



26 March 2024

Written observations in application no. 29359/22 Salay v. Slovakia

I. Introduction

1. The European Network of Equality Bodies (EQUINET) is an association registered in Belgium representing national equality bodies (NEB) across Europe. EQUINET membership comprises 48-member organisations from 38 countries. Our mission involves promoting equality in Europe by supporting and enabling the work of national equality bodies, as well as supporting equality bodies to be independent and effective catalysts for more equal societies.

2. NEBs are public institutions set up across Europe to promote equality and tackle discrimination on grounds of sex, race, age, sexual orientation, religion and belief, disability or other grounds. Their role is defined in accordance with EU equal treatment legislation requiring Member States (and EU accession countries) to set up NEBs to combat discrimination based on race and ethnic origin, as well as sex. Many Member States have gone beyond these requirements and ensured that NEBs can also deal with discrimination based on other grounds. These bodies have a distinct role from national governments and civil society organisations. Many NEBs have, as part of their statutory functions, the ability to intervene in equality and human rights cases before national courts, or indeed before international and regional courts and tribunals.

3. The Slovak National Centre for Human Rights (the Centre) is an independent institution with two mandates: national human rights institution (NHRI) and Equality Body (EB). As part of the mandate as an Equality Body, the Centre is a member of Equinet. The Centre was established by the Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights (Act on the Establishment of the Centre), which came into effect on 1 January 1994.

4. As EB, the Centre is regularly confronted with segregation of Roma, as a form of unequal treatment and discrimination. Due to the significance of this topic and scale of systematic violation of human rights of the affected groups concerned, segregation in education is a strategic topic of the Centre. To this end the Centre closely cooperates with the State School Inspectorate in Slovakia and often engages with other relevant partners such as the Ministry of Education, Science and Research and Sport of the Slovak Republic, as well as civil society organizations focusing on the same issue. The Centre deals with individual cases of discriminatory placement in education but it also plays an active role in proposing systematic solutions, providing Courts with expert advice in this matter and participating in the creation of preventive measures.

3. On 14 February 2024, the European Court of Human Rights (ECtHR) granted Equinet and the Slovak Centre for Human Rights leave to intervene in the above mentioned Applications by way of written submissions in accordance with Article 36(2) of the European Convention on Human Rights (ECHR) and Rule 44(3) of the Rules of the Court.

4. The case concerns questions regarding the right to education free of discrimination and the disproportionate placement of Roma children in segregated special education systems under article 14 and Article 2 of Protocol No. 1.

5. This submission will provide the ECtHR with information on the following issues of relevance



- Inform the Court about Slovak and European anti-discrimination and education law, as well as the case-law of the domestic and European Courts.
- Share reports regarding the over-representation in special education, the systematic deficiencies in the special education placement process, as well as to showcase the systemic and structural issues that arise with this practice.
- Share information related to diagnosing and testing of pupils and their special needs in education.

II. Discrimination of Roma

6. The **ECtHR** will, in interpreting the ECHR, look “for any consensus and common values emerging from the practices of the European States and specialised international instruments... as well as giving heed to the evolution of norms and principles in international law.”ⁱ

7. Systemic discrimination against Roma communities is a persistent reality across Europe, as highlighted by reports from, among others, this esteemed Court, the **Council of Europe** or the **Commissioner for Human Rights**. In spite of the reinforcement of legal and policy frameworksⁱⁱ disparities persist, necessitating robust measures to address the structural inequalities faced by Roma communities. **ECRI** has pointed out that these efforts must focus on effective implementation of policies, awareness-raising initiatives, and fostering inclusive societies to combat systemic discrimination and promote Roma rights.ⁱⁱⁱ

8. Judgments from the **ECtHR** have established that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority (for instance, *D.H. and Others v. the Czech Republic*). In the same case, the Court acknowledged that it is vital, in particular in the light of the special vulnerability of Roma children, special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases.^{iv} In *Sampanis v. Greece*, the Court underscored states' obligations to combat discrimination and uphold the rights of Roma individuals.^v

III. The principle of inclusive education and school segregation in Slovakia

9. There is consensus from specialised international instruments and research that: Roma are the most discriminated ethnic minority in Europe, in particular regarding equal access to education. Segregation of Roma children in school settings is one of the manifestations of such structural and structuralising discrimination. The effects that school segregation has in the Roma population is not a conjunctural issue, but an issue that International and European organisations have pointed out systematically, especially given the pernicious effects of perpetuating systemic racism by limiting equal opportunities. There is a positive obligation for contracting states to redress this situation, and insufficient efforts have been performed by the Slovak state in this regard, as shown by the numerous reports by international organisations, including bodies of the CoE, as well as the infringement procedure opened by the European Commission in this regard.

