

## SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRÉTARIAT DU COMITÉ DES MINISTRES



Contact: Zoë Bryanston-Cross  
Tel: 03.90.21.59.62

Date: 02/02/2024

### DH-DD(2024)119

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1492<sup>nd</sup> meeting (March 2024) (DH)

Communication from NGOs (Rosa Parks foundation and the Coalition for Inclusive Education) (23/01/2024) concerning the case of HORVATH and KISS v. Hungary (Application No. 11146/11) (appendices in Hungarian are available at the Secretariat upon request).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1492<sup>e</sup> réunion (mars 2024) (DH)

Communication d'ONG (Rosa Parks foundation et Coalition for Inclusive Education) (23/01/2024) relative à l'affaire HORVATH et KISS c. Hongrie (requête n° 11146/11) (des annexes en hongrois sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

---

DGI

23 JAN. 2024

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH



## **Department for the Execution of Judgments of the ECHR**

DGI - Directorate General of Human Rights and Rule of Law Council of Europe

F-67075 STRASBOURG CEDEX

Tel.: +33 (0)3 90 21 55 54 Fax: +33 (0)3 88 41 27 93

E-mail: DGI-Execution@coe.int

### **Rule 9 Communication from the Rosa Parks Foundation (RPF) and the Coalition for Inclusive Education in the case of Horváth and Kiss against Hungary (Application No. 11146/11) under Rule 9.2 of the Rules of the Committee of Ministers**

Dear Committee of Ministers,

On behalf of the Hungarian Rosa Parks Foundation (RPF) and the Coalition for Inclusive Education, we respectfully submit the above report in the case of Horváth and Kiss against Hungary.

- 1) Rosa Parks Foundation is a grassroots organisation promoting inclusive and quality education for marginalised children through the Invisible Study Hall program, advocacy and research. RPF aims to ensure that all children have access to inclusive and quality education regardless of their race, disability and economic background. RPF runs a legal aid program for parents in education matters; most inquiries are related to the right to inclusive education of children of special educational needs children.
- 2) The Coalition for Inclusive Education is a network of Roma and pro Roma activists, experts and civil organisations founded by the Polgár Foundation for Equity. The mission of the Coalition is to change public thinking regarding the co-education of Roma and non-Roma children, and to advocate against the unjustified classification of Roma children as SEN.
- 3) The case of Horváth and Kiss concerned discrimination against two Romani applicants in the enjoyment of their right to equal education due to their misdiagnosis and consequent assignment to a remedial school for children

Rosa Parks Foundation  
[www.rosaparks.hu](http://www.rosaparks.hu)  
[rosaparks@rosaparks.hu](mailto:rosaparks@rosaparks.hu)  
H-1086 Budapest, Karácsony S. u. 31-33

Polgár Foundation for Equity/Coalition for  
Inclusive Education  
[www.egyuttnevelesszovetseg.hu](http://www.egyuttnevelesszovetseg.hu)  
[info@polgaralapitvany.hu](mailto:info@polgaralapitvany.hu)



with mental disabilities. In its judgement of 29 January 2013, the ECtHR reiterated, referring to its previous judgement in the case of D.H. and Others v the Czech Republic, that such misplacement of Romani children in special schools has a long history in Europe, notably in Hungary. The violation of the Applicant's rights therefore was not a standalone phenomenon; it was a consequence of a biased and discriminatory system in Hungary.

- 4) The ECtHR called on the Hungarian Government to adopt specific positive measures "to avoid the perpetuation of past discrimination or discriminative practices disguised in the allegedly neutral tests" (§116). 2. There are at least two general measures the Government must undertake in order to execute this judgment: (1) the adoption of a non-discriminatory testing preventing misdiagnosis of and misplacement of Romani children; and (2) the provision of adequate and sufficient safeguards against misdiagnosis and misplacement of Romani children.
- 5) We respectfully submit that the Government of Hungary has not yet properly executed the judgement. To date, the Government has not and could not provide any evidence of measures that can or will have a significant impact on the number of misdiagnosed Romani children in special education. Misdiagnosed children have not been compensated, and there are no safeguards implemented that would prevent further misdiagnosis of Romani children.

### **1. Recent case law pertaining to the misdiagnosis of Roma children**

- 6) In 2010, parallel to the case of Istvan Horvath and Andras Kiss, the Chance for Children Foundation (CFCF) and the European Roma Rights Centre (ERRC) as plaintiffs submitted an actio popularis claim (as permitted under domestic law) to the Regional Court of Eger against the Ministry of Human Resources and the Expert and Rehabilitation Panel of Heves County for the systematic misdiagnosis of Romani children in the county. According to a 2003 official study, 98% of children in special classes and 80 % in the special schools in Heves county were Roma.

