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THE RIGHT TO EDUCATION AND PROHIBITION OF DISCRIMINATION

International and domestic legal framework and
practice in the sphere of prohibition of discrimination
in the realization of rights to education of Roma



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The Roma Education Fund, branch office in Serbia is implementing the project “Employment Empowerment of Young Roma”, with the support of German Financial Cooperation, implemented by KfW on behalf of the German Government – Ministry for Economic Cooperation and Development.



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The right to education is a human right guaranteed by numerous international documents, and as such it is also covered by constitutional guarantees and prescribed by domestic legislation. Observed in the context of the rights of the child and the rights of national minorities, the effective exercise of the right to education is essential for improving the position of the Roma national minority and as such is necessarily linked to the exercise of other rights guaranteed to members of the Roma national minority in the international and domestic legal framework.

Exercising the right to education, while respecting the prohibition of discrimination, represents an important segment of social integration, and therefore involves a comprehensive approach, bearing in mind the general position of the Roma national minority in the Republic of Serbia and the existing problems faced by this minority - such as poverty, discrimination, difficulties in the field of obtaining personal documents, housing, social and health care and employment. Taking into account the interconnectedness and conditionality of human rights and freedoms, it is indisputable that the obligations that the Republic of Serbia has assumed by ratifying international conventions and pacts in all key areas, and therefore the right to education of members of national minorities, cannot be achieved without a comprehensive approach. This implies not only the improvement of the legal and strategic framework, but also the effective and complete implementation thereof.

The Strategy for Social Inclusion of Roma for the period from 2016 to 2015¹ sets a goal of ensuring full inclusion of Roma children into quality pre-school, primary and secondary education, with the introduction of effective and efficient mechanisms for combating discrimination and the fulfillment of conditions for the enjoyment of all minority rights for Roma in the education system. In spite of significant measures taken to improve the legal and strategic

¹ Official Gazette of the Republic of Serbia, no. 26/2016

framework in the Republic of Serbia, as well as the measures of affirmative action, the realization of the right to education of Roma is still impeded and accompanied by numerous problems.

Considering the importance of the right to education, the rights of the child and the rights of members of the Roma national minority as a whole, the analysis of the international and domestic legal framework and practice in the field of exercising the right to education of Roma and the prohibition of discrimination provides an overview of the relevant legal framework of international documents of the UN and the Council of Europe (Chapter II), and the domestic legal framework including constitutional guarantees, laws, bylaws and strategic documents (Chapter III). The overview of the practice of the European Court of Human Rights in the area of the right to education of Roma and the prohibition of discrimination is provided in Chapter IV, as well as the protection against discrimination in the domestic legal system with the practice of the Commissioner for the Protection of Equality and the existing court practice case law in Chapter V. Regarding the degree of realization of the rights guaranteed, an overview of the most important observations of the competent international bodies for Serbia and the reports and analysis of the local authorities, bodies and institutions (Chapter VI) was given, with concluding considerations regarding the existing legal framework and practice in the area of the right to education of Roma and the prohibition of discrimination, as well as existing obstacles in the implementation of the legal framework.

The right to education and the prohibition of discrimination are among human rights and freedoms guaranteed by basic international documents at the level of the United Nations and the Council of Europe. The right to education and its realization without discrimination is included in the constitutional guarantees of the Constitution of the Republic of Serbia and numerous legal regulations, bylaws and strategic acts at the national level. Universal Declaration of Human Rights (1948), as the fundamental document of human rights and freedoms, sets standards relating to the right of every person to education, which should be directed towards the full development of human personality and the strengthening of respect for human rights and fundamental freedoms.

In accordance with existing international standards, the right to education includes not only the right to the availability of education for everyone, but also the individual and subjective right to a certain quality of education, as well as teaching methods adapted to the different needs of different children². The right to education also includes access to educational institutions that exist, as well as the transfer of knowledge and intellectual development, and the right to official recognition of studies completed in accordance with the existing legal regime of any state³.

In the domestic legal system, the education system must be based on principles that aim to ensure equality and accessibility and exercise of the right to education, based on social justice and respect for human rights and the rights of every child and pupil without discrimination. From these foundations entails the obligation of the state commitment to education of persons from socially

² UN Committee on the Rights of the Child, General Comment No. 1; Goals of Education, CRC/GC/2001/1, 17 April 2001, available at www.ombudsman.rs/attachments/2145_PDFPrava_detet_u_medjunarodnim_dokumen_timaF.pdf

³ Council of Europe/European Court of Human Rights, Guide to Article 2 of Protocol No.1 – Right to Education, 2015, available at www.echr.coe.int

vulnerable groups, in order to reduce the rate of dropout from the education system and provide support for their inclusion in the system, in accordance with the principles of inclusive and Intercultural education⁴.

The right to education without discrimination, viewed in the context of human rights, that is, the rights of the child, and especially the rights of national minorities, creates an additional obligation for the state to devote to the inclusion of members of the Roma national minority in the education system in accordance with the principles and guarantees outlined above. This implies not only the harmonization of the legal framework with the existing obligations that the state has undertaken with the ratification of international documents in this field, but also the consistent implementation of the existing legal framework in order to ensure that Roma pupils can effectively exercise the right to education without discrimination. The improvement of the position of the Roma national minority and their involvement in society must be based on the awareness of the importance of the right to education and the fight against discrimination, not only through the prevention and sanctioning of discrimination, but also by undertaking affirmative measures in order to correct factual inequalities.

The application of a non-discriminatory principle implies not only identical treatment, but also positive obligations on the part of the state, and therefore it is evident that there is an obligation to undertake special measures in order to reduce or eliminate the conditions that cause discrimination. In doing so, one should bear in mind the general situation of the Roma minority and the problems they face in terms of poverty, lack of personal documents, housing, and health and social protection and employment. In its practice, the European Court of Human Rights has emphasized that the Roma, as a result of their turbulent history and constant uprooting, have become a specific type of disadvantaged and vulnerable minority, and therefore should enjoy special protection, including the protection of rights in the field of education, including the existence of protective mechanisms which would ensure that

⁴ Law on the Foundations of the Education System, Official Gazette of the Republic of Serbia, no. 88/2017 and 27/2018 - other laws

in the field of education, each state takes into account their special needs as members of a group that is socially disadvantaged⁵.

The state has the obligation to ensure the availability of the right to education and take appropriate positive measures in order to eliminate existing obstacles in the process of exercising the right to education, whether due to an inadequate legal framework or inadequate practice. Commitments exist not only in terms of availability, but also the quality of education, bearing in mind that education must not compromise the further development of the individual, but must enable and facilitate to members of the Roma minority their integration into society. This implies active efforts and opposition to practices that impede or prevent access to education to members of the Roma national minority, restrict the right to an appropriate educational standard, and in particular segregation practices. It is necessary that “the right to and in education”⁶ be protected by legislation that is clear and mutually harmonized, and that there is both willpower and resources to enable the application of the existing legal framework and the implementation of supervision and reporting on the degree of realization of guaranteed rights.

The access of Roma children to quality education with equal rights and achieved integration is a problem in many countries, and so in the Republic of Serbia. According to UNICEF data, primary school in Serbia is completed by 64% of children living in Roma settlements, while secondary school is attended by 22% of children living in Roma settlements⁷. The challenges in practice are numerous, starting with enrollment in schools, attendance rates and drop-out rates, inadequate classroom allocations, segregation and discrimination by teaching staff, pupils and parents, with difficulties

⁵ SEuropean Court of Human Rights, Case D.H. and Others v. The Czech Republic, no. 57325/00 of 13 November 2007 (Grand Chamber)

⁶ Advisory Committee for the Framework Convention for the Protection of National Minorities, Comment No. 1: Education Based on the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002 of 02 March 2006, p. 19, available at

http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/obrazovanje_na_osnovu_okvirne_konvencije_za_zastitu_nacionalnih_manjina.pdf.pdf

⁷ Data available at <https://www.unicef.org/serbia/inkluzivno-obrazovanje>

regarding the lack of personal documents of parents and children, general poverty and social exclusion, language barriers. Despite the significant improvement, Roma children are still impeded in their access to education, thus pointing to the lack of support for stay of Roma children in the education system, there is a practice of transferring to special schools, with problems such as the lack of accurate data on segregation in special schools located near the Roma settlements, as well as the prevalence of Roma students in “special “ schools or in schools for children with disabilities⁸.

Particularly worrying is the segregation in education, which is still indicated by relevant reports of international bodies, as well as reports by local bodies and institutions. Segregation can occur as a separation into “special” schools or schools for children with special needs, as a result of an incorrect or incomplete procedure of testing and diagnosis; as a separation into special school buildings and often arises as a result of the protest of parents of non-Roma children or is conditioned by territorial affiliation; as well as segregation within the school through extracting special classes⁹.

The lack of full and adequate involvement in the education process makes it impossible to integrate members of the Roma community into the society and their complete personal fulfilment, which is unacceptable from the aspect of democracy and pluralism to which every democratic society must strive. Discrimination against Roma people in exercising their right to education, as well as discrimination based on ethnic origin, is a form of racial discrimination, which by its nature represents especially dangerous form of discrimination, and taking into account its consequences, requires from the authorities special vigilance and a vigorous reactions for the purpose of reinforcing democracy’s vision of a society in which diversity is not perceived as a threat, but as a source of

⁸ European Roma Rights Centre, *Written comments concerning Serbia for consideration by the Human Rights Council*, Working group on the Universal Periodic Review of the 29th Session (January-February 2018), June 2017, available at http://www.errc.org/uploads/upload_en/file/serbia-hrc-submission-30-june-2017.pdf

⁹ Commissioner for the Protection of Equality of the Republic of Serbia, *Prevention of segregation, development of inclusive enrollment policies and desegregation of schools and classes – International experiences and proposals for improving practice in Serbia*, Belgrade 2016, available at <http://ravnopravnost.gov.rs/wp-content/uploads/2017/02/Prirucnik-zavod-FINAL.pdf>

enrichment, and which must be based on the principles of pluralism and respect for different cultures¹⁰.

Preventing discrimination in the field of education and full inclusion of members of the Roma national minority in the educational process in a manner that follows the standards of international documents and guarantees the full realization of human rights implies active prevention and positive obligations of the state, and paying special attention to their needs and different lifestyles, both in the relevant regulatory framework and in practice. Although significant steps were made in the improvement of the legal framework and the adoption of strategic documents in the field of education and social inclusion, it can be concluded that significant obstacles in practice still remain. This is indicated by numerous factors such as the high rate of enrollment of Roma children in special schools, the existence of discriminatory procedures of school authorities, as well as insufficient knowledge of pupils and parents but also of teaching staff. Characteristic problems are the low rates of enrolled students, as well as the high percentage of dropouts of Roma students, low level of participation in education, and segregation into special classes that usually work according to lower standards of achievement, as well as the practice of directing to schools for children with disabilities¹¹.

Despite obvious efforts to improve the legal, strategic and institutional framework, in practice there are still major challenges and obstacles in this regard, so there is a need to continue to direct the activities at encouragement of inclusion in the school system of Roma pupils. One of the objectives of the Strategy for Social Inclusion of Roma for the period 2016-2025 is to ensure full inclusion of Roma children in quality education, with the introduction of effective and efficient anti-discrimination mechanisms and the fulfillment of conditions for the enjoyment of all minority rights for Roma in the education system.

¹⁰ European Court of Human Rights, case Horváth and Kiss v. Hungary, No. 11146/11 of 29 January 2013

¹¹ Civil Rights Defenders, *The Wall of Antigypsyism: Roma in Serbia*, 2018, available at <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93-Roma-in-Serbia-Srb.pdf>

1. DOCUMENTS AT UN LEVEL

At the United Nations level, the key documents are the **Universal Declaration of Human Rights** (1948), which set the foundations for respecting basic human rights and freedoms that belong to everyone without any differences in race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other circumstances (Article 2). The Universal Declaration establishes the equality of all before the law and the right without any difference to the equal protection of the law, as well as the right to equal protection against any discrimination that violates this Declaration and against any incitement to such discrimination (Article 7). It also stipulates that everyone has the right to education and that the basic education is compulsory (Article 26), that education should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms and shall promote understanding, tolerance and friendship among all peoples, racial and religious groups. Parents have a primary right to choose a type of education for their children.

In accordance with the **International Covenant on Civil and Political Rights**¹² (1966) all are equal before the law and are entitled to equal legal protection without any distinction, and in this regard, the law will prohibit any discrimination and ensure that all persons have equal and effective protection against any discrimination, in particular on grounds of race, color, sex, language, religion, political or any other opinion, national or social origin, property, birth or other status (Article 26). **International Covenant on Economic, Social and Cultural Rights**¹³ (1966) recognizes the right

¹²Official Gazette of the Socialist Federative Republic of Yugoslavia – International contracts, no. 7/1971

¹³Official Gazette of the Socialist Federative Republic of Yugoslavia – International contracts, no. 7/1971

of every person to education, which should aim at the full development of human personality and dignity and to enhance respect for human rights and fundamental freedoms (Article 13). Primary education must be compulsory and available freely to all, and secondary education in its different forms shall be made generally available and accessible to everyone by all appropriate means. By ratification, Member States have undertaken to guarantee that all rights formulated in the pact will be exercised without any discrimination based on race, color, gender, language, religion, political opinion or any other opinion, national or social origin, property, birth or any other circumstance (Article 2).

International Convention on the Elimination of All Forms of Racial Discrimination¹⁴ (1965) under racial discrimination implies any distinction, exclusion, restriction or giving of advantage based on race, color, ancestry, national or ethnic origin which aims or results in the disruption or compromise of recognition, enjoyment or exercise, under equal conditions, the rights of man and basic freedoms in the political, economic, social and cultural fields or in any other area of public life (Article 1). The special measures taken solely for the purpose of ensuring the proper progress of certain racial or ethnic groups are not considered to be racial discrimination, provided that they do not result in the maintenance of different rights for various racial groups and are not maintained when the objectives are met why these measures have been taken (Article 1). The Convention obliges the Member States to take, if circumstances so require, in the social, economic, cultural and other fields, specific and concrete measures to adequately ensure the development or protection of certain racial groups or individuals belonging to these groups in order to guarantee conditions of equality, full realization of human rights and fundamental freedoms (Article 2). States Parties also undertake to prohibit and abolish racial discrimination and to guarantee the right to equality before the law without distinction as to race, nationality or national or ethnic origin, in particular with regard to the enjoyment, inter alia, of the right to education and vocational training (Article 5).