10. The **Slovak Ministry of Education, Science, Research and Sport** has acknowledged the existence of segregation and discrimination of Roma children in education in Slovakia and assumed responsibility for remedying the situation in order to eliminate segregation and implement a policy of inclusive education.^{vi}



11. The **Slovak State School Inspectorate** regularly informs the Slovak National Centre for Human Rights of the shortcomings in the process of enrolment in the special education system, as well as segregation of Roma pupils in schools.^{vii} The Centre then starts independent investigations at those schools that usually result in out of Court solutions and support, involving the public authorities, in putting de-segregation measures in place that are monitored closely. The Centre observed that segregation of Roma children in school settings persists and followed investigations in 4 cases in 2022 and 2 in 2023.^{viii}

12. In 2021, **FRA** pointed out that over 65% of Romani children in Slovakia remain in segregated schools. This makes it the Member State with the highest share of Romani children segregated in their education system across the European Union.^{ix} There, more than half or (in Bulgaria and Slovakia) almost two thirds of these children attend a school where all or most of the other children are Roma. In Serbia, Italy and Portugal, the shares of children in segregated education are significantly lower.^x

13. The **EU statistics on income and living conditions** (EU-SILC) in 2020 revealed the deliberate establishment of segregated Roma classes and schools, along with the disproportionate and often unjustified placement of Roma children in special education programs. The study indicated that 17% of children belonging to Marginalized Roma Communities (hereafter referred to as MRC), aged between 6 and 15 years old, were enrolled in special education, marking a threefold higher rate compared to the general population. Of these, nearly two-thirds (63%) of MRC children in special education were surrounded solely by Roma peers, suggesting a targeted effort to form ethnically homogeneous classrooms. Additionally, almost half (47%) of MRC children in mainstream education were exclusively in classrooms with other Roma students, while 32% attended schools with entirely Roma student bodies. Furthermore, in the 2018/19 academic year, MRC pupils comprised 74% of all students in zero-grade classes, despite accounting for only approximately 11% of 6-year-olds overall, indicating a significant overrepresentation of MRC pupils in these classes.^{xi}

14. A report by the **Slovak Public Defender of Rights** documented that Roma represented over 88 per cent of pupils of special classes and schools for pupils with mild mental disabilities that were surveyed.^{xii}

15. In spite of the right to education without any distinction being enshrined in both the **Slovak Constitution**, as well as the School Act underlining the need to consider the educational needs of the individual and their co-responsibility for their education, inclusive education, and prohibition of all forms of discrimination and segregation, the segregation of Roma children in special schools in Slovakia persists.^{xiii}

16. The **Council of Europe** has repeatedly expressed concern, reported and provided recommendations about segregation of Roma children in schools across Europe, including Slovakia. The **European Committee of Social Rights** considered in 2015 that the situation of Roma children in Slovakia, previously found not to be in conformity with the European Charter of Social Rights, has not changed significantly and they remained disproportionately represented in special classes.^{xiv} Similarly, in 2019, “in light of the lack of concrete information on the measures taken to include Roma children in mainstream education, the lack of data on the number of Roma children in special schools and the lack of data on the number of Roma-only classes and schools, as well as on trends in the area, the Committee concludes that the situation in the Slovak Republic is not in conformity



with Article 17§2 of the Charter on the ground that it has not been established that adequate measures have been taken to include Roma children in mainstream education, resulting in the perpetuation of segregation in education.”^{xv}

17. **The European Commission against Racism and Intolerance (ECRI)** has stated concerning Slovakia that “far too many (Roma) children are placed in special education classes and establishments. Over half of Roma children suffer from segregation.”^{xvi} ECRI also emphasized that it is a matter of urgency to put an end to the segregation of Roma children in schools and the unjustified placement of Roma children in specialised education.^{xvii} Among recommendations to the Slovak authorities, ECRI asked to “significantly reduce the number of Roma children enrolled in special education, and abolish school segregation”.^{xviii} ECRI reported that one “cause of the segregation of thousands of Roma children lies in the power that municipal and regional authorities have to set the boundaries of school catchment areas themselves, as this power is used to create or maintain segregation”. The central authorities do not have the power to stop these practices^{xix}, which is contrary to the Court’s case-law in relation to Article 14 ECHR and Article 2 of Protocol No. 1 to the Convention.^{xx} In ECRI’s opinion, the Slovak authorities should take effective measures to end this segregation, if necessary by changing the regulations concerning the way in which the boundaries of school districts are set and enforcing the new Article 424 of the Criminal Code, which has made segregation and all other forms of generalised or systematic discrimination a criminal offence since 2017.^{xxi}

18. The **UNCERD Committee’s** 2022 concluding observations on Slovakia recommend that the State take all necessary measures to address the root causes of discrimination and segregation of Roma children, to ensure equal opportunities for Roma children in access to quality education, and to enforce effectively the Schools Act and the Anti-Discrimination Act in order to eliminate the overrepresentation of Roma children in specialized classes and special schools, and take adequate steps to integrate them into mainstream education^{xxii}. In parallel, the CERD Committee also noted the persisting residential segregation of Roma and urged the State to take steps to end it.^{xxiii}

19. The **UNCRPD Committee** expressed concern over the lack of measures to implement an inclusive education system and called on Slovakia to put an end to the process of placing Roma children in segregated schools for children with disabilities on the basis of their ethnic background.^{xxiv}

20. **Inclusive education** is recognised as a centrepiece of educational systems. This involves not only children of Roma origin, but also children with disabilities. Personalized support and not segregated schooling systems are internationally recognised as good practices, thus avoiding that the placement in segregated school settings affects the chances of completing primary school education and having the consequence of deepening the effects of systemic discrimination^{xxv}.