The Appeals Court of Debrecen delivered its final decision on 24 September 2020. (See Annex 1). The Court stressed that the ministry was responsible for the indirect discrimination of Roma children of Heves county, which resulted in misdiagnosing and placing them into special schools without a proper reason. According to the court, the ministry should have used all means at its disposal



to combat discrimination against Roma children, including inspecting and screening the educational bodies under its control, in particular the committee of experts, in order to take better care to avoid misdiagnosis of Roma children.<sup>1</sup>

- 7) The Court ordered the Ministry of Human Resources to examine the number of Roma children among SEN children for 5 consecutive years and publish its findings on its website.<sup>2</sup>

The Ministry has published one article about the findings of such data collection but has failed to elaborate an action plan.

## **2. Recent data on special educational needs Roma and socially disadvantaged children**

- 8) Despite the formal introduction of new testing methods in the past, misdiagnosis of Roma children is still an ongoing form of discrimination in education. It remains a two-folded problem, which on the one hand articulates in delivering false, culturally still biased diagnosis, and on the other hand, children are also put into special schools based on this diagnosis without a proper medical or educational reason. While the latter phenomenon - the denial of access to inclusive education - applies to many non-Roma special educational needs children in Hungary, the Roma are overrepresented among them.
- 9) As a result of litigation referred to above by the Chance for Children Foundation and the European Roma Rights Centre in Heves county, the Government collected perceived ethnic data in 2021. While data collection focused on one single county, the findings of the report published by the Government substantiate our claim that **Roma children are still overrepresented among special educational needs children**, especially children with a diagnosis of mild intellectual disability. (See Annex 2)
- 10) According to this report, in 2021 **23% of special educational needs children were perceived as Roma**, and 77% non Roma.
- 11) **42 % of Roma children were diagnosed with mild intellectual disability, while only 16% of non-Roma children. Roma children are therefore 2.5 times more likely to be diagnosed with mild intellectual disability**

---

<sup>1</sup> See the judgment of the Appeals Court of Debrecen No. Pf. I. 20.214/2020/10., 24 September 2020

<sup>2</sup> Ibid



**compared to their non Roma peers.**<sup>3</sup> In the other categories it seems that there is no significant disproportionality among the two groups.

12) Unfortunately, ethnic data collection was restricted only to Heves county in 2021, therefore these cannot be compared to other counties, as there is no data on the proportion of Roma children among SEN children available outside of Heves county. Moreover the report does not provide any data on the proportion of Roma and non-Roma children in special schools, so **we have no information how many Roma children were directed to segregated special education in Heves county.**

13) In 2019 7.8 % of students in primary schools (1-8 grade) were SEN. Among those attending basic education, the differences according to type of settlement are moderate.<sup>4</sup> In Budapest schools, the proportion of SEN students is slightly lower, 6.7 percent, but this is only 1-1.5 percentage points behind the proportion of SEN students in city and village schools. At the same time, if the schools providing basic education are examined according to the proportion of multiply disadvantaged students - a proxy used for socially disadvantaged Roma - the considerable differences are evident. **In those schools where the proportion of multiply disadvantaged students is high or very high, the proportion of SEN students is around 13 percent,** while where the proportion of multiply disadvantaged students is low, the proportion of SEN students is also lower, 6.2 percent.<sup>5</sup>

14) It can be concluded therefore that **it is 2 times likely that a child is labelled SEN if she/he is multiply disadvantaged.**

15) However, as a result of legislative change in the definition of multiply disadvantaged (halmozottan hátrányos helyzet) in 2013, a dramatic decrease is observed in statistics in the number of children who fall into this category. This dramatic reduction has an inevitable impact on shaping the outcome of the inclusive education policy measures as lack of reliable data hinders efficient targeting and tackling of multiply disadvantaged and therefore Romani children in the public education system.

---

<sup>3</sup> Judgment of the Appeals Court of Debrecen No. Pf. I. 20.214/2020/10., 24 September 2020 p. 4.

<sup>4</sup> Julia VARGA (ed.), The indicator system of public education 2021 Economics and Regional Science Research Center Institute of Economics, 2022, p. 34. available at:

[https://kti.krtk.hu/wp-content/uploads/2022/02/A\\_kozoktatas\\_indikatorrendszere\\_2021.pdf](https://kti.krtk.hu/wp-content/uploads/2022/02/A_kozoktatas_indikatorrendszere_2021.pdf)

<sup>5</sup> Ibid, p. 34.