¹⁴ Official Gazette of the Socialist Federative Republic of Yugoslavia, no. 31/67

In **General Recommendation XXVII - Roma Discrimination (CERD)**, of the UN Committee on the elimination of racial discrimination of 16 August 2000¹⁵, the Committee has, inter alia, made recommendations in the areas of education, which refer to encouragement of involvement in the school system of all children of Roma origin in order to decrease the drop-out rates, especially among Roma girls, and in this sense the active cooperation with Roma parents, organizations and local communities. The recommendations are aimed at the preventing and avoiding of segregation of Roma pupils, with leaving open a possibility of bilingual classes or in their mother tongue; it seeks to improve the quality of education in all schools and increase the level of achievement in schools by the minority community, employing school personnel from among members of Roma communities and encourages intercultural education; as well as consideration of the adoption of measures for the benefit of Roma children in the field of education, in cooperation with their parents.

Of particular importance is the **UN Convention on the Rights of the Child**¹⁶ which, in addition to other rights, provides for the child's right to education, including primary education which is compulsory and free (Article 28). States are obliged to take measures to encourage regular school attendance and reduce school dropouts. Child education should be directed to the development of a child's personality, the development of respect for human rights and fundamental freedoms, and respect for cultural identity, and the preparation of a child for responsible life in a free society (Article 29).

In accordance with **General Comment No. 1: The aims of education (CRC)**, of the UN Committee on the Rights of the Child¹⁷, the right to education guaranteed by the Convention on the Rights

¹⁵ UN Committee on the elimination of racial discrimination, General recommendation XXVII – Discrimination of Roma, A/55/18 annex 5, of 16 August 2000, available at <http://www.refworld.org/docid/45139d4f4.html>

¹⁶ Official Gazette of the Socialist Federative Republic of Yugoslavia – International contracts, no. 4/96 and 2/97

¹⁷ UN Committee on the Rights of the Child, General Comment No. 1; Goals of Education, CRC/GC/2001/1, 17 April 2001, available at www.ombudsman.rs/attachments/2145_PDFPrava_detet_u_medjunarodnim_dokumentimaF.pdf

of the Child is clarified, which includes not only a question of availability, but also the content, so one can talk about individual and subjective right to a specific quality of education and, therefore, the curriculum must be directly linked to the child's social, cultural, economic and environmental context, and teaching methods should be suiting different needs of different children (Item 9). The Member States are required to respect and ensure the rights enshrined in the Convention to each child within their jurisdiction without discrimination and irrespective of race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, economic status, incapacity, birth or other status of the child or his/her parent or legal guardian (Article 2). In **General Comment No. 5: General measures for the implementation of the Convention (CRC)** of the UN Committee on the Rights of the Child¹⁸, regarding the Article 2 of the Convention, it is stated that the obligation of non-discrimination requires that states identify individual children and groups of children whose rights may demand special measures, as well as to classify collected data, because the fight against discrimination requires the amendment of the laws, administrative measures and education to change attitudes. A non-discriminatory principle of equal access does not mean identical treatment, but it is important to take special measures in order to reduce or eliminate the conditions that cause discrimination.

In the sphere of education, it is important to mention the **Convention Against Discrimination in Education**¹⁹ aimed at combating discrimination in education and equal access to education, as well as promoting equal opportunities and procedures in education aimed at strengthening respect for human rights and fundamental freedoms. Discrimination is defined as any discrimination, exclusion, limitation or giving benefits based on race, color, sex, religion, political or other belief, national or social origin, economic status or birth, with the aim of challenging or endangering

¹⁸ UN Committee on the Rights of the Child, General Comment No. 5: General Measures for the Implementation of the Convention, CRC/GC/2003/5, 27 November 2003, available at www.ombudsman.rs/attachments/2145_PDFPrava_detet_u_medjunarodnim_dokumentimaF.pdf

¹⁹ Convention Against Discrimination in Education, Adopted at the 11th Session of the General Conference of UNESCO, Dec. 14, 1960, entered into force on 22 May 1962, Official Gazette of the Federative People's Republic of Yugoslavia - International contracts, No. 4/64

the right to equality in education, and in particular: denying any person or group access to any type or degree of education; limiting a person or group to a lower educational standard; the establishment or maintenance of separate educational systems or institutions, except in the cases provided for in the Convention; as well as bringing any person or group into a position that is incompatible with human dignity (Article 1).

2. COUNCIL OF EUROPE DOCUMENTS

In addition to international instruments concluded under the auspices of the UN, documents concluded at the level of the Council of Europe are also significant, such as, in the first place, **European Convention for the Protection of Human Rights and Fundamental Freedoms**²⁰, which guarantees education (Article 2 of Protocol 1, i.e. Additional Protocol to the Convention) and the non-discrimination (Article 14 of the Convention and Article 1 of Protocol 12 to the Convention) and the application of which, through the case-law of the European Court of human rights, significantly contributed to the fight against discrimination in the education of Roma. Article 2 of Protocol No. 1 i.e. the Additional Protocol to the Convention (the right to education) provides that no one may be deprived of the right to education. Article 14 of the Convention (prohibition of discrimination) provides that the enjoyment of the rights and freedoms set forth in the 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, economic status, birth or other status. Article 1 of Protocol No. 12 to the Convention (general prohibition of discrimination) provides that the enjoyment of any right provided for by law must be provided without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, connection with a national minority, economic status, birth or other status, so in this way the domain of the prohibition of discrimination extends to the enjoyment of any right, including

²⁰ Official Gazette of Serbia and Montenegro – International contracts, no. 9/03, 5/05 and 7/05 – correction and Official Gazette of the Republic of Serbia – International contracts, no. 12/2010

the rights under national law, bearing in mind that Article 14 of the Convention prohibits discrimination only in relation to the enjoyment of another right guaranteed by the Convention.

The right to education covers not only the right to access educational institutions that exist, but also the transfer of knowledge and intellectual development, as well as the right to be officially recognized completed studies, in accordance with the existing legal regime of each state²¹. In the case-law of the European Court of Human Rights, there are numerous cases of discrimination in the exercise of the right to education of Roma, in which the Court emphasized that, due to turbulent history, the Roma must be regarded as a specific group in an unfavorable and vulnerable position as a minority, and therefore requires special protection that extends to the field of education. States are required to pay special attention to this issue and to take measures to remedy the imbalances, in order to facilitate the enrollment of Roma children in school, even when missing some administrative documents, and to take the necessary steps to enabling appropriate conditions of education, including the positive obligations of States to take effective measures to avoid discrimination.

Revised European Social Charter²² within the framework of the rights of children and youth to social, legal and economic protection (Article 17), stipulates that the contracting parties are obliged to take appropriate and necessary measures aimed at, inter alia, children and youth receiving the education they need, and providing children and youth with free primary and secondary education, and encouraging regular attendance. Special attention must be paid to achieving equal access to available and effectively educational system especially when it comes to vulnerable groups, such as, among others, children from minority groups and undertaking of special measures in order to ensure they could exercise the rights²³.

²¹ Council of Europe/European Court of Human Rights, *Guide to Article 2 of Protocol No.1 – Right to Education*, 2015, available at www.echr.coe.int

²² Law on the Confirmation of the Revised European Social Charter, Official Gazette of the Republic of Serbia - International contracts, no. 42/2009

²³ European Social Rights Committee, Mental Disability Advocacy Center (MDAC) v. Bulgaria, Complaint No. 41/2007, Decision of 11 June 2008, available at [https://hudoc.esc.coe.int/eng#{%22ESCDcIdentifier%22:\[%22cc-41-2007-dmerits-en%22\]}](https://hudoc.esc.coe.int/eng#{%22ESCDcIdentifier%22:[%22cc-41-2007-dmerits-en%22]})

Framework Convention for the Protection of National Minorities²⁴ provides for the obligation of Contracting States to adopt, where necessary, appropriate measures to ensure in all areas of economic, social, political and cultural life full and effective equality of persons belonging to national minorities and members of the majority, and in this regard care will be taken of the specific conditions of members of national minorities. These measures shall not be considered an act of discrimination (Article 4). The obligation is also stipulated to ensure equal access to education at all levels to the minorities (Article 12). **In the Resolution on the Application of the Framework Convention for the Protection of National Minorities in Serbia** of the Committee of Ministers of the Council of Europe dated March 30, 2011²⁵, it is pointed out that members of the Roma minority continue to face discrimination in many fields, including the inappropriate practice of directing Roma children to special schools, and that discriminatory practices against members of national minorities are still not addressed sufficiently and adequately in the justice system, which is why it is necessary to gain the trust of members of national minorities to report cases of discrimination to existing judicial and non-judicial mechanisms.

Recommendation no. R (2000) 4 of the Committee of Ministers of the Member States on the Education of Roma children in Europe²⁶ emphasizes the urgent need to build new bases for future educational strategies for the Roma people in Europe, especially given the high rate of illiteracy or semi-literacy among them, a high drop-out rate, a low percentage of students who complete primary education, and their persistence in poor school attendance. It is pointed out that the problems that Roma face in the field of education are mainly the result of long-standing educational policies

²⁴ Law on the Confirmation of the Framework Convention for the Protection of National Minorities, Official Gazette of the Federal Republic of Yugoslavia – International contracts, no. 6/98

²⁵ Committee of Ministers of the Council of Europe, Resolution on the Application of the Framework Convention for the Protection of National Minorities in Serbia, CM/Res CMN(2011)7 of 30 March 2011, available at <http://www.ljudskaprava.gov.rs/en/node/128>

²⁶ Adopted by the Committee of Ministers of the CE on 3 February 2000 at the 696th meeting of the Ministers' Deputies, available at https://www.coe.int/t/dg4/education/roma/Source/TextsActivitiesISBN_EN.pdf

from the past which resulted in the assimilation or segregation of Roma children in schools due to their “social and cultural deprivation” and that the disadvantaged position of Roma in European societies cannot be solved if Roma children are not guaranteed equal opportunities in the field and education. Education of Roma children must be a priority in national policies for improvement of the situation of Roma. Relevant parts of the Appendix to Recommendation no. R (2000) 4, “General Principles of Educational Policy for Roma Children in Europe” emphasize that it is necessary to establish appropriate support structures to enable Roma children to have equal opportunities in schooling, in particular through positive actions.

There are also the recommendations of the European Commission against Racism and Intolerance (ECRI) which were established in 2002 with the task of reviewing every five years the situation in terms of protection in the Member States of the Council of Europe. **ECRI General Policy Recommendation No. 3: Combating racism and intolerance against Roma of 6 March 1998**²⁷ recommends that Member States sharply oppose all forms of segregation in schools against Roma children and ensure the effective enjoyment of equal access to education. **ECRI Recommendation No. 10 regarding general policy on combating racism and racial discrimination in and through school education** of December 15, 2006²⁸, recommends that Member States ensure the free and high quality education of all students, suppress racism and racial discrimination in schools, train teachers in multicultural environments, and ensure that all policies listed in this document are provided with the necessary financial support and that their implementation is regularly monitored to assess their impact. **ECRI’s Recommendation on General Policy No. 13 on combating anti-Gypsyism and discrimination against Roma** of June 24, 2011²⁹ contains specific recommendations in the field of education and calls on member states to take measures to prevent and combat

²⁷ CRI (98)29, available at <https://rm.coe.int/ecri-general-policy-recommendation-no-3-on-combating-racism-and-intole/16808b5a4e>

²⁸ CRI(2007)6, available at <https://rm.coe.int/ecri-general-policy-recommendation-no-10-on-combating-racism-and-racia/16808b5ad2>

²⁹ CRI(2011)37, available at <https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5af6>

stereotypes, prejudices and discrimination that Roma children experience in schools, take urgent measures to eliminate segregation in schools, and excessively frequent sending of Roma children to special schools, fight against maltreatment of Roma pupils at school, and take appropriate measures to combat school dropouts among Roma children and eliminate obstacles to access to education to Roma children.

1. CONSTITUTION

Basic human rights and freedoms are enshrined in the **Constitution of the Republic of Serbia**³⁰, either directly or through constitutional guarantees, or by a direct application of human and minority rights which are guaranteed by generally accepted rules of international law, ratified international treaties and laws. Constitution of the Republic of Serbia shall guarantee, and as such, directly implement human and minority rights guaranteed by generally accepted rules of international law, ratified international treaties and laws, while regulations on human and minority rights shall be interpreted in accordance with applicable international standards of human and minority rights, and the practice of international institutions which supervise their implementation (Article 18 of the Constitution of the Republic of Serbia).

The Constitution of the Republic of Serbia guarantees the protection of national minorities, so the country has an obligation to protect the rights of national minorities and guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity (Article 14). The Constitution prohibits discrimination and, in particular stipulates that discrimination does not consider specific measures that Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens (Article 21). With measures in education the state fosters understanding, appreciation and respect for differences that exist due to the particular ethnic, cultural, linguistic or religious identity of its citizens (Article 48). The Constitution also contains guarantees for the rights of the child (Article 64), as well as the right to education, so everyone is entitled to education, whereby primary education is compulsory and free and secondary education is free (Article 71).

³⁰ Official Gazette of the Republic of Serbia, no. 98/2006

Members of national minorities, in addition to the rights guaranteed by the Constitution to all citizens, are also guaranteed additional, individual or collective rights (Article 75). In particular, discrimination does not include special regulations and temporary measures that the state can introduce in the economic, social, cultural and political life in order to achieve full equality between members of the national minority and citizens belonging to the majority, if they are aimed at removing the extremely unfavorable living conditions that especially affect them (Article 76). Members of national minorities have the right, *inter alia*, to study in their own language in state institutions and institutions of autonomous provinces.