21. The **UN CRPD Committee** has pointed out^{xxvi} that the failure of some States parties to provide students with disabilities -including students with visible and invisible disabilities and those who experience multiple forms of discrimination or intersectional discrimination- with equal access to mainstream school with inclusive and quality education is discriminatory, contrary to the objectives of the Convention and in direct contravention of articles 5 and 24. The reference in this passage to multiple and intersectional discrimination demonstrates that States are obliged to provide inclusive education to all children, including those with special needs. According to the Committee,



segregated models of education contravene the UNCRPD, furthermore, States Parties have an obligation to ensure reasonable accommodation.

22. The **CERD Committee** underlined that a condition of racial segregation can occur without any initiative or direct involvement by the public authorities and States have the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State^{xxvii}.

23. The **ECtHR** has consistently found violations of Article 14 read in conjunction with Article 2 of Protocol No. 1 in a number of cases concerning the right to education of Roma pupils. These cases concerned the disproportionate number of Roma children placed in special schools for children with mental disabilities (*D.H. and Others v. the Czech Republic, Horváth and Kiss v. Hungary*), in Roma-only classes (*Oršuš and Others v. Croatia*), or in Roma-only schools (*Lavida and Others v. Greece*); as well as their inability to access school before being assigned to special classrooms in an annex to the main primary school buildings (*Sampanis and Others v. Greece*).^{xxviii} Furthermore, the Court has manifested that intentionality is not relevant when it comes to the differential treatment received by Roma children regarding their placement in schools, and constitutes a form of indirect discrimination (*D.H. and Others v. the Czech Republic; Sampanis and Others v. Greece; Horváth and Kiss v. Hungary; Lavida and Others v. Greece; Oršuš and protection v. Croatia*). Furthermore, the Court has recognised that contracting states have a positive obligation to take desegregation measures under Article 46 in an elementary school attended almost exclusively by Roma and Egyptian children in *X and Others v. Albania*.^{xxix}

24. The **UN Committee on Economic, Social and Cultural Rights**, in its general comment No. 20 (2009), noted that States must adopt an active approach to eliminating segregation.^{xxx}

25. The **European Commission** started an infringement procedure against Slovakia in 2015 and issued a reasoned opinion in 2019.^{xxxi} Since then, Slovakia has undertaken a series of legislative reforms and adopted several strategies and action plans to foster Roma inclusion in education. However, after assessing those measures and monitoring the situation the Commission concluded that the reforms undertaken are insufficient and consequently referred Slovakia to the Court of Justice of the European Union for failing to effectively tackle the issue of segregation of Roma children in education on 19th of April 2023.^{xxxii}

26. The existence of segregation was also confirmed in several recent cases before Slovak courts:

26.1. On 15 December 2022, the **Slovak Supreme Court** concluded that by educating Roma children in an ethnically homogeneous school close to the local disadvantaged Roma community, they were discriminated against on the ground of their ethnicity. Besides establishing the responsibility of the State, the Court established that the defendants had failed to take sufficient preventive measures to protect against discrimination and the measures to eliminate the discrimination against Roma children in such school.^{xxxiii}

26.2. On 28 February 2023, the **Regional Court in Prešov** ruled that the Private Centre for Special Pedagogic Counselling in Prešov and the primary school in Hermanovce had discriminated against three Romani children who were illegally educated in such school in special classes for children with mild mental disabilities. The Court ruled that Slovakia, represented by the Ministry of Education, carries the responsibility and had failed to both take effective preventive measures to protect



against discrimination and to eliminate such discrimination. In the school year 2015/2016, 96.99% of the pupils of the Primary School in Kindergarten Hermanovce with diagnosed mental disabilities were of Roma origin. Spatial segregation was also present at the school by placing special and zero-grade classes in two separate buildings outside the main building and having the children taught in two shifts. When confronted with the issue of the parents not having requested the placement in mainstreamed school system, the Prešov District Court confirmed that the parents of children must not, by their decision-making, deny them the right to equality of access to education.^{xxxiv}

26.3. On 12 July 2023, the **Slovak Supreme Court** concluded that the education of Roma children in a school attended exclusively by Roma children built near the disadvantaged Roma community in Muránská Dlhá Lúka had led to their segregation. This is not affected by the absence of a motive to intentionally discriminate against Roma children, nor by the existence of a legitimate aim to ensure access to education for children closest to their place of residence. The Supreme Court stated that the construction of such a school constitutes a disproportionate and inappropriate means of disadvantaging Roma children by de facto segregating them. In this case, the Supreme Court decided that Slovakia (Ministry of Education) carries the responsibility and had failed to take sufficient preventive measures to protect^{xxxv}

26.4. On 6 November 2023, the **District Court in Prešov** decided that the defendant state institutions^{xxxvi} had violated the principle of equal treatment – both by adopting decisions on the designation of the school district area, which maintained the existing segregation of Roma children at the school in Terňa, and by failing to take effective measures to prevent and eliminate their segregation.^{xxxvii}

IV. Mid and Long term consequences of placement in zero-grade and special schools for Roma Children

27. Based on the information below, there is a consensus emerging from specialised international instruments and research that: The overrepresentation of Roma children in the so-called zero-grades or special education classes has proven to have mid and long term consequences regarding the deepening of segregation leading to the formation of ethnically homogeneous classes in later grades of primary school and adversely affecting the chances of completing primary education. Not only are the opportunities for higher education very limited for graduates of special classes and schools but their career options are also significantly reduced. Since educational attainment is one of the factors with a major impact on employment, low educational attainment due to special school education makes access to employment even more difficult for Roma people, who already face barriers to employment due to discrimination and face unemployment to a greater extent than the general population.