- 16) While the number of multiply disadvantaged children in 2012/2013 academic year was 157.000<sup>6</sup>, in 2020 it decreased to 93.000.<sup>7</sup> **Almost 1/3 of the multiply disadvantaged children have disappeared from the statistics between 2013 and 2020.** This proxy is no longer reliable to be used for planning and executing policies that should target Roma as the number of children with socially disadvantaged status is lower than the number of Roma.
- 17) According to the publication of the Central Statistics Office, the proportion of SEN students has been steadily increasing since the 2013/2014 academic year, and it was 7.9% in the 2020/2021 academic year.<sup>8</sup> The number of SEN students educated in an integrated manner in primary school classes increased by 2.9% since the previous academic year (2019/2020) and reached 41.8 thousand. In the last ten years, the proportion of SEN students with integrated education among all SEN students has increased by 10 percentage points to 73%.
- 18) 70% of SEN students with integrated education suffer from severe learning, attention or behavior control disorders, 11% have mild intellectual disabilities, and 8.5% have speech disabilities. **71% of students with special educational needs taught in separate schools or classes have mild or moderate intellectual disabilities**, 10% have autism spectrum disorders.<sup>9</sup>
- 19) **It can be concluded that mildly intellectually disabled children in which category Roma are 2.5 times overrepresented (at least in Heves) are the most likely to study in a segregated setting, in special schools or classes.**

### **3. Recent civil movements to challenge misdiagnosis of Roma children**

- 20) In July 2023 the Rosa Parks Foundation launched a new project that focuses on the educational situation of Roma children in special education. Qualitative research is part of this project which will result in a comprehensive report in April 2024. The preliminary findings of this research are summarized below. Findings are based on interviews with the following experts: a director of and

<sup>6</sup> Educational Data 2012/2013, Central Statistics Office, available at: [Oktatási adatok, 2012/2013 \(ksh.hu\)](https://www.ksh.hu/oktatasi-adatok/2012/2013)

<sup>7</sup> Socially and multiply disadvantaged children, Central Statistics Office, available at: [Hátrányos helyzetű és halmozottan hátrányos helyzetű gyermekek – Fenntartható fejlődési célok \(ksh.hu\)](https://www.ksh.hu/halmozottan-hatranynos-helyzetu-gyermekek)

<sup>8</sup> Primary education, education, 2020/2021, Central Statistics Office (KSH), available at: <https://www.ksh.hu/docs/hun/xftp/idoszaki/oktat/alt-iskola2021/index.html#ahtrnyossahalmozottanhtn-yoshelyzettanulkkzselfe3000falattiteleplsentanul>

<sup>9</sup> Ibid.



EGYMI Institute in Budapest, a special educator in Budapest, a head of District Pedagogical Specialist Service in northern Hungary, a special educator member of an county level expert committee in northern Hungary, and a special educator of county level expert committee in western Hungary.

- 21) Parallel to this project, Rosa Parks Foundation's strategic partner, the Polgár Foundation is also focusing on the misdiagnosis of Roma children with the Coalition for inclusive Education that consist of Roma activists and experts of 15 localities and strategic civil partners, such as RPF and experts in the field. The Coalition has collected data from Roma parents to substantiate its campaign against the discriminatory process of misdiagnosis of Roma children.

The Coalition has brought to surface a number of violations of the rights of Roma parents and children throughout the diagnostic process and in access to inclusive education. Some parents were talking about their experience in short videos.<sup>10</sup> In at least 3 cases parents were summoned by the kindergarten /school if their children as a consequence of their allegations. RPF provided legal advice to these parents.

#### **4. Preliminary results of our research on the situation of Roma special needs children**

##### **a) Roma are overrepresented among segregated SEN children**

- 22) RPF has requested data from the Educational Authority as freedom of information request on the social composition of special schools (Egységes Gyógypedagógiai Intézmény, abbreviated as EGYMI), and also data on the proportion of Roma children and the number of SEN children in non-segregated, integrated schools. (See the table sent by the Educational Authority as Annex 3)

- 23) We have created two tables based on the above data. *Table 1* illustrates the proportion of Roma children in integrated primary schools and the proportion of special educational needs children. We created 5 categories: schools with more than 75 % of Roma students, schools with 50-75 % of Roma, schools with 25-50% Roma, schools with 10-25 % of Roma and schools with less than 10% of Roma students or where no data was included in the sheet of the Educational Authority.