2. LAWS AND BYLAWS

The new **Law on the Foundations of the Education System**³¹ which was enacted in 2017, stipulates that the right to education belongs to each person, and that the citizens of the Republic of Serbia are equal in exercising this right. The system of education and upbringing is based on the general principles of education (Article 7), in order to ensure equality and accessibility of exercising the right to education based on social justice and the principle of equal opportunities without discrimination, and respect for human rights and the rights of every child, student and adult, and respect for human dignity. The process of education and upbringing must be adapted to the educational and personal needs of each child, student and adult. In the realization of these principles, the law stresses the importance of cooperation with the family, local community and the wider social environment, especially in achieving the continuity in education to enable students from vulnerable groups to have access to all levels of education. In particular, the state's commitment to reducing the rate of abandonment of the education of persons from socially vulnerable categories of the population and supporting their reintegration into the system is in accordance with the principles of inclusive and intercultural education and upbringing. The law provides for the rights of children

³¹ Official Gazette of the Republic of Serbia, no. 88/2017 and 27/2018 – other laws

and students (Article 79), which among others include the right to a quality educational work, respect of personality, protection against discrimination, timely and complete information on issues of importance for education, protection and fair treatment of the institution, as well as other rights in the field of education.

Law on Primary Education³² stipulates that primary education is realized in accordance with the Constitution, the law regulating the foundations of the system of education, confirmed by international conventions, charters, treaties and this law. Every person has the right to free of charge and good quality primary education in a public school, and primary education and upbringing is mandatory. The primary task of the school is to enable good quality education and upbringing for every child and student, under equal conditions, regardless of where the school is located, i.e. where the education is taking place, and the persons who are conducting educational-upbringing work and other persons employed in the school will especially promote equality among all students and actively oppose all types of discrimination and violence (Article 9).

In accordance with the **Law on Secondary Education**³³ the education is achieved in accordance with the goals such as compliance with racial, cultural, linguistic, religious, gender, sex and age equality, tolerance and recognition differences (Article 2).

The **Law on the Protection of the Rights and Freedoms of National Minorities**³⁴ recognize the Roma as the national minority and the obligation of the authorities has been established to adopt regulations and individual legal acts in accordance with the Constitution and law, and to adopt measures ensuring full and effective equality between members of national minorities and members of the majority nation, and in particular in order to improve the position of persons belonging to the Roma national minority

³² Official Gazette of the Republic of Serbia, no. 55/2013, 101/2017 and 27/2018 – other law

³³ Official Gazette of the Republic of Serbia, no. 55/2013, 101/2017 and 27/2018 – other law

³⁴ Official Gazette of the Federal Republic of Yugoslavia, no. 11/2002, Official Gazette of Serbia and Montenegro, no. 1/2003 – Constitutional Charter and Official Gazette of the Republic of Serbia, no. 72/2009 – other law, 97/2013 – Decision of the Constitutional Court and 47/2018

(Article 4). This law prohibits any form of discrimination against the national minority (Article 3). Members of national minorities have the right to education in their own language or speech, in accordance with the law, while the exercise of this right may prescribe a certain minimum number of students and that education in the language of the national minority does not exclude the mandatory learning of the Serbian language (Article 13).

The **Law on State Administration**³⁵ regulated the affirmative measures, that is, the obligation of the state administration bodies to take care, in accordance with the Constitution, laws and other acts of the implementation of special measures in order to achieve full equality of the person or group of persons who are essentially in unequal position with other citizens (Article 5a).

Of particular importance for the field of prohibition of discrimination in the sphere of education is the **Law on the Prohibition of Discrimination**³⁶. In accordance with the law, discrimination is any unwarranted discriminationa or unequal treatment or omission (exclusion, limitation or preferential treatment) in relation to individuals or groups as well as members of their families or persons close to them, be it overt or covert, on the grounds of race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital or family status, previous conviction, age, appearance, membership in political, trade union and other organizations, and other real or presumed personal characteristics (Article 2).

Everyone has the right to be effectively protected by competent courts and other public authorities from all forms of discrimination (Article 3). Everyone is equal and enjoys the same position and equal legal protection, regardless of their personal characteristics, and everyone is obliged to respect the principle of equality, i.e. the prohibition of discrimination (Article 4). As a form of

³⁵ Official Gazette of the Republic of Serbia, no. 79/05, 101/07, 95/2010, 99/2014, 47/2018 and 30/2018 – other law

³⁶ Official Gazette of the Republic of Serbia, no. 22/2009

discrimination the law envisages direct and indirect discrimination, as well as violation of the principle of equal rights and obligations, recourse to responsibility, association for the purpose of discriminating, hate speech and harassing and degrading treatment (Article 5). Direct discrimination exists if a person or a group of persons, due to his/her or their personal characteristics in the same or similar situation, by any act, deed or omission, are being placed in or were placed or could be placed in a more unfavorable position (article 6). Indirect discrimination exists if a person or group of persons, due to his or her personal characteristics, is placed in an unfavorable position by an act, deed or omission that is apparently based on the principle of equality and non-discrimination, unless justified by a legitimate aim, and the means for achieving these goals are appropriate and necessary (Article 7). Special measures shall not be considered to constitute discrimination introduced to achieve full equality, protection and progress of a person or group of persons who are in an unequal position (Article 14).

Discrimination in proceedings before the public authorities is prescribed as a specific case of discrimination, so everyone has the right to equal access and equal protection of their rights before the courts and public authorities (Article 15). The specific cases of discrimination are also discrimination in the sphere of education and vocational training (Article 19), and the law stipulates that everyone has the right to pre-school, primary, secondary and higher education and vocational training under equal conditions, in accordance with the law. It is forbidden for a person or group of persons, based on their personal characteristics, to make it difficult or impossible to enroll in an educational institution, or to exclude them from these institutions, impede or deny the possibility to follow classes and participate in other educational activities, classify pupils according to their personal characteristics, mistreat them, and otherwise unjustifiably make a difference and treat them unequally.

The law specifically prohibits discrimination against children (Article 22), so each child or minor has equal rights and protection in the family, society and state, regardless of his or her personal characteristics or personal characteristics of parents, guardians and family members. It is forbidden to discriminate against the child, that is, the juvenile in terms of health, marital or extra-marital birth, publicly

calling for the giving of the advantage to the children of one sex in relation to the children of the other sex, as well as making a difference in the state of health, economic status, occupation and other characteristics of the social position, activities, expressed opinion or belief of child's parents, or guardians and family members. The discrimination of national minorities (Article 24) and their members is also prohibited on the grounds of nationality, ethnic origin, religious beliefs and languages, and the manner in which the rights of persons belonging to national minorities are exercised and protected are regulated by a special law.

In the sphere of the right to education and prohibition of discrimination, there are also numerous bylaws of importance for the position of members of the Roma national minority and the exercise of the right to education without discrimination.

When it comes to protection against discrimination in education, the **Rulebook on the detailed criteria for the recognition of forms of discrimination by an employee, child, student or third party in the institution of education**³⁷ it is envisaged that discrimination in the achievement of outcomes and standards of education and training exists, inter alia, if, for the pupil or group of students due to their personal characteristics, they are expected not to attain the standards and outcomes of education and upbringing, and the criteria for them are unjustifiably lowered in advance; as well as if conditions are not provided that would enable every child, that is, the pupil to achieve the standards and outcomes of education, regardless of personal characteristics. Discrimination in exercising the right to primary and secondary education exists if the institution does not apply prescribed measures aimed at providing support for enrollment of students from vulnerable social groups, especially members of national minorities and specifically Roma national minority; if, when enrolling students, they seek documents that are not envisaged or where the lack of documents is used as a reason for excluding children and students; or if it is not allowed to use textbooks in the language and alphabet of the national minority in accordance with the law. Discrimination in

³⁷ Official Gazette of the Republic of Serbia, no. 22/16

the sphere of language use exists if unjustifiably and contrary to the law ethnic minorities are prohibited from educational work in their mother tongue or the teaching of the Serbian language as a non-native. Segregation is foreseen as a particularly difficult case of discrimination.

The **Rulebook on the conduct of the institution in case of suspicion or established discriminatory behavior and insulting of the reputation, honor or dignity of a person**³⁸ was also adopted, which prescribes the actions of institutions (preschool, primary and secondary schools and student campuses), ways to implement preventive and intervention activities, obligations and responsibilities of the child, students, adults, parents, employees, third party in the institution, authority and bodies of the institution and other issues of importance for the protection against discrimination. Discrimination implies a behavior in which, in a direct or indirect, open or concealed manner, an unjustifiable difference or unequal treatment is performed, or a failure to act in relation to a person or group of persons or members of their families or close relatives, which is based on race, color, ethnic affiliation or ethnic origin, or any other basis established by law prohibiting discrimination.

Specific forms of support are regulated by the **Rulebook on additional educational, health and social support to children and students**³⁹ which regulates closer conditions for assessing the needs for providing additional educational, health or social support. The assessment must be based on comprehensive and individualized approach based on equal opportunities and determination of the needs of the child and students, in order to facilitate social inclusion (Article 1), while additional support is secured without discrimination on any grounds to the child from socially vulnerable groups which due to social deprivation, developmental disorders, disability, learning difficulties and other reasons, needs additional support in education, health and social protection (Article 2). The **Rulebook on enrollment of students in secondary school**⁴⁰ regulates, inter alia, the enrollment of students, members of the Roma

³⁸ Official Gazette of the Republic of Serbia, no. 65/2018

³⁹ Official Gazette of the Republic of Serbia, no. 63/2010

⁴⁰ Official Gazette of the Republic of Serbia, no. 23/18

national minority to school under more favorable conditions in order to achieve full equality.

3. STRATEGIC DOCUMENTS

Strategy for Improving the Position of Roma of the Government of the Republic of Serbia⁴¹ emphasizes education as a special area and points to problems such as the language barrier, sending Roma children to special schools, and various forms of discrimination, but its implementation has expired in 2015.

Strategy for the development of education in Serbia until 2020⁴² especially points out the goals of increasing the quality of education, and increasing the coverage of the population at all levels of education, and in particular points to the low coverage of Roma children by preschool education. The **Action plan for Implementation of the Education Development Strategy in Serbia until 2020**⁴³ stipulates as one of the objectives in the context of primary education the reduction of dropout rate of students during their primary education, with the expected outcome, which includes publicly available reports about the dropout from the primary school, established dropout factors by categories of students for each municipality, reduction in the number of children not completing primary school, greater fairness in the coverage of children in primary education; and for the secondary school also reduction in the early dropout rate in education, with the aim of reducing the rate of early dropout from education and determined dropout rates by categories for each municipality.

The **Strategy for prevention and protection against discrimination**⁴⁴ represents the first national strategic document dedicated to the fight against discrimination, which provides for a system of measures and public policy instruments aimed at the prevention or reduction of all forms and special cases of discrimination, in

⁴¹ Official Gazette of the Republic of Serbia, no. 27/09

⁴² Official Gazette of the Republic of Serbia, no. 107/12

⁴³ Available at http://www.mprn.gov.rs/wp-content/uploads/2015/08/Akcioni_plan.pdf

⁴⁴ Official Gazette of the Republic of Serbia, no. 60/2013

particular against certain persons or groups of persons with regard to their personal characteristics.

In October 2014, the Government of the Republic of Serbia adopted the **Action Plan for Implementation of the Strategy for Prevention and Protection against Discrimination 2014-2018**⁴⁵. In the field of education, the goal is to significantly reduce and eliminate discrimination cases in the education system and education of the public sector employees, with the envisaged preparation and adoption of bylaws that would more closely regulate the application of affirmative measures for enrollment of students from particularly vulnerable groups and ensure effective implementation, improving the fairness of the education system and establishing support measures for the education of vulnerable social groups.

The **Strategy for Social Inclusion of Roma in the Republic of Serbia for the Period from 2016 to 2025**⁴⁶ was adopted in 2016, with the adoption in 2017 of the **Action Plan for the Implementation of the Strategy**⁴⁷ for the period 2017 - 2018. The Strategy concludes that in the past period certain results have been achieved regarding the permanent improvement of the position of Roma, but that, in spite of this fact, the main obstacles to the socio-economic integration of Roma have not been eliminated, as well as complete normative basis for implementing long-term measures of poverty reduction and the achievement of the essential equality of Roma citizens, which were the goals of the previous Strategy for the Improvement of the Status of Roma 2009-2015.

Exactly because of this, the basic reason for the adoption of the new Strategy is to create conditions for their social inclusion – reducing poverty and combating discrimination against Roma, i.e. creating conditions for full access to the realization of human rights of people with Roma nationality. The Strategy emphasizes

⁴⁵ Available at http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/akcioni_plan_-_srpski.pdf

⁴⁶ Official Gazette of the Republic of Serbia, no. 26/2016

⁴⁷ Available at http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/akcioni_plan_za_primenu_strategije_za_socijalno_ukljufivanje_roma_i_romkinja_u_rs_2016-2025_za_period_od_2017._do_2018._godine.pdf

that, aside from being the basic human right, education is also a pre-requisite for the realization of many other human rights. The general goal of the Strategy is to improve the socio-economic status of the Roma national minority, with full respect for minority rights, eliminating discrimination and achieving greater social inclusion in all segments of society. Specific objectives in the sphere of education also include the full involvement of children and young people from the Roma community in quality preschool, primary and secondary education, greater coverage in the student population, with full respect for the rights and elimination of discrimination.

It is also important to mention the **Action Plan for the Realization of the Rights of National Minorities**⁴⁸ which represents an integral part of reporting on the implementation of the Action Plan for negotiating chapter 23, and which in the context of the segment VI Education, notes that the availability of textbooks in minority languages represents a barrier to access to education in minority languages, and as a basic problem highlights the lack of implementation of regulations. The aim is to improve the position and encourage the realization of the rights of members of minority communities in the sphere of education.

⁴⁸ Available at <http://www.ljudskaprava.gov.rs/sh/node/21793>

European Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁹ guarantees the right to education, as well as the prohibition of discrimination. Article 2 of Protocol 1 i.e. the Additional Protocol to the Convention (Right to Education) provides that no one may be deprived of the right to education, while Article 14 of the Convention (Prohibition of Discrimination) provides that the enjoyment of the rights and freedoms set forth in the Convention shall be ensured without discrimination on any grounds, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, economic status, birth or other status. Protection against discrimination considerably improved by the provision of the Article 1 of Protocol 12 to the Convention (General Prohibition of Discrimination) which prescribes that the enjoyment of any right provided for by the law must be provided without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, connection with a national minority, birth or other status. In this way, the scope of the prohibition of discrimination extends to the enjoyment of any right, including rights under national law, while the prohibition of discrimination under Article 14 of the Convention only concerns the prohibition of discrimination in relation to the enjoyment of the right guaranteed by the Convention.

