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## Warehouses and Window-Dressing: A Legal Perspective on Educational Segregation in Europe

### Abstract

The right to receive an education free from discrimination is a well-established principle of international human rights law and is protected by the EU Race Equality Directive.

The landmark decision of the European Court of Human Rights in *DH and Others* established that the segregation of Roma pupils violated their right to an education free from discrimination. It might thereafter have been expected that States in which Roma disproportionately attend remedial schools or classes would begin to move towards desegregation. Yet progress has been lamentably slow, with similar judgements handed down to Greece, Croatia and Hungary. Meanwhile Roma pupils continue to receive an unequal, inferior education in many European states. The persistence of segregation threatens social inclusion and demands that the European institutions adopt a much more assertive position.

**Keywords:** *Discrimination in Education, Educational Segregation, DH v Czech Republic, European Court of Human Rights, Roma*

### Zusammenfassung

Das Recht auf Bildung frei von Diskriminierung ist ein etabliertes Prinzip der internationalen Menschenrechtsnormen und geschützt durch die EU-Richtlinie zur Gleichbehandlung ohne Unterschied der Rasse.

In der wegweisenden Entscheidung des Europäischen Gerichtshofs für Menschenrechte im Fall *DH und Andere* gegen die Tschechische Republik entschied das Gericht, dass die schulische Segregation von Roma Schüler/inne/n gegen das Recht auf Bildung frei von Diskriminierung verstößt. Hiernach hätte erwartet werden können, dass Staaten, in denen Roma überproportional in Sonderschulen oder -Klassen beschult werden, Maßnahmen gegen schulische Segregation unternehmen. Schritte in diese Richtung werden jedoch bemerkenswert langsam vollzogen und es gab ähnliche Urteile des Gerichtshofs gegen Griechenland, Kroatien und Ungarn. In vielen europäischen Ländern sind Roma nach wie vor vom Zugang zu gleichen Bildungschancen weit entfernt. Die Persistenz schulischer Segregation gefährdet den sozialen Zusammenhalt und erfordert eine strengere Position der europäischen Institutionen.

**Schlüsselworte:** *Diskriminierung im Bildungsbereich, Bildungssegregation, DH gegen Tschechische Republik, Gerichtshof für Menschenrechte, Roma*

### Introduction

This paper aims to examine the five key judgements of the European Court of Human Rights (ECtHR) beginning with the landmark decision in *DH v Czech Republic*. Since the majority ruling, the Court has reasserted and defined its position, both on the interpretation of indirect discrimination and the specific issue of distinct educational provision. The Court appears to have become increasingly frustrated by benevolent segregation arguments espoused by respondent states who commonly assert that separation will benefit less able pupils by providing a more appropriate, less academically demanding curriculum. Segregation must also be carefully scrutinised where pupils are identified as having particular learning needs which are determined to require a tailored, but separate, learning environment (ECtHR 2010). The legitimacy of such schooling is especially questionable when there is an over-representation of pupils from a particular ethnic group, when the education provided is inferior to that in mainstream schools and where the opportunities for subsequent integration are severely limited.

Once the legal position is clarified it becomes necessary to examine compliance with the judgements in the respondent states. As members of the EU, these states are additionally bound by European Union law. Of particular interest in the present context are the legal obligations under the Equal Treatment Directive and the European Commission’s political strategy on Roma integration. For the first time, all EU Member States are required to identify relevant policies which can address Roma integration in four key areas, including education. One of the biggest obstacles to integration must surely be the extent of segregated schooling. It is thus argued that desegregation (in all its forms) should be prioritised by Member States in order to make any progress towards future integration.

The importance of the right to education needs little explanation. It is a precursor to the recognition of other fundamental rights and is recognised in a wealth of international human rights instruments. It is axiomatic that education be free from discrimination. The UNESCO Convention Against Discrimination in Education 1960 defines discrimination to include: any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education (Art 1).

Equality of treatment will be impaired where access to education of any type or at any level is impaired, or where a person is limited to education of an inferior standard. The Convention expressly prohibits separate educational systems or institutions subject to very limited exceptions (UNESCO 1960). This position is reiterated in various instruments of international law (O’Nions 2007, p. 163).

