e.g., *Green v. New Kent County School*

Board, 391 U.S. 430 (1968); *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

17 Jack Greenberg, *Crusaders in the Courts* (Basic Books, 1994); *Eyes on the Prize*.

18 *Gayle v. Browder,* 352 U.S. 903 (1956).

19 See *City of New Orleans v. Barthe*, 376 U.S. 189 (1964) (parks and playgrounds); *Holmes v. City of Atlanta*, 350 U.S. 879 (1955) (golf course); *Mayor and City Council of Baltimore City v. Dawson*, 350 U.S. 877 (1955) (beach).

20 402 U.S. 1 (1971).

21 *Green v. County School Board*, 391 U.S. 430 (1968).

22 402 U.S. at 16.

23 See *Crusaders in the Court* (Basic Books, 1994), p. 389.

24 413 U.S. 189 (1973).

25 418 U.S. 717 (1974).

26 *Milliken v. Bradley*, 433 U.S. 267 (1977).

27 515 U.S. 70 (1995).

28 *Missouri et. al. v. Jenkins et. al.*, 515 U.S. 70 (1995).

29 A case is currently pending before the European Court of Human Rights on the issue of segregation in schools in the Czech Republic city of Ostrava.

30 *Gruter v. Bollinger,* 123 S. Ct. 2325 (2003).

Two

Segregation and Anti-discrimination Law and Policy

A Brief Overview: European Legislative Framework for Anti-discrimination Policies

by Maxine Sleeper

1. Council of Europe and the European Union: Progress and limits

Both the Council of Europe and the European Union have made great strides in protecting minorities and combating discrimination. The emphasis on human rights and principles of anti-discrimination within the laws of the EU indicate a movement toward a vision of the European Union as a guarantor not just of economic integration, but also of fundamental human and social rights. In 1999, the Treaty of Amsterdam went into effect, creating two new important provisions in the founding treaties of the European Commission. Article 13 provided the EU Council with the legal competence to take "appropriate measures to combat discrimination based on sex, racial, or ethnic origin, religion, belief, disability, age or sexual orientation." In addition, Article 29 was amended to specify that one of the key objectives of European police and judicial cooperation is to prevent and combat racism. The European Charter on Fundamental Rights also indicates a departure from the economic orientation of European integration. The strength of its provisions, however, is severely limited by its nonbinding status. Human rights advocates around the region must now encourage the governing bodies of the EU to see this vision through, ensuring its implementation and

adequate enforcement on a national level. The enlargement of the European Union holds great promise for national policies against discrimination throughout Central and Eastern Europe.

1.1 Race Equality Directive

Perhaps the most significant development in EU law, the Race Equality Directive forbids discrimination on the grounds of racial or ethnic origin, in areas such as employment, education, and provision of social benefits and goods and services, including housing. The directive requires member states to adopt domestic anti-discrimination laws and to enforce these laws with enforcement bodies. The directive is most significant and innovative in its provisions on remedies and enforcement. It allows for claims by organizations, as long as they have a "legitimate interest" in the claim. In addition, the directive calls for a shifting of the burden of proof to the respondent where "facts from which it may be presumed that there has been direct or indirect discrimination" are established.[1] The directive also calls for states to create or designate bodies dedicated to the promotion of equal treatment. However, it fails to provide guarantees against discrimination in criminal justice. This is a particularly significant weakness because criminal justice represents an area where discrimination, especially on the grounds of race and ethnicity, is rampant and possibly most harmful.

1.2 Employment Directive

Also arising out of Article 13 of the Amsterdam Treaty, the European Union Employment Directive seeks to present a framework for combating discrimination on the grounds of religion, belief, disability, age, or sexual orientation as regards employment and occupation. This directive also specifically refers to direct and indirect discrimination. The provisions of this directive must also be incorporated into domestic law and must be backed by effective judicial and/or administrative procedures available to all persons. Like the Race Equality Directive, this Employment Directive calls for the burden of proof to fall on the respondent, and it also allows for organizations or associations to bring claims as long as they have a "legitimate interest." The directive may prove to be especially useful in promoting equal rights because, as mentioned above, discrimination in employment, com-

bined with high levels of unemployment, is a common factor contributing to poverty, marginalization, and social isolation of many vulnerable groups.

1.3 Protocol 12

This addition to the European Convention on Human Rights makes up for one of the inherent weaknesses of the Convention by providing an independent right to non-discrimination. Prior to the adoption of Protocol 12, claims of discrimination could be brought only under Article 14 and had to have been made in connection with a violation of another right provided in the Convention. Protocol 12 is far more comprehensive than Article 14 in the range of grounds of discrimination to which it applies. These grounds include sex, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status. This list is not exhaustive, by virtue of the phrase "any ground such as" in the article. But Protocol 12 has not yet entered into force. It requires ratification by ten member states for entry into force. As of December 2003, only five countries had ratified the protocol.

These recent developments within the European legal context are especially important for countries within the Council of Europe and seeking accession to the European Union.

2. Implementation of anti-discrimination laws

Perhaps the greatest challenge in incorporating regional and international norms into a domestic framework is in the enforcement and implementation of these laws. Countries may force through their parliament some type of palliative law that satisfies the requirement that countries acceding to the European Union harmonize their legislation with the *acquis communitaire*, but fails to provide real remedies or to make significant progress in the area of anti-discrimination.

Implementation will depend largely on adequate funding and political will. Central and Eastern European countries have benefited from PHARE assistance, but more assistance must be dedicated specifically to the area of "institution building." can help develop the political and societal will that is necessary to transform the law reform into reality.

3. Importance of anti-discrimination laws in fighting segregation in education

The adoption of anti-discrimination laws provides an important legal framework for progress in fighting segregation. With an increase in both advocacy and litigation strategies for raising awareness of, and providing remedy for, segregation in education, comprehensive anti-discrimination legislation arms lawyers and advocates with the necessary tools for bringing complaints or cases. Strategic litigation has been an important avenue for law reform and the adequate implementation of already existing laws in many countries around the world. The growing jurisprudence related to discrimination in education on both the national and international levels throughout Europe gives a clear indication of the importance of comprehensive anti-discrimination legislation in combating this evil. These legal strategies can be effective, however, only when national laws are adequately and fully enforced. Specialized bodies that are designed to prevent or punish acts of discrimination are an essential part of any national enforcement mechanism. The following articles present an analysis of anti-discrimination laws and enforcement bodies in various contexts. The success of these bodies depends greatly on adequate funding, political will, and independence from government influence.

Notes

1 European Union Directive 2000/43/EC of 29 June 2000, on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

2005-2015: The Decade of Roma Inclusion

Next year will mark the beginning of the Decade of Roma Inclusion, *an initiative endorsed by the World Bank, Open Society Institute and the governments of Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Montenegro, and Slovakia. This initiative seeks to accelerate progress in improving the social inclusion and economic status of the Roma population throughout Europe. The* Decade of Roma Inclusion *will create a coordinated framework for action involving the development and implementation of national action plans to achieve specific targets for improvement, and regular monitoring of progress toward these target goals. Among the expected benefits of this initiative, and a key to its success, is the improved efficiency of action plans through information networks about which actions are most effective, most replicable, and most sustainable in promoting social inclusion of the Roma population. In an effort to devote significant resources to the problems of discrimination and segregation in education, a complementary initiative has been proposed:* The Roma Education Fund. *This fund will provide additional financing for initiatives that aim to improve the educational status and performance of the Roma population in Central and Eastern Europe.*

The following is a re-print of "Roma Education Fund: A Concept Note" in Roma in an Expanding Europe: Challenges for the Future *from the World Bank and Soros Foundation conference in Budapest, Hungary, June 30-July 1, 2003.*

Roma Education Fund

Rationale

Roma, or Gypsies, are a unique minority in Europe. Unlike other ethnic groups, Roma have not settled in a single land and are found in nearly all countries in Europe and Central Asia (ECA). Current estimates suggest that between 7 and 9 million Roma live throughout Europe, making them the largest minority in Europe. The collapse of the socialist regimes in Central and Eastern Europe (CEE) created new opportunities for all citizens, including Roma. For the first time in decades, minorities were able to

express their ethnic identity, participate in civil society, and engage in previously forbidden economic activities. However, these gains have been offset by a dramatic reduction in opportunities in many respects. For many Roma, the collapse of the socialist state has led to an erosion of security in jobs, housing and other services, and in the absence of viable economic opportunities. A consequence for many Roma families is severe poverty.

A new World Bank report on Roma in Central and Eastern Europe[1] identified Roma as one of the main poverty risk groups in the region. Roma are both poorer than other population groups, and more likely to fall into poverty and to remain poor. The roots of Roma poverty are intertwined with many of the factors which are correlated with poverty throughout the region– including low education levels, unemployment, and large family sizes. Roma children are far less likely than non-Roma children to complete the compulsory cycle, to progress to secondary and higher education, and to perform at satisfactory levels. In Serbia, for example, only one third of Roma children complete primary school.[2] Most do not start school at all, or drop out in the initial two or three years. Surveys from Bulgaria, Hungary and Romania show a roughly similar pattern: Enrollment rates among primary-school aged Roma children are 20% to 33% percent lower than among non-Roma children, and dropout rates at the end of the primary cycle are more than twice as high for Roma children than for non-Roma children.[3] High drop-out rates become especially critical at key "breaking points" within the school cycle, such as moving from primary to middle school and on to secondary school. Inadequate school participation, combined with the fact that a relatively high proportion of the population is in the primary-school age group[4], suggests that there are between 500,000 and 750,000 Roma children of primary-school age in the accession countries who are not attending school.

There are many reasons for this dismal performance. Many Roma families lack legal status and are therefore denied access to schools, health care, and other services. Many Roma parents are illiterate and often do not appreciate the importance of education as a means for improving their situation. Low income makes it difficult for most Roma households to purchase the textbooks and other school supplies that parents are

expected to provide. Roma children often work in the informal sector to supplement meager family income. Many Roma children do not have a reasonable command of any of the languages of instruction in schools. (Although minority-language programs are available for other ethnic minorities in the accession countries, no such programs exist for Roma children.) Roma often marry and start childbearing at a very early age – as early as age 12. Of those Roma children who do complete primary school, few attend secondary school or go on to university education.

Moreover, Roma education is usually separate and unequal education. Roma children are often taught in schools or classrooms that are effectively segregated, and where instruction is substandard because facilities and teaching materials are substandard, teachers are less well trained, and teachers and principals have lower performance expectations than for other students. Roma children who do attend primary school are often stigmatized by being assigned to schools for the mentally or physically disabled, because of their lack of command of the majority language and other educational handicaps resulting from their environment rather than from innate limitations.

There are a number of targeted programs under implementation in the CEE countries – most of them NGO supported — which aim to prepare Roma children for successful school participation. These efforts involve a range of interventions to help overcome the educational and economic handicaps of Roma households. They include preschool education (such as OSI's child-centered *Step-by-Step* program), programs to involve parents in the work of schools, legal registry for Roma households, school lunches, provision of school clothing and educational materials, support for financial incentives to schools which attract and retain Roma students, catch-up classes and tutoring for Roma students, special training for teachers of Roma children, provision of language and culture mediators in schools with Roma students, and offering of optional Romany language and culture classes. Some of these initiatives have been remarkably successful in raising Roma enrollments and school performance. For example, the following results are cited for a preschool program for Roma children in Serbia:

"When programs are highly structured and involve the commitment of the Roma community using

child-centered learning methodologies, the results are impressive. For example, evaluations from the work carried out with technical support form the Center for Interactive Pedagogy (CIP) show impressive results. The program implemented in collaboration with Roma Associations provides a comprehensive preschool experience for children between 3-7 years and includes educational learning activities, attention to health and hygiene, family partition and local community involvement. Follow-up school achievement data indicated that 100% of children who had attended the kindergarten completed the school entry exam. 97.3% of children participating in the program as compared to 33.3% who did not, were competent in the Serbian language, and 99% had regular school attendance as compared to 44.6%. of children who did not attend. Moreover, of those children who attended, 99.8% completed first grade compared to 40% of the children who did not have previous kindergarten experiences"[5]

A generic problem with existing programs which aim to improve Roma educational performance is the lack of a mechanism for scaling up and influencing policy. Most of these initiatives are isolated, small programs, initiated by NGOs with very modest resources. They are, in effect, pilot projects. The collective experience of these pilot projects could make a valuable contribution by informing education policy development and by influencing systemic changes in education programs to provide sustainable benefits to the Roma population. But the potential payoff of these experiments has not been exploited because there is no systematic mechanism to evaluate the lessons of these small-scale initiatives and, where appropriate, to implement them on a larger scale. Instead, they tend to remain isolated initiatives in which the whole – in terms of educational benefits for the Roma community – amount to less than the sum of the parts. Moreover, the benefits of these initiatives are fragile; implementation often ends when external funding runs out, however successful they have been in meeting their objectives.

Larger-scale implementation is also hampered by the fact that some educational pilot projects for the Roma population may not be fully compatible with prevailing policies and constraints, and do not include features that would make them compatible with prevailing policies and constraints. An example is that some of the approaches to successful integration of Roma students involve additional school staff (such as

tutors or mediators), yet many of the education systems in the region are under growing pressure to reduce school staffing. Rarely are pilot projects subjected to cost-effectiveness analysis to establish whether the costs of larger scale implementation would be sustainable under prevailing national and local constraints. Another problem is that educational initiatives designed to benefit the Roma population often do not affect education policy because they are conceived and implemented outside the framework for national policy development, and often aim to achieve objectives which differ from the objectives of the national education program. A disconnect between expectations at the local and national levels often weakens national policy development and/or isolates worthwhile initiatives at the local, community or school level. In such an environment, the probability that pilot education initiatives designed for the Roma population would be scaled up to the regional or national levels will depend on the extent to which the national strategy (i) is built on the lessons of experience at the local level and (ii) includes explicit targets for educational achievement by Roma and other minorities.

Objective

To address these problems in scaling up successful pilot projects to improve the educational performance of the Roma population, two activities are proposed: the *Roma Education Fund* (described in this concept note), and the *Decade of Roma Inclusion* (described in a separate concept note). The objective of the proposed Roma Education Fund is to improve the sustainability of initiatives to improve the educational status and performance of the Roma population in Central and Eastern Europe by providing additional finance for programs that will help reduce the gap in access to quality education between Roma and non-Roma and for which effective demand has been demonstrated to exist. The objective of the proposed Decade of Roma Inclusion is to accelerate and raise the profile of actions to improve the economic status and social integration of the Roma population in the CEE countries by developing appropriate performance targets and policies to achieve those objectives, and by monitoring performance in meeting them.

Activities to Be Supported by the Roma Education Fund

The Fund would promote this objective by supporting activities that embrace the whole lifecycle of education, ranging from interventions at the pre-school level through primary, secondary and higher education, including adult education. Three kinds of activities would be supported by the Fund:

- Implementation of pilot projects designed to improve educational performance[6] and inclusion of the Roma population in the CEE countries, with special attention to measures to help ensure sustainability, and support for scaling up worthwhile pilot projects,

- Independent evaluation of the educational outcomes of these and other initiatives designed to improve educational performance and inclusion of the Roma population,

- Dissemination, consensus-building, and policy development activities aimed at reflecting the lessons of this experience in the design of national education policies. This could include, for example, feasibility studies and other analyses of evaluation findings to examine their broader applicability for education policy, seminars for policymakers and stakeholders on which approaches for improving Roma inclusion and educational performance work best and are most appropriate in particular settings, and technical assistance to support policy development actions such as drafting legislation.

How the Fund Would Operate

The Roma Education Fund would make competitive grants for activities in each of the three areas described above. Individual grants would be limited in amount, and criteria would be established for evaluating grant proposals. These criteria would help ensure that the proposed activities promote the sustainability objective of the Fund. These criteria might include, for example, giving priority to pilot projects which

demonstrate cost-sharing, which are supported by cost-effectiveness analysis, which are aligned with specific objectives of national education policy, and which demonstrate agreed cooperation arrangements between national government, local government, and NGOs. Further work would be carried out in the course of preparing the Fund's more detailed technical blueprint, in order to determine the full set of activities that the Fund would support, not only at the school and community level, but also at the level of national and local government.

In order to encourage creativity in the design of educational initiatives, and to ensure that interventions can effectively address both demand and supply side issues, the range of eligible expenditures would be broad enough to include not only technical assistance, goods, and services of agreed programs, but also discrete expenditure programs at local government, community and school level. Such programs would include a) initiatives to eliminate poverty constraints for improved school attendance and performance by providing support for transportation, clothing and school meals; b) outreach programs that support liaisons/assistant teachers between school staff and parents, in order to secure family support for the children's education; and c) efforts to improve the conditions for effective teaching and learning through activities such as teacher training, provision of educational inputs such as textbooks, supplementary learning materials, and tutoring. Supply side measures would include improving quality of education through up-graded inputs (teachers; school administrators; learning materials and a discrimination-free environment and school desegregation) and promoting model schools.

To ensure flexibility in the application of resources managed by the Fund, entities of both the national and local governments, as well NGOs and community schools would be eligible for grants.

Institutional Framework

It is proposed that the Roma Education Fund be managed by a Secretariat established in the CEE region and financed by contributions from participating multilateral and

bilateral agencies, and well private foundations. But, as already stated, care will be taken that programs financed by the Fund would not displace the extensive and innovative work underway in the NGO sector and that the funding provided represents additionality. The Fund Secretariat would award grants and monitor their implementation. It would also organize regional dissemination and consensus-building activities to promote Roma education objectives and policy reform.

The ultimate institutional structure of the Fund would have to be determined in the course of further technical preparatory work. It would have to be based on the following principles: (a) a multi-donor fund allowing a number of interested bilateral and international institutions to contribute funds; (b) World Bank contributions to the establishment and operation of the Fund would have to be of a form that satisfies requirements of partnership agreements and adequately mitigates risks; (c) Fund governance would be independent under the purview of a body representing the share holders; (d) the Fund would not be authorized to raise funds through borrowing or other issue obligations – which is fully consistent with the operation of grants; and (e) the Fund would, at least initially, serve CEE countries that are involved in education reforms in support of integrated and wider Roma education.

The Budapest Conference, *Roma in an Expanding Europe*, to be held on June 30-July 1, 2003, affords a unique opportunity to (a) bring before representatives of the Roma communities, regional governments and international organizations the concept and potential benefits of the Fund, and (b) obtain a broad mandate from participants for undertaking any additional work required before such a Fund could be launched.

A blueprint for the design and operation of the Fund would have to be prepared by a consultant to be financed from Trust Funds or other bilateral sources. The technical work would elaborate on all essential features of the Fund, its organization, financial structure, operation and oversight by the share holders. Recommendations would be developed for a business plan based on consultations with potential beneficiaries both at the central and local government levels.

Potential Partners in the Roma Education Fund

To secure adequate funding levels and to strengthen the case for favorable consideration by the World Bank, a critical mass of potential donors will need to be identified, showing sufficient interest in supporting establishment of such a Fund. Donors to be canvassed should include bilateral development agencies, international financial institutions, multi-lateral organizations, and private foundations. The necessary consultations would take place in the course of additional technical work that is expected to be carried out after the Budapest Roma Conference.

Next Steps

The following actions are proposed for seeking an endorsement of the Fund's concept and a mandate for undertaking the required technical work at the Conference, and for subsequent establishment of the Fund:

a) Build a consensus in support of the participants in the Budapest Conference – use one-on-one meetings as well as other gatherings during the Conference to achieve this;

b) Communicate the commitment of the main participants of the Conference for establishing the Roma Education Fund and their willingness to authorize the use of funds additional technical work outlined in the Concept Note – such communication to take place in the closing session of the Conference, at the press conference and in written communiqués and papers following the Conference;

c) Identify donor funding for employment of a suitably qualified specialist who can prepare the Fund's blueprint and coordinate with representatives of beneficiary groups as well as donors;

d) Organize a pledging event to secure adequate funding of the Rome Education Fund and agree on the location and administration of the Fund; and

e) Establish the Roma Education Fund and start up its operation.

NOTES

1 Dena Ringold, Mitchell A. Orensyein, and Erika Wilkens, "Roma in an Expanding Europe: Breaking the Poverty Cycle", World Bank, 2003; *Roma and the Transition in Central and Eastern Europe: Trends and Challenges*, World Bank, 2000.

2 Aleksandra Mitrović and Gradimir Zajić, "Social Position of the Roma in Serbia", *The Roma in Serbia.* Center for Anti-War Action, Institute for Criminological and Sociological Research, Belgrade, 1998.

3 Ana Revenga, Dena Ringold, and William Martin Tracy, *Poverty and Ethnicity: A Cross-Country Study of Roma Poverty in Central Europe*, World Bank Technical Paper No. 531, 2002.

4 In Serbia, for example, a total of 41% of the Roma population is 14 years old or less (Mitrović and Zajić).

5 *Early Childhood Development in the Former Republic of Yugoslavia: Suggested Strategies for UNICEF,* Cassie Landers, 2001.

6 Where educational performance is broadly defined to include higher enrollment rates, improved school attendance, higher student achievement, higher levels of self-esteem, and better integration with non-Roma students.

Anti-discrimination Law in the Netherlands: Experiences of the First Seven Years[1]

by Professor J. E. Goldschmidt, LL.M.

The Netherlands has developed and implemented legal instruments and institutions to protect against discrimination. The Dutch Equal Treatment Commission is an institution that is easily accessible to victims of discrimination and has the power to conduct investigations, make recommendations, and give semi-judicial opinions. The Dutch government cannot influence the decisions or policies of the Commission—thereby ensuring its independence. This article gives an overview and an analysis of the Equal Treatment Commission during the first seven years of its operation.

1. Introduction

In the Netherlands, we now have more than twenty-five years of experience with anti-discrimination legislation on the ground of sex, which has been introduced under the strong influence of European Community law. This experience reaffirms that legal instruments are necessary but by no means sufficient for the promotion of equal opportunities in society. To be effective, anti-discrimination legislation has to be embedded in a broader context of equal opportunity policy and legislation. Specific legislation should be combined with mainstreaming of the principle of equality in other laws. Thus, in the Netherlands we have, for instance, legislation that obliges labor organizations to submit annual reports on the number of ethnic minorities in their enterprise.[2]

We must also realize that it is not easy to measure the effectiveness of anti-discrimination law. Unlike, for example, traffic regulations, the results of this kind of legislation often are more subtle and differentiated. Anti-discrimination legislation has also been characterized as "communicative legislation," referring to its potential to stimulate the social debate on, and awareness of, issues of discrimination and equal opportunities.[3]

2. Legal context

Since 1983, the Constitution of the Netherlands has opened with the prohibition of discrimination (Article 1).

To guarantee equal treatment not only as a fundamental right of the citizens toward the state, but also in the relation between individuals, the Algemene wet gelijke behandeling (AWGB) was enacted more than ten years later. The purpose of this act is to develop the general provision for specific areas and to specify the relation between the constitutional principle of equality and other fundamental rights, such as the freedom of religion, freedom of association, and freedom of education. This Equal Treatment Act covers discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, sexual preference, and marital status.

This contribution focuses mainly on the grounds of race and nationality. I want to emphasize, however, based on our experience, that it is very important that the non-discrimination act covers different forms of discrimination. First, several forms are closely interrelated—not only nationality and race, for example, but also religion and race; many members of minority groups in the Netherlands are Muslims and fall under the protection against religious discrimination. Second, people may suffer from multiple discrimination. An example is the equal-pay case in which men earned more than women, and Dutch women in their turn more than women from the Turkish minority. The fears that the combination of different grounds in one law might trouble the view on the particularities of the specific forms of discrimination have not been reaffirmed in our experiences. On the contrary, the combination of grounds makes it possible to get a better understanding of both the similarities and the specific features of discrimination. Moreover, international legal obligations also cover different grounds of discrimination (such as the new Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union (EU) Employment Directive no. 2000/78/EC).

This act establishes the Commissie gelijke behandeling (CGB), or Equal Treatment Commission (hereafter, the Commission). The Commission has the task of considering complaints regarding discrimination, which are investigated and, after a public hearing, result in a semi-judicial opinion. The commission may also give recommendations and advises both the government and other organizations on the implications of equality laws. In addition, the Commission has the responsibility to promote knowledge of these laws.[4]

3. System of the law

The AWGB has a so-called "closed system." This means that the law contains an exhaustive account of both the forbidden grounds of discrimination and the areas in which the law applies. Moreover, the exceptions to the rule of nondiscrimination are also limited to the statutory ones.

The law forbids both direct and indirect discrimination. The areas in which the law applies are employment relationships (any area related to paid work, from job advertisement to dismissal), working relationships across professions, offers of goods and services by professionals, public services and institutions in the fields of housing, and social services related to health care, cultural affairs, and education, as well as contracts on these matters. Finally, advice on educational and career opportunities are included. As all aspects of working relationships are included in the law, the circumstances of labor are too. Thus, intimidation or racism in the workplace (compare the new EU Employment Directive) is also within the scope of the law.

The composition, selection, and office of the Commission are also provided in the law. Arguments to set up an independent specialized body were manifold. First, it was held that the equality norms demand specific expertise on the legal and social aspects thereof. Second, it is important that such an institution is easily accessible to victims of discrimination and has power to conduct independent investigations, make recommendations, and provide advice and information to stimulate the observance of this specific legal norm.

The Commission comprises nine members and a similar number of substitute members. In all, it currently has a staff of approximately forty-five people, although expansion to sixty in the near future is foreseen. The chair and the two vice-chairs must fulfill the requirements for judges. The Commission is independent. It is financed, in a way comparable to that of the courts, by the Ministry of Justice and four other ministries. Non-governmental organizations (NGOs) and others may present candidates but cannot influence the selection procedure. The members are appointed for six years, can be reappointed, and can be dismissed only during the period of office after a procedure before the Supreme Court that is laid down in the law. The salaries and working conditions of the Commission are ruled by a decree. The government is given no possibility to influence the decisions or policy of the Commission.

In practice, these provisions have proved to be sufficient safeguards for the independence of the Commission.

4. Direct and indirect discrimination

It should be noticed that the AWGB uses the term "differentiation," rather than "discrimination." This reinforces the fact that unequal treatment covers more than cases of intentional discrimination. Both terms are used here.

The act forbids both direct and indirect discrimination. Indirect discrimination occurs when an apparently neutral requirement, rule, or practice has a disproportionate negative impact on one of the groups protected against discrimination. In practice, the concept of indirect discrimination is used in conformity with the definition of the recent EU Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Examples of indirect discrimination are a requirement that workers who peel tulip bulbs speak Dutch fluently, or the imposition of additional conditions for loans to people with a temporary residence permit. Both requirements have a disproportional negative impact on people of foreign origin. Further, in legal systems in which religion is not included as a separate ground, religious discrimination can amount to indirect discrimination of ethnic or national minorities.

An important implication of the concept of indirect discrimination is that the intention of the person who performs this specific act is irrelevant; only the effects of the act count. This is important because indirect discrimination aims to reveal practices based on persistent habits that in turn are often based on dominant views, prejudices, or stereotyped opinions. In the practice of the Commission's work, it is necessary to explain this to the parties involved, because it can be hard to them to understand that a case of discrimination may exist even when they have no such intention. Insight into the background of the concept can improve acceptance of the law.

Indirect discrimination is not always forbidden. Apart from the exceptions provided by the law, indirect discrimination can be objectively justified by a legitimate aim to the extent that the means of achieving that aim are appropriate and necessary. This requires a review in several steps. First, the disproportionate impact has to be established, preferably on the basis of statistical data.[5] The availability of reliable statistical information is very important in practice. Collection of data on the specific position of minorities

is a task that the government must take seriously. Second , the purpose must be derived and examined. Finally, the specific act or measure must be considered to establish the necessity and suitability thereof. In practice, it is often difficult to draw sharp lines between the distinctive elements, but it is still important to make visible why a justification is accepted or rejected. In accordance with the case law of the European Community (EC) Court of Justice, financial arguments generally are not admitted as justification.

5. Exceptions

The exceptions foreseen by the law are restricted. Not only are the number of exceptions restricted, but so is the interpretation by the Commission and the courts, in accordance with the case law of the EC Court of Justice.

First, there is the "genuine occupational requirement" clause, which is further elaborated in a decree. This means it is not an open exception, but rather that there can be a genuine occupational requirement only if the decree foresees that specific situation. This is the case, for example, when a model or an actor is hired for a specific role, or when nationality can be decisive in an international contest of national teams. The need of a specific qualification must be established not only as being justified for the occupation in general but also as being necessary for the specific vacancy.

Second, positive action is allowed, but only on behalf of women and minorities. Moreover, positive action is restricted to cases in which underrepresentation can be established, and it is justified only insofar, and as long, as it is proportional and effective. The underrepresentation must be related to the representation of minorities in that specific field. Thus, it is not allowed to recruit people from minority groups only if the number of employees in that specific profession is equivalent to the percentage of minority group members that is qualified for the job. The fact that positive action must be based on underrepresentation means that it is not allowed to use positive action, for example, in the selection of a broadcasting council that aims to reflect different groups in society, if there is no underrepresentation of these groups. The Commission has recommended that an exception for this kind of situation will be incorporated into the law.

Positive action has to be distinguished from positive obligations, which can be part of equality law. Positive obligations, such as in the EU Employment Directive, in which reasonable accommodations for people with disabilities are prescribed,

constitute not an exception to non-discrimination law but a consequence of it.

Motherhood protection (in a limited sense) is also allowed as an exception, but limited to the period of pregnancy and maternity leave.

Finally, the law contains some general exceptions to guarantee other fundamental rights. Thus, religious offices (such as that of priests) are not covered by the law; religious organizations may impose requirements related to their principles, although these requirements may not lead to selection on the sole ground of one of the other characteristics. Thus, a Christian school may demand that its teachers adhere to Christianity, but it may not refuse a homosexual teacher because of the assumption that homosexuality is in contradiction with the fundamentals of Christianity. This exception is similar to that provided for in Article 4.2 of the EU Employment Directive.

6. Scope of the Commission's competence

The competence of the CGB is limited in several ways. These limitations are a consequence of the fact that the Commission derives its powers exclusively from the AWGB, as well as some more specific laws that cover discrimination because of sex and equal treatment of part-time workers but which are not relevant in this context. This means that the Commission cannot consider discrimination on other grounds than those enumerated in the law. More specifically, age and disability are not covered. Legislation in these fields is under preparation, and it shall also be necessary in pursuance of the EU Employment Directive.

Still, the competence of the Commission covers eight different grounds of discrimination (actually, nine; however, the ground of "part-time work" is not included in the AWGB, but rather is based on a more specific act, which seems to be less relevant in this context—and, as mentioned, I am restricting myself to the specific context of the AWGB). During the preparation of the law, it was questioned whether it was desirable to bring together these different forms of discrimination. After evaluating this, the conclusion was that it is indeed desirable. This is not only because the inclusion of several grounds can improve the knowledge of the concept and practice of discrimination, including both the similarities and specific characteristics related to different grounds, but also because there are cases of multiple discrimination, such as the one mentioned above regarding unequal pay in a flower company where women earned less than

men and women from minority groups earned less than their Dutch colleagues.

The competence of the Commission is restricted to the areas covered by the specific laws. Thus, the Commission cannot deal with cases in the field of social security allowances, permits, or government grants, as these are not "goods and services" as defined in the law. This restriction is a consequence of the aim of the law to guarantee the effect of the constitutional provision in relations between individuals (third-party effect). It means, however, that people lack an independent, expert, and easily accessible procedure in these cases. In the evaluation of the AWGB that is prescribed every five years, the Commission mentioned this as one of the shortcomings of the law.

The Commission also is not allowed to base its opinions directly on other Dutch legal instruments, such as the Constitution, or on international covenants, such as Article 26 of the International Covenant on Civil and Political Rights (ICCPR) or the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). However, Dutch law obliges the courts and the Commission to interpret the applicable law in a way consistent with the relevant international laws. Thus, the Commission uses the definition of "race" as included in the CERD. But if a case lies outside the scope of the AWGB (for example, a segregated housing policy by a local authority), the Commission cannot deal with that case, which is deemed an undesirable restriction in the recent evaluation of the act.

7. Investigation of complaints

The first task of the Commission is to conduct investigations of complaints. This is the semi-judicial task of the Commission. Written complaints can be lodged instead of court procedures, before them, or simultaneously. The condition that complaints have to be written is sometimes a barrier, but the Commission does not require any formalities. If necessary, an intake interview is held to clarify the contents of the complaint.

Complaints can come from individuals (who can be represented, though this is not necessary), as well as class actions by organizations that represent specific interests, such as NGOs combating discrimination or defending human rights. Trade unions or workers' councils are also entitled to bring a case before the Commission. Further, a company or association may ask the Commission to give an opinion on a policy or regulation, for example, to find out whether it is in

accordance with the law. Thus, a draft collective agreement can be examined on a specific point before it comes into force. In addition, a judge who is faced with a case with specific discrimination aspects may ask the Commission for advice. However, thus far this has never happened. The Commission is also empowered to carry out an investigation on its own initiative when there are indications of substantial unequal treatment.

The possibility of class actions and the potential for the Commission to act on its own are important because the enforcement of anti-discrimination law cannot depend altogether on the victim's courage to bring forward a case. Fear of adverse consequences—despite formal protection against victimization—is a well-known major deterrent to equality litigation procedures.[6]

The rules of procedure of the Commission are laid down in a specific decree. Of course, the general principles of fair proceedings are complied with. This means, for example, that anonymous complaints are not admitted and that both sides are heard. The Commission conducts an investigation in each case, which is mostly written. Every person involved is obliged to provide the Commission with the information it asks for. If necessary, the Commission may carry out an on-site investigation.

These investigatory powers of the Commission are essential because, for the most part, it is too difficult for victims themselves to obtain the information necessary to decide a case. The law contains (Article 19) an obligation that all parties involved (including third parties) provide the Commission with the information it requires. Noncompliance with this obligation is a criminal offense. In the single case to date in which this was refused, the company in question was penalized, and subsequently a court order to provide the necessary information was issued. Especially in equal-pay cases, the Commission has developed a very elaborate method of investigation to examine whether job evaluation has been done in a way that is free from discrimination. One of the staff members of the Commission is an expert in this field.

After the preliminary investigation, a public hearing is held, at which both parties are invited to present evidence and are questioned by the Commission. Witnesses and experts can be invited by the parties involved or by the Commission to appear at the hearing. In practice, this hearing is an important aspect of the Commission's work. First, the hearing can be necessary to establish the facts and to confront the parties with

each other's perspective on what happened. In addition, hearings have been found to be very useful to explain to people what the law encompasses. Not only employers and others but also the lawyers who sometimes represent them can be reached and informed in this way. This is important because there is a widespread, serious lack of knowledge about the content and implications of the equality laws, including European case law, among the public in general and the legal world in particular.

When the Commission has enough evidence, it renders its opinion. The Commission is also entitled to include recommendations in its opinions, such as suggestions as to how the law can be complied with. This power is very useful to make visible the fact that specific aims can be reached without resort to discriminatory measures and practices. Recommendations are frequently used to stimulate the adoption of codes of conduct and complaint procedures.

The Commission's opinions have no binding force, but it is a rule of customary law that the courts have to take the opinions seriously (giving it the status of an "expert judgement"), something that has been reaffirmed in the case law of the Supreme Court. This means that a court has to consider an opinion of the Commission as an expert view that can be overruled only with due motivation. Recently the Commission has recommended that this obligation should be explicitly prescribed in the law itself.

The opinions of the Commission also impose no sanctions—although the Commission may publish an opinion, which in itself can serve as an effective sanction). In practice, the opinions are generally complied with (as far as compliance is still possible), and only a very few such cases are subsequently sent to court.

Between 1994 and 2001, the Commission issued twelve hundred written opinions. In addition, many complaints did not lead to written opinions, either because they fell outside the scope of the law or because they were settled before an opinion was issued. The fact that a procedure before the Commission is pending can be sufficient motivation for the parties to come together. In addition, the investigation by the Commission may create more awareness about the scope of obligations incorporated in the equality laws. Sometimes the Commission tries to settle the case. In future, the Commission wants to try to do this more often and more actively. Incidentally, almost one-third of the complaints have dealt with race or nationality.

A Case of Roma School Segregation in the Netherlands

An association of Christian schools in the Netherlands had a policy of limiting the number of pupils for whom Dutch was their second language, so called NT2 students, to no more than 15 percent of the total student body. A separate policy required that children from the Sinti and Roma community be distributed evenly among the various Christian schools. The association claimed that its purpose was to protect the quality of the education as well as to promote integration.

In reality, these policies meant that state schools had to accept all remaining students for whom Dutch was a second language. This placed a higher burden on these schools than would have existed without the policies. One state school brought a complaint against the association of Christian schools. The claim was later taken over by a local anti-discrimination center,[1] which continued the case together with the National Bureau against Racism. The latter is an independent organization funded by the Department of Justice, working as a national center of expertise on the prevention of racial discrimination in the Netherlands.

Both being pressure groups committed to the battle against racism, they were entitled to file their complaint with the Equal Treatment Commission, an independent organization charged with investigating, mediating, and judging matters concerning equal treatment legislation. The Commission was established under the Equal Treatment Act in 1994. The case was brought before the Equal Treatment Commission in January 2003.

The Commission ruled[2] that the criterion of the 15 percent maximum for students with Dutch as a second language leads to indirect distinction on the grounds of race. The Equal Treatment Act gives defendants the opportunity to present facts and circumstances that can justify an indirect distinction, but in this case the Commission found that the association of Christian schools had not proved an objective justification. Although aiming for a good quality of education is legitimate, the statistics presented by the association showed no difference in the quality of education between schools with a maximum of 15 percent and those schools with a higher percentage of NT2 students.

The Equal Treatment Commission also ruled that it is not clear the policy helped inte-

gration in any way. In addition, the Commission ruled that the separate policy for Sinti and Roma children results in direct distinction on the grounds of race. The Commission stated that the legitimate aim of promoting integration cannot justify a violation of the principle of equal protection. The ruling of the Commission was that both policies are forbidden. Although decisions of the Equal Treatment Commission are not legally binding, in practice parties that have been found guilty of discrimination usually accept the Commission's decisions and carry them out.

Prepared by Maria Pereira

NOTES

1 More than forty anti-discrimination centers act at the grassroots level to combat discrimination and racism.

2 Case No. 2003-105/File No. 2003-0009 (www.cgb.nl).

8. BURDEN OF PROOF

The Commission divides the burden of proof, as laid down in the new EU Employment Directive and in the earlier Directive on the Burden of Proof (97/80), which means that the complainant has to bring forward facts that provide an indication of discrimination. Then the defendant has to establish that there are other, non-discriminatory reasons to justify the contested conduct, act, or regulation. If the defendant has practiced a non-transparent procedure (for example, for selection or job evaluation), he or she risks the possibility that discriminatory elements are incorporated therein and can be held responsible for discriminatory effects. This is based on the case law of the EC Court of Justice (see, for example, the *Danfoss* case, 17 October 1989, C-109/88).

9. Follow-up

The Commission considers every opinion to be the start of a follow-up. First, the Commission asks the parties involved in a case to inform the Commission of the consequences they attach to the opinion; if necessary, the Commission makes recommendations thereon. If relevant, branch organizations are also involved in the follow-up, to stimulate a broader effect of individual cases. The AWGB explicitly empowers the Commission to send an opinion to the minister concerned or to a branch or umbrella organization. This formal power gives the Commission a legitimacy for a more effective implementation policy.

As a consequence of this policy, after a case before the Commission, conditions for loans to people with temporary residence permits have been revised and complaint procedures regarding intimidation in the workplace have been adopted by several companies.

10. Other tasks

As mentioned, the issuing of opinions and the actions to promote compliance are not the only tasks of the Commission. It also has the power to take a case to court. So far this power has not been used, though that may happen in future. Further, the results, and investigations related to individual complaints, are important sources of information that the Commission uses in its advisory role.

In addition, education and dissemination of information on discrimination are based on the practical experiences of the Commission. Its members deliver many lectures and courses on the subject, to various kinds of organizations; post-academic courses for lawyers and legislators, expert meetings for trade unions and people responsible for collective bargaining, and education of NGOs that are active in this field are only a few examples.

From an independent position, the Commission also keeps in touch with relevant organizations, such as the non-discrimination agencies that operate at the local level and deal with all kinds of complaints, often representing victims of discrimination in cases before the Commission.

It is precisely this combination of tasks that is important for the work of the Commission. Its expertise and experience in the field of the day-to-day practice of discrimination, as investigated in the complaints procedure, are

reinforced by the possibility of using these experiences in order to stimulate more structural measures, as well as to improve knowledge of the law and the features of discrimination.

11. Final comment

It must be kept in mind, however, that the Dutch model works in a specific national context, with a network of active, and often very professional, NGOs and a long tradition of negotiations and bargaining. The establishment of similar institutions in other countries has to take into account the particularities of the national situation in order to be effective. It is important to compare the different national situations with their particular solutions and shortcomings and to learn from one another.

Notes

1 Speech given at the International Conference on Equal Treatment Between Persons and Prohibition of All Forms of Discrimination, Budapest, December 2001.

2 See also Janny Dierx, "The Incorporation of Equality in Dutch Legislation and the Experiences of the Equal Treatment Commission," presentation given at the International Seminar on Non-Discrimination, Minority Rights, and Integration in Estonian Society, Talinn, January 2001.

3 Bart van Klink, *De wet als symbool* (Deventer, 1998).

4 More information on the equality laws and the Commission can be found at its Web site (www.cgb.nl) and in the English-language booklet that can be ordered from the Commission by e-mail (cgb@support.nl).

5 See also EC Court of Justice, 9 February 1999, Seymour-Smith and Peres, Case C-197/97.

6 J. Blom, B. Fitzpatrick, et al., "The Utilisation of Sex Equality Litigation Procedures in the Member States of the European Community" (paper), June 1995.

Anti-discrimination Legislation in Romania: Moving Toward Enforcement and Implementation

by Dezideriu Gergely

In August 2000, Romania undertook a process of developing a legal framework for combating discrimination. The adoption of an anti-discrimination law was only the first step in what would become a long but important process of reform, revision, and ultimate enforcement. This article explores the history of the legal framework for combating discrimination in Romania, identifies some of the missing concepts in the law, and demonstrates how the law is now implemented and utilized by Romanian human rights activists and lawyers.

1. Anti-discrimination legislation in Romania: A step toward admission into the European Union

1.1 Adoption of Governmental Ordinance 137/2000 on the prevention and punishment of all forms of discrimination

In August 2000, the Romanian legal framework for the protection of minorities was enlarged through the adoption of Governmental Ordinance 137, which laid the foundation for a comprehensive anti-discrimination law following the requirements of Directives 43/2000/EC and 78/2000/EC of the European Council of the European Union. Ordinance 137, regarding the prevention and punishment of all forms of discrimination, forbids discrimination by public authorities, legal entities subject to private law, or private individuals on grounds of race, nationality, ethnic origin, religion, language, sex, or sexual orientation, and it outlines the relevant implementation mechanisms, procedures, and sanctions. In being the first European government to adopt anti-discrimination provisions as laid out by two new Directives of the European Council, the Romanian authorities were showing their eagerness to comply with the political criteria, including respect for human rights and the harmonization of domestic legislation in the field with EU standards, for accession to membership in the European Union.

Indeed, the European Commission considered the adoption of this ordinance "a very positive step," but it stated that "both secondary legislation as well as institutional settlements are necessary before the provisions included in Ordinance 137 are enforced."[1] The chair of the Human Rights Committee of the Romanian Chamber of Deputies, Deputy Nicolae Paun, echoed the European Commission's concern in stating that the ordinance would not have any effect before 2002, when details such as the organization and budget of the implementing body would be settled.[2]

The prediction turned out to be accurate—in fact, overly optimistic. The ordinance's text had been developed during the summer of 2000 by the former Department for the Protection of National Minorities within the Romanian government, in collaboration with a number of non-governmental organizations (NGOs).[3] Following its adoption by the government during the August 2000 parliamentary vacation, the ordinance had to undergo an approval and amendment procedure through both chambers of the Romanian Parliament. After a lengthy series of amendments and negotiations between the two chambers of Parliament, the ordinance was finally adopted into law in the middle of January 2002, and it entered into force as Law 48/2002.[4] But judges and other authorities declined to rule on discrimination cases even after January 2002, claiming that such cases fell exclusively under the competence of the implementing body, which had yet to be established. So it was not until late 2003, when that implementing body, the National Council for Combating Discrimination (hereinafter NCCD), began to function, issuing decisions and imposing fines for violations, that the Romanian anti-discrimination law effectively came into force.[5]

To date, the case law related to discrimination in Romania has been limited primarily to cases of access to public places or services, discriminatory statements or advertisements, or hate speech by journalists.[6] As of this writing, the anti-discrimination law has yet to prove its effectiveness in other areas, such as housing, education, social protection, or migration.

1.2 Bringing Romania's anti-discrimination law closer to compliance with EU standards

Law 48/2002 is a first tool for fighting discrimination, but it does not fully comply with the requirements of the

European Council of the European Union Race Equality Directive 43/2000/EC, which implements the principle of equal treatment between persons regardless of racial or ethnic origin,[7] or with Council Directive 97/80/EC of 15 December 1997, on the burden of proof in cases of discrimination based on sex.[8] First, the law does not include an explicit definition of indirect discrimination. The law refers only to passive behavior that, "by the effects generated, results in unjustified advantages or disadvantages or submits to unjust or degrading treatment a person, a group of persons, or a community," without spelling out a clear definition of indirect discrimination as contained in EU Directive 43/2000/EC.[9] Similarly, the law fails to define or prohibit harassment, or to prevent victimization.

Second, it does not provide for the reversal of the burden of proof in civil lawsuits once a case of *prima facie* discrimination has been established. The law not only fails to provide for the reversal of the burden of proof in cases of *prima facie* discrimination, but it makes reference to and relies on Romanian procedural rules that in fact prohibit the reversal of the burden of proof.

Third, the Romanian provisions on the role of NGOs are far more restrictive than those included in EU Directive 43/2000/EC, which requires states to ensure that organizations with a "legitimate interest in combating discrimination" may engage in legal and/or administrative procedures on behalf of claimants. By contrast, Article 22 of the Romanian anti-discrimination law stipulates that "[h]uman rights non-governmental organizations can appear in court as parties in cases involving discriminations pertaining to their field of activity and which prejudice a community or a group of persons" and that "[t]he organizations provided in the above paragraph can also appear in court as parties in cases involving discrimination that prejudice a natural entity, if the latter delegates the organization to that effect." While these provisions allow for NGOs to represent victims of discrimination before the courts of law, restrictive interpretations by Romanian courts have sought to limit the range of cases with NGO involvement. For instance, some courts have been restrictive in their interpretation of what may be considered a human rights organization. One court has required that the NGO have specific provisions in its statute explicitly identifying its purpose as the protection of

human rights.[10] Moreover, the Romanian term for "delegation" has been interpreted restrictively as provision of power-of-attorney documents of the NGO involved, which often adds to the expenses incurred by claimants in the course of proceedings.

Finally, while the law creates a specialized body with the power to identify and punish acts of discrimination, it fails to safeguard the independence of this implementing body. According to Law 48/2002, the NCCD is a specialized body of the local public administration, subordinate to the government. As emphasized in the report on Romania by the European Commission against Racism and Intolerance, the NCCD should be assured its independence from the government or the political sphere.[11] But since the adoption of the anti-discrimination law, the independence of the NCCD has become harder and harder to achieve. Thus, Article 1 of Governmental Decision 1194/2001, which regulates the organization and functioning of the NCCD, states that the NCCD is "a specialized body of the central public administration . . . subordinated to the government." Furthermore, Article 2 of the same decision stipulates that the NCCD is dependent on government approval for proposed regulations in the field of anti-discrimination. Furthermore, the president and board members of the NCCD are appointed and released from their function by the prime minister; moreover, members of the NCCD board are proposed by various ministries. Therefore, it is reasonable to conclude that the independence of the NCCD can be affected by its direct involvement with the government.[12]

The Romanian Constitution recognizes the possibility of establishing self-contained administrative authorities under direct parliamentary supervision, but not the creation of an independent administrative authority. Such self-contained central administrative authorities can be established only through organic law, not through a simple ordinance or governmental decision.[13] Setting up the NCCD as a self-contained administrative authority, through an organic law adopted by the Parliament in accordance with Article 72, correlated with Article 116 of the Constitution, would have guaranteed, to a great extent, its independence and its efficiency in dealing with other ministries and governmental authorities.

Thus, the *2002 Regular Report of the European Commission on Romania's Progress toward Accession* summarized the

shortcomings of the new Romanian law:

> Amendments to the law will be needed in order to fully conform to the *acquis* based on Article 13 of the EC Treaty, notably with regard to indirect discrimination and the burden of proof. A formal decision was taken to establish the National Council for Combating Discrimination in December 2001, and the necessary funds for its functioning were allocated from the 2002 state budget. . . . This is a significant development, as it has proved impossible to enforce anti-discrimination legislation without such a body. The decision setting up the Council states that it will operate independently of any institution or public authority. However, in practice it is not an independent body, as it remains administratively subordinate to the government. A concern is that members from vulnerable groups and NGOs are not represented on the Council.[14]

Under pressure both from the European Commission and from Romanian civil society actors, the Romanian government undertook to amend the anti-discrimination law so as to bring it closer to compliance with the minimum requirements laid out in EU Directives 43/200/EC and 78/2000/EC. But both the amendment processes and the resulting legal provisions have failed to measure up to European standards for transparency, clarity, and ultimately legitimacy.[15]

Nevertheless, the amendments, adopted as Governmental Ordinance 77/2003, include provisions on indirect discrimination, provide for aggravating circumstances in cases where discrimination is based on two or more criteria, make implicit reference to victimization, extend the competencies of the NCCD to mediating conflicts generated by acts of discrimination, offer specialized assistance to victims of discrimination, increase the fines imposed for violations of the provision, and spell out the obligation of physical or juridical persons to submit all the necessary evidence required by the NCCD in the course of its investigations.

Though an important step forward, this ordinance only partially satisfies the minimum standards put forth in EU Directives 43/200/EC and 78/2000/EC. Moreover, some concepts in the ordinance are either not clear or not explicitly included. For example, the term "mediation" is not clearly defined, and the inclusion of mediation among the attributes of the

NCCD does not carry with it any of the necessary structural changes in the organization of the implementing body. Notions of justice would require that the persons who conduct the mediation between parties would not, if the parties failed to reach an agreement, subsequently be the same persons to determine whether a violation has been committed and sanction be imposed.[16] Similarly, the new ordinance also provides for "specialized assistance" for victims of discrimination. But it remains unclear whether that expression complies with EU Directive 43/2000/EC, which require that implementing bodies offer "independent assistance."

In addition, Governmental Ordinance 77/2003 fails to properly address the issue of multiple or intersectional discrimination. The ordinance refers to multiple discriminatory acts as "aggravating circumstances" of a single discriminatory act, rather than identifying all of the separate acts of discrimination as constituting multiple violations of the law, as should be the case. All grounds for discrimination are protected equally, and all discriminatory acts are equal in the gravity of their consequences. Recognizing separate violations would offer better protection to a victim of multiple discrimination, because that person would have the right to ask for a remedy covering all the violations of his or her rights to freedom from discrimination.[17]

In order to comply with EU directives, Governmental Ordinance 77/2003 should have included the terms of harassment, exactly as stated in the directives themselves. Similarly, the provisions referring to victimization do not include reference to adverse treatment as a result of any "action in justice" (as provided in the EU Directive), which would have protected victims regardless of whether their initial complaint was brought through an administrative procedure or in a court of law.[18]

Some of the most basic elements of an anti-discrimination law are still missing. For example, no sanctions are provided against instructions to discriminate, even though this would have complied with constitutional stipulations that expressly mention instigation to discrimination (Article 30, paragraph 7, of the Constitution), as well as with EU regulations (Article 2, paragraph 4, of EU Directive 78/2000/EC).[19] Similarly, the shifting of the burden of proof is still not spelled out in the current text of the anti-discrimination law.

2. Protection against discrimination and access to education in Romania: The Cehei segregation case

In 2003, the Bucharest-based NGO Romani CRISS decided to test the protection against discrimination afforded by the new legal framework in cases of educational segregation of Romani children and to obtain an acknowledgment of segregation as a form of discrimination under Romanian law. In its current form, the anti-discrimination law does not refer directly to segregation in education, but it does prohibit (a) denying a person or groups of persons access to the private or public educational system, in any form, grade, or level; (b) requesting declarations of the ethnic affiliation of a person or group of persons as a precondition for education in the mother tongues of national minorities; (c) any limitations as to race, nationality, ethnicity, religion, social category, or underprivileged category in the establishment and accreditation process of educational institutions. Moreover, the definition of discrimination as any "difference, exclusion, restriction, or preference, based on race" in Article 2 of the anti-discrimination law appears to allow for interpreting educational segregation as a form of discrimination.

Furthermore, the Romanian Law of Education 84/1995,[20] with its subsequent modifications and completions, stipulates in Article 5: "Citizens of Romania have equal rights to access all levels and forms of education, regardless of social origin and financial situation, . . . race, nationality"; according to Article 12, paragraph 2: "The organization and content of the education cannot be structured by exclusive or discriminatory criteria, such as ethnicity."

Thus, when Romani CRISS learned in February 2003 about a situation of educational segregation of Romani children from the village of Pusta Vale who were attending school in the town of Cehei, Salaj County, in central Romania, the NGO decided to investigate and document the case, with a view to submitting a complaint to the NCCD. According to the preliminary information received by Romani CRISS, Romani children enrolled in the Cehei School attended classes in a separate building. Romani CRISS representatives who went to Cehei to document the case noted obvious differences in the quality of education, physical conditions of the rooms, and materials provided to the Romani children in the Cehei School.

Teachers explained to Romani CRISS that about ninety Romani children from Pusta Vale attend the Cehei School. These students are placed in an annex building, in only two classrooms. The fifth and sixth grades have classes in the morning, while seventh and eighth grades have classes in the afternoon. Some teachers reported that many girls from Pusta Vale refused to attend the Cehei School because the teachers forced them wear different clothing, not the traditional ones they are used to wearing. One teacher asked Romani girls to wear sport pants or other "normal" clothes.[21]

During the interviews, one Romani student in the eighth grade reported that "at Cehei School there are two buildings: a big one, where Romanians learn, and a small one, where Gypsies learn. We do not get along with Romanian children. When we write better, the Romanians beat us; they do not play with us, and they throw rocks at us. We would like to study with the other children, because we walk four to five kilometers every day, but the majority children seldom let us study. We have different teachers than the majority children, and the conditions [of study] are different: we do not have heat, they do; we do not even have a door; and the Romanians have more firewood." One fifth-grade student told Romani CRISS in an interview that "the teachers do not teach us anything and we do not have homework. The Romanians are in one classroom, we are in a different one; our classroom is dirty." Another fifth-grader reported that "we study separately because they [Romanians] say that Gypsies are bad and full of lice. Our building is dirty, the door and the windows are broken, and we do not have a bus to take to school. We have to leave for school at 6:30 in the morning so we can arrive at 8:00."

One of the majority pupils in the seventh grade in the same school shared his views: "Romani children study in the back; only Romanians study in the big school, and the Roma in the rear; we [Romanians] have heat; the teachers are good. It is not good to study separately; even if they are Roma, they have to become Romanians. In a way it's a good thing, on the other hand it's not: so what, that one is whiter and one is black; there should be no difference. We get along with Romani children; we ask for their advice."[22]

School authorities tried to deny that children were segregated simply because of their ethnic or racial identity, and to justify the situation in the Cehei School simply as appropriate use of available facilities and resources. The general

school inspector told Romani CRISS representatives that "it is not a question of Romani segregation, but a lack of space. And space is used as it is."

After documenting the case, Romani CRISS notified the Ministry of Education and Research, as well as the NCCD. At the same time, the situation was presented officially to the Romanian government, Ministry of External Affairs, Ministry of Public Information, National Office for Roma, Salaj County School Inspectorate, European Union Delegation in Bucharest, U.S. Embassy, Save the Children, and UNICEF.

The General Directorate for Minority Language Education within the Ministry of Education and Research officially responded to Romani CRISS in June 2003: "[W]e inform you that the General Directorate in charge of Roma education asked the Salaj County Inspectorate to provide further information in order to clarify the aspects in the complaint. Consequently, a commission has been formed and will be sent to the location. With the support of local authorities, the following measures have been adopted in order to improve the conditions for the Romani children in Cehei: starting with 15 March 2003, a special bus will be used to transport the children on the route Pusta Vale–Cehei. The thirty-five Romani students in the sixth and seventh grades will study in the main building as the Romanian pupils. An adult and teenage education program will begin in Pusta Vale. Additional qualified teaching staff will be hired within the school (there are sixteen teachers within the school, of whom only fourteen are qualified). A request has been placed for the urgent renovation of annex A building [the building where Romani children had been studying]. And intercultural education projects will be introduced in certain areas."[23]

The NCCD also officially responded to the Romani CRISS complaint. Following the NCCD's independent field investigation, the NCCD found that the Cehei School situation represented a case of discrimination, as defined by Article 2, paragraph 2, of Governmental Ordinance 137/2000. As a result, the middle school from Cehei was given a warning.[24]

5. Conclusion

Despite many points of concern about the content of Romania's new anti-discrimination legislation, this law substantially extends protections against discrimination. The slow process of

institutional development and implementation of the law also raises some questions. The lack of transparency in the process and selective consultation with the civil society have also drawn criticism. But the continued effort on the part of the Romanian government to acknowledge and address all forms of discrimination is a promising development.

Direct and indirect discrimination against Roma is an everyday reality, and various patterns of race-based discrimination are encountered in various fields of daily life. This situation triggers an even greater sense of urgency for the adequate implementation of Romania's law regarding the prevention or punishment of all forms of discrimination. The NCCD could play an important role in this process, but the effectiveness of this institution has yet to be proven.

In the meantime, non-governmental organizations must continue to sound the alarm against unfair or inadequate policies of the Romanian government. Although the government may attempt to portray problems in the Romani community as social challenges with economic or educational aspects, the NGOs must be sure to show the systemic nature of the denial of fundamental rights.

NOTES

1 See European Union, *European Commission's Progress Report on the Candidate States to EU: Romania* (2001), p. 21.

2 See RomaNews, News, available at http://www.romanews.ro (accessed on 15 September 2002).

3 See Open Society Institute, "Monitoring the Adhesion Process to the European Union, Minorities Protection in Romania" (Budapest: Open Society Institute, 2001), p. 74.