The case-law of the European Court of Human Rights has significantly contributed to better understanding and development of the freedoms and rights guaranteed by the Convention through the interpretation of rights and freedoms guaranteed and their scope of protection. The right to education covers both the right of access to the existing educational institutions, knowledge

⁴⁹Official Gazette of Serbia and Montenegro – International contracts, no. 9/03, 5/05 and 7/05 – correction and Official Gazette of the Republic of Serbia – International contracts, no. 12/2010

transfer and intellectual development, as well as the right to official recognition of studies completed in accordance with the existing legal regime of any state⁵⁰. Different treatment or action in the enforcement of obligations under Article 2 of the Protocol 1 may lead to a violation of the prohibition of discrimination under Article 14 of the Convention, unless there is a legitimate aim and the ratio of proportionality between the means employed and the aim pursued.

In the case-law of the European Court of Human Rights, there are numerous cases relating to the difficulties in exercising the right to education of Roma children, in which the Court emphasized that the Roma, due to their turbulent history, are regarded as a specific type of disadvantaged and vulnerable minority, and therefore require special protection that extends to the field of education. The vulnerable position of the Roma minority requires paying special consideration to their needs and their different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases by the Court. It is necessary to recognize the special needs of minorities, with the obligation to protect their safety, identity and lifestyle, not only in order to protect their interests, but also in order to preserve cultural diversity of importance for the whole community.

With this in mind, the case-law of the European Court of Human Rights establishes the obligation of the Member States to pay special attention to this issue and to take measures to correct inequalities in order to facilitate the enrollment of Roma children in schools, even in cases where some administrative documents are missing, but also take steps so adequate conditions of education would be created, including positive obligation of states to undertake effective measures to avoid discrimination.

In accordance with the case-law of the European Court of Human Rights, it is established that discrimination means different treatment or actions, without an objective and reasonable justification, of persons in relatively similar situations, if there is no legitimate aim or if there is no reasonable ratio of proportionality

⁵⁰ Council of Europe/European Court of Human Rights, Guide to Article 2 of Protocol No. 1 – Right to Education, 2015, available at www.echr.coe.int

between the means employed and the goal being strived for. When the difference in treatment is based on race, color, or ethnic origin, the notion of an objective and reasonable justification must be interpreted very narrowly. Article 14 of the Convention does not prohibit Member States from treating certain groups differently in order to correct “factual inequalities”; on the contrary, in some cases, the failure of the authorities to attempt to correct the inequality through different treatment may lead to a violation of Article 14 of the Convention. In addition, Member States enjoy a certain margin of appreciation in assessing whether and to what extent the differences in otherwise similar situations justify different treatment, with a particularly strong reason to be brought before a court in order for the different treatment be based solely on grounds such as ethnic origin to be justified as being compatible with the provisions of the Convention.

In the Court’s case-law it is also established that the general policy or measure which is apparently neutral but have a disproportionately prejudicial effect on the person or group of persons that can be identified on the basis of ethnic criteria, may be considered discriminatory notwithstanding that is not specifically aimed at that group, unless that measure is objectively justified by a legitimate aim and the means of achieving that aim are appropriate, necessary and proportionate. Also, discrimination may result from a *de facto* situation. Another significant rule that was established in the court case-law is that in cases where persons submitting an application to the court provide *prima facie* evidence that the effect of a measure or practice is discriminatory, the burden of proof shifts to the responsible state, and to which the burden falls to show that the difference in treatment is not discriminatory.

The European Court of Human Rights has a wealth of case-law dealing with discrimination against Roma in exercising the rights and freedoms guaranteed by the Convention and the accompanying protocols. Significant case-law and views of the court have also been developed in the field of discrimination in exercising the right to education of the Roma minority, and these are mostly related to the distribution of Roma children to “special” schools, that is, segregation during education, which the court recognizes as a form of discrimination.

1. D.H. AND OTHERS V CZECH REPUBLIC

One of the first cases in which the European Court of Human Rights discussed the discrimination of Roma children in education is the case of *D.H. and Others v Czech Republic*⁵¹, which specifically related to the problem of allocating Roma children to “special” schools, or to schools for children with special needs.

In the particular case, a group of Roma children of Czech nationality were placed in “special” schools, or schools for children with special needs in the period from 1996 to 1999. The classification of children into these schools was the result of their Roma origin, and the schools were intended for children with learning disabilities who have difficulty following teaching in standard schools. In accordance with current law, decision on placement of children into this school was based on the results of testing of intellectual capacity of children and required the consent of legal representatives of children. Applicants in this case pointed out that the tests were not reliable and that the parents of the children were not fully aware of the consequences of granting such consent, and that the placement of Roma children into “special” schools became a common practice that resulted in segregation and racial discrimination through parallel existence of two separate educational systems that include “ordinary” primary schools for the majority population and “special” schools for Roma.

In deciding on this case, the court first pointed out that Roma, as a consequence of their turbulent history and constant uprooting, represent a specific type of minority in disadvantaged and vulnerable position, and therefore should enjoy special protection, including protection of rights in the field of education. In the court’s ruling, it was established that during the given period, most of the pupils in “special” schools in the Czech Republic were Roma children, so Roma children with average or above-average intellectual capacity were often placed in such schools on the basis of psychological tests that were not adapted to their ethnic origin,

⁵¹ European Court of Human Rights, *Case D.H. and Others v. The Czech Republic*, no. 57325/00 of 13 November 2007 (Grand Chamber)

or as a result of testing without adequate psychological and pedagogical assessment, but the only real criterion was ethnic origin. In such a situation, the results of the test could not be accepted as justification for the difference in the treatment of Roma children.

It was pointed out that discrimination means treating differently, without objective and reasonable justification, persons in relevantly similar situations, with the exception that Article 14 of the Convention does not prohibit Member States from treating groups differently in order to correct “factual inequalities” between them, and so in certain circumstances, the failure of the State to attempt to correct the inequality through different treatment may be considered to be a violation of this article. Also, the difference in treatment may take the form of disproportionately prejudicial effect of general policies or measures which, although formulated in a neutral manner, disproportionately harms certain group and discriminates against it – such a situation can make an indirect discrimination that does not have to require a discriminatory intent. As this involved a case of indirect discrimination, the court concluded that the law at that time had a disproportionately adverse impact on Roma children, bearing in mind that differences in the treatment of Roma and non-Roma children was not objectively and reasonably justified nor was there a reasonable relationship of proportionality between the means used and the goal to which it was intended. All this led to violation of Article 14 of the Convention (Prohibition of Discrimination) together with Article 2 of Protocol 1 of the Convention (Right to Education).

The court’s conclusion is that in the particular case, the regulation of the education of Roma children did not contain protective mechanisms to ensure that in applying the field of free assessment in the sphere of education, the state takes into account their special needs as members of a group that is socially disadvantaged. In addition, the said arrangement led to the applicants being deployed in schools for children with mental disabilities, in which the teaching of the curriculum was lowered compared to the curriculum in regular schools and were isolated from pupils from the

⁵³ Evropski sud za ljudska prava, slučaj Oršuš and Others v. Croatia, br. 15766/03 od 16. marta 2010. (Veliko veće)

general population. The result was that they received education that increased their difficulties and compromised their further personal development, instead of dealing with their real problems or to help them integrate into regular schools and develop skills that would make life easier for them in the majority population.

The Court again reiterated its established position from practice that discrimination on the basis of ethnic origin, as a form of racial discrimination, requires special caution and prompt reaction of the authorities because of its dangerous consequences. That is why the authorities are obliged to use all available means in the fight against racism, and in a modern democratic society based on the principles of pluralism and respect for different cultures, it is not possible to objectively justify any different treatment based exclusively or decisively on the ethnic origin of the person.

2. SAMPANIS AND OTHERS V. GREECE

Another important decision of the European Court of Human Rights in this area was made in the case of *Sampanis and Others v. Greece*⁵². The case was related to the failure of the Greek authorities to provide an education for the children of Roma origin in Psari region, near the town of Aspropyrgos, in the period of the school year 2004-2005, as well as their subsequent placement in special classes that were located in the annex to the main primary school building, for which the applicants claimed represented a measure related to their Roma origin.

The Court concluded that in this case Roma children were not adequately tested initially, in order to determine whether there was a need to go to preparatory classes, or later, to determine whether they had made enough progress in order to join the main primary school. The Court emphasized the importance of introducing an appropriate system for assessing the capacity of children with additional learning needs, especially when it comes to ethnic minorities, to ensure that eventual placement in special

⁵² European Court of Human Rights, *Sampanis and Others v. Greece*, no. 32526/05 of 5 June 2008

classes is not based on discriminatory criteria or leads to segregation. It is also important to point out the conclusion that the previously required consent of parents for children to be placed in a special part of the school was not taken into account bearing in mind that the parents of Roma children belonging to the minority community which is in a subordinate position in society and often poorly educated and therefore according to the court's opinion did not have the ability to properly evaluate all aspects of the consent nor the consequences for their children. Emphasizing the fundamental importance of the prohibition of racial discrimination, the decision in this case has stated that it is unacceptable to have the possibility for someone to waive his/her right not to be discriminated against, given the significant public interest in this issue.

The Court took into account the fact that the Greek authorities have not planned by 2005 formation of preparatory classes, but also the fact that the protests of non-Roma parents who were opposed to their children attending the same school, although not be subsumed under the responsibility of the state, nevertheless influenced the decision to place Roma students in a separate annex to the elementary school building. Taking into account the vulnerable position of the Roma community which required particular attention to their needs in order to correct existing imbalances, the court found that, considering the fact that the parents of Roma children expressed their intent to enroll their children in primary school, authorities should have recognized the specificity of this case and provided assistance with enrollment of Roma children, although some administrative documents that were required for enrolment were not prepared, especially since such a possibility was provided for by the law.

The Court determined a violation of the Article 14 of the Convention (Prohibition of Discrimination) in conjunction with Article 2 of Protocol 1 to the Convention (Right to Education), having regard to the procedure for enrollment and placement of children in special classes. It was concluded that, although the authorities showed the will to include Roma children in the education system, the enrollment conditions for the school for these children and their placement in special preparatory classes outside the main school building ultimately resulted in discrimination against them. The

Court also found that there had been a violation of Article 13 of the Convention (the Right to an Effective Remedy), bearing in mind that there was no effective remedy available to applicants for the review of those violations of the law.

3. ORŠUŠ AND OTHERS V. CROATIA

The European Court of Human Rights ruled on discrimination through the segregation in education of children of Roma origin in the case of *Oršuš and Others v. Croatia*⁵³, which related to a group of Croatian citizens of Roma nationality, who complained that they had suffered racial discrimination, during education, as a consequence of a segregation into separate classes for Roma children, because of which they have suffered damages at the educational, psychological and emotional level. Due to the lack of transparency and clear criteria in relation to transferring to mixed class units, the applicants remained in exclusively Roma classes for a long time, some even during their entire primary schooling. By deciding in this case, the court once more emphasized its position established in previous cases, that as a consequence of their history and way of life, the Roma have become a specific category of a minority that is in a disadvantaged and vulnerable position, and therefore requires special protection in regards to the rights guaranteed by the Convention, as well as in the sphere of education.

Although this case differs from the case of *D.H. and Others v. The Czech Republic*, in the sense that there was no general school policy for Roma students to automatically be assigned to special classes, it is a common finding of the court that a certain number of European countries face problems in providing adequate schooling for Roma students. In this case, the court pointed out that only Roma students were assigned to special classes in the said primary schools, and therefore there was an obvious difference in treatment. That's why it was an obligation on the part of the state to show that the practice of segregation of Roma students was objectively justified, appropriate and necessary, and the Croatian

⁵³ European Court of Human Rights, *Oršuš and Others v. Croatia*, no. 15766/03 of 16 March and 2010 (Grand Chamber)

authorities justified this separation by insufficient knowledge of the Croatian language of Roma students. The court pointed out that the Croatian laws in that period did not provide for special classes for students who were not proficient in Croatian language and that tests on the basis of which allocation to such classes was carried out were not particularly focused on language skills but on the general assessment of the psycho-physical state of children, whereby the subsequent educational program was not directed towards language barriers and language problems (additional classes of Croatian were not systematically offered to all children). Also, the progress of children was not clearly monitored, and the applicants as students spent a significant part of their education in classes only for Roma, so the court pointed that the lack of prescribed and clear monitoring in this case left a plenty of room for arbitrariness.

The statistics submitted by the applicants, and which the government did not contest in the proceedings, stated that in the region the dropout rate of Roma children was 84% before the end of primary education, which was a clear indication that there was a need for the implementation of positive measures for raising of the awareness on the importance of education among the Roma population and assistance in overcoming the difficulties in monitoring the school curriculum, which was not the case. Assessing the alleged “passivity” of the parents and the lack of timely opposition by parents to the placement of children in separate classes, the court also decided that, as members of a minority in a disadvantaged and vulnerable position, they were not able to assess all aspects of the situation or the consequences of giving consent, repeating again the position that one cannot waive the right not to be discriminated against.

According to the court’s conclusion, the Croatian authorities did not establish adequate protection in the period in question to ensure that the special needs of Roma children as members of the disadvantaged group are taken into account, and that the deployment of these children during primary school in special classes intended only for Roma was unjustified and lead to the breach of Article 14 of the Convention (Prohibition of Discrimination) in conjunction with Article 2 of Protocol 1 of the Convention (Right to

Education). Furthermore, the court also pointed out that a general policy or measure which appears to be neutral, but has disproportionately prejudicial effects on persons or group of persons that are, as the case here involves, identifiable only according to the ethnic criterion, may be considered discriminatory even if it is not specifically aimed at that group, unless this measure is objectively justified by a legitimate aim and if the means to achieve that aim are appropriate, necessary and proportionate. Furthermore, discrimination potentially contrary to the Convention may also result from a de facto situation. According to the practice of the Court, the difference in treatment is discriminatory if “there is no objective and reasonable justification”, that is, if it does not seek to achieve a “legitimate aim” and if there is no “reasonable relationship of proportion” between the used means and the aim pursued. If the difference in treatment relies on race, color or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible.