28. The **State School Inspectorate** reported in 2016/17^{xxxviii} that up to 91% of pupils belonging to marginalised Roma communities were in zero-grade classes.^{xxxix} Segregation of school children was continued after the completion of the zero-grade. The same report proved that pupils completing zero-grade in 2017/18 and entering first grade in 2018/19 were in classes where, on average, 64% of their classmates had also completed a zero-grade the year before. By comparison, students who entered directly first grade (at the schools where the zero-grade classes existed) were in classes in which, on average, only 16% of their classmates had completed a zero-grade.^{xl}



28.1. In the 2019/2020 school year, 19% of children who completed zero-grade failed in their first grade and had to repeat it, while the overall repetition rate for 1st grade among all pupils in mainstream primary schools was from 5% to 6%. Since the zero-grade was counted as a year of compulsory education it significantly limited the chances of its graduates to complete all years of education within the statutory length of compulsory education, especially in case of repeating a year at a later stage of study.^{xii}

28.2. Graduates of special schools and classes in the Slovak Republic can only continue their education in a practical or vocational school, which allows for attaining at most lower secondary vocational education. Since Roma pupils are over-represented in special primary education, and given their limitation to further their studies, Roma over-representation and segregation is also reflected in lower vocational education.^{xiii} The low educational attainment and widespread discrimination excluding the Roma population from the labour market have been pointed to as causes of persistent unemployment by the **Ministry of Finance of the Slovak Republic** in 2014.^{xiii}

29. According to the **EU SILC survey**, in Slovakia^{xiv} the self-reported employment rate of working-age (20-64 years old) people from the MRC was 23 %; in the overall population it was 76 %. It also confirmed higher drop-out rates of people from MRC and the significant differences between the overall population and the MRC in the degree of the highest level of completed education. While the share of adults from the MRC who have dropped out of school is 83 %, it is 10% in the overall population. MRC receive less education both quantitatively (number of years) and qualitatively (type of school attended). Consequently, two thirds (67 %) of MRC aged 16-24 are neither in education nor in employment, compared to 12% in the general population. For graduates (MRC) of special schools/classes and specializations without a vocational certificate, the share is 80 %. While among working-age (20-64) MRC with low educational attainment, the employment rate was 19 %, the employment rate in the same age-education group in the overall population was 38 %. For those with a medium level of education, the share of those employed in the MRC was 42 % and in the overall population it was 77 %. The employment rate of the MRC is significantly lower than that of people in the overall population with the same education level.

30. **OECD** has indicated that school segregation has negative implications not only for minority or vulnerable students themselves but also jeopardises the overall performance of education. Tackling school segregation is therefore not only necessary to safeguard the right to education and equality in the education systems, but is also key to improving the effectiveness and performance of the education system as a whole.^{xiv}

V. The procedure and procedural safeguards regarding the protection of the right of the child to education free from discrimination

1. The use of tests and its disproportionate negative impact on Roma children

31. Based on the information below, there is a consensus emerging that placement of Roma children in special education systems is often made by the use of biased tests that do not properly consider the cultural and language barriers faced by them. Such a failure to consider the barriers is in direct clash with the positive obligations the State has in this area and serves to further feed the structural discrimination faced by Roma.



32. The **CoE Commissioner for Human Rights** has underlined the importance of prohibiting testing as a selection tool in developing more inclusive education policies. The use of testing to channel Roma children to special schools for children with intellectual or psycho-social disabilities and to avoid having to integrate them into mainstream schools has been a common practice in some Member States. Such testing practices have been roundly criticised for being culturally biased and they can therefore not be considered a fair means of assessing children's skills or needs.^{xlvi}

33. Importantly, the **CRPD Committee** has clarified that placement through a common test as a condition for school entry that fails to consider reasonable accommodation, and therefore individualised support, is indirect exclusion and as such, prohibited.^{xlvii}

34. The **Slovak Research Institute of Child Psychology and Pathopsychology**^{xlviii} has repeatedly pointed out the shortcomings of diagnostic methods used for inclusion in the special education system and challenged the results of diagnostic testing when providing its expert opinions in cases of excessive inclusion in special classes identified by State School Inspectorate or in court proceedings.

35. Academia has acknowledged that the diagnostic tests used most frequently in **Slovakia** are not methodologically appropriate for assessing Romani children since they have been composed in the Slovak language, standardized on ethnic Slovaks, and assume previous acquisition of a repertoire of knowledge and skills associated with putatively intelligent behaviour, as well as a vocabulary associated with membership in the middle class. Insofar as Roma were not involved in the standardization of the tests, the use of these tests on Roma is methodologically inappropriate.^{xlix} Traditionally used tests of school readiness aimed to measure skills which Roma children often lack at the age of school enrolment. While language barrier represented a main problem, other factors including a shorter attention span and less developed fine motor skills, as well as a different set of experiences than most non-Romani children fundamentally influenced the results of the diagnosis, which did not take these factors into account.¹

36. The **ECtHR** has also held in different cases that there is a correlation between the overrepresentation of Roma Children in special education systems and the use of tests that are inherently biased by not taking into consideration the specific cultural context and own language:

36.1. In *Oršuš and Others v. Croatia* the Court stated that "The Court reiterates that the right to education is a fundamental right of every child. The authorities must therefore secure to children belonging to national minorities the conditions required for them to effectively exercise their right to education without discrimination. This requires, inter alia, that such children have access to adequate education facilities. ...In this context, it is particularly important that the educational authorities ensure that tests used for the purpose of determining whether children should be placed in special classes or schools are objective and do not give rise to any form of indirect discrimination. "

36.2. In *D.H. and Others v. the Czech Republic* (2007), stated that "The authorities' failure to take appropriate measures to eliminate the cultural and language barriers faced by Roma children and to ensure that the tests used to assess their educational abilities were objective and unbiased, resulted in indirect discrimination against the applicants."