4 Before the adoption of the anti-discrimination law, national institutions such as the Ombudsman played an active role in monitoring and intervening in discrimination cases in Romania. Other avenues, such as the complaint mechanisms provided under the Office of Consumer Protection, have been used to combat discrimination in various areas of public life, with mixed results. For instance, Romani CRISS filed a number of complaints relat-

ing to discriminatory refusals by private businesses to sell goods to Roma; the NGO alleged violations of Law 12/1990, prohibiting illegal commercial activities, including "preferential sale, unjustified refusal to sell or to provide services" (Article 1 (k)). In one instance, the Office of Consumer Protection declined to punish a private bar for displaying a notice stating "No waiting on Roma and Gypsies," on the grounds that the office had no competence to rule in cases of discrimination (though the bar was punished for health code and other violations); when presented with evidence obtained through testing, however, the same office sanctioned another bar for preferential sales practices.

5 See Romani CRISS, Database, available at www.romanicriss.ro.

6 Ibid.

7 Directive 43/2000 was adopted by the European Union's Council in June 2000 and published on 19 July 2000, in the Official Journal of the European Community. EU member states had a time frame of three years to set the internal legislation to comply with the requirements of the Directive. The Directive is part of the *acquis communautaire,* the community laws that candidate states—including Romania—have to adopt prior to accession.

8 Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, Official Journal L 014 20.01.98, p. 6 , amended by 398L0052 (OJ L 205 22.07.98, p. 66.

9 According to Article 2(2)(b) of Directive 43, through "indirect discrimination is understood any provision, criterion, or practice that, although apparently neutral, is unfavorable toward certain persons, of race and origin different from other people, except for the case when these provisions, criteria, or practices are objectively justified by a legitimate purpose, and the means for achieving that purpose are adequate and necessary." The Directive regarding equality among races also stipulates that indirect discrimination can be established through any means, including on the basis of statistic records (Preamble, paragraph 15). The Romanian ordinance almost punishes indirect discrimination in Article 2(2), which states: "Any active or passive behavior that, by the effects generated, results in unjustified advantages or disadvantages or submits to unjust or degrading treatment a person, a group of persons, or a community, by reference to other persons, groups of persons, or communities, brings contraventional liability according to the present ordinance, unless it falls under the jurisdiction of penal law." This standard does not rise to the level of forbidding indirect discrimination; furthermore, the lack of provisions referring explicitly to indirect discrimination—a concept developing significantly in the

international legislation—is an additional setback.

10 See Romani CRISS, Database, *CRISS v. Milenium Radauti, Human Rights Department,* available at www.romanicriss.ro. Other laws in Romania have been more appropriately worded. Law 202/2002 on Equality for Men and Women refers to "nongovernmental organizations that aim to protect human rights." In the latter case, an organization can prove by any means that its activities have the purpose of protecting human rights.

11 See ECRI, *Second Report on Romania,* adopted on 22 June 2001, available in Romanian at the official Web site of the European Council: www.coe.int.

12 See Workshop Report, *Implementation of the European Anti-discrimination Legislation* (Prague, 2002), organized by the ERRC, INTERIGHTS, and MPG; see also Romani CRISS–Roma Center for Social Intervention and Studies, *Equal Opportunities in Accessing Public Services and Places: Case of Roma in Romania,* annual report (2001), available at www.romanicriss.org.

13 Ibid.

14 See European Commission, "Human Rights and the Protection of Minorities," in its *2002 Regular Report on Romania's Progress toward Accession* (European Union, 2002), p. 28.

15 For instance, on 7 July 2003, the NCCD sent an official request to Romani CRISS and other local NGOs for comments and opinions on amendments and modifications to the Governmental Ordinance in light of its inadequacies under EU requirements. A working group of experts in the field representing a broad coalition of civil society actors sent the NCCD its comments and proposals on 31 July 2003. The group was formed by representatives of the following organizations: Center for Juridical Resources, Open Society Foundation, ACCEPT, APADOR–Helsinki Committee, Romani CRISS, Center Partnership for Equality, Pro Europe League, and Institute for Public Policies. Still, when a board member of the NCCD summarized the amendments sent to the government by the NCCD in a press interview given later in August, it became clear that the recommendations of the NGO working group had not been taken into consideration. The working group's subsequent requests for the text of the amendments proposed by the NCCD received no official response. Unofficially, members and staff of the NCCD notified individual members of the working group when the proposed amendments would be discussed in closed cabinet meetings, without providing any further details on the substance or results of the debates.

Thus, the process by which the first set of amendments to Law 48/2002 was adopt-

ed, as Governmental Ordinance 77/2003, ultimately lacked transparency. The mere request for comments regarding the modifications to the normative act cannot be construed as effective consultation with the civil society. This unidirectional flow of information is also in conflict with the spirit and the letter of EU Directive 43/2000/EC, whose provisions "encourage the states to have a dialogue with the non-governmental organizations, which, according to the law and their national practice, have a legitimate interest to contribute to combating racial or ethnic discrimination" (Article 12 of the Council of the European Union's Directive 2000/43/EC).

16 See Stand Document of the organizations Center of Juridical Funds, Open Society Foundation, ACCEPT, APADOR–Helsinki Committee, Romani CRISS, Center Partnership for Equality, and Institute for Public Policies, sent to the NCCD on 31 July 2003.

17 Ibid.

18 Ibid.

19 Ibid.

20 Published in the *Official Monitor,* Part I, no. 167, 31 July 1995, republished subsequently in the *Official Monitor,* Part I, no. 1, 5 January 1996, and no. 606 of 10 December 1999.

21 Ibid.

22 Ibid.

23 See Romani CRISS, Newsletter, no. 19, 9 June 2003, available at www.romani-criss.ro.

24 See Romani CRISS, Newsletter, no. 24, 26 August 2003, available at www.romani-criss.ro.

Anti-Discrimination Laws at Work in Romania[1]

by Romanița Iordache

This article presents a hypothetical discrimination claim and walks the reader through ways in which a case can be brought and pursued under Romania's newly implemented anti-discrimination laws, as well as what the likely outcomes might be. This article further identifies the challenges that might be faced within each option. In each step of the procedure, the author also proposes recommendations for making the action more feasible, the law more transparent, or the process clearer.

For a better understanding of the legal regime relating to discrimination in Romania, this article provides a look at a possible overall scenario, the process, and the outcomes. Let us assume that an act of discrimination has occurred in the field of employment, economic relations, social protection, education, health, or access to goods or services, and that such an act is impairing a constitutionally guaranteed right. To follow up with the scenario, the deed constitutes an act of discrimination as defined by Article 2(1) of Law 48, which means that it implies "distinction, exclusion, restriction, or preference," and that its motivation clearly falls under the grounds listed by the law: "race, nationality, ethnicity, language, religion, social group, beliefs, sex or sexual orientation, vulnerable group, or any other criterion." The scope or the effect of the deed is also covered by the definition that the law provides, "as it impairs or nullifies the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms stated by the law in the political, economic, social, cultural, or any other field of public life."

Now let us examine the various steps of the procedure that follows.

1. Step 1: Filing a complaint: Who can do it? How? What are the difficulties?

1.1 Scenario

Let us assume we are dealing with a legally educated victim, aware of his or her rights and also aware of the existence of both the law and the enforcing agency, the National Council Against Discrimi-

nation (NCCD). In this happy (but rather unlikely) case, the victim could contact the NCCD via regular mail, by fax or e-mail, or in person. To date, however, the internal rules of procedure that the NCCD adopted to define the process and the requirements to be observed for a successful complaint have not been made public, and this remains one of the core criticisms that non-governmental organizations (NGOs) working in this field have in relation to the NCCD as an effective institution. Regardless, the general rules on petitions apply.[2] The members of the NCCD suggest it is enough to provide the full story, with as many details as possible, and then the agency will take over from that point.[3]

1.2 Impediments

The NCCD adopted a formal provisional procedure as an internal document in January 2003; ever since, this has been tested and amended but not refined into a final product. A lack of information and adequate education might be the first dead end for our scenario; legal education of the population at large has never been a priority, and absent a thorough public relations campaign on the mandate of the NCCD and on the substantive provisions of Law 48, the chances are quite high that victims would have no knowledge of Law 48 or the NCCD. A second dead end is possible because a clear methodology is still unpublished, and even the few persons who are informed about it either might be intimidated or might perceive the NCCD as a sham institution and subsequently give up filing a complaint.

1.3 Alternative scenario 1: "The good old NGOs"

Although the victim does not know about the NCCD in this scenario, the NGOs that are active in the protection of human rights and the few NGOs engaging in public interest litigation have a legal standing in cases against communities or groups of persons, under Article 22(1) of Law 48, or in other cases if the individual victim authorizes them, under Article 22(2). Thus, NGOs could bring a case before the NCCD in the same way an individual victim could. However, this does not apply to complaints before courts of law, where, due to the peculiar wording of the law, the NGOs would have to produce notarized proxies.

Impediments

The fact that the law provides for the legal standing of NGOs is a positive and salutary step in combating discrimination. However, relying solely on this solu-

tion might be dangerous, for several reasons. First, not that many NGOs in Romania have any expertise in anti-discrimination litigation, and public interest litigation in general is in its very incipient stages. The few active NGOs might end up being overwhelmed by the number of cases, thus paralyzing all other activities they might have. There is also a risk that each would target assistance only to its own constituency (for example, LGBT NGOs would represent only lesbians, gays, bisexuals, and transgendered people; Roma NGOs would take only cases related to the Romani population; etc.). Thus, vulnerable groups that are not actively engaged in associational activities, as well as victims of multiple discrimination, would fall through the cracks and remain unrepresented. Besides, in some cases, even if certain vulnerable groups are organized, the NGOs working with or for them may not have legal expertise because they are primarily involved in providing social services (for example, aid to people infected or affected by HIV/AIDS), not legal representation.

Second, representation by NGOs might create difficulties in relations with the courts later on in the process, when they would try to ask for civil damages on the basis of the finding of discrimination or decision issued by the NCCD. It would be natural to allow NGOs to ask for damages to cover the costs of the legal representation and of the programs monitoring discrimination that they are running. As long as the money is used to combat discrimination, this probably would be the most effective sanction. But, absent express provisions, would the courts of law accept NGOs as victims in a torts case where an individual is the victim, and the NGO is only an agent or representative of the victim?

Here we can analyze previous jurisprudence as indicative of the tendencies of courts of law and their understanding of anti-discrimination law. In this context, the experience of Romani CRISS, the only NGO that tried to sue on grounds of Ordinance 137 before the establishment of the NCCD, bears mentioning. In two of its cases (*CRISS v. Artenis SRL* and *CRISS v. Compact Impex SRL*), its legal standing was denied by the courts; thus, the cases were quashed on procedural grounds. In both cases, the courts refused to apply the law and defined the cases as not being justiciable in the very early stage of admissibility. Basically, the courts were unable to understand the novelty of the law on procedural grounds, as well as the whole notion of delegated legal standing, and therefore they did not perceive the NGO as a representative of the victim. If the courts failed to understand and apply the

clear provisions of Ordinance 137, how would they react to a more sensitive issue not clarified by the law—that of civil damages for the NGOs?

1.4 Alternative scenario 2: "Is ex officio action possible?"

The other scenario is that the NCCD would act *ex officio*. This possibility is provided by Governmental Decision 1194/2001 in Article 2(k), which mandates the NCCD to identify and decide on misdemeanors, as well as by Ordinance 2/2001. Legally, it is thus possible that the NCCD would find out from various sources about our hypothetical case and decide to intervene without further notice. So far, this has in fact happened on isolated occasions, mostly in cases of discriminatory statements in the media and discriminatory job announcements.

Impediments

Theoretically, potential beneficiaries of the anti-discrimination law could include all 22 million Romanians, as well as the refugee population and those seeking asylum in Romania, not to mention all foreigners living in Romania. The NCCD has a board of seven members and almost thirty employees so far (the existing norms provided for fifty persons to be hired by the end of 2003, but this has not happened yet and it is not likely to happen, due to financial constraints). This limited number has to cover not only the Litigation Department but also the attributions regarding legislative drafting and analyses, public policies, studies, the development and publication of reports and statistics, and relations with other public authorities, international organizations, and NGOs. Despite all the good intentions of its members, the NCCD is understaffed and lacking in basic resources, and it would not be able to survey the media effectively and screen all incidents of discrimination.

1.5 Recommendations

- The NCCD should adopt and publish its rules clarifying procedures as well as the process and the conditions of admissibility for complaints.
- Similarly, the NCCD should publish its decisions on a Web page and in a newsletter or a compendium and make them available to victims, lawyers, activists, and scholars. Publicity would also help in educating the community, in providing information to journalists, and in sanctioning perpetrators, because of the factor of public shame.
- To increase public awareness, the

NCCD should make it a priority to initiate a national campaign of education and information. The campaign should inform the public of the existence of the institution as a protection mechanism, but the NCCD should also develop a broader anti-discrimination campaign aimed at sensitizing the general public about stigma.

- The development of a national network of monitoring and intervention against discrimination, with the NGOs that already have such a mechanism in place, would be useful in reaching as far as possible. In this context, the NCCD should look at its NGO counterparts as partners, not as enemies. The tendency to marginalize the group of NGOs constituting an informal Working Group on Anti-Discrimination, because those NGOs were more critical of the work of the NCCD, is disquieting; it shows a lack of understanding of the role of NGOs as actors that are committed to social change and have already developed expertise in the area of anti-discrimination.
- Sensitization of the legal profession, the media, and the police is also a required measure at this early stage. The development of training, handbooks, and fact sheets is important not only for lawyers and judges, so they can understand the core of this new branch of law, but also for those who are explaining it to the population and reporting it (i.e., the media).

2. Step 2: Procedures before the NCCD

2.1 Scenario

Following our journey, once a complaint was filed, the NCCD would deal with it and assess the conditions of admissibility. As no rules of procedure have been made public to guide us, we can only analyze previous decisions and take on their face value the declarations of the NCCD board, drawing analogies between the NCCD's unpublished procedure and proceedings before the European Court of Human Rights. Thus, we can assume that the NCCD would evaluate the case in terms of the following: (a) *ratione personae,* the legal standing; (b) *ratione materie,* the substantive provisions of the deed and the nexus with the legal definition; (c) *ratione temporis,* the six-month period from the date of the discriminatory act as established by Ordinance 2/2001 for any misdemeanor. If these conditions of

admissibility were fulfilled, the NCCD could move on to analyze the core of the complaint and evidence provided by the plaintiff, or alternatively it could gather evidence itself.

2.2 Impediments

Here, besides the absence of a clear provision for the shift of the burden of proof, the question is whether the NCCD would understand the specificity of anti-discrimination law and the difficulties related to proving acts of discrimination, and whether it would introduce different standards of evidence than the strict standards of civil procedure law. For example, one question is whether the NCCD would find acceptable any recordings (audio or video) made without a court or prosecutor's order, or if testing would be accepted as evidence in establishing that an act of discrimination had occurred. The recent practice of the NCCD showed that recordings had indeed been found acceptable in the preliminary stage; however, this leaves open the question of the legal value of these recordings before courts of law during appeal procedures (as, under the Romanian Civil Procedure Code, recordings have to fulfill certain conditions in order to be accepted by the court).

In the case of testing, the evidence submitted by various NGOs (especially Romani NGOs) that already have experience in testing discrimination has not been found conclusive; alternatively, testing teams including NGO and NCCD representatives have been created and operated in several cases. Although this is a salutary step, and both the NCCD and NGOs can only benefit from this type of joint action, the question remains whether the NCCD would choose to use the work of NGOs or instead stick to a rigid understanding of evidentiary rules and strike out important evidence in the numerous cases where such evidence is gathered by NGOs, without waiting for the complicated and elaborated scenarios of joint testing teams—which often are not even possible, due to the financial constraints burdening the work of the NCCD.

Another question concerns the type of assistance granted to victims of discrimination before the NCCD. Both the Race Directive in Article 13 and the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 2 from June 1997 assert the importance of providing independent assistance to victims of discrimination in pursuing their complaints about discrimination.[4] The *status quo* is one of a compromise solution, in which the legal adviser in the Department for

Ensuring the Respect of Non-Discrimination consults with the victims in the hallways of the NCCD office, the investigating inspector gathers further evidence, the board of the NCCD makes a decision, and the legal department and some members of the board represent the NCCD—but not the victim—before courts of law in cases of an appeal against the decisions. However, it is unclear how the NCCD would manage to be both the agent issuing the finding of discrimination, and sanctioning the perpetrator, and simultaneously the advocate of the victim during its own proceedings and before the courts of law.

Article 13 of European Union Directive 43/2000 establishes, as one of the competencies of the bodies for the promotion of equal treatment, the obligation to provide independent assistance to victims of discrimination in pursuing their complaints. Nevertheless, the Romanian legislation fails to mention if and how the legal assistance of victims will be pursued. As the agency responsible for finding and sanctioning discrimination misdemeanors, the NCCD should be objective and impartial in relations both with the victim and with the perpetrator. As the Race Directive leaves to the member states the modality of implementing the requirement to provide independent legal assistance, various models might be designed by taking into consideration the structures developed by the European Court of Human Rights or suggested by the ECRI in its General Policy Recommendation No. 2 from June 1997: financial support, legal advice through legal aid offices or independent consulting, etc.

2.3 Recommendations

- Publicity about the NCCD's internal norms and procedures would facilitate the access of beneficiaries, as well as the work of the NGOs and of all those interested in the NCCD, and would legitimize the work of this agency.
- Further improvements in the legal regime against discrimination are also required, by harmonizing the procedures, having in mind the specificity of the act sanctioned. Similarly, a comparative study of the solutions found in anti-discrimination legislation in other countries would be beneficial.
- Although joint testing is salutary, this option is limited by the NCCD's lack of human and material resources. If the lack of funding cripples the work of the NCCD in the future, appropriate guidelines allowing NGO testing should be drafted in order to compensate for

the scarce resources of the NCCD and tap into the NGOs' willingness to help in building evidence.

- Legal aid should also cover anti-discrimination law. The very concept of legal aid in Romania still needs to be developed and reformed, and this might be an opportunity to design various solutions for anti-discrimination litigation, such as providing free legal services for victims, introducing cases on grounds of Law 48 as *pro bono* matters, creating an entirely new category of cases that generate tax exemptions for the lawyers, allowing for *cota litis* for cases of discrimination (which would also be available for NGOs working in this field), or establishing legal aid offices dealing only with this issue. The last solution would also help to provide independent and effective assistance to the victims of discrimination in pursuing their complaints.

3. Step 3: NCCD decision

3.1 Scenario

Assuming that the methodology the NCCD has already developed is legal and hoping that one day it will be also made public (the methodology should be adopted as a distinct Anti-Discrimination Procedural Code and not as an internal regulation of the NCCD, which is not binding on the courts), if there was a finding of discrimination, the NCCD would issue an administrative/misdemeanor decision, with the sanction being solely a fine ranging from 1,000,000 ROL (roughly USD 30) to 10,000,000 ROL (USD 300) for individual victims, or from 2,000,000 ROL (USD 60) to 20,000,000 ROL (USD 600) if the discrimination act targeted a group.[5] Due to the general rules of administrative law, if the sanction is not issued in the six-month statutory period from the date of the deed, or if the NCCD decision is not communicated to the perpetrator in a one-month period, the NCCD finding is not valid anymore. Unlike similar agencies, the NCCD cannot issue binding recommendations or interlocutory injunctions or establish a *status quo ante* (e.g., order an employer to hire back a victim of discrimination illegally fired, order the owner of a bar to allow Roma inside, or order a school not to exclude HIV/AIDS children).

3.2 Impediments

The major question is how effective in combating discrimination some adminis-

trative fines are if almost everybody can afford to pay them. As the principle established by the Race Directive is that the legal remedies should be effective, dissuasive, and proportionate,[6] further consideration of the quantum of the fines and types of punishment is required.

3.3 Recommendations

- Publicizing the decisions is extremely important, both for the purposes of educating the public and for punishing the discrimination misdemeanor. The reaction of an informed public, such as refusing to accept goods or services from a company publicly known to discriminate against a certain group, might be even a harsher penalty than a mere fine that is not very relevant from a pecuniary perspective, and which has no specific added value since the amount of money is not included in a special budget line for anti-discrimination projects but rather is diluted within the overall state budget.
- In order to make the legal remedy effective, it is important both to increase the quantum of the administrative fines sanctioning discrimination and to diversify the types of sanctions. In this way, the sanction can serve not only to fine the perpetrators but also to enforce other sanctions provided for by Ordinance 2/2001, i.e., to be a warning, to work for the benefit of the community, etc. The last sanction would be even more effective not only in terms of impact on the attitudes of the perpetrator but also in terms of visibility in the community.
- The NCCD should also develop having a role in mediation or conciliation between parties. Although this function was introduced only recently by Governmental Ordinance 77/2003, in practice, the NCCD has expanded its mandate and used mediation in the past.

4. Step 4: Appealing the Decision of the NCCD

4.1 Scenario

If either the victim or the defendant was not satisfied with the decision of the NCCD, Ordinance 2/2001 allows for the possibility of an appeal within fifteen days from the date of the communication.[7] The appeal should be addressed to the NCCD, which has to register it and send it, together with the file of the case,

to the court of first instance located where the deed was perpetrated.[8] The court has to decide on a date (not more than thirty days from the communication) and subpoena the perpetrator, or the person who appealed (the victim or the NGO), as well as the NCCD, the witnesses mentioned in the documents, and any other persons who might help in resolving the case.[9]

After the hearings and assessment of supplementary evidence, if available, the court would decide whether to repeal or affirm the sanction that the NCCD established. This judicial decision might be appealed separately, within fifteen days from the communication, to the administrative section of the tribunal.[10]

4.2 Impediments

Although many NCCD decisions have already been appealed, as of this writing there has been no judicial decision on any of these appeals. The question pending at this point is whether in the case of an appeal of the NCCD's decision, the court of first instance would decide on the existence or nonexistence of the discriminatory act or on the quantum/type of sanction. The practice in Romanian misdemeanors law suggests that the court would look at all aspects (existence of the deed, mitigating circumstances, quantum of the sanction); however, comparison should also be made with the face value of the decisions of similar bodies, e.g., the Dutch or the Belgian institutional mechanisms combating discrimination, whose decisions have been quashed by the judiciary only in rare cases and for well-founded reasons.[11]

4.3 Recommendations

- The relationship between the NCCD and the judiciary needs to be further refined in order to clarify the standing of the NCCD proceedings (as compulsory or optional proceedings before the filing of civil complaints) and the value of the NCCD decisions, as well as the rules of procedure applicable to discrimination cases.
- It would be extremely useful to adopt an Anti-Discrimination Procedural Code, expanding on the civil procedure rules but applying them to the specific needs of the anti-discrimination legislation, particularly in relations with the civil courts that decide appeals against the decisions of the NCCD and torts cases on grounds of discrimination.

5. Step 5: Asking for civil remedies

5.1 Scenario

At this point in our hypothetical case, the victim got a positive decision from the NCCD and there was no appeal, or during the appeal the NCCD decision was affirmed. Then, although there was an official recognition of the act of discrimination and the fine was paid to the state, the victim remained in the situation created by the discrimination.

On the grounds of the finding or decision of the NCCD, the victim could bring a case before the civil courts and ask for damages and the reestablishment of *status quo ante,* the situation before the discrimination occurred.[12] More important, it would also be up to the courts of law to decide whether to withdraw the authorization or certificate allowing the discriminating organization its registration or right to function, in the case of legal persons causing major damages to a victim of discrimination or repeatedly infringing the provisions of the anti-discrimination law. The advantage of initiating such a procedure is that the law exempts from judicial taxes any actions on the grounds of Law 48.

In addition to Article 21 of the law, the applicable norms are Articles 998 and 999 on civil liability from the Civil Code. The requirements for a decision of compensation or damages on civil liability are a) the existence of an illicit act, b) the damage, c) the nexus, or relation of causality between the illicit act and the damage, and d) the culpability of the perpetrator. The illicit act (action or inaction) is spelled out by Law 48, all the misdemeanors sanctioned being prone to be considered illicit acts. The damage can involve both moral and pecuniary damages, *damnum emergens* and *lucrum cessans.* The nexus between the discriminatory act and the damages would be probably the most difficult part to prove, a complex body of evidence being required. As for the culpability requirement, the finding of the NCCD should be sufficient to fulfill this condition.

5.2 Impediments

Proving the negative consequences of discrimination is one of the most difficult tasks a lawyer might have. Here, of course, it would be helpful to have a derogation from the standard evidentiary rules in Romanian civil procedure, thus allowing for more complex evidence, such as psychological, sociological, and medical studies of the impact of discrimination on human personality, as well as statistics and records of testing.

The real challenge for the judges as well as for the lawyers of the victims would be in assessing moral damages, as for more than half a century Romanian legal scholars stated that the concept of moral damages conflicted with the socialist legal system and provided for unjust enrichment. Thus, students had been taught that the payment of moral damages is not a legal source of income in a socialist society. After studying and applying this legal institution as restrictively as possible for so long, it is difficult to believe that overnight the courts would open up and accept the importance of recognizing the destructive impact of discrimination in the life of an individual as well as in the life of the society.

5.3 Recommendations

- As the core challenge here is an outdated attitude of the courts and of the legal profession in general, it is important for the NCCD to develop a strategy toward sensitizing this group and informing it about recent trends and subsequent developments in Romanian law, not only through continuing legal education but also with improvements in the curricula of the law schools.
- The NCCD is also mandated to develop studies and reports on different vulnerable groups and on the overall situation of discrimination in Romania. Such documents, if elaborated in time and in a comprehensive manner, might be useful for the lawyers in their relation with the courts when asking for civil damages, as these documents would be authoritative enough for the courts to accept them.

NOTES

1 This is an updated excerpt from an article written in April 2003 for the European Roma Rights Center; see Romaniţa Iordache and Andreea Tabacu, *Not Yet Viable: Discrimination Action in Romania,* 1 Roma Rights 61–70 (2003).

2 Ordinance 27 from 2002 on petitions.

3 Discussion with Cristian Jura, president of the NCCD, on 29 November 2002.

4 Article 13(2), Race Directive.

5 Article 20 of Law 48/2002.

6 Article 15 of the Race Directive provides that "the sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate, and dissuasive."

7 Article 31(1) of Ordinance 2/2001.

8 Article 32 of Ordinance 2/2001.

9 Article 33 of Ordinance 2/2001.

10 Article 11 of Law 180/2002, amending Ordinance 2/2001.

11 See the comparative study *Specialized Bodies on Equal Treatment and Non-discrimination,* PHARE Programme RO 9503.01, Improvement of Roma Situation in Romania, MEDE European Consultancy and MRG, by Marcel Zwamborn (May 2001).

12 Article 21 of Law 48/2002.

Three

STRATEGIES FOR SCHOOL DESEGREGATION

Advocacy Strategies to Combat Segregation

by Iulius Rostaş and Mona Nicoară

Various strategies have been deployed throughout Central and Eastern Europe to advocate for desegregation. Most efforts, however, have not been able to sustain involvement by all necessary stakeholders and to combine short-term tactics with an understanding of the long-term dynamics of desegregation processes. This article presents detailed information on how a variety of strategies have been deployed, from international and regional pressure to project development to campaigning around legal action. The authors use examples to illustrate the obstacles and challenges faced and the essential elements of successful campaigning in support of desegregation.

1. INTRODUCTION

In Central and Eastern European countries transitioning from communist systems to democratic societies and free market economies during the 1990s, the economic crisis accompanying the transition led to a shortage in state budget allocations for education. This shortage impeded adequate and full educational reforms. Therefore, such reforms became highly competitive processes in which various stakeholders tried to impose their interests at the top of the agenda. For example, in a process driven by the rapid development of civil society and political groups associated with national minorities having strong connections to various nation-states in Europe, the improvement and extension of minority language education was included among the priorities of educa-

tional reform in the region. On the other hand, the fact that equal access to quality education for Roma in mainstream schools has not been firmly set on the agenda of policy makers to date can be seen as a failure of Romani organizations and other institutions interested in the rights of Roma and additional vulnerable groups. These organizations failed to react promptly to the new opportunities offered by fledgling democratic processes in Central and Eastern Europe. Moreover, both governmental authorities and civil society actors have been slow to react to new impulses to segregate Roma within mainstream educational systems, as they arose simultaneously with early educational reforms.

In the field of education, segregation acts as a structural factor that reinforces existing inequalities between Roma and non-Roma in terms of social exclusion and opportunities for the future. Segregation is not a characteristic of post-communism. The segregation of Roma in different fields of public life—housing, education, health, etc.—has been part of European history for centuries. Post-communism has only deepened the segregation of Roma in various fields. Changes in the agricultural sector of the region during the 1990s—agricultural reform and land privatization—to a large extent excluded Roma from among their beneficiaries. This led to the economic migration of Roma from rural to urban areas. Thus, existing ghettos expanded and new predominantly Romani areas appeared. In schools located in these areas, Romani children came to constitute the overwhelming majority of the student body. The resurgence of nationalist impulses after the fall of communism also reinforced already existing segregationist practices, leading in some cases to the creation of separate facilities for Roma enrolled in mainstream schools.

Furthermore, being unprepared to compete on the new job market, and facing prejudice and discrimination in the new environment, Roma became further mired in huge economic difficulties that affected their ability to support—both financially and otherwise—their children's education. Sometimes Romani parents sought relief from their material difficulties by registering their children in special schools for the mentally disabled, where students receive aid in the form of food. This decision, however, disregarded the long-term consequences on their children's ability to continue their studies in other schools and to compete later in the job market with their peers educated in mainstream schools. In some cases, new bureaucrat-

ic and financial arrangements associated with educational reforms encouraged the educational segregation of Romani children. Such is the case of Hungary, where segregation was largely caused by the provision of financial incentives for including Romani students in the so-called "catch-up" programs built into post-communist education law. Thus, it is not surprising that educational segregation of Roma has taken on a variety of forms in the region, from separate mainstream schools primarily as a result of residential segregation, to separate classes for Roma in mainstream schools, to the overrepresentation of Romani children in special schools for the mentally disabled or other remedial programs.[1]

The strategies deployed in order to advocate for the desegregation of Central and Eastern European educational systems have been as diverse and complex as the different types of segregation that developed around the region. The success of these advocacy efforts has largely depended on a difficult task of joining tactics and long-term planning with, on the one hand, local context and stakeholders and, on the other hand, motors for implementation—such as non-governmental organizations (NGOs) or governmental projects—and the material and human resources available to them. A striking (given the relatively recent vintage of the issue) variety of strategies has already been tested in the region, with more or less success. The following sections will analyze the advocacy impact of these strategies, as it appears to date, and suggest ways for moving forward and maximizing the effects of these efforts.

2. International pressure

The absence of political will to implement far-ranging desegregation practices, coupled with the lack of effective legal avenues to challenge the racial segregation of Roma in the educational systems of many countries, forced human rights and Roma rights activists to turn to the international community to mobilize shame and generate pressure for change. Compared to domestic law, which until recently contained at best declarative constitutional guarantees for equality, international human rights law had the advantage of articulating clear bans on racial segregation. These provisions include the ban contained in Article 3 of the 1966 International Convention for the Elimination of All Forms of Racial Discrimination; a requirement that states adopt comprehensive anti-discrimination legislation and policies covering a variety of sectoral fields,

including education, as in the case of the European Council Racial Equality Directive 43 of 2000; and the creation of monitoring mechanisms for state compliance with international human rights law commitments.

International advocacy efforts were spearheaded by the Budapest-based European Roma Rights Center (ERRC), which was the first organization in the field to articulate the issue of separating Romani children from non-Romani peers in the charged, strategic language of segregation. For instance, as early as November 1997, the ERRC stated before a Human Dimension Implementation meeting of the Organization for Security and Cooperation in Europe that the Czech Republic had an "effectively segregated school system,"[2] a formulation that inflamed the governmental delegation of the Czech Republic present there. The language of segregation was quickly adopted by Romani and other human rights groups, but, as the ERRC and its allies were to find out, intergovernmental organizations were much more reluctant to deploy it in official documents, and the much-needed international pressure on governments to abide by their international commitments on school segregation was slow to build. Part of the problem lies in the relatively long cycle of monitoring by intergovernmental bodies, as well as in the delayed development of a Roma rights movement after the fall of communism in most Central and Eastern European countries.

2.1 Advocating for desegregation in the UN system: The case of Slovakia

In one instance of this problem, reports of racial segregation of Romani children in special schools for the mentally disabled throughout Slovakia had been accumulating since before the fall of communism, but the issue first appeared on the international agenda only in August 2000, when the Slovak Republic came up for review before the United Nations Committee for the Elimination of Racial Discrimination. Based on reports received from NGOs, the Committee noted its concern, *inter alia*, with respect to the fact that "a disproportionately large number of Roma . . . are segregated and placed in schools for mentally disabled children." However, the Committee fell short of calling for the immediate enactment of desegregation policies with respect to Romani children in the Slovak educational system, recommending instead more vaguely that "the state party address the various factors responsible for the low level of education among the Romas . . .

and continue efforts to develop and expand strategies to facilitate the integration of minority pupils into mainstream education."[3]

The efforts of NGOs redoubled when, in October 2000, Slovakia came up for review before the UN Committee on the Rights of the Child, the body that monitors the implementation of the Convention on the Rights of the Child, and whose general comments have sought to give content to the right to education.[4] For instance, the Bratislava-based League of Human Rights Advocates filed with the Committee a joint submission together with the International Club for Peace Research, based in Yaoundé, Cameroon, which detailed not only cases of segregation in special schools for the mentally disabled, but also cases of segregation in all-Romani schools that functioned according to standard curricula, but amid inadequate material and educational conditions.[5]

Despite such efforts by local and international human rights groups, the language adopted by the Committee in its Concluding Observations was even weaker than in the case of the Committee for the Elimination of Racial Discrimination. Thus, the Committee noted "with concern that most Romani children attend special schools because of real or perceived language and cultural differences between the Roma and the majority," but it recommended only that "the state party design further measures aimed at ensuring that Romani children have equal access to and opportunities to attend regular school with supportive education, if necessary," as well as "ensure that the educational system and the media in particular foster positive attitudes toward minorities and intercultural dialogue between the minorities and the majority, including children."[6] Thus, despite sustained advocacy by domestic and international NGOs, and despite the Committee's apparent concern with giving full content to the right to education, the language of segregation and integration was not adopted by the members of the Committee, while the tone of the Committee's recommendations lacked the necessary urgency to effect decisive governmental action on the issue.

More recently, in July 2003, the Slovak government report on the implementation of the International Covenant on Civil and Political Rights was reviewed by the UN Human Rights Committee, arguably one of the most decisive and influential treaty-monitoring bodies in the United Nations system. Alongside other domestic organizations, the ERRC submitted a comprehensive shadow report documenting, *inter alia*, segregation in the educational system. Backing its analysis

with extensive statistical data collected in the field in 2002, the ERRC stated that "during the 2002/2003 school year, in many Slovak schools for the mentally disabled, more than half of the students are Romani, and in some schools for the mentally disabled, *every single pupil was Romani*" (emphasis in the original).[7] In response, the Human Rights Committee produced the strongest language to date on racial segregation in Slovak schools:

- The Committee is concerned about the grossly disproportionate number of Roma children assigned to special schools designed for mentally disabled children, which causes a discriminatory effect, in contravention of Article 26 of the Covenant.
- The state party should take immediate and decisive steps to eradicate the segregation of Romani children in its educational system by ensuring that any differentiation within education is aimed at securing attendance in non-segregated schools and classes. Where needed, the state party should also provide special training to Romani children to secure, through positive measures, their access to education without segregation.[8]

The urgent tone of the recommendation above, as well as the principled position expressed by the Human Rights Committee in the case of Slovakia, is consistent with the opinions expressed by Committee members on previous occasions when the racial segregation of Romani children in the field of education came to the attention of the monitoring body.[9] Much of the difference in positions and tone on sensitive strategic issues between various UN treaty-monitoring bodies depends on their relative importance—as perceived by governments appointing members to the committee, NGOs engaged in strategic advocacy, and the international media. In the case of the Human Rights Committee, the perceived relative importance of the body, as well as the higher-profile media coverage that the work of the body receives internationally, leads member states to appoint more senior human rights experts with substantive experience in the field. In addition, the importance of the committee prompts a larger number of NGOs to submit information and shadow reports that complement the information presented by governmental delegations during the review process. Successful advocacy before UN bodies largely hinges on variables such as these, rather than

merely on the merits of the submissions presented by governments and independent groups.

2.2 Regional advocacy for desegregation: Recent challenges

Another monitoring process that held much promise for Roma and human rights activists in Central and Eastern Europe has been the regular reporting of the European Commission on the progress toward accession of candidate states in the region. This process has proved to be an increasingly weaker mechanism for pressuring governments to deal with segregation in education, as the process became more politicized. In the early stages of the accession process, these reports were extremely effective instruments for the European Commission to pressure governments to comply with the criteria for accession to the European Union, including respect for human rights and protection of minorities; as such, these reports were seen by civil society actors as opportunities to amplify their concerns in a forum and format that would receive thorough attention from the governments concerned. But as the accession process draws to an end, the reports read increasingly as documents legitimizing the process of enlargement, rather than as records of thorough monitoring by the European Union.

To refer back to the example of Slovakia, for example, the 2001 report of the European Commission noted that "the under-representation of Romani students in the educational system, hand in hand with over-representation in schools for retarded children, continued to exist. The practices of separate classrooms for Romani students was reported in a number of cases."[10] By November 2003, when the European Commission issued its last monitoring report before Slovakia's inclusion in the European Union, scheduled for May 2004, the reference to the specific issues with which Roma are confronted in the Slovak educational system had been replaced by vague references to the persistence of problems relating to the Romani minority,[11] even though the situation on the ground had not changed.

Politics is not the only limitation that affects the impact of advocacy before international monitoring bodies. Enforceability is another, possibly larger, limitation. In the absence of specific measures that can be imposed by intergovernmental monitoring agencies, and in the absence of adequate state and private funding devoted to minority education, non-NGOs need to complement their advocacy strategies with additional

efforts aimed at coordinating outside funding devoted to education and at including segregation among the priorities of larger international donors who can lean on governments to change their policies toward Roma. The New York–based Open Society Institute, a foundation with a particularly strong activist side to its work, led the first extensive effort for donor coordination on Romani issues by co-organizing with the World Bank, along with the involvement of the European Union, a donor coordination meeting in Budapest, Hungary, in the summer of 2003. Romani civil society activists throughout the region highlighted segregation in the field of education among the concerns they presented before the conference. As a result, segregation featured prominently on the agenda and in the resulting documents of the conference, and it is expected to be among the major issues to be dealt with during the "Decade of Roma Inclusion" launched at the meeting.[12]

3. Project Development

Another strategy employed to tackle the segregation of Roma in education has been to develop local, small-scale projects that can be replicated and can serve as concrete, persuasive springboards for advocating for the adoption of national desegregation policies.

3.1 Bulgaria: Non-governmental initiatives to implement desegregation programs

The first such desegregation project started in Vidin, Bulgaria, in 2000, at the initiative of the local NGO Drom, in response to the failure of the Bulgarian government to enact effective desegregation plans.[13] In April 1999, following two years of intense negotiations with Romani NGOs, the government of Bulgaria adopted the Framework Program for the Equal Integration of Roma in Bulgarian Society, which includes language on desegregating the national educational system. However, to date, the government has failed to take any major step to implement the Framework Program.

In response to government inaction, in the 2000–2001 academic year, Drom enrolled 275 Romani children from the Nov Pat Romani neighborhood into integrated schools located in the city. (The number of children increased to 460 by the end of the academic year; the following academic year, the number of children who benefited from the project increased to 611; another hundred children from the Romani neighborhood

enrolled in two mixed schools on their own initiative.) The academic achievements of the children participating in the project increased significantly in the new environment, as revealed by an evaluation made by the Bulgarian Helsinki Committee.[14] Given the success of the Vidin project, in the academic year 2001–2002, a number of other NGOs throughout Bulgaria modeled similar programs on Drom's strategy, and desegregation projects were implemented in Pleven, Montana, Stara Zagora, Sliven, and Kaskovo.

3.2 Importance of involving all stakeholders

Drom's campaigning strategy for implementing the project was comprehensive, targeting all the stakeholders: Romani children, Romani parents, teachers and principals of the schools, non-Romani children and parents, and local authorities. In addition to an educational objective—equal access to quality education for Romani children—the project sought to actively engage the local Romani community and to garner the support of non-Roma. In the preparatory phase, Drom worked closely with Romani parents, raising awareness on the issue of segregation, and acting as a liaison between Roma, on the one hand, and the administrators and teaching staff of the future hosting schools, on the other. Drom provided training to Romani teaching assistants selected to accompany Romani children to and from school each day, to monitor and ensure school attendance, and to deal with any potential problems; Drom organized meetings with representatives of the local authorities, NGOs, and political leaders from the Romani community, and explained the rationale, goals, and planned activities of the project. The campaign also included door-to-door visits in the Romani neighborhood, during which Drom explained to Romani parents the benefits of sending their children to integrated schools.

In addition, Drom tried to reach the wider public through the local media. Thus, the local newspaper in Vidin published an interview with the Drom director, Donka Panayotova, informing the public about the proposed initiative, while a Roma-oriented program that is broadcast locally via cable produced short presentations on the educational programs and facilities of the prospective hosting schools, in order to enable Romani parents to make informed choices concerning the best school for their children. All of these activities were followed by a national conference, which Drom organized, with educational experts, prominent academics, gov-

ernment representatives, members of political parties and NGOs, and Roma community leaders. The conference led to the development of a coalition of civil society and political figures supporting desegregation, and it received extensive local and national media coverage.

During the implementation stage, Drom held regular meetings with Romani parents and organized a meeting between Romani parents and school administrators, which led to the inclusion of Romani parents on the school boards of some of the hosting schools. Drom gradually developed regular contacts with school authorities, following a seminar hosted at the beginning of the academic year. In cooperation with the Regional Education Inspectorate, Drom also held a series of training seminars on multicultural education, ethnic tolerance, and the history and culture of minority groups, whose primary beneficiaries were teachers working in the newly integrated classes. The Vidin project also had a social component. Thus, children from the most impoverished families received free school materials; in addition, supplementary tuition was provided to some Romani children in order to meet the new educational standards. Drom organized extracurricular activities to bring together Romani and non-Romani children and their parents: a competition for the most tolerant class, an integrated camp, and a celebration of International Roma Day. Simultaneously, Drom launched a sustained media campaign targeting local, regional, and national media, with the support of the London-based Minority Rights Group and the Budapest-based ERRC. The campaign also received international attention from the *New York Times,* the *International Herald Tribune,* the Canadian Broadcasting Corporation, and the British Broadcasting Corporation.[15]

3.3 Paving the way for government action on desegregation

About one year after the start of the project, Drom's actions, especially the media campaign and the support for desegregation gained from educational experts and civil society actors, propelled municipal authorities to sign an agreement with Drom, the Regional Education Inspectorate, and the regional governmental authorities, pledging their support for desegregation. Moreover, in response to sustained domestic advocacy, as well as to criticism in the media and pressure from international organizations and monitoring bodies alerted to the existence of segregation in Bulgaria, the Ministry of Education

in September 2002 adopted a document entitled *Instruction for Integration of Children and Pupils from Minorities,* which is in effect a government plan to desegregate the Bulgarian educational system and to develop inclusive school curricula for minority students in Bulgaria.

However, more than one year after the adoption of the instructions by the Bulgarian Ministry of Education, no state budget funds have been allocated toward desegregation. Thus, after September 2002, the focus of the advocacy campaign of Romani NGOs in Bulgaria shifted toward pressing for the effective implementation of the desegregation instructions by calling for the inclusion of substantive funding specifically for this purpose in the state budget, as well as by seeking to attract private and foreign funding for specific projects that could act both as political leverage and as matching or complementing resources to pool together with potential government funding. As of this writing, the negotiations between NGOs and the Bulgarian government are continuing, and there are indications that the 2004 state budget will provide some funding for desegregation.

The difficult process of convincing the Bulgarian government to allocate funds for desegregation points to a structural weakness in the Romani movement: the absence of political representation. If Roma want to effectively influence government policies toward them, the most effective way is to have representatives in key decision-making bodies. The case of Hungary, discussed in more detail elsewhere in this source book, is a clear illustration of this thesis. Following the elections in the summer of 2002, as a result of a process of political negotiation between representatives of the strong, well-developed Romani civil society in Hungary and mainstream parties currently forming the government coalition, Romani representatives were appointed at all levels of the central government, most notably within the office of the Prime Minister and the Ministry of Education. The Commissioner for the Integration of Roma and Disadvantaged Children, appointed within the Ministry of Education, was able to implement an extensive and adequately funded desegregation program, which received full governmental support beginning in the 2003–2004 academic year. As of this writing, it is too early to evaluate the effectiveness of the Ministry of Education's efforts for the current academic year, much less the long-term impact of the new educational policies toward Roma in Hungary

4. Campaigning related to legal action

A number of recently developed legal cases challenging the racial segregation of Roma in education in Europe have been modeled after the U.S. Supreme Court case *Brown v. Board of Education.*[16] The uses of strategic litigation as an effective tool to challenge structural and legal inequalities and to help bring about social change became clear to human rights lawyers and Romani activists seeking to jump-start desegregation processes in recent years. The following will analyze the impact and shortcomings of the advocacy strategies surrounding recent legal challenges to the racial segregation of Romani children in schools in Central and Eastern Europe.

4.1 Strategies surrounding legal challenges to segregation

The first legal challenge to the segregation of Romani children in Central and Eastern Europe was mounted in Ostrava, the third-largest city in the Czech Republic. In June 1999, with the assistance of local counsel and the Budapest-based European Roma Rights Center, twelve Romani children from Ostrava and their families filed an action before the Constitutional Court of the Czech Republic seeking remedies for being segregated in schools for the mentally disabled solely on account of their race; the lawsuit was filed against the administrators of the special schools in Ostrava, the local department of education, and the Czech Ministry of Education. The plaintiffs in the case asked the Constitutional Court for a judicial finding on racial discrimination and segregation in the Ostrava special schools, the establishment of a compensatory educational fund, and a court order compelling the Ostrava board of education and the Czech Ministry of Education to put an end to racial segregation in education and to develop adequate reforms aimed at remedying the legacy of racial discrimination against Roma in the Czech educational system.

After the Czech Constitutional Court dismissed all twelve cases in October 1999, the plaintiffs submitted the Ostrava file to the European Court of Human Rights in April 2000, alleging that segregation in the field of education amounted to inhuman and degrading treatment under Articles 3 and 14 of the European Convention of Human Rights.[17] As of November 2003, more than four years after the initial filing with the European Court of Human Rights, the Ostrava case is still awaiting an admissibility decision from Strasbourg. Informal pressure from the Czech government, the novelty of the

legal claims in the case, and the Court's own workload appear to have conspired to keep the Ostrava legal case unresolved to date.

The ERRC and its partners in the Czech Republic concentrated their desegregation advocacy around the international impact of the legal case, without developing alternative strategies to deal with the eventuality that litigation before the European Court of Human Rights would not progress, or with the possibility that government-led reform of the Czech educational system would be stalled. Consequently, the local impact of the Ostrava case has so far been limited to the immediate reverberations generated by the publicity surrounding the case, and to the more intractable ripples generated by the reactions of various inter-governmental bodies alerted to the situation.

After filing the Ostrava case with the Czech Constitutional Court, the ERRC engaged in intensive international advocacy aimed at building support for the legal case.[18] In response to international pressure, the Czech government promised to enact comprehensive educational reforms that would include ending the segregation of Romani children in special schools for the mentally disabled. But promises of reform have to date failed to materialize in concrete government actions. A series of strategies and reform proposals discussed by the government between 2001 and 2003 have failed even to acknowledge the existence of segregation in the Czech educational system.[19] The only arguable improvement in the Czech government's educational policies toward Roma is the introduction of Romani classroom assistants. However, reports indicate that more than half of these assistants work in special schools for the mentally disabled, which makes them a part of the supporting mechanisms of segregation, rather than a tool for the integration of Romani children in mainstream schools; moreover, Czech school administrators have the option of opting out of the Romani classroom assistants program. There are strong indications that many schools choose not to hire additional support for Romani students.

Built as a test case challenging segregationist practices throughout Europe, the Ostrava case has yet to deliver on the promise of legal and social change that provides the impetus for public interest strategic litigation endeavors. The ERRC spent more than eight months building the case in Ostrava, collecting data on the representation of Romani children in both mainstream and special schools in the city, inter-

viewing special school teachers and psychologists on placement committees, and consulting with local counsel, outside experts, and Czech human rights defenders. Romani community leaders and parents were involved in building the twelve cases brought before the Constitutional Court. But the ERRC's strategy left out of the process other stakeholders: teachers in mainstream schools and non-Romani parents. Non-Romani parents may have been irrelevant to the legal case itself, but they could have been instrumental in changing public attitudes toward the segregation of Romani children, and even in ultimately facilitating the process of desegregation in the Czech Republic.

A similar strategy was deployed in the ERRC's legal case filed with a local court in April 2002 against the Croatian Ministry of Education, the local government of Medimurje County in Croatia, as well as four primary schools in the county. The plaintiffs in the case alleged that Romani children were segregated in separate, educationally inferior Roma-only classes organized in otherwise mainstream primary schools solely on account of their race. The high visibility of the case and the publicity generated by the lawsuit gradually carved out a space for public debate on segregation in the Croatian media, but it also led to the development of racial tension around desegregation on a local level. Thus, in response to the possibility of desegregation raised by the lawsuit and the initial government response to it, non-Romani parents in the county organized to block the entrance to one of the local schools in Medimurje County on the first day of classes in September 2002, in order to prevent Romani children from attending.

Following a meeting with the protesting parents and school administrators, the Croatian Ministry of Education accepted the non-Romani parents' demand that five out of seven classes in the school be racially segregated and sent the local government of Medimurje County a letter formalizing this arrangement, effectively condoning the practice of racial segregation in Croatian schools.[20] It is not clear whether community advocacy involving all major stakeholders would have led to an entirely different course of events in Medimurje County, but the non-Romani's parents' response to the lawsuit and the subsequent official reinforcement of segregationist practices could at least have been mitigated by coordinating the legal strategy with sustained local advocacy.

4.2 Strategies surrounding the development of anti-discrimination laws

The gradual development of strong anti-discrimination legal instruments throughout Europe in recent years has been opening new avenues for both strategic litigation and advocacy against desegregation. Romania, which in 2000 adopted comprehensive anti-discrimination legislation in conformity with the benchmarks set by the European Union Race Equality Directive, and in 2002 appointed a body charged with implementing the newly adopted legislation, became one of the first testing grounds for mounting legal challenges to segregationist practices by using domestic anti-discrimination provisions and mechanisms. Thus, upon receiving reports that Romani children were being forcibly separated from non-Romani children by school authorities in the village of Cehei, Sălaj County, in northern Romania, the Bucharest-based NGO Romani CRISS filed a complaint with the Romanian National Council for Combating Discrimination in March 2003. The complaint alleged that the separation of children in different buildings solely based on their ethnicity constitutes an act of racial discrimination in breach of Romanian anti-discrimination law.[21] In its complaint, Romani CRISS documented not only the existence of separate school buildings for Romani and non-Romani children, but also the provision of lower-quality education in substandard facilities for the segregated Romani children. The success of the complaint that Romani CRISS lodged with the National Council for Combating Discrimination was relative: the Council issued a decision that the Cehei school authorities had violated the provisions of the Romanian anti-discrimination law, but it fell short of punishing the violators and levying a fine (as provided for in the law), choosing instead the rather creative solution of issuing a "warning" to the Sălaj County Education Inspectorate (an avenue not provided for in the anti-discrimination law).

By comparison, Romani CRISS's advocacy strategy around the legal complaint was more successful: by following up its legal action with sustained advocacy efforts at the level of the Sălaj County Education Inspectorate, as well as the central Ministry of Education, Romani CRISS was able to pressure education authorities to dismiss the principal of the Cehei school and to coordinate its efforts to improve the conditions under which Romani children were studying. However, what should have been a landmark case challenging the educational segregation of Romani children in Romania led

only to minor changes in the situation of the segregated Romani children in Cehei. Because segregation had not been firmly established as a major human rights issue for Roma in Romania, Romani CRISS was unable to garner support from other Romani groups, mainstream human rights organizations, or other actors. Neither Romani, or non-Romani, parents nor the wider communities were brought into play in Romani CRISS's dealings with county and national school authorities. In addition, the message of the NGO's efforts interpreted segregation restrictively as discriminatory separation based on ethnicity, without elaborating on the educational and psychological harm of segregation. As a consequence, the Ministry of Education was not mobilized to investigate the existence of segregation, and Romanian media presented the Cehei case as an exotic anomaly, rather than representative of a pattern of serious human rights violations with long-term consequences.

The complexities of maximizing the impact of litigation and other legal actions through advocacy have yet to be fully exploited in the region. As the very model provided by *Brown v. Board of Education* and the development of the civil rights movement in the United States has plainly shown, litigation alone is not sufficient to bring about social change. Without sustained advocacy complementing legal actions, without community mobilization on a local level, and without the development of messages tailored to all relevant stakeholders, legal challenges on their own cannot lead directly to desegregation. At best, they can provide precedents on which other cases and further advocacy for reform can be built. At worst, they may spark backlash and racial tensions and thus serve as springboards for reinforcing segregationist practices and other racial inequalities.

5. Further obstacles to successful advocacy for desegregation

As the above analysis demonstrates, advocates for desegregation have had considerable successes—both at the level of international forums, as is the case of the ERRC's advocacy before the United Nations, and on a very local level, as shown by Drom's project in Vidin, Bulgaria. But, with the possible exception of the Hungarian example, the layer between the international and the local levels, the sphere of national decision-making and implementation, is missing. This is the crucial link in any desegregation process, because at the end of the day, national governments are the ones

with the duty and capacity to enact integration policies. We propose several explanations for this failure at the national level.

5.1 Piecemeal approach of small human rights groups

To date, advocacy for desegregation has been primarily the work of a relatively small group of human rights and Romani political activists with limited human and material resources, a lack of expertise, and an insufficient legalistic understanding of the phenomenon. These limitations have meant that those advocating for desegregation have, in most cases, developed a piecemeal approach to the issue, and they have not been able to develop comprehensive strategies addressing the full range of stakeholders or to tailor their message according to the different advocacy targets involved. More importantly, they have failed to generate a grassroots movement among Romani communities in support of desegregation or to make inroads into public awareness about segregation and educational inequalities.

A principal problem is the capacity of Romani organizations to mobilize their primary constituency around the issue of segregation. Romani political organizations are often weak and their political agenda is rarely attractive to Roma, who tend to support mainstream parties with more chances for success. They have a reduced capacity of coalition-building, primarily due to widespread prejudice against Roma, which leads mainstream organizations to fear losing their constituencies if they adopt Romani issues on their agenda. Furthermore, Romani NGOs throughout the region are underfunded; whatever funding is available is usually conditioned by the agenda of foreign donors, not by the actual priorities of Romani communities—a state of affairs that only deepens the gap between Romani groups and their presumed constituencies. Finally, a dearth of qualified personnel and of adequate capacity-building efforts further weakens Romani civil society in Central and Eastern Europe.

5.2 Divergent views within the Romani community

A second obstacle to generating grassroots support for desegregation is the persistence of divergent points of view with respect to education among Roma themselves. Some Romani activists see segregation as a particularly egregious form of discrimination that reproduces inequality, and they propose an inclusive educational system as a partial solution to

racial inequality. Others see segregation as an opportunity for Romani children to preserve their traditions and to avoid potential psychological harm associated with mixed schooling environments; they propose increasing the quality of education in Roma-only schools as a means to remedy underachievement among Romani students. These divergent tendencies within the Romani movement itself create confusion among donors and policy makers. This confusion only serves to reinforce the inertia with which educational systems have been treating the problem of ensuring equal access to quality education for Roma.

5.3 Failure to develop messages for all stakeholders

A third important problem lies in the selection of targets for most advocacy strategies. Because most strategies dealing with segregation in the region have been developed by lawyers and activists with a human rights background, these strategies have primarily focused on the relationship between Roma, on the one hand, and school and national authorities, on the other, often leaving out of the equation entirely the relationship between Roma and non-Roma. Thus, even the most successful strategies have been limited in their impact, since they did not seek to develop a message addressing the wider society and the long-term benefits of desegregation for all—Roma and non-Roma alike. Without the support of non-Roma, desegregation threatens to be a divisive issue even before it becomes a fact on the ground.

5.4 Conflicting approaches: Desegregation vs. minority rights

This last point forces consideration of yet another problem: the clash between the Romani advocates of desegregation and the members of other minorities that would like to have separate educational institutions for the preservation of their ethnic identity. The fault line lies between the human rights approach of those supporting desegregation and the minority rights approach of those in favor of minority language schools. Since other national minorities in the region have been better organized and better represented at various levels of decision-making, their call for minority language education has had more of an echo among the general public. This tension between many Romani activists and representatives of other minorities has created confusion among the majority population, which is having difficulty understanding the full range of positions with respect to education for minorities.

NOTES

1 Lack of statistical data makes it impossible to accurately assess the extent of segregation in most cases, as well as to estimate the costs of desegregation. In some cases, provisions regarding protection of personal data and protection of minorities have been invoked by school authorities and those supposed to be collecting relevant statistics, as an excuse for the absence of data on the segregation of Romani children. However, when the school can benefit from donations or projects for Roma, school authorities usually overestimate the number of Romani children attending a specific school.

2 See *Statement of the ERRC at the OSCE Implementation Meeting on Human Dimension Issues*, 21 November 1997, available at: http://errc.org/publications/letters/1997/osce-3.shtml.

3 *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Slovakia,* 1 May 2001, CERD/C/304/Add. 110.

4 See United Nations Committee on the Rights of the Child, *The Aims of Education: General Comment 1*, 17 April 2001, CRC/GC/2001/1.

5 See *Joint Submission of the International Club for Peace Research and the League of Human Rights Advocates on the State of the Rights of Romany Children in Slovak Republic, to the United Nations Human Rights Committee on the Rights of the Child for Consideration*, available at: http://www.crin.org/resources/infoDetail.asp?ID=170.