Although it cannot be considered that the Croatian authorities are solely responsible for the fact that so many students did not complete primary education or acquired the appropriate level of language skills, the high rate of drop-out among Roma pupils in a particular county indicated the need to take positive measures, among other things, in order to raise awareness of the importance of education among the Roma population, and to help the applicants solve all the difficulties they encountered in following the curriculum. Therefore, in order to address these problems, it was necessary to take certain additional steps, such as the active and structured involvement of competent social services. Regarding the consent of the parents, and given the fact that the difference in treatment in this case was established, it was concluded similarly in the previous cases, that any such consent would mean accepting a difference in treatment, even if it was discriminatory, or a waiver of the right to protection against discrimination. In the practice of the Court, renunciation of the rights guaranteed by the Convention – if such a waiver is permitted at all – must be unambiguously established and expressed with full awareness of the facts, that is, on the basis of informed consent and without limitation.

4. SAMPANI AND OTHERS V. GREECE

Case of the European Court of Human Rights *Sampani and Others v. Greece*⁵⁴, related to the provision of education of Roma children in the primary school in Aspropyrgos, Greece. The application was filed by 140 Greek citizens from 38 families, all of Roma origin, who lived in the area allowed for residence in Psari (some of them have participated as applicants in previously stated case *Sampanis and Others v. Greece*).

From the facts of the case it can be established that in September 2008, in Aspropyrgos, the “12th school” was opened, which was supposed to replace the annex to the existing building of the “10th school” where classes were attended predominantly by Roma children, with the goal for the new school to be attended by both Roma and non-Roma children together. In addition to the accompanying protests of the parents of non-Roma children, who continued to object to joint attendance, during the course of summer 2008, the school was damaged and the equipment stolen. Despite the involvement of the competent Ombudsman, the authorities did not take adequate steps to enable the education of Roma children. Applicants pointed out that Roma children were forced to go to school attended exclusively by Roma children and that the level of education was lower than in other schools.

Deciding in this case, the court found that there had been a violation of the Article 14 of the Convention (Prohibition of Discrimination) in conjunction with Article 2 of Protocol 1 to the Convention (Right to Education), and noted that, after the previous case, *Sampanis and Others v. Greece* from 2008, there were no significant changes in the period related to this case (2008-2010), and that the “12th school” was attended exclusively by Roma students. Although the intention of the authorities was the integration of Roma children in the school system, problems in the work of the school have led to the fact that Roma children continued to be exposed to different treatment. The court pointed out that when considering

⁵⁴ European Court of Human Rights, *Sampani and Others v. Greece*, no. 59608/09 of December 11, 2012

whether there was an objective and reasonable justification for the difference in treatment based on race, color, or ethnic origin, these terms must be interpreted narrowly.

Pointing again to a similar problem faced by many European countries, and that it was not easy to find adequate methods for children who do not speak the language in which the teaching is organized, it was concluded that the government of Greece did not take into account the specific needs of Roma children from Psari as members the minority group in a disadvantaged position, and that the functioning of the elementary school between 2008 and 2010, attended exclusively by Roma students, has led to discrimination.

It was also pointed out that only the Roma children attended the “12th school” and that the school worked in poor material conditions, while the plan to merge the “11th and 12th school” was rejected by local authorities who, in their address to the competent ministry, stated that the Roma “chose themselves to live in landfills” and “to engage in illegal activities”, and therefore cannot expect to “share a classroom with other students”, while the Ombudsman called the school a “ghetto school”. The court recommended that applicants who are still in school age be transferred to another state school and that adult students be enrolled in the so-called “second-chance schools” or adult education institutes established by the Ministry of Education.

5. HORVÁTH AND KISS V. HUNGARY

In the case of *Horváth and Kiss v. Hungary*⁵⁵ the European Court of Human Rights has debated the case of two young man of Roma origin and their education in schools for persons with mental disabilities, which was the result of misplacement, i.e. the use of culturally biased tests for their deployment in schools, which finally led to placing them in an unfavorable situation and discrimination in the right to education. The court again in this case

⁵⁵ European Court of Human Rights, *Horváth and Kiss v. Hungary*, No. 11146/11 of 29 January 2013

stated that there had been a violation of the Article 14 of the Convention (Prohibition of Discrimination) in conjunction with Article 2 of Protocol 1 of the Convention (Right to Education), noting that there is a long history of misplacement of Roma children in “special” schools in Hungary as a result of the systematic incorrect establishment of the diagnosis of mental disability, which led to the situation that Roma children were predominantly represented in these schools.

The facts of the case indicated that the way in which the education of Roma applicants was conducted, who were allegedly mildly mentally handicapped or had learning difficulties, was without adequate protective mechanisms ensuring that, in accordance with the state’s authority in the field of education, the authorities take into account the specific needs of applicants as members of a minority group in an unfavorable position. This resulted in the deployment of Roma pupils to schools for children with mental disabilities, in which the educational process was carried out according to a curriculum that was less complicated than that of “ordinary” schools, and that in this way they were isolated from students of the general population. Also, the education they received was not in line with the positive obligations of the state to end the history of segregation of Roma children in “special” schools, and they were isolated as pupils and received education that made their integration into the majority society more difficult, rather than facilitating them with this process and enabling their personal development.

Again in this case, the Court pointed out that discrimination on the basis of ethnic origin is a form of racial discrimination, which is a particularly invidious type of discrimination, and given its consequences, demands from the authorities special vigilance and vigorous reactions for the purpose of utilizing all available means for combating racism and thus strengthening a democratic vision of a society in which diversity is not seen as a threat but as a source of enrichment. No difference in treatment based exclusively on the ethnic origin of a person can be objectively justified in a modern democratic society based on the principles of pluralism and respect for cultural diversity. Pointing again to the vulnerable position of the Roma minority who require special protection, the

court pointed out that their vulnerable position means that special attention must be paid to their needs and their different lifestyle, both in the relevant regulatory framework and in decision-making in individual cases.

In the context of the right to education of members of groups that are constantly exposed to discrimination in education, structural deficiencies require the implementation of positive measures in order, *inter alia*, to help those facing difficulties in following the school curriculum. These obligations are particularly severe when there is a history of direct discrimination, so additional steps are needed to address these problems, such as the active and structural involvement of the relevant social services.

The Court has already taken the view that the difference in treatment may be the result of a disproportionately prejudicial effects of general policy or a measure which, although seemingly neutral, leads to indirect discrimination that does not require the necessary discriminatory intent. A general policy or measure which is apparently neutral but has disproportionately prejudicial effects on a person or group of persons identified by ethnic criterion can be considered discriminatory, irrespective of the fact that it is not specifically aimed at that group, unless this measure is objectively justified by a legitimate aim and if the means of achieving that aim are appropriate, necessary and proportionate. Also, discrimination that is potentially contrary to the provisions of the Convention can also arise from the *de facto* situation. In situations where it has been shown that regulations produce such an indirect discriminatory effect, it is not necessary to prove a discriminatory intent on the part of the authorities. When assessing the impact of a measure or practice on a person or group, reliable and meaningful statistics may be sufficient to base *prima facie* evidence, which does not mean that indirect discrimination cannot be proven without statistical data.

6. LAVIDA AND OTHERS V. GREECE

The European Court of Human Rights once again dealt with segregation in education in the case of *Lavida and Others v. Greece*⁵⁶, which refers to the education of Roma children who were restricted to attending primary schools where the remaining pupils were exclusively Roma children. In the town of Sofades, there was a school in an older settlement where Roma were inhabitants, attended exclusively by Roma children, and Roma children from the newer settlements were also forced to attend the same school, although they were closer to the other school according to the territory of their residence. According to a report by a non-governmental organization, this was the case of ethnic segregation. Despite the commitment of civil society organizations as well as the Ombudsman, refusal of authorities to enroll children to another, territorially closer school, has not been adequately addressed.

In this case, the Court also found that there had been a violation of the Article 14 of the Convention (Prohibition of Discrimination) in conjunction with Article 2 of Protocol 1 to the Convention (Right to Education), stating that the continuing nature of this situation and the refusal of the state to undertake anti-segregation measures pointed to discrimination and violation of the right to education. Namely, the school in question had exclusively Roma students and was not attended by non-Roma children who would normally belong to that school territorially, while the school was not even established as a school that would provide preparatory classes for Roma children in order for them to be included in other schools. Although the competent state authorities were informed of the existence of ethnic segregation of Roma children in this case and officially recognized the need to correct it, the court found a violation bearing in mind that the situation in the school year 2009-2010 lasted until the school year 2012-2013. Reiterating its previously stated position with regard to discrimination in the exercise of the right to education of Roma children, the court found that the authorities had a positive obligation to take the effective measures against segregation, so the absence of the discriminatory intent itself was not sufficient.

⁵⁶ European Court of Human Rights, *Lavida and Others v. Greece*, no. 7973/10 of 28 May 2013

1. PROTECTION PROCEDURE UNDER THE ANTI-DISCRIMINATION LAW

In accordance with the provisions of the Law on the Prohibition of Discrimination, protection against discrimination can be achieved in the prescribed procedure before the Commissioner for the Protection of Equality (Commissioner) or in court proceedings.

A person who considers that he/she has suffered discrimination in accordance with the law submits a **complaint to the Commissioner** (Article 35), which is submitted in writing, and exceptionally verbally for the record. The filing of a complaint is without obligation to pay a tax i.e. fee or other charges, and along with the complaint, evidence of the suffered act of discrimination is submitted. In the name and with the consent of the person whose rights have been violated, a complaint may be filed by a human rights organization or another person.

The Commissioner shall take steps concerning a complaint unless proceedings pertaining to the matter in question have been initiated before a court of law or an enforceable decision has been passed, and the Commissioner shall not take any steps concerning a complaint if it is evident that no violation of rights pointed to by the person having lodged the complaint has actually occurred, if he/she has already taken steps concerning the same matter and no new evidence has been provided, and if he/she establishes that, in view of the time elapsed since the violation of rights in question, no useful purpose will be served by acting upon the complaint (Article 36). The person against whom the complaint is filed has the right to make a statement on the complaint within 15 days of its receipt. Prior to undertaking other actions in the proceedings, the Commissioner recommends the implementation of the reconciliation procedure, in accordance with the law governing the mediation procedure (Article 38).

The provisions of the law governing the general administrative procedure shall apply accordingly to the procedure before the Commissioner. The Commissioner shall give his/her opinion on whether there has been a violation of the provisions of this Law within 90 days of the day of receiving a complaint, of which he/she shall inform the person who submitted the complaint and the person against whom the complaint was submitted. If he/she decides that there has been a violation of the provisions of this Law, the Commissioner shall issue a recommendation to the person against whom the complaint was submitted, suggesting a way of redressing the violation in question. The person to whom the recommendation is addressed shall be obligated to act upon it and to redress the violation in question within 30 days of the day of receiving it and to inform the Commissioner of it (Article 39). If he/she fails to do so, the Commissioner gives him/her a warning by a decision against which no special appeal is allowed, and if the violation of the right is not remedied even within 30 days from the date of the warning, the Commissioner may notify the public thereof (Article 40).

Anyone who has suffered discriminatory treatment has the right to file a lawsuit before the court, in a civil procedure that is urgent under the law (Article 41). The lawsuit may require imposing a ban on activity that poses the threat of discrimination, a ban on proceeding with a discriminatory activity or a ban on repeating a discriminatory activity; finding that the defendant has treated the plaintiff or another party in a discriminatory manner; taking steps to redress the consequences of discriminatory treatment; compensation for material and non-material damage; as well as the publication of a decision (Article 43). The person submitting a lawsuit may, within a lawsuit, during the proceedings, as well as after the completion of the proceedings, and until the enforcement is carried out, require the court to prevent, by a temporary measure, discriminatory treatment in order to eliminate the danger of violence or greater irreparable damage (Article 44). Regarding the burden of proof rules, the law provides that if the court has determined that the act of direct discrimination has been committed or is undisputed among the parties, the respondent shall not be relieved of the responsibility by proving that he is not guilty. Also, if the plaintiff proves the likelihood of the defendant's having committed an act of discrimination, the burden of providing evidence that

no violation of the principle of equality or the principle of equal rights has occurred shall fall on the defendant (Article 45).

The lawsuits may be initiated by other persons, (Article 46), so the lawsuits provided by the law (other than compensation for damages) can be submitted by the Commissioner and the organization dealing with the protection of human rights or the rights of a particular group of persons, as well as a person who had deliberately exposed him/herself to discriminatory treatment intending to directly verify the application of the regulations pertaining to the prohibition of discrimination in a particular case (about which the Commissioner is required to be informed).

2. PROHIBITION OF DISCRIMINATION IN THE PRACTICE OF THE COMMISSIONER AND COURTS

A person who considers that he/she suffered discrimination in accordance with the Law on the Prohibition of Discrimination may file a complaint with the Commissioner for the Protection of Equality, while the complaint may also be filed in the name of and with the consent of the person whose rights have been violated, by organizations dealing with the protection of human rights or another person. In addition, a lawsuit may be filed with the competent court other than a person who has suffered discrimination (other than a claim for compensation of damages) by the Commissioner, organization for the protection of human rights or the rights of a particular group of persons, as well as a person who has been consciously exposed to discriminatory treatment in order to directly check the implementation of the rules on the prohibition of discrimination in the specific case.

In accordance with the reports of the competent international and national bodies, obstacles to the realization of the right to education without discrimination of members of the Roma national minority in this area still exist, despite the significant progress made in terms of the legal and strategic framework, as well as the measures taken in practice. In practice, the number of cases related to discrimination against Roma in the sphere of education is

significantly lower in relation to other areas of realization of human rights and freedoms. Cases of discrimination in education of the Roma national minority were registered in practice of the Commissioner for the Protection of Equality, while for the court practice in this area it may be stated that it is still in the process of development.