The education of Roma, Gypsy and traveller pupils has been a concern of both the Council of Europe and the European Community for the past thirty years. The Council of Europe has repeatedly emphasised the need to prioritise Roma/Gypsy education in national policies; recommending initiatives to secure access and retention, improve communication with parents and to adopt intercultural teaching strategies (Council of Europe 2000a, 2010). Segregation, both *de facto* and *de jure*, is rejected (Council of Europe 2000, 2009, p. 5).

In 1989 the European Council identified a number of challenges affecting the education of “Gypsy and Traveller pupils”, stressing the need for Member States to work to overcome obstacles acting as a barrier to access and retention (European Council 1989). These initial concerns primarily focussed on the education of nomadic children, many of whom received no formal schooling.

A different problem became apparent following the accession of states from Central and Eastern Europe whose Roma populations, unlike those of the UK and France, are generally larger and predominantly sedentary. Whilst many of the obstacles in the new Member States were common to the experiences of Gypsies and Travellers in Western Europe, an altogether more endemic problem faced these Roma children, threatening the very foundation of their right to an education. A significant number of Roma pupils were experiencing, and continue to experience, an unequal education in a segregated environment.<sup>1</sup>

The causes of segregation are multifarious and its eradication is not simply a matter of eliminating discrimination. In some cases the geographical isolation of Roma communities means that segregated schools offer a pragmatic solution, without which many children would not attend any school. In others, psychological tests are used by education professionals to assess that pupils may be better suited to a special education. There may be no intention to discriminate during these assessments but their application to Roma children who disproportionately come from materially deprived backgrounds without access to pre-school education, inevitably leads to ethnically disproportionate results.

The persistence of this practice notwithstanding the ECtHR rulings has further entrenched Roma inequality, making social inclusion a distant dream (EU 2010). Where legislation has been introduced to demonstrate compliance with the judgement it has been criticised as mere ‘window-dressing’ (Amnesty International 2012, Open Society 2012b). It will be argued that this raises serious questions over the commitment of Member States to Roma integration.

### **Segregated education in Strasbourg**

The first case on segregated schooling, *DH v Czech Republic*, was decided by the ECtHR Grand Chamber in 2007 (ECtHR 2007; O’Nions 2010). The case concerned 18 Roma pupils required to attend special schools for students with limited in-

tellectual capacity. In finding that the segregation constituted indirect racial discrimination the Court accepted statistical evidence revealing that Roma pupils in Ostrava were 27 times more likely than a non-Roma child to attend these schools (para. 17). The state was then left to rebut the presumption of discrimination by providing an objective justification for the treatment.

The state argued that the choice of school was made by head-teachers with the consent of parents following psychological aptitude testing (para. 197). The Court rejected these arguments, finding that the tests were conceived for the majority population and took no account of the Roma pupil’s background. Consequently they were culturally biased and could not justify the discriminatory treatment. On the issue of consent the Court considered that a signature on a pre-completed form did not constitute informed consent. Further, as a matter of general principle, the right not to be discriminated against was considered too important to be waived in this way.

The following year, the Court held in *Sampanis v Greece* that the placement of Roma pupils in a building separated from the rest of the school violated their right to an education coupled with the prohibition of discrimination (ECtHR 2008). Following the judgement the pupils were moved from the annexe into a newly established primary school where the practice of segregation continued. Five years later, the new school was subject to another successful challenge by 140 Roma applicants in *Sampani v Greece* (ECtHR 2012). The Chamber in *Sampani* recommended that the Greek authorities address the ongoing wrongs caused to these pupils through measures including adult education and second chance schools.

The Greek cases demonstrate the structural challenges facing advocates of Roma inclusion. Following a critical intervention from the Greek ombudsman, the Ministry of Education was fully aware that separation continued but considered it impractical and too costly to initiate integrated schooling. The new school’s head-teacher expressed reservations over the limited resources and facilities available yet the local education authority were more concerned that inclusion would cause hostility from non-Roma parents. The town’s mayor was particularly vocal in his opposition to integration, stating in a letter to the Ministry that as ‘Gypsies’ chose to “engage in illegal activities” they could not expect “to share the same classrooms as the other pupils” (ECtHR 2012, para. 25).