6 *Concluding Observations of the Committee on the Rights of the Child: Slovakia,* 23 October 2000, CRC/C/15/Add. 140.

7 *Written Comments of the European Roma Rights Center Concerning the Slovak Republic for Consideration by the United Nations Human Rights Committee at its 78th Session,* 14 July–8 August 2003, available at: http://www.errc.org/publications/legal/HRC-Slovakia_July_2003.doc.

8 *Concluding Observations of the Human Rights Committee: Slovakia,* 22 August 2003, CPR/CO/78/SVK.

9 See, for instance, *Concluding Observations of the Human Rights Committee: Czech Republic,* 27 August 2001, CCPR/CO/72/CZE; and *Concluding Observations of the Human Rights Committee: Hungary,* 19 April 2002, CCPR/CO/74/HUN.

10 Commission of the European Communities, *2001 Regular Report on Slovakia's Progress toward Accession*, SEC (2001) 1754, p. 22.

11 See Commission of the European Communities, *Comprehensive Monitoring Report on Slovakia's Preparations for Membership*, pp. 32–34 and 37.

12 For more information, see the World Bank's group's Roma page, at:

http://lnweb18.worldbank.org/ECA/ECSHD.nsf/ecadocbylink/the%20roma?opendocument.

13 For detailed information about the project, see Open Society Institute and Roma Participation Program, *Reporter*, August 2002.

14 For an evaluation of the Vidin project and of other five desegregation projects implemented in Bulgaria, see Krasimir Kanev, *The First Steps: An Evaluation of the Nongovernmental Desegregation Projects in Six Bulgarian Cities* (Open Society Institute, 2003).

15 The media campaign targeting national and international media has continued. For instance, the Roma Participation Program within the Open Society Institute in Budapest sponsored a visit to Vidin in June 2003 by the prominent human rights activist Jack Greenberg, an attorney involved in the U.S. Supreme Court case *Brown v. Board of Education*.

16 For more information on the cases discussed here, as well as on another strategic litigation initiative relating to desegregation in Bulgaria, see the Web site of the European Roma Rights Center at: http://www.errc.org.

17 For more details, see *The ERRC Legal Strategy to Challenge Racial Segregation and Discrimination in Czech Schools,* 1 Roma Rights (2000), available at: http://errc.org/rr_nr1_2000/legalde1.shtml#1.

18 The European Roma Rights Center's submissions on the Czech Republic to international bodies are available at: http://errc.org/publications/indices/czechrepublic.shtml.

19 For a succinct analysis of the Czech government's actions to date, see European Roma Rights Center, *Letter of Concern to the United Nations Committee for the Elimination of Racial Discrimination*, 28 July 2003, available at: http://errc.org/publications/indices/czechrepublic.shtml.

20 For a full account, see Branimir Pleše, *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action,* 3–4 Roma Rights (2002), available at: http://errc.org/rr_nr3-4_2002/legal_defence.shtml.

21 Law No. 48/2002 amended by Government Ordinance 77/2003.

Segregated Schools under International Law[1]

by Robert Kushen

States are under an obligation under international law to eliminate overtly discriminatory laws and policies and to enact and enforce anti-discrimination laws. As such, segregated education for Romani students violates several international legal instruments. This article identifies various relevant international human rights instruments and discusses how these relate to provisions such as the right to education, freedom from inhuman and degrading treatment, and the right to equal protection. This article also looks to customary law, the law of the European Union, and the decisions of United Nations organs in presenting the consensus against and the prohibition of segregation in education.

1. Summary

The provision of education to Romani students or any other group of students segregated according to race, nationality, or ethnic origin violates a host of international legal instruments. The only exception to this rule is the provision of education in Romani-language schools at the request of Romani families.

At minimum, states are under an affirmative obligation to eliminate overtly discriminatory laws and policies and to enact and effectively enforce anti-discrimination laws relating to education (and, where applicable, housing). States are probably not obliged to compel affirmative integration of schools or to address *de facto* school segregation that exists as a result of economic segregation. On a related note, states cannot discriminate in provision of resources to schools that serve predominantly Romani populations.

While overt and intentional segregation is clearly prohibited, it is unclear how international law would treat *de facto* segregation of schools that is a legacy of segregated housing or other discriminatory policies and practices. Under an expansive reading of treaty obligations, states would be obliged to end facially neutral policies such as school placement based on residence that are discriminatory in effect.

2. Segregated schools under international human rights instruments

International human rights instruments contain both express and implicit prohibitions on segregation of educational facilities based on race, ethnicity, or national origin. The relevant binding treaties are: the Convention Against Discrimination in Education (CDE); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention on the Rights of the Child (CRC); the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); and the Framework Convention for the Protection of National Minorities. Almost all member states of the Council of Europe, including countries in Central and Eastern Europe with a substantial Romani population (for example, Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia), are parties to *all* of these instruments.

These treaties contain provisions that can be grouped into four categories: the first is an explicit prohibition of segregation in education; the second consists of guaranties related to education per se; the third, general guaranties related to non-discrimination, which when read together with provisions related to education create strong prohibitions against segregated education; and the fourth, discrimination that rises to the level of "inhuman treatment."

All CEE states with significant Romani populations are parties to all of the treaties discussed below. All have constitutional provisions that expressly incorporate such treaty obligations into domestic law, and most provide that such obligations supersede any contradictory domestic laws; for example, Constitution of Bulgaria, Article 5 (4); Constitution of the Czech Republic, Article 10; Romania, Article 20; Slovakia, Article 11. Moreover, European Union candidate states are further obliged as a condition of EU membership to respect human rights (as part of the political criteria established by the Copenhagen European Council, as part of Stabilization and Association Agreements and other accession instruments). However, the EU process in practice provides little legal leverage. While the deficiencies of these countries vis-ŕ-vis protection of Roma are noted in numerous EU documents, the EU thus far has always judged these countries as satisfying the human rights requirements mentioned above; for example, segregat-

ed education for Roma has not been an obstacle for EU membership for Hungary, the Czech Republic, or Slovakia.

A brief description of the relevant treaty language follows.

2.1 Prohibition against segregation in education

The Convention Against Discrimination in Education (CDE) is perhaps the most relevant, but arguably least known, binding international instrument that speaks to this issue. It is the only instrument expressly to prohibit segregation in education based on race. The CDE prohibits discrimination in education, which is defined to include "establishing or maintaining separate educational systems or institutions for persons or groups of persons." (Article 1 (c)). This would clearly apply to overt segregation of schools. Arguably, a system of *de facto* segregation as a result of segregated housing, combined with admissions policies that do not permit Roma to overcome the geographic barriers to entering majority schools, would be a system that "maintained" separate educational systems and would also be impermissible. A more difficult question concerns a system of school assignment based on geography that allowed a certain amount of access for Romani students across geographic districts but still consigned the majority of Roma to schools of inferior quality compared to those enjoyed by the titular nationality.

The CDE also prohibits "limiting any person or group of persons to education of an inferior standard"; again, admissions policies that effectively bar Roma from attending majority schools that receive more resources than schools in Romani areas would be prohibited. (Article 1 (b)).

The CDE expressly permits "separate, but equal" schools segregated according to gender, as well as the maintenance of separate schools for religious or linguistic reasons if attendance in such schools is optional and voluntary. The CDE seems to permit segregation on the basis of disability (a pretextual basis for segregating Roma in many countries), because "disability" is not included in the list of prohibited distinctions that constitute "discrimination." This is consistent with state law and practice, which typically allows segregated educational facilities for persons with disabilities.

In contrast to some of the other treaties described below, the CDE has never been definitively interpreted by courts or UN treaty bodies.

The Framework Convention for the Protection of National Minorities requires that parties "undertake to pro-

mote equal opportunities for access to education at all levels for persons belonging to national minorities" (Article 12). At minimum, this suggests that the state must take some kind of affirmative steps to ensure an end to segregation of schools.

2.2 Right to education

While defining the content of the right to education may be problematic, it is worth noting in the context of school segregation, because the recognition of such a right leads to the requirement that any implementation of that right must be done in a non-discriminatory manner. Moreover, to the extent that the content of this right can be defined (in terms of quality or quantity of education), segregated education may be defined as inherently substandard and thus violative of the right to education itself. As shown below, all the countries of Central and Eastern Europe recognize a right to education as part of their international treaty (not to mention their constitutional) obligations.

Article 2 of Protocol no. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) states: "No person shall be denied the right to education." The right to education in the ECHR is narrowly drawn along traditional civil and political rights lines. The right does not "require [states] to establish at their own expense, or to subsidize, education of any particular type or at any particular level." (*In the Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium* (23 July 1968), paragraph B.3). However, as discussed further below, once the state establishes a system of education, a right to access this system in a non-discriminatory manner also springs into being.

Both the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) infuse the right to education with greater content, namely the requirement that the state provide compulsory and free primary education. CRC: "(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: a) Make primary education compulsory and available free to all." (Article 28).

ICESCR: "(1) The States Parties to the present Covenant recognize the right of everyone to education. . . . (2) The States Parties to the present Covenant recognize that, with a view to

achieving the full realization of this right: a) Primary education shall be compulsory and available free to all." (Article 13).

2.3 Equal protection/anti-discrimination

The International Convention for the Elimination of All Forms of Racial Discrimination (CERD) contains a general prohibition against segregation: "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." (Article 3). Elsewhere, the CERD speaks of the responsibility of parties to prohibit and eliminate discrimination and to guarantee equality before the law in the enjoyment of the right to education (Article 5). Taken together, these provisions suggest that racial segregation is one of the impermissible types of discrimination in education that the CERD prohibits.

The Committee on the Elimination of Racial Discrimination suggests a broad interpretation of the CERD to include prohibition of overt discrimination as well as the prohibition of facially neutral acts that have "an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin." (General Recommendation XIV: Definition of Discrimination (Article 1, paragraph 1) (Document No. A/48/18, Forty-second Session, 1993)).

Under this interpretation, defining school enrollment strictly by place of residence could be discriminatory if it served to isolate Roma in substandard schools and prevent their matriculation in better-quality schools located in majority communities. As noted below, this prohibition on indirect discrimination clearly applies to EU member states through the Race Equality Directive of the Council of the European Union.

The other international human rights treaties are rife with general guarantees of equal protection and prohibitions against discrimination that are applicable equally to education as to all other spheres of state action. Thus, the ECHR states: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." (Article 14).

The CRC states: "(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of

the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." (Article 2).

The ICESCR states: "(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 2).

The International Covenant on Civil and Political Rights (ICCPR) states: "(1) 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 recognised in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2); "(1) Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State" (Article 24); and "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, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 26).

The United Nations Economic and Social Council (ECOSOC) commentary to Article 13 of the ICESCR indicates that one of the components of the right to education is that education be "accessible to all, especially the most vulnerable groups, in law and in fact, without discrimination" (E/C.12/1999/10, CESCR General comment 13, paragraph 6 (b)). Furthermore, while many components of the right to education (like all rights in the ICESCR) are subject to progressive realization, the prohibition against discrimination requires full and immediate application (Idem, paragraph 31). In contrast, the 2002 Report of the Special Rapporteur on the Right to Education suggests that, in fact, the development of the right to education has involved the progressive realization of the desegregation ideal (E/CN.4/2002/60, paragraph 30). However, this should be

seen as a statement of historical fact, not as a statement of treaty interpretation.

In the only case to come before the European Court of Human Rights interpreting the meaning of the "right to education," the court held that certain residency restrictions on access to minority-language schools constituted discrimination in the provision of educational resources in violation of Article 14 of the ECHR. The Court noted that these residency requirements constituted discriminatory treatment "founded even more on language than on residence." The Court suggested that residency requirements imposed "in the interest of schools, for administrative or financial reasons," might be acceptable, thus leaving open the question of whether a facially neutral scheme of residency requirements that had discriminatory effect would be prohibited.

2.4 Inhuman and degrading treatment

The ECHR (Article 3), the ICCPR (Article 7), and the CRC (Article 37) all contain prohibitions on "inhuman and degrading treatment." The European Court of Human Rights has stated that "discrimination on the basis of race might, in certain circumstances, constitute a special affront of human dignity" and rise to the level of inhuman and degrading treatment. In *Cyprus v. Turkey* (10 May 2001), the Court held that Turkish-Cypriot abolition of Greek-language secondary school education in northern Cyprus, coupled with abolition of the right to reside in northern Cyprus for those who chose to be educated in the south, amounted to degrading treatment and violated Article 3 of the ECHR.

3. European Union instruments

Council of the European Union Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, is a binding instrument for member states of the EU. It prohibits "direct or indirect discrimination based on the grounds of racial or ethnic origin" (Article 1), including in the field of education (Article 3 (g)). The directive requires states to implement effective remedies for persons wronged by discrimination, and to give standing to organizations to seek enforcement of the directive.

4. Actions of UN organs

On numerous occasions, UN treaty bodies have expressed the need to eliminate segregated schools, including those for Roma in Eastern Europe. In 2002, the Committee on the Elimination of Racial Discrimination expressed concern to the government of Croatia about segregation of Roma in the education system there, as well as other deficiencies in the education system vis-à-vis Romani students (CERD/C/60/CO/4, paragraph 11, 2002).

In 2001, the Committee expressed concern about *de facto* segregation of Roma in housing and education in the Czech Republic, implying that such segregation was a violation of Article 3 of the CERD. The Committee in particular highlighted the use of special schools as a tool of segregation of Romani students (CERD/C/304/Add.109, 1 May 2001).

In 2002, the Committee "expressed concern about the establishment of separate classes for foreign pupils in [Switzerland]. It is the view of the Committee that segregated schooling may only in exceptional circumstances be considered as being in conformity with the [CERD]"(A/57/18, paragraph 252, 2002).

Likewise, the Secretary General in 2001 noted that separate educational systems were subject to very strict scrutiny, and could be legally justified only under the terms laid down in the CDE (i.e., either along gender lines or for religious and linguistic reasons, and in the latter two cases only on a voluntary basis) (A/CONF.189/PC.2/22, paragraphs 21–24).

The UN Human Rights Committee has addressed the issue of discrimination against Roma in education, commissioning a report by the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Special Rapporteur visited the Czech Republic, Hungary, and Romania in 1999 and reported on discrimination in all spheres of life (E/CN.4/2000/16/Add.1). While the report did not address the legal aspects of segregation, it concluded by calling for an end to school segregation in the Czech Republic and Hungary.

5. Comparative state practice and customary law

The laws and practices of many states suggest that the prohibition on segregation in education is developing into a customary norm, which in turn would be binding on all states, regardless of whether they are party to any of the

aforementioned treaties. In the case of *Brown v. Board of Education,* 347 U.S. 483 (1954), the Supreme Court of the United States declared that "segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive[s] the children of the minority group of equal educational opportunities. . . . The effect of this separation on their educational opportunities . . . , the segregation of white and colored children in public schools, has a detrimental effect upon the colored children . . . the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system. We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The government of Switzerland, in its report to the Committee on the Elimination of Racial Discrimination, noted that the introduction of separate classes for Swiss and foreign children is contrary to the Swiss constitution, the CRC, and the CERD, is "virtually irreconcilable" with the ICCPR, and is politically unacceptable in Switzerland (CERD/C/351/Add.2, paragraph 244). The Equal Opportunities Commission of Australia, in addressing the issue of children with disabilities, has stated that "separate but equal or segregated education" is "by its nature, discriminatory" (quoted in *New South Wales Department of Education v. Human Rights and Equal Opportunity Commission,* Federal Court of Australia, 186 A.L.R. 69, (2001)). A Canadian court has suggested that segregation of Roma in Hungarian schools is a factor that could constitute a basis for an asylum claim in Canada (*Piel v. Canada,* 106 ACWS (3d) 318 (2001)).

6. Minimum obligations in ending school segregation

The international instruments are silent on specific obligations to protect against or ameliorate school segregation, and there is no case law in domestic courts or in the European system providing any guidance. As discussed above, laws or policies that intentionally establish or maintain segregated schools are illegal. Similarly, laws or policies that establish or maintain segregated housing are illegal

per se and, to the extent that school assignment is based on residence, are also illegal as helping to establish and maintain segregated schools. At minimum, therefore, states are under an affirmative obligation to eliminate such laws and policies. Protection of the rights outlined above would also require states to enact and effectively enforce anti-discrimination laws relating to education (and, where applicable, housing).

Moreover, states cannot discriminate in provision of resources to schools that serve predominantly Romani populations. School financing systems that disproportionately favor schools serving primarily a majority population (for example, a system based on local property tax revenue) could be prohibited as indirect discrimination. Many states in the United States have struck down inequitable school financing schemes that are based in whole or in part on property tax revenues as violating equal protection provisions of state constitutions; for example, Opinion of the Justices, 624 So.2d 107 (1993) (Alabama); *Tucker v. Lake View School Dist. 25,* 917 S.W.2d 530 (1996) (Arkansas); *Sheff v. O'Neill,* 678 A.2d 1267 (1995) (Connecticut); *Abbott by Abbott v. Burke,* 710 A.2d 459 (1998) (New Jersey).

Once intentionally discriminatory laws and policies are eliminated and effective anti-discrimination protections are in place, does international law impose any additional obligations on states? States are probably not obliged to compel affirmative integration of schools or to address *de facto* school segregation that exists as a result of economic segregation.

NOTES

1 This article was originally written as a memorandum to the Open Society Institute on 13 March 2003.

Combating Segregation in Education through Litigation: Reflections on the Experience to Date

by James A. Goldston and Ivan Ivanov

Despite efforts over the past decade, educational discrimination and segregation of Romani students remain entrenched throughout Central and Eastern Europe. As governments have been slow to respond to this crisis, some Roma have turned to litigation as a means of seeking remedy, raising awareness, and promoting social change. This chapter explores the experience of combating segregation through litigation, with a particular focus on the obstacles and lessons to consider when bringing a case to court. It describes the litigation to date and highlights the prospects for litigation as a necessary tool of last resort.

In no aspect of public life are the consequences for the Roma of racial hostility, political exclusion, and social disempowerment more far-reaching than in the field of education. For decades, Romani children in Central and Eastern Europe have been shunted into substandard elementary schools with few resources and poor facilities, or sent to Roma-only and/or second-class, remedial "special" schools or classes with reduced curricular demands for those stigmatized as "stupid," "retarded," or "mentally deficient." By design and reality, those few Roma who make it through such schools typically attend vocational high schools, which limit their training to manual labor skills. In some countries, entire Romani communities receive no schooling whatsoever, and throughout the region, the number of university-trained Roma remains negligible. The result has been to condemn entire generations of Roma to second-class status and deny them effective opportunities for political participation and economic advancement.

This chapter first seeks to outline the roots and principal features of segregation in several countries in Central and Eastern Europe. It then highlights a number of difficulties with which any legal challenges to segregation must contend. It next describes the state of litigation that has been brought to date to overcome educational segregation in the region. Finally, on the basis of this experience, the discussion offers some initial reflections on the prospects for litigation as a tool in combating segregated schools and classes.

1. Segregation in different countries

Systematically placed in racially and/or ethnically separate and educationally inferior schools and classes, Roma children are victims of segregation and discrimination in much of Central and Eastern Europe.[1] The particular features and historical background of this problem differ from country to country.

In Bulgaria, at present, about 70 percent of Romani children of school age attend all-Romani schools located in segregated Romani neighborhoods.[2] Most of these schools were created between 1950 and 1970 "for children with inferior lifestyle and culture."[3] Commonly referred to as "Gypsy schools," they were populated almost exclusively by Romani children and were intended to teach basic literacy and vocational skills. In the 1970s and 1980s, the official state policy was to channel all Romani children to these schools. Although this policy formally ended in 1992, to date all schools located in Romani settlements remain "special schools," which offer low-quality education for students who graduate at a significant disadvantage compared to students at regular schools. At the same time, school placement rules assigning most students to schools in their district of residence replicate in the educational system *de facto* segregationist patterns in residence.

In Czechoslovakia, the 1958 Law on the Permanent Settling of Nomadic Individuals obliged local councils to help create "normal," integrated citizens.[4] Although the law made no specific reference to "Roma" or to "Gypsies," and while the great majority of Roma in Czechoslovakia were not nomadic, in practice the law was often used as an excuse to relocate Roma forcibly, whatever their lifestyle. Until 1958, it was permissible to place Romani students into schools for the intellectually deficient even if they did not satisfy the definition of intellectual deficiency.[5] In 1965, the Ordinance on Provisions for Solution of Questions of the Gypsy Population sought to address what official policy considered the "undesirable" concentration of Roma, and particularly to break down Romani settlements in Slovakia and move their inhabitants to the Czech lands.[6] No provision was made for the educational needs of the newly resettled Romani children. In the late 1970s, the dissident group Charter 77 found that "the failure of Romani pupils in Czech and Slovak schools is often solved by their transfer to special schools for children with below-average intelligence."[7]

Today, the principal foundation for school placements is a psychological

intelligence test that purports to measure a child's capacity to excel in primary school. The tests used are entirely at the discretion of the individual psychologist. There is no law or decree indicating which tests should be used or how they should be applied. Placement into special schools amounts in practice to a dead end, both because the level of instruction is lower than in basic schools and because the possibility to transfer back is virtually nil. Numerous Romani parents consent to special school placement without being informed of the serious consequences that follow. Graduates of special schools enjoy limited opportunities for secondary education. In practice, they are stigmatized for life.

The legacy of these policies is evident in statistics. A comprehensive study by the European Roma Rights Center (ERRC) of all schools in the Czech city of Ostrava in 1998–99 revealed that Romani children were more than twenty-seven times as likely to end up in special schools as non-Romani children. Although Roma represented less than 5 percent of all students of primary school age in Ostrava, they constituted more than 50 percent of the special school population. Nationwide, as the Czech government has itself acknowledged, approximately 75 percent of Romani children attend special schools, and substantially more than half of all special school students are Roma.[8]

In Slovakia, the misapplication of intelligence tests and long-standing patterns of residential segregation have combined to create a largely segregated educational environment for Romani children. In Hungary, segregated education of Roma is a product of several factors. As in the Czech Republic and Slovakia, intelligence testing results in the placement of a disproportionate number of Romani students in special, substandard schools and/or classes. In addition, a disproportionate number of Romani children are placed in so-called "catch-up" classes, which offer sub-par education to students deemed in need of special assistance. Once assigned to catch-up classes, students rarely return to normal classes or schools. Finally, under a system of "private classes," many Romani parents succumb to the pressure of teachers or school administrators to remove their children from schools altogether on the grounds that they present insurmountable disciplinary problems.

A large number of children in Romania are refused admission to primary school because they lack the necessary identity papers to document their birth and/or residence status. At particular risk are Roma who fled villages following violence or threats of violence, or those

who lead a marginal existence on the outskirts of towns and cities. In addition, those Romani children permitted to enroll are often segregated in special Roma-only classes or in classes for the mentally handicapped.

2. Obstacles to success

Notwithstanding the prevalence of the problem, Europe's governments and regional bodies over the past decade, pushed by a growing grassroots Roma advocacy movement, have begun to acknowledge the gravity of the problem and the need for reform. Nevertheless, educational discrimination and segregation remain entrenched throughout the region. With governments slow to translate rhetoric into action, a number of Roma have gone to court. The results, to date, have been modest, as most of the cases are still pending. Litigation takes time. Still, even at this relatively early stage, it is possible to venture some initial thoughts—if not yet conclusions—about the value and challenges of litigation as a tool to combat discrimination in the schools.

In considering the possibility and impact of litigation to challenge educational segregation, a number of fundamental obstacles to success must be considered. Although these are quite well known, they so powerfully constrain the landscape for legal action to combat discrimination in the schools as to bear underlining.

First, educational segregation is but one manifestation of a persistent, all-encompassing, and deep-rooted series of popular prejudices against the Roma that pervade many aspects of public life in the countries of Central and Eastern Europe. The extent to which anti-Roma bias penetrates the attitudes of many non-Roma, and a fair amount of official policy, is hard to overestimate. School administrators, teachers, judges, lawyers, other students, and their parents are among those convinced that Roma simply lack the same intellectual capacity as others, and hence that inferior educational achievement and status reflect biology, not discriminatory treatment.

Second, the history of hostility and subjugation that Roma have experienced for decades, often at the hands of officers of the law, discourages many from turning to the courts for recourse. Many Roma view the mostly non-Romani police officers, judges, lawyers, and prosecutors as, at best, persons to be avoided. The failure to date of the legal system to redress systematic discrimination and segregation, as well as acts of racially motivated violence, only reinforces this

widespread distrust of official bodies of law and legal solutions within many Roma communities.

Third, in general, the problem is not laws that discriminate on their face against Roma, but the discriminatory application of race-neutral rules. As a general matter, *de facto* discrimination is far more difficult to prove. Thus, unlike in the United States prior to the landmark Supreme Court decision in *Brown v. Board of Education,* segregation in Europe today is not grounded in laws that assign "blacks" to one set of schools and "whites" to another. Rather, school assignments based on such categories as place of residence (as in Bulgaria), intelligence test results (as in the Czech Republic, Hungary, and Slovakia), or access to documentation (as in Romania) are applied in a manner so as to send the vast majority of Roma to substandard schools and classes.

Fourth, litigation as a tool to achieve changes in government policy is a recent phenomenon in much of Central and Eastern Europe. As a result, many lawyers and judges are unaccustomed to, and/or uncomfortable with, some of the common practices employed in public interest litigation in other contexts—for example, joint actions by large numbers of plaintiffs, the use of statistical evidence, arguments drawn from comparative and international standards and jurisprudence, and equitable remedies. It will take time, and the example of a number of successful cases, to demonstrate that this kind of litigation is possible and not antithetical to the legal culture and tradition of the post-Communist region.

Fifth, in most of Central and Eastern Europe, "loser pays" rules for cost allocations, coupled with the paucity of government-financed legal aid in civil cases, present substantial obstacles. Litigants may bear the burden not only of their own costs for research, legal representation, and victim services—which may be time-consuming and substantial—but also, in the not unlikely event that their claims fail, those of their opponents. As most Romani parents lack the resources to finance even a portion of their own legal costs, let alone assume the risk of loss in a "loser pays" jurisdiction, anti-segregation litigation will, for the foreseeable future, be a philanthropic enterprise on the part of interested donors and lawyers offering their services *pro bono publico*.

Sixth, in many countries in the region, bar association rules and/or historical experience prohibit—or, at a minimum, strongly discourage—lawyers from representing clients without taking a fee. Designed in part to strengthen the bar as an independent institution against outside

interference, these norms often complicate the provision of legal representation in the public interest.

Finally, national legal remedies are often inadequate to address the problem of educational discrimination. More than three years after the European Union Race Directive mandated enactment of national legislation to outlaw direct and indirect discrimination in education and other areas of public life,[9] most European countries are still not in compliance. Hence, in some countries the law does not clearly prohibit discrimination in the field of education. In others, it is unclear whether administrative, civil, criminal, or constitutional law is most directly relevant. Even where legal action is clearly authorized, courts generally lack the custom, if not the legal authority, to order remedies of sufficient scope and nature to address systematic segregation.

These are some of the principal difficulties that litigation challenging educational segregation must confront.

3. Litigation: The experience to date

Given the imposing obstacles to any court action in challenging segregation, it is not surprising that only a few cases have been brought to date. In only one, in Hungary, has a definitive result been achieved. The rest—in Bulgaria, Croatia, and the Czech Republic—are still pending before a domestic or international tribunal. The litigation to date is described below.

3.1 Tiszavasvári, Hungary[10]

The first legal challenge to racial segregation in the schools in Central and Eastern Europe commenced in 1997 in the town of Tiszavasvári, Hungary. At the time, approximately 17 percent of the 14,844 inhabitants of Tiszavasvári were Roma, most of them living on the poorer edge of town. The lawsuit was brought against Ferenc Pethe School, one of three primary schools operating in Tiszavasvári. In 1997, 531 pupils attended Ferenc Pethe, 250 of them Roma. Of this number, 207 were assigned to Roma-only classes, 38 to classes for the mildly mentally handicapped, and five to mixed classes of Roma and non-Roma. The school was physically divided into two principal structures: a central building in good condition, containing the gymnasium and cafeteria, and an auxiliary structure 230 meters away, in very bad repair, with little educational equipment. Roma-only classes and classes for the mildly mentally retarded were held in the auxiliary structure. For more than ten years,

Roma had not been permitted to enter the cafeteria or gymnasium in the main building. Separate records were maintained for Romani classes, marked "C" for "Cigány"—"Gypsy" in Hungarian.

In June 1997, after the school convened separate graduation ceremonies for its Romani and non-Romani students, fourteen Romani students sued the school principal for discrimination. The students were assisted by the Foundation for Romani Civil Rights. The legal complaint, filed in civil court in Nyíregyháza, followed an investigation by the Ombudsman for National and Ethnic Minorities, which concluded that discrimination had taken place. The lawsuit claimed that each student had suffered a violation of human rights and asked for non-pecuniary damages of HUF 500,000 (equivalent at the time to approximately USD 2,500) for each.

On 1 December 1998, the City Court of Nyíregyháza issued a verdict in favor of the plaintiffs. The court found violation of the children's personal rights as set forth in the Constitution; Article 4(7) of Law 79/1993 on Public Education; Law 77/1993 on the Rights of National and Ethnic Minorities (which prohibits discrimination against private persons on the basis of gender, race, nationality, or religious conviction); and Article 76 of the Civil Code, which contains an analogous non-discrimination provision. The Court ordered the local government to pay HUF 100,000 (about USD 500) to each child in damages and court costs. The judgment of the City Court was subsequently affirmed by the County Court of Nyíregyháza and by the Hungarian Supreme Court, which published the case in its 2002 annual review of most important cases.

In September 1999, the Minister of Education and the Parliamentary Ombudsman for Ethnic and Minority Rights announced the results of an investigation into segregation in Hungarian schools prompted in part by the Tiszavasvári litigation. The investigation concluded that segregation was widespread in the Hungarian educational system, and that the system of "special schools" for mentally disabled children excluded socially disadvantaged children from normal public education. A National Board for Public Education, Evaluation, and Exam Administration was proposed to monitor and review the special educational system.

In 2002, the Hungarian government adopted a National Integration Program, which pledges to desegregate all schools by the year 2008. A National Educational Integration Network will highlight model institutions that have eliminated segregated schooling. However, progress

toward desegregation remains slow. In September 2002, the UN Committee on the Elimination of Racial Discrimination continued to express concern "about discriminatory practices resulting from the system of separate classes for Romani students and from private schooling arrangements" and recommended "that new programs integrate Romani children into mainstream schools."[11]

3.2 Ostrava, Czech Republic

In 1998, the ERRC began research in the eastern Czech city of Ostrava, the third-largest city in the country. At the time, there were eight remedial special schools in the district of Ostrava, responsible, according to the Ostrava School Bureau, for "educating mentally retarded pupils." There were also seventy basic schools for "normal" pupils. The ERRC collected statistics from every school in the city of Ostrava. Authorities at each special school and each basic school stamped and signed a document testifying to the exact number of Romani and non-Romani pupils in their school. The results of the collected data showed that, whereas only 1.8 percent of non-Romani students in Ostrava were in special schools, 50.3 percent of Ostrava's Romani students were in such schools. Thus, the proportion of the Ostrava Romani school population in special schools outnumbered the proportion of the Ostrava non-Romani school population in special schools by a ratio of more than twenty-seven to one.

The statistics indicated that, although Roma represented less than 5 percent of all primary school-age students in Ostrava, they constituted more than 50 percent of the special school population. And Ostrava was far from an isolated example. Nationwide, approximately 75 percent of Romani children attended special schools, and substantially more than half of all special school students were Roma.

The research, carried out over a period of several months, demonstrated a systematic pattern of racial segregation in the assignment of students to remedial special schools. The ERRC interviewed hundreds of children and parents in Ostrava, as well as teachers, school administrators, psychologists, and government officials, and it documented numerous cases in which Romani parents had been subjected to pressure on the part of school teachers, administrators, and/or psychologists to send their children to special schools. Notwithstanding the serious consequences of consenting to special school placement for their children, few Romani parents indicated that they had been informed fully about their rights with respect to such placement, the

methods of assessment used in making placement assignments, the inferior quality of education offered in most special schools, or the likely irrevocability of assignment. Moreover, a wealth of evidence suggested that Romani children in Ostrava basic schools routinely encountered racially offensive speech, racial exclusion (being forced to sit in the back of the class), and threats of racial violence on the part of teachers, administrators, and non-Romani students. Indeed, in March 1999, an anonymous letter was delivered to one basic school in Ostrava that threatened to bomb the school unless all Romani children were told to leave.

On 15 June 1999, based on the foregoing research, twelve Romani children in Ostrava and their parents, with the support of several Romani leaders, local human rights organizations, and the ERRC, filed an action in the Constitutional Court of the Czech Republic, challenging and seeking remedies for systematic racial segregation and discrimination in Czech schools. The lawsuit in the Constitutional Court was filed against five Ostrava special school directors, the Ostrava School Bureau, and the Ministry of Education. It alleged that the general practice and application of regulations in the special educational school system resulted in *de facto* and *de jure* racial segregation and discrimination against the twelve Romani applicants.[12]

The constitutional complaint asserted that, as a result of such segregation in dead-end schools for the "retarded," the applicants, like many other Romani children in Ostrava and around the nation, had suffered severe educational, psychological and emotional harm, which included the following:

- they had been subjected to a curriculum far inferior to that in basic schools;
- they had been effectively denied the opportunity of ever returning to basic school;
- they had been prohibited by law and practice from entrance to non-vocational secondary educational institutions, with attendant damage to their opportunities to secure adequate employment;[13]
- they had been stigmatized as "stupid" or "retarded," with effects that would brand them for life, including diminished self-esteem and feelings of humiliation, alienation, and lack of self-worth; and
- they had been forced to study in racially segregated classrooms and hence denied the benefits of a multicultural educational environment.[14]

The complaint addressed a number of commonly voiced explanations for the disproportionate assignment of Romani children to remedial special schools. First, with respect to the allegedly scientific nature of the intelligence tests used as a basis for such assignments, the complaint noted the absence of any standardized procedures in the Czech Republic for determining which tests to employ or how to assess performance; the failure of the authorities to account for, and overcome, predictable cultural, linguistic, and/or other obstacles that have often negatively affected the validity of the test results; and the fact that few, if any, Roma had been consulted in the selection or design of the most commonly used tests. Second, with respect to alleged language deficiencies, the complaint observed that no other minority language population in the Czech Republic (which includes primary speakers of Polish, Vietnamese, and other languages) is over-represented in special schools at a comparable level to that of the Roma. Finally, with respect to the generally lower socioeconomic status of Roma, the complaint noted that many poor ethnic Czech children study and excel in basic schools, and that any allegedly greater risk of mental or physical disease among Roma due to malnutrition and/or inadequate medical care would not explain why Roma are not similarly over-represented in schools for the physically disabled. The complaints noted that racial segregation and discrimination in education violate the Constitution of the Czech Republic, the Czech Charter of Fundamental Rights and Freedoms, other provisions of domestic law, and numerous binding international treaties including the European Convention on Human Rights.

On 20 October 1999, however, the Constitutional Court dismissed the application. The Constitutional Court found that the applicants' allegations of racial segregation and discrimination were unsubstantiated. Acknowledging that the "persuasiveness of the applicants' arguments must be admitted," the Court reasoned that it had authority only to consider the particular circumstances of individual applicants, and it was not competent to consider evidence demonstrating a pattern and/or practice of racial discrimination in Ostrava or the Czech Republic. The Court stated that "the plaintiffs [substantiated] their complaint by [extensive] statistical data and expert opinions but that they failed to recognize that the Constitutional Court is entitled to decide—with regard to constitutional cases—only individual legal acts and is bound to evaluate only

particular circumstances of the individual cases."[15] The Court stated that it did not have jurisdiction to consider the applicants' request for an educational reform plan or an all-out ban on race discrimination and compensatory schooling. Nevertheless, it also stated that the "Constitutional Court assumes that the relevant authorities of the Czech Republic shall intensively and effectively deal with the plaintiffs' proposals."[16]

Having exhausted domestic remedies, on 18 April 2000, the twelve applicants rejected by the Constitutional Court, together with the six other applicants who had unsuccessfully sought administrative review by the Ostrava School Bureau, turned to the European Court of Human Rights in Strasbourg. Their application contends that their assignment to special schools constitutes "degrading treatment" in violation of Article 3 of the European Convention of Human Rights. In so doing, it relies on the legal authority of the Strasbourg organs, which have made clear that "a special importance should be attached to discrimination based on race." The submission further argues that the applicants have been denied their right to education, in breach of Article 2 of Protocol 1 of the Convention; that they have suffered racial discrimination in the enjoyment of the right to education, in violation of Article 14; and that the procedure which resulted in their assignment to special schools did not afford the minimal requisites of due process required by Article 6(1). The application asks the European Court of Human Rights to find violation of the above-noted Convention provisions and to award just satisfaction. In November 2003, the European Court communicated the application to the Czech government. These proceedings are currently pending.

The filing of the constitutional complaint and the subsequent Strasbourg application generated substantial debate in Czech society about the merits and legality of racial segregation in education. Perhaps most significantly, the legal action concretely posed the possibility that what had long been considered a product of deeply entrenched attitudes was, in fact, a legal problem of rights and remedies that courts of justice might properly address. More generally, the litigation has reinforced—with specific data and legal arguments regarding the situation in the third-largest city in the country—a continuing stream of concern expressed by international monitoring bodies about racial segregation in education in the Czech Republic.[17]

Perhaps partly as a result, since 1999, the political agenda in the Czech Republic has frequently reverberated with discussion and/or adoption of a series of legislative measures ostensibly intended to ameliorate the conditions of Romani students in Czech schools. However, none of these measures has yet made a significant dent in the disproportionate over-representation of Roma in remedial special schools—the central element of racial segregation. Thus, a 1999 Methodological Order—No. 28498/99-24 on Securing the Transfer of Successful Remedial Special School Pupils to Regular Basic School—has not resulted in the transfer of any significant number of children from remedial special schools to basic schools. In 2000, an amendment to the Law on Education removed a legal prohibition that had previously barred graduates of remedial special schools from taking the entrance examination for secondary schools. Although the removal of this legal barrier is welcome, the inferior educational quality of remedial special school effectively prevents the vast majority of special school graduates from qualifying to attend secondary school. In 2001, the government authorized modification of the basic school curriculum to accommodate the needs of special school students. However, it did so in a way that diminishes, but does not enhance, the future education and employment prospects of most special school students. As a result, as of the end of 2003, racial segregation remains entrenched in the educational system in the Czech Republic.

3.3 Sofia, Bulgaria

Within the past year and a half, Romani students and parents have launched two separate legal actions to challenge alleged segregation in Bulgarian schools, one in the administrative court and one in the civil court.

Administrative Court

Fakulteta is a settlement located in the suburbs of Sofia, inhabited by approximately 35,000 Roma. Secondary School No. 75, which includes grades one through twelve, is the only school located in Fakulteta. Its student body is entirely Romani. School 75 suffers from many of the same problems afflicting other all-Roma schools in Bulgaria, including the inferior quality of the physical plant, the materials, and much of the teaching staff; the overcrowded classrooms; and the racial hostility toward Roma exhibited by a number of non-Romani school staff. Many graduates of School 75 can barely read or write.

Over the course of many months, with the assistance of the ERRC, the Bulgarian foundation Romani Baht, and a Fakulteta-based Romani advocacy organization, a number of students attending School 75 and residing in Fakulteta applied for enrollment in one of several racially mixed schools located in nearby neighborhoods. About sixty students were denied permission to enroll on the grounds that, under Article 36(2) of the Rule for Implementation of the Law on Education, priority in school placement must be given to students who reside in the district where a school is located, and that the schools at issue were already full. When one parent sought admission for her child in June 2002 to Secondary School No. 123, located in the district of Krasna Polyana, she was informed it was too early to apply. In August, when she visited the school again, she was told to come again in early September, when enrollment forms would be available. When she returned in early September, the school director advised her that all classes were full and it was not possible to enroll her child. A half hour later, the mother of a non-Romani child successfully enrolled her out-of-district student.

In September 2002, on behalf of the parents of fourteen Romani students in School 75, the ERRC, in cooperation with the Romani Baht Foundation, filed three lawsuits with the first instance administrative court in Sofia against the principal of School 75, located in Fakulteta, and the regional Inspectorate of Education, for discriminating against Roma in admissions to his school. Two of the complaints were declared admissible. A hearing, initially scheduled for May 2003, was adjourned until February 2004. The third complaint was declared inadmissible because it lacked sufficient written foundation of the alleged facts. Although it has yet to secure any legal remedy, the litigation has been covered widely in the national media.

Civil Court

While the administrative court action was pending, the ERRC, together with a group of lawyers from the Sofia Bar Association, filed a civil action in Sofia District Court on behalf of twenty-eight Romani students against the Ministry of Education, the Sofia Municipality, and School 75. Filed pursuant to the Law for State Responsibility for Damages Caused to Citizens and the Law for Obligations and Contracts, the lawsuit alleged that the plaintiffs had been subjected to segregation and discrimination through their education in Roma-only schools in different neighborhoods of Sofia. Among other allegations, the complaint contends that the students have been educated in

classrooms that exceed Ministry of Education guidelines and lack heating, electricity, and adequate textbooks. The plaintiffs claim that the inferior-quality education they have been provided violates their constitutional right to education, diminishes their self-confidence and potential for career development, and constitutes inhuman and degrading treatment. The plaintiffs requested the lowest amount fixed in the law (five Bulgarian Leva, equivalent of less than USD 3) in compensation for non-pecuniary damages.

In support of their claim, the plaintiffs submitted the results of an investigation of comparative educational quality conducted in 2003 by independent experts and officials from the Inspectorate of Education in Sofia. The survey, which assessed student performance in mathematics, Bulgarian language, and literature among seventy-two classes in nine schools—three all-Roma, three all non-Roma, and three racially integrated—concluded that students in all-Roma schools performed at the lowest educational level. The case is currently pending in the first instance court.

As in the Czech Republic, the Bulgarian cases, though still pending in the courts, have already generated a great deal of press and public attention. They have thus added force to calls from international monitoring bodies, political parties, advocacy movements, and others seeking an end to racial segregation in education. They have also contributed to the efforts of other non-governmental organizations (NGOs) using legal action to combat discrimination.

In just the past year, Bulgaria has taken a number of significant steps forward in the fight against racial segregation and discrimination. Thus, in April 2003, while a complaint was pending before the Supreme Administrative Court, the Ministry of Education abolished Article 36(2) of the Rule for Implementation of the Law on Education. Accordingly, Bulgarian law no longer privileges in-district students in making school assignments.

In September 2002, the Ministry of Education issued an ordinance on desegregation of minorities in the educational system. The ordinance faithfully applies European anti-discrimination standards and provides a solid foundation for challenging discriminatory practices in the field of education.

In September 2003, the Bulgarian Parliament adopted the most progressive and far-reaching anti-discrimination law in the post-Communist region. Among other provisions, the new law bans discrimination on a number of grounds, including race, gender, religion, disability, age, and sexual orientation. The law pro-

vides that in *prima facie* cases of discrimination, the respondent has the burden of proving that discrimination did not occur. The law establishes an anti-discrimination commission—with specialized subcommittees for racial and gender discrimination—that has the power to receive and investigate complaints and issue binding rulings, as well as to impose significant sanctions on perpetrators. The commission will consist of nine members, including five selected by Parliament and four by the President. The law permits complaints by groups.

3.4 Medjimure County, Croatia

According to official governmental statistics, during the 2000–2001 school year, 59 percent of the 865 Romani students attending primary schools located in Medjimure County in Croatia were placed in separate, all-Romani classes.[18] These Roma-only classes were provided with less-qualified staff and fewer resources than other classes. The curriculum was designed for children with development disorders, a fact often concealed from the public. When the disparities between education of Romani and non-Romani children were publicized, some school administrators suggested that Romani students lacked—variously—the requisite Croatian language proficiency, hygiene, motivation, and socialization skills necessary to integrate with non-Romani children. School officials failed to respond to the complaints of Romani parents that segregation into separate classes harmed their children's educational opportunities and self-esteem.

On 19 April 2002, a group of fifty-seven Romani parents with children in the segregated classes, assisted by the ERRC and a Croatian lawyer, filed a civil action in the Chakovec Municipal Court. The complaint charged the Croatian Ministry of Education , the Medjimure County local government, and the four primary schools at issue with segregating the plaintiffs and numerous other Romani children into separate and educationally inferior classes solely on the basis of their ethnicity.

On 26 September 2002, the Municipal Court ruled that the segregation was lawful and justified by the Romani children's Croatian-language needs. Two months later, the judgment was affirmed on appeal by the Chakovec County Court. On 19 December 2002, fifteen applicants filed a complaint with the Croatian Constitutional Court requesting that both the first and second instance judgments be quashed and the case be retried. This complaint was still pending as of December 2003.

With the domestic proceedings exhausted and no clear date as to when a Constitutional Court judgment might be expected, the applicants in May 2003 filed a pre-application letter with the European Court of Human Rights. In substance, they claim that: (1) the applicants' placement into Roma-only separate classes constitutes "degrading treatment" in violation of Article 3 of the European Convention of Human Rights; (2) the applicants have been denied their right to education, in breach of Article 2 of Protocol 1 of the Convention; (3) the applicants have suffered racial discrimination in the enjoyment of the right to education, in violation of Article 14; (4) the applicants have been subjected to a determination of their civil rights in a procedure that has proved fundamentally flawed and consequently in clear violation of the fair trial guarantees contained in Article 6; and (5) the applicants have been denied an effective domestic remedy, in violation of Article 13.

To date, the legal challenge to segregation has yielded little visible reform. In July 1998, the Croatian Ministry of Education and the Office of Ethnic Communities and Minorities adopted a Program for Integration of Romani Children into the School System of the Republic of Croatia, which included a promise to introduce Romani teaching assistants in the schools. As of December 2003, no steps had been taken in this direction.

CROATIAN SCHOOL SEGREGATION CASE

On 13 May 2003, the European Roma Rights Center (ERRC), together with Lovorka Kušan, a local Croatian attorney-at-law, filed a pre-application letter against Croatia with the European Court of Human Rights in Strasbourg. The submission concerns the practice of continued racial discrimination and segregation of Romani children in Croatian primary schools and was lodged on behalf of fifteen Romani pupils attending schools in Macinec, Podturen, and Orehovica (all villages located in the County of Međimurje). The ERRC and Ms. Kušan have filed a pre-application letter, rather than a full-scale application at this point, in order to preserve the applicants' right to bring the case before the European Court of Human Rights in a timely manner should

the Croatian Constitutional Court, which is yet to rule on the complaint filed by the applicants, decline to provide a remedy.

All of the fifteen Romani applicants whose case would be heard in Strasbourg attend segregated Roma-only classes in what are otherwise "regular" primary schools. Their placement stems from the blatant practice of discrimination based on race/ethnicity carried out by the schools concerned, the dominating and pervasive anti-Romani sentiment of the local non-Romani community, and ultimately the unwillingness and/or inability of the Croatian authorities, local and national alike, to provide them with redress.

The teaching syllabus for the pupils attending separate Roma-only classes is significantly reduced in scope and volume compared to the officially prescribed teaching plan and program. As a result of this practice, stretching back to the very beginning of their primary education, the applicants have suffered severe educational, psychological, and emotional harm. In particular, by being subjected to a curriculum far inferior to that in mainstream classes, they have sustained damage to their opportunities to secure adequate employment in the future, been stigmatized with the effects of diminished self-esteem and feelings of humiliation, alienation, and lack of self-worth, and been forced to study in racially/ethnically segregated classrooms and hence denied the benefits of a multicultural educational environment. Official government statistics show that at the county level, almost 60 percent of all Romani pupils attend separate Roma-only classes. Moreover, in at least one of the schools concerned, more than 88 percent of all Romani students are placed in segregated classes.

On 19 April 2002, as part of a larger group of Romani pupils, the fifteen applicants, assisted by local counsel and the ERRC, filed a complaint with the Municipal Court in Čakovec against the Republic of Croatia/Ministry of Education and the County of Međimurje, as well as the four primary schools in Orehovica, Macinec, Kuršanec, and Podturen. The complaint requested: i) a judicial finding of racial discrimination/segregation; ii) an order that the defendants develop and implement a monitoring system and a plan to end racial segregation and discrimination and to achieve full integration; and iii) an order that the plaintiffs be placed in racially integrated classrooms and provided with the compensatory education necessary for them to overcome the adverse effects of past discrimination/segregation.

On 26 September 2002, the Municipal Court in Čakovec issued a ruling rejecting the plaintiffs' complaint. This decision was appealed on 17 October 2002 to the Čakovec County Court. On 14 November 2002, the appeal was rejected and the decision of Čakovec Municipal Court confirmed.

Although the defendants failed to produce any meaningful evidence to justify their practices, and notwithstanding the overwhelming evidence in support of the pupils presented during the court proceedings, both the first-instance court and the second-instance court failed to provide redress for the violations suffered. On 19 December 2002, the applicants filed a complaint with the Croatian Constitutional Court requesting that both the first-instance and the second-instance judgements be quashed and the case retried. At present, this complaint is still pending, with no indication as to when a ruling might be handed down.

As a result of the current status of domestic legal proceedings and in the absence of any redress to date, the applicants have now turned to the European Court of Human Rights for protection. The pre-application letter filed on their behalf by the ERRC and Ms Kušan contends that: i) the applicants' placement into the separate classes for only Roma constitutes "degrading treatment" in violation of Article 3 of the European Convention of Human Rights; ii) the applicants have been denied their right to education, in breach of Article 2 of Protocol 1 to the Convention; iii) the applicants have suffered racial discrimination in the enjoyment of the right to education, in violation of Article 14; iv) the applicants have been subjected to a determination of their civil rights in a procedure that has proved fundamentally flawed and consequently in clear violation of the fair trial guarantees contained in Article 6; and v) the applicants have been denied an effective domestic remedy, in violation of Article 13. In addition, in the pre-application letter the applicants have reserved the right to assert additional violations, as they become apparent, and submit a detailed claim for just compensation in accordance with Article 41 of the Convention.

The full-scale application will be filed if and when it becomes clear that the applicants have been denied an effective and comprehensive remedy in Croatia.

Prepared by Branimir Pleše

4. Litigation's prospects: A necessary last resort

Although the practice of racial segregation in education extends back several decades in parts of Central and Eastern Europe, the first legal challenge appears to have been brought in 1997, and only a few cases have followed. With such a small sample of experience to draw upon, it would be premature to venture any definitive conclusions. Nevertheless, the continuing reality of school segregation, and its corrosive impact on the future of Romani economic and political opportunity, demands an initial assessment of what has been learned so far.

At first glance, the litigation to date has achieved little. Hungarian courts have gone the furthest in acknowledging the existence of racial segregation as a matter of law, and in providing damages for the victims in one school. Even there, however, nationwide patterns of segregation and discrimination will take years to overcome. Claims brought in Croatia and the Czech Republic have yielded firm rejections on the part of local courts, at least at the initial stages. While the Czech Constitutional Court appears concerned by the gravity of the allegations, it has suggested that the political branches, not the courts, have responsibility for finding a solution. In Bulgaria, the courts have yet to address the merits of pending complaints.

Despite these setbacks, a somewhat longer perspective—one commensurate with the magnitude and duration of the problem—suggests the need for caution before litigation is written off as a tool for change. Most immediately, both the Croatian and Czech cases described above are now pending before the European Court of Human Rights, and it may be several years before judgments are issued. The Bulgarian litigation is at an even earlier stage.

More generally, it is important to recall that public interest litigation as a whole—and litigation to challenge racial or ethnic discrimination more particularly—has a relatively brief history in much of Europe. Anti-discrimination litigation was largely unknown until very recently in many European countries—particularly when it comes to matters of race or ethnicity. Thus, it was only in 1973 that the European Commission of Human Rights found for the first time that racial discrimination could amount to "degrading treatment" in violation of Article 3 of the European Convention. The European Court still has yet to find a violation of

Article 14 on the grounds of racial or ethnic discrimination. The European Union Race Directive—one of the more far-reaching standards of anti-discrimination legislation in the world—only took effect in the middle of 2003. In short, outside of the United Kingdom, Ireland, and a few other countries, European experience with racial discrimination as a concept of law is quite new.

Finally, the example of the United States is instructive. The legal campaign to challenge racial segregation in education spanned more than three decades before achieving its landmark victory in 1954. Yet, half a century later, the United States is still struggling to implement and interpret the dictates of *Brown*.

In light of the foregoing, it would be folly to assume that judges and lawyers untrained in anti-discrimination law and litigation can turn on a dime and swiftly apply untried and untested principles in an often complicated doctrinal field. Like other aspects of law, the accumulation of anti-discrimination jurisprudence will take time. Persistence and determination will be at least as necessary as patience in seeing it through. Regardless, the cases already under way reveal a few facts worth taking into account as we take the process forward.

First, litigation is, in this area as in most fields of social change, a last resort. Slow, expensive, and uncertain, it is a recourse generally worth pursuing only as a complement to—not a substitute for—more explicitly political actions.

Seeking legislative change is one obvious alternative. Adoption of the EU Race Directive in June 2000 and the Framework Employment Directive several months later marked major steps forward in anti-discrimination law, achieved at the political level of law-making. These were the products of more than ten years of lobbying by grassroots NGOs. The Bulgarian anti-discrimination law, adopted in September 2003, was similarly the result of political bargaining, not judicial reasoning.

Another tactic is direct action. An example comes from Bulgaria, where over the past few years a number of Romani advocacy groups, working with the Open Society Institute, have achieved integration of previously segregated schools, not by filing lawsuits, but by hiring additional teachers, renting buses, and organizing previously excluded parents and children to attend classes in newly mixed schools. The results have been promising, with a majority of the new students in the

project successfully passing their first-year exams.[19]

Second, just as litigation is not the only method, it should not be completely overlooked as a necessary tool to push, prod, and persuade recalcitrant government officials to act in compliance with their responsibilities. Laws require human beings to give them meaning. Significant as are the new EU anti-discrimination directives, litigation will almost certainly be required to enforce, apply, and interpret their various provisions. The same is true of newly enacted domestic anti-discrimination legislation in a number of European countries.

Third, advocates seeking to use litigation to combat racial segregation in schools must be resourceful and flexible in making use of the tools at hand. Thus, in the absence of clear legislative rules barring segregation in education, it may be necessary to rely on civil code provisions that prohibit discrimination or more generally protect human dignity, or on other legislation.

Fourth, the problem of evidence is not to be underestimated. Segregation may seem a rather obvious fact to prove, yet it can be quite difficult, particularly in countries (including many in Central and Eastern Europe) where the misuse of race- and ethnic-coded data in the past has given rise to legislative barriers or customary resistance to the recording and/or publication of information about racial and/or ethnic groups. Absent data showing how many students are of which race/ethnicity, it may well be impossible to document discrimination and segregation in schools. In practice, more government officials—including teachers and school administrators—possess such data than are willing to admit. But documentation efforts that have preceded litigation now under way suggest it may be necessary to ask several times and in different ways before obtaining this information. The overarching need for evidence of sufficient quality and quantity frequently mandates that litigation efforts involve and capacitate not only local lawyers, but also local investigators, journalists, human rights workers, psychologists/social scientists, and doctors.

Fifth, it may well be important to join into one cause of action the claims of several plaintiffs. This is so even in countries that do not countenance "class actions," as they are known in some Anglo-American legal systems, and, hence, where a collective remedy applicable to the class as a whole is not a possibility. Joinder of more than one plaintiff helps protect against the quite

substantial risk that one or more of the initial complainants will drop out of the litigation, whether under pressure, out of frustration, or for other reasons. The litigation in the Czech Republic generated a series of hostile reactions on the part of local authorities, including a bomb threat and the suggestion that failure to withdraw the complaint would result in referral of the matter to so-called skinheads. In addition, although discrimination is inevitably a concept that requires comparison to others, courts are often reluctant to consider evidence pertaining to anyone other than the particular plaintiff before them. Adding plaintiffs broadens the evidence that courts may be willing to entertain.

Sixth, and related, it is vitally important to work closely and from the beginning with local Roma rights advocates and Romani community leaders. While perhaps obvious, this presents a particular challenge at a time when the social and historical gaps between (often non-Romani) lawyers and (often non-lawyer) Roma are so large. Like other efforts to combat racial discrimination through law, educational desegregation in Central and Eastern Europe is primarily about, and must be led by, Roma. Advocates must take account of, and address with care, a reluctance in some communities to assume the risks of retribution, delay, and failure that may flow from frontally challenging entrenched patterns of school segregation. Forging links among Romani communities, Romani advocacy groups, lawyers, and mainstream human rights organizations, as well as encouraging genuine and continuing dialogue, is critical to the struggle.

Seventh, the nature of the segregation at issue may significantly affect the kind of litigation pursued and the likelihood of success. Thus, school segregation that is grounded in underlying patterns of residential segregation (as in parts of Bulgaria) may be more difficult to challenge than segregation based on misapplied test results (as in the Czech Republic) or overtly racist assumptions about Romani students' hygiene (as in Croatia). To be sure, local context and law will be important constraints in guiding strategy. On the whole, however, clear examples of differential treatment and forced separation that lack an objective basis are the most compelling facts to bring forward.[20]

Eighth, particularly when the subjects at issue—racial discrimination and segregation—are imbued with such long-standing and deep-rooted popular sentiments, litigation must be accom-

panied and supported by thorough documentation and skilled presentation of the facts. This may require detailed and time-consuming research, as well as progressive education of the media, many of whose members may harbor the same biases that inform attitudes among the population at large. What in one context constitutes overwhelming proof of unjustified racial segregation—for example, data demonstrating the over-representation of Romani children in remedial special schools—may in another environment be taken as confirmation of the widespread belief that Roma are intellectually deficient.

Ninth, given uneven levels of familiarity among both bar and bench with comparative and international anti-discrimination law and jurisprudence, and the speed at which this field is developing, litigation will in some cases require a form of on-the-job training for the lawyers and judges involved. This must be carried out with care. On the one hand, citation to the law of the European Union, the Council of Europe, and/or United Nations treaty bodies—however appropriate—may engender resistance, if not hostility, in some domestic courts. On the other hand, the failure to correct common judicial misconceptions about discrimination and segregation may lead to adverse results.