---

<sup>10</sup> <https://www.facebook.com/61552000124328/videos/928371338808981>





24) In *Table 2* we analysed the ratio of socially disadvantaged children in segregated special schools, we added up the number of socially disadvantaged (hh) and multiply disadvantaged (hhh) and compared the ratio to the county average of socially disadvantaged children (also hh+hhh), as there are significant differences among counties in the share of socially disadvantaged children. Data on county averages were available in the official educational database (KIR).



**Table 1: Number and proportion of SEN children with integrated and segregated education by the Roma share of schools and whether the municipality is a single-school or multi-school municipality**

	Proportion of Roma children in schools										Special schools for SEN children (no data on Roma children)*	%
Source: October 2020 public education statistics, 2021 National Competency Measurement	75+	%	50-75	%	25-50	%	10-25	%	under 10 (SEN schools are xclude)	%		
<b>Total number of schools</b>	3595											
<b>number of schools</b>	245	7%	156	4%	292	8%	478	13%	2218	62%	206	6%
<b>one school settlement</b>	203	83%	128	82%	155	53%	213	45%				
<b>multiple school settlement</b>	42	17%	28	18%	137	47%	265	55%				
<b>Total number of students</b>	726862											
<b>number of students</b>	35287	5%	22847	3%	57589	8%	113658	16%	484195	67%	13286	2%
<b>number of SEN students</b>	2680	8%	2141	9%	4863	8%	9524	8%	25013	5%		
<b>integrated</b>	2440	91%	1841	86%	4510	93%	8707	91%	24159	97%		
<b>segregated</b>	240	9%	300	14%	353	8%	817	9%	854	4%		



- 25) According to the 2020/21 education data, 6 percent of schools were special schools where SEN children are taught separately, and 2 percent of children attended these schools. There are no estimates of the proportion of Roma children in these schools, hence we can only rely on the disadvantaged (hátrányos helyzetű/hh), multiply disadvantaged (halmozottan hátrányos helyzetű/hhh) and Regular Child Protection Benefit (rendszeres gyermekvédelmi kedvezmény/rgyv) ratios. Previous research has shown that Roma children are highly over-represented among disadvantaged and multiply disadvantaged children. While we have argued beforehand that these proxies are no longer reliable in targeting Roma (as there are many more Roma children who do not fall under this category), we do not have any better official data that could be used as a proxy for Roma.
- 26) On the other hand, in the normal curriculum schools, we do have data on the proportion of Roma children from the head teachers' estimates. Since there are both integrated and segregated SEN children in mainstream schools too, we can also tell something about segregated SEN children by the proportion of the Roma in the schools (see table 1).
- 27) The breakdown of schools by Roma share also shows that about 8 percent of children are SEN children, except for schools where the estimated Roma share is below 10 percent, where the share of children with SEN is only 4 percent. **It can be concluded that where there are no or very few Roma children attending, the proportion of SEN children is half of the national average.**
- 28) However, when looking at how the proportion of segregated SEN children within schools is evolving, we see that the proportion of segregated SEN children in the most Roma-segregated schools (the proportion is above 75 percent) is not more pronounced compared to schools with a much lower proportion of Roma children in the school. The only exceptions are the **schools where the Roma ration is between 50 and 75 %, where the proportion of segregated SEN children is 14 per cent.** This leads to the conclusion, and it was also confirmed by the expert interviews, that **where schools are almost completely segregated, Roma children are not even sent for testing as they are already separated from non-Roma children.** While in the next group of schools, where the proportion of Roma children is between 50 and 75 per cent, this 'solution' of declaring them as SEN children and putting them in a segregated group is more evident (14 per cent).



**Table 2: County-level proportions of disadvantaged children and the proportions of disadvantaged SEN children in special schools.**

	Disadvantaged + multiply disadvantaged %	SEN Disadvantaged + multiply disadvantaged % in special schools	Differences
Borsod-Abaúj-Zemplén	38%	41%	3%
Szabolcs-Szatmár-Bereg	36%	44%	8%
Nógrád	33%	44%	11%
Jász-Nagykun-Szolnok	25%	43%	18%
Heves	23%	54%	31%
Hajdú-Bihar	22%	39%	17%
Somogy	20%	36%	16%
Baranya	17%	45%	28%
Tolna	17%	51%	34%
Békés	15%	20%	5%
Bács-Kiskun	12%	34%	22%
Zala	9%	36%	27%
Fejér	7%	24%	17%
Csongrád-Csanád	6%	24%	18%
Pest	5%	31%	26%