Until adoption of the Law on the Prohibition of Discrimination, the reasons for the lack of cases in practice were largely conditioned by the lack of an adequate domestic legal framework, but even after the adoption of this law, the situation in practice has not been significantly changed, especially when it comes to judicial practice. In addition, there is a lack of adequate data and failure to report cases, which is certainly a result of mistrust in institutions but also of lack of information about rights among members of the Roma national minority. Also, submitting a lawsuit to the court and conducting court proceedings, except in the cases of the so-called “Strategic cases” in which individuals or groups have support of the civil society organizations that have the mandate to protect human and minority rights and initiate “strategic” litigation, for those whose rights are at stake also implies potential costs of court proceedings. As a consequence, the practice of the Commissioner for the Protection of Equality as well as the court case-law records the cases concerning the violation of the rights and freedoms of members of the Roma national minority in various aspects of the protection of rights, some of which relate to the sphere of exercising the right to education.

Cases concerning the discrimination of members of the Roma national minority in the exercise of different rights and freedoms were also recorded before the Law on the Prohibition of Discrimination was adopted. Thus, the first case where the existence of **discrimination against Roma in the access to public places** has been established in civil proceedings, has determined the way for further strategic cases in this area.

In the particular case, in 2004, the Supreme Court of Serbia upheld lower-ranking court decisions and created the first case in which discrimination was established, involving the discrimination of members of the Roma national minority in access to public

places⁵⁷. The argument of the court in this case has created the basis for more comprehensive protection of victims of discrimination, so the Supreme Court of Serbia pointed out the obligation and direct application of international conventions, clearly determined the concept of the personal rights, and finally accepted “situation testing” as appropriate way of proving discrimination in court. Regarding the factual situation, the court determined that members of the Roma minority were deprived of access to the swimming pool of the Sport and Recreation Center “Krsmanovaca” in Šabac. Referring to ratified international documents and using the provisions of the Law of Contract and Torts, in the reasoning of the judgment, the court clearly expressed the principle of non-discrimination, especially when it comes to access to public places. Thus, the Supreme Court emphasized that everyone has the right to the protection of person rihgts, without distinction in relation to race, skin color, national or ethnic origin, that all places and services intended for public use must be available to everyone in the same way, and that discrimination on any grounds offends human dignity the components of which include the honor, reputation, personal integrity, and the like, and such a violation of personal rights enjoy judicial protection both through the request for stopping the infringement of personal rights and the claim for damages⁵⁸.

After the entry into force of the Law on the Prohibition of Discrimination, one of the first significant cases in the court case-law related to the discrimination of Roma in the **procedure of subsequent enrollment in the birth register**. The final decision established discrimination against persons belonging to the Roma national minority, which was committed by the city administration of Novi Sad in the procedure of subsequent registration in the birth register. The lawsuit, in accordance with law, filed the Praxis association, and the court found that the sued authority was guided in the decision-making by the personal characteristics of the applicants who belonged to the Roma national minority, thereby violat-

⁵⁷ Center for the Advancement of Legal Studies, *Anti-Discrimination Laws: Guide*, Belgrade, 2008, available at <https://cups.rs/wp-content/uploads/2010/03/Antidiskriminaciono-pravo-vodic-2007.pdf>

⁵⁸ Supreme Court of Serbia, Decision no. Rev. 229/04 of 21 April 2004

ing the provisions of the Law on the Prohibition of Discrimination, stating that every state body is obliged to act equally towards everyone, regardless of the actual or presumed characteristics of the parties⁵⁹. The final decision⁶⁰ of the competent Basic Court in Novi Sad established discrimination and the sued party was required at its own expense to publish the decision in the daily newspaper "Politika".

From the Regular Annual Report of the Commissioner for the Protection of Equality for 2011⁶¹ it can be established that during this year, of the five complaints involving discrimination against Roma children in education, in two cases the discrimination was determined – in one preschool institution and in one school, where the **segregation of Roma children** was observed, while two misdemeanor charges were filed. Commissioner in 2011 filed three lawsuits within his jurisdiction, and in one lawsuit the court proceedings were finalized over the event in which a person gave statement on the television opposing moving in of a Roma family into the building, so the court ruling established a **severe form of direct discrimination** of members of the Roma minority, while the defendant was prohibited giving such statements in the future that discriminate against the Roma national minority, as well as to, at his own expense, publish apology and the court decision in the daily newspaper.

In the Regular Annual Report of the Commissioner for the Protection of Equality for the year 2012⁶², the Commissioner expressed concern in regard to existence of **segregation of Roma children in education**. During this year, the Commissioner filed five lawsuits. A lawsuit was filed against one elementary school, but in this particular case the discrimination of Roma children was not established, although the measures and the preparation of a comprehensive plan whose implementation will overcome the problem of segregation were recommended.

⁵⁹ Praxis, Protection of Roma Against Discrimination, 2013, available at <https://www.praxis.org.rs/index.php/sr/reports-documents/praxis-reports/item/644-protecting-roma-against-discrimination>

⁶⁰ Basic and Court in Novi Sad, final decision number P.56984/2010 of 12 September 2011

⁶¹ Available at <http://ravnopravnost.gov.rs/izvestaji/>

⁶² Available at <http://ravnopravnost.gov.rs/izvestaji/>

As stated in the Regular Annual Report of the Commissioner for the Protection of Equality for 2013⁶³, the Commissioner filed three lawsuits during 2013. The report states that the majority of complaints were submitted for discrimination on grounds of belonging to the Roma national minority, expressing the concern regarding their rights in the field of education - despite the legal framework that provides for the possibility of inclusive education and the application of measures of affirmative action, there are still numerous problems in practice – in some schools the segregation of Roma children is still present, there are schools attended by a large number of Roma children, and there are frequent problems concerning the relationship of teaching staff towards Roma students.

In the course of 2013, the Commissioner adopted several opinions and recommendations related to the discrimination against Roma children in education. Acting on complaints regarding **discrimination of Roma children in the relocated department of elementary school**, the opinion was given that the primary school, i.e. relocated four-year department and director have failed to timely undertake measures to prevent indirect discrimination against Roma children in exercising the right to education, with appropriate recommendations. In case of **violence against a Roma student** in the school, the Commissioner gave the opinion that the school and the director had discriminated against the student and that they had not taken adequate measures to prevent discrimination. It was also concluded that one school prevented students in the school year 2012/2013 from studying **Roma language** with elements of national culture, thus indirectly discriminating Roma students.

Upon the lawsuit filed by the Commissioner to the court against the owner of a catering facility because of **discrimination against a female Roma student who has been denied practice** at the facility, the competent court in 2013 adopted a decision based on confession, given that the respondent in the proceedings acknowledged the claim which requested determining that she had made direct discrimination on the basis of nationality by insulting and humiliating a student. The decision prohibited the accused giving such statements in the future and was ordered to send a

⁶³ Available at <http://ravnopravnost.gov.rs/izvestaji/>

written apology to the student, by which the court proceedings were legally finalized.

During 2014, the Commissioner filed two lawsuits before the court⁶⁴, while in 2015 no new lawsuits or proceedings were initiated, but one court proceeding on the lawsuit filed by the Commissioner in 2014 ended with the adoption of the final decision⁶⁵. In the said court proceedings, the lawsuit was filed against the president of the local community of Sirča over the statements that discriminate against the Roma minority and in which it was alleged that Sirča was degraded by the settlement of Roma from Kosovo. The final decision of the Higher Court in Belgrade in June 2015 found that the president of the local community Sirča committed **severe form of discrimination** of members of Roma national minority and was prohibited giving future statements and expressing the opinions that discriminate against the Roma national minority, with the obligation of public apology and the publication of the decision⁶⁶.

In Regular Annual Report of the Commissioner for the Protection of Equality for 2016⁶⁷ it is pointed out that among the opinions and recommendations issued by the Commissioner in relation to the discrimination of the Roma national minority, there are none in the field of education. The report states that the Commissioner submitted 13 lawsuits by 2016, seven of which were filed for discrimination on grounds of belonging to the Roma national minority, and that no lawsuits were filed in 2016.

From the Regular Annual Report of the Commissioner for the Protection of Equality for 2017⁶⁸ it can be established that in 2017, the Commissioner gave 501 recommendation of measures for achieving equality, filed three lawsuits for protection against discrimination before the courts in the territory of the Republic of Serbia, one case of which refers to discrimination based on

⁶⁴ Regular Annual Report of the Commissioner for the Protection of Equality for 2014, available at <http://ravnopravnost.gov.rs/izvestaji/>

⁶⁵ Regular Annual Report of the Commissioner for the Protection of Equality for 2015, available at <http://ravnopravnost.gov.rs/izvestaji/>

⁶⁶ Regular Annual Report of the Commissioner for the Protection of Equality for 2015, available at <http://ravnopravnost.gov.rs/izvestaji/>

⁶⁷ Available at <http://ravnopravnost.gov.rs/izvestaji/>

⁶⁸ Available at <http://ravnopravnost.gov.rs/izvestaji/>

belonging to the Roma national minority. Out of the total number of complaints filed to the Commissioner, the complaints filed due to discrimination on grounds of national affiliation and ethnic origin are in the fifth place, with a share of 9.8% of the total number of complaints, which points to the tendency of the decline in this number of complaints - in 2014 this ground of discrimination was in the first place by the number of complaints, in 2015 in the second place, and in 2016 in the fourth place. The largest number of complaints filed for discrimination on grounds of the national affiliation and ethnic origin were submitted due to belonging to the Roma national minority (53.2%).

In 2017, the education sector is in fourth place and 7.9% of complaints relate to this sphere of social relations. Of the total number of complaints related to discrimination based on national affiliation and ethnic origin, the highest number of complaints were related to the field of proceedings before the public authorities (17), in the procedure of employment or at work (14), the public sphere and the general public (8), the segment of private relations (6), followed by other areas where fewer complaints were submitted. Compared to 2016, when civil society organizations mainly addressed the Commissioner over discrimination against members of the Roma national minority, in 2017 the number of complaints filed by individuals increased. In 2017, the Commissioner initiated a civil procedure for discriminating against members of the Roma national minority, as well as three criminal charges.

From the opinions and recommendations given by the Commissioner during 2017, none of them concerned the segment of Roma education. A warning was issued regarding the **attack on the Roma student** in June 2017 in the courtyard of the elementary school in Belgrade, who was beaten by a group of students because he was Romani, while the Commissioner stressed that he expects an immediate response from the authorities. A civil action has been initiated for discrimination based on belonging to the Roma national minority, due to the **construction of a wall around the Roma settlement** in Kruševac, as well as a criminal complaint against a police officer from Novi Sad because of the suspicion that he **threatened and insulted** a Roma boy, slapping him in the end, in which case the competent public prosecutor's office rejected the criminal complaint.

In July 2017, the Higher Court in Belgrade adopted a decision upholding the claim of the Commissioner, pursuant to the lawsuit filed by the Commissioner in 2012 against the fast-food restaurant **because of the denial of access to the catering facility** to Roma children, a while the decision established discrimination in the provision of services⁶⁹. The case involved a group of Roma children and a woman who wanted to buy them food, but the restaurant denied this service.

When considering the problems and obstacles that Roma face in exercising the right to education in practice, both in access to education and in the quality of education, it seems that effective and systematic implementation of the Law on the Prohibition of Discrimination in practice is lacking. As an indication of this, it must be particularly necessary to consider the small number of cases that receive the epilogue in litigation related to discrimination, and in particular the lack of cases concerning the discrimination of members of the Roma national minority in education. In addition to improving anti-discrimination legislation, as observed by the remarks and comments of international bodies, it is necessary to undertake measures to improve the effective implementation of the legal framework in practice. This certainly may include additional support to the Commissioner, the additional training for all participants in court proceedings, better records and collecting of data as well as information about the rights and opportunities that the law provides.

As in spite of the significant steps taken by the state, discrimination in education, also including the segregation of members of Roma community still exists, it is necessary to ensure the effective exercise of the guaranteed human rights and freedoms in order to resolve the existing problems and conduct consistent implementation of legal and strategic frameworks in the field of education and social inclusion of Roma.

⁶⁹ Regular Annual Report of the Commissioner for the Protection of Equality for 2017, available at <http://ravnopravnost.gov.rs/izvestaji/>

1. OBSERVATIONS AND REPORTS BY INTERNATIONAL BODIES

As a member state that has ratified the most important conventions at the UN level, Serbia is obliged to submit initial and periodic reports on application and respect of guaranteed rights to the competent bodies for monitoring of the implementation of these conventions and committees, and to take all appropriate measures so the recommendations in the respective areas of protection of rights are fully implemented.

In the **Concluding Observations of the Committee on Economic, Social and Cultural Rights in connection with the Second Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights**⁷⁰, the Committee expresses its concern over the fact that members of national and ethnic minorities, refugees and internally displaced persons, including Roma and other marginalized groups continue to face discrimination in access to economic, social and cultural rights, as well as the fact that the Law on the Prohibition of Discrimination is not applied systematically, as evidenced by a small number of closed cases related to discrimination. The Committee also expresses its concern over the prevailing discrimination against Roma, which is, among other things, testified by a disproportionately high unemployment, limited access to social protection, accommodation in informal settlements, inadequate health care and education. It also states that the Committee is concerned about the prevalence of violence and discrimination in schools, because of the deployment of Roma children to special schools or departments, the high rates of abandonment of primary education and the irregular attendance of classes by Roma children.

⁷⁰ UN Committee on Economic, Social and Cultural Rights, Concluding Observations of the Second Periodic Report on Serbia, E/C.12/SRB/CO/2 of 23 May 2014, available at <http://www.ljudskaprava.gov.rs/sh/node/19967>

The Committee recommends that the Contracting State continue to implement legal and political reforms in order to enable every child to exercise the right to education and to intensify the implementation of measures in order to prevent violence and discrimination in schools; guarantee enrollment of Roma children in regular classes in primary schools instead of schools or classes for children with special needs; reduce the rate of primary education dropouts for Roma children, and to take effective measures to enable Roma to attend schools and increase attendance in secondary schools through affirmative action, such as granting scholarships and providing textbooks.