In the more finely balanced decision of *Oršuš v Croatia* (ECtHR 2010) a narrow majority of the Grand Chamber rejected the state’s ‘benevolent segregation’ argument that separate, remedial primary classes would benefit Roma pupils. These pupils had poor command of the Croatian language and certainly required additional learning support but in the Court’s view this could not justify a position of segregation whereby Roma pupils were subject to ongoing discrimination.

Also in 2010, the case of *Horávrth and Vadász* hinted at the persistence of segregatory practices in Hungary, a country that has attempted to address minority rights through a unique self-government system (Kovats 2000). The applicants had both been assigned to special classes in a mainstream school following negative assessments of their intellectual ability. After obtaining independent psychological evaluation, their lawyer contended that this was unjustified segregation

constituting endangerment of minors. Both pupils experienced a reduced curriculum with a teacher that lacked appropriate professional qualifications. Although declared inadmissible for the failure to exhaust all domestic remedies, the ECtHR handed down a judgement on similar facts three years later. Horváth and Kiss concerned two Romani men who had been sent to schools for mentally impaired children having been diagnosed with mild learning difficulties (ECtHR 2013b). The Court accepted that Roma pupils were disproportionately consigned to these schools and that there no chance being able to sit the standard school examination. The reduced opportunities available in these schools left the men unable to pursue their chosen careers, limiting their life chances. The Court emphasised that, in light of persistent discrimination and the presence of cultural bias in past testing, states had a duty to avoid the perpetuation of discrimination disguised in allegedly neutral tests (para. 116).

The final case to be considered suggests that ECtHR judgements alone may be insufficient to act as a catalyst for change in the presence of entrenched, structural discrimination. In *Lavida v Greece*, the authorities could not pretend to be unaware that educational segregation was *prime facie* unlawful and the Court criticised their persistent refusal to take anti-segregation measures (Council of Europe 2013a). The Greek Helsinki Monitor had twice written to the Ministry of Education raising concerns over primary schools in Sofades. Although the town had four schools, Roma pupils were not attending the nearest but were instead attending a segregated school in a Roma housing estate. The government attempted to deflect criticism by arguing that Roma parents could have requested a transfer to an integrated school. This was rejected by the Court as it shifted the responsibility for preventing discrimination onto the victims.

To summarise, the judgements indicate that segregation is unlawful without an objective justification which is accompanied by proportionate measures and sufficient safeguards to enable integration whenever possible. This will be a question of fact in each case but in the climate of pervasive discrimination the state will be afforded a particularly narrow margin of appreciation. There are a number of common themes emerging from these decisions which deserve further consideration.

### **Consent to discrimination**

Educational authorities do not necessarily act with discriminatory intent. Often they refer to the wishes of Roma parents in support of their position and it is thus helpful to understand why parents may express this preference. Integrated education may be viewed with suspicion for a number of interwoven reasons. Firstly, parents' own education experience may not have been positive. Illiteracy levels among Roma populations are high, particularly in the older generation, and Roma parents may have had limited engagement with the education system. Those that have received formal education may have experienced racist bullying by teachers, pupils and other parents and fear that their children will similarly suffer (European Commission Resolution 1989; Conway 1996). In the Greek cases, the authorities implicitly recognised these challenges when they contended that segregated education helped to protect Roma

pupils from the antagonism of non-Roma parents (ECtHR 2008, 2012). Additionally, Roma parents may have legitimate concerns about the values of the national education model which might appear to challenge aspects of Romani culture and family life (Etxeberria 2002, p. 295; O'Nions 2010). Whilst these are complex considerations they are certainly not insurmountable if an adequately resourced, intercultural model is adopted.

Mindful of these factors, the Court established in *DH* and reiterated in *Oršuš*, that where there is a strong, *prime facie* case of discrimination, parental consent cannot operate so as to waive the right not to be discriminated against. Even in cases where the presumption of discrimination is less clear, parental consent would need to be fully informed. It cannot be waived through inaction or disengagement. This is an important statement of principle as it places an onus on the education authority to ensure that parents are fully aware of the consequences (both immediate and longer-term) of such a decision. Given the fact that confirmed legal precedent provides that segregation is *prime facie* unlawful, it now seems unlikely that any consent would satisfy the requirement of an objective and reasonable justification for inequality.