Komárom-Esztergom	5%	16%	11%
Veszprém	5%	22%	17%
Vas	4%	29%	25%
Győr-Moson-Sopron	2%	22%	20%
Budapest	2%	10%	8%

29) The county-level proportions of disadvantaged children are compared with the proportions of disadvantaged SEN children (see Table 2) in segregated special schools. **On average, there is an 18 percent difference between the overall countywide disadvantaged rate and the disadvantaged segregated SEN rate, which means that whether a child is sent to a segregated (EGYMI) school is heavily influenced by his or her social status. Poor, undereducated disadvantaged children are much more likely to attend such segregated schools.**

#### **b) Expert committees lack professional independence**

30) Centralisation has affected the pedagogical services including the operation of the expert committees. The same school district centers (tankerületi központ) maintain the expert committees and the primary schools in the area. Decisions of the expert committee (diagnosis, designation of school) might be appealed by the parent but the decision over the appeal is delivered by the schools district center, the same office that should provide for inclusive education in the district.<sup>11</sup> This system in our view greatly hinders the independence of the expert committees. They do not have the means to force the schools (their maintainer) to provide for inclusive education, as it would have been the responsibility of the school district center which is their maintainer at the same time.

31) Moreover the common maintainer over the schools and the expert committees might also affect the diagnostic process. Schools have the right to initiate the diagnostic process even against the parent's will in case they detect special educational needs in the child.<sup>12</sup> As explained above, in some instances

<sup>11</sup> Art. 18 (1)-(2) of EMMI decree No. 15/2013 (II. 26.) on the operation of pedagogical service institutions

<sup>12</sup> Ibid, Art. 13 (2) da)



schools might “order” the expert committee to designate a different school for the child even in case the child’s abilities would not justify this.

The examination of the child by the expert committee can be initiated by several institutions, but only in case the parent has consented to such examination.<sup>13</sup> However, should the parent protest such an examination, the school district delivers a decision that orders the parent to take the child to the examination.<sup>14</sup> Should the parent still not comply with the decision, child protection services might be notified by the school maintainer.

In sum, even if the parent disagrees with the necessity of such an examination, authorities have the power to force the attendance of the child.

**c) There is no effective remedy available against the decision of the expert committee, including misdiagnosis**

32) There is no effective remedy available in Hungary against the decision of the expert committees. This has been tested recently in two different cases. Rosa Parks Foundation provided legal representation for a child who was diagnosed with ADHD and was designated a segregated special school. The parent did not contest the diagnosis but firmly contested the segregated education and wanted his child to attend an inclusive school with the mainstream curriculum. She appealed the decision of the expert committee and then asked for judicial review. The first instance court decision was delivered 3,5 years after the decision of the expert committee, while the Curia delivered its decision one more year later. The timeframe of this procedure illustrates how futile for any parent to go through all the redressal forums as the child in question spends several years in the contested setting or with the contested diagnosis and those years cannot be undone even after a positive decision by the courts. It is even more illusory for a socially disadvantaged - Roma - parent to go through all these stages.

33) While the Government states in its Action plan that most cases were reconciled in the administrative process, in reality it means that it is clear from the deadline and timeframe of the administrative and the judicial procedure that an appeal to the courts will not provide the imminent redress a child would require in these cases. It is unclear from the data provided by the Government in the Action plan whether there have been any successful

---

<sup>13</sup> Ibid. Art. 1. (2) d)

<sup>14</sup> Ibid, Art. 13. (5) and Art. 42. (3) a) of Government decree No. 229/2012 (VIII. 28.) on the implementation of the Act on National Public Education.



judicial proceedings when a court actually changed the decision of the expert committee in a timely manner.

The Action plan cites first instance administrative decisions and appeals but does not mentions any judicial reviews.

34) We suggest that the Committee call the Government to provide data on the number and outcome of judicial reviews of the expert opinion.

35) The decision of the expert committee can be challenged immediately after receiving the preliminary results by the parent. Should the parent express disagreement, the same expert panel has the right to amend the examination or the expert opinion. In our view this must be the “administrative remedy at first instance” in the Action plan. This however cannot be regarded as a proper remedy, as the same authority- the expert committee- makes a decision over the complaint. Should the final expert opinion of the expert committee be appealed by the parent, the school district center decides over such a complaint. This is the first proper remedy in the administrative procedure. The same expert committees that delivered the decision are tasked to review the expert opinion, though the same expert cannot take part in the new examination. Based on this new examination the school district adopts a decision.