In conclusion, racial segregation in education remains a serious problem in a number of countries in Central and Eastern Europe. Efforts to bring about change through law are relatively recent, and they provide too sparse a foundation on which to base any irrevocable conclusions. Nonetheless, it seems clear that the movement to desegregate schools will take a long time to complete. Litigation is a necessary but not sufficient part of the process. The long road ahead requires creative, thoughtful, and sensitive lawyers working closely with Romani advocacy groups, human rights organizations, and others to educate the bar, the bench, and the general public about the rights of Romani children and their remedies in law.

NOTES

1 Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) defines racial discrimination as "any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life." Segregation is one particular kind of discrimination expressly prohibited by Article 3 of the CERD. In addition, Article 1(c) of the International Convention against Discrimination in Education expressly prohibits discrimination in education, which is defined to include "establishing or maintaining separate educational systems or institutions for persons or groups of persons." Throughout this chapter, the terms "discrimination" and "segregation" are used interchangeably to refer to the placement of Romani students in ethnically/racially separate and educationally inferior classes and/or schools.

2 Elena Marushiakova and Vesselin Popov, *Desegregation of Roma Schools: Creating Equal Access to Education for Roma Children in Bulgaria* (2001), p. 6.

3 Ibid., p. 6.

4 "Zakon o trvaalem usidleni kocujicich osob," No. 74/1958, dated 17 October 1958. On the history of forced settlements, see also David M. Crow, *A History of the Gypsies of Eastern Europe and Russia* (London: I.B. Tauris Publishers, 1995), cited in ERRC, *Czech Country Report: "A Special Remedy"* (1999), p. 17.

5 See David Canec, "Extract from Report on Minorities in Special Schools" (1999) (report on file with the ERRC).

6 "Usneseni vladi CSSR o opatrenich k reseni otazek cikanskeho obyvatelstva," No. 502, 13 October 1965, cited in ERRC, *"A Special Remedy,"* supra, at p. 17.

7 Ctibor Necas, *Romove v. Ceske Republice vcera a dnes* (1995), p. 87, cited in ERRC, *"A Special Remedy,"* supra, at p. 17.

8 See Czech Republic Resolution No. 279 of 7 April 1999, "Draft Conception of the Governmental Policy toward the Romani Community," para. 5 (on file with the ERRC) ("three-quarters of Romani children attend special schools destined for children with a moderate mental deficiency and . . . more than 50 percent (estimations are that it is about three-quarters) of all special school pupils are Romani").

9 Directive 2000/43/EC of the European Council of the European Union prohibits "direct or indirect discrimination based on the grounds of racial or ethnic

origin," including in the field of education (Article 3(g)).

10 See ERRC, *Roma Sue School in Northeastern Hungary: The Submission against the Principle of the Ferenc Pethe Primary School, Tiszavasvari, Hungary,* Roma Rights (spring 1998).

11 UN Committee on the Elimination of Racial Discrimination, "Concluding Observations on Hungary," 16 September 2002, para. 382.

12 On the same date, all twelve Constitutional Court applicants, plus six other Romani special school students, lodged an application for exceptional review of their placements with the Ostrava School Bureau, pursuant to paragraphs 65–68 of the Administrative Proceedings Code. On 10 September 1999, the School Bureau notified the applicants' attorney that it found no reasons to commence the review proceedings, as the assignments to special schools had not violated the law.

13 Monika Horakova, MP, tabled an amendment to Section 28 of the Schools Law to attempt to rectify this gross inequality. See ERRC, *Legal Strategy to Challenge Racial Segregation and Discrimination in Czech Schools,* 1 Roma Rights (2000), available at: http://errc.org/rr_nr1_2000/legalde1.shtml.

14 Applicants' Petition to the Constitutional Courts; see ibid.

15 Decision of the Constitutional Courts; see ibid.

16 Unofficial translation of the court decision into English by the ERRC; see ibid.

17 A report published by the Directorate for Employment and Social Policy of the European Commission notes that racial segregation continued in Czech schools as recently as September 2003: "Despite a number of initiatives supported by the Czech authorities, including the 'Concept for Roma Integration' that was agreed by the government in June 2000, Roma continue to face discrimination in all aspects of society including education, housing, employment, and police abuse. For instance, Roma children are still placed in special schools for people with learning disabilities. . . . The Czech Republic does not fully comply with the requirement of the EC Racial Equality Directive to ban racial discrimination in education. . . ." Directorate-General for Employment and Social Affairs, European Commission, *Equality, Diversity and Enlargement: Report on Measures to Combat Discrimination in Acceding and Candidate Countries* (Brussels: September 2003), pp. 53–58. See http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/studies/EqualDivEnlarge_en.pdf.

This echoes concerns that have been voiced by a number of United Nations

bodies, among others. At its sixty-third session, in August 2003, the UN Committee on the Elimination of Racial Discrimination (CERD) stated:

> "14. While appreciating the complexity of the problem of special schooling and noting the accompanying measures taken by the government with a view to promoting adequate support to Roma children, the Committee remains concerned, as does the Committee on the Rights of the Child (CRC/C/15/Add.201 para.54), at the continued placement of a disproportionately high number of Roma children in 'special schools.' "(UN Committee for the Elimination of Racial Discrimination [CERD], Sixty-third session, 4–22 August 2003, CERD/C/63/CO/4, para. 14)

In 2001, the UN Human Rights Committee, in its Concluding Observations on the Czech Republic, expressed concern about "the disproportionate number of Roma children who are assigned to special schools for mentally disabled children, which would seem to indicate the use of stereotypes in the placement decisions, in contravention of Article 26 of the Covenant [on Civil and Political Rights], and which make it difficult, if not impossible, to secure admission to secondary schools." UN Human Rights Committee (UNHRC), *Concluding Observations: Czech Republic*, CCPR/CO/72/CZE from August 27, 2001, para. 9.

18 See Branimir Pleše, *Racial Segregation in Croatian Primary Schools: Romani Students Take Legal Action,* 3–4 Roma Rights (2002), available at: http://errc.org/rr_nr3-4_2002/legal_defence.shtml.

19 The desegregation project in Bulgaria started as a pilot initiative in northwestern Bulgaria and now encompasses seven desegregation projects in towns across the country. The basic idea has been to develop models of good practice to show that integration can work, publicize these successes, advocate their replication, and build broad coalitions to press governments to reform their educational policies and implement equal opportunities. Through media campaigns and public meetings, the project has sought to raise awareness and build consensus within the majority community around the issue of desegregation. *OSI Roma Participation Program,* Reporter (August 2002).

20 However, residential segregation does not absolve government authorities of responsibility for ensuring desegregated

schools. In its General Comment 19 on "Racial Segregation and Apartheid," the United Nations Committee on the Elimination of Racial Discrimination has observed as follows:

"2. The Committee believes that the obligation to eradicate all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous governments in the state or imposed by forces outside the state.

3. The Committee observes that while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons. In many cities, residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent, and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.

4. The Committee therefore affirms that a condition of racial segregation can also arise without any initiative or direct involvement by the public authorities. It invites states parties to monitor all trends that can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in their periodic reports."

Desegregating Romani Schools in Romania: A Cost-Benefit Analysis[1]

by Mihai Surdu

This article illustrates the inferior quality of education in segregated schools in Romania and indicates the ways in which the segregation of Romani pupils presents a major obstacle to their enjoyment of equal educational opportunities. The article defines the term "segregated schools" and explores the causes of this problem in Romania. The author analyzes school achievement, school facilities, and teacher qualifications in evaluating the quality of education in segregated schools. The article then presents possible policy options that may be considered in order to improve the quality of education for Romani children.

1. Introduction

Segregated schools refer to those in which Roma constitute more than 50 percent of the student body. Segregated schools are usually situated near Romani communities. Historically, these schools have arisen as a consequence of residential segregation. Thus, segregated schools are not a result of a governmental policy but a legacy of the past. Most of these communities have a high level of poverty, and this is reflected in the schools as well: they not only are physically separated from the schools with a non-Romani majority but also are much poorer compared to those other schools. Many Romani schools are in fact located relatively close to schools with a non-Romani majority. However, although formally there are no barriers preventing Romani pupils from enrolling in non-segregated schools or transferring to them, Romani parents in fact encounter a series of economic and bureaucratic obstacles related to racial prejudice. The social distance between the Roma and the majority population has a strong influence in maintaining the status quo.

The main problem with the status quo is that the quality of education in segregated schools is much lower than in the rest of the public education system. In the Romani-majority schools, the number of pupils in secondary education who pass is extremely low, the number of functional illiterates is high-

er, and an increased number of Romani students are required to repeat the school year due to poor results. The main indicators of a low-quality education include high proportions of unqualified teachers and overcrowded classes, as well as absent or inadequate libraries. Low teacher expectations also contribute to making these schools second class. Conversely, schools with a non-Romani student majority are widely regarded as superior, with better school facilities as well as human and financial resources. Studies indicate that most Romani parents consider it desirable for their children to learn in ethnically mixed schools rather than in schools in which the children are predominantly Roma.

Creating both a set of standards for a quality public education and a process for annually monitoring the educational system are important first steps in initiating desegregation policies. In this way, Romani parents (and non-Romani ones as well) can become informed on an objective basis about the quality of education in local schools, in neighboring schools, and indeed in every school within the system. From this information, combined with an evaluation of the costs and benefits of a variety of policy options, one can draw the conclusion that desegregation will produce greater benefits, for comparable or even lower costs, than the option of simply improving the quality of education in Romani schools. The social benefits of choosing desegregation include a reduction in the state budget for social welfare in support of the Roma and the chance for greater social cohesion among the different groups in the populace. Of course, under a desegregation policy involving parental choice, there would be added costs in aiding individuals to attend better schools; on the other hand, there are significant structural and administrative costs simply to improve Romani schools. And in the context of the European Union's expansion, choosing the option of desegregation in effect means lower costs, in the form of new opportunities, than choosing either to maintain the status quo or to improve the quality of education in segregated schools. Further, desegregation is a feasible policy option because institutional and legal structures for implementing it are already in place, and so it is not necessary to incur additional costs to create these structures. These include the existence of Romani inspectors at the county level, schools mediators, the National Council for Combating Discrimination, and anti-discrimination legislation.

2. Defining segregation

The term "segregated schools" is defined in this article as schools that use a standard or national curriculum and have a student body that is more than 50 percent Romani. Although segregation has never been legally sanctioned in Romania, *de facto* segregated schools are an undeniable reality.[2] Notwithstanding Romania's obligations to eradicate segregation and discrimination in education flowing from domestic and international law,[3] there have been no legal or practical efforts by the state to eliminate these schools.

Segregated schools are usually near Romani communities, and most of these communities have a high level of poverty. Those schools are much poorer than other schools as well as physically separate from them. In addition, despite an absence of formal barriers,[4] Romani parents who seek to place their children in non-segregated schools encounter economic and bureaucratic obstruction rooted in racial prejudice.

3. Romani schools: Physical or social distance?

Historically, Romani segregated schools have appeared as a result of residential segregation rather than legislation. According to a 1998 survey by the Research Institute for Quality of Life (RIQL), more than one-quarter of the Roma in Romania lived in segregated communities.

In Romania, Roma were slaves ever since their arrival in this territory. The abolition of slavery was a process that took almost twenty-five years to complete, in the second half of the nineteenth century. Forcing the previously itinerant segments of the Romani population to settle was a permanent effort of the authorities that began during the period of slavery but continued through the communist era of the twentieth century.[5] The process of forced settlement of Roma resulted in the appearance of isolated and homogeneous Romani communities, usually situated on the margins of villages or cities. The communist regime then tried, through its town planning policy, to demolish Romani districts and disperse the Romani population among the majority population by moving Roma from houses to blocks of flats. This policy was largely unsuccessful, however, and nowadays a large number of Roma live in Romani districts or ghettos. There are also instances in which Romani settlements are not administratively registered because local Roma do not have prop-

erty documents, although several generations have lived there.

Nevertheless, explaining educational segregation only as a result of residential segregation is insufficient. In fact, research data indicate that as of 1998, more than half of the schools with Romani pupils in the majority were situated at a distance of less than three kilometers from neighboring schools at the same level but with predominantly non-Romani children.[6]

Because the physical distance between Romani and non-Romani communities (and therefore between majority Romani and majority non-Romani schools) is often relatively small, an explanation for continuing educational segregation in such circumstances can be found instead in the *social* distance between the Romani minority and the majority population. Initially established largely as a consequence of residential segregation, the schools for Roma have nowadays overwhelmingly become an expression of negative stereotypes toward Roma. Indeed, recent data[7] reveal intense negative perceptions about the Roma on the part of the majority.

The social distance between the Romani minority and the majority is further increased by socioeconomic discrepancies. Statistics show much higher poverty levels among Roma as compared to non-Roma. For example, in 1998, 62.9 percent of the Roma in Romania lived below the minimum level of subsistence, compared to 16 percent of the population as a whole.[8] Poverty is usually associated with other characteristics of a lower social status, and it is therefore a cause of widespread negative public perceptions of the poor.

Thus, although segregated schools have been a consequence of residential segregation, which was forced upon the Roma both long before and during the years of communist rule in Romania, the social distance between the Roma and the majority population also has had a strong influence in maintaining the status quo.

4. Dimensions of Educational Segregation

One example of the current situation involved an analysis of rural schools, which make up 75 % of the total number of schools in Romania[9], and can be divided into the following categories:

- mixed schools: 0.1–50 percent Romani children
- schools with a Romani majority: 50.1–70 percent Romani children
- schools in which Romani pupils prevail: 70.1–100 percent Romani children

Mixed schools constituted 87 percent of the school units analyzed, 6.4 percent were schools with a Romani majority, and 5.8 percent were schools in which Roma prevailed. In this analysis, the number of Romani children who attended schools with a student body more than 50 percent Romani was 38,334, or 12.2 percent of the total number of Romani children in all of the 5,560 schools analyzed.[9] A recent UNDP report[10] makes available similar data for both rural and urban schools. According to that report, 13.5 percent of Romani pupils were attending classes in schools with a Romani majority.[11]

According to the 5,560-school database, segregation tendencies were more salient in relation to compulsory education, in lower grades.[12] More than half of the Romani students in schools with a majority Romani student body were in primary schools, and almost one-third were in secondary schools.[13] One factor that skews most of the cases of Romani segregated schools toward the grades under compulsory education is that a high number of Romani children drop out of school after the eighth grade. But this problem is not limited to higher grades. RIQL research in 1998 indicates that in the age group from seven to sixteen years old, for which compulsory education still applies, at least 11.6 percent of the Romani children drop out of school. The words "at least" are needed here because another 8.7 percent of the subjects in this study were in the category of non-answers; it is plausible that most of these "non-answer" cases are in fact dropouts, who did not declare themselves as such because of the social stigma of doing so.

5. Quality of education in predominantly Romani schools

The factors determining quality of education can be categorized as follows: a) educational input (curricula, textbooks, school buildings, learning materials and facilities); b) educational processes (teachers, classroom organization, schedules); and c) educational outcomes, or learner achievement. This section assesses some of these factors, illustrating disparities between schools with a high percentage of Romani pupils and mixed schools.

5.1 Learner achievement in Romani-majority educational units

The proportion of pupils who obtain a *certificatul de capacitate*[14] is an indicator

of schools' resources in preparing pupils to move on to college or vocational school. While 68 percent of pupils in the entire educational system passed the exam for this certificate, as of 1998, the proportion of pupils was only 44.6 percent in the schools in which Romani pupils were prevalent. The data indicate that more than half of the Romani pupils in schools with a prevailing number of Roma failed the exam.

Another calculation, for primary and secondary levels from 1995 to 1998, was of the proportion of pupils who repeat one or more school years due to poor school results. An increase in this proportion correlates with a higher number of Romani pupils in the school. In schools with more than 70 percent Romani pupils, 11.3 percent of the pupils repeated the school year—a rate that is almost three times higher than the average for the educational system as a whole (3.9 percent). Note that a student who has three successive failures is expelled from the school system, because he or she would then be over the legal age for primary or secondary school.

As for functional illiteracy, a 1998 RIQL survey[15] revealed that some of the Romani students in compulsory education did not have basic reading and writing skills, even though they had advanced to a higher grade. Practically, these pupils can be regarded as functionally illiterate. High levels of functional illiteracy indicate failures in the educational system. Although the available data do not specify the percentage of functionally illiterate Romani students from schools with a higher proportion of Roma, it is very likely that, as a result of the lower quality of education in segregated schools, many if not most of these functional illiterates come from this type of school. As one example of the problem, functional illiteracy as of 1998 amounted to 17.6 percent of the pupils enrolled in fourth grade. This increased to 35.7 percent in the case of pupils who dropped out in the fourth grade. Further, one-third of the Romani pupils who dropped out of school in the sixth grade could not read or write properly. Certainly, functional illiteracy can be part of the explanation for student abandonment of school. This situation is created in part because of many teachers' low expectations of Romani pupils. Some teachers consider that for Romani pupils, literacy is simply another indicator of performance rather than a basic minimal requirement.

5.2 School facilities in Romani-majority educational units

For both primary and secondary education, overcrowded classes are a common situation in schools with many Romani pupils. Studies have indicated that the likelihood of having overcrowded classes increases proportionately with the percentage of Romani pupils in a school; in other words, the more Romani pupils there are in a school, the higher the number of overcrowded classes. This problem was more than three times greater in primary schools in which Romani pupils prevail than in all rural schools. In secondary schools in which Romani pupils prevail, this likelihood was more than nine times greater than in the whole system. In the segregated schools for Roma, insufficient school space is another factor that negatively affects the quality of education. In overcrowded classes, we can assume that teachers are more oriented toward maintaining discipline than taking care of each individual pupil's needs.

Another important facility when it comes to the quality of the educational process is the school library. For Romani pupils, this is an essential resource, because many Romani children come from poor families and do not have ready access to books otherwise. However, the higher the number of Romani pupils there are in a school, the more likely it is that the school does not have a library. The data indicate that a library was missing in almost two-thirds of the schools with a majority of pupils being Roma. In schools in which Romani pupils prevail (at least 70 percent of the pupils), this facility was missing in almost three-quarters of the cases.

5.3 Teachers' qualifications in Romani-majority educational units

Teachers' qualifications and attitudes are crucial factors influencing the quality of the educational process. While quantitative indicators can objectively evaluate qualifications, teachers' attitudes have a subjective component in terms of their perceptions and expectations about Romani pupils.

One factor to examine is the proportion of schools with a shortage of qualified teachers—even if there is just one who is unqualified. According to the data, schools in which Romani pupils prevail indicated a shortage of qualified teachers that was almost two times greater than that of all rural schools. Practically speaking, all schools with more than 50 percent Romani pupils were confronted with the prob-

lem of a shortage of qualified teachers.

The proportion of unqualified teachers in compulsory education (primary and secondary schools reflects the extent of the problem. It can be supposed that in schools with a high proportion of unqualified teachers, the quality of education is correspondingly low. And the data indicate that there is a clear correlation between the percentage of Romani pupils in a school and the proportion of unqualified teachers.

In the category "50–75 percent unqualified teachers,"

- the percentage of schools with a majority of Romani pupils was approximately three times higher than that for the educational system as a whole;
- the percentage of schools in which Roma prevail was approximately five times higher than for the entire educational system.

In the category "more than 75 percent unqualified teachers,"

- the percentage of schools with a majority of Romani pupils was approximately four times higher than for the entire educational system;
- the percentage of schools in which Roma prevail was ten times higher than for the educational system as a whole.

As illustrated by the above data, the schools with a high percentage of Romani pupils are second-class schools that offer inadequate facilities and high levels of underqualified teachers. This fact has a detrimental impact on the quality of education that Romani children receive, as well as on their motivation to attend school. Among Roma, high dropout rates are in part the result of the negative experience that Romani children have at school. Most of the "beneficiaries" of this type of education, Romani parents and children alike, have a clear awareness that they do not receive equal education in the schools with a high percentage of Romani children.

5.4 Quality of education in relation to beneficiaries' expectations

Many Romani parents express dissatisfaction with the level of knowledge achieved and skills mastered by their children in schools with a prevailing number of Romani children. Parents frequently complain about a lack of motivation among teachers working with Romani pupils. Because some

teachers from the schools with a high percentage of Romani pupils have low expectations of those pupils, those teachers tend to set lower standards of educational achievement for Romani pupils than for the others. As one teacher expressed it, "There are differences between the Romanian children and the Rudari [Romani] children. They [the Romani children] are asked only to stay at their desks in the last row, and they are left alone and told only to be quiet."[16]

Some teachers believe that Romani pupils have no chance to pursue higher levels of education, and these teachers behave accordingly. They have low commitment; they underestimate Romani pupils' potential, and they do not treat Romani pupils individually. For many educators, the main objective regarding the education of Romani children is the mere achievement of basic literacy skills. Moreover, some teachers consider reading and writing to be only a performance indicator, not a basic ability to be accomplished in the first two years of school. Fixing literacy as a final objective of primary school (sometimes even of secondary school), instead of a stepping-stone toward other, more advanced objectives, teachers' requests and expectations are often very limited. And some Romani pupils in fact pass classes for years and sometimes even attend high school without properly knowing to read and write.

The majority of Romani parents are aware of the discrepancies in the quality of education between schools with a high percentage of Romani pupils and those with another ethnic majority. For this reason, some wealthy Romani parents who are able to do so prefer to place their children in schools with a non-Romani majority. Non-Romani parents act the same way when they have to choose between a closer school that has a high percentage of Romani children and a faraway school with few if any Roma.

It is clear that most Romani parents consider it desirable for their children to learn in ethnically mixed schools, not in schools with a Romani majority; schools with a non-Romani majority are recognized as being better, with superior facilities as well as human and financial resources. Parents who favor mixed schools bring the following arguments:

- mixed schools tend to have a higher quality of education because teachers tend to have better qualifications and there are generally better facilities;
- romani pupils are taught to achieve better results in mixed schools;

- having Romani and non-Romani children socialize together can have positive effects for both groups of children, facilitating communication and cultural exchanges, avoiding social exclusion, and increasing interethnic tolerance;
- schooling in a mixed school is perceived to bring rewards such as higher educational and, ultimately, employment opportunities.

Despite this, it became evident in author's interviews with Romani parents that cases of abusive treatment of Romani pupils who attend mixed schools make some Romani parents reluctant to send their children to school together with non-Romani students. Such cases include the seating of Romani children at desks in the back, the failure of teachers to encourage Romani pupils to be active in class, the exclusion of Roma from extracurricular activities, and tensions between the two groups of pupils, as well as sometimes between Roma and their teachers. Indeed, some Romani parents are afraid that mixing Romani and non-Romani pupils could strengthen segregation tendencies, in that Romani children might find themselves isolated in the mixed schools because of majority prejudices and stereotypes, including those related to differences in social and economic status. Such differences are evident in many Romani pupils' lack of school supplies, adequate clothing, meals, and money for extracurricular activities.

Romani children are in fact more afraid than their parents about learning in the same class or school as non-Romani children. During the course of this research, many Romani children stated that they were frightened of being isolated, badly treated, or even beaten. Yet these fears are actually more salient among pupils who are learning in all-Romani schools than among those who are taught in mixed schools.

6. Policy options: Desegregating versus improving segregated schools

Evidence supports the argument that the quality of education for Roma in segregated schools is lower than in the mainstream schools. Unqualified teaching staff, a lack of basic facilities, and discriminatory treatment of Romani children are crucial factors contributing to the inferior level of education in the schools where Romani children prevail. In practice, Romani children who attend segregated schools have a very small

chance of passing beyond the stage of compulsory education. In fact, a large number of them drop out before finishing secondary or even primary school, and the incidence of functional illiteracy among Romani children is very high even for those pupils who have graduated from fourth or eighth grade.

In Romania, segregated schools first appeared as a consequence of residential segregation, which affects more than one-quarter of the Roma. However, the social distance between the Roma and the majority population, and prejudices held by the majority against the Roma, are the main factors in the preservation of the status quo. Although by law there should be no obstacles to the enrollment of Romani children in integrated, higher-quality schools, obstruction on discriminatory grounds has in practice blocked extensive integrated schooling to date.

There are mainly two approaches in addressing the existing discrepancies regarding educational quality in the segregated and in mainstream schools. The first way is to improve the quality of education in the segregated schools. Since 1989, almost all relevant agencies and groups, including the Romanian Ministry of Education and non-governmental organizations, have acted within the framework of this policy option. For example, most of the projects and programs that NGOs have developed aim, in one way or another, to improve the quality of segregated schools. Measures such as teacher training, school development, improvement of school facilities and teaching materials, involvement of parents and communities, and participation of Roma in extracurricular activities fall within this framework. The assumed philosophy behind such intervention is that if the quality is improved, Romani pupils will attend school to higher levels of education and consequently will be more competitive in the labor market; in turn, better integration of the labor market will lead, over time, to improved economic and social status for the Romani population. However, while this strategy addresses the quality of education, it fails to deal with the problem of segregation itself. And such segregation in fact ensures that the social distance between the Romani minority and the majority population cannot in the end be overcome.

The second policy option consists of desegregation of the educational system. Unlike the first option, which does not address the core problem of educational segregation, a policy of desegregation challenges both the existing quality of education and the state of physi-

cal separation of the Romani children based on ethnicity. While the currently applied strategy of improving the quality of education means preserving segregated schools, the desegregation option proposes eliminating this kind of school from the educational system. Regardless of intent, the segregation of schools makes a judgment about Romani culture as being of a lower rank than the majority culture. Although it is not the result of a governmental policy, educational segregation of Romani pupils is still unacceptable. Beyond its functions of transmitting knowledge and developing abilities, school is also a means of disseminating values. Tolerance, ethnic dialogue, and democratic exercise cannot be applied if a minority is isolated and thereby excluded from the mainstream society. Thus, even if segregated Romani schools became equal in quality with other schools in the educational system, segregation is inappropriate for both the Romani minority and for the Romanian society as a whole.

Educational segregation is a major cause not only of inferior education but also of social exclusion of Roma from Romanian society. Eliminating segregation, by including Romani pupils in mainstream education, will increase the school achievement of Romani pupils; in addition, it will open up a movement for the equal status of Roma in all social areas. The success of the desegregation program initiated in Bulgaria[17] demonstrates that school desegregation can be considered a viable policy option in the case of Romani education.

Therefore, existing programs and projects targeting so-called Romani schools have to take this important next step, to go from improving the quality of education to establishing a policy of school desegregation. In schools with more than 50 percent Romani pupils, desegregation plans must be created, taking into account local contexts. There are some already validated modalities of desegregating schools: for example, transporting children to schools where the majority is not from the same ethnic group, creating magnet schools that can attract non-Romani pupils to majority Romani schools, providing information to Romani parents and helping them send their children to better schools, and removing bureaucratic barriers by redrawing school boundaries. Additional information is needed in order to adapt such plans based on local contexts and to choose the appropriate desegregation techniques in each situation. Further, antibias training for teachers is needed, to create a friendly environment for

Romani pupils in their new host schools. In addition, where needed, Romani families have to be given assistance in order to provide their children with suitable clothing, writing materials, meals, and so on.

The first step in choosing an appropriate option is to initiate a broad public debate. A satisfactory solution should take into account all relevant stakeholders. Thus, it is important that Romani parents' voices be heard before an educational policy targeting their children is planned.

7. Conclusions and recommendations

The most straightforward and least costly way to address the problem of low-quality education in segregated schools is to physically remove Romani pupils from such a lower-quality—and often unfriendly—environment and insert them in a new one that is better in both quality and atmosphere. With a history of failure on the part of segregated schools, it is reasonable to suppose that trust in such schools is at a very low level among Romani parents. Trust is a crucial prerequisite when we think of human relationships in connection with education. A relationship based on mistrust cannot be corrected overnight simply by trying to improve the same relationship. No matter how much those schools tried to improve, the stigma associated with lower-quality Romani schools remains a residual constraint, obstructing effective trust and investment.

It is difficult to believe that teachers, parents, communities, and society at large can change their way of perceiving segregated Romani schools, which are widely considered to be second class. Thus, investing money in an enterprise that people do not believe is capable of being effectively improved can result in a loss of money without tangible results. As projects aimed at improving the quality of education in schools that remain segregated decrease or come to an end, the currently lower-quality Romani schools will be at high risk of returning to low educational standards.

For those who continue to advocate improving segregated schools, it is legitimate to ask the following: if the quality of education is supposedly better in Romani schools that are engaged in various recently developed educational projects, why have non-Romani parents not enrolled their children in those schools? After all, in an open environment, which is what the public education system is supposed to be, it is ratio-

nal for parents to choose the best, or at least better, schools from what is available. Yet the supply-and-demand mechanism seems to indicate that Romani schools are not ranked high in the preference of these parents.

On the other hand, it is naive to believe that simply taking Romani children out of lower-quality schools and placing them in others will solve the problem of equal access to quality education for Roma. In every educational system, there will be elite schools and ones that are not as good. The challenge is to create mechanisms to ensure that not all Roma—or even large numbers of Romani pupils—are in lower-quality schools. It is also foolish to think that placing Romani children in better schools can be effectively achieved solely by law or a decree from the Ministry of Education. What we can reasonably do, however, is to create a set of standards for public education, along with a process for yearly monitoring of the public education system. In this way, both Romani and non-Romani parents can become informed in an objective way regarding the quality of education in their schools, in neighboring schools, and indeed in every school within the educational system.

Such information about the quality of education is currently quite scarce for parents; it can be obtained only through informal networks, not for public dissemination. Thus, without knowing basic information about school performance, it is a risky matter of chance where parents decide to place their children in the educational system; when children are placed in a school, it is difficult to know what will come out after a certain number of years. Often parents find out information about the quality of the education in a school only when their children have failed—and when is too late to change the social prospects of those children.

Instead, what is proposed here is desegregation of the educational system based on the informed choice of the parents. It is most urgent for desegregation to take place in K–8 schools, where the dimension of the segregation is greater and the consequences are most irreparable. The word "informed" is essential; the choices of Romani parents must be a result not of inertia but of real information. An informed choice for parents includes the availability and ranking of schools, in a specified area and in the system as a whole, based on objective school performance indicators. An informed choice also means that Romani parents well know and understand both the risks of sending their children to lower-quality

schools and the benefits of sending them to better schools. Related to informed choice, it is also essential that no barriers be permitted that keep parents from choosing schools other than the ones their children are attending.

Although the Ministry of Education cannot be the entire answer, some support from the Ministry is needed in order to sustain parents' choices. For example, this can include providing transportation if parents choose a school that is far from a Romani community. In some instances, choosing certain schools can raise the costs of schooling the children, as a result of the need for better clothing, money for extracurricular activities, individual paid consultations with professors, and so on; in such instances, some support for expenditures of this type have to be assured in order to give Romani parents true choice for a quality education.

Drawing on the types of costs and benefits that are likely for mentioned policy options, it can be assumed that desegregation will produce greater benefits for comparable or even less costs than the option of merely trying to improve the quality of education in Romani schools. This is in part because while there are individual costs associated with parental choice resulting from desegregation, improving Romani schools requires a variety of structural and administrative costs. Desegregation is feasible because institutional and legal structures for implementing this option are already in place, and so it is unnecessary to incur extra costs in these areas. Among these structures are Romani inspectors at the county level, school mediators, the National Council for Combating Discrimination, and legal measures against discrimination. It is also helpful that more than half of the segregated Romani schools are within walking distance—less than three kilometers—from schools on the same level that have a different ethnic composition.

A favorable cost-benefit analysis is based on the assumption that the desegregation option will have similar costs to the option of improving Romani schools while producing greater social benefits in the long term. Some of those benefits come in the form of opportunities in the context of the expansion of the European Union. Concretely, based on educational policies elsewhere in Europe, it is probable that evaluations of Romania in order to integrate it into EU structures will be more favorable if a policy of desegregation is chosen. To a greater degree, the social benefits of choosing desegregation will consist mainly of reduced

social welfare support for Roma on the part of the state budget, as well as the likelihood of greater social cohesion among different ethnic groups. Further, the more educated Roma coming out of better schools will more easily find jobs, earn more, gain access to housing and medical services, and will pay more taxes to the state.

Conversely, under the option of improving Romani schools policy, there is a serious risk that the schools will return to lower educational standards after the end of financing for related projects. In addition, teachers trained in programs designed to improve Romani schools may leave those schools soon after the training is finished. Moreover, if children emerging from improved Romani schools move on to other schools, they may be likely to have greater difficulty in suddenly adapting to an environment that is competitive rather than protective.

For all the reasons cited previously, the desegregation option is recommended, especially for the K–8 level. In order to desegregate the educational system, three main types of action are needed:

- putting a halt to segregation in education by enrolling Romani pupils entering the educational system in schools with a non-Romani majority and better quality;
- transferring Romani children from segregated schools to mixed schools and placing them in ethnically mixed classes;
- achieving an ethnic mix in classes in mixed schools where Romani children are currently placed in separate classes.

For a coherent desegregation policy, the following institutions need to be involved:

- County Inspectorates for Education (Romani inspectors);
- school mediators for Romani communities;
- local and county councils (Romani counselors);
- Roma and non-Roma NGOs acting in the field of education;
- the National Council for Combating Discrimination;
- local and central mass media.

And, as previously noted, the existing structure of transportation under the Ministry of Education needs to be optimized in order to provide Romani pupils from segregated communities with access to schools from neighboring localities.

The desegregation process has to be carefully monitored in order to prevent discrimination against Roma in their host schools and to maintain evidence about school achievement. Roma NGOs and Romani inspectors also have to ensure that placing Romani children, through enrollment or transfer, in schools with a different ethnic composition will not artificially create barriers to the study of Romani language and culture by Romani pupils.

NOTES

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2 In American jurisprudential literature, *de facto* segregation is described as follows: "Racial segregation resulting from the actions of private individuals or unknown forces, not from governmental action or law. *De facto* segregation is to be distinguished from *de jure* segregation, segregation resulting from governmental action or law. *De facto* segregation is generally the result of housing patterns, population movements, and economic conditions often reinforced by governmental policies not aimed at segregation but having that effect." See Jeffrey Raffel, *A Historical Dictionary of School Segregation and Desegregation* (Westport, Conn.: Greenwood Press, 1998), p. 232.

3 Article 32(1) of the Constitution of Romania stipulates: "The right to education is provided for by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and post-graduate refresher courses" (official translation).

The Romanian Law on Education recognizes "equal rights of access to all forms and levels of education for all Romanian citizens." See Article 5(1) of the Romanian Law on Education, adopted as the Law on Education 84/1995, amended by Ordinance 36/1997 and by Law 151/1999 (official translation by the Public Information Department of the Government of Romania).

Moreover, Romania is a party to several international treaties that prohibit

segregation and discrimination in education, such as the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(v)) and the UNESCO Convention against Discrimination in Education (Article 3).

4 Recent regulations of the Ministry of Education and Research of Romania (MER) allow a pupil to enroll in any school from the system, regardless of residence.

5 Achim Viorel, *Tiganii in istoria Romaniei* (Bucharest: Editura Enciclopedica, 1998), p. 155.

6 According to a 1998 database created by the MER, the Institute of Educational Science (IES), and the Research Institute for Quality of Life (RIQL).

7 According to the Interethnic Relations Barometer, created by Metro Media Transilvania for the Resources Center for Ethno-Cultural Diversity, November 2001, p. 11, the three main characteristics perceived by the majority as describing Roma are *dirty, thief,* and *lazy.*

8 C. Zamfir and E. Zamfir, *Dimensiuni ale saraciei* (Bucharest: Expert Publishing House, 1995), p. 28.

9 The total number of school units for grades 0 - 12 is 27,433, of which 6,980 are urban and 20,453 are rural. Therefore, rural school units for grades 0 -12 as a percentage of total schools for the same grades is 74. 55%. Primary data source: Ministry of Education and Research and NCS (National Commission of Statistics) 1999, quoted from "Rural Education in Romania: Conditions, Challenges and Strategies of Development ", Ministry of Education and Research, Institute for Educational Sciences, Mihaela Jigau coordinator, second edition, Bucharest 2002, editura Marlink, p. 204. Regarding the number of pupils, the percentages of pupils by residence area are almost the same. The explanation for why rural schools count for about three quarters of total schools is due to the fact that every village has a rural school even if most of them have small numbers of pupils when compared with urban schools.

10 UNDP, *The Roma in Central and Eastern Europe: Avoiding the Dependency Trap* (Bratislava: 2002).

11 In response to the question "What is the ethnic affiliation of the majority of the children in the class in the school your children are attending?" the answers of Romanian Roma are broken down as follows:

- most of them are ethnic majority: 55.5 percent;
- most of them are Roma: 13.5 percent;
- most of them are representing other ethnic minorities: 6.5 percent;
- do not know: 10.2 percent;

• N/R [No response]: 14.3 percent.

See UNDP, *The Roma in Central and Eastern Europe: Avoiding the Dependency Trap,* Annex 1, p. 91. We can observe the large number of "Do not know" and "N/R" answers.

12 Compulsory basic education *(învatamânt obligatoriu*) includes the first four grades of primary school *(primar*) and four years of lower secondary school *(gimnaziu*), grades five to eight. Upper secondary education includes four- and five-year academic high schools *(liceu*), four-year technical high schools, and two- and three-year vocational schools (*scoala profesionala*).

13 The number of Romani children who study in schools with more than 50 percent Romani children in primary education was 21,014; in secondary education, this number was 10,640; and in kindergartens, it was 6,680.

14 Secondary school students in Romania have to pass a compulsory national examination *(capacitate*), required to enter upper secondary education, in mathematics, the mother tongue, history, or geography.

15 Functional illiteracy was estimated based on a national sample of 1,765 Romani households, representative of the Romani population in both rural and urban areas.

16 Author's interview with a Romanian teacher named Rudarie in Gorj County, 1998.

17 See *The Desegregation of 'Romani Schools': A Condition for an Equal Start for Roma* (Sofia, Bulgaria, 27 April 2001), report published by the European Roma Rights Center and the Open Society Institute's Roma Participation Program.

Concluding Observations of the Committee on the Elimination of Racial Discrimination: Czech Republic, 01/05/2001[1]

1. Consideration of reports submitted by states parties under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination

Czech Republic

1. The Committee considered the third and fourth periodic reports of the Czech Republic (CERD/C/372/Add.1) at its 1411th and 1412th meetings (CERD/C/SR.1411 and 1412), on 7 and 8 August 2000, and at its 1419th meeting (CERD/C/SR.1419), on 11 August 2000, adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the comprehensive report presented by the Government of the Czech Republic, in accordance with the Committee's guidelines, which contains relevant information about the implementation of the provisions of the Convention in the State party. The Committee appreciates the frank and constructive dialogue with the State party delegation, composed of representatives of a wide range of governmental offices, as well as the detailed answers to questions raised and concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the additional amendments to the Act (194/1999) on the Acquisition and Loss of Citizenship (September 1999), which has helped to resolve problems relating to the acquisition of Czech citizenship for former citizens of the Czech and Slovak Federal Republic.

4. The Committee welcomes the establishment of new advisory bodies on matters relevant to combating racism and intolerance, in particular the Government's Commissioner for Human Rights and the Council for Human Rights. In addition, the Committee takes note of the process to enact the draft bill for the creation of a Public Rights Protector (Ombudsman), which is expected to enhance the protection of citizens against any inappropriate treatment by the State administration, including acts of racial discrimination.

5. The launching and implementation of the "Tolerance Project" (December 1999–June 2000), a public awareness campaign intended to prevent racial discrimination and increase tolerance, as well as other programs in the field of human rights education are regarded as significant measures in the implementation of Article 7 of the Convention.

6. The Committee also welcomes the Act on the System of Primary and Secondary Schools (1999), which facilitates the entry of special school graduates into secondary schools, a measure that is designed to benefit Roma children.

7. The Committee welcomes the steps taken by the authorities of the State party to make the declaration provided for in Article 14 of the Convention, and encourages the State party to finalize this process as soon as possible.

8. The publication on an Internet site of the Ministry of Justice of the initial and second periodic reports as well as the concluding observations and other related documents relating to the dialogue between the State party and the Committee is noted with appreciation.

C. Concerns and recommendations

9. While the Committee welcomes measures taken by the State party for the promotion and the protection of the human rights of the Roma minority, in particular the ones included in the "Concept of Government Policy Towards Members of the Roma Community" (June 2000), it remains concerned by the fact that the Roma population continue to be subjected to discrimination in the fields of housing, education, and employment. The Committee recommends that the State party include in its next periodic report information on the impact of the measures taken to improve the situation of the

Roma minority, especially the ones designed to eliminate their social exclusion.

10. With regard to Article 3 of the Convention, concern is expressed about the existing situations of *de facto* segregation in the areas of housing and education of the Roma population. In particular, concern is expressed at measures taken by some local authorities leading to segregation and at the practice of school segregation by which many Roma children are placed in special schools, offering them lesser opportunities for further study or employment. The Committee recommends that the State party undertake effective measures to eradicate promptly practices of racial segregation, including the placement of a disproportionate number of Roma children in special schools.

11. The Committee is concerned that some organizations, including political parties, promoting racial hatred and superiority are hidden behind legally registered civic associations whose members are promoting xenophobia and racism. Concern is also expressed at the ineffective implementation of existing legislation to prosecute the perpetrators of incitement to racial hatred and support to racist movements. In light of Article 4 of the Convention, the Committee recommends that the State party strengthen law enforcement to ensure that these organizations are dismantled and their members prosecuted.

12. While noting the information provided by the State party on the number of convictions for racially motivated offenses, the Committee is concerned by the increasing number of incidents of racially motivated violence against minority groups, in particular against members of the Roma community, many of which may not even be reported. The Committee recommends that the State party strengthen the measures already undertaken to intensify enforcement of the criminal law against racially motivated crimes.

13. The Committee reiterates its concern at the lack of criminal, civil, or administrative law provisions expressly outlawing racial discrimination in education, health care, social care, and the penitentiary system, as well as in the private sphere. The Committee recommends that the State party undertake legislative reform to safeguard the enjoyment, without any form of discrimination, by all segments of the population, of the economic, social, and cultural rights listed in Article 5 of the Convention. It further recommends that such reform should include the provision of adequate reparation for victims of racial discrimination.

14. The Committee reiterates its concern about the lack of effectiveness and confidence in the ability of the criminal judicial system to prevent and combat racial crimes. In this connection, concern is also expressed about the degrading treatment by the police of members of minority groups. The Committee recommends the continuation and strengthening of training programs for police and all officials in charge of implementing the law on issues related to the implementation of the Convention. The Committee reminds the State party of the Committee's General Recommendation XIII relating to the implementation of Articles 2 and 7 of the Convention.

15. With regard to Article 7 of the Convention, the Committee is of the opinion that the measures taken by the State party in the field of teaching, education, culture, and information to combat racial discrimination should be intensified. In this regard, the Committee recommends that the State party continue and extend its educational programs in order to raise awareness of the population at large of all aspects relating to racism and racial discrimination.

16. The Committee recommends that the State party ratify the amendments to Article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

17. The Committee recommends that the State party ensure the wide dissemination of the text of the Convention and continue to make its periodic reports readily available to the public from the time they are submitted, and that the Committee's concluding observations on them be similarly publicized.

18 .The Committee recommends that the State party's next periodic report, due on 22 February 2002, be an updating report and that it address the points raised in the present observations.

NOTES

[1] CERD/C/304/Add.109 (Concluding Observations/Comments).

European Commission Against Racism and Intolerance: Second Report on the Czech Republic, Adopted 18 June 1999

Foreword

The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, anti-Semitism and intolerance at a pan-European level and from the angle of the protection of human rights.

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyzes the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on the Czech Republic is dated 4 October 1996 (published in September 1997). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.

An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organization of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.

The contact visit to the Czech Republic took place on 7-9 April 1999. During this visit, the rapporteurs met with representatives of the various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Czech national authorities for their wholehearted co-operation in the organization of the contact visit, and in particular would like to thank all the persons who met its delegation and the Czech national liaison officer, whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.

ECRI would also like to thank all the representatives of non-governmental organizations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.

The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 18 June 1999 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.

Executive Summary

Over recent years, the Czech Republic has taken positive steps towards addressing issues related to racism and intolerance. The problem of racially-motivated violence is being tackled through adoption of several legislative and policy measures. Measures are also being taken to facilitate acquisition of citizenship for the Roma/Gypsy population. Positive developments have also taken place in improving legal protection against discrimination in employment, and in addressing the problem of inadequate education of Roma/Gypsy children. Moreover, there appears to be a growing acknowledgement of the problems of racism and discrimination in the Czech Republic, particularly towards Roma/Gypsies, as reflected in the establishment of bodies with competence in this field and the preparation of studies and research on the situation of this minority group. Nevertheless, severe problems of racism and intolerance persist in the Czech Republic. Of especial concern is the continuation of racist violence, mainly - but not exclusively - directed towards members of the Roma/Gypsy population. The incidence of discrimination towards members of the Roma/Gypsy community in all fields of life, including the administration of justice and access to equal opportunities in areas such as education and employment is also of concern. The situation of non-citizens in the Czech Republic, given new patterns of migration, also calls for attention. The widespread lack of communication between, on the one side, the authorities and the majority population and, on the other, the members of the Roma/Gypsy community is another important issue of

concern. In the following report, ECRI recommends to the Czech authorities that further action be taken to combat racism and intolerance in a number of areas. These recommendations cover, *inter alia*, the need to ensure that anti-racist legislation is fully implemented by addressing persisting difficulties at various stages of the judicial process; the need to establish a comprehensive body of anti-discrimination legislation covering all fields of life and to implement it effectively; the need to take a range of steps to combat discrimination and racism against the Roma/Gypsy community, in particular in the fields of education and employment; and the need to raise the awareness in particular of the majority, but also of the minority, population of all aspects concerning racism and intolerance.

Section I: Overview of the Situation

A. International legal instruments

1. ECRI welcomes the ratification by the Czech Republic of the Framework Convention on the Protection of National Minorities, as suggested in its first report. Preparations for the signature of the European Charter for Regional or Minority Languages are underway and ECRI encourages the authorities to sign and ratify this instrument as soon as possible. ECRI furthermore understands that the ratification of the revised European Social Charter is currently being discussed in Parliament, and calls for a swift and successful conclusion of this process. ECRI also urges the Czech authorities to finalise as soon as possible the ongoing preparatory work for accepting Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, which provides for the possibility for individuals and groups of individuals to file petitions before the Committee for the Elimination of Racial Discrimination for alleged violations of the rights set forth in the Convention. Furthermore, ECRI encourages the Czech authorities to sign and ratify the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public life at Local Level.

B. Constitutional provisions and other basic provisions

2. Article 24 of the Bill of fundamental rights and freedoms, which forms part of the constitutional order, affirms that "the national or ethnic identity of any individual shall not be used to his/her detriment". Furthermore, the rights and freedoms guaranteed by the Bill apply equally "to all irrespective of sex, race, colour of skin, language, faith, religion, political and other opinion, national or social origin, belonging to a national or ethnic minority, property, birth or other status". Although this principle can also be found in other statutes, including the Civil Code and the Penal Code, little legislation has been adopted so far to implement these constitutional provisions.

3. According to Article 10 of the Constitution of the Czech Republic, international conventions on human rights and fundamental freedoms are directly applicable and take precedence over national legislation.

Citizenship law

4. The problems concerning the discriminatory effects of the Czech citizenship law on the Roma/Gypsy population living on the territory of the Czech Republic were already addressed by ECRI in its first report. These problems arose from the conditions for citizenship that the Czech law imposed on those long-term residents who held Slovak nationality in the former Czechoslovakia. Due to historical reasons this is the case of most Roma/Gypsies, despite their long-term or even life-long residence in what is today the Czech Republic. Rather than allowing these residents automatically to acquire Czech citizenship, the 1993 Czech citizenship law required these residents to apply for citizenship and established certain requirements to this end: a clean criminal record for the previous five years, at least two years of permanent residence in the Czech Republic, and a certificate of exemption from Slovak citizenship. This procedure, in effect, prevented a large number of Roma/Gypsies from acquiring citizenship.

5. Following considerable international comment and criticism, the Czech authorities amended the 1993 citizenship law in April 1996, and other legislation concerning permanent residence in August 1996, so as to facilitate access to citizenship. The amendment to the citizenship law gave discretionary power to the Ministry of Interior to waive the clean criminal record requirement. Since the introduction of this amendment, the

waiver has been applied in some 4,300 cases. The amendment to the legislation concerning permanent residence (Foreigners' Law) enabled non-citizen minors placed in orphanages in the Czech Republic - most of whom are Roma/Gypsies—to obtain automatic entitlement to permanent residence, thus opening the way for citizenship applications.

6. While both these amendments have to some extent improved the situation, they are still insufficient in terms of their intended effects. For this reason, ECRI notes with interest further amendments to the citizenship law currently being debated in Parliament, which would further facilitate the procedure. It hopes for the swift adoption of these amendments, and stresses the paramount importance of ensuring the practical implementation of the amended law. In particular, given the difficulties that many Roma/Gypsies may encounter in producing proof of residence, ECRI stresses the need for flexible administrative instructions as concerns such proof. District administrations play a crucial role in accepting and processing applications for citizenship. In view of persistent allegations of discriminatory attitudes by local officials towards members of the Roma/Gypsy community, including misinformation and discouragement in pursuing applications, strict central government supervision over local offices is urgently required. Alongside ensuring satisfactory implementation of the law, ECRI also considers that, in the field of citizenship, it is incumbent on the authorities to improve communication with the members of the Roma/Gypsy community living in the Czech Republic. In particular, targeted and consistent efforts are necessary to raise the awareness of some members of the Roma/Gypsy community of the need to acquire citizenship of the Czech Republic and the necessary application procedures to follow.

C. Criminal law provisions

7. The Czech Criminal Code includes racist motivation as a specific aggravating circumstance which judges are required to take into account when deciding on the type and duration of the sentence imposed for a specific offence. In addition, the Criminal Code specifically penalises certain acts inspired by racism and intolerance. These include: Sections 196 ("violence against a group of inhabitants and against individuals on the basis of race, nationality, political conviction or religion"), 198 ("defamation of a race, nation

or belief"), 198a ("incitement to national and racial hatred"), 260 ("sponsoring and promotion of movements which aim to suppress the rights and freedoms of citizens") and 261 ("public expression of sympathy for fascism or similar movement").

8. In 1995, following a considerable increase in racially motivated violence, affecting Roma/Gypsies particularly but also other visible minorities, the Criminal Code was amended. These amendments increased all sentences for crimes with racial motives and extended the range of evidence for such crimes as murder, battery, intimidation and damages to another person's property when there is possible racial motivation. In addition to changes in the law, a number of other measures were introduced. ECRI suggested in its first report that the effects of these changes be evaluated and monitored. The present report addresses these issues in Section II.[1]

D. Civil and administrative law provisions

9. In its first report, ECRI focussed mainly on the lack of adequate anti-discrimination provisions in the areas of employment and housing. It therefore suggested that such provisions be enacted, expressly allowing the possibility of civil action for racial discrimination. As will be mentioned below,[2] since the publication of ECRI's first report, a positive development has occurred as concerns improved legal protection against discrimination in employment.

10. However, given that discrimination against Roma/Gypsies especially is reported to be pervasive in virtually all spheres of life, ECRI urges the authorities urgently to consider the establishment of a comprehensive anti-discrimination law which would cover all fields of life, *inter alia* education, employment, housing, access to public services and to public places.[3] The implementation of such a law could furthermore be facilitated through the establishment of an independent specialized body on issues of racism and racial discrimination, as suggested below.[4]

E. Administration of justice

Legal aid

11. In its first report, ECRI made a specific proposal about provision by the State of free

legal aid for victims of discrimination without means. Since there has been no progress in this field, ECRI reiterates that the authorities should examine the question of providing such assistance, especially in consideration of the fact that most victims of discrimination belong to the poorest segments of society.

F. Special Government initiatives to promote tolerance and equality

Specialized bodies and other institutions

12. The Czech authorities have in recent years established a number of governmental bodies with advisory functions on matters relevant to combating racism and intolerance. ECRI had already noted, in its first report, the consultative role played by the Council of Nationalities on legislation and policies concerning minorities in the Czech Republic. Since the publication of ECRI's first report, however, the Inter-ministerial Commission for Romany Affairs was established. The terms of reference of this Commission, which comprises government and Roma/Gypsy representatives, include advice on and evaluation of government policies and measures concerning Roma/Gypsies, collection of information on the situation and development of the Roma/Gypsy community and allocation of government subsidies to projects designed for the Roma/Gypsy community. A Council for Human Rights, including a section for combating racism and intolerance, was also set up in 1998. All the above-mentioned bodies come under the Government Commissioner for Human Rights, whose Office was also established in 1998. ECRI considers that, despite the lack of executive powers and financial independence, these bodies can make a valuable contribution to improving the situation as concerns racism and discrimination in the Czech Republic. For this reason, it encourages the authorities to address the difficulties encountered in the functioning of such bodies, including provision of adequate resources and staff and improved representation of the Roma/Gypsy communities (notably in the Interministerial Commission for Romany Affairs).

13. ECRI is aware that a draft bill on the establishment of an Ombudsman for human rights is currently being discussed in Parliament. However, it has no information on the details of this bill. In its General Policy Recommendation N°2 on specialized bodies to combat racism, intolerance, anti-Semitism and xenophobia at national

level, ECRI recommends to the governments of member States of the Council of Europe the establishment of independent bodies in this field and provides guidelines to this end. ECRI therefore draws the attention of the Czech authorities to the principles set out in this recommendation and considers that the new Ombudsman should have full competence and authority to permit an effective and durable improvement of the situation as concerns racism and discrimination in the country. To this end, the Ombudsman could, for example, provide legal aid and assistance to victims; have recourse to courts and other judicial authorities; hear and consider certain types of cases and seek settlements through amicable conciliation or through binding and enforceable decisions. In addition, given the urgent need to raise the awareness of the general public and members of professional and minority groups concerning all aspects of discrimination,[5] the Ombudsman could play a central role in this respect, in conjunction with the Council and Government Commissioner for Human Rights, as well as the Interministerial Commission for Romany Affairs.

G. Reception and status of non-citizens

14. An influx of refugees to the Czech Republic started after 1990 and a legal and institutional framework is now in place. Applications for refugee status have increased over recent years and so has the number of migrants, including migrant workers (both legal and illegal) to the Czech Republic. With regard to recognised refugees, a government sponsored integration programme endeavours to work with local authorities in providing housing for such persons. The scheme aims to assist refugees to achieve self-sufficiency as quickly as possible, thereby promoting tolerance of refugees. Recognised refugees are entitled to the same level of social assistance as Czech nationals, and are able to study, receive a work permit and find employment. Some concern has been expressed about the denial of employment and housing to recognised refugees in integration programmes on grounds of their ethnicity. It is also reported that some local government employees display a lack of knowledge or even unwillingness to assist the "foreigners". ECRI therefore urges the authorities to ensure a more rigorous supervision of the application of measures aimed at facilitating integration of refugees, particularly at the local level. Training of officials who deal with refugees, asylum appli-

cants and other such vulnerable groups should expressly include awareness programmes about other cultures and human rights education. In addition, given reports of intolerant statements on the side of some public figures circulated via the media, ECRI stresses that such statements contribute to creating a climate of tension which can ultimately encourage the development of intolerant behaviour and ideas.

H. Monitoring the situation

15. While acknowledging the fact that the collection of data on ethnic origin is prohibited in the Czech Republic out of concern for data protection and privacy, ECRI is concerned that the lack of reliable information about the situation of the various minority groups living in the country makes evaluation of the extent and causes of possible discrimination against them, or the effect of actions intended to combat such discrimination, difficult. ECRI recommends that the Czech authorities consider ways of monitoring the situation in this respect, with due attention to the need for protection of data and of privacy. For example, carefully-prepared studies which respect the anonymity and dignity of persons involved may allow the situation in some areas of life to be evaluated.

I. Conduct of certain key institutions

Law enforcement officials

16. Policing in the Czech Republic is the responsibility of the Czech National Police, which is under the Ministry of the Interior and municipal police forces, established under the authority of local administrations. Although there appears to be overlap in function, broadly, the Czech National Police is responsible for dealing with serious crime, the municipal police with public order and minor criminal offences. ECRI is concerned at evidence of differential treatment of members of minority groups, especially Roma/Gypsies, on the part of some Czech national and municipal law enforcement officials. Non governmental organizations receive complaints about harassment and excessive use of force, deliberate prolonging of investigations, wrongful arrests and ill-treatment of detainees belonging to this category of people. In addition, there are reports that police are in some cases reluctant to issue administrative documents need-

ed by individuals. Furthermore, as will be mentioned below,[6] the reaction of some law enforcement officials to cases involving racially-motivated crime is inadequate. More generally, it is claimed that racist attitudes are widespread among the police, some of whom sympathise with right-wing extremist groups.

17. Despite these reports of misbehaviour, measures to counter such actions seem to be inadequate. The police itself conducts investigations into misconduct by its officers and appears reluctant to acknowledge any incidence of racist behaviour on its part. In addition, a serious lack of transparency is reported, as complainants and the public seldom find out about the results of investigations or the disciplinary measures taken in specific cases.

18. ECRI is aware that the Czech Government aims to improve the response of the authorities to complaints of racism on the part of the national police. However, ECRI considers that, as a first step, it should be made clear publicly and at a high level that incidents of police ill-treatment of members of minority groups will be impartially investigated and those found responsible punished. The authorities could also consider the establishment of an independent mechanism to investigate all allegations of police ill-treatment of members of minority groups. Methods could also be developed to encourage victims to come forward with complaints, since they often - with some justification - lack confidence in the possibility of redress and fear further repraisals. As regards the local police, ECRI recognises the reasons why certain law enforcement functions have been delegated to local level without, apparently, formal accountability to the national authorities. It draws attention, however, to the risks incurred by such a degree of delegation, with respect, particularly, to the compatibility of local actions with national priorities. ECRI suggests that the Czech Government should review whether further action is called for in order to reconcile the principle of local autonomy in law enforcement with the need to observe national priorities in the field covered by this report. The possibility of appointing members of the Roma/Gypsy community as advisers or liaison officers to the police at the local level should also be explored.

19. Current government efforts to increase recruitment of national police officers from among members of minority groups should be strengthened and accompanied, as necessary, by assistance to members of such groups to enable them to fulfil the entry

requirements for employment. Increased recruitment of members of minority groups in the municipal police should especially be undertaken, in view of their responsibility for dealing with public order and minor criminal offences. ECRI also encourages the strengthening of confidence-building initiatives to improve relations between the police and the Roma/Gypsy community.