### **'Benevolent' segregation**

Often educational authorities have attempted to justify segregation on the basis that separate schooling can be better tailored to the Roma pupils' needs (or at least their needs as defined by the dominant culture). Whilst educators may argue that a practical education may be better suited to these pupils; 'benevolent segregation' is inherently inferior to an integrated educational model which could address the needs of Roma pupils through specially trained teachers and teaching assistants, pre-school classes and intercultural mediators (EUMC 2006; Council of Europe 2000, 2009).<sup>2</sup> The Advisory Committee on the Framework Convention for National Minorities has noted that even when segregation is requested by parents it likely to place children at a significant disadvantage (Advisory Committee 2003). Inequality of access is perpetuated by subsequent inequality of opportunity as there is rarely any opportunity for pupils to transfer into integrated schools or to progress into further or higher education (ECtHR 2013b). The question of an intercultural dialogue, understanding and friendship does not arise in this dynamic and suspicion of Roma as different is established and confirmed from a very young age (O'Nions 2007, p. 133). Subsequent employment prospects are similarly limited as Roma applicants are less likely to have gained the formal qualifications required (O'Higgins and Brüeggemann 2014).

The decision in *Oršuš* clarifies that separate 'benevolent' policies will be carefully scrutinised to ensure they are not in fact discriminatory (cf. ECtHR 2010). When such policies are introduced the Court will scrutinise them to ensure that subsequent integration is immediate once the remedial purpose is satisfied (para. 145). It is very clear that separation can be no substitute for supportive measures in an integrated setting (Rostas 2012).

### **Positive measures**

In its Recommendation On the Legal Situation of Roma in Europe, the Parliamentary Assembly of the Council of Europe

recognised that Roma are doubly discriminated against as members of an ethnic minority with a particularly weak socio-economic status (Council of Europe 2002). Positive measures were advocated to ensure genuine equality of treatment. In the education context states are asked to provide opportunities for Roma students to participate in all levels from kindergarten to university; developing positive measures to recruit Roma in schools and eradicating all practices of segregated schooling.

Yet special measures are not without controversy in human rights law as they challenge the prevailing emphasis on formal equality which rejects all differences of treatment that have no objective justification. Initially the ECtHR was cautious, recognising on one hand that states may need to take positive obligations to respect the nomadic lifestyle of British Gypsies who wished to live in caravans on their own land. However, the same judgements on the right to a home life under Article 8 ECtHR also afforded states a wide margin of appreciation when determining whether planning restrictions were 'necessary in a democratic society' (ECtHR 2000, 2004). The decision in *DH* and subsequent case-law reasserts the necessity of special measures in order to ensure equality of opportunity in a substantive rather than procedural sense (ECtHR 2010). Such differences might include additional language instruction or behavioural support and there are plenty of examples of these initiatives across the EU (UNICEF 2010).

### **Educational discrimination under EU law**

The Treaty on the European Union establishes the foundations of the Union as:

“respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (EU 2010, Art 2).

The binding Charter of Fundamental Rights complements (and in some cases extends) the rights protected by the Council of Europe. Article 21 prohibits discrimination on the grounds of race as well as membership of a national minority. In decisions affecting children, the child's best interests shall be a primary consideration (EU 2000, Art 24). A further dimension in legal protection from discrimination is now offered by the Racial Equality Directive which applies to all Member States (European Council 2000). The Directive specifically covers education and makes exception for the application of positive measures 'with a view to ensuring full equality in practice' (Article 3(1)g, Article 5).

Many of the new Member States have struggled to implement the Directive, having no previous anti-discrimination legislation which could be adapted for the purpose. The EU's Fundamental Rights Agency noted that many states questioned the necessity of legislation because they did not consider discrimination to be a significant problem (Fundamental Rights Agency 2012, 10). Interviews with social partners (such as trade union representatives) echoed this view, particularly when the question of Roma exclusion was raised (Fundamental Rights Agency 2010, 85, 41, 59). Whilst most states have now formally complied with the provisions, enforcement of anti-discrimination laws remains marginal.

