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Council of Europe Dialogue with Roma and Traveller¹ Civil Society 8th Meeting

Strasbourg, 10-11 October 2019

***“Protecting the right of Roma and Traveller children to equal access to quality education.
Fighting school segregation through inclusive education”***

Conclusions and Recommendations

The 8th meeting of the Council of Europe Dialogue with Roma and Traveller civil society focused on the right of Roma and Traveller children to equal access to quality education by fighting school segregation and promoting inclusive education. The dialogue provided an opportunity for showing the continued discriminatory practices in education and the long-term consequences of such practices for Roma and Traveller inclusion from a legal, policy and practical perspective.

I. Conclusions

1. Education ensures life chances. Everyone has the right to education. Access to quality and inclusive education is at the heart of the fundamental rights of all children. There is no justification for discriminatory practices. The right to education is reflected in international law and has been reaffirmed in the 1960 UNESCO [Convention against Discrimination in Education](#) that categorically prohibits segregation in education, similar to the UN Convention on the Elimination of All Forms of Racial Discrimination. The [European Convention on Human Rights](#) (ECHR) states that the right to education is recognised as a human right and is linked to the access and the fulfilment of all other rights. Article 17 of the [European Social Charter](#) (ESC) stipulates that children and young persons have the right to appropriate social, legal and economic protection. Discrimination in education based on racial or ethnic origin is also prohibited in other relevant UN treaties and the European Union’s Racial Equality Directive of 2000.
2. The principles which have been elucidated through the case-law of the European Court of Human Rights over many years provide a crucial framework for desegregation. However, governments and civil society are essential partners to ensure that suggested measures are translated into action. The Court has recognised in its case-law that the schooling of Roma children in satisfactory conditions raises great difficulties in several European states.

¹ The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand, Roma, Sinti/Manush, Kale/Calé, Kaale, Romanichals, Boyash/Rudari; and, on the other hand, groups such as Balkan Egyptians and Ashkali, Eastern groups (Dom, Lom and Abdal), Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies, Boshia or Garachi. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

Furthermore, the Court's case-law has highlighted the vulnerability of Roma as a group in society. In its landmark judgment of [D.H. and Others v. Czech Republic \(2007\)](#), the Court found that: *"as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority... As the Court has noted in previous cases, they therefore require special protection...this protection also extends to the sphere of education"*.

3. The Court considered that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be enough to constitute the *prima facie* evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence. The Court has recognised that the national authorities face numerous difficulties in their efforts to integrate Roma children in schools. This may be as a result of cultural difference or as a result of a certain hostility manifested by the parents of non-Roma children. Sometimes, it is not easy to choose the best way to solve the learning difficulties of children who sometimes do not have enough knowledge of the language in which the education is provided. Therefore, the dialogue with civil society is crucial in finding the best solutions.
4. The vulnerable position of Roma means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular case.
5. The mandate of the Council of Europe's Commissioner for Human Rights is to foster the effective implementation of human rights in the member states. Successive Commissioners have consistently emphasized that member states should put an end to school segregation and implement inclusive education policies. In order to achieve this goal, which requires strong leadership and political commitment, the Commissioner issued twelve recommendations available in the publication: [Fighting school segregation in Europe through inclusive education: a position paper](#).
6. Roma and Traveller civil society organisations are invaluable interlocutors in the execution and monitoring processes. They play a critical role in providing the Department for the Execution of Judgments of the European Court of Human Rights and the Committee of Ministers with important information as to what is happening at national level by "shadow reporting". Furthermore, civil society can improve the enforcement of the social rights guaranteed by the European Social Charter via the [Collective Complaints procedure](#) by bringing complaints against States Parties of the Social Charter on issues that have affected the community and by submitting information when the European Committee of Social Rights (ECSR) is considering its conclusions.
7. The Council of Europe monitoring bodies such as the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) have set standards regarding equal access to quality and inclusive education for all children that members states should comply with. Civil Society can provide valuable information to the monitoring bodies through different types of

written submissions at the time when the state reports are due, such as shadow reports which cover the situation of one or several minorities and focus on selected articles or topics or provide information on all articles of the Framework Convention.