20. The government has launched various initiatives in police training, as is noted in ECRI's first report, including training courses, lectures, seminars and instructions on how to deal with racially-motivated crime. At the same time, there appears to be a continuing need for improved recording and reporting of racially motivated violence or other incidents, as well as improved investigation and action by police.[7] In addition, ECRI considers that more training initiatives are vital at all levels of the police force, and as part of in-service training as well as initial training. Such courses should focus on the traditional minority groups living in the Czech Republic and vulnerable to abuses, but should also cover the situation of non-citizens such as refugees, asylum seekers and immigrants.

Local authorities

21. While local authorities in some districts in the Czech Republic are at the origin of several positive initiatives as regards the situation of minority groups, and particularly the Roma/Gypsy community, in some others they are also responsible for discriminatory practices of concern to ECRI. In response to complaints from neighbours, for example, one municipality has planned to construct a wall to restrict access to the main road for a "problematic" Roma/Gypsy community. Furthermore, some elected local officials publicly express anti-Roma/Gypsy attitudes.

22. ECRI stresses that any form of discrimination practised by local authorities should not be tolerated by the national authorities. In this respect, it is particularly important to ensure that national policies and legislation against discrimination are fully applied at the local level.

23. Officials working in district administrations are also reported, in some cases, to treat differently members of minority groups. There are reports of local officials demonstrating discriminatory attitudes in the application of the citizenship law[8] and in their contacts with refugees.[9] ECRI therefore reiterates the need for stricter central

government supervision in this respect. ECRI welcomes the establishment, in most district governments, of social curators for national minorities in order to provide counselling and assistance in improving contacts of members of minority communities with local administrative offices. ECRI encourages the Czech authorities to monitor and improve the effectiveness of this initiative, noting, in this respect, that most of these posts have been filled by non-Roma/Gypsies.

24. ECRI stresses that local authorities play a pivotal role as concerns one of the most urgent priorities to improve the situation of racism and intolerance in the Czech Republic: the building of good community relations, mutual knowledge and understanding between the different segments of the population at the local level. It therefore urges the Czech Government to stimulate local authorities, through different types of incentives, to give priority to initiatives and strategies aimed at promoting the establishment of such relations at the local level.

J. Media

25. Although, during 1998, more and better information appears to have been available in the mainstream press on Roma/Gypsy issues, the Czech media still tend to perpetuate racism and discrimination, rather than to encourage tolerance and acceptance of minorities. The portrayal of the Roma/Gypsies by the media is particularly harmful, promoting negative stereotypes of Roma/Gypsies as well as highlighting behaviour which is different and "problematic" for Czechs. The media generally pays insufficient attention to the problems and discrimination suffered by Roma/Gypsies, immigrants or refugees.

26. In its first report, ECRI suggested that codes of self-regulation might prove useful in ensuring a more correct reporting of information concerning members of minority groups. Since there do not appear to have been any initiatives taken among media professionals in this respect, ECRI reiterates its call for the adoption of self-regulatory measures by the media profession and urges the authorities to remain vigilant in identifying cases where the media transgresses the law.

Section II : Issues of Particular Concern

27. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of the Czech Republic, ECRI would like to draw attention to the problems of racially motivated violence, particularly against Roma/Gypsies, as well as to discrimination against members of this group in the key fields of access to services and employment. The need for awareness-raising measures is also addressed in this section.

K. Racially motivated violence

28. Racially motivated violence is one of the most pressing and dangerous expressions of racism and intolerance threatening particularly Roma/Gypsies but also other members of minority groups in the Czech Republic. Following a marked increase in violent racist offences in the early-1990s, official statistics show that in recent years the number of prosecutions and convictions for most racially motivated crimes involving acts of violence has dropped. However, members of minority groups living in the Czech Republic, notably Roma/Gypsies, consider that, despite some improvements, the situation as regards racially motivated violence still constitutes a major problem. Regrettably, many Roma/Gypsies still feel insecure in everyday life circumstances. In addition, the number of reported cases is deemed vastly to underestimate the scope of the problem as attacks often go unreported due to fear of reprisals or lack of confidence in the response of the criminal justice system.

29. Most attacks are carried out by skinheads—or sympathisers of such group—who are reported to be well organised and publicly promote fascist and racist ideas, at mass rallies and also in publications. Such open propaganda is supplemented by secret prints, called "fanzines" that spread hatred against Roma/Gypsies, Jews and other minorities. Despite criminal code sections being directed primarily against racist speech and propaganda[10] the state or local authorities rarely prosecute such groups. Although the authorities appear to be aware of the seriousness of the problem and are taking some steps to address it,[11] further efforts are still necessary to counter the skinhead movement. These should include a more effective implementation of the

existing legislation, especially the provisions concerning incitement to racial hatred and support to racist movements. At the local level, a multi-agency approach to the problem of racist violence on the part of extremist groups could also prove effective. This would imply close co-operation between such instances as the police, local authority housing, education and social services departments, the prosecuting authorities and voluntary organizations as well as the establishment of local multi-agency panels sharing information among members, monitoring the incidence of racial attacks and developing co-ordinated policies.

30. As noted above, the Czech Republic disposes of an adequate legal battery to combat racist violence. However, despite welcome efforts, the implementation of the relevant legal provisions is still unsatisfactory. Problems arise at different levels of the judicial process. Firstly, police and investigators appear often to misclassify racially motivated crimes and do not follow through investigations. ECRI welcomes the initiatives which have been taken in this field, including the detailing of specifically-trained officers in the different police units to concentrate on action against racial violence. However, it is not clear that these officers uniformly play an active role in following up cases involving racial violence. ECRI therefore urges the authorities to monitor more closely and to improve the effectiveness of this initiative. Secondly, problems arise at the level of prosecutors. These often seem to have difficulties gathering and organising the evidence necessary to prove such motivation, partly due to the unwillingness of witnesses to testify. A certain reluctance has also been noted in some cases to prosecute this type of crime. ECRI therefore calls for the strengthening of the efforts already undertaken to ensure that prosecutors pay special attention to crimes which may involve racial motive and ensure a speedy and effective legal process in such cases. Thirdly, the interpretation of "racial motivation" rendered by some judges is a very restrictive one. In this respect, ECRI had already noted in its first report that sentencing in cases of racist crimes showed some inconsistency. ECRI encourages the authorities to provide judges with all the necessary training for an effective application of the relevant legal provisions and to evaluate the impact of such training on the decisions rendered in these cases. All the above-mentioned difficulties are compounded by prejudices and stereotypes held by individuals. The result is that perpetrators of racially motivated crime often escape being brought before the courts,

and even when they are found guilty of such crimes, punishment is relatively light.

31. Comprehensive efforts are needed to cope with this persisting problem. Not only must criminal enforcement be intensified and the problems identified at each institutional level addressed, but these efforts should be combined with a broader approach. As is the case in many other countries, in the Czech Republic, these crimes are linked with problems of disaffected youth, unemployment and widespread stereotypes and prejudices about the Roma/Gypsies and members of other minority groups.

L. Discrimination against Roma/Gypsies in education, access to services and employment

32. The disadvantage and effective discrimination faced by members of the Roma/Gypsy community in the field of education in the Czech Republic is of particularly serious concern to ECRI, given the decisive consequences that it entails in terms of equal participation of this category of people in society.

33. The Czech law on schools provides for a system of special schools, parallel to the nine-year elementary school system, which cater for pupils who have mental deficiencies such that they cannot successfully be educated in elementary schools. Although estimates on the number of Roma/Gypsy children attending such schools vary, it is accepted that they are vastly overrepresented. Despite compulsory pre-school attitudinal tests, channelling of Roma/Gypsy children to special schools is reported to be often quasi-automatic. Roma/Gypsy parents often favour this solution, partly to avoid abuse from non-Roma/Gypsy children in regular schools and isolation of the child from other neighbourhood Roma/Gypsy children, and partly due to a relatively lesser interest in education. Most Roma/Gypsy children are consequently relegated to educational facilities designed for other purposes, offering little opportunity for skills training or educational preparation and therefore very limited opportunity for further study or employment. In its general policy recommendation N° 3 on combating racism and discrimination against Roma/Gypsies, ECRI recommends that member States "vigorously combat all forms of school segregation towards Roma/Gypsy children". ECRI therefore considers that the practice of channelling Roma/Gypsy children into special schools for the mentally-retarded should be fully examined, to ensure that any testing used is fair and that the true abilities of each child

are properly evaluated. As will be mentioned below,[12] ECRI also considers that it is fundamental that Roma/Gypsy parents are made aware of the need for their children to attend regular education.

34. In the above-mentioned general policy recommendation, ECRI also recommends that governments «ensure the effective enjoyment of equal access to education». However, in the Czech Republic, most Roma/Gypsy children do not attend kindergarten education. This could contribute to explaining the poor results obtained by these children in the pre-school attitudinal tests and their consequent assignment to special schools. Again, ECRI urges the Czech authorities to take appropriate measures, such as information and incentive campaigns for Roma/Gypsy parents, to improve the attendance of Roma/Gypsy children at kindergarten level. At pre-school level, the authorities have begun to put in place initiatives to improve access to regular education for Roma/Gypsy children. These include the establishment, in districts with a high concentration of Roma/Gypsies, of so-called "zero grades", a year-long programme to prepare disadvantaged youth for their first year in school. While only a small part of Roma/Gypsy children attend these classes, an important percentage of children who attend "zero grade" training are reported to enter and remain in mainstream schools. ECRI urges the Czech authorities to strengthen and expand this initiative, notably through provision of adequate resources to the programme - currently funded only by local authorities - and information campaigns for the Roma/Gypsy community.

35. Participation of members of the Roma/Gypsy community in education beyond the primary school level is extremely rare. ECRI feels that urgent measures are called for to increase the participation of Roma/Gypsy children in education at the secondary and higher level. In particular, the role played by stereotypes and prejudices among teaching staff, which may lead to low expectations for Roma/Gypsy children, should be investigated, and measures taken to train teachers in this respect. Such training should not only provide information on the particular needs and expectations of Roma/Gypsies, but also the ability to use this knowledge effectively. Targetted training of Roma/Gypsies for teaching posts and recruitment of teaching staff from the Roma/Gypsy community might also play a role in improving the situation. In this respect, ECRI notes the hiring of Roma/Gypsy assistant teachers in primary and special schools and urges the authorities to undertake all possible efforts to strengthen and expand this initiative.

36. Alongside efforts to enhance and develop the potential of Roma/Gypsy children, ECRI feels that steps should also be taken to counter prejudices among children from the majority culture and their parents. In this respect, ECRI stresses the need for further efforts towards educating the young majority and minority generations in tolerance. Furthermore, in its General Policy Recommendation n°3, ECRI recommends that governments "introduce into the curricula of all schools information on the history and culture of Roma/Gypsies". Such information about the Roma/Gypsy community living in the Czech Republic and its history is not commonly available in schools at the present time.

37. In general, ECRI considers that there is a need for closer involvement of members of the Roma/Gypsy community in matters concerning education. This would enhance the possibilities of success of any initiative aimed at improving the situation of members of this community. As a start, the authorities should ensure that Roma/Gypsy parents are kept fully informed of measures taken and are encouraged to participate in educational decisions affecting their children.

38. Parallel to policy measures, ECRI furthermore stresses the role of an effective legislative framework in combating discrimination in education, as recommended to governments in its general policy recommendation. ECRI therefore stresses the need for the establishment of anti-discrimination provisions covering the field of education. Once enacted, it should be ensured that such legislation is made widely-known, particularly at the local level, and that its implementation is closely monitored.

39. Moreover, given the continuing discrimination of Roma/Gypsies in other key areas of public life as well, notably access to public places, housing and access to other social services, ECRI stresses that similar anti-discrimination legislation should also cover these fields.[13]

40. ECRI is particularly concerned, in this respect, at evidence of ghettoization of the Roma/Gypsy community. Roma/Gypsies are reported to be the least preferred neighbours compared to all nationalities and ethnic groups. This is reflected not only in the private housing market but also in the assignment of council flats. As a result, there are large concentrations of Roma/Gypsies on the outskirts of cities, where these people often live in poor hygienic conditions, far from work and educational opportunities and where they are essentially separate from the rest of society. ECRI considers that

municipal authorities should endeavour to encourage Roma/Gypsy participation and decision-making in the local community, particularly concerning housing. Separation of majority and minority communities should be avoided and discouraged as far as possible. At the same time, efforts should be undertaken to persuade the local majority communities of the necessity to devote resources to finding an adequate housing solution for members of minority groups.

41. As concerns employment, it is again the Roma/Gypsy community which is particularly disadvantaged and discriminated against. Lack of adequate education and professional qualifications are compounded by widespread discrimination on the part of employers. As a result, the vast majority of Roma/Gypsies in the Czech Republic are reported to be unemployed.

42. The central government has introduced some initiatives to improve the situation, including the provision of financial contributions to employers who hire persons identified as not easily employable. However, important efforts aimed at producing long-term positive effects on the employment situation of members of disadvantaged minority groups are still necessary in this area. In particular, this category of people should be motivated to participate in training courses and these courses should be made as widely available as possible. Special attention could also be devoted to Roma/Gypsy initiatives, including support for Roma/Gypsy entrepreneurs.

43. Again, an adequate legislative framework prohibiting discrimination in the field of employment is also of particular importance. As mentioned above,[14] the Czech authorities have taken some positive steps in this respect. In September 1998, the Parliament voted in favour of the incorporation of a provision prohibiting discrimination in the normative body of the law on employment. The Czech authorities have stated that this amendment will come into effect in mid 1999. ECRI urges all relevant authorities - including judges - to ensure a satisfactory implementation of this new provision.

M. Awareness-raising

44. ECRI considers that there is an urgent need to raise the awareness both of the majority and of the minority population of all aspects related to racism and racial discrimination in the Czech Republic.

45. There is agreement that the general public is increasingly aware of the existence of these phenomena, and that it is therefore more difficult to deny or ignore that racism and discrimination are present in the country. The media and public debate reflect, to a certain extent, this incipient progress. However, especially as concerns Roma/Gypsies, there appears to be still a very widespread perception that most victims of racism and discrimination are "outsiders" and do not really belong to Czech society. This perception contributes to rendering manifestations of racism and discrimination less unacceptable in the eyes of the majority population. ECRI feels that the authorities should undertake all possible efforts to educate the general public to accept that Roma/Gypsy people form an integral part of the Czech society and that—given the current situation of serious disadvantage of Roma/Gypsies in all fields of life—time and resources must be devoted to giving this part of Czech society the same opportunities as the rest of the population.

46. In order to encourage support from the general public to this approach, it is necessary to improve information to the general public about the Roma/Gypsy people so as to preempt the social reproduction of negative stereotypes and myths. This should be done, on the one side, through education, ensuring that the desirability and benefits of tolerance and respect for difference is taught to the young generations and that this is done in a professional way. On the other side, special attention should be devoted to maximising the opportunities of contact between majority and minority populations. Current patterns of separation in vital sectors as education and housing run counter to the promotion of mutual knowledge and understanding and should therefore be avoided as much as possible.

47. It would, however, be impossible to achieve these goals without raising, at the same time, the awareness of the Roma/Gypsy people themselves of the need to participate more actively in society. In ECRI's opinion, the authorities should undertake all possible efforts, for instance, to make Roma/Gypsies more aware of the need to acquire citizenship of the Czech Republic. Roma/Gypsy parents should also be motivated to make sure that their children receive regular and not special education, notably that designed for pupils who have mental deficiencies.

48. Parallel to efforts to motivate members of minority groups to equal participation in society, communication between institutions and this category of people should be improved. In this respect, it is particularly important that members of minority groups

are constantly involved in the setting up of initiatives and measures targeting, or involving, these groups. Experience, also at the Czech level, shows that this greatly increases the chances of success of such measures. While the governmental bodies mentioned above aim at providing this forum,[15] formal structures providing a common space for collaboration are often lacking at the local level. In addition, it is equally important that an adequate flow of information on existing initiatives aimed at improving the situation of members of minority groups in different fields (zero grade courses, training programmes for employment etc.) reach the different actors involved. This information should also extend to the rights guaranteed to members of minority groups. Once an anti-discrimination provision concerning employment is enacted, for instance, Roma/Gypsies, immigrants and refugees should be made thoroughly aware of their rights and encouraged and supported in bringing cases concerning unlawful discrimination in this area.

49. Implementation of the law is also a powerful educational tool. All aspects related to implementation of the law - in particular, training targeted to professional groups (civil servants, legal community, etc.)—as highlighted throughout this report, are therefore paramount also in an awareness-raising perspective.

50. ECRI finally stresses the role that the Ombudsman could play in accomplishing the demanding tasks highlighted above. It is therefore hoped that adequate powers and resources will be assigned to the Ombudsman and that this institution will be adequately represented at the local level throughout the country. ECRI also encourages the authorities to devote adequate resources to ensure the success of the anti-racist campaign, which is to be undertaken under the co-ordination of the Council for Human Rights.

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Four

Models of Integration Programs

Local Initiatives: Desegregation in Bulgaria

by Krassimir Kanev and Kalinka Vassileva

Desegregation in Bulgaria has seen significant progress under the efforts of non-governmental organizations throughout the country. What started as a small local initiative in Vidin, Bulgaria, has now grown to a multi-town integration program involving the transfer of Romani students from all-Roma schools to the mainstream schools. This article provides a history of segregation in education of the Roma in Bulgaria and discusses the legislative framework that provided the foundation for Bulgaria's integration program. The authors present an analysis of the non-governmental desegregation program and the means by which its advocates were able to mobilize community support for the project. In addressing the challenges faced in implementing the program, the article also highlights the essential elements for any successful desegregation program.

Desegregation in Bulgaria as a governmental policy was proposed as a response to the history of discrimination and the social exclusion of Roma from all spheres of social life. It first became a subject of discussion in the Romani community and among human rights organizations in 1997–98, in preparation for the Framework Program for Equal Integration of Roma in Bulgarian Society. For several years the Framework Program as a whole, and desegregation in particular, remained a dead letter. Government activities to implement parts of the program started several years after its adoption under pressure from the European Union (EU). These measures, however, remain very unpopular. As a result, the implementation of the Framework Program is sluggish, and government policy on desegregation, though determined on

paper, is in fact indecisive. At present, desegregation of the education of Roma in Bulgaria is an effort solely of non-governmental organizations (NGOs).

1. Genesis of segregated Roma education

Romani communities in Bulgaria have always lived in *de facto* segregation, although up to the late 1940s, their education was integrated with that of the local peasant community. Segregated education spread under communism with urbanization and the formation of the large Romani urban ghettos. The process developed spontaneously and was not part of a coordinated policy. The Communist authorities, at least publicly, followed an assimilationist policy and invested significant efforts in attempting to dissolve the Romani ghettos and the institutions associated with them. In October 1978, the Secretariat of the Central Committee of the Bulgarian Communist Party passed Resolution 1360, which provided for the gradual elimination of Romani neighborhoods and banned the founding of segregated schools for Roma. That resolution existed only on paper, however.

In practice, a widely accepted system of segregated Romani schools developed during the Communist period alongside the formation of large Romani ghettos in the country's major cities. The schools in the segregated Romani neighborhoods were established as a result of the school districting system, which made the free choice of schools difficult or impossible, especially for people who were isolated from the system of semi-official party-state patronage and nepotism. Moreover, the segregated schools in the Roma neighborhoods were created as schools for pupils "with a backward way of life and a low cultural level." The main goal of these schools, therefore, was "basic literacy and the development of work habits and vocational abilities." Thirty-one of these schools "emphasized vocational training," which meant that in addition to the elementary academic program they were assigned to produce various things for sale.[1] Nevertheless, the official policy of the Communist authorities, which was recorded in several party and state resolutions, was to constantly increase the quality of education in the Romani schools.

Along with the segregated Romani schools, the Communist authorities' policy of removing Romani children

from the harmful environment of their "backward way of life" resulted in the creation of a network of boarding schools. Romani children either were purposely placed in these boarding schools or simply ended up in them due to lack of parental care or poverty. There were three types of boarding schools: orphanages, which accepted both orphans and children from families that were too poor to care for them; labor reform schools and social-educational boarding schools for children who had a history of antisocial behavior;[2] and boarding schools for children with special needs.[3] In all of these types of boarding schools, Romani children were, and continue to be, overrepresented. Some of these schools are exclusively occupied by Roma.[4]

One specific problem is the placement of Romani children in special schools for children with minor mental disabilities. These special schools developed during the Communist period as a result of the totalitarian regime's idea that children with mental disabilities needed special care in special institutions. Most of these schools are yearround or part-time boarding schools in which the pupils are isolated from their peers and from society in general. Several published studies show that the Romani children in these schools are placed there not because they have mental disabilities but because of poverty, the inability of parents to provide for their welfare, and insufficient knowledge of the Bulgarian language. Many of these children would be able to handle the academic program in a regular school without any problems.[5]

During the totalitarian period, the staff in the segregated schools in the Romani neighborhoods and in the boarding schools received extra payments for these posts. This practice was supposed to encourage qualified teachers to work in these schools. In fact, however, the number of "noncertified teachers" (those who did not have the necessary level of education and qualifications) in these schools was drastically higher than the number in other schools. Because of the relative lack of parental interest and the official policy of ignoring education in Romani schools, the educational authorities very rarely conducted inspections of those schools. When inspections were carried out, they were without remedies or recommendations for improvement. Because the Romani schools were so marginalized, the physical conditions and material resources in many of them were drastically substandard.

2. Racial discrimination, social exclusion, and the problems of Romani education today

Roma have always suffered discrimination, as have most of the other ethnic and religious minorities in Bulgaria. Negative ethnic prejudices and social separation have been significant between Bulgarians and all other ethnic groups, but they are most noticeable between Bulgarians and Roma. A series of studies in the 1990s showed that the extent of prejudice and social distance that Bulgarians felt vis-à-vis Roma was comparable to that of white Americans in southern states vis-à-vis black people in the 1950s and 1960s.[6] Ethnic discrimination against Roma is still a serious problem today. It exists in all spheres of Bulgarian social life, including the hiring and firing of employees, housing, social and other publicly organized services, health care, participation in political life, and the criminal justice system. Discrimination and mistreatment in all of these areas are extensively documented by local and international human rights observers.[7]

A study by the Open Society Foundation–Bulgaria, published in October 2001, shows a dark picture of the country's educational ghettos. According to this publication, there are 419 schools in which Romani children make up between 50 and 100 percent of the total student body. Sixty of these are elementary schools (grades one through four), 350 are primary schools (grades one through eight), and nine are secondary schools.[8] The physical conditions and quality of education in these schools are illustrated, according to the study, by the following facts:[9]

- Only 5 percent of the pupils in these schools have even "the slightest chance" of finishing their secondary education.
- It is not uncommon for a fourth grader to be illiterate.
- The schools are short of computers, study cabinets, laboratories, and gyms. Even if there is enough space, they might be lacking in instruments, blackboards, and chalk.
- Only 0.3 percent of the Romani pupils take an interest in the national examinations for admission to elite high schools after seventh or eighth grade.
- In more than 50 percent of Romani schools, the windows are covered with cardboard rather than glass.
- Dedicated teachers with a missionary zeal, who refuse additional pay-

ments so that the money can be used to feed the students, are in the minority. Many other teachers in these schools consider themselves "punished" for teaching in such conditions, and therefore they punish the pupils.

Romani and human rights activists have documented many cases of school and kindergarten administrators who have refused to enroll Romani children, citing as an excuse the school districting system and in some cases the claim that these children present a threat to the health of the "white" children.[10]

In addition to the disadvantages in education mentioned above, the Roma lack certain basic minority rights in education. In contrast to children from other ethnic minority communities, Romani children in Bulgaria today do not exercise their right to study their mother tongue. For a short period of time in the early 1990s, Romani language classes were organized for pupils who wanted to study their mother tongue. The maximum number of children who studied the Romani language in that period was about 4,000.[11] Because of the lack of systematic organization and proper study materials, these courses slowly faded out and eventually disappeared completely.

3. Framework Program for Equal Integration of Roma in Bulgarian Society

The Bulgarian Council of Ministers adopted the Framework Program for Equal Integration of Roma in Bulgarian Society on 22 April 1999. It was created by Romani and non-Romani experts during the autumn of 1997. During the winter of 1998, Romani organizations launched a campaign to pressure state institutions to pass the program. This campaign went on for one and a half years, while the Bulgarian government offered two of its own versions of a program for the integration of Roma and tried unsuccessfully to convince Romani organizations to accept the government program instead. None of these programs envisaged desegregation. In the end, the government signed the Framework Program on 8 April 1999, with some prospective "editorial changes." This subsequent editing worsened the quality of the program to a certain extent, but it did not change the program's primary goals or the types of measures that should be taken in order to achieve these goals.[12]

The Framework Program stipulates a broad spectrum of measures in eight different spheres of social life, with the

ultimate goal of "real equality for Roma in Bulgaria."[13] The basis of these measures is the acknowledgment that "discrimination against Roma in social life creates problems for society and in the socioeconomic and cultural-educational realms."[14] In the realm of education, the Framework Program provides for six types of measures directed at overcoming discrimination and its effects. These measures include: desegregating Roma schools; doing away with the practice of sending normally developed Romani children to special schools for the mentally disabled; counteracting racism in the classroom; providing opportunities for the study of the Romani language in schools; preparing Romani pupils to continue their education at university; and creating literacy and vocational programs for adult Roma. Desegregation was deemed to be necessary because of the legacy of historical *de facto* segregation of Romani education. This legacy was further reinforced after the fall of the totalitarian regime by the progressive social isolation of Roma in society. It is assumed that desegregation will bring innovation not only to the education of Romani children, but also to the life of the Romani community as a whole. Desegregation was intended to improve the social prospects for this entire community.

The Framework Program provides for the creation of a "long-term strategy for the complete elimination of schools that are exclusively for Roma and located in Romani neighborhoods, for active measures that will provide Romani children access to 'normal' schools, and for preventing the segregation of Romani children in special classrooms in these schools."[15] According to the program, desegregation should be accompanied by a series of other measures, some of which are directed at counteracting racism in the schools to which Romani children will by sent. In order to accomplish this, the Framework Program provides for the creation and implementation of programs to teach tolerance to students, teachers, and parents, and for the quick and effective punishment of racist behavior in schools.

The Framework Program also provides for a series of concrete and direct measures such as: the organization of preparatory kindergarten classes for Romani children; the introduction of unified programs for general education in the schools to which Romani children are sent; the elimination of "non-certified" teachers and the introduction of "teachers' assistants." All of these measures strive directly towards the final goal: the desegregation of Romani schools.

4. Recent governmental policy on education of Roma

Efforts to implement parts of the Framework Program started only as late as 2003, four years after its adoption.[16] In September 2003, the Parliament, in fulfillment of both the Framework Program and EU Directives 2000/43 and 2000/78, passed the Law on the Protection against Discrimination, a rather progressive and far-reaching act, which creates a special governmental body with wide powers to investigate and punish discrimination in many spheres of social life. The law was to enter into force in January 2004. No government or local authority, however, has made any effort to begin the desegregation of Romani schools anywhere in Bulgaria. Accordingly, no funds have been set aside in the national or local budgets for this purpose. In the meantime, the demographic situation of the Bulgarian educational system has made the task of desegregation even more pressing.

According to data from the March 2001 census of the Bulgarian population, the country's population has decreased by about one million people over the past twelve years.[17] This decrease is due to a low birthrate as well as to emigration, and it is especially drastic in the younger age groups. At the same time, the portion of the Bulgarian population that identifies itself as Roma has increased by one percentage point, to 4.69 percent, since the 1992 census.[18] Moreover, because of the high birthrate among Roma both in the past and today, the percentage of Roma in the school age population is even higher than their percentage in the total population. Roma make up 10.67 percent of people between the ages of five and nine years old and 9.11 percent of people between ten and fourteen years old.[19] Given this situation, schools for non-Romani Bulgarian children, where education is of a significantly higher quality, are becoming progressively emptier. Consequently, classes and teachers are being cut, and in some cases entire schools are closing. This crisis has failed to affect the Romani schools, which continue to enjoy high enrollment figures. In Sliven, for example, where the average school has three to four classrooms for each grade, the Romani school, Brothers Miladinovi Sixth Primary School, had nine classrooms for the first grade for the 2002–2003 school year.

The demographics of Bulgarian education made the non-governmental initiatives to enroll Romani children in non-Romani schools easier. Despite the prejudice and the social distance that

Bulgarians feel between themselves and Roma, many Bulgarian schools agreed to enroll Romani children in order to stabilize the number of classes and teaching positions. This is even more true for the schools on the periphery than it is for the "elite" schools in the centers of Bulgaria's big cities. The latter benefited from the discriminatory school districting system established under communism. It allowed the principals of the non-Romani schools to reject applications from Roma if they were not from that school district.

In April 2003, the Ministry of Education changed Article 36, paragraph 2, of the Rules and Regulations of the National Education Act, which provides for the school districting systems at the municipal level. The provision had been used in a number of municipalities to deny Roma access to the schools of the "whites," which are in different school districts. It was in clear violation of Article 9, paragraph 1, of the National Education Act, which gives every Bulgarian citizen the right to an education "in a school of his or her choice and to the type of education that fits his or her own preferences and abilities." The revised provision is now in line with the National Education Act.

In the past few years, the Ministry of Education has faced two difficult tasks. It has had to adjust the educational infrastructure to the demographic crisis and to deal with the continuing decrease in the quality of education for Roma. The first task means cutting the number of teaching positions and closing schools in regions and neighborhoods populated mainly by ethnic Bulgarians. The population and the local authorities met this solution with resistance. Protests continued throughout the first half of 2002 and tested the strength not only of the Ministry of Education's administrative and political leadership but also of the national government as a whole. In an attempt to solve both problems while simultaneously responding to the concerns of local groups and the European Commission, in September 2002 the Ministry of Education published its "Instruction for the Integration of Children and Pupils from Minorities."[20] This established that there are five specific problems of Romani education correlating to five of the six measures stipulated in the Framework Program dealing with education. These problems are: the isolation of Romani children in special schools in the Romani neighborhoods; the placement of normally developed Romani children in special schools for children with mental disabilities; the manifestation of racism in

the classroom; the lack of mother-tongue education in the Romani language; and the low literacy and job qualifications of adult Roma. Accordingly, the instruction set out two "strategic tasks":

1. "Preparation for the process of taking children and pupils out of educational institutions in the Romani neighborhoods and creating possibilities for equal access to quality education";
2. Discontinuing the practice of sending normally developed Romani children to schools for children with mental disabilities.[21]

The instruction requires municipalities whose territory includes schools exclusively for Romani children "to create their own programs for the gradual integration of Romani children into schools with their peers outside the ghettos."[22] In addition, the instruction stipulates that "if the schools in the Romani neighborhoods are closed immediately and the Roma and non-Roma are not ready for this closure, it will definitely lead to the even greater exclusion of Roma living in the separate neighborhoods from the educational process."[23]

There is no doubt that the Ministry of Education's instruction is an expression of a clear political will for the desegregation of Romani education. However, this will showed up too late in September 2002, after the classrooms in most schools, and especially in the "elite" schools, had long since been formed. It was already too late to undertake any sort of preparation for the implementation of desegregation. The instruction is also not tied to any sort of financial benefits or sanctions that might encourage its implementation. Thus, it had no influence on the process of enrollment of Romani children into non-Romani schools during the 2002–2003 school year. No similar document was issued at the beginning of the 2003–2004 school year. Another deficiency of the instruction is its non-obligatory character. The school systems in Bulgaria are run by the municipalities; the Ministry has powers to impose measures that can relate only to the educational process as such, not to school infrastructure and enrollment.

The ambiguity and indecisiveness of the government's desegregation policy were further demonstrated in September 2003 with the adoption of the government's action plan to implement the Framework Program for Equal Integration of Roma in Bulgarian Society. Drawn in anticipation of the next Euro-

pean Commission pre-accession report, and with the specific purpose of showing compliance with the recommendations, the action plan was another example of the government's goodwill to implement the Framework Program. At the same time, it signified a serious pullback from its original aims. The government failed to allocate appropriate resources for the implementation of a number of key measures envisaged in the Framework Program, including education and legalization of Romani neighborhoods. The action plan speaks of desegregation of the Romani schools, but it does not provide for any activism on the part of the government and does not set aside any resources for the special transportation of Romani children to the integrated schools or for any closures of segregated schools. The only cost the government is prepared to pay is that of the public transport tickets of the Romani children if and when their parents enroll them in the "white" schools.

5. Non-governmental desegregation initiatives

So far, desegregation has been a failure as a governmental action, despite the Framework Program and the Ministry of Education's instruction. Demonstration of goodwill, however, produced NGO activism in the field of desegregation, which has developed as a specific model for desegregating Romani schools in Bulgaria for more than three years now. During the 2000–2001 academic year, one NGO, Drom Organization, began the process of desegregating the Romani school in the city of Vidin. It did this by enrolling Romani children in the other schools in the city. In the following school year, the project grew to involve five other cities in Bulgaria. During the 2002–2003 school year, a small desegregation program started in one of Sofia's Romani neighborhoods. The Open Society Institute–Budapest supported these projects through its Roma Participation Program. The model of desegregation through non-governmental initiatives that was established first in Vidin and later adopted by NGOs in the other cities includes several interrelated components:

- Specially hired pedagogues provide the academic guidance for the project. Individually or through consultations with other project participants and host school administrators, these staff determine the strategies for enrollment, the needs

for supplementary pedagogical work with pupils, and the types of extracurricular activities that will be organized. These pedagogues also supervise the work of counselors.

- The projects aimed to enroll Romani children in as many host schools as possible outside the Romani neighborhoods in the cities.
- The projects tried to garner political and social support from the administrators of the public school system, from the members of the Romani community, from NGOs, and from the various other political forces in the cities involved.
- The projects hired counselors—usually one per host school—who were responsible for meeting the needs of the participating children and their teachers, providing assistance with teaching materials, dress, contacts with parents, etc. They provided an everyday link for the schools, the project staff, and the parents to ensure the security of the children and their emotional comfort.
- The projects organized the transportation of the pupils from the Romani neighborhoods to their host schools in school buses that the NGOs purchased specifically for the purposes of the project.
- The projects organized supplemental classes for children who were falling behind in their classes. These were taught either by teachers from the host schools or by other teachers specially hired for this purpose. The projects also organized special preparatory classes for the pupils during the summer and other school vacations.
- The projects provided opportunities for teachers in the host schools to receive additional training, with a special emphasis on multicultural education.
- The projects organized extracurricular events—celebrations, excursions, camps, etc.—with an explicitly multicultural character and used them to try to attract both Romani and Bulgarian children and parents to participate in the particular project.
- Project organizers tried to secure the support of the local educational and municipal authorities, as well as of the media and NGOs.
- The projects provided school supplies and meals to needy participants, and in some cases they also provided clothing and shoes.

- The projects provided assistance to Romani parents during their participation in parents' meetings at the host schools and periodically organized other parents' meetings for the project participants. They also made an effort to inform Romani parents about the projects' work and to encourage them to participate.

This model was adjusted to fit the various local environments of the six cities based on ethno-demographic characteristics, the social situation of the Romani parents and children participating in the projects, the responsible NGOs' capacity, and the degree of support that the projects received from the local authorities and the public. A total of 1,191 children completed the 2001–2002 school year with the projects. More than half of these children were in Vidin.[24] Nearly twice as many children completed the 2002–2003 school year with the projects.

In addition to the desegregation projects in the big cities, several were started in smaller towns and villages. In the village of Gurmen, the foundation Inter-Ethnic Initiative for Human Rights, in the course of two years (2000–2002), financed the enrollment of some 105 Romani children from the segregated Romani school into the integrated municipal school. The foundation organized additional classes for the Romani children and paid for their food and school materials.[25] In Samokov, the foundation Romani Baht works to achieve the enrollment of several dozen Romani children into one integrated kindergarten in this small town. A small-scale desegregation project was also started in Kyustendil.

The Romani parents' main motivation to enroll their children in the integrated schools was the low quality of education that the children were receiving in the segregated Romani schools. The parents wanted to integrate their children into the broader national educational system. The low quality of education available in the segregated Romani schools made enrollment in the desegregation projects easiest for children in the primary grade levels. About 80 percent of the Romani pupils in the projects are enrolled in classes at this level. The various projects chose different strategies for enrolling the children. Some placed more emphasis on enrolling children in the primary grades than did others. In all cases, it should be noted, the administrators of the Romani schools voiced opposition to the enrollment of Romani children in integrated schools. In some cases, the

projects did not receive necessary support from the local authorities or from the school system's administration.

The experience of the desegregation projects showed that the success of desegregation is strongly dependent on the amount of supplementary academic assistance that the children receive in the host schools. This amount is determined by a number of factors, including the social situation of the Romani parents and children who participate in the projects, the age of the children, and whether family communication in the local Romani community is conducted primarily in the Romani language. The projects' success also depends on the creation of a link between the host school and the family and on the material assistance that the Romani parents receive in order to compensate for the social burden they take on when they enroll their children in integrated schools. All the projects successfully met these challenges, although some met them better than others.

Along with the activities related to the provision of academic and social support, the projects also took on the organization of extracurricular activities. These activities, especially when based on multicultural foundations, noticeably helped the Romani children's integration into their new school environments. They included winter and summer camps, multiethnic celebrations of mutual holidays, and participation in musical and theatrical presentations. Some of the activities included Romani and Bulgarian parents along with the Romani and Bulgarian children.

One of the tasks of the NGOs operating desegregation projects was to ensure community support. It was not an easy task, as there are strong vested interests in segregated education. Opposition to the projects came from teachers in these schools, who are concerned about their jobs; some community leaders, who are partners in projects with the segregated schools; and officials in the local municipalities. The major work in ensuring community support was with the Romani parents and community. This work included visits to parents' homes and organizing community meetings to discuss Romani education and desegregation. In addition, the NGOs undertook advocacy campaigns in the local media. They also approached officials from the district educational inspectorates and the municipalities and tried to ensure their support. In principle, the projects were designed to work on a nonpartisan basis, and the NGOs tried to ensure the support of all major political parties in the region. This process of building

alliances and coalitions progressed with the recruitment of more and more Romani children in the projects. Some of the projects, such as the one in Vidin, were very successful in ensuring the support of almost all stakeholders in a relatively short period of time.

The projects' most important success was their demonstration that Romani children can quickly adjust to an academic environment and to life and norms in integrated schools. In general, after initial tensions and insults, the atmosphere in the host schools cooled down. By the end of the first semester, normal communication was going on between the children from the different ethnic groups. This happened more quickly in some places, because of the more efficient intervention of the counselors and host school administrators when incidents did occur. The projects became convincing proof that Bulgarians and Roma can study and become socialized together.

The success of these non-governmental desegregation projects has forged a path for the further continuation of the process of desegregation of Romani education with the active participation of the Bulgarian state. For this to happen, the state must begin to coordinate its policies in the realm of desegregation and to take actions to finance the process by creating a special fund under the auspices of the Ministry of Education. NGOs, schools, municipalities, and others should be able to apply to this fund with their desegregation projects. The government should also link the implementation of the Ministry of Education's "Instruction for the Integration of Children and Pupils from Minorities" with the financial support that the government provides for the educational institutions. In addition, the state must make an effort to organize classes in the Romani language in the host schools.

6. Special schools for children with developmental disabilities

Treatment of children with developmental disabilities in Bulgaria followed the wisdom of the Soviet "defectology" and relied heavily on their institutionalization. There are two types of institutions where these children are placed—educational and social. For many years, placement was based on the diagnosis: children diagnosed with mild mental retardation were considered "educable" and were placed in special schools; and those with moderate to profound retardation were labeled "uneducable" and

were placed in social institutions where, at best, they could be taught only basic skills with no supervision whatsoever by any educational authority. The percentage of Roma in the special schools for children with mild developmental disabilities is traditionally high. Many Roma end up in these institutions because of poor knowledge of the Bulgarian language and because the methods for testing their condition are not culturally sensitive. "Diagnostic commissions" at the regional level, established to evaluate children's abilities, do not have Roma on their staff. When the Framework Program addressed this situation in 1999, it required urgent measures to reduce the number of Romani children in the special schools. It was thus quite moderate and did not require a revision of the entire model of institutional education of mentally handicapped children.

The government started considering measures to reduce the number of Roma in the special schools in 2002, three years after the adoption of the Framework Program. On 19 August 2002, the Ministry of Education passed Ordinance 6 for the education of children with special educational needs and/or chronic diseases. The ordinance attempts to establish a more precise procedure and to put some limits on the arbitrary placement of Romani students in special schools. The ordinance provides that placement in a special school should occur only after all other alternatives for integrated education are exhausted. It also specifically prohibits placement in a special school for social reasons and provides for the obligatory presence of the child's parents during testing. The ordinance does not limit the placement in a special school to certain diagnoses. However, it leaves intact the differentiation between educational and social institutions for children with developmental disabilities and thus leaves placement to the unfettered discretion of the diagnostic commissions.

Research immediately following the adoption of the new ordinance showed that, despite the improvements in the procedure for diagnosis and placement, the opportunities for arbitrary placement in special schools are still significant. There is no uniform interpretation of the provisions of Ordinance 6 by the local diagnostic commissions; Romani parents are not informed about the profile of the school where their children are going to be placed; there are no attempts (and no facilities) to place children with special educational needs in an integrated educational environment.[26]

7. Conclusion: Challenges to Desegregation in Bulgaria

The major obstacles to the desegregation of Romani education in Bulgaria are the political will of the government and its ability to undertake firm measures to implement this complex policy. This is further exacerbated by the ethnic prejudices toward Roma prevalent among Bulgarians and the other ethnic groups. It becomes even more difficult with the educational system in Bulgaria being run at the local level, with a variety of different situations and attitudes.

So far, the NGOs have proved to be the engine of desegregation, and they will no doubt have a role in future developments. However, Bulgaria does not have a developed and sustainable civil society. There is no tradition or culture of cooperation between the government and the NGOs. Although the situation at the local level in this respect is better than at the central level, the country's civic sector is unevenly developed. Nevertheless, the success in Vidin has established a model and is likely to serve as such for the rest of the country.

Unlike the situation in the United States, the judiciary in Bulgaria is not likely to be a driving force of desegregation there. Although the judiciary has assumed some political role on a number of issues, the civil law system significantly limits its activism. As discrimination generally and desegregation in particular are unfamiliar as subject matter brought before the Bulgarian justice system, the judiciary is not likely to exercise even the limited role that the system allows.

Notes

1 Elena Marushiakova and Veselin Popov, *Gypsies in Bulgaria* (in Bulgarian) (Sofia: Club 90, 1993), pp. 90–101. Their status as enforced vocational training schools was abolished in law after the fall of the Communist regime, but in fact only in the mid-1990s. Their curriculum was integrated with the national curriculum but there was little, if any, change in the staff.

2 The broad definition of this term and the arbitrariness in enforcing the law made possible the sending of mostly minority

children to these most problematic educational institutions in Bulgaria. For more details, see Bulgarian Helsinki Committee, *Social-Educational Boarding Schools and Reform Schools* (Sofia: 2001).

3 See Bulgarian Helsinki Committee, *The Special Schools in Bulgaria* (Sofia: 2002).

4 The figures cited in the 2002 European Commission report on Bulgaria's progress toward accession, on the Romani share among the pupils in the "special schools" (32 percent) and in the educational boarding schools (21 percent), are incorrect. (See *2002 Regular Report on Bulgaria's Progress Toward Accession,* pp. 32–33, available at: http://europa.eu.int/comm/enlargement/bulgaria/index.htm.) The BHC estimate of the proportion of Roma in the educational boarding schools is somewhere between 70 and 80 percent. (See Bulgarian Helsinki Committee, *Social-Educational Boarding Schools and Reform Schools,* p. 391.)

5 See, for example, *School Success for Romani Children: Step by Step Special Schools Initiative*, Interim Report (Budapest: OSI, December 2001).

6 See Krassimir Kanev, "Changing Attitudes Toward the Ethnic Minorities in Bulgaria and the Balkans, 1992–97," in *Ethnicity and Nationalism in East Central Europe and the Balkans*, ed. Thanasis Sfikas and Christopher Williams (Ashgate Publishing, 1999); See also Krassimir Kanev, "Ethnic Identity, Interethnic Attitudes and Religiosity among Bulgarian Jews," in *Jews in the Bulgarian Lands*, ed. Emmy Baruh (Sofia: IMIR, 2001).

7 For one of the most recent summaries of these facts, see *Monitoring the EU Accession Process: Minority Protection* (Budapest: Open Society Institute, 2001), pp. 83–99.

8 Dimitar Denkov, Elitsa Stanoeva, and Vassil Vidinski, *Roma Schools—Bulgaria 2001* (Sofia: OSF, 2001), p. 10. This publication is also available in both Bulgarian and English on the Internet at: romaschools.osf.bg.

9 Ibid., pp. 10–11.

10 *Monitoring the EU Accession Process: Minority Protection,* p. 88; see also *Minority Children—No Man's Land,* Obektiv (January 2001).

11 Josif Nunev, *Roma Children and Their Family Environment* (in Bulgarian) (Sofia: IMIR, 1998), p. 40.

12 For more details on Bulgaria's experience passing the Framework Program, see OSCE High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area* (The Hague: 2000). For an analysis of the contents and the measures that have been undertaken so far during the implementation of the Framework Program, see *Monitoring the EU Accession Process: Minority Protection,* vol. 1, *An Assessment of Selected Policies in Candidate States* (Budapest: CEU Press, 2002).

13 The Bulgarian government has not yet

officially published the Framework Program. The final text, as passed by the Bulgarian government after "editorial changes," may be found in Kamelija Angelova, ed., *Roma and the Public Sphere* (in Bulgarian) (Sofia: Human Rights Project and Minerva Foundation, 2000). This report cites the Framework Program from that source. It is also available on the Internet at: www.bghelsinki.org.

14 Ibid., p. 85.

15 Ibid., p. 93.

16 For a detailed evaluation of Bulgaria's implementation of the Framework Program up to the middle of 2002, see *Monitoring the EU Accession Process: Minority Protection,* vol. 1, *An Assessment of Selected Policies in Candidate States* (Budapest: CEU Press, 2002).

17 The data cited below are from a 2 percent representative sample, generously provided by the National Statistical Institute. The final results of the census have not yet been published.

18 In Bulgaria, as in other countries, the number of people who are treated as Roma by the surrounding population, and who for the most part live in Romani neighborhoods, is actually much higher. This figure reaches 600,000–800,000 people (see Elena Marushiakova and Veselin Popov, *Gypsies in Bulgaria* (in Bulgarian), p. 95; Jean-Pierre Liegois, *Roma, Gypsies, Travelers* (in Bulgarian) (Sofia: Litavra, 1999), p. 35; Ilona Tomova, *Gypsies in a Period of Transition* (in Bulgarian) (Sofia: IMIR, 1995), p. 13.

19 In this case, too, the number of people whom others treat as Roma and who live in Romani neighborhoods is much higher and may be as much as 20 percent of the total population.

20 Ministry of Education, *Organization and Administration of Activities for General Educational, Professional, and Special Schools* (Sofia, 2002), Appendix no. 10. The Ministry's instructions are issued on a year-by-year basis to guide the educational process during the current school year.

21 Ibid., pp. 156–57.

22 Ibid., p. 156.

23 Ibid.

24 Cf.: *The First Steps: An Evaluation of the Non-governmental Desegregation Projects in Six Bulgarian Cities* (Budapest: OSI, 2003) for an evaluation of the projects sponsored by OSI–Budapest.

25 2 Bulletin of the National Council on Ethnic and Demographic Issues 34 (2003).

26 See Bulgarian Helsinki Committee, *The Special Schools in Bulgaria,* p. 19.

Government Initiatives: Hungary's School Integration Program

by Viktória Mohácsi

In response to the growing segregation of schools throughout the country, Hungary has become the first country in the region to adopt and implement a government-initiated and -supported school integration program. Launched in September 2003, Hungary's program provides financial incentives to schools that commit to integrating Romani students into the mainstream classrooms. Through the National Educational Integration Network, the program gives assistance and guidance to participating schools in teaching methodologies, community outreach, and extra academic help. This article provides an outline of the program to date, the means by which budgetary policy can positively influence integration in education, and recommendations for ensuring the future success of integration in Hungary.

1. Discriminatory treatment of Romani children: The situation in Hungary

The Roma are the most deprived and vulnerable ethnic and social group in Hungary. Romani families are situated primarily in the lowest strata of the Hungarian society or even completely excluded from society. In general, their living conditions are very poor, their educational level is far below the Hungarian average, and the unemployment rate among Roma is extremely high. It is estimated that their unemployment rate is 70 percent; in some villages, 90–100 percent of the Romani population are unemployed. The Minority Ombudsman has noted that there have been many cases of discrimination in employment, but that Hungary's legal regime provides no effective remedy.[1]

Such systematic discrimination compounds the effects of other factors that contribute to high levels of unemployment. Most important among these, low levels of educational achievement among Roma further reduce prospects for employment.[2] In 1994, a representative sociological survey by István Kemény, Gábor Havas, and Gábor Kertesi[3] showed that only 1.5 percent of the Romani children continued on to secondary schools, and only about 0.2 percent reached a post-secondary level of education.

There are several reasons for the lower level of success of Romani children in the Hungarian educational system. One explanation asserts that the

system is basically designed for the children of middle-class Hungarian families. Romani children are socialized in an environment and culture that is distinct from that of the middle-class Hungarian children. This claim is true, but it alone does not provide a sufficient reason for the severe under-education of the Romani population.

According to surveys conducted in 2000 by the OSCE PISA (the Program for International Student Assessment of the Organization for Security and Cooperation in Europe), the Hungarian educational system provides the fewest opportunities for children of parents with lower education and the children of poor families among the surveyed OSCE countries. According to these surveys, a Romani child is fifty times less likely to complete secondary-level education compared to a non-Romani peer from an average social background. These children (referred to as disadvantaged children) do not have equal opportunities to obtain the qualifications that would later enable them to lead successful lives in society. Among all groups of disadvantaged children, the most vulnerable are the Romani children.

The majority of the Romani communities in Hungary live in the poorest regions in the country, in small and economically less developed settlements. The quality of education varies from school to school, depending significantly on the social and economic status of the settlement. General educational conditions are well below average in schools located in the small villages in the poorest regions. Non-professional teachers without basic training or a teacher's degree are frequently employed in these schools. The Hungarian system does not help to provide these underprivileged children with a proper education. Moreover, Hungary created and maintains a system of segregated classes and separate schools for Romani children. This segregation in Hungary's educational system has contributed further to the isolation and marginalization of the Romani population.

Schools throughout Hungary are becoming increasingly segregated, due in part to the growing Romani population in many areas of the country. Of 192 schools surveyed, the proportion of Romani students in 1989 was 25.1 percent; in 1999, the proportion was 40.5 percent.[4] As the proportion of Romani students in a school increases, non-Romani parents seem more likely to transfer their children to schools that have fewer or no Romani students. In one Budapest school, the proportion of

Romani pupils increased from 40 percent to 100 percent between 1989 and 1999.[5]

Even in schools where both Romani and non-Romani students are present, the former are often placed in separate classes (remedial or "catch-up" classes). According to a 2000 Ministry of Education survey, Hungary's elementary schools operate more than 700 Romani-only classes. Romani children in segregated classes are often taught according to an adjusted curriculum that is not designed to provide education on an equal footing. The effect of such schooling arrangements is to exclude Roma from equal education, thereby eliminating any possibility of their developing the necessary knowledge and skills to compete for jobs in a market economy. In Hungary, estimates are that Roma make up 84.2 percent of the students in catch-up classes.[6] An unfortunate aspect of this arrangement is that school authorities have a financial stake in maintaining these catch-up classes, because they can receive supplementary grants for the education of minority children (as provided under the 1993 Public Education Act).[7] Catch-up classes, therefore almost never actually catch the students up to the appropriate level. Most Romani children are never mainstreamed into the normal school system.

In addition to separate classes, Romani children are often channeled into "special schools" for the mentally disabled. These schools offer a limited curriculum with lower educational requirements. Romani children are often over-represented in these special schools. Romani children attending special schools increased from 25 percent in 1974–75 to 42 percent in 1992 (the last year before Hungary adopted its Data Protection Act, which bans the collection of data on ethnic or racial background). One shocking statistic reports that one out of every five Romani children is considered to be mentally disabled and is educated in a special school. A survey carried out in Borsod-Abaúj-Zemplén County in 1998 showed that more than 94 percent of the students attending a school following a special curriculum were Roma. A report prepared by the Minority Ombudsman pointed out that there were some schools in which the single reason for carrying out the assessment or for determining that the child is handicapped (as provided on the assessment form) is that the child is "of Roma parentage."

Several international organizations and non-governmental organizations, including Save the Children, the Euro-

pean Roma Rights Center, and the UN High Commissioner for Human Rights, have noted the over-representation of Romani children in special schools. According to the European Commission Against Racism and Intolerance (ECRI), even though rules regulating entry to the special schools have been tightened over the years, Romani children still constitute about 60 percent of the total number of children in these types of schools nationwide. This channeling, "which in principle is carried out by an independent board, is often quasi-automatic in the case of Roma/Gypsy children."[8]

While the proportion of children classified as disabled is about 2.5–3 percent in the European Union, the figure for Hungary is 5.3 percent. The relevant figure has grown continuously over the last several years and even decades. There are settlements in Hungary where many Roma live and where 20 percent of the local children are classified as slightly mentally disabled. It is worth noting, however, that, according to a comprehensive study commissioned by the Ministry of Education in 1998 for Borsod-Abaúj-Zemplén County, in settlements where no classes for the mentally disabled were established, there were no children classified as disabled either.

2. Hungarian integration program: What have we achieved so far?

The need to change the situation in Hungary raises difficult educational issues. What will make it possible to achieve integration in education is the government's commitment to the objective of its School Education Program: creation of schools that are organized around children's interests, where each child can receive quality education and training that is in line with their individual needs. More time must be given to the development of the so-called key competencies (i.e., those communication skills and abilities that are essential for better learning) in order to ensure the smooth acquisition of core skills and abilities. In this type of education, the measure of success is whether a school is able to provide each and every pupil with the opportunity to realize his or her potential.

2.1 Legal and financial background for Hungary's integration program

The first step taken by the Ministry of Education changed the ministerial decree (11/1994.MKM) in order to create the legal and financial background (39/E: per capita allowance for inte-

grated education) that can pave the way for many disadvantaged children to reach the level of education desired in an open society. These first steps are laid down in Decree OM 57/2002 (XI.18) of the Ministry of Education. This regulation introduces the concept of preparatory training for the realization of potential and integration. New forms of assistance are aimed at making it possible for children with different social and cultural backgrounds to be taught together and receive the same level of education. The decree does not require schools to implement integration, but it does provide guidance to schools or districts that choose to integrate. The new integration programs are to be introduced in the 2003/2004 school year. Institutions undertaking to implement new approaches will be launching integration programs in a concerted manner for children in their first, fifth, and ninth year of education.

According to this decree and the integration program, those Romani students who have special educational needs and are therefore currently participating in a preparatory training program (usually in separate so-called catch-up classes) are eligible to participate in an integration program. Through the integration program, these students will study in the same class or, when a class is split, in the same group with students not participating in the training program.

Who is eligible to participate in the integration program?

The pupils (mainly Romani pupils) who can benefit from this program are those students

- whose parents attended only elementary school and find it difficult to understand the modern requirements of schools;
- whose family is eligible for supplementary family allowance, i.e., they come from an economically disadvantaged environment;
- who have special needs according to the head of the school.

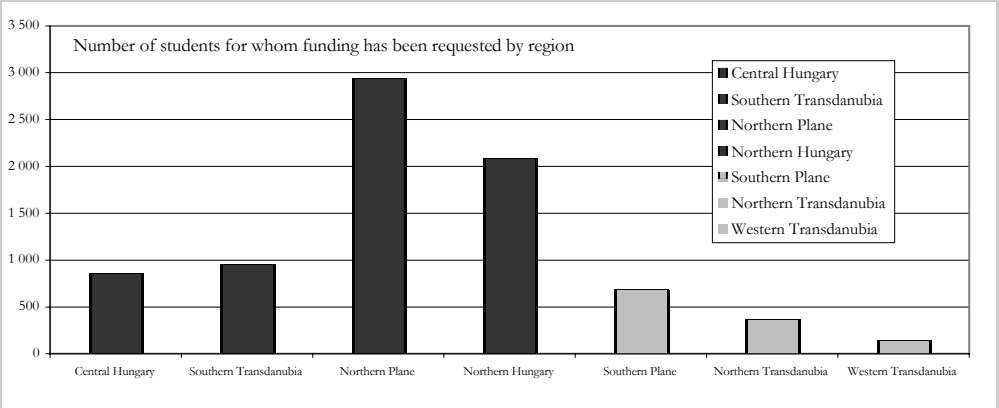
Where can such programs be launched?

These programs can begin in any settlement where children from different backgrounds will be taught together. As of September 2003, special assistance for Romani minority education will be available. Until now, financial support for Romani minority education provided pursuant to Decree MKM 32/1997 was provided only to the exclusion of financial support for disadvantaged children. As of September 2003, these two forms of support may be applied simultaneously.

THE HUNGARIAN NATIONAL EDUCATIONAL INTEGRATION NETWORK

The Hungarian National Educational Integration Network supports the spread of integrated education by selecting partner schools (model institutions) from those parts of the country where the number of disadvantaged and Romani children is the highest. The primary way the network targets these areas is by sending calls for proposals to schools within such districts. The model institutions then develop their programs with the professional and financial support of the network's central and regional offices, which provide information and professional guidelines to the new schools intending to join the integration process.

The chart below shows the number of requests the network has received from various regions in Hungary. Central Hungary, Southern Transdanubia, Northern Plane, and North Hungary are seen as high-priority regions, while Southern Plane, Northern Transdanubia, and Western Transdanubia are a lower priority.



The network acts as a resource by transmitting professional know-how to schools in order to enable them to successfully educate children with different backgrounds. The professional knowledge that the network shares includes the different pedagogies and methodologies (activity orientation, project methodology, drama pedagogy, etc.) related to differentiation in the classroom, effective techniques of student cognition, means to facilitate the transition from nursery to elementary school, multicultural contents, methods to motivate children, ways to increase participation, and the theory and practice of cooperative learning.