Enforcement is a particular problem when indirect discrimination is alleged because, in the absence of directly discriminatory rules and procedures, it is difficult for applicants to demonstrate that an apparently neutral criterion produces a discriminatory effect. Indeed, Farkas argues that the application of the supposedly neutral aptitude tests should more accurately be conceived as direct discrimination because the tests can in no way be regarded as ethnically neutral (Farkas 2007, p. 29). This argument has much to commend it as the direct discrimination approach would prevent states being afforded an opportunity to offer nebulous justifications for discriminatory treatment. Unfortunately the ECtHR's tentative development of the non-discrimination provision in Article 14 suggests that such reconceptualization may be a long way off for the Strasbourg court. It remains to be seen whether the EU's Court of Justice will adopt a broader, purposive approach.

It will be recalled that in *DH* the Grand Chamber endorsed the use of statistics to establish a presumption of discrimination. However, statistical evidence is not required under the Racial Equality Directive and is not collected in many Member States due to concerns over compatibility with data protection laws (Fundamental Rights Agency 2012, 13). The absence of reliable statistics on ethnic differentiation provides educators with an opportunity to deflect criticism of segregation by pointing to the absence of reliable evidence (Farkas 2007, p. 10). The Fundamental Rights Agency's research demonstrates the limited empowering effect of the Directive, finding that on average 82 % of those who had experienced discrimination in the EU in the past year did not report it to a competent authority (19).

The Directive simply does not go far enough in making a real difference to the prevention of discrimination in Europe. Its cautious approach to special measures is insufficient when discrimination is not perceived to be a significant problem by state representatives. Furthermore, the structural discrimination that characterises the experiences of many Roma is not sufficiently addressed. For example, employers will often justify a decision to favour a particular candidate by reference to superior qualifications rather than by racial preference. Structural discrimination includes segregation as well as institutional discrimination and the discriminatory impact of organisational procedures, including schools and local education bodies (Farkas 2007, p. 7). The multi-faceted nature of Roma identity and the prevalence and diversity of discriminatory practices demands that the Race Equality Directive be significantly adapted if it is to offer much hope in securing educational equality.

### **The persistence of segregation**

Notwithstanding the judgements of the ECtHR and criticism from human rights agencies, educational segregation remains common in the countries surveyed. This cannot simply be attributed to a lack of resources as EU structural funds have been available to assist with Roma integration for some time (European Commission 2007). Funds have been available for a variety of educational initiatives including training of teachers and pre-school classes in line with a long term strategy of abolishing separate schools and classes (European Commission 2007, p. 8).

Even when improvements appear to have been made, there is little substantive change on the ground. This can be seen in the Czech Republic where the Education Act abolished special schools but included a right to be accommodated by special educational arrangements. This has enabled a two-tier, discriminatory education system to remain in the formal appearance of so-called 'practical schools' that offer a reduced curriculum (Amnesty International 2012). The Czech Ombudsperson investigated 67 'practical schools' and found that typically more than one-third of pupils were Roma (Czech Ombudsperson 2012). Other schools in Roma neighbourhoods usually have exclusively Roma pupils and teach a reduced, practical curriculum. Research suggests that many parents do not even know what type of education their child is receiving under the new law (Amnesty International 2012, p. 9). In 2011 the former Education minister, Josef Dobeš, announced that his ministry had no intention of abolishing special schools or practical classes, leading 50 experts to resign from an inclusive education working group.

The Czech Supreme Court recently dismissed a challenge by a Roma applicant educated in a special school as the applicant could not show a *prima facie* case of discrimination (Romea.cz 2013). The court construed Oršuš to require that a presumption of discrimination would only be established when the school had a majority of Roma pupils (the number at the applicant's school was around 40 %). This marks an incomplete reading of the ECtHR's reasoning whereby DH was distinguished precisely because segregation was so widespread in the Czech Republic that there was a clear basis on which to presume a policy of indirect discrimination. Furthermore, the Court reasoned that indirect discrimination could also be presumed where particular admissions criteria or testing was applied selectively (ECtHR 2010, para. 153). It is thus unfortunate that the Supreme Court did not apply the more relevant case to the facts.