8. The right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards, and to improve quality. Member states have the obligation to ensure the rights of every child without discrimination on any grounds, including race, ethnicity and way of life (*nomadic or sedentary*). Fulfilling this obligation requires the introduction of policy measures and legislation with a specific prohibition of discrimination on grounds of ethnicity. In addition, there must be monitoring mechanisms to assess progress in implementation and enable actions to be taken where, the law is not respected.
9. Despite considerable efforts by member states to secure access to public quality and inclusive education, Roma and Traveller children are still victims of discriminatory practices and hence suffer from stigmatisation, bullying, neglect of their linguistic and cultural diversity, and disregard of their learning needs. Traveller students who have a nomadic and itinerant way of life are often invisible in educational policies. Roma children are often segregated in Roma-only schools and classes (*with lack of qualified teachers, decaying buildings and poor infrastructure*) and are often misdiagnosed and disproportionately streamed into special schools. Roma and Traveller children face social injustice and disadvantage in accessing quality/inclusive education and as such are unable to reach their full educational potential. As a consequence, many Roma and Traveller children and youth are not competitive for well-paid jobs, and thus, the wage, wealth, and privilege gap between Roma and non-Roma is maintained.
10. Anti-Roma racism/anti-Gypsyism and anti-nomadism are root causes of the repeated violations of the right to quality and inclusive education. Institutional, ideological, and interpersonal racism drives the inability of Roma and Traveller children to access their fundamental human rights, including quality and inclusive education. This has become evident not only in the case law of the European Court of Human Rights, where some member states who have breached the law are reluctant to remedy the situation through the process of the execution of the judgements of the Court, but also through the monitoring of member states' conformity with the provisions of the European Social Charter and their actions to combat racism and discrimination as reported by European Commission against Racism and Intolerance (ECRI) of the Council of Europe. Any further dialogue on combating anti-Roma racism/anti-Gypsyism should include the issue of reparation and reconciliation for past and present injustices, including wrongful placement in special schools.
11. Segregation in education is unlawful and is one of the worst forms of discrimination against children and as such a serious violation of the rights of the child. Segregation in education is specifically prohibited by United Nation (UN) treaties cited above and has been repeatedly condemned by the European Court of Human Rights and human rights bodies supervising state's compliance with international human rights treaties as well as by public institutions at national level which monitor human and minority rights also condemned school segregation.

The different teleology's and wording of international human rights treaties pertaining to segregation require (judicial) interpretation that seeks to overcome potential gaps and discrepancies. Therefore, this repeated violation calls for additional and strengthened synergies with all stakeholders charged with the obligation and responsibility to defend human rights and secure the rights of children to quality and inclusive education. Redress in the courts should include financial compensations, responsibility of the teachers, uplifting the voices of the victims, healing, truth-telling, and apologies.

12. Civil society organisations can and do play a leading role in combating school segregation through litigation, law suits, third party interventions, policy recommendations, monitoring of interventions, raising awareness of the phenomenon, convincing central and local authorities to act, pushing for accountability, and providing technical guidance. They also facilitate access of Roma and Traveller children to schools, support local authorities in identifying appropriate school inclusion strategies, provide advice on desegregation processes and bring the Roma and Traveller community closer to schools and public authorities for mutual solutions to issues. Any holistic approach to combating segregation in education should reinforce the role of civil society through financial support and capacity building initiatives.
13. In the comprehension of an inclusive and quality approach to education, the 8th Dialogue meeting endorses the following definition into its working on a Joint Statement on Inclusive Education: *“An inclusive approach to education provides an important foundation for ensuring equality of opportunity for students from diverse backgrounds and quality provision. It is the tool which results in schools being able to be flexible and responsive to the diverse needs of ALL their learners and the development of skills and attitudes necessary to interact effectively in a multicultural society. Inclusive pedagogy advocates teaching practices that embrace the whole student in the learning process and argues that students enter the classroom as personal, political, and intellectual beings. It is not enough to have students from diverse backgrounds work together; it is also necessary to “create and maintain a culturally and linguistically diverse environment that makes collaboration - social engagement in intellectual pursuits - a genuine part of the student educational environment. Inclusive pedagogical models are transformative, meaning that the educational process seeks to empower students to change the worlds in which they live. It is not simply making sense of the world they live in, but the capability to change it. The definition also includes the right to return to quality education for those who experienced barriers to learning early in their school life”.*