36) This administrative decision is subject to judicial review. The court might appoint an expert committee- different from the one that has originally examined the child- to reexamine the child. The court will base its decision on this new expert opinion. The judgment of the court is final. The Curia would only review the first instance judgment in exceptional cases. **As a result, it is solely in the hands of the expert committee whether a child gets access to inclusive education or not, not even in the judicial phase can an independent expert- someone who is not dependent on the central school districts- review the expert committee’s decision.** Their decision- with being the remedies futile- is final.

37) We propose that the Commission calls the government to adopt a legislative amendment so that independent experts might revise during the appeals procedure the findings of the expert committee.



38)As mentioned above, right after the examination the parent is asked whether she or he agrees with the diagnosis.<sup>15</sup> The decision of the parent is then written on the decision of the expert committee. While even the agreeing parent has the right to review this decision and ask for a review, we find this practice problematic.

39)After the examination of the child - in theory- someone from the expert committee should explain orally the results and consequences of it to the parent. This can be traumatic for any parent who has to face the child's disability. The same parent - at this emotional state- shall make a decision whether or not she agrees with what the expert just told her. In our view **it is inhuman and does not serve the best interest of the child, but rather discourages parents from taking further actions.**

40)We propose that the Committee take the initiative to abolish this rule and enable parents to only take action (appeal) later after receiving the expert opinion in writing.

#### **d) Culturally biased testing procedures are still in place**

41)RPF found that while the testing methods applied during the diagnostic process by the expert committees are considered as culturally unbiased standardized testing methods (e.g. WISC-IV), **the tests do not guarantee per se that the testing process will be culturally unbiased.** Therefore the result - the diagnosis - can still be influenced by the child's social, cultural and ethnic background.

42)Experts interviewed by RPF were unanimously of the opinion that **the examining process as a whole is unable to exclude from the results the children's socio-cultural disadvantages.**

43)One expert pointed out how the experts who conduct the testing play a crucial role in what the diagnosis will be, meaning that the diagnosis is not fully dependent on the child's actual abilities. The expert we interviewed stated that there are two kinds of experts who diagnose children: one that firmly follows the instructions of e.g. the WISC IV and whatever the outcome of the test is, accepts it as final. The other kind of expert however takes into consideration the child's background, who are the parents, whether he/she was in school, etc. and if the child underperforms in the WISC, he might take another- non

---

<sup>15</sup> See section 6 of Annex to of EMMI decree no. 15/2003





verbal instrument- and if the result of the non verbal instrument is better, than goes further and fill in questionnaires with the parents, asks for teacher's opinion, etc, to fully discover - not only based on one testing method- whether the child is SEN. This was affirmed by another expert: "As special needs teachers it is much easier, because the instructions for tests are not so tied up, for example, as for an intelligence test" (county level expert committee specialist).

44)We propose the Committee to call the Government to oblige expert committees to use non verbal testing (e.g.Raven) as a tool for double check in case WISC-IV and other verbal test results amount to mild intellectual disability.

45)Experts also said that the **tests often ask questions in ways and using words that the child has not encountered before, and it is up to the flexibility of the examiner to choose more informal methods to find out whether the child is really in trouble or just disadvantaged.**

46)Even if the special needs teacher believes that the child is not disabled despite the failed testing, the kindergarten teacher is afraid that she is acting irresponsibly not to send the child to the district-level expert committee. Since the child with a minor code with behavioral, learning and integration difficulties (BTMN) does not receive any development, the kindergarten teacher understands that this is the interest of the child to get a SEN code, because it means development", explained a special education teacher in a district of Budapest.

47)Roma children are mostly placed in the categories of mild intellectual disability and other mental developmental disorders. The latter are those who score above 70 on IQ but have various difficulties in reading, writing, speaking, behavior. In Borsod, half of the children referred to the county expert committee are Roma. Intellectual disability is the most common among them. "If you go to the Csillagfürt Egymi in Ózd (special school), 90 percent of the children are mentally handicapped and 90 percent are Roma children". "Once you get a better picture of a child, you find out that it makes it difficult for them to learn. But they can't speak normally, they can't eat normally, they can't play because they just bully each other, but if they are being taken out of the family and put in a foster home where they live in normal conditions, his/her performances will be much better after a year, so he/she just needed a little bit of a push," the **county level expert committee specialist confirms how**



**much social situation depends on what the child will be able to achieve in the tests.**

**e) The rigid, non-inclusive Hungarian mainstream education system contributes to higher chance of Roma to appear at the expert committees**