37. The problematic nature of such tests have also been confirmed in some members of Equinet's network: a study by the Belgian equality Body, **Unia**, highlighted that students belonging to the Roma community are overrepresented in special education partly because of socially and culturally biased tests, which do not assess children regarding their learning potential but regarding the academic skills they already possess. In this sense, children growing up in an environment which puts the focus on different competencies than what schools consider to be the basic level, are not favoured in regular education.ⁱ Furthermore, a study from **Czechia** observed that regarding prevalent diagnostic tests there was no clear separation between test results being caused by mental disabilities or complex socio-cultural differences, a limited stimulating environment and long-term social deprivation.ⁱⁱⁱ

2. Parent's consent is not enough

38. Based on the information below, there is consensus emerging that parental informed consent, should be required and adequate safeguards should be put into place, as well as providing information about available remedies. Further, there is growing consensus that decisions expressed by parents regarding the right of education of their children, when in contrary to the best interests of the child, and therefore the right to receive equal quality education, should be disregarded.

39. In **Slovakia**, the Prešov District Court ruled on 5 December 2011 that the consent of the Romani parents or the children themselves to being educated in segregated classes cannot in and of itself cancel out or justify the unlawful action of school segregation. The decision of the Court considered the field study findings showing that the reason Romani children as well as their parents' consent to this kind of education is that they had become used to this situation and were afraid of being bullied or humiliated in mixed classes.^{liii}

40. In his dissenting opinion on the decision by the **Slovak Constitutional Court** in the *Salay* case, judge Peter Straka stated that the complainant was transferred to special class as a result of the examination conducted based on the consent of the parents. However, the quality of this consent is unknown, and it is questionable whether it was an informed consent and whether the parents understood that their child may have considerably more difficult opportunities or will be unable to rejoin the normal educational process.^{liv}

41. The **Czech Supreme Court**, referring to the ECtHR's case law, stated that the question whether discrimination occurred is independent from the parent's consent to enrolment of a student into a special school as "such consent cannot be relevant, since no one can waive his or her fundamental right not to be discriminated against, in particular if the consent is not informed".^{lv}

42. The Complaints Committee for Ethnic Equality in **Denmark** likewise highlighted that a decision to place a student in a special class or school can constitute a violation of equality legislation no matter if the parents consented to the placement.^{lvi}

43. In line with ECtHR jurisprudence, legal practice in different European countries confirms that the fact that a person or their legal guardian consented to the placement into a special school cannot serve as justification for the lawfulness of the placement according to the survey performed by **Equinet** amongst its members and therefore further safeguards should be put in place.



43.1. Legislation in the majority of countries participating in Equinet's survey gives the possibility to effectively challenge the decision about a transfer to a special school or class, even where consent was given or ask for re-testing.^{lvii} In the Walloon region in **Belgium**, parents can decide to keep their child in the regular school. The school can then refer the matter to the Special Education Advisory Committee which decides whether the child is eligible for special education. The parents can then decide whether to follow the advice and if they refuse to do so, the case is re-examined. If the parents then still do not comply with the Committee's decision, the matter can be referred to the Juvenile Court.^{lviii} In Wallonia, in **Belgium**, children are examined from a multidisciplinary angle by a psycho-medico-social centre or by a medical specialist to assess the need for special education.^{lix}

43.2. If a student has been placed in special education on the basis of a test, the importance of retesting on a regular basis has been highlighted in several European countries. In a case in **Germany**,^{lx} the Cologne Regional Court found that the respective authorities were obliged to regularly repeat the test or procedure used to determine whether the child should be placed in a special class. This was especially important in cases where the tests gave inconclusive results which did however not lead to a reconsideration of the school type.^{lxi} Likewise, according to the Guidelines for Setting Up and Organising Special Classes for Boards of Management and Principals of Primary and Post-Primary Schools by the National Council for Special Education in **Ireland**, the enrolment of a student in a special class should be reviewed at least once a year under consideration of the views of the student, parents, teachers and other relevant professionals, the suitability of the special class placement as well as whether the student's needs might be best addressed in a mainstream setting or in a special school setting.^{lxii}

VI. Conclusions

44. **The Centre and Equinet** submit that different reports, recommendations and decisions from various international and regional human rights bodies as well as legislation, jurisprudence and practices across Council of Europe Member States confirm that States have a positive obligation to redress the persistent segregation of Roma children in schools, including their disproportionate placement in special schools. It is proven that such placement has a direct correlation to their low educational attainment, limited opportunities to continue their education and higher unemployment rates in Slovakia and therefore perpetuates the systemic discrimination of Roma.