Prepared by Judit Szőke

They can also take place in villages where the migration to neighboring towns of children who are not disadvantaged has reached a high level over the past few years. The schools in these villages must gradually expand their "educational offerings," become more attractive, and, by 2008, win back those families who are now seeking better schools for their children by incurring significant costs and undertaking daily travel to schools in nearby towns or villages. As of 2003, schools may start the integration program if the proportion of children from less disadvantaged families is not more than 20 percent of the total number of children in their first and fifth year of education.

And such programs can be launched in large villages and towns where disadvantaged children are clustered in one or two schools or classes. A school that is currently providing services to a deprived district must become more attractive within the community in part by changing its district area. By 2008, such schools will be required to win over families who seek a wider selection of education programs. This will also require changes in the district areas of other schools as well, so other institutions must gradually start the inclusion of disadvantaged children. Therefore, in many towns integration will not be possible, unless the local authority reviews its school policy. We also count on the active participation of schools run by foundations and churches.

What methods can teachers use to implement integration programs?
The Ministry of Education is offering institutions a continuously expanding program package and providing guidance through the services of the National Educational Integration Network. This package includes integration methods that have proved to be successful in Hungary and abroad, such as the Step-by-Step Program and alternative methods tailored to personal needs. Methods developed in Hungary, such as educational systems of study groups, are also available.

Pursuant to Article 48 of the Public Education Act, the non-minority members of a community where a national minority lives must be taught about the culture of the local minority. The educational program package issued by the Minister of Education intends to provide guidance for the development of such curricula.

What sort of developmental funds will be available for this purpose?
The availability of new funding through the budget of the Ministry of Educa-

tion will considerably improve the financial standing of schools that participate in the program. As of 2003, it will be possible to increase the per capita subsidy provided in support of the education of Romani children by as much as 50 percent. (The amount of financial support laid down in the draft act on the central budget is HUF 196,000 baseline support per child + HUF 22,000 minority education support + HUF 22,000 support for the teaching of "*beás,*" or Romani languages, + HUF 34,000 support for supplemental training for integration + HUF 51,000 for the integrated education of children.

To provide assistance to those schools where the integration (desegregation) is needed, the Ministry for Education has created the National Educational Integration Network. Its development was completed in the first half of 2003. This network, with its headquarters in Budapest and regional coordinators in the six most disadvantaged regions of the country, is responsible for providing coordination and a wide range of professional assistance in education for those schools implementing integration programs.

In addition, the network has designated forty-three model institutions that have started effective integration programs and committed themselves to disseminate the idea and to share their experiences with other schools. Over the next several years, we plan to designate an additional twenty-five schools as model institutions each year. The National Educational Integration Network is helping to improve these model institutions by providing funding for extra educational or other programming needs from the HUF 300 million fund.

In the 2003/2004 school year, schools that choose to participate in the integration process will receive a total of EUR 2.5 million from the Phare Program. Romani community centers will receive another EUR 4 million in support from the Phare Program. This will be a great help for the schools, as it will allow many communities to start coaching programs, providing academic assistance in the form of extracurricular study groups. Financial support is also available from the Phare Program for the development of integrated pedagogical programs in public education institutions, as well as for the launching of Romology programs in tertiary education. The Hungarian government's contribution to these programs will amount to 50 percent; the rest will be provided by the European Union.

Another program financed from Phare resources, "ICT (Information and Communication Technologies) in elementary schools," will be launched as part of the project Schools of the 21st Century. This project, which is co-financed by the Hungarian government, will receive considerable funds from 2003 to 2005 to start developing ways to apply and incorporate the latest developments of information and communication technologies in the schools. This may involve the renovation or expansion of school buildings. Preference will be given to schools educating the majority of underprivileged students in disadvantaged regions.

In addition, the National Development Plan's Human Resources Development Operational Program (HRDOP) has developed a measure (under a priority described as "fighting social exclusion by promoting access to the labor market") to ensure equal opportunities in education for disadvantaged pupils. The target groups for this Measure 2.1 are the disadvantaged, especially Romani children and youth, and those children and youth who have special educational needs. The intermediary target groups of the measure are teachers, educational experts, and students in teacher training who are involved in the education of disadvantaged students, as well as local decision-makers and professionals working in related fields. Under this HRDOP measure, a total of EUR 30,356,701[9] is available between 2004 and 2006 for programs aimed at

- preventing school failure and dropouts among the disadvantaged, especially Romani pupils and others with special educational needs;
- promoting educational success, and thereby improving the labor market prospects and social integration, of the disadvantaged, especially Romani youth and others with special educational needs;
- eliminating segregation in the public education system and promoting non-discriminatory, inclusive educational practices.

The measure contains two main elements, which will be implemented through a central program (first component) and through tendering procedures (second component).

The first element deals with the training of educational professionals involved in the education of the disadvantaged, as described above, along with the development of related curricula and methodology to promote inclusive education:

- developing and introducing teacher training programs and modules;
- developing and implementing in-service teacher training programs and training programs for educational experts;
- developing and implementing training programs for local decision-makers and non-teacher groups to increase social awareness and positive attitude toward inclusive education;
- developing the know-how related to inclusive education, elaboration of a methodological data bank, and service program packages;
- developing new ways to prevent leaving school prematurely and to promote the early identification of pupils at risk of dropping out.

The second element supports the adaptation and implementation of inclusive educational programs at the level of individual institutions:

- adapting teaching methodologies as well as teaching modules and materials;
- adapting extracurricular activities (such as extracurricular study groups and talent promotion programs) to prevent dropouts and foster the schooling success of disadvantaged children;
- adapting measurement and evaluation methods;
- improving intercultural communication;
- setting up horizontal learning and thematic information networks, workshops, and seminars[10].

2.2 Program against channeling Romani children into special schools for the mentally disabled

The Ministry of Education has initiated a governmental program that aims to decrease the incidence of misplacement of disadvantaged and especially Romani children in special education for the mentally disabled. This is a compelling issue that must be addressed, for several reasons. Although students who graduate from schools with special curricula receive the same certificate as students in normal schools, students in the special schools rarely continue on to secondary education in "normal" classes. Schools for the mentally disabled provide a less demanding curriculum and therefore prevent students from developing the knowledge or skills needed to compete in the labor market. Moreover, the stigma attached to attending these special schools humiliates the children and negatively affects

their ability to socialize or integrate into mainstream society.

Experts have attributed the continuous rise in the proportion of children classified as disabled to the fact that the per capita funding available to schools for the education of disabled children is constantly growing. This appears to be true even though children with a slight mental disability count as two for educational arrangement purposes, meaning that the number of students in a class of disabled students cannot exceed half of the maximum size for a normal class (in the 1974/75 school year, the per capita funding was HUF 56,000 per child per year for disabled children; in the 2003/2004 school year, the per capita amount is HUF 430,000).

For this reason, it is essential to revise the per capita amounts, provide strict standards for the designation of disabled students, and modify the educational system in such a way that ensures, through fixed funding, that the expertise needed for additional academic support and special training is available to those who truly need it, thereby promoting further integration in education.

In many "normal" schools that offer separate classes for the slightly mentally disabled, the dropout rate for students in the special classes is considerably higher than for students in classes following a normal curriculum. These schools also fail to provide the conditions necessary for the proper integration of the student bodies. Integration in these schools is often hindered by school statutes and local pedagogical programs. The government must therefore work to facilitate the amendment of these statutes in order to allow for the introduction of integration programs in these schools.

The goal of integrating slightly disabled students into mainstream classes is supported by Act XXVI of 1998 on the rights and equal opportunities of handicapped persons, which provides for integrated education, based on the opinion of the Expert and Rehabilitation Committee, in cases where it is expected to positively affect the skill development of the handicapped person. Surveys have shown, however, that currently this is not happening in practice, and the Expert and Rehabilitation Committee in each of these local districts continues to refer students to segregated divisions and classes. Paragraph 29(3) of the act states that the conditions for assigning students to special education under Article 13 on handicapped persons shall be established gradually, but must be in place no later than 1 January 2005. As the deadline for

implementation is approaching, the current situation must be assessed so that necessary corrections can be made in the school year prior to the deadline.

It is essential that inquiries into divisions and classes for disabled students begin as soon as possible in the 2003/2004 school year, with the aim of enforcing the right to rehabilitation and the appropriate use of the increased state subsidy provided for disabled students. At the same time, the status of children who enter the first grade in the 2002/2003 school year and who are recommended for a special class shall be reconsidered in order to prevent the enrollment of non-handicapped children in special schools or classes. Non-handicapped children shall be enrolled in divisions following a normal curriculum, where any additional development or academic needs can be met by the services provided by the National Educational Integration Network.

Over the past several years, rules to be used by the Expert and Rehabilitation Committee in determining slight mental handicap have become stricter. In line with the Public Education Act, Decree 14/1994 (VI.24) of the Ministry of Public Education and Culture (amended in 1999) contains more stringent provisions intended to ensure that children are referred to a school following a special curriculum only if it is justified. For example, the new provisions state that the issue may be decided only after the student has been observed for an extended period, at least three months. The decision of the experts is to be reviewed—*ex officio*—after one year, and then annually until the student reaches the age of twelve. It has been reported, however, that due to the heavy workload of the Expert and Rehabilitation Committee, compliance with this provision does not always occur. These provisions need to be reconsidered and made more stringent, and actual compliance must be assessed.

Classification as a disabled person must be conducted in compliance with strict medical diagnostic criteria. However, while the generally accepted limit for establishing that a person has a slight mental handicap is an IQ of 70, the data of the Expert and Rehabilitation Committee show that today, the upper level at which a person can be deemed to have a handicap is an IQ of 86. Stricter enforcement of the medical diagnostic criteria in establishing a slight mental handicap is essential; and medically competent personnel must be present at each assessment.

In order to promote integrated education, Parliament Resolution 100/1999 (XII.10), on the National Program for

the Handicapped, requires that special curriculum enhancement programs be prepared in the teacher training institutions and in the in-service training programs that prepare teachers for addressing behavioral and learning problems of disabled students in mainstream schools. Preparation of teachers for special education and development must be made a constant focus of the profession. To this end, tools supporting integration should be an essential part of the requirements in the basic and in-service training of teachers. Components supporting integration should also be included in the pedagogical development plans of institutions. The decrees pertaining to the in-service training of teachers should be amended appropriately, and the specialized examination of teachers in integration should be introduced.

2.3 Anti-discrimination provisions in Hungarian law

The third—but equally important—achievement is the introduction of anti-discrimination legal provisions in Hungarian law. The Ministry of Education has recently launched a modification process of the Public Education Act. The main elements (pertaining to desegregation) accepted by the Hungarian parliament in the summer of 2003 include the definition and prohibition of discrimination, indirect discrimination, and segregation (§4, §84). The Ministry of Education has also contributed to the draft of the overall anti-discrimination act (Equal Treatment Act), which has been prepared and will come before the Hungarian parliament in the fall of 2003. The act has been drafted in accordance with CERD (the International Convention on the Elimination of All Forms of Racial Discrimination), the European Union Race Directive, and other relevant international norms. It is hoped that this act will enter into force, with adequate sanctioning powers and monitoring bodies, on 1 January 2004.

Other changes in the legal provisions of the Public Education Act include the following:

- Alterations in the kindergarten regulation (§65). According to the new law, it is obligatory to set aside places in the kindergartens for disadvantaged children from the age of three, if the parents request it. This regulation is very significant, as today 11 percent of Romani children at least five years old are not enrolled in kindergarten. Until now they have been rejected in huge numbers because the kinder-

gartens lack space for them.

- According to modification (§7), the Hungarian government seeks to reduce the number of Romani students who are designated as "private students." This is a relatively new phenomenon that seeks to assign as "private students" those problematic students who are disruptive in class.[11] The private study scheme does not involve school attendance but instead relies on home studying. This has had a disparate impact on many Romani students and has excluded them almost entirely from education. Because these students are still expected to take final examinations even without having attended school, many drop out of school entirely.[12] At present, the possibility of being declared a private student is eight times higher for a Romani pupil than for a non-Roma.
- The definition of special education needs has been incorporated in the act (§30). This inclusion is especially relevant because the segregation of Romani children is today partly a result of disability diagnoses. With the new regulation, Romani children with special educational needs can and must be educated together with their peers in integrated classes and should not be completely segregated or stigmatized as being mentally disabled.
- Article 48 of the Public Education Act requires that mainstream pupils be taught about the culture of the local minority, and that the schools include this curriculum in their pedagogical program.

2.4 Other elements of the integration program

- Creation of an "anti-discrimination alarm system." This alarm system is a mechanism by which warning signals of violations of anti-discrimination provisions may be provided.
- Inclusion of anti-discrimination elements and the methodology for integrated education, model programs, and good practices in the curricula of teacher training colleges and in-service teacher training programs.
- Creation of funding support for the extracurricular study groups that have been successfully run by NGOs and Romani organizations. This funding will allow the implementation of extracurricular study

groups to reach new areas and communities.

- Development of a "second chance education program" for uneducated adults and adolescents who did not finish their schooling.
- Development of the curriculum of Romani language, culture, and history with a multicultural education approach.
- Diverse projects (training and employment of Romani pedagogical assistants in primary schools).

3. Recommendations

In July 2003, at the World Bank conference on Romani issues in Budapest, nine Central and Eastern European countries agreed to dedicate the next decade to the integration of Roma into their societies. I would like to address the leaders of these countries and call for the following:

- In order to cease the discriminatory treatment of Romani children, develop and implement comprehensive regulations banning discrimination and providing for effective sanctions.
- Develop and implement similar comprehensive programs to desegregate the school systems and ensure that adequate resources are allocated for these desegregation programs.
- Take immediate measures to ensure that Romani children in special schools and special classes for the mentally disabled are integrated into the mainstream school system.
- Develop and implement adult education programs to remedy nonschooling and inadequate education of Roma.

Notes

1 *Annual Report of the Parliamentary Commissioner for National and Ethnic Minority Rights,* 1 January–31 December 1998, Section 4.2.5.

2 OSCE High Commissioner on National Minorities, *Report on the Situation of the Roma and Sinti in the OSCE Area* (2000), p. 33.

3 Hungarian Academy of Sciences, Sociology Institute, *Beszámoló a magyarországi*

roma (cigány) népesség helyzetével foglalkozó 1993 októbere és 1994 februárja között végzett kutatásról (Report on the Survey Concerned with the Situation of the Roma [Gypsy] Population in Hungary, Conducted between October 1993 and February 1994) (1994).

4 Institute for Education Research, as cited in G. Havas, *Kitörési pont: az iskola* (Breaking Point: The School), Beszélő 50–65 (November 2000).

5 Open Society Institute, *Monitoring the EU Accession Process: Minority Protection* (2001), p. 226, available at:http://www.eumap.org/reports/2002/content/07.

6 *Barriers to the Education of Roma in Europe: A Position Paper by the European Roma Rights Center,* 5 May 2002, available at: http://errc.org/publications/position/education.shtml, p. 6.

7 Since 1993, these Roma Minority programs have spread in Hungary, and significant amounts of state funds are distributed for "minority education."

8 European Commission Against Racism and Intolerance, *Second Report on Hungary* (March 2000), para. 30.

9 EUR 22,767,525 from the European Social Fund and EUR 7,589,176 from the Hungarian central budget.

10 *Measure 2.1: Ensuring Equal Opportunities for Disadvantaged Pupils in Education,* Human Resources Development Operational Program, Program Complement, Ministry of Employment and Labor, Ministry of Education, Ministry of Health Social and Family Affairs (2004).

11 According to the Public Education Act, Section 1, paragraph 7, compulsory education can be met by attending school or as a private student, depending on the choice of the parents concerned. Traditionally, private study arrangements were reserved for very gifted students.

12 Dimitrina Petrova, *Racial Discrimination and the Rights of Minority Cultures,* in *Discrimination and Human Rights: The Case of Racism* (2001), p. 58.

"Constituting the Class": An Analysis of the Process of "Integration" in South African Schools[1]

by Crain Soudien

This article examines the process of integration in South Africa's schools. By analyzing this process of integration on the grounds of race, the author seeks to address questions relating to education as a vehicle for social change and the assimilation which has taken place in South Africa. The author employs the notion of "scapes", or various ways of seeing, in order to explore some of the complexities of integration in South Africa.

1. Introduction

Any discussion that seeks to delve into issues such as "community," "integration," "the nation," and so on cannot but begin with the caution that history and the broad social sciences constitute a *constructed* field. Whether one takes the approach of consensus and leans toward what has come to be understood as the "liberal" view of society, namely, that of a presumptive sense of coherence, and asks what constitutes "the community," how "the nation" is imagined, what divisions and fractures exist within the nation, group, or community, what is to be "integrated" or unified, or the more critical approach of rights and justice (and asks how rights are to be distributed or redistributed) will always depend, as Carr would have said, on *who* the historian or the social commentator asking the question is.[2]

Mindful of Carr's injunction, this chapter seeks to provide an explanation of how South African schools are dealing with the challenge of integration. The broad argument that the chapter will make is that the notion of "integration" depends on how, following Carr, the concept of difference is defined. The chapter works mainly with the dominant approach to difference in South Africa, that of race. It tries to show, as an attempt to engage with the question of how education is contributing to social change in South Africa, that the most critical outcome of the process of integration has been that of assimilation. While there has been a flight of African children out of the former African schools, there has been

no movement whatsoever in the direction of African schools. It is also argued that children of color have moved in large numbers toward the English-speaking sector of the former white school system. These clearly suggest that the social nature of the education system has changed quite dramatically. The change, however, has been complex and has made it possible, it is argued, for the expanded middle class, which now includes people of color, to consolidate its position of privilege. Working-class and poor people, conversely, continue to experience high degrees of vulnerability and even discrimination.

The chapter begins with a discussion of the different ways in which the field of difference has been conceptualized and understood in South Africa. It proceeds to suggest that there are difficulties that come with the conventional understandings of difference in South Africa and, using the notion of "scapes," or ways of seeing, points to a more complex way of looking at how integration might be approached.

2. Race, class, and notions of difference

One of the most important scholars of social difference in South Africa, Harold Wolpe, argues that neither race nor class, by itself, is capable of explaining the nature of the South African social formation and the ways in which privilege, power, and position are distributed.[3] Neither is able to grasp the entire story of social division, the hierarchies that operate within society, and, critically, how rights accrue or are denied. Explaining South Africa and seeking to resolve the injustices and inequalities would require more than working through race and or class. In his work he makes the crucial point that the formation and maintenance of racial groups and division in South Africa is a process that takes place in specific contexts that are subject to both centrifugal and centripetal pressures. Allied to these is the crucial element of politics, which operates often independently from other factors but always in some form of articulation with them. This combination of the instances of race, class, and politics produces effects and outcomes that are, moreover, ongoing and always in flux. They produce differentiations within groups, fracturing their homogeneity. Privileging race, therefore, as a category of analysis underplays the ways in which a whole range of conditions and processes influences the sense of cohesiveness and fragmentation within groups. Class

analysis too, he continues to argue, suffers from a similar insularity and reductionism. As a result of this reductionism, little room is allowed for non-class effects. "It is clear," says Wolpe, "that this analysis provides no conceptual basis for an analysis of the specific conditions in which racial categorizations come to provide the content of class struggles and/or the basis of organization of interests in a manner which both cuts across class divisions and yet may serve to sustain, change (for example, racialization or deracialization) or undermine them."[4]

The value of Wolpe's work, and I wish to show below what possibilities it opens up, is that it calls into question the ways in which discourses of race and class have been mobilized to understand South Africa. In his text, *Race, Class and the Apartheid State,* he implicitly argues against the dominant iconographic systems of South Africa, particularly those of race, and looks to more complex ways of understanding social difference in South Africa. In attempting to analyze post-apartheid South Africa, there is much to work with here, because the essential system of referencing and marking the social landscape remains. The racial discourse of apartheid has been sustained and carried into the new South Africa, as the new state has struggled to assert itself. Looking upon South Africa, this mode of address, in directing the new reform agenda, has remained firmly within the language of race. This language is manifest in policies of affirmative action, immigration, and social renewal.

While recognizing how and why the language of race retains its pertinence, of concern in thinking about questions of integration, is the question of how the theory we use is able to engage with and even displace the power/knowledge couplet of race (and even class). How do we write in ways that will subvert the power that comes with the language of race?

Part of an answer is recognizing, and this is extending Wolpe's discomfort with reductionist notions of race and class, that our explanations of the realities we confront will always be grasping or incomplete. They construct and constitute the reality as we speak it. They hold versions or interpretations of what is out there and present these as the truth. They are unable to recognize the multiple social contingencies that enter our processes of making meaning. Instead, our statements of what reality is depend on unproblematized portmanteau theories that are allowed to define and to normalize what clearly is partial and incomplete. Forgotten are

the stratagems and artifices of our representational modalities within these grand theories; forgotten are the multiple conscious and unconscious positions of privilege we call upon as we pronounce and enunciate.

3. Toward a new space

In attempting to move to a more self-conscious theoretical position, one that is aware of how we take position within the structures and narratives of our own social analyses, it seems that we need to be developing a social criticism that is profoundly alert to the shifting relationship between cultural difference, social authority, and political discrimination and that can deal with the dominant rationalizations of self and other. Such an approach would need to be aware of how much the ways in which we speak, our theories and languages of description, are mobilizable for the dominant project of race and class. It has the potential of opening up ways of seeing that take us beyond the stereotypical ways in which difference is understood. Critically, it unmasks the arbitrary ways in which the mark of the stereotype is assigned to each of us, particularly the racial, class, cultural, and gender values that are supposed to define who we are. It has the potential for helping us work in new productive spaces where we are able to confront processes of social and individual meaning-making—culture—in our lives and to recognize how those processes, in their innovativeness, continually produce new forms of oppression and emancipation and how—and this is an important point—each of us is implicated in these processes. From such a position we can develop a project of emancipation that is fundamentally conscious of the complex ways in which we are positioned and position ourselves. We can begin to see each other in our heterogeneity and to deal with, and not disavow, the proclivity within us to "other" as we socially identify. The power of such an approach is to force us to realize the limitations of consensual and collusive theories of community embodied in notions of race, class, gender, culture, and so on.

Taking this into thinking about the questions of unity or integration in South Africa, we clearly have a long way to go. Critical, therefore, if we are seeking to enter a new social space where notions of "unity" and "integration" are what drive social policy, what realities, we must ask, are we to unify and to integrate? Can it be any reality? All realities? And once we have unified or

brought them together, what notions of self and group do we use that will remain just and fair, sensitive to the multiple ways in which individuals and groups seek to be represented, and yet, at the same time, critical and alert to the political and ideological artifices that go with building polities?

4. Working with notions of integration—"integration" scapes

In terms of the arguments above, I want to suggest that there are two ways of proceeding. The first is to develop an approach that tries to work with the notion of multiplicity and brings together, as far as is possible, the range of factors that *can* be identified within a given context. The second is to work with the dominant languages of description in their attenuated form, or insofar as they attempt to articulate with other ways of seeing.

The first approach could be described as the contingent model and the second as the dominant factor model. Elements of both models were used in the Education Inclusion and Exclusion in India and South Africa Project reported in an *IDS Bulletin*.[5] The contingent model clearly carries more possibilities in terms of its aims of uncovering the complex and multiple forms of identification and identity that would have to be revealed and would need to be mediated in a common social space. The second is more limited insofar as its logic tends to insulate the major factor, even when its dominance is in doubt.

For pragmatic purposes, however, I am electing to work with the dominant factor model, simply because there is available material to work with. Attempting to work in an integrated factor framework, at this stage, is not viable, if only because the existing material on integration, as it has been understood and assembled, does not easily lend itself to thinking of complexity and contingency.

Having made the decision to use the dominant factor approach, I am proposing that a suitable way forward might be to work in a number of what one might call "scapes," where the dominant factor can be seen to be at work. Scapes are used here as ways of seeing. They frame the objects that come into view in particular kinds of ways. Reality and explanation of what reality constitutes are defined in relation to the dominant factor. Having assembled these scapes, we might then see how we can reach *toward* a contin-

gent model by articulating the different scapes in an integrated analysis.

Important about such an approach is the following:

- It acknowledges, in its very genesis, its limitations and the possibilities for being recruited into use by the dominant project.
- It proceeds from the recognition of its dependency on certain representational strategies, chief among which are reductionism and essentialism.
- In terms of the foregoing, it declares, as an approach, its culpability as a discursive framework for defining reality.

What are the scapes that we can describe? The most obvious are those of race, class, and gender. Allied to these are also cultural scapes, language scapes, religious scapes, age scapes, sexual orientation scapes, physical ability scapes, intellectual ability scapes, nationality scapes, health scapes (including HIV/AIDs), and a whole range of others that have yet to be specified.

Taking this approach is, of course, not without its difficulties. While it attempts to suggest a way through the thickets of the school integration discussion, there are certain immediate challenges that it throws up. Predictably, the first and most important is that of attempting to develop a series of ways of seeing in an analytic space where particular perspectives have been privileged and others disallowed. Given this, we have to accept that some scapes will be considerably fuller, better constructed, and more accessible than others. Other scapes will be, in their turn, either darker or emptier. This clearly suggests opportunities for developing new lines of research and investigation. These are not pursued in this work. The next section of the paper, therefore, seeks to work with the dominant scapes of race and class. The discussion draws on work done carried out by a range of researchers, many of whom are colleagues and work that associates and I have been doing.

5. The race scape

The race scape is, of course, dominant within the repertoire of school integration analyses and studies both in South Africa and elsewhere in the world. In many ways, the South African discussion has depended on the discussion as it has unfolded in the United States and to a lesser degree in the United Kingdom. In the United States, the genre has

literally exploded, where it has attracted both the best and the worst theorists of schooling and equality. In South Africa, it has achieved prominence in a field that remains, frustratingly, slim, underresearched, and heavily dependent on the terminology, the typologies, and the modes of analyses of Americans.

Studies that take race explicitly as their focus in South Africa include the work of Lemmer and Squelch, Dekker and Lemmer, a landmark study conducted for the Human Rights Commission by Vally and Dalamba, a forthcoming doctoral study by Tihanyi, a study by Zafar on integrating public schools, and a study published by the Education Policy Unit at the University of Natal arising from a master's thesis by Naidoo. A larger corpus of work that looks more generally at school relations rather than only race is also available in the work of Christie, Gaganakis, Carrim, Soudien, Carrim and Soudien, Chisholm, Dolby, and Soudien and Sayed. Other studies, such as that of Hofmeyr, touch on the subject.[6] There are undoubtedly many more studies and commentaries on the matter. These, however, represent the most significant in the field.

The dominant theoretical approach within this body of work is that of social construction. As is to be expected, no works in the South African literature explicitly approach race from the primordialist perspective (even though those beliefs may exist, and may parade as social constructionism). In relation to social construction, positions vary from the Marxist to those leaning toward what was earlier described as contingency theory.

The consequence of this approach is to understand integration, and its opposite, desegregation, in distinctive kinds of ways. As Naidoo says, integration "requires fundamental changes in . . . personal attitudes and behavior patterns. It requires major changes of deep-seated attitudes and behavior patterns among learners and teachers of minority and majority groups."[7] In this approach, integration is when groups with their cultures come together. The interesting thing for this discussion is not what happens when bodies meet but that which occurs when the cultural auras or cultural universes around people come into contact with each other. People are assumed to be carrying their universes around them as they engage and negotiate with each other.

How they deal with each other, carrying these universes with them, is the interest of those who work with race. Following the work of sociologists and psychologists, integration occurs only

when positive interaction occurs.[8] Again, as suggested above, it is not physical contact that matters but how yielding and open to engagement the universes people are carrying around with them that count. As Naidoo says, "the current ethos of a school, the nature of the interaction and existing patterns and institutional features and policies of school may limit or facilitate such integration."[9] These orientations make possible, essentially, three different kinds of approaches to integration, namely, assimilation, multicultural education, and antiracist education. These approaches, from the perspective of equality and justice, represent a continuum of possibilities in which one can see degrees of accommodation and integration.

The least accommodative and integrative is the assimilationist position. In this position the values, traditions, and customs of the dominant group frame the social and cultural context of the school. Quoting Gillborn, Naidoo explains that key to the assimilationist project are the following presumptions:

- that subordinate groups represent a threat to the standards of the dominant group;
- and that the dominant group is culturally superior.[10]

By contrast, the consequences of assimilationism for subordinate groups are dire. They are expected both to give up their own identities and cultures and, critically, to acknowledge the superiority of the culture and, by implication, the identities of the groups into whose social context they are moving.

In response to the oppressiveness of assimilationism, especially in the United States and the United Kingdom, a more accommodative policy was developed called multiculturalism. Central to multiculturalism was the idea that the school had to accommodate the different cultures brought into the school. Arising in response to the demands of politically subordinate groups, it essentially sought to make the point that all cultures were equally valid and had to be respected in the school context.

Not unexpectedly, multiculturalism drew the ire of critics from both the right and the left. Right-wing critics, such as Hirsch and Ravitch in the United States, argued that it undermined the inclusivist nature of the great American culture and sought to infuse into it inferior standards.[11] Critics on the left saw it, *inter alia,* as a weak, and in the end racist, alternative to real democracy insofar as it paid lip service to the rights of the subordinate, and was also a way of continuing to shore up half-baked and stereotypical notions

of culture. They argue that the so-called respect for other cultures fails to engage with the complex ways in which individuals and groups develop attitudes to one another. While cultures are celebrated, the processes through which those cultures are delineated and then hierarchalized never come into view. They call, therefore, for a perspective that engages directly with processes that make meaning. Theirs, they argue, is an anti-racist program that directly attacks the othering implicit and embedded in dominant culture.

These three approaches are evident and have been used in most studies working in the race scape in South Africa. Interestingly, most studies come to much the same conclusion, namely, that the integration process in South Africa has followed a decidedly assimilationist route.

In what follows, an attempt is made to show how these studies come to this conclusion. Before, however, this is done, a point of clarification about the empirical strength of the data available to us is necessary. As things stand, essentially because the new government has officially (although this policy is inconsistently followed) abolished racial categories, not all schools or provincial authorities collect statistics about their learners in terms of race. Where information is collected in this way, it has happened, one hopes, as a result of individual decisions at schools, hopefully with the consent of parents and learners. Official statistics that reflect the racial demography of schools are not uniformly available. Annual reports of provincial governments, as a result, do not systematically include integration as an aspect of schooling experience. While the reports might make mention of racism and racial incidents at schools, they do not deal with race as a demographic factor. The result of this is that we do not know in a precise and accurate way what has happened in terms of racial integration in South African schools.

One source of empirical data is a research-led body of evidence on learner migration carried out by the Human Sciences Research Council.[12] Another is a set of statistics provided to the Human Rights Commission study.[13] Fleshing out this picture are a number of studies where estimations of integration have been made based on a number of sources.

The Human Sciences Research Council study based on a survey of 120 schools (79 returns) in five provinces showed that enrollments had changed dramatically. In response to the question of the extent to which changes had occurred in their schools, schools reported in the following way:

Table 1: Extent of changes in selected schools in five provinces

	None	Minor	N/A	Moderate	Major
Enrollments have changed in terms of their racial composition	6.8%	16.1%	16.2%	31.2%	29.3%
The schools admission policy has changed to accommodate learners from different residential backgrounds	10.4	11.4	10.8	27.7	39.7
The number of learners coming from other than the school's immediate neighborhood has changed	5.2	19.3	6.1	36.2	33.1

If one accepts that almost 75 percent of schools are former Department of Education and Training (DET) schools and that, as is argued below, very little change would have happened in these schools in terms of demographics, the extent of the changes signaled in the table is considerable. In response to all three questions about the extent of change, as is shown above, more than 60 percent of the respondents acknowledged that either moderate or major changes had taken place in their schools.

The Human Rights Commission study shows that across the former House of Assembly (HOA) schools that served pupils classified white, the House of Representatives (HOR) system that served pupils classified "colored," and the House of Delegates (HOD) system that served pupils classified Indian, all in the Gauteng region, the number of children classified African was significant. The point will be repeated below, but what is clear is the strength of the movement into the former Indian and colored schools.

Table 2: Percentage of Gauteng learners by "race" groups

	Ex-DET "African"				Ex-TED "white"				Ex-HOR "colored"				Ex-HOD "Indian"			
	A	W	C	I	A	W	C	I	A	W	C	I	A	W	C	I
Gr. 1	100	0	0	0	16	75	2	6	9	0	91	0	61	0	22	17
All Grades	100	0	0	0	22	72	3	2	31	0	67	0	45	0	5	50

These statistics need to be read in conjunction with those captured in the table below that show the breakdown of learners by race in the entire system for Gauteng.

Other studies support the trends noted in Gauteng. The first of these is that of the Inclusion and Exclusion Project, which looked at fourteen schools (fictitious names provided) located in the provinces of KwaZulu-Natal, the East-

Table 3: Total percentage of Gauteng learners by "race" groups in public and independent schools

	All Public Schools				Indep. (Subs)				Indep. (Non-subs)				Total			
	A	W	C	I	A	W	C	I	A	W	C	I	A	W	C	I
Gr. 1	77	16	5	2	55	37	2	6	80	18	2	0	76	17	5	2
All Grades	71	21	5	2	57	35	2	5	86	12	1	0	70	22	5	3

ern Cape, and the Western Cape.[14] Based on estimates provided by school principals, the schools' demographic profiles looked as follows:

Table 4: Learner demographic profiles

Name of School	Ex-Dept.	Enrollment (%)					Med. of Instruction	Social Context
		Total	A	W	C	I		
Ruby Primer	HOR	300	60	40			Afrikaans	Poor working class
Lagaan Primary	HOD	800	15		5	80	English	Middle class
Bass Secondary	HOD	1,200	80			20	English	Stable working class
Dover High School	HOD	+/– 900	80			20	English	Middle class
Amazon Secondary	HOD	+/– 1,000	80			20	English	Stable working class
Marula Primary	HOD	520	60		10	20	English	Poor working class
Basildon Primary	DET	414	90				English	Middle class
Divinity Technical	DET	+/– 700	100				English	Stable working class/lower middle class
Bongalethu Secondary	DET	1,001	100				English	Working class poor
Siyafika Secondary	DET	1,020	100				English	Working class poor
Eastdale Primary	HOA	+/– 600	60	40			English	Upper middle class boys
Oasis Senior Primary	HOA	+/– 700	20	10		70	English	Middle class
Valley Primary	HOA	600		90	10		English	Middle class
North City High Afrikaans	HOA	800	0	90	10	0	Afrikaans	Middle class

Interesting about this set of data is how complex schools' population mixes have become. While the national evidence, as argued above, of the nature and the extent of the movement of South African boys and girls across their apartheid divides is not available, the assumption that the strongest movements have occurred from African to white schools is open to question. Based on the evidence, it would appear that the movement from formerly African schools to Indian and colored schools has been as strong as, if not stronger than, that of Africans into formerly white schools. African students have been migrating into Indian and colored schools closest to their homes and convenient for purposes of travel. In the Cape Town area, for example, it is apparent that former Indian and colored schools located on bus and train routes from the townships have been the recipients of considerable numbers of African students. While anecdotal evidence seems to suggest also that there has been a domino effect in this process with colored and Indian students moving further up the transport line to former white schools, the reality seems to be that the demographic profiles of former colored and Indian schools have changed significantly, with some schools' pupil rolls being up to 50 percent African.

This evidence is supported by Naidoo's work in KwaZulu-Natal, which shows that the percentage of children classified African in former Indian schools is more than twice that in the former white schools.

Interesting about the Naidoo study is the suggestion that the levels of integration in smaller towns are lower than those in the metropolitan areas. In both smaller towns and the metropolitan areas, however, evident is the large enrollment of children classified African in former HOD schools.

Table 5: Percentage of African learners in selected KZN schools

Ex-Dept.	School			Area						Med. of Instruction	
	High	Prim	Tot	Dbn	PMB	Newcastle	Port Shep	Rich. Bay	T	Eng	Afrik
Ex-NED	17	10	14	17	10	15	30	10	12	21	<1
Ex-HOD	41	28	35	35	35	38	30	30	35	N/A	
Total Ave. %	29	19	24	26	23	27	30	30	23	28	<1

The Tihanyi study carried out in Cape Town in 2002 yielded the following breakdown for the classes (not the whole school) in which she worked.[15] Again, the names of the schools are not their actual names.

Table 6: Learner profiles and cross-tabulation of student characteristics by school (refers only to participating students, not necessarily the whole school)

		Hoërskool Kaapstad	Main Street H. S.	Mountain Side H.S.	Rhododen-dron H.S.	Steve Biko H. S.	Table Mntn Grammar S.	Acacia H.S.	Sunny Park H.S.	TOTAL
Count		34	30	33	17	40	24	26	43	247
Age (%)	15	-	-	-	-	2.5	8.3	-	-	1.2
	16	5.9	30.0	15.2	41.2	20.0	20.8	38.5	51.2	27.5
	17	85.3	46.7	42.4	41.2	42.5	54.2	61.5	44.2	52.5
	18	8.8	16.7	30.3	17.6	10.0	12.5	-	4.7	12.1
	19	-	3.3	9.1	-	12.5	4.2	-	-	4.0
	20-22	-	3.3	3.1	-	12.5	-	-	-	2.8
	Avg (in years):	17.03	17.03	17.45	16.76	17.55	16.83	16.62	16.53	17.00
Gender (%)	Female	41.2	46.7	66.7	5.9	42.5	29.2	50.0	65.1	47.0
	Male	58.8	53.3	33.3	94.6	57.5	70.8	50.0	34.9	53.0
Race (%)	Black	5.9	3.3	45.5	11.8	100.00	8.7	-	2.3	25.6
	"Coloured"	5.9	96.7	48.5	88.2	-	39.1	42.3	65.1	44.7
	Indian	-	-	3.0	-	-	13.0	11.5	-	2.8
	White	88.2	-	-	-	-	34.8	42.3	32.6	25.6
	Other	-	-	-	-	-	4.3	-	-	0.4
	Mix	-	-	-	-	-	-	-	-	0.4
	Didn't mark[1]	-	-	-	-	-	-	3.8	-	0.4
Mother tongue	Afrikaans	94.1	3.3	45.5	-	2.5	4.2	-	-	20.3
	English	-	60.0	6.1	50.0	-	91.7	96.2	83.7	45.1
	Xhosa	-	3.3	33.3	6.3	95.0	-	-	-	20.7
	Other	-	-	-	-	-	4.2	-	2.3	0.8
	English & Xhosa	-	-	3.0	-	2.5	-	-	-	0.8
	Afrikaans & English	2.9	33.3	9.1	43.8	-	-	3.8	14.0	11.4
	English & Tswana	-	-	3.0	-	-	-	-	-	0.4
	Afrikaans & Tswana	2.9	-	-	-	-	-	-	-	0.4

Hofmeyr's study in the Carletonville area, carried out in the last three years, shows evidence of large movements from former DET schools.[17] Interesting about this study, and also suggested in the Soudien and Sayed and Tihanyi studies, is that former white schools have not uniformly become majority black.[18] While this is certainly not the basis for making definitive statements, in both studies, it appeared that English-speaking former House of Assembly schools are more popular among African learners and parents.

The actual patterns of migration as suggested by these studies are important to track and to make sense of. Clearly, learners and their families are making important decisions about what they perceive to be in their best interests. Noteworthy about these statistics, briefly, are the following:

- Paramount is noting the flight of students out of former African schools. As all the statistics in this article show, there has been no movement whatsoever of children classified colored, white, or Indian into former African schools. The schools that are integrating, therefore, are all the non-former DET schools.
- Children classified African constitute a larger proportion of the total school population in former Indian and colored schools than in former white schools.
- Children classified African, it would appear, are not entering Afrikaans-speaking former white schools in significant numbers.

Why these particular patterns are arising deserves more detailed study than is possible here. Briefly, however, it is clear that the flight of African children out of the former DET system has much to do with the recent history of turbulence within that system and the perception, as many commentators suggest, of higher standards in the other systems.[19] This is especially the case with regard to the former House of Delegates schools. While former white schools are regarded in the same light, the perception that they are expensive has limited the movement of students into them. Following these comments, it is true to say then that particular kinds of schools are not attracting large numbers of previously disqualified learners. Why this is so undoubtedly has to do with issues of physical, financial, and linguistic access. These issues were explored in the previously cited Soudien and Sayed study and will not be pursued here.

One further point to note before looking at the outcomes of the studies is, as the Soudien and Sayed study points out, the degree to which the schools retain the racial profiles of their former authorities as far as teachers are concerned. Former Indian schools remain largely Indian with respect to their teachers, former white schools, largely white; and former colored, largely colored.

Having outlined the patterns of movement in the system, it is now necessary, on the basis of the studies that have been done, to make some comments about what is happening in these schools.

In none of the studies is there evidence of what the literature calls the anti-racist school. Instead, all the studies referred to concur, pre-eminent in the schools of the country is a distinct tendency toward assimilationism. This is even the case in the examples of the politically conscious schools that my own work has looked at.[20] This is an important point around which to pause, because it talks to the issue of those individual teachers and schools in the system who deliberately and consciously work for and project themselves as subverters of the dominant order.[21] There remains a strong tradition in the country of individuals who have valiantly sought to make what they teach the subject of their own and their pupils' interrogation. In many instances, however, these individuals, unless they were supported by organizations, such as was the case with the Teachers League of South Africa, burned themselves out in their efforts.[22] The schools that presented themselves as radical schools were also, and still are, complex and contradictory places. While these schools promote a strong non-racial ethos, and present themselves as "schools for *people*" and not "schools for coloreds" or "schools for Africans," they do not have the analytic sophistication to engage with issues of identity. Much of their engagement with race is polemical rather than substantial and interrogative. They end up, as a result, working with notions of identity that young people are simply required to take on. Following this, Naidoo says explicitly that all the schools in his study followed an assimilationist approach.[23] The Vally and Dalamba study comes to a similar conclusion: "the predominant trend in school desegregation is the assimilationist approach, or as one student emphasized: 'I feel that if pupils from other races want to come to our school then they must adjust to the culture and norms of the school.'"[24]

Vally and Dalamba suggest that

some schools have begun to espouse a multicultural perspective. Providing evidence for this statement, they quote teachers in schools who make comments such as the following:

> We are fortunate to have a rich diversity of cultures in our school. We respect and recognize the different cultures and ethnic groups and promote tolerance and understanding amongst them. In the beginning we had problems, mainly due to preconceived perceptions and judgments amongst different cultures, a general insecurity in the community and a lack of experience of how to deal with problems.[25]

Testimony like this is certainly not in short supply in all the studies, and, clearly, it is important to recognize that multiculturalism, as described above, enjoys a great deal of respect in schools and might even be practiced. Tihanyi, for example, chose to place two of her schools in a category she referred to as "Deracialized Multiculturalism." She comments (and I quote at length):

> two former Model C schools and the private school I visited (Acacia and Main Street Highs and Table Mountain Grammar School) use the language of multiculturalism and inclusivity to describe the process of racial integration:
>
> > it is important that everyone celebrates . . . diversity and be proud of being "Colored" or black, and these are the things from my culture that I'm proud of and not feel inferior to any culture in any way, and not sort of think that this one is better than the other. It isn't that at all. . . . they're different, and one should be proud of the differences (Personal interview with the principal of Table Mountain Grammar School).

Tihanyi goes on to say:

> My first impressions, indeed, validate this statement: I saw faces of many colors among the well-dressed and seemingly cheerful students, who, as they chatted and laughed with one another, gave a picture of relaxed race relations. Unlike Mountain Side, which had no whites, in these schools white students are the majority, usually followed by a sizeable group of "Colored," and a few black students.
>
> Most white students say that race

> relations are good at their school—even that race does not "exist." Some students of color share this opinion, while others notice subtle signs of what they see as racial discrimination on the part of teachers and fellow students. When it comes to recess, a look at the school yard showed me the clear lines of separation that keep students in racially divided groups. However, students insist that this has nothing to do with race; it is cultural, they say, people who share the same culture feel comfortable with one another.[26]

Without denying the existence of these forms of address to race in many schools, I want to suggest that many forms of multiculturalism are in effect variations of assimilationism. They are rooted in the presumption that the dominant culture is an unquestionable good. The incoming children might be allowed to perform in their so-called native guises for special occasions, but they operate under the protection of the dominant culture. A principal in the Vally and Dalamba study makes the point very clear: "I wish South Africa could visit us and see how things should be done. . . . We are a veritable United Nations. You have taught us about your cultures. . . . we thank you that you have lead [*sic*] us unscathed into the new South Africa."[27]

In closing my discussion of this scape, I want to suggest that assimilationism is overwhelmingly hegemonic as a practice of integration in schools. In attempting to develop a framework for understanding schools under this rubric, I wish to suggest that we begin to identify the different kinds of assimilationism that might present themselves in schools. Toward such a typology, we can identify assimilationism as it plays itself out in a variety of ways in the complex environment of former Indian and colored schools, in English-speaking former white schools that have remained largely white, in English-speaking schools that have become majority black schools, and in Afrikaans-speaking former white schools. Former African schools, because they have not experienced the movement of new constituencies into their classrooms, racial, of course, as this reality might be, clearly fall outside the scope of the discussion in this scape.

As the work of Tihanyi, my own 1996 work on so-called African children in a so-called colored school, the work of Naidoo, Vally and Dalamba's study, and the Soudien and Sayed survey suggest, there is a deep resentment pre-

sent in many schools with respect to the so-called newcomers. This manifests itself in the ways children play, formal ceremony at school, and pedagogical practice and amounts to what I call *aggressive assimilationism*. This kind of assimilationism is brusque, characterized by high degrees of intolerance and often violence.

Less aggressive are the forms of assimilationism evident in schools with political histories, such as former Indian and colored schools, where issues of race are seldom addressed. This form of assimilationism I refer to as *assimilationism by stealth*. My own 1998 study of a high-profile former colored school with a strong political pedigree describes the particular conceits that circulate in schools such as these, where the incoming so-called African children are recruited into new "non-racial" identities that have never been opened up to inspection.[28]

The final form of assimilationism is most evident in former white English-speaking schools and is what I call *benign assimilationism*. This form of assimilationism looks like multiculturalism because there is an attempt to acknowledge the cultural diversity of the school's learners. The schools in this category deliberately have cultural evenings, unlike the schools in the two previous categories, and present themselves as self-consciously inclusive. I am suggesting here, however, that the intent of this policy, insofar as it leaves the dominant relationships in the school untouched, is an assimilationist one.

6. The "class" scape

Untangling race from class in the South African context is clearly undesirable. There are, however, distinct ways in which schools behave that can be perceived to be and understood to be the actions of "class" agents rather than simply those of race agents.

Few studies on school integration (or desegregation), or school as a site for social cohesion, approach the matter from an explicitly class perspective. This is essentially because class has been used in education, following the work of theorists such as Bowles and Gintis, for making sense of the school as a medium for social differentiation.[29] In this explanation, school allocates people to specific class positions. It is a sorting agency rather than an integrative agency. While this use of class makes sense, there are critical ways in which perspectives based on class underestimate how class structures and class influences, as both an "objective" force (in determin-

ing one's objective social position as a either a capitalist or a worker) and an ideological force, work to maintain, in an integrating way, the cohesion of society. The work of Althusser is crucial here. He tried to explain how ideology worked in society through what he called "ideological state apparatuses" that transmitted ruling class ideology and maintained the subject class in its subordinate position.[30]

I want to argue, moving from this point of departure, that using class provides an important framework for understanding how integration is being conceptualized and effected in South Africa. Central to the race scape, I argued above, was the project of assimilationism into the cultural universe of the dominant order. What the class scape offers is a way of understanding how domination is being *rearticulated* in an extra-race way around integration. Integration in this approach is decidedly not *unity* and *social harmony*. It is not the assertion of the cultural values of the dominant group that is important to understand, but the modalities of the dominant group as it seeks to maintain its hold on the social order. For this order to survive, it is important that the dominant group wins people over to the class project. Critical, therefore, is its attempt to construct a social consensus in which classes occupy and *accept* their places. S*ocial cohesion* is important. Based on the dominance of the socially privileged or the elite class, the social objective of the class project is the shaping and reconfiguration of society. This dominance, however, is not that of the so-called whites, but a new elite comprising the core of the old white elite and selected elements from among the former subordinate black groups. School in this project is about nurturing this class and its interests, in the face of threats to the hegemony of the class.

In the racial scape, it was possible to show the dimensions of the integration process among different "racial" groups. How integration manifests itself in terms of class is less obvious. What one can say, however, is that a distinct realignment of socioeconomic groups is taking place in the schools, with the large-scale exodus of middle-class black parents and their children out of the former DET and HOD and HOR systems into the former white systems. In the Soudien and Sayed study, evidence suggested that there was a domino-effect playing itself out within the school system. When the apartheid system began breaking down, the flow of children within the system took place in fairly predictable ways. Previously excluded African, colored, and Indian

children moved in large numbers into the formerly white schools. African children began to move into formerly Indian and colored schools. For African schools, significantly, this amounted to a flight of the more economically stable elements within their midst, leaving those schools largely with the poorest members of the community. This amounts to class following its own interests. Naidoo's work provides support for this line of thinking. He suggests that the process of integration followed distinct socioeconomic paths in KwaZulu-Natal in both ex-NED and ex-HOD schools.

Important to understand in these explanations are the complex ways in which class supplants and displaces race as a means of determining the social character of schools. The relatively low numbers of black students entering elite schools, and the high numbers entering poor schools, reflect, one might argue, the objective and ideological situations in which the different classes find themselves. It is not possible, for reasons that are explored below, for poorer children to move into wealthier schools in large numbers, even if the system is supposed to admit any child if a place exists for him or her. Many things happen in wealthy schools that conspire to keep out the poor child. What this suggests is the bedding down of new class processes or new social alignments within the schooling system that are producing new and distinctive class forms. It is out of these that one can say that there is a reconstituting of the class.

How this process is happening is important to understand. It happens, I want to suggest, around what Marxists call the "objective" forces that are active in society and around the ideological mechanisms that the middle class has at its disposal.

In terms of objective forces, the social and economic resources families have access to is a major structural determinant in where they send their children. While it is true that the flight from township schools has a great deal to do with the search for better education,[31] it also has to do with costs and with what parents know. Black parents were choosing to send their children away from the township, but invariably they sent their children to modest former white, colored, and Indian schools. School fees were a major determinant in guiding parents' decisions. In all of the schools in the Soudien and Sayed study, finances proved to be either exclusionary or inhibitory. A whole range of filtering mechanism were used in these schools. Before children were admitted,

even in the elite black schools, parents were often required to pay a deposit of 50 percent of the annual fee. Where parents were tardy in paying, a variety of shaming devices were used. In places, school reports were withheld until fees were paid. Aside from these mechanisms, often fees were pitched at extremely high levels. In the case of Eastdale, parents had to "be able to afford it" in order for their young ones to be part of the school.

Parents also, interestingly, depend a great deal on their own children for making these decisions.[32] Their children would have heard about the "class" devices at schools and would have urged them not risk the kinds of embarrassments that went with being poor in a more wealthy school. These factors do not operate for middle-class parents, by contrast. Middle-class parents spare no costs in the decisions they make. As things currently stand, as the Vally and Dalamba statistics show, people classified African have become the largest constituency in both subsidized and non-subsidized independent schools in the Gauteng province. They constitute 57 percent of the total in subsidized independents and 86 percent in non-subsidized independents. While there may be a flight of people classified white into the independent school sector, one could similarly say that there has been a rapid increase of black middle-class numbers in non-DET schools. This increase has, of course, been facilitated by the abolition of the Group Areas Act. Middle-class former white areas have experienced significant increases in inflows of black people.[33] In the case of at least one private school in the Johannesburg area, the governors actively encouraged black parents to buy property in the area of the school. In all the former African schools, virtually every single teacher had his or her children in a former white or colored and Indian school. At the Bongalethu School in Mdantsane, Eastern Cape, as reported by Soudien and Sayed, teachers spoke explicitly to the "class" decisions they had made for their children. They could not be expected, they argued, to keep their children in the conditions that existed in townships.

The drift toward a new middle-class alignment has also been facilitated by the direction being taken in the policy domain. Central in this large body of legislation and policy directives is the South African Schools Act (SASA), which was passed in 1996. By the time the new government came into power in 1994, governance infrastructures in black schools had all but collapsed. As part of the process of rebuilding the

school system, the government passed the SASA as an attempt to give parents the responsibility of managing the schools their children attend and of officially legitimating parental participation in the life of the school. The act required that schools establish School Governing Bodies (SGBs), which were to be composed of parents, teachers, students (in the case of secondary schools), and members of the school support staff. This structure was required to develop school policy across a whole host of areas and to ensure that the school managers would carry out this policy. Achieving this, however, was compromised by the way in which the new legislation framed identities in the schools, particularly parental identities. The act projected parental identity around a restrictive middle-class notion of who parents were and how they functioned. Central to this notion were particular understandings of how time is used, what domestic resources are available for the schooling process, how much cultural capital parents can draw on in relating to school, and so on. The upshot of the practice, as a result, was that in black schools, SGBs continued to be dominated by their principals or their teachers. In formerly white schools, middle-class white parents dominated.

This approach of the state was complemented by practices that were emerging in schools, especially in the governance of schools. In the Soudien and Sayed study, many instances were documented where the schools not only retained but nurtured practices in schools that effectively sidelined poorer people. One school in that study, called Valley Primary in Cape Town, maintained its middle-class character through the invocation of gender and the deployment of gender identities within the school. These allowed the school to draw on existent and strongly encoded social structures within the school, many of which were not as familiar to and accessible to parents who were not white and middle-class. For example, the Mother Program and the Catering Committee were exclusively run by women. This assumed that most mothers who had children at the school were not working or should not be working. Projecting these approaches as "family oriented" allowed the school to assimilate newer parents, and even non-middle-class parents, into its social project. Poorer parents thus had access and rights of way in the school, but decidedly so on the school's terms.

The situation at Eastdale College, an elite Eastern Cape school in the Soudien and Sayed study, was similar. The

school had effectively assimilated parents into a middle-class settlement based on a particular image of what the school stood for. This was particularly clear in the consistent and seamless representations of parents of their "responsible parent" identities. At a former white primary Durban school in the same study, parents were convinced by the school that they were *buying* into a way of doing things that was in their children's interests. The school convinced them that the package—effectively a *commodity*—it was offering was what their children needed to succeed in the world of work.

What this discussion suggests is that a particular kind of class settlement is taking place in schools that is being actively driven by the middle class. Conscious of its position within the new South Africa, this class is constructing a new concept of integration and even a new concept of its identity around the notion of "good schooling." Largely led by the old white middle class, this class operates on the basis of "buy-in" of the new middle classes into the new settlement. This "buy-in" comes with the acquiescence of the new elite. Soudien and Sayed describe the situation at a former middle-class white primary school in Durban called Oasis, where the settlement pivoted on the maintenance of "standards": "At Oasis in 1991, the school accepted the first persons of color, 22 'Indian' and three African learners. These learners were carefully selected. 'We took the cream of the crop' said a teacher."[34] Though parents' and learners' racial identities and religious and cultural backgrounds were different, their socioeconomic status was very much the same. There was among parents, an agreement about what constituted "good" education and where good education could be obtained. For the class, the priority would be to preserve the character and traditions of the good schools for the maintenance of what they perceived to be quality.

Important also about this new settlement is the way in which the position of the poor and their schools is fixed. Given the stipulations of the South African Schools Act, particularly its discursive constructions of the ideal parent, and the ways in which the wealthy have erected barriers to entry for the disadvantaged, poor schools have, by and large, accepted the *modus operandi* of the new system. Driven, therefore, as the new settlement has been by the new and enlarged middle class, the poor have, one could suggest, also bought into the way in which the system operates.

7. Other scapes

Clearly, as this chapter has sought to argue, one can delineate difference in a number of other ways in South Africa. The most immediate of these are gender, language, and religion, but include also region and geographical location (urban and rural) and a number of other less obvious ways. Important about these are the complex ways in which they determine and configure access to rights and opportunities. Clear examples that demonstrate these realities are rural schools and boys' or girls' schools. Less clear but equally, if not more, powerful is the medium of instruction of a school. Medium of instruction, particularly English, defines, for large numbers of children in South Africa, the degree to which, epistemologically, they have access to and understand what they are being taught. For many, because their English-language competence is so poor, exclusion is a structural experience.

8. Conclusion

I have tried to argue in this essay that we are constrained by the dominant languages of description that exist within our sociological repertoires. These dominant languages predefine what can and cannot be seen. The argument of this contribution, in relation to this, is that there exists multiple ways in which society experiences difference, but that within these certain ways are privileged. As they are elevated in importance, they become normative and so come to condition how social differentiation in everyday discourse is approached. Race, as a result, becomes the almost unchallenged lens through which South African difference is understood. By using "scapes," this essay has sought to work with a recognition of this form of discoursing and to point out some of its limitations.

Reality, however, does not operate in scapes. It exists out there in a swirl of events and phenomena that language seeks to tame or to call to order. Language, in this sense, is a device that seeks to approximate the "facts" of experience. Recognizing this, the challenge is how we might begin to talk to encompass, as efficaciously as we can, the complexity of this swirl that surrounds us and that is who we are.

In attempting to make a comment about the social reconstruction process taking place in South African education, it is necessary to say that while our languages will always be inadequate and while we might demur at the reductive

and essentializing discourses of race, class, and gender, we cannot but acknowledge the large role these forces play in our everyday lives. Displace complexity as these discourses do, there are ways in which we can see patterns of what one might call *contingency* emerging. One can argue that race, class, gender, and language in South Africa are implicated in a complex of signs that are part of a process of profound social realignment in the country. This realignment is not simply a racial or a class or a gender realignment but is pivoted on the contingencies of the new post-apartheid landscape in which dominance is reinterpreting itself and is being reinterpreted. These contingencies are forcing groups and individuals to reevaluate and reposition themselves in relation to the range of social differences that surround them and in relation to the problem of having to work out new positions of power and authority. Emerging out of this is a reconfiguration and in some instances a reworking of hegemonic practices.

Critical in working through the scapes is recognizing how much dominant practices in each of them have essentially remained as they were and how apposite the notion of assimilationism is, whether one is talking of race, class, language, or gender, for understanding the social processes under way in each. The story of education in the new South Africa is, in these terms, essentially a story of the reconfiguration of dominance in relation to race; class, gender, and language dominance. Dominant practices have adjusted to the contingencies, but the presumptions upon which they have been premised have remained unchanged. The existing ways in which things are done are "virtuous" in and of themselves. Dominant "racial" groups, dominant classes, dominant genders, and dominant languages have had to make space for new constituencies, but they have done so on their own terms. Important in understanding the contingencies here are recognizing the political dynamics, the strategic occupation of space—agency—by groups, particularly previously excluded groups, and the strategic yielding of space by others. The continuation of domination is always a contingent moment.