48) In most cases, the examination process starts with a signal from the teachers in the kindergarten or school. They indicate that the child may have a problem, and then a process of several stages is started, and if they find that the child has a problem, he or she is given a special needs education (SEN) label at the end. But this whole process is complexly responsible for the over-representation of Roma children among SEN children. Children who come from socially disadvantaged backgrounds, whose parents are also in many cases under-educated, cannot perform in the rigid Hungarian education system, which is unable to differentiate in the classroom. So in many cases it is not a real disability, but in fact, the expert committee decides that these Roma children will not be able to make progress in normal primary schools that are unable to use progressive pedagogical methods and differentiate properly. A former special education teacher working for the county expert committee said that the Roma children whose test scores are around 80 (IQ) are the children who come from socio-culturally poor backgrounds and in reality they are not mentally disabled as indicated in the expert opinion.

**f) Availability of the local educational infrastructure plays a crucial role in appointing a special school**

49) In many cases, whether a SEN child is placed in segregated or inclusive education depends on the availability of institutions near the child's home. The decision of whether a child shall attend an integrated or segregated school/class (special school) highly depends on the local infrastructure and not only on the child's abilities. Roma children are sent to segregated special schools because they could not perform in class of 30, experts say. But the reverse is also true, the county level expert committee professional would send the Roma child to segregated special school, but there is no institutional capacity, so they give him/her an evaluation that he/she can learn in normal integrated classroom.

50) RPF runs a legal aid service in educational matters. Currently 80 % of the inquiries concern SEN children. We have numerous complaints from even



non-Roma parents. Parents often claim that the burden to find an appropriate inclusive school for the child that can and willing to accommodate the child's disability is on the parent. **Should the parent fail to obtain a declaration for admission from an inclusive school, the child is then directed to special segregated education.** Decision over the type of education (integrated or segregated) in fact dependent on the availability of special educators, the capacity of special and mainstream schools, the relationship between the expert panel and the local mainstream schools, but most importantly with regard to Roma children: the local pressure or needs for unlawful segregation.

51) In Kalocsa (one of the localities the Coalition is active in) the designation of special segregated education clearly used as a tool to get rid of problematic Roma children of one particular state run school, where the proportion of Roma children is already high. Based on the interviews among Roma parents, many Roma children are transferred to the segregated special school for two main reasons: one, so that the mainstream school have a balanced- not too high- proportion of Roma in order to prevent white flight, and second, is that special school need pupils to attend to avoid its closure. We met a family where all 3 children were designated to the special school, which is suspicious at least that all children are SEN and are in such a condition that could not be integrated into mainstream education.

52) **These examples point to the fact that one of the main outcomes of the examination- what kind of education the child should receive- is not entirely a result of the child's actual abilities, which in itself is a direct violation of the right to their education.**

53) We propose the Committee to call the Government to inspect the practice on designation of schools of the expert committees and take firm actions to lift the burden from parents to identify inclusive schools and ensure that it is on the state run school districts or the expert committees.

#### **g) Violation of the procedural rights of parents during testing**

54) There is no or very limited information available for socially disadvantaged, undereducated families about the whole diagnostic procedure. Their rights of parents throughout the process are not fully exercised. Not one family among the Roma parents interviewed by the Coalition have ever contested the diagnosis or the designated school of the expert committee.



- 55)None of these parents have heard or met with an equal opportunity expert despite their children being multiply disadvantaged. In theory this expert could assist parents in the whole procedure and safeguard their rights. We have no information about the number of experts who were present during the examinations since 2018.
- 56)According to the Educational Authority, they collect no data on the number of socially disadvantaged children who are examined, and they could not provide any information about the number of cases where the presence of experts were rejected by the parents. (See Annex 4)
- 57)Most of the interviewees were not present during the examination of their child either because they were not informed that they have such rights or were actively talked down to be present.<sup>16</sup> Éva Gyarmathy, a well known expert in the field however stressed in a public event organized by the Coalition<sup>17</sup>, that **the presence of the parent during the examination is crucial for the optimal performance of a child at a young age.**
- 58)Interviewees also reported that they were **not informed about the possibility that their travel costs to and from the examination can be reimbursed.** Reimbursement or advancing the travel costs would be crucial for poor and socially disadvantaged families to enable them to fully exercise their rights throughout the procedure.
- 59)Roma parents have also stated that they were not fully informed - in a clear and understandable way- about the consequences of the diagnosis of their children, including the services they are entitled to and what steps they are supposed to take should the school not provide these services. This is very important because based on these interviews it was also clear that **many children do not get access to special pedagogic services despite the fact the final decision of the expert committee prescribed it to their children.** Without access to these services there are clearly no benefits of the SEN status.