45. Consequently, States, and therefore Slovakia, need to prevent and address segregation, promote inclusive education systems and refrain from the use of biased tests for placement in special schools. The best interest of the child needs to be core and central to any decision made on their behalf, and therefore even when there is parental consent, it is invalid in cases where it violates a child's right to equality in education. States are also under the obligation to provide for effective safeguards and remedies to challenge decisions.



- ⁱ ECtHR, *Opuz v. Turkey*, application no. 33401/02, 9 June 2009, para. 164.
- ⁱⁱ See for instance the Framework Convention for the Protection of National Minorities and the European Social Charter.
- ⁱⁱⁱ ECRI, 'Preventing and combating antigypsyism and discrimination against Roma and Travellers Factsheet' (2 August 2023), pp. 8-10.
- ^{iv} ECtHR, *D.H. v Others*, app no. 57325/00, 13 November 2007, paras. 181-182.
- ^v ECtHR, *Sampanis et autres c Grèce*, app no. 32526/05, 5 June 2008, paras. 68, 71-72.
- ^{vi} Ministry of Education, Science, Research and Sport of the Slovak Republic, '[Our goal is to eliminate segregation of Roma children](#)' (2020).
- ^{vii} [Summary reports of the State School Inspectorate](#) for individual years (available in Slovak).
- ^{viii} The Slovak National Centre for Human Rights.
- ^{ix} European Union Agency for Fundamental Rights, '[Roma In 10 European Countries Main Results](#)', 2023, p. 16.
- ^x *Idem*, p. 16, figure 15 on p. 40.
- ^{xi} Filip Markovič and Ľudmila Plachá, '[Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC MRK 2020](#)' (no date), Executive summary.
- ^{xii} Slovak Defender of Rights, 'Report on executing the right to education of members of Roma national minority with special education needs' (July 2013).
- ^{xiii} Section 3(d)(e)(f) of [Zákon z 22. mája 2008 o výchove a vzdelávaní \(školský zákon\) a o zmene a doplnení niektorých zákonov](#) (22 May 2008), No.245/2008.
- ^{xiv} European Committee of Social Rights, 'Conclusions 2015 Slovak Republic Article 17(2)' (4 December 2015).
- ^{xv} European Committee of Social Rights, 'Conclusions 2019 Slovak Republic' (March 2020), p. 32.
- ^{xvi} ECRI, '[ECRI Report on the Slovak Republic](#)' (8 December 2020), p. 8.
- ^{xvii} ECRI, '[ECRI Report on the Slovak Republic](#)' (8 December 2020), paras. 45, 93.
- ^{xviii} ECRI, '[ECRI Report on the Slovak Republic](#)' (8 December 2020), para. 93.
- ^{xix} Poradňa pre občianske a ľudské práva (Center for Civil and Human Rights) (2019), '[NGO's submission to the UN Committee on Economic, Social and Cultural Rights](#)', p. 6; Poradňa pre and Public Defender of Rights of the Slovak Republic (2019), 'Report on the Activities of the Public Defender of Rights of the Slovak Republic for 2018', p. 33.
- ^{xx} ECRI, '[ECRI Report on the Slovak Republic](#)' (8 December 2020), para. 90.
- ^{xxi} *Idem*.
- ^{xxii} CERD, 'Concluding observations on the thirteenth periodic report of Slovakia' (16 September 2022), UN Doc CERD/C/SVK/CO/13, para. 33.
- ^{xxiii} CERD, 'Concluding observations on the thirteenth periodic report of Slovakia' (16 September 2022), UN Doc CERD/C/SVK/CO/13, paras. 26-27.
- ^{xxiv} CRPD Committee, 'Concluding observations on the initial report of Slovakia' (17 May 2016), UN Doc CRPD/C/SVK/CO/1, paras. 67-68.
- ^{xxv} Among others: Commissioner for Human Rights, '[Fighting School Segregation in Europe through inclusive education: a position paper](#)'
- ^{xxvi} UN CRPD Committee, 'General Comment No. 6 on Article 5: Equality and non-discrimination' (26 April 2018), UN Doc CRPD/C/GC/6*, paras. 63-64.
- ^{xxvii} [Committee on the Elimination of Racial Discrimination](#), 'General Recommendation No. 19 on Article 3 of the Convention' (1995), paras. 3-4.
- ^{xxviii} ECtHR, *D.H. v Others*, app no. 57325/00, 13 November 2007; ECtHR, *Horváth and Kiss v Hungary*, app no. 11146/11, 29 January 2013; ECtHR, *Oršuš and Others v Croatia*, app no. 15766/03, 16 March 2010; ECtHR, *Lavida et autres c Grèce*, app no. 7973/10, 30 May 2013; ECtHR, *Sampanis et autres c Grèce*, app no. 32526/05, 5 June 2008.
- ^{xxix} ECtHR, *D.H. v Others*, app no. 57325/00, 13 November 2007; ECtHR, *Horváth and Kiss v Hungary*, app no. 11146/11, 29 January 2013; ECtHR, *Oršuš and Others v Croatia*, app no. 15766/03, 16 March 2010; ECtHR, *Lavida et autres c Grèce*, app no. 7973/10, 30 May 2013; ECtHR, *Sampanis et autres c Grèce*, app no. 32526/05, 5 June 2008; ECtHR, *X and Others v Albania*, app nos. 73548/17 and 45521/19, 31 May 2022. In this regard also (among others) UNCERD General Recommendation No. 19 of 18 August 1995 on racial segregation and apartheid, para 4; OSCE, Action Plan on Improving the Situation of Roma and Sinti which urged the member States to "develop and implement comprehensive school desegregation programmes aimed at: (1) discontinuing the practice of systemically routing Roma children to special schools or classes; and (2) transferring Roma children from special schools to mainstream schools".
- ^{xxx} UN CESCR, 'General Comment No.20' (2 July 2009), UN Doc E/C.12/GC/20, para. 39.
- ^{xxxi} European Commission, '[October infringements package: key decisions](#)' (10 October 2019).