Using this argument, "integration" in education in South Africa can be argued to be a process of accommodation in which subordinate groups or elements of subordinate groups have been recruited or have promoted themselves into the hegemonic social, cultural, and economic regime at the cost of subordinate ways of being, speaking, and conducting their everyday lives.

NOTES

1 This article will appear in Linda Chisholm (ed), *Changing Class: Education and Social Change in Post-Apartheid South Africa* (HSRC Pretoria & Zed Press London, 2004).

2 E.H. Carr, *What is History?* New York: Alfred Knopf (1964).

3 Harold Wolpe, *Race, Class and the Apartheid State* Paris: UNESCO (1988).

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New Solutions to Old Problems: Models of Integration from the United States[1]

by Jack Greenberg

Over the years, the United States has witnessed a return to increasing racial segregation in America's schools. This "re-segregation" presents new challenges to civil rights advocates who are now facing greater resistance from the courts in implementing race-based integration policies. Educationalists, governments, and school districts have sought to find ways to integrate schools in the absence of court-ordered desegregation. This article addresses some of these innovative models and explores the benefits and detriments of these integration programs. In examining experiences with magnet schools, charter schools, vouchers, and other voluntary desegregation programs, the article provides a useful means of determining which integration program might be useful in certain contexts. The author also proposes recommendations for the amendment of current laws in order to better address re-segregation in the United States.

1. Introduction: America's return to segregation

Brown v. Board of Education required the dismantling of dual systems and led to significant desegregation throughout much of the American South. Since the decision, however, courts have revisited the question of viable methods of desegregation, and they have consistently diminished the strength of *Brown* and limited the situations in which desegregation is required. Over the years, the United States has witnessed the return of highly segregated schools. To the extent that suburbs have become whiter and cities have become blacker, desegregation has been deemed less and less feasible. In metropolitan areas, where housing segregation creates school segregation, and there are separate city and suburban school districts, an increasing number of black children go to school only with other black children, or with few white children; white children go to school mainly with other white children.

On Dr. Martin Luther King Jr.'s birthday in February 2004, the Harvard University Civil Rights Project described the decrease in integration,

summarized and excerpted below:[2]

- In many districts where court-ordered desegregation ended in the past decade, there has been a major increase in segregation. The courts assumed that the forces that produced segregation and inequality had been cured. They have not been.
- Among the four districts included in the original Brown decision . . . three . . . show considerable long-term success in realizing desegregated education.
- Rural and small-town school districts are, on average, the nation's most integrated for both African-Americans and Latinos. Central cities of large metropolitan areas are the epicenter of segregation; segregation is also severe in smaller central cities and in the suburban rings of large metros.
- There has been a substantial slippage toward segregation in most of the states that were highly desegregated in 1991.
- The vast majority of intensely segregated minority schools face conditions of concentrated poverty, powerfully related to unequal educational opportunity.

1.1 Why desegregate?

Should there be concern about re-segregation? Several studies over the years have unanimously concluded that students in integrated schools perform better academically than those in all-black or nearly all-black schools. The earliest study, the Coleman Report,[3] identified the racial composition of schools, after the influence of a child's home, as among the most important factors in determining quality of education. The period of greatest increase in black standardized test scores occurred shortly after school integration took an upward leap following the *Alexander* case in 1969. Studies of school integration across Texas in recent years have established that "schools with higher concentrations of minority students lead to lower achievement for Black students with minimal effects on whites or Hispanics."[4] John Kain, a scholar who has studied the effects of integration on minority education, has advocated various measures to promote integration, including[5]

> more aggressive policies promoting housing desegregation as opposed to expensive compensatory strategies that left ghettos unaffected. Empirical analysis of segregation

differences across metropolitan areas . . . finds direct impacts on educational attainment and other outcomes. More recently, the outcomes of the Gautreaux Program . . . and the Moving to Opportunity experiments . . . have reinforced the possibility of favorable outcomes from housing dispersal programs. Policies that support the continued suburbanization of black Americans and the slow, but steady decline in black-white segregation that has marked the last two decades . . . would, by the results of this paper, support improved schooling outcomes—particularly for higher achieving black students.

Other studies uniformly come to similar conclusions. Not only do integrated schools provide academic settings in which black students do better, they introduce pupils to a wider variety of relationships through which they improve their opportunities to enter majority networks and learn how to deal with the majority culture. Nevertheless, integration has been declining sharply in recent years.

Erika Frankenberg and Chungmei Lee, in a 2002 study of school desegregation, wrote: "The racial trend in the school districts studied is substantial and clear: *virtually all* school districts analyzed are showing lower levels of inter-racial exposure since 1986, suggesting a trend towards resegregation, and in some districts, these declines are sharp. As courts across the country end long-running desegregation plans and, in some states, have forbidden the use of any racially-conscious student assignment plans, the last 10–15 years have seen a steady unraveling of almost 25 years worth of increased integration."[6]

2. What to do where it is difficult or impossible to integrate

Assigning children on the basis of race for the purpose of integration has become controversial, both legally and politically. Therefore, over the years, educationalists, governments, and school districts have sought to find ways to integrate schools in the absence of court-ordered desegregation. This section addresses some of these models and explores the benefits and detriments of these integration programs. Most of the techniques of educational administration discussed below, other than magnet schools, are relatively new. While there has been considerable experience with magnet schools, other pro-

grams have been implemented on a more limited scale and therefore can not yet be evaluated as broadly.

2.1 METCO: Voluntary cross-district integration

The Metropolitan Council for Education Opportunity (METCO) was founded in 1966 by parents and activists who were seeking a remedy for the poor conditions of Boston's segregated, predominantly black schools. METCO is a non-government-initiated program that buses black children from urban, predominantly black schools to suburban schools. Although METCO helped to promote racial balance in Boston's schools, most parents who enrolled their children in the program were searching for a better education for their children, not necessarily racial integration. But from the beginning, METCO clearly achieved both goals: for black students from the urban schools, METCO provided equal educational opportunities; for suburban schools, it allowed for a level of racial diversity that had not been seen prior to the program.[7] METCO has now been in existence for more than thirty years. More than 4,300 students have graduated from the program. Technically, it has no admissions standards, but some districts do use informal standards that students must meet to remain in their district or will counsel students out of the program for disciplinary or other problems.[8] METCO is now funded almost entirely by the state. Studies of METCO have documented that children who initially had a negative experience viewed the program positively in the end; now that they are adults, as they look back on the program, they say they would enroll their own children. In Boston, it is not uncommon for black families to put their children on the METCO waiting list when they are born.

Black children who over a generation have participated in METCO perform at a higher level than if they had attended all-black schools in the city. But more than test scores improve. In describing Hartford's Project Concern, a program similar to METCO, Susan Eaton has stated that "blacks who participated . . . are more likely than their segregated counterparts to have high aspirations, consistent career planning, and career patterns that would prepare them for their desired occupations."[9] In addition, she stated that "Blacks who had attended desegregated schools were more likely than blacks from segregated schools to have a racially mixed social network of friends and acquaintances

and to live in racially mixed neighborhoods . . . [and] were more likely to enroll in college and work in occupations traditionally dominated by whites." This is consistent with other studies of integrated education.[10]

It is not, as sometimes is said disparagingly, that a black child has to sit next to a white child in order to learn. Rather, given the coincidence of race and poverty, children who come from homes with limited opportunity and aspirations see examples to emulate: other children who have been encouraged to learn and to apply themselves academically. R. L. Crain and Mahard, two other scholars who have studied what difference integration makes, have written that black children with an integrated education acquire jobs about which they may not have known, are informed about whether to pursue higher education and where, learn how to navigate around society, and are more versatile in social and economic relationships than if they had been without integrated education.

2.2 Equal or adequate school funding as a substitute for integration

When school desegregation ran into dead ends, many advocates for equal education for minorities returned to the separate-but-equal formula. In the first such case, the Supreme Court of California held that the equal protection clause of the Fourteenth Amendment guarantees equal funding of all schools.[11] However, the U.S. Supreme Court rejected the claim in a 5–4 decision in the case of *San Antonio Independent School District v. Rodriguez*.[12]

The Court decided that (1) wealth is not a "suspect class" as race is, and (2) education is not a "fundamental right." It also observed that the amount of money spent on education is not necessarily related to its quality, and that poor children sometimes live in rich districts. In addition, the Court objected to equal funding on the ground that the Court was too remote from local education and unfamiliar with what might be the consequences of its decisions in such cases.

The Supreme Court of California responded by reiterating its earlier decision but based it on the California constitution. The U.S. Supreme Court has no power to review a state court's implementation of its own constitution, and the outcome remained the same as the Supreme Court of California originally had decided it, although under a different constitutional rubric. Other state courts have come to a similar result by interpreting equal protection

or education clauses of their state constitutions. Many education clauses make no reference to equality but require that the state establish "thorough" and "efficient" systems of education or a "sound basic education." Sometimes they employ other, similar formulas. The state courts have widely engaged in creative interpretations of their own constitutions in coming to their conclusions in this area. Nearly twenty state supreme courts have read their constitutions to require equal or adequate funding. The most recent decision to address equal funding under state constitutional law has been the decision of the New York Court of Appeals in *Campaign for Fiscal Equity v. New York*.[13] Chief Judge Kaye wrote for the Court:

> [A] sound basic education [which the state constitution guarantees] back in 1894, when the Education Article was added, may well have consisted of an eighth or ninth grade education, which we unanimously reject. The definition of a sound basic education must serve the future as well as the case now before us. Finally, the remedy is hardly extraordinary or unprecedented. It is, rather, an effort to learn from our national experience and fashion an outcome that will address the constitutional violation instead of inviting decades of litigation. A case in point is the experience of our neighbor, the New Jersey Supreme Court, which in its landmark education decision 30 years ago simply specified the constitutional deficiencies, beginning more than a dozen trips to the Court . . . a process that led over time to more focused directives by that court. . . . In other jurisdictions, the process has generated considerably less litigation, possibly because courts there initially offered more detailed remedial directions, as we do. . . .

Nevertheless, school financing litigation has generally not provided equal or even adequate funding. It has, however, resulted in increased appropriations for black schools. James Ryan and Michael Heise have summarized the experience:[14]

> [T]he most remarkable feature of school finance litigation is that even successful challenges have not led to equal funding, nor have any of the suits done much to alter the basic structure of school finance schemes. . . .
>
> The controversy stems from the fact that equalizing funding by controlling local spending requires a cap

on local spending or the recapturing of some locally raised revenues. . . . [I]n places like Texas, Kansas, and Vermont, recapture plans—dubbed "Robin Hood" schemes—have provoked continued and intense political squabbling, public protests, and litigation.

. . . [A]lmost no school finance systems—even those reformed in response to a court order—limit the amount that local districts can raise. Similarly very few rely on explicit recapture provisions. States typically respond to court orders by increasing state aid to poorer districts. States usually hold aid to wealthier districts constant or increase it at a slower rate than aid to poorer districts, but wealthier districts are typically allowed to use their own revenues to spend more than the poorer districts can afford. Providing more state aid to poorer districts while holding such aid to wealthier districts constant is, of course, redistributive, and it is often controversial.

Instead of seeking equal funding or equal access to resources, most school finance suits now seek sufficient resources to fund an adequate education. The progression of school finance suits has thus paralleled the progression of desegregation suits, in that both reforms have preserved the boundaries between urban and suburban districts. Indeed, the parallel between adequacy suits and *Milliken II* relief is quite striking. Both channel resources to poor, often urban, districts while protecting the independence and sanctity of wealthy, usually suburban, districts.

Nevertheless, as important as equal funding is to schools with large minority student bodies, funding alone has not provided the answer to deficient inner-city education. Kansas City provides a striking example. The city spent $1.5 million on all black schools, but it paid no attention to teaching, administration, or the environment in which the schools were located. As a result, academic performance following the infusion of money was no better than before.

Neither integration nor increased funding needs to be an exclusive approach to equalizing the educational experience. In a recent case, *Sheff v. O'Neill,*[15] the court held that state law mandates equal and quality education for all pupils, and it ordered a combination of integration and equal funding for minority residents of Hartford, Connecticut. A January 2003 settlement following this case required the state to

spend $245 million over four years to improve education and establish eight new magnet schools in Hartford. It is too soon to judge what the decree will mean as a practical matter. However, this case demonstrates not only the power of judicial decrees, but also how limited they must be. They must proceed district by district and state by state, unless districts not under court order themselves decide to abide by a ruling elsewhere. Experience with equal funding cases has been that legislatures appropriate funds in compliance with decrees only grudgingly and after very lengthy enforcement proceedings, in some cases over decades.

3. Innovative techniques for promoting educational equality

The combination of housing segregation and neighborhood assignment to schools presents a severe obstacle to integration. Desegregation cannot be very meaningful where there are no children of other races, or very few, with whom to integrate. Inter-district integration cannot be required in the absence of inter-district violation, which can be demonstrated only rarely. Therefore, proponents of equal education for African-Americans have looked at other alternatives. Among the proposals have been: voluntary inter-district integration, magnet schools, charter schools, vouchers, and the assignment of children on the basis of their economic status. One recent proposal bases assignments on test scores so that all schools in a community will have a mix of children at all levels of scoring.

Citizens and groups involved in social, political, and educational reform activities have created most of these assignment systems. As citizen-conceived and -promoted programs, they have an advantage over litigation in that they are not intrusive and not so provocative. On the other hand, they are less likely to be enforceable. *Brown v. Board of Education* culminated in court-ordered relief because the taboo on non-racial school attendance could not have been overcome any other way. Certainly, in 1954 blacks had no political power to achieve educational equality (in terms of facilities) or integration. They were unable to vote in the segregationist South. Local, state, and national legislative bodies, as well as mayors, governors, and the executive branch of the national government, were white and responded to white constituencies. Indeed, it was in the politicians' own narrow interest to keep constituencies,

from which they came, all white.

The only possible approach to educational segregation and discrimination until *Brown* was a move to force change via the courts, which took the first step in breaking all-white hegemony. *Brown*'s success unavoidably incurred the wrath of a large and influential part of the white population that faced loss of power. In the early decades following *Brown,* hardly any desegregation was worked out cooperatively between blacks and whites. The battle was not fundamentally over education; it was over power. Now that the political configuration of the nation has changed, and blacks and whites cannot be kept from going to school together, the challenge is to overcome the obstacles that remain in the path of non-segregated schooling. Various means have been used and others proposed.

3.1 Magnet schools

Magnet schools are a desegregation device—sometimes voluntary, sometimes court-ordered. They offer special curricula in, for example, mathematics, science, art, music, languages, and vocational, technological, and other subjects not available in the general curriculum of public schools. As their name implies, they attract (in a manner likened to a magnet) and enroll students from all over a school district, unconstrained by ordinary assignment schemes, such as limits on admission that bar children from outside certain neighborhoods. Because magnets are often at a considerable distance from students' homes, they have the potential to promote integration by attracting and accepting blacks and whites from all over a school district.

Integration at a magnet school would be impaired if so many blacks, or whites, chose to attend it that there would be no room for members of the other group. Where that has occurred, magnets sometimes have limited enrollment by race in order to maintain integration. In that situation, families whose children have been excluded sometimes have objected that the quota is unconstitutional. Where the magnet has been a remedial device for *de jure* segregation, courts have approved the quota, just as the Supreme Court approved quotas in schools to which students were bused in *Swann,* the school case in Charlotte, North Carolina. Where the quota has been employed not as a remedy for *de jure* discrimination but to maintain racial balance, lower courts generally, but not always, have struck it down.[16]

In the latest phase of *Swann,* whites had been rejected in order to keep space

available for blacks in an integrated magnet school. The Fourth Circuit (by a closely divided court) upheld the quota as a remedy during a time when the system had been desegregated *de jure*. But it disapproved the quota for a subsequent period after which the district had become "unitary."[17] Magnet school quotas designed to maintain integration divide pretty much along these lines. It may be that since the Supreme Court has upheld affirmative action in higher education in the University of Michigan Law School case (see below) as a means of promoting diversity, the same principles may apply to lower levels of schooling. Perhaps also, affirmative action at lower magnet schools will be upheld on the basis of the strong suggestion in Justice Sandra O'Connor's opinion that it is a means of creating a substantial black middle class. As of this writing, no court has applied the Michigan ruling to elementary and high school magnets on either basis.

3.2 Charter schools

Evidence of the consequences of charter school education for minority children ranges from conflicting to discouraging, with a few bright areas of promise. About 700,000 students now are in charter schools, public schools that operate unconstrained by many rules that govern ordinary public schools. Typically, they are chartered by some public authority for up to five years and must reapply for renewal, at which time charters may be revoked for poor performance. Rarely does a charter school admit children who live outside its district. This may present a significant impediment to integration, given the racial divide along city-suburb lines.

The Harvard University Civil Rights Project reports that charter schools are largely more segregated than public schools. It has concluded, "Segregation is worse for African-American than for Latino students, but is very high for both."[18] The Harvard project concludes that there is little convincing evidence for the superiority of charters over public schools and, indeed, some evidence suggests that charters on average are inferior.

However, a recent study of the Manhattan Institute, a proponent of charter schools, measures charter schools of comparable populations against similar public schools. It concludes that charter schools serving the general student population outperformed nearby regular public schools on math tests equivalent to 3 percentile points for a student starting at the 50th percentile. Reading

scores of charter students were 2 percentile points higher compared on the same basis.[19]

On the other hand, according to early assessment tests, Texas public schools outperform charter schools by nearly two to one. Nearly two-thirds of the 46 low-performing Texas schools are charter schools. In a report on charter schools in Texas, *New York Times* reporter Francis X. Clines has written that about 25 of the 200 Texas charter schools created so far have failed or have been closed for management abuses, with millions of dollars unaccounted for. Absent state controls, Clines has observed, some Texas charter schools became well known for "nepotistic staffing, inflated attendance, false academic records, exorbitant salaries and employees with unchecked criminal backgrounds, according to investigators."[20] These scandals helped force the enactment of the first serious fiscal controls over Texas charter schools, two years ago.

While charters may not exclude students on the basis of race, if they were to set out deliberately to have an integrated student body, they might encounter some of the issues that magnet schools face. To reserve places for children of any racial background, a school may be required to exclude children from other groups, creating vulnerability to charges of racial discrimination. Where a charter sets out to deliberately integrate, but it does not do so as a remedy for discrimination, it might rely upon the University of Michigan decision to justify affirmative action. But that defense would be valid only if the principle of the Michigan cases were to apply at the elementary and high school level.

Minority parents seek alternatives to the inferior education offered in inner-city schools, and many have been among the strongest advocates of charter schools. Whatever the averages or overall picture, some all-minority charter schools have achieved remarkable academic success. Roxbury Prep, of Roxbury, Massachusetts, with a student body that is 85 percent black and 15 percent Latino (with all students admitted by lottery), demonstrates charter schools' potential for the education of African-Americans. It has a dedicated administration and teaching staff, with a school day from 7:45 A.M. to 4:15 P.M. Students observe a dress code and follow strict rules of conduct. Its students have closed the achievement gap between black, Latino, and white students. Last year, the entire eighth-grade graduating class went on to college prep high schools. Charter schools with all-

black and all-Latino populations are at the top among schools in all urban centers in Massachusetts.

Some charters have been founded by educators and others with vision and inspiration. Their performance reflects unusual energy and idealism. Encouraging examples must, however, be assessed along with the likelihood of others replicating the founders' creations. So far, the conclusion might be that charters have the potential to provide higher-quality education for African-Americans and other minorities. To the extent that charter schools are successful in this manner, they do not typically take the form of racial integration. On occasion, some of them have performed superbly. But they also have demonstrated the potential to succumb to mediocre performance and, sometimes, administrative irresponsibility.

3.3 Vouchers

Vouchers are payments or credits, taken from the public school budget, that are awarded to families so that they may pay private schools (or public schools other than the one to which a student would be assigned) some or all of their tuition charges. Typically, vouchers have not exceeded $2,500 per year, although recently a few have been larger. Vouchers have been touted as a superior way to achieve educational excellence. There is some evidence to support the claim. On the other hand, there is also evidence pointing to significant problems associated with vouchers. Battles over vouchers are not merely over the best way to assign children and finance schools. They involve a great deal of ideology about whether to: strengthen parochial schools, maintain or lower the wall between church and state, promote competition between private and public schools, or diminish the role of public education. For some, the single most important concern is that children receive the best possible education. Others care as much or more about religious or free market issues.

There are two main arguments in support of vouchers. First, some argue that vouchers offer school choice to poor parents similar to that enjoyed by more affluent families, thereby allowing students to escape inferior schools in their neighborhoods. Vouchers, however, may not be used across city-suburb district lines, which would be necessary if they were to provide access to the best public schools. Nor do they ordinarily promote integration, which ordinarily would also be across such lines. Indeed, vouchers have not promoted

Affirmative Action in Higher Education

The critical event for African-American higher education in the United States has been the Supreme Court's 2003 decision in *Grutter v. University of Michigan Law School*. Affirmative action now may continue for at least a generation. Substitutes for it need not be found except where, under state law, affirmative action has been abolished, as in California. That affirmative action is constitutional does not mean that it must be maintained, only that it *may* be. Black enrollment in higher education now approaches the level of white enrollment. The big difference has been in admission to the selective institutions of higher learning that are gateways to leadership positions.

Using diversity as a criterion for admission, black enrollment at the most selective schools now is about 6 percent, with some schools having black enrollment of 10 or even 12 percent. Alternatives to affirmative action have not been as effective, or they have unacceptable side effects. Texas, Florida, and California, for example, have adopted or will implement various policies such as admitting the top 10 percent, or some other fixed percentage, of high school graduates to the state universities. (Texas now is returning to old-fashioned affirmative action, in view of the Supreme Court's decision in *Grutter*.) This actually places a premium on maintaining segregated high schools in order to send more African-Americans to colleges. However, it is in no one's interest to encourage segregation in high schools; in any event, such a plan would not be applicable to graduate and professional schools.

The majority decision that Justice Sandra Day O'Connor wrote in the Court's 5–4 ruling in *Grutter* upheld affirmative action on the ground that universities use it to promote diversity as an educational measure. Universities should have the academic freedom, under the First Amendment, to make their own admission decisions, the Court ruled. The University of Michigan Law School does not premise its need for critical mass on "any belief that minority students always (or even consistently) express some characteristic minority viewpoint on any issue." To the contrary, diminishing the force of such stereotypes is a crucial part of the Law School's mission, as well as one that it cannot accomplish with only token numbers of minority students. Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own unique experience of being a racial minority in a society

like our own, in which race unfortunately still matters. The Law School has determined, based on its experience and expertise, that a "critical mass" of underrepresented minorities is necessary to further its compelling interest in securing the educational benefits of a diverse student body.[1]

Justice O'Connor went beyond prior rulings by the Court in justifying the importance of allowing affirmative action. She embraced a more comprehensive justification: affirmative action promotes diversity in society. Implicit in her justification, although she does not spell out the facts, is that universities are justified in combating African-American subordinate status throughout society. Black income and wealth are substantially less than that of whites. Black unemployment is approximately double that of whites. Blacks make up half the prison population. About one-third of young black males will end up in prison at some point in their lives. Blacks are vastly more likely to be victims of crime. They are isolated both residentially and in education. Concomitant with these factors is persistently lower test score performance, which serves as a barrier to admission to selective schools.

Affirmative action in higher education has contributed to narrowing that gap. The *Journal of Blacks in Higher Education* reports:

> [O]ver the past 30 years at least 15,000 black students admitted under affirmative action guidelines have graduated from America's 25 highest-ranked universities. Another 15,000 African Americans, also admitted under preferential admissions policies, have graduated from the nation's highest-ranked law schools. Some 10,000 more blacks have successfully entered the business world after admissions under affirmative action policies that were established at our leading business schools. Another 3,500 young blacks have graduated from our most distinguished medical schools.[2]

In *Grutter*, Justice O'Connor set forth significant wage considerations:

> These benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. . . . What is more, high-ranking retired officers and civilian leaders of the United

States military assert that, "[b]ased on [their] decades of experience," a "highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle mission to provide national security.". . . The primary sources for the Nation's officer corps are the service academies and the Reserve Officers Training Corps (ROTC), the latter comprising students already admitted to participating colleges and universities. At present, "the military cannot achieve an officer corps that is *both* highly qualified *and* racially diverse unless the service academies and the ROTC used limited race-conscious recruiting and admissions policies." To fulfill its mission, the military "must be selective in admissions for training and education for the officer corps, *and* it must train and educate a highly qualified, racially diverse officer corps in a racially diverse setting." We agree that "[i]t requires only a small step from this analysis to conclude that our country's other most selective institutions must remain both diverse and selective." Ibid. . . . For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. The United States, as *amicus curiae*, affirms that "[e]nsuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities, represents a paramount government objective." And, "[n]owhere is the importance of such openness more acute than in the context of higher education." Ibid. Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.

But even though it is constitutional, affirmative action remains vulnerable politically. The University of Michigan decision means only that a university may have affirmative action, but it is not required to. California, Florida, and Washington have prohibited it. The groups that tried to persuade the Supreme Court to declare it unconstitutional now will try to persuade governors, state legislatures, state courts, and university systems to bring it to an end as a matter of policy. And they will try again in the Supreme Court of the United States.

Prepared by Jack Greenberg

NOTES

1 *Grutter v. Bollinger*, 2003 U.S. LEXIS 4800 (2003).

2 Thomas Carlyle and Affirmative Action, 24 J. Blacks Higher Educ. 7 (Summer 1999). These statistics may include some double counting in that at least some of the professional school graduates were also among the college graduates. The number is impressive, nonetheless.

racial integration within or outside districts. Poor families are unlikely to be able to afford upscale schools even with the voucher subsidy, although they often could afford better schools than the ones their children attend. Most of the time, so far, the private schools that voucher pupils attend have been parochial schools, which often are more integrated than many public schools and provide better integration than some secular private schools. The question arises whether voucher funds might not be used to integrate or improve.

Secondly, proponents argue that vouchers will force public schools to do better in order to compete with schools that accept vouchers. What this has meant in practice is not clear. The question has two levels: are voucher-subsidized schools better? If better, do they spur public schools to improve in order to compete? There is hardly enough evidence to form clear conclusions. Small studies in Milwaukee and Indianapolis concluded that vouchers do raise the educational level of their beneficiaries, but the reliability of these studies has been questioned.[21] Moreover the effect on public school performance has not been established. It may be that public schools will in fact not feel pressure to perform better. Where teachers and administrators are indolent and not caring, it is not clear that competition is the answer. At the same time, channeling public school funds into private schools will sap public schools of support, and all the competition-inspired motivation in the world will not enable them to do better.

Opponents have argued that vouchers inevitably end up supporting religious training and religious schools. In fact, religious (ordinarily, Catholic) schools are the only private schools to which poor parents can afford to send their children with a subsidy of only

$2,500. This inevitably raises constitutional issues regarding the separation of church and state. Governmental funds paid to church institutions, it has been charged, support the church and the teaching of its doctrine, regardless of the formal relationship with the voucher recipient. In Cleveland, site of the schools involved in the recent Supreme Court voucher case *Zelman v. Simmons-Harris,*[22] almost all recipients used their vouchers to attend Catholic religious schools. The Supreme Court held that because the vouchers were payments to parents who had the right to spend them anywhere, they were not grants to religious schools, and the Court rejected the church-state objection.

The NAACP Legal Defense and Education Fund has been vocal in its opposition to vouchers, citing them as a significant factor in increasing segregation. Expanding voucher programs, they have argued, may lead to more white and affluent students abandoning city schools while leaving those most in need behind in increasingly isolated and minority-only public schools.[23]

The church-state issue and opposition by public school supporters have made vouchers more the subject of debate than an actual factor in financing education. Following *Zelman,* vouchers may begin to play a significant role. Still, they have been impugned as bearing the seeds of destruction of the public school system by redirecting public school funding to private schools. That has been a political issue, which would become more controversial if vouchers were used more widely.

For vouchers to make a significant difference, legislators would have to provide more money—not a likely prospect. Equally important, they would also have to allow the use of vouchers across district lines into suburban schools, which would be required to accept them. Given the political, legal, and financial constraints, both of these conditions are very unlikely.

3.4 No Child Left Behind Act

The No Child Left Behind (NCLB) Act[24] was enacted to improve the performance of America's elementary and secondary schools. The act requires annual testing for students in grades three through eight, as well as statewide progress toward objectives in order to guarantee that all students become proficient in twelve years. Results must be reported by students' poverty, race, ethnicity, disability, and limited English proficiency. Schools that do not improve sufficiently will be subject to remedial action.

The NCLB Act would allow students in poor schools to transfer to better ones, with transportation at the district's expense. Until recently, parents in failing schools have been largely unaware of this. When children in failing schools have elected to transfer, their numbers have been so great that transferee schools have not had space. But there is no right to transfer outside one's district, and students may not move to better suburban schools. The NCLB Act also contains provisions for enhanced academic and, particularly, reading programs. African-American and other minority children would, of course, benefit if the act were to fulfill its promise, but that would be difficult to accomplish for black students who live within a segregated urban area, absent the right to transfer out.

If the NCLB Act were amended to emulate the METCO program, allowing city students to transfer to the suburbs, the act would make a positive contribution to improving minority education. To anticipate objections, the numbers could be limited to manageable size. The program would be voluntary; suburbs would have to agree. State and federal governments would have to pay for transportation and increased costs of instruction. In view of the fact that most suburbs could be expected to object to such an arrangement, is it likely to come about? Still, forceful national leadership that advocates advancing better education for minorities as a patriotic measure might be persuasive over time. It took from the 1950s until 1964 for Adam Clayton Powell's "Powell Amendment" to be adopted. That year it became part of the Civil Rights Act. A law permitting African-American students to transfer to suburban schools might take as long to enact, but there would be no better way of improving their education, given the housing segregation that dominates most residential communities. And, suburbs should know that in improving education for the least advantaged, the country becomes a better place in which suburbanites will prosper, too.

3.5 School assignment based on parental income, class

Assignment schemes based on social or economic criteria may capture results similar to race-based programs, since race and socioeconomic status (SES) overlap considerably. Accordingly, racial integration might be obtained without using race as a standard. A few small cities, including Cambridge, Massachusetts, use SES as a basis for school assignment. Low SES is identified by

eligibility for free and reduced-price meals. Cambridge turned to economic integration in order to raise academic performance and achieve racial balance, without resorting to race-based formulas that would be looked upon less favorably by the courts.[25] Cambridge set as its goal, for school year 2002–03, that each grade in each school be within a 15 percent range of the number of students eligible for free and reduced-price meals. Goals for subsequent years call for closer correlation, ultimately plus or minus 5 percent. Seats may be held open in an individual school in order to achieve socioeconomic diversity. It remains to be seen whether, if used in this way and challenged, race would be upheld as a relevant assignment factor.

SES-based assignment could work in many cities as a means of promoting racial integration. But it must be adopted voluntarily, and there is no indication of how widely it would be accepted: at the moment, it has not been a major factor nationally. It is worth noting, however, that in La Crosse, Wisconsin, the first district to implement an economic integration program in the early 1990s, scores have risen and dropout rates in the district are very low.[26]

It may be that together, voluntary transfer plans such as METCO, charters, vouchers, SES-based assignment, court-ordered integration, and enhanced funding for minorities could make a dent in the educational deficit that racial minorities suffer. But first there has to be the national will toward that end. The University of Michigan affirmative action cases are an encouraging sign of the national will on the issue of providing better education for poor students of racial minorities. The Supreme Court upheld affirmative action by a 5–4 vote. This ruling is a positive sign, but it also indicates how narrow the margin of support is on the Court. Moreover, the Court's decision rested on the grounds that universities may take steps to diversify classrooms. Although not a strong force for civil rights claimants, the case cannot be ignored. The court has shown that there is the will, however slight, to improve black education in the United States.

4. Conclusion

Despite the important advances made in education since *Brown v. Board of Education,* the United States is facing what is surely a tragic pattern of re-segregation. As the disadvantages and inequalities of segregated schools are resurfacing, education experts, governments,

and advocates are developing innovative ways of overturning discrimination in education. While many of the desegregation and integration programs mentioned in this article are too new to allow for meaningful evaluation, they may provide crucial building blocks toward educational improvement and racial balance. The experiences and the lessons learned from these various programs will help to guide future efforts in the inevitable struggle to promote both equality and quality in education.

NOTES

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15 678 A.2d 1267 (Conn. 1996).

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Five

Curricular Aspects of Integration

Strategies to Promote the Successful Integration of Romani Students in the School System

by Angela Kocze and Dawn Tankersley

The Step by Step Program of the Open Society Institute began a project in five countries in order to develop solutions to the problem of high failure rates and segregation of Roma in education. The project sought to ensure the success of integration programs by focusing on three areas: a) changing the traditional teaching methodology (especially in the area of literacy development); b) adding Romani teaching assistants and changing the attitudes of teachers toward the role of teaching assistants in a classroom; and c) expanding upon ways that teachers could include Romani parents in the educational process. This article provides an analysis of each element of the program and the lessons learned from its implementation. The authors also put forth recommendations for the continued development of educational strategies to support integration in education.

In Central and Eastern Europe, the high failure rates of Romani students and their overrepresentation in special or remedial education have recently received significant publicity. This publicity has created pressure on governments in this region to stop the practice of placing Romani students in special education. However, simply placing them in majority-population classrooms is not enough. Strategies that will improve the academic success of Romani students must be implemented, or the high failure rates will continue.

In 1999, a pilot project was initiated by the Step by Step Program of the Open Society Institute in four countries in the region, and expanded since then to five other countries, to work on

solutions to the problem of high failure rates and integration of Roma. Three areas were focused upon that were instrumental in increasing the academic performance of Romani students and making their integration into the mainstream educational systems of those countries more successful. These areas included: a) changing the traditional teaching methodology (especially in the area of literacy development); b) adding Romani teaching assistants and changing the attitudes of the teachers toward the role of teaching assistants in a classroom; and c) expanding upon ways that teachers could include Romani parents in the educational process.

1. Description of the Roma Special Schools Initiative

According to the World Bank in 2001, in some countries in Central and Eastern Europe up to 80 percent of Romani children are placed into special education schools. The Step by Step Roma Special Schools Initiative funded by the Open Society Institute was a three-year project conducted in sixteen special schools in four countries (Bulgaria, the Czech Republic, Hungary, and Slovakia). The premise of the initiative was that many of the children who had been placed in special schools did not in fact have mental disabilities, but rather had been misplaced into special education due to biased testing and practices. Romani children are placed into special education because of the disadvantages they experience, including: low socioeconomic status; high rates of illiteracy and semi-literacy among many adults (who probably also were educated in special schools); the use of different languages in the home and community other than the official language of the country; and low attendance rates of Romani children in preschools and kindergartens.

The Step by Step Roma Special Schools Initiative[1] developed and piloted a model that consisted of five points: a) the deletion of the special education curriculum and its replacement with the mainstream education curriculum of each country; b) the inclusion of Romani teaching assistants in the classrooms; c) teaching strategies to promote second-language development; d) teaching strategies to eliminate biases among teachers toward Roma; and e) the implementation of an Open Society Institute early childhood program, called Step by Step, to promote developmentally

appropriate, child-centered teaching practices.

The result of the program was that after three years, 62 percent of the students classified as mentally disabled were able to pass mainstream curriculum tests in language and mathematics.[2] These results indicated that the Romani students were not mentally disabled, and that with changes in teaching strategies, they were capable of learning the same material as any other student in the country, in spite of any disadvantages they had experienced.

In the fourth year, the students who passed these tests were moved out of special education schools and classrooms into mainstream education. The educational practices piloted with the students in the special schools were continued in the mainstream schools that the children attended. During Year 3 of the project, teachers were prepared at the new schools in Step by Step teaching methods and in how to work with families (both from the majority group and Roma) to make the transition easier for all who would be attending the new integrated classrooms. The Romani teaching assistants from the Special Schools Initiative also went to the new classrooms with their students.

2. Changing the traditional teaching methodology for the region

Teaching practice in the countries in the region has traditionally been teacher centered, with teachers giving information to the students in a lecture format that the students then copy and memorize. The Step by Step methodology changes the way students learn from being passive receivers of information to engaging in active learning, in which the role of the teacher is that of facilitator. The methodology works from the premise that students have different styles, experiences, interests, and needs in the learning process and that a "one suit fits all" approach does not work any better in education than it does in clothing. In addition, the Step by Step methodology looks at what is developmentally appropriate for young children's learning, including the fact that learning must be at the concrete level as opposed to the abstract level. Step by Step promotes the concept that children need time and opportunities to interact with their environment and peers in order to construct knowledge.

Although these core teaching ideas can be challenging for teachers to accept and apply in all curricular and subject areas, one of the hardest areas to

change is in the teaching of reading and writing. Public schools in this region of the world rely solely on the phonics approach to develop literacy in children. Through the use of textbooks or the copying of words off a blackboard into copybooks, children begin by learning the alphabet. They then begin to construct blends such as "ma, me, mi, mo, mu" and to use them in very simple text, such as something written about "Mama and Emu." Every child in a country seems to be on the same page of the same book on the same day, no matter what his or her own level of reading is. This is to say that a student will not even be exposed to any material to read other than what is in the stage in which they are working.

Those children who cannot work at the same pace as the other children are failed and must repeat the grade and/or be placed into special education. If they are repeating, they must start at the same place as the new children in the class. Teachers do not acknowledge that the repeating children may have previously learned something about reading. Instead, they begin the whole process again. There is no individualization. If a student has been placed into special education, then the pace becomes even slower. No one is allowed to progress to a new stage, nor will anyone be introduced to new concepts in reading, until all have mastered all of the concepts at the particular stage in which they are working.

This approach to literacy development becomes problematic when working with children who have learning differences. In many places, educators have found that one approach does not work for all and have adapted learning techniques for different learning styles, different multiple intelligences, and different knowledge levels. A one-only approach becomes even more problematic when children come from entirely different cultural and language groups than those of the dominant culture. In Central and Eastern Europe, this includes many of the Romani children, because different languages are spoken at home and there is more emphasis on oral-language traditions than on written-language traditions.

In this project, we trained teachers in a balanced approach to literacy development, combining it with good second-language acquisition methodology and a multicultural/anti-bias emphasis. As children are taught to read solely through textbooks or words copied off a blackboard into copybooks, we could not find many children's books that are specifically scaffolded for teaching literacy. We had to find a source of mate-

rials that would allow us to use a balanced approach, would address bilingual issues, and would be culturally relevant to the students. The source we found to accommodate all these needs consisted of the stories being told in the homes as they used language and concepts that the students were familiar with.

The major challenge in achieving these goals was the prevailing sentiment among educators in the region that children are not active participants in the literacy development process. By having a single educational approach to literacy (in this case, the acquisition of phonetic decoding skills), teachers were locked into an approach where they were the sole transmitters of the knowledge of how to read, and the reading had to follow a strict sequence and format. The idea that children could enter school already having acquired some knowledge about the reading and writing process was a new concept to them. Teachers did not understand that literacy development is a process that begins at birth and that children are active constructors of this process.

An example of this is that there is no validation that children may already be able to recognize words (as names) in their environment, and that those words children already recognize are useful in helping them learn decoding skills. The approach of teaching them blends such as "ma, me, mi, mo, mu" did not build on what students already know. It also used material that had no meaning for them. It moved students into a symbolic realm without connecting it to the concrete.

The grapho-phonic approach to teaching children to read can work with students who come from homes where literacy is practiced, where children grow up with books and being read to and see models of how these grapho-phonic symbols are used to express ideas. However, it creates a problem for students who come from homes where oral-language traditions are more prevalent than written language. With these children, some kind of transition has to be made from what is oral and/or concrete to the symbolic. They first need to be able to understand that what can be said (in this case, the stories they were hearing at home) can be written down and then read back by someone else. In addition, they need to see that the stories from their homes and communities can be legitimized and made into books, just as those stories from mainstream groups were made into books.

When we began our work with these teachers and told them that we wanted first-grade children to write their stories,

they were shocked. When literacy development means children forming letters correctly, being able to read a designated number of words per minute, and using correct spelling and grammatical structures, how could they write? First, we connected the theory of a balanced approach to literacy to a learning concept that teachers could understand: the learning of new languages. We compared this to learning to read and write, specifically focusing on factors in the environment that help people acquire languages and classroom practices that may not. Teachers could see that environments that encouraged risk taking, that were emotionally safe, that developed self-confidence, and that demonstrated a need or real purpose for learning helped them learn languages in the easiest manner.[3] They were able to transfer these same environmental factors to learning to read and were able to critique where their classroom environments did not promote these qualities.

In addition, the teachers were able to make a connection between oral-language development and written-language development. This means that children need more opportunities at school to interact orally both in their home language and in the new language in order to promote literacy development. Children also need to be able to understand what they hear and what they read if they do not speak the official language of the country.

In our approach, students learned the alphabet through learning to read and write their names, the names of their classmates, and the names of their family members instead of just through the pictures on the classroom walls, which may not even be part of their home experience. In the beginning of first grade, the children began writing very simple books about their families and themselves. They learned how to read by reading these books, such as "I Am," "I Can," and "My Family." They also learned to read by reading the books that their parents in parent meetings wrote about their cultural traditions, their hopes and dreams for their children, and other topics of interest to them.

3. New ways of working with families

In the multicultural/anti-bias approach we used in this program, two of the specific goals that we were working toward were: a) to nurture a positive self-concept, individual identity, and group identity in children, and b) to bring the experiences of the students, families, and

their communities into the educational system in order to strengthen home/school relationships.[4] In order to achieve these goals, we had to reevaluate the way we wanted to work with the families and communities of these schools.

Children are individuals, but they are also members of a cultural group. A child's sense of identity, feeling of belonging, and values are shaped by the culture in which he or she is raised. Creating an educational environment that acknowledges, respects, and affirms all people and cultures so that each child can learn to accept himself or herself is essential to the ability to learn. Educators traditionally follow a curriculum and delivery method that draw largely from their own experiences and life histories, forgetting or ignoring that those experiences may not be the same as those of the children we teach.[5]

According to a 1999 study,[6] part of the problem in not being able to reach out to the Roma and other marginalized communities is that current channels for parental contact, such as parent-teacher conferences, open house nights, and report cards, are ritualized and institutionalized. They also assume a level of trust and understanding that are often absent in populations that do not feel part of the system. Expected parental participation, such as helping students with homework and volunteering in the classroom, is clearly problematic if the parents themselves have low levels of literacy, a history of school failure, and a feeling that their contributions to the classroom are less than worthwhile.

A 1993 analysis of parental programs[7] found that for school-parent partnerships to be successful, parental empowerment has to be a goal of the school. This means that schools must engage in equal conversations with parents and communities and move from thinking that they are the experts and "schools know best." What this suggests is that although schools may have expertise in pedagogy and child development, they are not the experts on individual families, children, and communities. In order for equal conversations to occur, it is necessary to first acknowledge and respect that parents and communities have expertise that can help educators and school personnel do their job better. One of the goals in schools should be to learn to gather and utilize that expertise. In short, when parental involvement is redefined to build on the strengths of the parents and the community, including the values, structures, languages, and cultures of the home and community, even the most reluctant parents become more involved.

Roma Education Initiative: Striving for Systemic Policy Changes that Promote Equal Education for All—the Case of Serbia

The Roma Education Initiative (REI), begun in 2002, was designed to draw from quality educational resources and experiences developed by the Open Society Institute (OSI) and to target them to schools serving Romani communities, as well as to the Romani communities themselves. Through school- and community-based work, the REI is designed to advocate strongly and consistently for systemic policy changes that work against segregation and all forms of racial discrimination of Romani children in the school systems. The prime objective of the REI is to promote equal access to high-quality education for all. Currently, the REI is functioning in eight countries in the region where there are large populations of Roma: Bulgaria, Croatia, Hungary, Macedonia, Montenegro, Serbia, Slovakia, and Slovenia.

While operating under common REI principles and goals, each nationally developed project is unique in its design and operation, reflecting local context and needs. One of the earliest projects to begin operation was in Serbia, starting in November 2002. The project team there took advantage of political changes after the fall of Slobodan Milošević to work through the REI framework to lobby for reforms that would lead to a more equitable educational system for all students in Serbia. The timing was just right, as overall educational reform in Serbia was beginning—and was much needed—after many years of stagnancy. The two have been working in tandem since the project's beginning. Its overall aim is to increase real accessibility to quality education for Romani children by contributing to the process of desegregation.

The REI project in Serbia utilizes aspects of the methodology piloted in OSI's Roma Special Schools Initiative, such as including Romani teaching assistants in classrooms; teaching strategies to promote second-language development and to eliminate biases among teachers against Roma; and implementing Step by Step, an early childhood program that promotes developmentally appropriate, child-centered teaching practices. The project also draws from and includes good practices identified during the international Roma Education Research Project, conducted by OSI-Budapest in 2001; these include after-school tutoring support programs and scholarships for secondary students, among others. All of

this educational input, as well as strong partnerships with Romani NGOs and representatives of civil society who have as their core mission the promotion of equity in education, resulted in the creation of a strong project team that could lobby for systemic changes.

In order to receive support, all REI projects must include a strategy to influence policy at the national level, and to base their advocacy campaigns directly on the practice they are piloting at REI sites. In all countries where it operates, the REI ambitiously seeks to mobilize national agendas and resources in order to have an impact on policy changes through the promotion of good practice. All projects use the results of ongoing monitoring and evaluation as the tool with which to influence national policy. REI Serbia took this opportunity to facilitate and provide direction for the creation of a national educational strategy for the integration of Romani children and youths into the educational system. REI Serbia supported the process by

- formulating an expert team to work on this topic;
- training the team in policy formulation;
- supporting public debates within the Romani community and professional circles about the proposed national strategy;
- creating a final document based on the public debate.

One of the biggest challenges in the region is to implement policies at the local level. Taking this into consideration, REI Serbia also targeted the creation of educational strategies and implementation plans at the local level in much the same way that it supported the process at the national level.

The project team has been successful in piloting the new methodological practices in its target schools, in changing the practice to include Romani teaching assistants as pedagogical partners in schools, and in creating a job description for those assistants that is acceptable to all involved, and for which the REI team will advocate recognition by the government. The project has also been successful in attracting more Romani students to schools—and, just as important, in keeping them there. One of the biggest changes visible to an outsider, however, is in the positive morale of administrators, teachers, Romani teaching assistants, and children themselves. The project has attracted the attention of the

Pestalozzi Children's Village Foundation, from Switzerland, which will be an important donor partner over the next few years, and is in constant negotiations with the government on systemically sustaining the practice it is pioneering. More changes are expected through 2004.

Such a comprehensive approach to influencing educational change, from innovative practice in schools, to good partnerships with Romani civil society, to having solid evidence of change, impact, and improvement of educational outcomes for Romani children through solid external evaluation, will hopefully provide the necessary platform for Serbia's educational system to move toward becoming more equitable for Romani children.

Prepared by Christina McDonald

Instead of looking at the deficit of how some communities may be illiterate, we have to discover where they are in the development of literacy process. Literacy is more than just sounding out words to read. Words are only one part of what we read; we can also read pictures, objects, and events. A 1987 examination of literacy[8] uses the term "reading the world" to expand our concept of literacy to include all the different ways we are literate. In early childhood education, we recognize that young children are in this process when they are looking at pictures in a book, reciting words in a story by memory, or making up their own story to match the pictures. Adults with low levels of text literacy also make sense of their world by reading the world around them, the same as young children do.

The 1999 study points out that teachers do not know how to utilize the home literacy environments of their students.[9] Even in families of low socio-economic status that we may judge as being illiterate or semiliterate, they have developed skills in literacy and model those skills for their children. These include the "hidden literacies" in the things they have to do on a regular basis, such as shopping, paying bills, cooking, or obtaining social assistance. Instead of reading storybooks to children or helping them with their homework, families may be reading and listening to the Bible or other religious texts as part of a household routine.

Entertainment in the form of the extensive oral literature, such as the telling of legends, folktales, and family history stories or singing and playing games, is also not recognized by schools as literacy events.

More is required of schools, though, than just acknowledging the knowledge of the communities. According to a 1995 study,[10] we also have to ensure that there is interaction between parents and the school by exploring different ways in which our students can take part in the two-way communication process between the school and the community, such as sending assignments home that encourage students to talk to family and community members. Examples of this would include doing projects in the classroom for which students research the lives, childhoods, friends, work, and so on of their parents and grandparents. To do this, we have to promote the development of the child's first language as a vehicle for home communication, and we have to find ways to use literacy as means of validating parents.

In the Step by Step Roma Special Schools Initiative, we focused on the goals of: a) finding out more about the communities' values, b) learning how to incorporate them into our own teaching practice, c) building upon the sources of literacy that already existed in the communities, and d) increasing the dialogue between our students and our families. We did this by using material that was gathered directly from the families and community, ensuring that all children saw themselves as part of the "educational story." This approach differed from traditional schooling that uses textbooks written by members of the dominant culture as the only basis to deliver academic skills and knowledge. Whereas traditional schooling promotes the dominant culture as having the only valid knowledge to be acquired, the approach we used also validated Roma as having valuable knowledge to pass onto the children.

However, we cannot forget that we have to continue to be inclusive and non-threatening to the parents of those children from the majority population as well. All parents need to understand how the philosophy of inclusion in the program benefits all children regardless of race, language, or ability. All parents also need to feel a part of the new "educational story"; therefore, activities have to be found in which all families can participate.

One activity we did to facilitate reading among our students came from a 2003 essay on oral history.[11] Teachers and teacher assistants documented the

proverbs, sayings, and stories that the children were hearing at home. These were made into little books of individual proverbs and sayings by folding a page and placing the first part of the proverb or saying on the outside, and the second part on the inside with accompanying pictures.

Proverbs and sayings are particularly useful tools to teach language arts because they can say something important with a minimum of text, are linguistically organized to promote memory, and are a source of predictable text.[12] This activity allowed us not to rely solely on the grapho-phonic approach, but rather to employ a more balanced approach to teaching reading that used whole words and sentences. In addition, it used the languages in the communities, not just the language of the dominant group. Finally, as this source of learning material came from the local community, it represented the wisdom of that community and in those families. This promoted positive self and group concepts because children could see the positive in their own communities and not just what is positive in the mainstream or dominant culture's communities. Learning about proverbs and sayings gave students a chance to engage in collaborative work, discussion, critical thinking, and language development. Proverbs and sayings also helped children with higher-level comprehension skills, because they require the use of inference and extrapolation.

Another example of bringing in local knowledge from the community was that teachers developed thematic units based on folktales from the communities in which the children lived.[13] These included folktales on how certain foods were developed, how certain traditional practices started, or what their origins were. These stories would first be told in the children's home language. Later the children would work in the official language of the country to learn phonetic and grammatical concepts that they were required to learn in the national curriculums. Parents and other community members were invited to teach what they knew about topics that arose from the study of these folktales, such as cooking certain foods, celebrating traditions, doing different kinds of crafts, and the like.

4. Role of the Romani Teaching Assistant

The placement of teaching assistants from the local community into classrooms is a common strategy that schools use to bridge the cultural and

linguistic gaps between schools and communities whose members are from cultures other than that of the mainstream. The belief behind this practice is that the use of teaching assistants will benefit children from marginalized groups be more successful academically in school by helping them with the differences in languages spoken between the home and the school, assisting them to successfully navigate the culture of the educational system, and cultivating parents' support for their children's schooling process. The teaching assistant becomes someone whom everyone in the community respects and a role model for the children on how to be a successful person, both in their own culture and in the mainstream culture.

In theory, this is what is supposed to happen. However, the reality often looks very different. In many classrooms, teaching assistants are seen merely serving students snacks, cleaning up after teachers or students, or watching the students on the playground while the teacher takes a break. Instead of being seen as role models for students, the teaching assistants are placed in the position of being "babysitters," "maids," or the even the "mother." What begins as a strategy to give "at risk" students the tools to meet mainstream curriculum standards turns into a vehicle for keeping marginalized students in subservient positions in their societies. If the purpose of the teaching assistant is to help students become more successful in the mainstream culture and reduce their rate of school failure, then the teaching assistant must be seen as an equal partner in the classroom and not as a person who "serves" those from the mainstream culture.

When the discrepancy between the theory of using teaching assistants to help "at risk" children and the reality of how they are used in the classroom is discussed with teachers and principals, the response very often focuses on the differences in educational levels between the teachers and the teaching assistants. Teaching assistants seldom have a teaching degree; therefore, it is felt that they cannot be seen as equal to teachers. However, even among teachers themselves, it is often observed that the best teachers are not necessarily the ones with the highest-level degree or the most education. In reality, anyone can be a good teacher. The best teachers are those who relate to people by making them feel valued and capable. They are the ones who feel confident in their ability to give another person something, be it knowledge of a subject or development of a skill. Family mem-

bers, friends, community members, and coworkers are all teachers in our lives.

Beyond the issues of having a positive role model for students when teachers share power with teaching assistants in a classroom, the Romani assistants helped the students' academic performance in other ways. These included allowing for more small group instruction in classrooms through cooperative learning activities, providing activities to maintain and strengthen Romani culture, and increasing the quantity and quality of parental involvement in their children's educational process.

Having assistants work as instructors helps teachers individualize instruction for their students. In the Special Schools Initiative, much of the classroom instruction and practice was done in small groups working cooperatively together, and the teaching assistants were crucial in being able to monitor groups of children. Another factor that the teaching assistants were able to provide for their students' success was the input of Romani culture into the classrooms. In all of the classrooms, the teaching assistant acted as the expert on Romani culture. Research has shown that cultural maintenance can have a positive influence on academic achievement.[14] Time was given every day for stories, songs, art, and other activities that were led solely by the assistant. (It was interesting to observe that during such times, one would even see the teacher preparing or cleaning up after the snacks.) The teachers then used the material that the teaching assistants brought into the classroom to plan with the assistant instructional activities for the students in reading, writing, and math.

Because the importance of family involvement in their children's education has been widely documented, another role of the teaching assistants was to improve communication between schools and homes. When the role of the teaching assistant is lowered to "babysitter" or maid," schools can destroy the bridge to the parents and community that they are seeking to build. The parents see that the mainstream culture does not respect the teaching assistant, so why should they? In the Step by Step Roma Special Schools Initiative, when students and families saw the Romani teaching assistant (who was from their own community) as a valued member of a teaching team who also had knowledge to impart, an increase in family involvement and the subsequent increase in students' academic performance was observed.

5. Lessons in integration of Romani children into mainstream education

There were some key observations about integration that we were able to make as we moved the students in the Step by Step Roma Special Schools Initiative from special/remedial education into mainstream education. The first lesson we learned was that teachers needed to be trained, supported, and given time to gain experience in using new approaches and teaching methodology. In some cases when the children in this project moved to new schools, we were able to place them in classrooms that were model sites for the Step by Step methodology and where the teachers already had attended workshops on second-language acquisition and anti-bias approaches. These were the classrooms where the students had the most success.

In other cases, we could not place the children in Step by Step schools, and we had to train new teachers the summer before the school year started in all of the methodologies we were using. These teachers had less experience, and the children in some cases did not do as well. For example, in some of those schools the Romani students would be separated in the classroom as a group working with the Romani teaching assistant and not integrated into mixed learning groups. The teachers still saw the Romani students as not being able to learn the same material as the children from the dominant culture, instead of finding activities that students could do together where all could be successful. In these classrooms with less experienced Step by Step teachers, the Romani teaching assistants were also frustrated because they were working only with the Romani students. When teachers had Romani teaching assistants working with all of the students, the children all benefited from the experience. In addition, relations between the Romani and non-Romani students were better in classes where the students were more fully integrated, in terms of showing one another respect and listening to one another.

Finally, there were some cases where we could not integrate the students from the Step by Step Roma Special Schools Initiative into classrooms where there were students from the majority population. In these cases, our students remained in Romani schools or classrooms, but these classrooms used the mainstream curriculum rather than the special schools or remedial curriculum. In general, this was where the students did the most poorly. The Romani stu-

dents had much better classroom behavior in the mixed classrooms, which helped their academic performance. In the all-Romani classrooms, there was fighting among the children and refusal to participate in activities (especially among many of the girls). It appeared that in the classrooms where the Roma were most fully integrated, the Romani students followed the models of school behavior set by the children from the majority group.

6. Recommendations

The educational strategies that have been traditionally used in the classrooms have not promoted the success of Romani students in the educational system. Blaming Romani students and families for their failure will not change this situation. Instead, educators need to look at what they can do differently. Teachers need to incorporate into their teaching methodologies strategies that are child centered, such as using a balanced reading approach and activities that promote second-language acquisition. In addition, teachers need to explore new kinds of activities they can do with Romani families, parents, and communities. Teachers also need to reevaluate how they can work more effectively with Romani teaching assistants, including changing their attitudes regarding the contributions that Romani teaching assistants are capable of making toward their students' success. Finally, educators must make the effort to work with representatives of both the majority and the Romani communities before and during the integration process so that dialogue between the groups can be fostered and problems can be resolved as they arise.

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A Pearl of a School[1]

by Rob Blezard

This article presents an example of a school in Washington, DC where students of different races, economic backgrounds and language ability learn and play together in an academically rigorous environment. The Oyster School is a bilingual public elementary school that draws students from within and outside the neighborhood. Oyster is in the top five among the district's 105 elementary schools ranked by standardized test scores, and it is the only one in the top 10 to have a Title I designation—signifying that at least 40 percent of the students qualify for free or reduced-cost school lunches. Of its approximately 350 students, 55 percent are Hispanic, 24 percent white, 18 percent African American and 3 percent Asian or Native American.

At Oyster, all children are taught their subjects in both English and Spanish, and each classroom has two teachers, one for each language. Washington, D.C.—One frosty Friday in January Gustavo Gatti staked his place on the sidewalk. He was the first parent in a line to register children for the few class slots open to families who live outside the neighborhood boundaries of James F. Oyster Bilingual Elementary School in the city's Woodley Park section.

Three days later when the school's office opened, a total of about 140 parents like Gatti had spent all or part of the weekend waiting for the first-come, first-served sign up.