The shortcomings in the implementation of the existing legal and strategic framework are also highlighted in the **Concluding Observations of the UN Human Rights Committee in relation to the Third Periodic Report on the Application of the International Covenant on Civil and Political Rights of 2017**⁷¹. Regarding the anti-discrimination legal framework, it is necessary to take measures to ensure that the Action Plan for the implementation of the Strategy for Prevention and Protection against Discrimination is implemented in a timely and efficient manner; to ensure that planned amendments to the Law on the Prohibition Discrimination adequately deal with indirect discrimination as a form of discrimination; to improve the capacity of the Commissioner for the Protection Against Discrimination so that he can file complaints under the Law on the Prohibition of Discrimination; to strengthen the enforcement of the Law on the Prohibition of Discrimination in criminal and civil procedures, through the training of judges, law enforcement officers and lawyers in relation to anti-discrimination; and to enable data collection and develop tools in order to enable the state to assess and ensure the effective enjoyment of all human rights and fundamental freedoms of racial and national minorities and to use these data for the purpose of planning and evaluation.

⁷¹ Concluding Observations of the UN Human Rights Committee of 10 April 2017, CCPR/C/SRB/CO/3, available at http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitetaccpr_c_srb_co_3_27019_e_srp.pdf

In the segment of social inclusion of Roma, the Committee is expressing concern about the fact that, despite the significant steps taken by the state, members of the Roma community continue to be exposed to discrimination and social exclusion and *de facto* segregation in housing and education, and that internally displaced Roma continue to face problems of registration and difficult integration into society, with a recommendation to improve non-discriminatory access to opportunities and services in all areas for members of the Roma community and increase efforts to solve outstanding issues and carry out a consistent implementation of the Strategy for Roma Social Inclusion.

Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on the Combined Second, Third, Fourth and Fifth Periodic Reports of the Republic of Serbia⁷², in the segment “Roma and Education”, points out that the Committee appreciates the detailed statistical data of the Contracting State, classified by ethnicity, the school enrollment, and notes with interest the statement of the delegation regarding scholarships and other forms of support provided to Roma students. However, the Committee expressed concern that the percentage of Roma children enrolled at all levels of education is drastically lower than in the general population due to segregated schools where most Roma children are or where special classes are reserved for Roma only. Bearing in mind the previous recommendation (CERD/C/SRB/CO/1), the Committee invites the Contracting State to abolish the *de facto* segregation of Roma children in state schools and to ensure access to quality education for Roma children, through the training of school staff in combating racism and on human rights, raising parents’ awareness, and increasing the number of Roma teachers. The Committee also recommends that the Contracting State take measures to avoid the withdrawal of children from the majority population from the school in which they enrolled Roma (aka. “white flight”), and to develop effective mechanisms to prevent further *de facto* segregation in schools. The Committee further

⁷² UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Combined Second, Third, Fourth and Fifth Periodic Reports of Serbia, CERD/C/SRB/CO/2-5, dated 8 December 2017, available at <http://www.ljudskaprava.gov.rs/sh/node/19865>

recommends that the Contracting State integrates the desegregation of education in its national policies in order to ensure sustainability, and to provide adequate funds for its implementation, so that all girls and boys are provided free, equal and quality primary and secondary education.

In the **Concluding Observations of the UN Committee on the Rights of the Child on the Combined Second and Third Periodical Reports of the Republic of Serbia**⁷³ the Committee welcomes the initiatives taken by the Contracting State to address the problem of discrimination, in particular of Roma children, but nevertheless expresses concern over the continued discrimination against Roma children in all areas of life, which is one of the main reasons leading to the placement of Roma children in institutions, as well as the fact that Roma children continue to face discrimination in terms of access to education, health care and adequate housing. Although the Committee notes as positive efforts to improve the education system, concern is expressed because of the high rates of non-attendance and dropout for a large number of students in many parts of the country, and a gap in equality that continues to prevent children from vulnerable groups, including Roma children, from accessing quality education. The concern is also being expressed over the participation in pre-school, primary, secondary and vocational education of Roma children, especially girls, which is still at a low level, where a large number of Roma children continue to face segregation in the school system. It is therefore necessary to facilitate this participation and inclusion of Roma children in education at all levels and to raise the awareness among teachers and staff members about the psychological and pedagogical counseling on Roma culture as well as to intensify efforts to fight discrimination of Roma children.

In addition to reports and observations of supervisory bodies at the UN level, there are also other important reports on the progress made, as well as on problems in the field of discrimination and access to education of the Roma national minority. Thus, in

⁷³ UN Committee on the Rights of the Child, Concluding Observations on Combined Second and Third Periodic Reports of the Republic of Serbia, CRC/C/SRB/CO/2-3 of 03 February 2017, available at <http://www.pravoslavljeprava.gov.rs/sh/node/19966>

the 2017 Report of the **European Commission against Racism and Intolerance (ECRI)**⁷⁴ in the area of the protection of Roma against discrimination a progress is being registered in the period of 2010, especially with regard to the strategic framework, as well as the concrete steps taken to register Roma people in registers and issuing personal documents, and to establish good practice for increasing the number of Roma children enrolled in school. Nevertheless, the Commission identified deficiencies in the implementation of strategies and action plans, with data stating that only 6% of Roma children are enrolled in preschool institutions, only 46% complete primary school and only 13% secondary school. In that sense, the Report provides recommendations regarding the clear sharing of responsibilities and the allocation of financial and human resources for the implementation of the Strategy for Social Inclusion of Roma, increasing the number of children who complete education, as well as collecting indicators and intensifying the collection of data on the process of integration and realization of equality.

European Commission Report on the Progress of Serbia from 2018⁷⁵ emphasizes that the Roma still represent a vulnerable group that is most exposed to discrimination. The report points out that, despite the improved legal framework, it is necessary to enable effective implementation of the same, and to promote the rights of vulnerable groups facing discrimination, to give priority to the rights of the child, to develop an adequate approach to the protection of national minorities through the implementation of the action plan for national minorities, as well as to ensure an effective implementation and monitoring of the strategy and action plan for the inclusion of Roma. Regarding the rights of children, the report draws particular attention to the lack of adequate statistical data processing, especially when Roma children are concerned. Progress has been made in the field of education, especially with regard to the preparation and publication of books in the language of minorities, although these preparations for secondary schools have not yet begun. As a positive step the report highlights the adoption of the Roma Social Inclusion Strategy 2016-2025 and

⁷⁴ ECRI Final Report on Serbia adopted in March 2017, Committee of Ministers of the Council of Europe, SM(2017)41-ad2

⁷⁵ European Commission, Serbia 2018 Report , SWD(2018)152 final, Strasbourg, 17.4.2018

the accompanying Action Plan, as well as the fact that, in general, Roma students benefit from affirmative action. In spite of that, there are still obstacles and a lack of adequate support in education, especially bearing in mind that the dropout rate is still high, especially for girls, and that only 14% of young Roma graduate from secondary education, which is one of the lowest rates in the Western Balkans. It also points to further existence of the problem of segregation in education.

2. NATIONAL REPORTS AND ANALYSIS OF THE SITUATION

Obstacles in the process of inclusion of Roma children in the education system were stated in numerous reports. Thus, in the **Special Report of the Protector of Citizens on the implementation of the Strategy for the Improvement of the Status of Roma with Recommendations from 2013**⁷⁶ points out that measures adopted by the Strategy only partially contribute to establishing of normative basis for the elimination of the unfavorable result of chronic unfavorable social status of Roma and that the results achieved have not eliminated the obstacles for socioeconomic integration. In the field of education the full inclusion of Roma children in the education system was not achieved along with the continuity in education, and it is stated that there are no records on the number of Roma students and the system of monitoring of their success, criteria are not established on the number and work of assistants for support in the education of Roma students, with the conclusion that support to inclusive education has not been achieved to the extent that it ensures full inclusion of Roma students.

The **Regular Annual Report of the Protector of Citizens for 2016**⁷⁷ alleges that members of national minorities are still among the particularly vulnerable groups, primarily Roma. The report points to the lack of mechanism of preventive and timely actions of the competent authorities for the purpose of segregation in schools

⁷⁶ Available at <https://www.ombudsman.rs/index.php/izvestaji/posebni-izvestaji/3115-2013-12-10-13-06-11>

⁷⁷ Available at <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

as a form of discrimination based on nationality, although the data show that the number of schools and classes with only Roma students is increasing. Report also points out the lack of bylaws for determining conditions for implementation of bilingual education, as well as new standards of achievement in the teaching of Serbian language as a non-native, when teaching is organized in the language of the national minority.

In the **Regular Annual Report of the Protector of Citizens for 2017**⁷⁸ members of the Roma national minority are still characterized as one of the most vulnerable groups, and the report indicates that the level of integration of members of national minorities remains far from satisfactory. A particular problem is the exceeding of the deadlines for improving the legal regulations envisaged by the Action Plan, as well as the unresolved problems related to the Strategy for Social Inclusion of Roma. In the field of education, amendments to the bylaws were recommended in order to provide the appropriate number of professional associates in line with the needs of students, especially in the implementation of inclusion and additional support in education.

The **Special Report of the Protector and Citizens “Inclusive Education: Additional Support Services for Children and Students in Education”**⁷⁹ from 2018, stresses that the legal framework requires further improvement, and that Roma children are not provided effective services that will encourage children and families to education and ensure continuity in education, as well as with additional counselling and assistance services during the education. It was also noticed that the existing regulations are not applied sufficiently, and that adequate educational support services are not provided to children, members of the Roma national minority. As a result, the number of children of this national minority involved in the regular educational process remains unjustifiably significantly lower than the children of the general population, while the children of Roma nationality are unjustifiably

⁷⁸ Available at <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

⁷⁹ Available at <https://www.ombudsman.rs/index.php/izvestaji/posebni-izvestaji/5927-in-luzivn-br-z-v-nj-uslug-d-d-n-p-drsh-d-ci-i-uc-nici-u-br-z-v-nju>

prevalent in schools and departments for the education of students with disabilities.

Recommendations given in the **Regular Annual Report of the Commissioner for the Protection of Equality for 2017**⁸⁰, among other things, also refer to providing greater access to primary and secondary education for children from vulnerable social groups, and in particular by taking affirmative measures directed towards Roma children with the aim of increasing the number of enrolled children and reducing dropouts from the education system. In addition, it is particularly emphasized that it is necessary to undertake measures to ensure the engagement of teaching of a pedagogical assistant for students who need additional support in education, and that it is necessary to prescribe the conditions for the work of pedagogical assistants as soon as possible.

The **Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia**⁸¹ also points to significant problems regarding the equity of education, as there is still a significant number of children from marginalized groups who do not enroll or abandon education.

Analysis of the application of affirmative measures in the field of Roma education⁸² points to the general problems of Roma students who, due to negligence, abandon their education, and during primary and secondary education they often find themselves in adult education schools, as well as to the fact that the enrollment rate of Roma children in special schools is 36 times higher than among others. According to some available data, 69% of children from Roma settlements enroll the primary school and 64% of them complete it, while 22% attend secondary school. Also, the pupils are allocated to schools for disadvantaged students for different unjustified reasons, from the lack of knowledge of the Serbian language to discriminatory procedures of school authorities.

⁸⁰ Available at <http://ravnopravnost.gov.rs/izvestaji/>

⁸¹ Available at <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2014/11/Drugi-nacionalni-izvestaj-o-socijalnom-ukljucivanju-i-smanjenju-siromastva-final.pdf>

⁸² The Team for Social Inclusion and Poverty Reduction of the Republic of Serbia, *Analysis of the Application of Affirmative Measures in the Field of Roma Education*, 2016.

Despite the improvement of the legal framework and the adoption of strategies in this area, the lack of harmonization between certain measures and the lack of coordination of the relevant institutions in the practical application of the legal provisions is noted. The problem was identified at the level of the assessment of the effectiveness of the implemented measures, so there is lack of harmonization and systematization of data, regulation of the status of pedagogical assistants, adoption of bylaws that would enable the application of affirmative measures, recognition of discrimination and prevention of segregation. Therefore, there is a need for further development of scholarship and mentoring programs, establishing a monitoring and evaluation system and developing a systemic support model for children and pupils returnees. Affiliate actions taken, especially in terms of primary school education, are difficult to estimate due to lack of reliable data. Some legal solutions do not find adequate application in practice, and the problem with regard to the position of pedagogical assistants is highlighted, as well as the continuing problem of insufficient knowledge of pupils and parents, as well as teachers about the rights.

The international and domestic legal framework relevant for exercising the right to education with the prohibition of discrimination guarantees the right to education without discrimination against members of the Roma national minority. These rights and freedoms are guaranteed by the international documents of the United Nations and the Council of Europe and the Constitutional guarantees and the laws, bylaws and strategies at the national level.

Effective exercising of rights to education with respect to the prohibition of discrimination implies an obligation of the state to commit to the inclusion of the Roma minority in the educational system, which demands not only harmonizing the domestic legal framework with the obligations of ratified international documents, but also the consistent implementation of the existing legal framework, the prevention and sanctioning of discrimination, as well as taking affirmative measures in order to rectify factual inequalities. Therefore, there are obligations of undertaking special measures in order to reduce or eliminate the conditions that cause discrimination, taking into account general problems in the position of the Roma minority in the sphere of poverty, lack of personal documents, housing, health and social protection and employment.

In its case-law, the European Court of Human Rights took important positions regarding the prohibition of discrimination against Roma and pointed out that, as a result of turbulent past and lifestyle, Roma represent a specific type of minority in an unfavorable and vulnerable position, which must therefore enjoy special protection, including the protection of rights in the field of education. On the side of each country, therefore there is an obligation to create a protective mechanisms that would ensure that in the sphere of education, each state takes into account their special needs as members of a group that is socially disadvantaged, bearing in mind that education must not compromise the further development of the individual, but must enable and facilitate members of the Roma minority integration in society.

In addition, it must be borne in mind that the right to education does not only include the right to access to education, but also the right to a certain quality of education, teaching methods adapted to the different needs of different children, knowledge transfer and intellectual development. The right to non-discrimination education, viewed in the context of human rights, that is, the rights of the child, and especially the rights of national minorities, creates an additional obligation for the state to devote to the inclusion of members of the Roma national minority in the education system, taking into account the specific needs of members of minority groups and the need to protect their safety, identity and lifestyle. It is also important to point out that the general policy or measure that is seemingly neutral but has a disproportionately prejudicial effect on members of a minority group can be considered discriminatory regardless of whether it is specifically aimed at that group and that discrimination can result in a *de facto* situation. The prohibition of discrimination implies not only identical treatment, but also positive obligations on the part of the state in order to reduce or eliminate the conditions that cause discrimination.