- xxxii European Commission, '[Press release: The European Commission decides to refer SLOVAKIA to the Court of Justice of the European Union for not sufficiently addressing discrimination against Roma children at school](#)' (19 April 2023).
- xxxiii Judgement of the Supreme Court in Bratislava of 15 December 2022, Ref. No. 5Cdo/102/2020.
- xxxiv Judgement of the Regional Court in Prešov of 28 February 2023, Ref. No. 20Co/21/2022.
- xxxv Judgement of the Supreme Court in Bratislava of 12 July 2023, Ref. No. 5Cdo/220/2022.
- xxxvi The Ministry of Education, Science, Research and Sport of the Slovak Republic and the legal predecessor of the Regional Office of School Administration in Prešov in January 2016.
- xxxvii Judgement of the Supreme Court in Bratislava of 28 March 2023, Ref. No. 4Cdo/112/2021.
- xxxviii *Objava skupiny ohrozené chudobou alebo sociálnym vylúčením* (March 2020), p. 66.
- xxxix In 2002, zero-grades were introduced into the Slovak school system in order to increase the school readiness of children. Zero-grades were designed for children who have reached age six by 1 September of a given year but who were not school-ready, come from a "socially disadvantaged environment," and, due to their social and linguistic environment, were not expected to master the subject-matter of the first year of (standard) primary school. Zero-grade was in 2021 replaced by compulsory pre-primary education for children from the age 5.
- xl The Ministry of Education, Science, Research and Sport of the Slovak republic, '*Revízia výdavkov na skupiny ohrozené chudobou alebo sociálnym vylúčením*' (10 March 2020), p. 66.
- xli Idem, p. 67.
- xlii See also FRA, '[Roma In 10 European Countries Main Results](#)' (2023), p. 38: School segregation negatively impacts the life chances of children; it violates their right to education on an equal footing with others, it also reduces their chances of acquiring essential life skills through contact with others as result of lack of interaction with children from a different ethnic or cultural background or with children with disabilities, they don't obtain a recognised diploma at the end of their school career.
- xliiii Gabriel Machlica et al., '[Bez práce nie sú koláče](#)' (2014).
- xliiv Filip Markovič, Ľudmila Plachá, '*Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020*', English Summary.
- xliv The OECD has warned against the consequences of school segregation on educational achievements. The countries with the highest index of social inclusion in schools (schools with a high social and cultural heterogeneity of students) are also the ones that performed best in the mathematics test in the PISA 2012 survey. These results are attributed to the "peer effect", namely the positive outcome derived from the fact that students with learning difficulties benefit from sharing the educational space with their more advantaged peers. Research in this field emphasises that heterogeneity in learning levels is positive, especially for the most disadvantaged students, while the observable "loss" derived from heterogeneity for the most advantaged pupils is marginal. Conversely, a high concentration of students with learning difficulties in the same classroom lowers educational quality and the expectation of teachers regarding their pupils' potential for progress. See Council of Europe Commissioner for Human Rights, '[Fighting school segregation in Europe through inclusive education: a position paper](#)' (2017), p.13.
- xlvi Council of Europe Commissioner for Human Rights, '*Fighting school segregation in Europe through inclusive education: a position paper*' (2017), pp. 23-25.
- xlvii UN CRPD Committee, '*General comment No. 6 on equality and non-discrimination*' (26 April 2018), UN Doc CRPD/C/GC/6, para. 64.
- xlviii The Research Institute of Child Psychology and Pathopsychology (Slovak abbr. VÚDPaP) is a directly managed contribution organization of the Ministry of Education, Science, Research and Sport of the Slovak Republic. It provided its expert opinion for example in case of three Roma children who were illegally educated at a primary school in Hermanovce. Judgement of the District Court in Prešov of 24 November 2021, Ref. No. 15C/14/2016-557.
- lix Eben Friedman, et al., '[School as Ghetto: Systemic Overrepresentation of Roma in Special Education in Slovakia](#)' (Budapest 2009), p. 56.
- ¹ Idem, p. 57.
- li Unia, '*Participation à l'enseignement des enfants des gens du voyage en Belgique*' (December 2017), p.7.
- lii Karina Hoření et al., '*Výzkumná zpráva: Analýza příčin vyššího podílu romských žáků vzdělávajících se dle RVP ZV UV ve třídách zřízených podle § 16 odst. 9, školského zákona a návrh souboru opatření pro oblast vzdělávání a další relevantní oblasti*' (2021-2022), Annex 1.
- liiii Judgement of the Regional Court in Prešov of 30 October 2012, Ref. No. 20Co/126/2012.
- liiv Dissenting opinion of the judge Peter Straka on final decision by the Constitutional Court of 12 November 2021, Ref. No. III. ÚS 633/2021, para. 8.
- liv Decision of the Czech Supreme Court from 05 May 2022, Ref. No. 25 Cdo 473/2021, ECLI:CZ:NS:2022:25.CDO.473.2021.1, para. 56: This case concerned the segregation of Roma students in a school for children with so-called social disadvantages in Ostrava.