"It was cold," recalls Gatti, a big, soft-spoken remodeling contractor who lives miles away in the Capitol Hill neighborhood. "There were people out lying on the asphalt or concrete playground in sleeping bags." Some had tents and others slept in their cars. "Everyone did whatever they had to do to be there."

Waiting overnight for out-of-boundary sign-up has been a tradition at Oyster for years, but Gatti's wait in 2001 marked the first time it had lasted more than one night. It's getting worse—in part because Oyster (named for a former school superintendent) opened in a brand new building in 2001, the first new school built in the District of Columbia in 20 years.

This past January the line began forming more than a week ahead of time. The new building is a bonus.

Over the years it's been Oyster's intense bilingual immersion program that has compelled parents to wait in the cold night. Oyster teaches all children their subjects in both English and Spanish. The school maintains an even split between Spanish- and English-dominant children, and each classroom has two teachers—one for each language.

"The demand is high for this kind of program," says Gatti, whose children Zöe and Carlos completed a year of kindergarten and pre-kindergarten, respectively, at Oyster in June. The bilingual program is important to Gatti, a native of Paraguay, and his wife, Magali, who is Peruvian.

The top-notch bilingual program at Oyster inspires scores of parents to wait in the freezing cold, but school officials say that the quality affects both sides of the equation. Motivated and enthusiastic parents buoy the school's morale, support the staff and keep educational expectations high. The synergistic partnership between teachers and administrators on the one hand and the parents and children on the other has brought Oyster success beyond most school's dreams.

In the early 1990's, when the school district slated Oyster for closure because there was no money to fix or replace its aging building, the parents took action. They formed the 21st Century School Fund to explore options and put together a creative solution that provided Oyster a new school - and not at taxpayer expense. Under an innovative public-private partnership, Oyster gave about half its property—a good chunk of its playground—to a developer to construct a 211-unit apartment building. In exchange, the developer built a school.

"It was an opportunity that wasn't evident until people looked at it for a while," says William Brenner, vice president for development and director of the National Clearinghouse for Educational Facilities. "It tells you that good people, when they want to solve a problem, can figure out ways to do it."

Oyster's success has led the district's public school system to set policies for similar development partnerships and to carry out a modernization program that will rebuild and replace every school in the city in the next 10 years. The 21st Century School Fund is now working with likeminded groups around the country to bring their creative, community-based, think-outside-the-box approach to other school districts.

Oyster earns the loyalty of parents through its excellent bilingual "immersion" program. Pupils from pre-kinder-

garten through sixth grade are taught in both Spanish and English by two instructors in each classroom, an English speaker and a Spanish speaker.

In a pre-K class last spring, the instructors were still easing children into the bilingual world, sometimes repeating phrases and words in both languages. In higher grades, the teachers stick to their own language.

"By the time they get to the first grade, when they've been here since pre-K, they really have a lot of language," says Linda Fink, the English-speaking teacher in a first-grade class. In an arrangement typical of the teams, Fink teaches some subjects in English and her partner, Nora Bustios, teaches other subjects in Spanish. But they continually work to cover the material across subject areas.

"We try and do it more by theme," says Fink. "Like if we're studying the weather, we don't just do it at science time, we integrate it." "We try to make connections all the time," agrees Bustios, who was for many years a teacher in Peru before coming to Oyster in 1997.

By the time students reach the higher grades, they are fully literate in both languages. In one session last May, Eduardo Gamarra's sixth-grade class showed their facility in Spanish as he led pupils in a drill, firing questions in rat-a-tat fashion, keeping them rapt and on the edge of their seats.

An African-American boy wearing jeans and a white sleeveless T-shirt was so eager to reply he jumped with every question, contorting his body and lifting himself halfway off his chair just to extend his fingertips a few extra inches. Finally, Gamarra called on him and heard the correct answer. "Excelente!" Gamarra praised.

Oyster began the dual-language immersion program in 1971 as an alternative way to instruct the children of the many immigrants from Latin America who were moving to the area. The approach sees Spanish proficiency as an asset, a gift to be shared with English-speaking students. By contrast, the more traditional approach, transitioning Spanish-speaking children into all-English classes, implies the language is a liability. "Why destroy the child's first language just to build up the second?" says Arturo Flores, Oyster's principal. The program gives the Spanish-dominant children cultural validation and continuity in their strong tongue while they learn English. At the same time, it steeps the English-dominant children not only in the Spanish language, but also in culture and customs. The interaction between children of different

cultures, backgrounds and economic groups also teaches the children to respect and appreciate differences in people. "So the children that walk out of here truly have another perspective on life," says Flores. The program became a hit not only among Latino parents and children, but also with English-speaking parents who wanted the experience for their sons and daughters.

"The quality is assumed here," says Steve Cox, an active parent who moved to Oyster's neighborhood so his daughters could go to school there. Cox agrees Oyster's children are much more culturally aware—something his daughter observed when she left Oyster to go to junior high school. "They're the kids who are sitting at a table with people from three or four different ethnic groups and continue to maintain those friendships and those bridges when the rest of the school really kind of divides along ethnic lines or social or class lines."

In addition to its language diversity, Oyster enjoys a mix of ethnicities and economic groups that is unusual for a high-achieving elementary school in the D.C. school district. Oyster is in the top five among the district's 105 elementary schools ranked by standardized test scores, and it is the only one in the top 10 to have a Title I designation—signifying that at least 40 percent of the students qualify for free or reduced-cost school lunches. Of its approximately 350 students, 55 percent are Hispanic, 24 percent white, 18 percent African American and 3 percent Asian or Native American. "We're in the top five, and we're doing two languages. How does that happen?" asks Gloria Rodriguez, assistant principal. She credits the dynamic mixture of community support, parental involvement and teacher enthusiasm—elements that coalesced around Oyster's bilingual immersion program.

"Once this school had a mission and everybody rallied round it, I think that provided the strength," Rodriguez says. The bilingual program energized the school but also reestablished connections between the school and its community.

The school lies in Woodley Park, one of the most well-heeled neighborhoods of Washington—close to National Cathedral, the National Zoo and "Embassy Row"—yet until the bilingual program was started in 1971, the wealthy residents tended to send their children to private schools. As a result, in the 1960's Oyster's boundary was extended into the nearby Adams Morgan neighborhood, home to many

Latin American immigrants. In the 1960's, the school enrolled the highest percentage of Hispanics in Washington, recalls Holland. These new parents helped push for the creation of the bilingual program, which then changed the enrollment dynamic.

"Within a year, because of the program, many of the neighborhood kids started going to the school and then it became overcrowded because the building was so small," says Paquita Holland, a native of Puerto Rico who was principal from 1983 to 1988, then from 1991 until her retirement in 2001. The connections between the school and the neighborhoods deepened.

Oyster's program attracted to the school both talented educators and parents with professional skills, vision, expertise and savvy to lead Oyster into bold new areas—including the public-private partnership that gave Oyster a new school. Establishing the strong academic program was the first step. "It sounds really simple," says Rodriguez, "but it's powerful because then you get people who care about everything—the environment, their housing, the community. It seems to me you actually get a true community."

Paradoxically, the high interest in the school is challenging the school's ability to maintain the diversity that is so much a part of Oyster's identity. With more children in the school from the immediate, wealthier neighborhood, the school has been forced to shrink its boundary away from the some of the Latino communities, Holland says. Many feel that this is especially unfair, considering that Latino parents led the establishment of Oyster's innovative bilingual program in the 1970's.

So far, Oyster has been able to maintain its 50-50 split of English-dominant and Spanish-dominant children by accepting children of Latino families as out-of-boundary students. But Oyster's staff worries they may not be able to do it forever. "These are things to think about," says Rodriguez.

Even as Oyster's academic achievement and community spirit soared in the 1970's, its 1920's-vintage brick building deteriorated steadily, and overcrowding forced the district to add portable classrooms. "The roof had a hole in it; the staircases were dilapidated," recalls Roxane Kovin, a pre-K teacher at Oyster for 25 years. The old building had only one set of bathrooms, no gymnasium, an antiquated electrical system that made upgrades difficult, a temperamental heating system and no air conditioning. "It wasn't well maintained—repairs weren't done

in a timely way," says Mary Filardo, whose first child entered the school in the late 1980's. "It was horrible, actually." Having married into a family with a construction business, Filardo became one of the leaders in organizing parent crews to fix up the school and in pestering the school system for improvements. "Modest things we were asking for initially," Filardo recalls: windows repaired, the roof fixed, rundown portable classrooms replaced. "And they said no, they didn't have the money. So we figured that there ought to be some way to raise this money. It couldn't be that hard."

Matters came to a crisis in the early 1990's, when the school district slated Oyster to close and its program moved to a larger school. "We said no, we wouldn't move," says Holland. "We were not going to allow that to happen." The parent-educator network shifted to high gear. "In less than 24 hours, we had organized a press conference where we brought in people from practically all over the country." Because she was already working on the problems of the physical plant, Filardo became a natural to lead the parent task force. In 1994 she started the 21st Century School Fund that arranged the deal giving Oyster a new school at no cost to taxpayers. The parents knew the school's property was valuable. Located in one of Washington's most prosperous neighborhoods, the school was also flanked by lucrative commercial structures: apartments on one side and the sprawling Marriott Wardman Park Hotel on the other. In her research, Filardo discovered the playground sat on property zoned high-density residential, which meant that a building with 254,000 square feet could be built on the site. Aware that private-sector developers arranged all sorts of creative deals, she looked into applying that kind of flexibility to Oyster's dilemma. "It seemed to me the knowledge base needed to do what we had to do did exist, but not in the government sector," Filardo says. The 21st Century School Fund began to act as a mediator between public and private parties to put a deal together.

To pay for the kind of expertise in real estate, architecture and law that the project would require, the fund worked out a deal with the District of Columbia. The school system signed an agreement pledging to give the fund a $250,000 "success fee" if they negotiated a deal, Filardo says. Based on that $250,000 commitment, the fund then secured contracts with the experts in real estate they needed to hammer out an agreement.

In planning the new building for Oyster, the fund developed a grassroots approach that it is now encouraging as a national model. Involving teachers, parents, administrators and community members, the fund wanted a building that would fit Oyster's special program, its educational goals and the needs of the community. Describing the approach Filardo recalls, "We were saying, 'Are you sure you want that? Do you think you'll want that in five years?'" The painstakingly devised plan became a reality after the school district selected LCOR Inc. to build the new Oyster School in exchange for land on which the private developer constructed a 211-unit luxury apartment building. The school is financed by a tax-exempt bond of $11 million. For the 35-year life of the bond, LCOR will pay $804,000 a year in lieu of taxes. "The attraction of Oyster was the quality of the school and the community support to have it succeed," says William Hard, executive vice president and principal of LCOR. "As we look at the entire project, we are pleased as a company."

Oyster's success caused marked reverberations in the District of Columbia. "Being able to make Oyster happen gave me confidence that the city is ready to tackle its school facility problem," says Sarah Woodhead, deputy director of facilities for the District of Columbia Public Schools. An architect and parent of an Oyster student in the 1990's, Woodhead worked on the Oyster project before she went to work for D.C schools. "There are parts of the Oyster School project that are a good model for all school projects," Woodhead says. "The community needs to own each project in the same way that Oyster owned its project. Oyster had a clear mission and was very articulate about it."

Using Oyster's financing model, the district has identified a handful of schools that might be fully funded by similar deals, and several others that could be partially funded. The approach may work in other cities facing similar stresses of crumbling schools and low funding. "For urban systems that are just waking up, it's a piece of the answer," Woodhead says.

The project also debunks the conventional wisdom that smaller schools, although proven to be educationally superior to larger ones, are also more expensive, says Joe Nathan, senior fellow and director of the Center for School Change, connected with the University of Minnesota. "School districts all over the United States can learn from places like Oyster that are showing how to improve achievement

with small schools but without spending more money," Nathan says.

Since the Oyster project, the 21st Century School Fund has worked extensively with the District of Columbia and is now leading a major effort—Building Educational Success Together—to give its community—based model nationwide exposure. Partnering with groups such as Chicago's Neighborhood Capital Budget Group, New Jersey's Education Law Center and Ohio's KnowledgeWorks Foundation, the 21st Century School Fund will encourage community residents and local governments to work together to solve school-building problems.

"They're offering a process, I would say, of enabling people to build better schools by thinking of some new ways to do that," says Brenner, of the National Clearinghouse for Educational Facilities. Many in the Oyster community agree that the approach is noteworthy. "This is the sort of thing that we ought to systematize and bottle and market and take to a lot of other places around the country," says Steve Cox. "It started with a community committed to having quality bilingual education. If you can start to get a community focused on these things and imagining what is possible, you can do this in some other places, too."

The exterior of the new James F. Oyster School has some of the early-20th-century charm of the old school. Tall rectangular windows with tidy white trim peer out from a red—brick façade. Pillars support a portico over the main entrance, and a cupola crowns the slanted roofline. Inside, the school is bright and airy. Light pours in from the windows and gleams off pale yellow walls and luminous white tile floors accented by squares in primary colors. Creating rooms inside the wedge—shaped building, architects avoided the monotony of white blocks. "There isn't a classroom in that place that's a box or a rectangle," says Holland. "They all have little walls and nooks and crannies and break—out places and diagonal walls. It's just beautiful." Recalling the bottlenecks that formed at the water fountains and bathrooms of the old school, the new building has a water fountain in every classroom and lavatories for every two.

The new school has a smaller schoolyard, but there is now a gymnasium and a host of other amenities that make life easier for children and teachers alike. "It's gorgeous," says Roxane Kovin, the pre-K teacher. "We have parent rooms, we have a special music room, a gym, a cafeteria and multipurpose room. We've got spaces for every-

thing and everybody." The building meets everyone's needs because everyone was involved in its design. "It was fun having a say in what we thought was important to go into the building," Kovin adds.

Despite its new building, the Oyster community keeps a clear perspective on what is really vital to a healthy school. "The new building is nice, but that isn't the program," says Frank Miele, the principal who developed Oyster's dual-language immersion program in the 1970's. "The program is the people. The people are competent and they have high standards."

NOTES

1 This article was originally printed in The Ford Foundation Report, Fall 2002.

Native American Education: A System in Need of Reform[1]

by Alison McKinney Brown

Native American education in the U.S. has been marked by high dropout rates, low college attendance, and poor performance on standardized tests. As integration into the public school system and increased funding have not solved the problem, educators and advocates look to develop innovative ways to improve Native American education. This article lays out some of the greatest challenges facing Native American education. The author identifies case studies and proposed models for providing a culturally sensitive and relevant education for Native American students, such as bi-cultural school curricula.

The high school dropout rate for American Indians—estimated nationally at 45 percent to 50 percent but as high as 85 percent in the most depressed areas—is the worst such record of any major ethnic minority group.[2] College-bound American Indian students continue to score significantly lower than average on both the math and verbal portions of the Scholastic Aptitude Test (SAT).[3] Moreover, American Indians, along with Hispanics, are the least likely ethnic groups to attend a four-year college after graduating from high school.[4] These statistics show that for many American Indian children, traditional educational methods are less effective than they are for American ethnic groups as a whole.

Societal attitudes, the educational system, and limitations on using the legal system as a catalyst for change are the three main reasons for the continued difficulty in improving American Indian education. This article begins by identifying test scores and studies showing the hardships that American Indian students face within the educational system. Second, a brief overview of the past two hundred years of American educational policy will show an ongoing lack of interest in integrating Native American culture into the curriculum. Then, approaches used by public, federal, and private schools to address the problem of low levels of academic success for American Indian students are identified. Next, this article looks at federal judicial decisions interpreting how American Indian rights, federal anti-discrimination law, and state educational policies affect the

manner in which American Indian children are educated. Finally, this article concludes by arguing that bicultural education should be mandated in the public schools.

1. The problem

Standard indicators illustrate that the educational system is less effective in educating American Indian children than other ethnic groups. SAT scores are one indicator of a student's academic skills. The SAT has two sections, verbal and mathematics, with possible scores ranging from 200 to 800 on each section. Comparing the average scores of each ethnic group, American Indian students score well below the average of all ethnic groups combined.[5] The average American Indian's verbal score is a full sixty-two points below the average white student's score.[6] The average American Indian's math score is sixty-three points below the average white student's score.[7]

American Indians are the least likely of the major ethnic groups to attend college following graduation from high school. In 1980, only 7.7 percent of American Indians over the age of twenty-five had completed four or more years of college,[8] compared with 17.8 percent of whites.[9] Only 14.5 percent of American Indian high school graduates in 1980 entered a four-year college.[10] That figure compares with almost 17 percent of Hispanic, over 28 percent of African-American, and almost 32 percent of white students from that year's high school graduating class.[11]

The most distressing indicator of the problem American Indians have in public schools, however, is the dropout rate. In 1980, the average high school dropout rate for all ethnic groups was 13.6 percent.[12] The dropout rate for American Indians was 29.2 percent, compared to 17 percent for African-Americans, 18 percent for Hispanics, and 12.2 percent for whites.[13] In the most depressed areas of the country, the American Indian high school dropout rate was estimated to be as high as 85 percent.[14] These figures show that the dropout rate for all students is too high, but for American Indians the dropout rate is tragic.

The inherent characteristics of individual children and individual school systems are responsible for many of these statistics. Attitudes about school clearly affect a student's willingness to learn. One study showed that American Indian students who remain in school have a higher rate of truancy than other

ethnic groups.[15] That study showed that 48 percent of the American Indian students who responded reported cutting classes.[16] American Indian students also reported a higher level of dissatisfaction with teachers than Hispanic, Asian, African-American, or white students.[17] In addition, American Indian students reported higher than average discipline problems, and the highest percentage of criminal problems.[18] Of the schools surveyed for that particular study, 65 percent reported that American Indians had poor attendance habits.[19]

The statistics indicate that a problem exists, but the cause of the problem is more difficult to comprehend. One must understand the historical reasons for educating American Indians, the manner in which American Indians have been educated over time, and current views of American Indians and non-Indians toward solving the problem.

2. History of American Indian education

When the early federal government determined that American Indians were an impediment to colonization of North America, an attempt to integrate them into the newly developing society through education was initiated.[20] Because education presents and reinforces society's values, early government leaders theorized that through European-style education, American Indians would adopt European values. Adoption of those values would "civilize" and "Christianize" the American Indians, thereby reducing their desire to oppose expansion by European settlers.[21]

Educational provisions for American Indian children were included in Indian treaties as early as 1794.[22] The federal government did not begin allocating money for American Indian education, however, until 1819, when it passed the Civilization Act.[23] This act had two purposes: a) to introduce "the habits and arts of civilization" to American Indians;[24] and b) to limit "the further decline and final extinction of the Indian tribes" caused by disease, war, and other side effects of the growing non-native population.[25] To achieve these goals, the Civilization Act allocated $10,000 annually for the purpose of Indian education.[26] The inclusion of educational funding in the act showed an increased determination on the part of the government to successfully assimilate and control American Indians.

In 1879, Army Captain Richard Pratt dramatically changed American Indian education.[27] Pratt used his military background to develop a military-style school for American Indian children.[28] An integral part of his educational theory required taking the children away from their families, tribes, and environments.[29] Thus, the Carlisle Indian School, a boarding school at Carlisle Barracks, Pennsylvania, was founded.[30] Although Carlisle was the first of its kind, many other boarding schools modeled after it opened over the next thirty years.[31]

At the Carlisle School and other boarding schools like it, academic instruction emphasized English language skills.[32] Academics, however, received less emphasis than industrial and vocational training. Boys were taught blacksmithing, farming,[33] and how to make products such as shoes, tin, and harnesses.[34] Girls were taught to perform the domestic chores needed in a traditional European household.[35]

The Carlisle School prohibited students from speaking native languages and participating in traditional Indian cultural activities.[36] Because of the distance from Pennsylvania to the Western reservations, many children were not sent home for the summer. Instead, they were sent to non-Indian families who lived near the school. The students spent their summers working for the families and practicing the skills they learned at school. As a result, children were often separated from their homes, families, and cultures for up to eight years.[37]

Congress did not implement a mandatory education requirement for American Indian children until the passage of the 1891 Indian Appropriation Act. After that, many American Indian children had no choice but to attend the only schools available to them: boarding schools far from home. By the 1920s, increasing costs and changing governmental policies prompted a different approach to educating American Indian children. The federal government began shutting down the boarding schools and encouraging students to attend federal day schools or state-supported public schools.[38]

To facilitate the transfer of control from the federal government to the state governments, the Johnson-O'Malley Act was passed in 1934.[39] This act allowed the federal government to provide states with funds for the various needs of American Indians, including education.[40] Because states could not tax tribal reservation land, these funds were vital to local school districts that supported themselves with a property

tax. The Johnson-O'Malley Act thus helped cover the costs of bringing American Indian children into local school districts.[41]

From the mid-1940s to 1961, the primary goal of the federal government's American Indian policy was to turn federal responsibility and jurisdiction over to the states. One result of this policy was increased federal aid to states for educating American Indians. Two financial aid bills, passed originally to compensate localities handicapped by large non-taxable military reservations, were made applicable to American Indians.[42] These bills, referred to collectively as "Impact Aid," provided funds to local school districts with large Indian populations for school construction and tuition reimbursement.[43] This reimbursement bill reduced the need for Johnson-O'Malley funds. As a result, Johnson-O'Malley was modified to provide support funds for school districts unable to meet the special needs of their American Indian students.[44]

In 1965, Congress passed another significant education-funding bill that affected American Indian children. The purpose of Title I of the Elementary and Secondary Education Act was to aid poor and educationally deprived children.[45] These funds were not intended to replace monies that would normally be made available to children through other programs, such as Johnson-O'Malley and Impact Aid. Instead, Title I was intended to supplement those acts by providing funding to children in need of additional educational services.[46] With the passage of this act, American Indian public school students had three potential sources of federal financial educational assistance.

These and other policies aided the integration of American Indian children into state-created public school systems.[47] Currently, about 90 percent of American Indian children attend public schools.[48] Slightly over half attend school in urban or suburban areas.[49]

3. Culture and the Classroom

As evidenced by the statistics previously presented, American Indian students continue to experience difficulty in education. Integration into the public school system and supplemental funding have not solved the problem. Consequently, other factors must impact American Indian students. It is not possible to delve into every educational impediment confronting every Native

American child. Certain aspects of the current educational system, however, can be examined. Those aspects include monocultural curricula, communication barriers, and biased textbooks.

Most teachers are overburdened by the responsibilities imposed upon them. In addition to academic requirements, the social, recreational, and psychological needs of each student must be met. These tasks leave little time or energy to address the cultural differences of students and the impact such differences have on learning.[50] There are so many racial and ethnic backgrounds represented in every public school classroom that it would be an overwhelming endeavor to utilize a curriculum that adapts to the cultural differences of all students. Thus, most teachers ignore cultural differences and view their classes as homogeneous groups, creating a monocultural classroom by default.[51]

The monocultural environment of the American classroom is based on the educational methods of the European immigrants. As a result, it is much more difficult for children of non-European descent to adapt to this environment. American Indian children are no exception. Although most no longer live on reservations, American Indian children are still the product of their families' culture. Parents and grandparents who were taught traditional tribal behavior pass these customs and attitudes on to their children. Thus, the socialization process of many Native American children is very similar to the traditional manner in which tribal children were socialized.

When children are socialized in the manner of a Native American, their motivations and responses are in accordance with a code of behavior different from the Euro-American norm. As a result, an American Indian student's "attitude" toward education may be misunderstood by educators interpreting certain behaviors from a non-Indian perspective.[52] For example, some tribes teach their children to avoid being singled out for praise or performance. Many tribal cultures also discourage competition for grades. In addition, tribes often teach children to live within and be in tune with the present. These beliefs can make motivating and disciplining students even more challenging for the non-Indian teacher.

Another cultural barrier to effective education is a difference in learning styles. American Indian children are traditionally taught by watching their elders.[53] Children do not begin to actively participate in an activity until after they spend the necessary time

watching their elders.[54] They are taught not to interfere by asking questions, and no questions are asked of them by their elders.[55] In most American classrooms, students are expected to learn by question-and-answer and teacher-led interaction. American Indian children have to learn a new learning style when they enter schools that emphasize verbal interaction.

Because most American Indian children speak English as their first language, verbal communication is not an impediment to learning.[56] Nonverbal communication, however, is a problem that American Indian children and their non-Indian instructors must overcome. Nonverbal messages explain one's emotional state, give basic social information, and provide cues when one person wants or expects something from another.[57] When teachers interpret an American Indian child's behavior in the context of the mainstream culture, problems may arise. For example, mainstream culture attributes "unhappiness or lack of cooperation to students who avoid eye contact."[58] Some tribes, however, teach their children that eye contact is disrespectful to elders.[59] The consequences are exemplified by one case where a teacher recommended an American Indian girl for counseling to correct her social anxiety and shyness.[60] The girl's intended show of respect for her teacher created a problem because of a cultural interpretation of nonverbal communication.

American Indians use nonverbal signals to communicate when it is appropriate for their children to talk. Conversation among many American Indian cultures includes long pauses between turns, and talk is not focused toward one individual.[61] In contrast, interaction in most classrooms is highly focused on a single individual. American Indian children may be confused by these differences. As a result of differences in nonverbal communication between cultures, many American Indian children have great difficulty understanding and participating in verbal exchanges and lessons in classrooms utilizing mainstream expectations of communication.[62]

The result of the cultural differences in both learning style and nonverbal communication becomes more apparent as American Indian children progress through school. They gradually become less willing to verbally interact in class and will not participate in teacher-led interactions.[63] They prefer to work one-on-one with instructors or in student-directed small groups.[64] Ethnocentric attitudes held by both the non-Indian instructors and American

Indian students may limit the willingness of either party to modify their communication method.[65] The result is a culturally created communication barrier.

Ethnocentric textbooks also make attending school a difficult experience for many American Indian children.[66] Textbooks traditionally aid a child's assimilation by presenting a standard way of perceiving history and the world. American Indians are rarely mentioned in textbooks.[67] When they are referred to, it is usually in history books that describe them as another hardship European settlers were forced to endure.[68] Educators who were themselves taught from these books have difficulty recognizing that part of the story is missing.

To make learning relevant to an Indian child's culture, textbooks written by and for American Indians are being developed.[69] For example, the Northwest Regional Educational Laboratory in Oregon has an American Indian program that develops many educational aids.[70] The program developed an American Indian reading series consisting of a collection of stories about Indian people of the Northwest. This reading series has been marketed all over the nation and was in use in thirty-three states by 1978.[71]

4. Curriculum options available to schools

Parents, teachers, and administrators are working diligently to develop and implement a curriculum that addresses the specific impediments that American Indian students face. This curriculum must consider the historical realities of Native American education and incorporate the cultural principles that impact on a student's ability to learn. One way of doing this is to create a bicultural educational environment.

Bicultural education is a type of curriculum that incorporates a student's specific culture and language as well as the mainstream culture and language into the lessons.[72] The bicultural concept is based on research that suggests children who recognize their own values undergo the mental processing required to accept concepts built upon values different from their own more easily. Thus, in a bicultural program, verbal and nonverbal language skills, as well as the basic learning skills developed in the home, are nurtured and reinforced during the first school years.[73] Then, after the children are proficient in using their skills to learn, the learning styles and language skills of the mainstream culture are introduced. Students are taught to build upon the

learning strategies they have already developed to understand how to learn new language skills. Biculturalism is thus able to convey skills to students while ensuring that the child's cultural values and language are respected.

To create a true bicultural educational environment for American Indian students, educators must transfer the learning skills of the American Indian family to the classroom. Some schools accomplish this by bringing American Indian elders into schools. The elders teach American Indian students traditional culture in a traditional manner. This reinforces the student's first set of learning skills. Later, students are encouraged to utilize traditional and cultural learning skills to master mainstream academic skills.

An example of a pure bicultural curriculum is found in Canada. Inuit (Eskimo) villages are taking control of the European-style school systems long recognized as ineffective and reworking them to serve their needs. These villages are developing strong bicultural educational programs.

In one Inuit village, the principal of the local elementary school decided that "too many schools set up 'traditional culture' classes as afterthoughts to the standard white curriculum—nice guilt-fueled ideas with little planning, few clear goals and no textbooks in the native students' first language."[74] Because this school only contended with meeting the educational needs of a single ethnic group, the bicultural program could be the underlying concept of the school. Thus, the bicultural curriculum does not approach its goal classroom by classroom or grade by grade, but rather incorporates the entire school. The first through third grades are taught only in the traditional Inuit language, fourth graders are taught in both their native language and in English, and after the fourth grade, students are taught in English.[75] To increase the effectiveness of the bicultural curriculum, the village school board also developed a textbook publishing program utilizing the local tribal language and the traditional geometric syllabic script.[76] The elementary school also has an Eskimo lodge in the playground where the village elders teach children tribal skills. A few children at a time watch, listen, and imitate the elders in making traditional tools and garments. By supplementing academic learning with traditional tribal lessons, the Inuit bicultural program has reduced dropout rates.[77]

4.1 Rough Rock Demonstration School

Some private schools that are composed only of Native American students are able to implement bicultural programs. One such school is the Rough Rock Demonstration School, founded in 1966.[78] This federally financed school is located at the center of the Navajo Reservation in Arizona.[79] Rough Rock was established to develop and implement bilingual education programs and cultural awareness.[80] Since the 1980s, these principles have merged into a bicultural curriculum.[81]

The goals and methods of Rough Rock's bicultural curriculum are similar to the immersion method utilized in the Canadian village. Rough Rock's educational philosophy is that "a child must be taught in a manner based on the child's use of their [*sic*] culturally specific cognitive style, and that the learning environment must best facilitate and capitalize upon the child's Native-specific environment."[82] The curriculum adopted by the Rough Rock school uses center-based, small group instruction reminiscent of traditional American Indian teaching methods.[83] The basic concepts of mainstream education are taught in the child's first language and in a manner that makes sense to the child.[84]

The program is relatively new and, so far, only the youngest students are involved. Thus, researchers and educators have not yet measured the impact of the Rough Rock bicultural immersion program on high school graduation rates and overall literacy. Until this program is deemed effective, the determination of whether this curriculum could be successfully transferred to a situation where non-native students and American Indian students are integrated cannot be made.

4.2 Public schools and biculturalism

Public schools have been slow to adopt bicultural programs. The difficulty of implementing bicultural immersion programs in public schools is often a result of the small size of the local American Indian population. Although approximately 90 percent of all American Indian children attend public schools, integration has left few public schools with a large enough American Indian population to make separate curricula feasible.[85] Even in schools composed mostly of Indian students, the incentive to create innovative programs is reduced because the judicial system has determined that bicultural education is not mandatory.[86]

5. Other methods to address the problem

A few school districts attempted to deal with the cultural barriers of American Indian students in the public school classroom with solutions other than bicultural curriculum. For example, Seattle, Washington, developed an American Indian magnet school.[87] All students in the district, regardless of ethnic background, may apply for permission to attend. The purpose is to teach all children about American Indians.

A variation on the magnet school idea is the implementation of intensive ethnic studies courses. School districts, including Los Angeles, California, are developing intensive ethnic studies courses designed to give all students and teachers the ability to perceive situations from a variety of ethnic perspectives.[88] These courses may include a section on American Indian culture, but are not designed to teach American Indians how to function effectively in their other courses.

Ethnic studies courses, however, do not go far enough for some American Indian parents. These parents believe integration policies exacerbate historical problems.[89] Small populations of American Indian students are spread across school districts to achieve an ethnic balance, causing feelings of isolation and inferiority. Social workers and educators who deal with the effects of integration daily suggest that immersing an American Indian student within a predominantly non-Indian high school causes the student to emotionally withdraw and alienate all school personnel.[90] These attitudes negatively impact a student's willingness to learn.

In response to the perceived problems resulting from integration, some American Indian parents are calling for a separate public school for American Indians, run by American Indians.[91] These parents believe that only a separate school can provide the cultural support necessary for American Indian students to succeed academically.

The Native American parents of Duluth, Minnesota, requested a separate public school operated by the school district for American Indian children.[92] The proposed function of the Native American school is to increase student achievement in the same manner as immersion and bilingual-bicultural programs. The curriculum would balance the principles of mainstream education with traditional American Indian culture. Of course, American Indians would not be required to attend, but supporters

expect American Indian children to constitute at least three-quarters of the school's students.[93] Parents and supporters believe that dropout rates will decrease because of reduced social and cultural distractions. Parents and community members also expect that a separate Native American school will give them a greater voice in establishing and updating the priorities of the school.[94]

Critics of the concept want to see clear evidence that "education of Indians by Indians" is beneficial before supporting a separate school because of the various negative side effects of such a program.[95] One potential consequence of such a program is a reduction in federal desegregation money for any school district that segregates a racial minority.[96] Some critics also assert that creating a separate school will prevent American Indian children from learning about how to function in America today. The discrimination, ethnocentrism, and lack of understanding that American Indians encounter may not be pleasant, but it is a reality. Critics of separate schools argue this reality can only be changed by staying within the current system and making it work.

To provide bicultural education to children living off reservations, American Indian's established alternative schools. Alternative schools come in many forms. One example is the Heart of the Earth Survival School, an urban, Indian-controlled school in Minnesota.[97] The school offers basic academic and supplemental educational programs for secondary American Indian students. Since its creation in 1971, it has served the students who are the least successful in the public schools. The school's founders believe that bicultural education helps many students complete their secondary education when they otherwise would not have graduated from a traditional high school.

The variety of programs currently utilized in different areas illustrates that there is a cultural dilemma in the classroom, but no consensus on how to solve the problem. American Indian children need to learn certain academic skills to survive in mainstream society. At the same time, the United States has a responsibility to protect the indigenous people of this land from being swallowed by the mainstream culture. Bicultural education may be the answer, but it has only been implemented in schools that are totally composed of a single American Indian culture. Most American Indian children attend public schools composed of students from a wide variety of ethnic

backgrounds. Additionally, a local Native American population is likely to be made up of a number of different tribes. Confronted with such disparate populations, public schools have tried to implement other types of cultural programs, but the reality remains: American Indian children are less successful in the public school classroom than other ethnic groups.

6. American Indian education and the law

Before pursuing any changes in the educational system, the laws that govern it must be explored. The difficult aspect of determining which laws apply to changes in the educational methods affecting American Indians is that, in addition to being a racial minority, Native Americans are deemed to have a special political status in limited circumstances. The applicable laws are derived from statutory law and from two hundred years of case law involving the relationships of the federal, state, and American Indian governments to each other.

The federal Constitution reserves to the states the right to develop an educational system. Congress, however, retained the power to protect students from prejudicial treatment and to educate American Indian children living on remote reservations. American Indians living on reservations have the additional protection of a special legal status under the Constitution.[98] Thus, when using the legal system to change the educational environment of American Indian students, one must first determine the applicable body of law.

The special legal status of American Indians was announced by the United States Supreme Court in an 1831 decision unrelated to education. In *Cherokee Nation v. Georgia,*[99] the State of Georgia attempted to impose its laws on the Cherokee reservation. The Cherokee filed suit against Georgia in the Supreme Court, claiming that the Court had original jurisdiction under Article III of the United States Constitution on the theory that Indian reservations were foreign nations. As foreign nations, Indian reservations would be exempt from state and federal law. The federal government, however, argued that it needed to maintain some authority over reservations because they are located within the borders of the United States. Chief Justice John Marshall said that Indian nations were not foreign nations, but "domestic dependent nations,"[100] thus satisfying the goals of both the Cherokee and the federal government.

The meaning of "domestic dependent nation" was clarified one year later in *Worcester v. Georgia.*[101] The Cherokee and the State of Georgia were disputing whether the Cherokee could give non-Indians permission to live on the reservation despite a Georgia law to the contrary. Justice Marshall found that because reservations were domestic dependent nations, they were "distinct, independent, political communities having territorial boundaries within which their authority is exclusive."[102] As a result, all state law is restricted on tribal reservation land.

As recently as 1980, federal courts have affirmed that the separate legal status of American Indians is applicable only to those American Indians living on reservations. In *State of North Carolina v. Chavis,*[103] the North Carolina Supreme Court clearly differentiated between the "legal status" and "racial status" of American Indians. According to the court, the legal status is a method of furthering tribal sovereignty and tribal self-government. The racial status of American Indians, however, is determined in the same way as any other racial classification.[104] This means that for American Indian children with access to the public school system, curriculum is a product of state education policy. For Native American children residing on reservations, however, their political status as citizen-members of a reservation allows them to attend schools established by the federal government. The federal government is free to determine the curriculum it will offer to the students of its schools.

Because schools on reservations are created by the federal government and public schools are governed by states, different laws are applicable to each. Several federal court decisions illustrate which laws are applicable to each type of school and also show the manner in which the courts interpret and apply those laws. In this way, the federal court system helps to shape the educational policy determinations affecting Native American students.

Federal anti-discrimination laws, along with state educational laws and policies, apply to American Indian children attending public schools just as they apply to every other student, regardless of race. The applicability of federal anti-discrimination law to minority students stems from *Brown v. Board of Education.*[105] In *Brown,* an African-American student argued that segregation was a violation of her right to equal protection under the Fourteenth Amendment. The United States Supreme Court determined that

segregation destroyed the self-esteem and self-confidence necessary for academic success. The Court also felt that racial segregation interfered with positive reinforcement and created feelings of inferiority in children attending non-white schools.[106] For this reason, the Court ordered the end of mandatory segregation.

A similar 1963 case in the Federal District Court of North Carolina ended mandatory segregation for American Indians. In *Chance v. Board of Education of Harnett County,*[107] American Indian students and their parents protested forced segregation in the Harnett County public school system. Prior to the suit, American Indian children were sent to a school far away from their homes. The Chance court held that American Indian children were entitled to attend the schools nearest their homes, citing the *Brown* decision as the controlling law. Although the *Chance* court did not adopt the language used in *Brown,* it did state that no cultural, social, or legal reason existed for continuing to segregate American Indians in public school systems.[108]

American Indian students attending public schools are not permitted to use the special legal status afforded American Indians residing on reservations. Legal theorists have argued that the unique political status of American Indians should permit the modified application of general equal protection and due process standards developed by the Court in *Brown* and subsequent cases to American Indians. Courts, however, have not made such a distinction. The Fourteenth Amendment applies to American Indians in public schools in the same manner it applies to other students. This lack of special consideration is important when developing educational programs because courts do not allow new programs to bypass federal anti-discrimination law.

The equal protection clause of the Fourteenth Amendment has been utilized by American Indian public school students to improve their educational opportunities. One example of this is *Natonabah v. Board of Education.*[109] In *Natonabah,* American Indian students protested the way schools in their district were funded. The students proved that district schools with small percentages of American Indian students received greater funds per pupil than schools populated by a majority of American Indian students. As a result, the court held that the American Indian's right to equal protection was violated by the consistent-

ly discriminatory funding.

The equal protection clause, however, has not been used as successfully to change the educational environment of American Indian students. In *Booker v. Special School District #1,*[110] the school board requested permission to put larger percentages of American Indian students in some schools. The goal of this policy was to derive greater benefits from federal funds allocated for American Indian students by providing more services in fewer places. The court held that although such a plan might benefit Indian students, it would cause non-Indian students to be stigmatized by attending a minority school.[111] Thus, American Indian children attending public schools could not be segregated even for a beneficial reason.

Federal courts have also refrained from broadening the interpretations of constitutional provisions in any way that would unduly restrict traditional state controls over education. One example of this is the protection of state power to mandate school dress codes. The Supreme Court refused to hear *New Rider v. Board of Education,*[112] a case involving three Pawnee Indian boys who were required to cut their braids in order to attend public school. The boys wanted to wear their hair in braids to show pride in their cultural heritage. The Tenth Circuit Court of Appeals held that the regulation describing the manner of haircut each boy must have helped to maintain order, school spirit, and scholarship.[113] Further, the court determined that this type of regulation would violate the Constitution only if it "rest[ed] on grounds wholly irrelevant to the achievement of the states' objectives."[114]

When the Supreme Court denied certiorari in *New Rider,* however, Justices William O. Douglas and Thurgood Marshall dissented. They pointed to a Senate study concluding that forcing "all students into one homogeneous mold even when it impinges on their racial and cultural values . . . frustrates Indian children and leads 'the community and the child [to] retaliate by treating the school as an alien institution."[115] The study also found that current policies created the same result as Captain Pratt's assimilation techniques of the late 1800s: frustration and alienation. The dissenting justices analogized the school's hair length policy to the historical goal of assimilation for all American Indian children.[116]

Federal courts have also avoided broadening the scope of federal edu-

cational laws. This is clearly illustrated by American Indian attempts to force states to provide bicultural education. In *Guadalupe Organization v. Tempe Elementary School District,*[117] Yaqui Indian children requested bilingual-bicultural education programs. The children argued that without bilingual-bicultural education, they would not receive a "meaningful" education as required by the Civil Rights Act of 1964. The Ninth Circuit held that "meaningful" as used in the Civil Rights Act did not mean bicultural.[118] The court said that each state has a legitimate interest in deciding how to "provide each child with an opportunity to acquire the basic minimal skills necessary for the enjoyment of the rights of speech and of full participation in the political process."[119] Thus, the "meaningful" requirement of the Civil Rights Act of 1964 was interpreted narrowly to prevent placing additional requirements on the state educational system.

Blackfeet Indian students in Montana also alleged that a failure to provide bilingual-bicultural education was a denial of their rights in *Heavy Runner v. Bremner.*[120] The district court held that although the state was "saddled with the obligation" to help students overcome "language barriers" as provided under the Equal Educational Opportunities Act of 1974 and Title VI of the Civil Rights Act of 1974, bicultural education was not required.[121] The court also determined that the obligation to provide bilingual education may be met in any way the state chooses. Once again, a federal court construed federal law narrowly to limit requirements on state educational programs.

Thus, case law on education policy for American Indians shows three important trends. First, American Indians may not be provided segregated public education when an integrated public school is available. Second, American Indians have no legally mandated right to bicultural education in public schools. Finally, American Indians have no constitutionally protected right to appear in a manner consistent with their culture and heritage while attending a public school. This final policy is the strangest of the three because it perpetuates the self-esteem and self-confidence problems that the *Brown* Court intended to solve through integration. These three policies place limits on how Congress, educators, community members, and parents can attempt to solve the educational problems of American Indians.

7. Proposals and conclusions

A unified and concerted effort must be made to change the fact that American Indian children, as a group, continue to perform below average in an academic setting. Isolating these children in federal or private schools is likely to increase their academic achievement. The cost to taxpayers and parents alike, however, prohibits educating the vast majority of children in this manner.

Creating separate public schools that every American Indian child in a particular school district could attend would provide the needed cultural support. This solution is dangerous, because, as legal precedent, it could be used to justify a number of frightening educational policies, including a return to racial segregation. Thus, most public school systems are legally and financially prevented from doing more than implementing multicultural and global education programs.

Multicultural and global education programs are methods of promoting the understanding of diversity among people of the world. Multicultural education is designed specifically to "prepare students to live in a culturally diverse society."[122] Global education teaches students the relevance of international events and cultural correlations.[123] Together, these programs are intended to teach American children to live within and accept a society composed of a multitude of cultures.

Despite the increasing number of multicultural programs, American Indians who attend public schools continue to drop out of high school at rates as high as, and often higher than, those of any other segment of society. Therefore, more than a traditional multicultural program is needed to keep American Indians in school.

An effective method of reaching American Indian students who attend public schools must incorporate the needs of the students, schools, and the law. Children must be taught learning skills that will lead to academic success. American Indian students must also graduate from high school with an understanding of what they must do to achieve the futures they want for themselves. At the same time, we should be careful not to place unrealistic expectations on already overburdened school systems.

For these reasons, federal and state law should be expanded to permit the creation of bicultural programs within the public schools. The manner of implementing a bicultural program should be left to the states and local

school districts, which must deal with varying sizes of ethnically diverse student populations. For example, the student bodies of some school systems may be 20 percent Asian, 15 percent Hispanic, and only 3 percent American Indian. If a small percentage of American Indian students are divided among four separate schools, it is unlikely that the district will be capable of directing much of its limited financial resources toward extra educational aid for them. Therefore, regulations should be created at the state level concerning the percentage of American Indian students a district must have in order to justify implementing a bicultural program. The federal government, however, must allow local districts to bring American Indian students together in one school to make the most of limited financial resources.

It should be reiterated that many of the problems American Indian students have in adapting to and adopting mainstream educational methods are a result of their small populations within school districts. Educators have fewer students from which to learn, while students have more reason to feel culturally isolated in districts with small American Indian populations. Thus, districts with small American Indian student populations should not rule out implementing bicultural programs.

In other instances, a school district could have a sizable American Indian student population that is academically successful. This type of school district must evaluate whether its limited financial resources would be best spent on a bicultural program. As long as the school is meeting the student's educational needs, the community can be charged with meeting the student's cultural needs.

For other schools, however, bicultural education could be the solution to the poor academic achievement of American Indian students. Bringing together American Indian students in certain grades to share resources and to affirm their cultural heritage should be permitted regardless of federal anti-discrimination law. Students at grade levels determined to be key intervention years, such as first, seventh, and tenth grades, could choose to be included in a year-long bicultural program. Standards for the program could be developed at the state level, but the program would be developed to fit the local community's needs. For example, some communities would need to develop bilingual-bicultural programs while others would be purely bicultural.

During years not determined to be key years for intervention, students

would attend mainstream classes. At the same time, other programs including special counselors and English as a Second Language should be offered. In this manner, students would be forced to transfer the skills learned in the bicultural program to mainstream classes during the grades they are not eligible for the bicultural program. Students would also be included in ethnically diverse classrooms during non-program years, helping American Indian students and non-Indians to learn to relate to each other and encouraging friendships to form. The most effective multicultural educational tool available is often simple friendship.

Permitting bicultural programs, but not requiring them, could create as many problems as it tries to avoid. Students who feel that bicultural education is a necessary service may find themselves attending school in a district that chooses not to provide such a program. No legal mechanism currently exists to ensure the creation of bicultural programs. Thus, it would be prudent for the federal government to mandate bicultural programs at the federal level for schools fitting a certain description. Districts with sufficient reasons for opting out of the program could be allowed to do so. If students could prove their needs outweighed the district's reasons for not providing the program, a court could intervene on behalf of the students. Creating a clear description of when bicultural programs should be implemented and providing a list of sound reasons why districts may opt out should limit legal conflicts.

Although American Indians are at the greatest academic risk, other ethnic minorities may also be able to justify bicultural programs if their culture is the basis of their academic difficulty. The possibility that other ethnic groups could choose to ask for similar programs is much less threatening to the foundations of equal education than separate schools. The precedent set by permitting separate public education for American Indians could be used as the basis for segregating all children based on their ethnicity. Because that concept is so abhorrent, nothing should be done to create such a precedent. A bicultural education program carried on in a classroom within a mainstream school that permits eligible students to choose whether to participate avoids the hazards of mandatory segregation.

A bicultural education program would give the American Indian community and the public schools a reason to work together. Alone, neither par-

ents nor educators can address the problems that American Indian children confront in the public schools. Educators see the need to improve basic academic skills while parents continue to teach a cultural heritage that makes learning in a traditional public school very difficult. Policymakers and the legal system are often so far removed from the problem, or restricted by laws, that they cannot take the lead in solving this problem. Working together, however, parents and educators can develop a program that meets their common goal: providing children with the tools necessary to prosper as adults.

NOTES

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Guides for International Advocacy

Frontline

Human Rights Defenders Manual: Right to Freedom from Discrimination (guide to the international human rights instruments that address discrimination and how to use them)

Available at http://www.frontlinedefenders.org/manual/en.

Human Rights Connection

Guide to Advocacy (a collection of articles and materials to help activists design effective human rights advocacy strategies)

Available at: http://www.hrconnection.org/advocacy/index.htm.

Minority Rights Group

The Framework Convention for the Protection of National Minorities: A Guide for Non-Governmental Organizations

ICERD: A Guide for NGOs

Minority Rights: A Guide to United Nations Procedures and Institutions

Available at: http://www.minorityrights.org.

International and Regional Instruments on Discrimination in Education

United Nations Instruments:

All documents available at: http://www.unhchr.ch/html/intlinst.htm.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Elimination of Discrimination in Education (CDE)

Convention on the Rights of the Child

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Universal Declaration of Human Rights
Available in more than three hundred languages at: http://www.unhchr.ch.udhr/naviage/alpha.htm.

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Available at: http://europa.eu.int/infonet/en/library/m/htm.

Council of Europe Framework Convention for the Protection of National Minorities
Available at: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm.

European Convention for the Protection of Human Rights and Fundamental Freedoms
Available at: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm.

International Advocacy Resources on the Web

The UN System

Guide to the UN human rights system: http://www.bayefsky.com.

UN High Commission for Human Rights portal: http://www.unhchr.ch.

Regional European Systems

The Council of Europe

Committee for the Prevention of Torture: http://www.cpt.coe.int.

Council of Europe Human Rights Commissioner: http://www.commissioner.coe.int.

Council of Europe Parliamentary Assembly: http://stars.coe.fr.

Council of Europe Treaties: http://www.conventions.coe.int.

European Commission Against Racism and Intolerance: http://www.ecri.coe.int.

European Court of Human Rights: http://www.echr.coe.int.

General human rights site: http://www.humanrights.coe.int.

The European Union

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Eurolink Database (all EU-related information): http://egora.uni-muenster.de/ifp/lehrende/meyers/bindata/eurolink_database.htm.

Organization for Security and Cooperation in Europe

Office for Democratic Institutions and Human Rights: http://www.osce.org/odihr.

OSCE High Commissioner on National Minorities: http://www.osce.org/hcnm.

About the Authors

Barbara Bedont served both as a consultant and later as the Program Director for the Training and Education Program of the Public Interest Law Initiative from August 2002 until December 2003. Ms. Bedont was instrumental in organizing and developing PILI's Summer Seminar on Combating Segregation in Education and worked extensively on many of the follow-up workshops throughout the region.

Rob Blezard is a freelance writer based in Gettysburg, Pennsylvania.

Savelina Danova is the Research and Policy Coordinator at the European Roma Rights Center based in Budapest, Hungary. She has conducted extensive research on the segregation of Romani students in Bulgaria, Czech Republic, Hungary, Romania and Slovakia.

Dezideriu Gergely is a Lawyer and Coordinator of the Human Rights Department of Romani CRISS, a non-governmental organization in Bucharest, Romania. Mr. Gergely is a former human rights monitor for the European Roma Rights Center and has authored several articles on combating discrimination, Roma rights, and the role of the human rights monitor.

Jenny E. Goldschmidt is a Professor in Human Rights Law at Utrecht University in the Netherlands. She has written and spoken extensively on the development and implementation of anti-discrimination laws in relation to human rights and diversity. She is the former Chair of the Dutch Equal Treatment Commission, the enforcement body of the Dutch anti-discrimination law. She is a member of the International Commission of Jurists in Geneva and member of the Board of the European Monitoring Center on Racism and Xenophobia (EUMC) in Vienna.

James Goldston is the Executive Director of the Open Society Justice Initiative, a program of the Open Society Institute that promotes rights-based law reform and strengthens legal capacity worldwide. Previously, Mr. Goldston served as the Legal Director of the European Roma Rights Center where he brought civil rights cases before the European Court of Human Rights, United Nations treaty bodies, and domestic courts in 15 European countries.

Jack Greenberg is a Professor of law at Columbia University School of Law. Professor Greenberg has argued before the U.S. Supreme Court in forty cases, including *Brown v. Board of Education*. Professor Greenberg served as Director-Counsel of the NAACP - Legal Defense and Education Fund, a civil rights organization in the U.S. from 1961-1984.

Romanița Iordache is currently a Furman Fellow with Human Rights Watch. She holds a law degree from the University of Bucharest Law School, and LLM degrees from the Central Europen University and New York University School of Law. She taught courses in international human rights and minority rights at the Faculty of Political Sciences in Bucharest and at the Invisible College. Ms. Iordache was a fellow with the Public Interest Law Initiative from 1999-2001.

Ivan Ivanov is a Legal Officer of the European Roma Rights Center in Budapest, Hungary. Mr. Ivanov was a Public Interest Law Fellow at Columbia University School of Law from 1999-2001.

Krassimir Kanev is the Director of the Bulgarian Helsinki Committee, a human rights organization in Sofia. He is a sociologist who has researched and written widely on issues of anti-discrimination and the promotion of Roma rights in Bulgaria and throughout the region. Mr. Kanev has conducted significant analysis and evaluation of Bulgaria's desegregation programs.

Angela Kocze is the Executive Director of the European Roma Information Office (ERIO), an international NGO in Brussels that works to promote the rights of Romani people and the improvement of their living conditions throughout Europe. Ms. Kocze was formerly the Human Rights Education Director of the European Roma Rights Center in Budapest, Hungary.

Robert Kushen is the Director of International Operations at the Open Society Institute (OSI). Mr. Kushen has also served as the Executive Director of Doctors of the World, a health and human rights organization, as an attorney in the Office of the Legal Adviser in the U.S. Department of State, and as a Research Fellow at Human Rights Watch. Mr. Kushen earned his JD from Columbia University School of Law and his BA in Russian Studies from Harvard College.

Christina McDonald is the Manager of the Roma Education Initiative of the Open Society Institute in Budapest, Hungary, and has been an Education Support Program staff member since 1997. Ms. McDonald has a background in education policy and has been working on issues of the education of Roma children since 1995.

Alison McKinney-Brown graduated from the University of Kansas School of Law. She is now a lawyer working in Kansas.

Viktória Mohácsi is the Ministerial Commissioner for the Integration of Disadvantaged and Romani Children of the Hungarian Ministry of Education since August 2002. Ms. Mohácsi has directed the development and implementation of Hungary's first school integration program. She engages in extensive public speaking about the need for promoting equal opportunities for Romani students in education and for the elimination of segregation practices in education.

Aryeh Neier is the President of the Open Society Institute (OSI). Prior to joining OSI and the Soros Foundations network, Mr. Neier spent 12 years as the Executive Director of Human Rights Watch, of which he was a founder. Mr. Neier also worked for the American Civil Liberties Union and served as its National Director for eight years. Mr. Neier has written and lectured widely on various aspects of human rights and played a leading role in the establishment of the International Criminal Tribunal for the former Yugoslavia.

Mona Nicoară is a consultant who assists activists and non-governmental organizations to develop domestic and international advocacy skills and startegies. In her former capacity as Advocacy Officer with the European Roma Rights Center in Budapest, Hungary, she wrote and presented submissions on the human rights situation

of Roma to various bodies within the United Nations, the Council of Europe, and the European Commission. Ms. Nicoară also served for two years as the Parliamentary Liaison for the Romanian Helsinki Committee in Bucharest.

Maria A. J. Pereira is studying Dutch law and intellectual property law at the University of Amsterdam in the Netherlands. She recently completed an exchange program at Columbia University School of Law.

Dimitrina Petrova is the Executive Director of the European Roma Rights Center (ERRC) in Budapest, Hungary. The ERRC is an international public interest law organization which monitors the human rights situation of Roma and provides legal defense in cases of human rights abuse. Dr. Petrova is a member of the International Council on Human Rights Policy. She has published and spoken widely on human rights and has been a vocal supporter of desegregation of Romani education.

Branimir Plesě is the Legal Director of the European Roma Rights Center in Budapest, Hungary. Mr. Plesě has worked with local organizations and victims of discrimination and school segregation to bring cases before local courts and the European Court of Human Rights.

Edwin Rekosh is the Executive Director and founder of Columbia University's Public Interest Law Initiative (PILI). Mr. Rekosh has been a leader in the effort to advance human rights principles and promote the development of public interest law throughout Central and Eastern Europe, the Balkans and the former Soviet Republics. He is a member of the adjunct faculty at Columbia University School of Law and a visiting Professor at Central European University. He previously worked for the International Human Rights Law Group in Romania and as a consultant for the Ford Foundation.

Iulius Rostaş is a Program Manager with the Roma Participation Program (RPP) of the Open Society Institute. He has spoken widely on the condition of the Roma and has participated in international advocacy efforts to raise awareness about discrimination against Roma in various countries in Central and Eastern Europe. Previously Mr. Rostaş served as the International Advocacy Coordinator of the European Roma Rights Center.

Rumyan Russinov is the Director of the Roma Participation Program of the Open Society Institute. The Roma Participation Program (RPP) works to assist the Roma populations of Central and Eastern Europe in the struggle for greater integration by supporting the development of the Romani non-profit sector throughout the region. Mr. Russinov has been instrumental in helping to develop desegregation programs in Bulgaria, Hungary and elsewhere in the region.

Maxine Sleeper served as a Research Fellow with the Public Interest Law Initiative in Budapest, Hungary. She focused her research and writing on the development of anti-discrimination laws and the promotion of school desegregation programs throughout Central and Eastern Europe. Ms. Sleeper received a JD from Columbia University School of Law in 2002 and completed a Fulbright Fellowship in Budapest from 2002-2003. Ms. Sleeper is now working as a lawyer in New York.

Crain Soudien is an Associate Professor in the School of Education, University of Cape Town and teaches in the fields of Sociology and History of Education. His research interests include race, culture and identity, school and socialization, youth, teacher identity, school effectiveness and urban history. He has published over fifty articles and book chapters in the areas of race, culture, educational policy, educational change, public history and popular culture.

Mihai Surdu is a PhD candidate in sociology at Bucharest University. Since 1995, he has been working with the Research Institute for Quality of Life in Bucharest, Romania. In 2002, Mr. Surdu served as an International Policy Fellow with the Open Society Institute. He has written extensively on issues of Roma education.

Judit Szőke is the Director of Hungary's Education Integration Network of the Ministry of Education. Ms. Szőke is directly involved with overseeing the successful implementation of certain aspects of Hungary's school integration program.

Dawn Tankersley is an Education Consultant who serves as an International Teacher Trainer and Coordinator for the International Step by Step Association and as a Coordinator of Methodology for the Open Society Institute's Roma Educational Initiative in Central Europe.

Kalinka Vassileva is the Executive Director of the Equal Access Foundation in Bulgaria. Ms. Vassileva has been active with NGOs for over seven years and is one of the most active Romani advocates promoting the desegregation of Romani students in Bulgaria.

Ina Zoon is a human rights lawyer who works as a Project Manager of the Open Society Justice Initiative in Mexico. The results of her extensive research on the Roma population was published in the book *On the Margins: Roma and Public Services in Romania, Bulgaria, and Macedonia*. She has recently written on reproductive rights of Roma in Slovakia.