Despite some small-scale programmes, Roma education in Greece has yet to be seriously addressed (Georgiadis/Zisimos 2012). The European Commission funds the 'Programme for the Education of Roma Children' which covers 100 schools but there are still enormous obstacles. Research suggests that special initiatives aimed at improving student engagement and retention for vulnerable groups have had little impact on the drop-out rates of Roma pupils (Ziomas/Bouzas/Spyropoulou 2011). Much of the educational exclusion is the consequence of residential segregation and almost total isolation of Roma from Greek society, it is therefore unlikely to be addressed until structural problems of inequality are targeted centrally (something that will be particularly difficult given the Greek economic and political situation).

The influence of a more conservative style of government in many European states may have hampered the efforts to improve Roma inclusion. Efforts to desegregate schools in Hungary ran into trouble when the current right-wing government was elected in 2011. Many segregated schools have since re-opened. A Hungarian Court, following Strasbourg case-law, has recently ruled that segregated schools are unlawful and ordered the closure of one primary school located in a Roma neighbourhood (BBC 2014). However, it is difficult to be optimistic as anti-Roma rhetoric is commonplace in Hungarian politics. The government has reportedly expressed reservations over the

European Commission's plans for Roma integration and their own action plan fails to identify desegregation as a key objective (European Commission 2012).

In Croatia there have been anecdotal signs of desegregation initiatives being actively pursued by some schools since the decision in Oršuš (Bowers 2013). However, the recent civil society report on Croatia reveals that the number of classes attended solely by Roma pupils has increased since the judgement (Roma Decade 21014, p. 10). Again the absence of ethnically differentiated statistics makes it difficult to assess the degree to which Roma pupils are directed to special schools nationally but the report evidences hugely disproportionate attendance of Roma in special education in Medimurje county. The report also finds that Roma pupils are far less likely than their non-Roma counterparts to complete secondary education and to secure important qualifications which will enable them to participate in the labour market (10).

As in many states there appears to be a lack of commitment to Roma integration at the local level where such measures need to be implemented. Yet it is difficult to envisage how this can be addressed when the Croatian government's submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities accepts no responsibility, instead blaming the Roma lifestyle: "The education of Roma is a serious problem caused by their way of life and their attitude towards the system, law, rights and obligations of citizens and requires particular efforts and solutions" (ECtHR 2010, p. 69).

The persistence of segregation is all the more surprising in the light of recent EU initiatives to promote social inclusion. The Europe 2020 agenda includes social inclusion and education as two of the five principles necessary for growth over the next decade (European Commission 2010). Further, the Commission's Framework for National Roma Integration Strategies established in 2011, calls on states to develop a comprehensive approach to Roma integration, focussing on four common goals: health, employment, housing and education. In theory such strategies should have been adopted under the auspices of the OSCE but monitors have reported instead that social exclusion has deepened, with rising incidents of hate crime across the 41 states (OSCE, 2013). These findings are echoed by the views of former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, who notes a discernible shift away from traditional prejudice towards outright racism which is largely unchallenged by the majority (Commissioner for Human Rights 2012).

Whilst the link between social inclusion, discrimination and economic development is to be welcomed, analysis by civil society actors reflects the concerns over the Racial Equality Directive, indicating that there are significant deficiencies in the protection from discrimination. Many strategies do not make any link between anti-Roma prejudice and anti-discrimination norms and where planned measures are proposed they appear inadequate (European Roma Policy Coalition 2012, Open Society 2012a). It is suggested that in much of Europe, anti-Roma prejudice is not perceived as racial discrimination as Roma are regarded as a socio-economic group, responsible for their own social exclusion. This allows for racist statements to go unchallenged.<sup>3</sup>

The European Commission has acknowledged that states are dragging their heels, noting negligible improvement in their review of action plans and asking states to prioritise the interests and needs of Roma children and young people (European Commission 2013). Of particular concern in the present context is the absence of a time-scale for the desegregation of education which suggests a lack of commitment to the Framework and wider Europe 2020 agenda at the highest level. The Commission's concerns have now been elevated to a Council Recommendation which recommends equal access to education: either by means of mainstream measures or by means of targeted measures, including specific measures to prevent or compensate for disadvantages, or by a combination of both, paying special attention to the gender dimension (European Council 2013, 1.1).