^{lvi} Denmark, Opinion of the Complaints Committee for Ethnic Equality from 5 December 2005, Ref. No. 10797: This case concerned a complaint regarding the establishment of classes for students with high absenteeism in which solely students with Roma background have been placed; This was also confirmed by the National Council on Combatting Discrimination in Romania in Decision No. 504 from 17 June 2020, Ref. No. 721/2019, paras. 31-32.

^{lvii} In Austria, the so called "Sonderpädagogischer Förderbedarf" is granted in an administrative proceeding according to Section 8 of the Federal Law on Compulsory Education (BGBl. Nr. 76/1985) and can be challenged within the administrative procedural system following Article 130(1) of the Austrian Constitution (BGBl. Nr. 1/1930); In Sweden, the decision can be appealed to the Board of Appeal for Education following Section 28, Articles 12 and 28 of the Education Act (Skollagen 2010:800); In Lithuania, in line with Sections 6.3, 7.2, 7.3, 7.4, 7.5, 7.10, 11, 12 of the Description of The Procedure for Assessment of a Student's Special Education Needs (Except Those Arising Due to Exceptional Talents) In Pedagogical, Psychological, Medical and Social Pedagogical Aspects and For Allocation of Special Education (approved by order of the Minister of Education and Science on 30.09.2011 no. V-1775, current summary version with amendments from 2013-07-28), parents can disagree with the decision of a pedagogical psychological institution in the municipality; In the Flemish community in Belgium, parents can appeal to the Pupils Rights Commission following Chapter IV Section 2 of the Decree of 28 June 2002 regarding equal education opportunities (Hoofdstuk IV afdeling 2 Decreet van 28 Juni 2002 betreffende gelijke onderwijskansen); In the Walloon community in Belgium, parents also have a right to appeal following Articles 124 – 129 of the Decret of 3 March 2004 organizing specialised education (Décret du 3 Mars 2004 organisant l'enseignement spécialisé); In Ireland, under Section 9 of the Ombudsman for Children Act (No.22 of 2002), the Ombudsman for Children can investigate complaints relating to the administrative actions of a school recognised by the Department of Education provided the complainant has firstly and fully followed the school's complaints procedures. The key criterion for any intervention by the Ombudsman for Children is that the action complained of has or may have adversely affected the child; in North Macedonia, according to Article 61 of the Law on Primary Education (Закон За Основното Образование (Службен весник на Република Северна Македонија бр.161/19 и 229/20)), the enrolment of the child in the school is conducted by a three-member commission comprising a pedagogue, psychologist, or special educator and rehabilitator, and a teacher from among the class instructors. This commission is appointed by the school director. Regarding non-enrolment or the child's unpreparedness for school, the committee is obligated to notify the parent or guardian in writing no later than 15 June. Upon receiving this notification, the parent or guardian has the right to object within eight days from the date of receipt to the commission formed by the mayor of the municipality; In Germany, different regulations exist in the 16 Federal States. Usually, decisions by the school supervisory authority about the need for special education can be reviewed in the objection procedure and then before the administrative court, see for example: Section 54(5) Hessisches Schulgesetz (GVBl. 2023, p. 234 of 26 April 2023), Section 39(2) Schulgesetz des Landes Sachsen Anhalt (2231.1), Section 19(5) Schulgesetz für das Land Nordrhein-Westfalen (223), Section 4c(9) Schulgesetz für den Freistaat Sachsen (710-1); In Romania, the decision can be contested at the DJIP/DMBIP (County Directorates of Pre-University Education / Bucharest Municipality Directorate of Pre-University Education) within 45 days from the date of communication of the decision according to the Pre-University Law No. 198/2023; In Poland, the applicant may appeal against the decision to the school superintendent, through the team which issued the decision, within 14 days of its delivery, according to Section 25 of the Regulation of the Minister of National Education of 7 September 2017 on decisions and opinions issued by psychological and pedagogical counseling centers.

^{lviii} Articles 124 – 129 of the Decret of 3 March 2004 organizing specialised education (Décret du 3 Mars 2004 organisant l'enseignement spécialisé, D. 03-03-2004 M.B. 03-06-2004).

^{lix} Article 12 Décret du 8 Mars 2007 portant diverses mesures visant à réguler les inscriptions et les changements d'école dans l'enseignement obligatoire, paru au Moniteur Belge du 3 Juillet 2007.

^{lx} Judgment of the LG Köln of 17 July 2018, Ref. No. 5 O 182/16; This case concerned the continued education of a student at a special school based on a test attributing him a slight mental disability without being able to clarify to what extent this was caused by social factors inhibiting development. There was no repeated testing of the student despite the first test being inconclusive and his expressed wish to attend a mainstream school.

^{lxi} Judgment of the LG Köln of 17 July 2018, Ref. No. 5 O 182/16, para. 49.

^{lxii} National Council for Special Education, 'Guidelines for Setting Up and Organising Special Classes for Boards of Management and Principals of Primary and Post-Primary Schools' (2016), p. 5.