The lack of full and adequate involvement in the education process represents an obstacle to a full integration into the society and the personal development of members of the Roma community, which is unacceptable from the aspect of democracy and pluralism to which every democratic society must strive. The education system must be based on principles that aim to ensure equality and access to enjoyment of the right to education, based on social justice and respect for human rights and the rights of every child and pupil without discrimination, resulting in the commitment of the state as an obligation to enable education to socially vulnerable groups, in order to reduce the education system dropout rate and provide support for their inclusion in the system, in accordance with the principles of inclusive and Intercultural education and upbringing.

Protection from discrimination in the domestic legal system, which is provided by the Law on the Prohibition of Discrimination provides the possibility of filing a complaint to the Commissioner for the Protection of Equality or the filing of the complaint to the

competent court in civil proceedings that may be filed not only by a person that deems to have endured discrimination, but also by the Commissioner, a human rights protection organization, as well as a person who has been consciously exposed to discriminatory treatment in order to directly verify the application of the rule on the prohibition of discrimination in a particular case. Nevertheless, the number of cases in practice relating to discrimination against Roma in the sphere of education is significantly lower in relation to other areas of exercising human rights and freedoms and does not correspond to the actual situation. Cases of discrimination in the field of education of the Roma national minority are recorded in the practice of the Commissioner for the Protection of Equality, while for the court practice based on the Law on the Prohibition of Discrimination, it can be concluded in this area that it is still in the process of development. When it comes to discrimination against the Roma national minority, the prevailing number of cases relates to discrimination in access to public places or the reaction of the non-Roma population to the formation of Roma settlements. Cases of discrimination in education mainly concern segregation of Roma children in the pre-school or school system.

More effective protection against discrimination in exercising the right to education requires the collection and existence of adequate data in this field, increasing the confidence of members of the Roma national minority in institutions, with better information on the rights available in the domestic legal system. The report of the Commissioner for the Protection of Equality for 2017 indicates that the total number of filed complaints, complaints related to discrimination on the grounds of nationality and ethnic origin are in fifth place, of which number the highest number of complaints relates to belonging to the Roma national minority (53.2%), while the share of complaints related to the field of education amounts to 7.9%.

Despite significant progress in the legislative, institutional and strategic plan, exercising of the right to education with equal rights and successful integration into society of the Roma minority is still far from its goals. One of the goals of the Strategy for Social Inclusion of Roma for the period from 2016 to 2025 is to ensure the full inclusion of Roma children in quality education, with the introduction of effective and efficient mechanisms to combat

discrimination and the creation of conditions for enjoyment of all minority rights in the education system. Observations, reports and analysis of international bodies, civil society organizations and state bodies, authorities and institutions indicate that difficulties in exercising the right to education continue to exist, with problems related to difficult school enrollment, unsatisfactory attendance rates, as well as the high drop-out rate from schools among the Roma population, the practice of directing to schools for children with disabilities, as well as segregation and discrimination in various forms. In order to overcome the obstacles on the road to the full social inclusion of Roma, including the field of education, it is necessary to continue with activities in order to provide a consistent and efficient implementation of the existing international and domestic legal framework.

SOURCES

International documents

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966), Official Gazette of the Socialist Federative Republic of Yugoslavia - International contracts, No. 7/1971
- International Covenant on Economic, Social and Cultural Rights (1966), Official Gazette of the Socialist Federative Republic of Yugoslavia - International contracts, No. 7/1971
- International Convention on the Elimination of All Forms of Racial Discrimination, Official Gazette of the Socialist Federative Republic of Yugoslavia - International contracts, No. 31/67
- UN Committee on the Elimination of Racial Discrimination, General Recommendation XXVII - Discrimination Against Roma, A/55/18 annex 5, dated 16 August 2000, <http://www.refworld.org/docid/45139d4f4.html>
- UN Convention on the Rights of the Child, Official Gazette of the Socialist Federative Republic of Yugoslavia - International contracts, No. 15/90 and Official Gazette of the Socialist

- Federal Republic of Yugoslavia – International contracts, no. 4/96 and 2/97
- UN Committee on the Rights of the Child, General Comment No. 1; Goals of Education, CRC/GC/2001/1, 17 April 2001, www.ombudsman.rs/attachments/2145_PDFPrava_detet_u_medjunarodnim_dokumentimaF.pdf
 - UN Committee on the Rights of the Child, General Comment No. 5: General Measures for the Implementation of the Convention, CRC/GC/2003/5, 27 November 2003, www.ombudsman.rs/attachments/2145_PDFPrava_detet_u_medjunarodnim_dokumentimaF.pdf
 - Convention against Discrimination in Education, adopted at the 11th session of the General Conference of UNESCO, 14 December 1960. Entered into force on May 22, 1962
 - European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette of Serbia and Montenegro - International contracts, no. 9/03, 5/05 and 7/05 - correction and Official Gazette of the Republic of Serbia – International contracts, no. 12/2010
 - Law on the Confirmation of the Revised European Social Charter, Official Gazette of the Republic of Serbia - International contracts, No. 42/2009
 - Law on the Confirmation of the Framework Convention for the Protection of National Minorities, Official Gazette of the Federal Republic of Yugoslavia - International contracts, no. 6/98
 - Committee of Ministers of the Council of Europe, Resolution on the Application of the Framework Convention for the Protection of National Minorities in Serbia, CM/ResCMN(2011)7 of 30 March 2011, <http://www.ljudskaprava.gov.rs/sr/node/128>
 - Advisory Committee for the Framework Convention for the Protection of National Minorities, Comment No. 1: Education Based on the Framework Convention for the Protection of National Minorities, ACFC/25DOC(2006)002 of 02 March 2006, p.19, http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/obrazovanje_na_osnovu_okvirne_konvencije_za_zastitu_nacionalnih_manjina.pdf.pdf
 - Recommendation no. R (2000) 4 of the Committee of Ministers to member states on the education of Roma children

in Europe, Adopted by the Committee of Ministers of the Council of Europe on 3 February 2000 at the 696th meeting of the Deputy Ministers, https://www.coe.int/t/dg4/education/roma/Source/TextsActivitiesISBN_EN.pdf

- Recommendation on general policy No. 3 of the European Commission against Racism and Intolerance (ECRI): Combating racism and intolerance to which Roma have been exposed of March 6, 1998, CRI(98)29, <https://rm.coe.int/ecri-general-policy-recommendation-no-3-on-combating-racism-and-intole/16808b5a4e>
- Recommendation No. 10 of the European Commission against Racism and Intolerance (ECRI) on the general policy on combating racism and racial discrimination in and through school education of December 15, 2006, CRI(2007)6, <https://rm.coe.int/ecri-general-policy-recommendation-no-10-on-combating-racism-and-racia/16808b5ad2>
- Recommendation from the European Commission against Racism and Intolerance (ECRI) on General Policy No. 13 on Combating Anti-Gypsyism and Roma Discrimination of June 24, 2011, CRI(2011)37, <https://rm.coe.int/ecri-general-policy-recommendation-no-13-on-combating-anti-gypsyism-an/16808b5af6>

CONSTITUTION, LAWS AND BYLAWS

- The Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 98/2006
- Law on the Foundations of the System of Education, Official Gazette of the Republic of Serbia, no. 88/2017 and 27/2018 – other laws
- Law on Primary Education, Official Gazette of the Republic of Serbia, no. 55/2013, 101/2017 and 27/2018 – other law
- Law on Secondary Education, Official Gazette of the Republic of Serbia, no. 55/2013, 101/2017 and 27/2018 – other law
- Law on the Protection of the Rights and Freedoms of National Minorities, Official Gazette of the Federal Republic of Yugoslavia, No. 11/2002, Official Gazette of Serbia and Montenegro, no. 1/2003 – Constitutional Charter and Official Gazette of the Republic of Serbia, no. 72/2009 – other law,

- 97/2013 – Decision of the Constitutional Court and 47/2018
- Law on State Administration, Official Gazette of the Republic of Serbia, no. 79/05, 101/07, 95/2010, 99/2014, 47/2018 and 30/2018 – other law
- Law on the Prohibition of Discrimination, Official Gazette of the Republic of Serbia, no. 22/2009
- Rulebook on closer criteria for recognizing forms of discrimination by an employee, child, student or a third person in the education institution, Official Gazette of the Republic of Serbia, no. 22/16
- Rulebook on the conduct of the institution in case of suspicion or established discriminatory behavior and insulting the reputation, honor or dignity of a person, Official Gazette of the Republic of Serbia, no. 65/2018
- Rulebook on additional educational, health and social support for children and students, Official Gazette of the Republic of Serbia, no. 63/2010
- Rulebook on enrollment of students in secondary high school, Official Gazette of the Republic of Serbia, no. 23/18

STRATEGIC DOCUMENTS

- Strategy for Improving the Position of Roma of the Government of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 27/09
- Strategy for the development of education in Serbia until 2020, Official Gazette of the Republic of Serbia, no. 107/12
- Action Plan for the Implementation of the Strategy for the Development of Education in Serbia until 2020, http://www.mpn.gov.rs/wp-content/uploads/2015/08/Akcioni_plan.pdf
- Strategy for Prevention and Protection against Discrimination, Official Gazette of the Republic of Serbia, no. 60/2013
- Action Plan for Implementation of the Strategy for Prevention and Protection against Discrimination 2014-2018, http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/akcioni_plan_-_srpski.pdf
- Strategy for Social Inclusion of Roma in the Republic of Serbia for the period from 2016 to 2025, Official Gazette of the Republic of Serbia, no. 26/2016

- Action Plan for the Implementation of the Strategy for the Social Inclusion of Roma in the Republic of Serbia for the period from 2016 to 2025, for the period from 2017 to 2018, http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/akcioni_plan_za_primenu_strategije_za_socijalno_ukljufivanje_roma_i_komkinja_u_rs_2016-2025_za_period_od_2017._do_2018._godine.pdf
- Action Plan for the Realization of the Rights of National Minorities, <http://www.ljudskaprava.gov.rs/sh/node/21793>

OBSERVATIONS AND REPORTS

- UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of Serbia, E/C.12/SRB/CO/2 of 23 May 2014, <http://www.ljudskaprava.gov.rs/sh/node/19967>
- Concluding Observations of the UN Committee for Human Rights in connection with the Third Periodic Report on the Implementation of the International Covenant on Civil and Political Rights of 2017, 10 April 2017, CCPR/C/SRB/CO/3 http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitetaccpr_c_srb_co_3_27019_e_srp.pdf
- UN Committee on the Elimination of Racial Discrimination, Concluding Observations on Combined Second, Third, Fourth and Fifth Periodic Reports of Serbia, CERD/C/SRB/CO/2-5, of 8 December 2017, <http://www.ljudskaprava.gov.rs/sh/node/19865>
- UN Committee on the Rights of the Child, Concluding Observations on Combined Second and Third Periodic Reports of the Republic of Serbia, CRC/C/SRB/CO/2-3 of 3 February 2017, <http://www.ljudskaprava.gov.rs/sh/node/19966>
- Final Report of the European Commission against Racism and Intolerance (ECRI) on Serbia adopted in March 2017, Committee of Ministers of the Council of Europe, SM(2017)41-ad2
- European Commission report on Serbia's progress in 2018 - "Serbia 2018 Report", European Commission, SWD(2018)152 final, Strasbourg, 17.4.2018

- European Roma Rights Center, Written comments on Serbia for consideration by the Human Rights Council, Working Group on the Universal Periodic Review, of the 29th Session (January-February 2018), June 2017, http://www.errc.org/uploads/upload_en/file/serbia-hrc-submission-30-june-2017.pdf
- The Ombudsman's report on the implementation of the Strategy for the Promotion of the Status of Roma with the recommendations from 2013, <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/3115-2013-12-10-13-06-11>
- Regular Annual Report of the Protector of Citizens for 2016-2017, <https://www.ombudsman.rs/index.php/izvestaji/godisnji-vestices>
- Special Report of the Protector of Citizens "Inclusive Education: Additional support services for children and students in education", 2018, <https://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/5927-in-luzivn-br-zv-nj-uslug-ddnp-drsh-d-ci-i-ucenci-u-br-zv-nju>
- Regular Annual Report of the Commissioner for the Protection of Equality for 2011-2017, <http://ravnopravnost.gov.rs/izvestaji/>
- Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2014/11/Drugi-nacionalni-izvestaj-o-socijalnom-kljucivanju-i-smanjevanju-siroastva-final.pdf>

OTHER PUBLICATIONS

- Commissioner for the Protection of Equality of the Republic of Serbia, Prevention of segregation, development of inclusive enrollment policies and desegregation of schools and classes - International experiences and proposals for improvement of practice in Serbia, Belgrade 2016, <http://ravnopravnost.gov.rs/wp-content/uploads/2017/02/Prirucnik-zavod-FINAL.pdf>

- Civil Rights Defenders, Obstruction of Antigypsyism civilism: Roma in Serbia , 2018, <https://crd.org/wp-content/uploads/2018/02/The-Wall-of-Anti-Gypsyism-%E2%80%93-Roma-in-Serbia-Srb.pdf>
- Council of Europe/European Court of Human Rights, Guide to Article 2 of the Protocol No. 1 - Right to Education, 2015, www.echr.coe.int
- European Court of Human Rights, Factsheet - Roma and Travelers, December 2018, https://www.echr.coe.int/Documents/FS_Roma_ENG.pdf
- Praxis, Protection of Roma From Discrimination, 2013, <https://www.praxis.org.rs/index.php/en/reports-documents/praxis-reports/item/644-protecting-roma-against-discrimination>
- Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, Analysis of the Application of Affirmative Measures in the Field of Roma Education, 2016
- Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, Monitoring of Social Inclusion in the Republic of Serbia, 2017
- Center for the Advancement of Legal Studies, Anti-Discrimination Laws: Guide, Belgrade, 2008, <https://cups.rs/wp-content/uploads/2010/03/Antidiskriminaciono-pravo-vodic-2007.pdf>

INTERNET SITES

- <https://www.echr.coe.int>
- <https://www.unicef.org/serbia/influence-education>
- <http://www.ljudskaprava.gov.rs>
- <http://www.mpn.gov.rs>
- <https://www.ombudsman.rs/index.php/izvestaji/godisnji-vestices>
- <http://ravnopravnost.gov.rs/izvestaji/>



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