II. Recommendations by Roma and Traveller civil society

1. The impact of the caselaw of the European Court of the Human Rights (ECtHR) should be amplified with explicit reference to other international and European norms that prohibit racial or ethnic segregation and discrimination in the field of education. International organisations and national institutions should ensure the consistency and synergy of legislative and regulatory provisions, measures and interpretations. To this effect, the ECtHR should further infuse into its definition of discrimination based on ethnic and racial grounds when examining such cases, the standards and interpretations of racial discrimination as developed by other monitoring bodies such as the Committee on the Elimination of All Forms of Racial Discrimination, the European Commission against Racism and Intolerance (ECRI) and the EU Fundamental Rights Agency (FRA). This would increase the clarity and consistency of interpretation by courts and enforcement agencies and considerably alleviate the burden of bringing cases concerning discrimination before national human rights institutions, equality bodies and enforcement agencies, domestic courts and the ECtHR.

Related to this, the Court's history of modest damages, while well established as an indication of the emphasis on policy rather than financial redress, should further stress in its judgement decisions, the obligatory conformity of members states to the recommendations and the punitive consequences of non-conformity.

2. Roma and Traveller civil society organisations are invaluable interlocutors in the execution and monitoring processes. The monitoring bodies of the Council of Europe (*the Department for the Execution of Judgments of the European Court of Human Rights, the Committee of Ministers, the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM)*) should ensure that Roma and Traveller civil society organisations are able to provide, on a regular basis, shadow reports on the situation at national level. This includes the presence of Roma and Traveller civil society organisations in round-table consultations during country visits.
3. Policymakers should take urgent steps to ensure widespread desegregation outcomes. As most international and European institutions prioritise Roma and Traveller education as a means for social inclusion, the focus on desegregation should be clearer in the policy papers. Consequently, policies should be reconfigured to combine social development, justice, and human rights approaches. Human rights approaches focusing on litigation are often reactive and address past injustices against a small number of plaintiffs. Therefore, the forthcoming Council of Europe Strategic Action Plan on Roma and Traveller Inclusion (2020-2025) should include forward-looking measures that enhance the chances of effective and sustainable desegregation while promoting quality and inclusive education.
4. Nomadic and semi-nomadic ways of life should be valued and protected as part of Travellers' heritage and culture. Access to quality education should not be conditioned by

mandatory prolonged settlement but adapted to a nomadic or semi-nomadic way of life. Mobility of nomadic and semi-nomadic Roma and Traveller pupils should be fully integrated in schooling and pedagogical systems. Inclusive education should develop innovating pedagogical tools compatible with mobility.

5. The anti-discrimination framework policy should explicitly address anti-Gypsyism/anti-Roma racism and anti-nomadism. This should be rigorously enforced in international, European and national policy development. Intergovernmental bodies and monitoring mechanisms of the Council of Europe should include the examination of this specific type of racism when examining the compliance of member states with standards particularly in the area of the right to education.
6. Roma and Traveller civil society organisations should play a key role between international and local institutions in the close monitoring of desegregation and inclusive education initiatives and in ensuring the sustainability for successful interventions. It is crucial that Roma and Travellers themselves participate in the leadership, design, and implementation of these interventions. Therefore, national authorities should prioritise funding to support the work of NGOs in the area of education.
7. The monitoring bodies of the Council of Europe should, in close co-operation with Roma and Traveller civil society, develop guidelines to be used by those NGOs that wish to write shadow reports on governments' implementation of desegregation. They should work co-operatively to strengthen actions so that member states are in conformity with charters and conventions they have ratified.
8. The Council of Europe should create a framework for civil society monitoring and documenting school segregation and desegregation action plans at national and local level. Considering that (a) school segregation is spread across member states, (b) most of the school segregation cases remain undocumented and unreported, (c) many of the obstacles in identifying, documenting, and reporting school segregation are similar in many of the member states, a guide for identifying, documenting, reporting and monitoring school segregation and desegregation action plans constitutes a necessary tool. Such a guide could be a practical tool for non-governmental organisations and human rights activists.
9. The Council of Europe should propose a more coordinated, collaborative, and proactive approach to the Dialogue with Roma and Traveller civil society, which incorporates capacity building-initiatives in its role as interlocuter between Roma and Traveller communities, local authorities and Council of Europe bodies. It is important to support capacity-building of Roma and Traveller civil society in order to maintain a high level of response to interventions. In addition, NGOs would benefit from the ability to combat discriminatory practices.
10. Any diffusion of Council of Europe good practices and tools regarding mutual co-operation with Roma and Traveller civil society and the right to quality and inclusive education should include the CoE regional offices and field offices.