The danger here is that states continue to view segregation as the best means of achieving a targeted approach. However, the Council recommends 'effective measures to ensure equal treatment and full access for Roma boys and girls to quality and mainstream education' including the elimination of any school segregation and inappropriate placement in special needs schools (European Council 2013 1.3a, b). Importantly, the ECtHR judgements are cited as authority on the implementation of non-discrimination in administrative practices and desegregation is recommended as a means to securing non-discrimination.

## Conclusion

The EU Framework is an important starting point in the eradication of school segregation. But whilst regular monitoring will help measure progress it may need to be complimented with enforcement proceedings, particularly where ECtHR judgements have failed to secure compliance over a number of years. Enforcement action may seem unduly punitive given the economic climate but it is worth reflecting on the reasons why segregation of Roma pupils has persisted in the face of international condemnation. The availability of EU funds means that resources are rarely the main obstacle. At times there is insufficient national commitment and often municipal authorities reject local desegregation initiatives. Here again we see a need to strengthen non-discrimination norms as the Roma are typically blamed for their situation.

There is much that educators can do to address the concerns of the European Court. Economic and social disadvantage can be addressed in the classroom through specialised Roma mediators and additional support, both academic and practical. Intercultural and mother tongue teaching can help to ensure increased educational engagement and attainment for Roma pupils (Kyuchukov 2007). Indeed there are many small-scale examples of good practice across the EU that can be developed to this end. The afternoon school program in Hungary is one such example where pupils, both Roma and non-Roma, from disadvantaged backgrounds are offered additional support to help ensure their integration and engagement with mainstream schooling (Roma Source 2012). The Decade of Roma Inclusion and the work of the Roma Education Fund have enabled representatives from Central and Eastern Europe to share best practices with an emphasis on desegregation. But the question remains as to why these initiatives are not ade-

quately promoted and resourced by national education departments. Too often it would seem that Roma inclusion is conceptualised as a peripheral or minority interest.

Thus Roma inclusion needs to be reconceptualised in the eyes of the majority as a matter of equality. This equality needs to be substantive in order to address years of entrenched structural prejudice. The Race Equality Directive may seem like the appropriate vehicle from which to pursue enforcement action but special measures are entirely at the state's discretion. In terms of social inclusion the EU has very limited competence in key areas that are instrumental to ensuring its objectives (including education, employment, health and housing) and therefore it has proceeded with caution, providing a 'framework' rather than clear targets for states. At present there is no clear authority by which the Commission can pursue action against Member States, consequently there is a real risk that desegregation will continue to remain empty rhetoric.<sup>4</sup>

## Notes

- 1 The cases before the European Court involve the Czech Republic, Hungary, Greece and Croatia but segregation is also widely reported in other East European states, notably Bulgaria, Poland, Slovakia and Romania.
- 2 It should be noted that there are a few models of separate education that are actively sort by Roma parents, such as the Gandhi High School in Pecs, Hungary which was founded by Romani organisations in 1994. The school aims to provide an academically rigorous but culturally-tailored education to its pupils with a particular emphasis on practical skills. Although it has an open admission policy its pupils are predominately Roma, thus it is unable to offer a truly intercultural experience and may be accused of undermining wider goals of social inclusion.
- 3 A good example is the public statement by Hungarian journalist Zsolt Bayer who wrote in Magyar Hirlap a national daily newspaper: "a significant part of the Roma are unfit for coexistence. They are not fit to live among people. These Roma are animals, and they behave like animals... These animals shouldn't be allowed to exist" (Verseck 2011). Bayer is reportedly a close friend of the Prime Minister and one of the founding members of the ruling Fidesz party.
- 4 In 2014 the European Commission announced they would commence infringement action against the Czech Republic for its failure to comply with Article 21 of the EU Charter of Fundamental Rights coupled with the Race Equality directive. The decision made explicit reference to the persistent failure to address the failings exposed by the ECtHR in *DH and others v. Czech Republic*.

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