## **5. Reflections on the Government's most recent Action plan of November 2023**

---

<sup>16</sup> See Art (2) 14 of EMMI decree 15/2013 (II.26.) which provides the right of parents to be present throughout the examination

<sup>17</sup>See the live reportin of the event of the coalition of 15 December 2023 at <https://merce.hu/2023/12/15/flashmobbal-hivtak-fel-a-figyelmet-a-roma-gyerekek-indokolatlan-sni-min-ositesere-budapest-legforgalmasabb-terein/>



- 60)The Government provides detailed analysis of the results of the data collection in Heves county. However, some of its conclusions are inaccurate or do not reflect the main issue at stake.
- 61)Most importantly, the **Government provides no data on the number and proportion of SEN Roma children who were put into special schools - EGYMI - and not into mainstream, integrated schools.**
- 62)Our research confirms that Roma are not only falsely diagnosed to be intellectually disabled but there is also a higher chance of being put into special schools which do not follow the same curricula as mainstream schools and do not get access to the same secondary education.
- 63)On page 9 of the Action plan of the Government submits:
- 64)“Statement: “In December 2003, Hazai térségfejlesztő Ltd. ... prepared a Strategic Programme for the Development of the Gypsy Society in Heves County, in which it pointed out that despite the legal provisions, those Roma children were also placed in special schools and classes, who were not professionally confirmed to be mentally handicapped. As a result, the proportion of Roma in special schools in the county was 80 % and 98 % in special classes during the period covered by the study (D).  
Answer: Currently, 43% of pupils with mild intellectual disabilities are of Roma origin (out of 638 pupils with mild intellectual disabilities, an estimated number of 276 pupils)”
- “Statement: “However, the Council of Europe’s Commissioner for Human Rights found in 2006 that 20% of Roma children continue to be placed in special classes, compared to only 2% of majority children (ECtHR).  
Answer: Currently 7% of Roma pupils and 3% of “majority” pupils have special educational needs. “
- 65)These statements (answers) seem to suggest that the proportion of Roma in special schools (EGYMI) decreased significantly in the past years. **However, being put into special classes/schools does not equal having special educational needs.**
- 66)Children who have special educational needs (SEN) can either go to mainstream schools or special schools (EGYMI). The decision over mainstream or special (segregated) education is exclusively made by the



expert committee. Also, children with mild intellectual disability can either go to a mainstream school or to a special school, based on the decision of the expert committee.

67)As a consequence, the fact that the proportion of Roma labeled as mildly intellectually disabled decreased does not reflect at all the actual proportion of Roma children put into special (segregated) schools. Also, the fact that the proportion of Roma children diagnosed with special educational needs decreased does not reflect at all the actual proportion of those Roma SEN children who are in special schools or classes.

68)**As of today we have no official data on the actual proportion of Roma children in EGYMI (special schools). Therefore the government could not challenge the statement referred to in its action plan about special schools having 80% or more students of Roma origin. On the contrary, our research shows that socially disadvantaged students are overrepresented in special schools.**

69)As we explained above, we were unable to get access to data on the proportion of Roma children in EGYMI (special schools) from the Educational authority through a freedom of information request. Since 2010 no studies were allowed to be done that would have provided actual ethnic data on the composition of special schools. **Without actual data on the proportion of Roma children in EGYMI schools or special classes, the Government cannot substantiate its claim that the situation that was described in Horváth and Kiss has significantly improved.**

70)We propose that the Committee calls the Government to provide data - at least in Heves county- on the proportion of Roma SEN children in special schools (EGYMI) and special classes.

71)The Action plan provides data on the number of examinations at Heves county in 2021 (p. 6.) "Total pupils with special educational needs assessed". The Action report states that in 2021 591 pupils were assessed in Heves county, out of which 138 were perceived as Roma. However the Educational Authority provided data to RPF of 1451 assessments at the Heves County Expert Committee and 2307 assessments at the district level (járási) committees in Heves county. (See annex 1)



72) We suggest that the Commission calls the Government to clarify the number of examinations.

We undertake to share the final report of our research on the situation of Roma children in special education as soon as it is completed. Should there be any further issues that need clarification from the Committee, please feel free to contact us.

Budapest, 22 January 2024

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adel Kegye', written over a light blue rectangular background.

Adel Kegye  
chair  
Rosa Parks Foundation

A handwritten signature in black ink, appearing to read 'Adrienn Zubek', written over a light blue rectangular background.

Adrienn Zubek  
executive director  
Polgár Foundation for Equity  
Coalition for Inclusive Education