Fighting school segregation in Europe through inclusive education

Position paper

Fighting school segregation in Europe through inclusive education: a position paper

by the Council of Europe
Commissioner for Human Rights

Council of Europe

This is a collection of positions on school segregation and inclusive education from the Council of Europe Commissioner for Human Rights. It contains a summary of the Commissioner's positions and conclusions concerning school segregation and inclusive education, based primarily on his country-monitoring and thematic work. It also provides a list of recommendations. It was prepared with the support of Xavier Bonal, Professor of Sociology at the Autonomous University of Barcelona and Special Professor of Education and International Development at the University of Amsterdam.

Contents

Introduction

School segregation is still an unfortunate reality in Europe today. Its negative consequences affect in particular Roma children, children with disabilities, children with a migrant background and other children due to their social or personal circumstances (such as children living in institutions and children in the juvenile justice system). Despite existing anti-discrimination legislation and policies, the practice of separating groups of pupils in specific schools or classes may even be growing, including as a result of the current increase in the arrival of migrants and refugees in Europe.

School segregation is one of the worst forms of discrimination and a serious violation of the rights of the children concerned, as their learning opportunities are seriously harmed by isolation and lack of inclusion in mainstream schools. It is a clear manifestation of injustice against minority and other vulnerable groups, which also perpetuates the marginalisation of entire population groups in Europe.

Strategic litigation, community empowerment supported by civil rights movements and the development of international human rights standards have contributed to fighting school segregation in many countries. The European Court of Human Rights in particular has, over the last decade, developed extensive case law on school segregation that especially affects Roma children. It has repeatedly found member states in violation of the European Convention of Human Rights (the Convention) for breaching these children's right not to be discriminated against with respect to their right to education.[1]

Many states have adopted important measures to build more inclusive education systems and to guarantee the right of all children to education without discrimination. In practice, however, authorities at national and local level do not always abide by their obligations and often yield to pressure from different sources, including from school administrations, teachers and other professionals and from families.

States have a positive obligation – firmly entrenched in international human rights law – to tackle school segregation. This can be achieved through a combination of strong anti-discrimination measures, including legislative measures, and policies that promote more inclusive education systems. As defined by UNESCO,[2] inclusive education is

> a process that addresses and responds to the diversity of needs of all children, youth and adults through increasing participation in learning, cultures and communities, and reducing and eliminating exclusion within and from education.

1. See European Court of Human Rights, "Factsheet on Roma and Travellers" (updated in June 2017), containing information on a series of cases in which violations of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 (right to education) of Protocol 1 were found.
2. UNESCO (2009), "Policy guidelines on inclusion in education", UNESCO, Paris.

It is a principle that places the responsibility (a positive obligation) on states to educate all children without any discrimination within the mainstream system.

As such, inclusive education encompasses the fight against segregation patterns that affect certain children in particular, but it also goes far beyond that. It is an approach that considers separation as a negative phenomenon for the right of all children to education. It rejects the notion of "separate but equal" and aims to make societies open to sharing and learning from their diversity. Its importance becomes even more apparent in times of economic crisis or political instability, when attitudes of racism, xenophobia and intolerance tend to be exacerbated and endanger democratic values and social cohesion.

Inclusive education should not be considered a utopian project. It is an achievable goal that has huge potential for improving social cohesion, intercultural relations and the educational opportunities of all children.

This paper firstly provides an overview of the situation regarding school segregation in Council of Europe member states, as well as of the main factors causing it, based on the findings of the Commissioner's country-monitoring work (Section I). It also reviews the risks entailed by separate education (Section II). It then outlines the key principles that should underpin any policy to eradicate segregation and promote inclusive education (Section III), and ends with a list of conclusions and recommendations for the attention of policy-makers and, more generally, all those involved in developing more inclusive education policies (Section IV).

I. School segregation in Council of Europe member states: the state of play

1. Overview of segregation in the member states

Substantial numbers of children across Europe are educated in schools with high concentrations of children who are disadvantaged on the basis of their socio-economic, ethnic or cultural background, or because of a disability. Their separation or concentration in specific schools and classrooms harms their learning opportunities and is a clear violation of their right to education and their right not to be discriminated against.

Children with disabilities

Separate schooling of children with disabilities is a widespread practice across Europe, notwithstanding the fact that Article 24 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) imposes on states a duty to ensure that children with disabilities can access "an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."[3]

The Commissioner has raised serious concerns about school segregation of children with disabilities during several of his country visits and in his subsequent reports, and drawn attention to the extent of this still widely accepted form of segregation in Europe.[4] Many countries still do not regard inclusion of these children as an enforceable obligation for mainstream schools. Some countries appear willing to settle for some form of segregation and rename segregated forms of education using more acceptable terminology or even "inclusive education".[5]

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3. All but three Council of Europe member states (Ireland, Liechtenstein and Monaco) are parties to the UNCRPD as of July 2017. See also UN Committee on the Rights of Persons with Disabilities, General Comment No. 4 on the right to inclusive education, 2 Sept. 2016.
4. See the reports on the Commissioner's visits to Belgium (2016), Bulgaria (2015), Czech Republic (2013), France (2015), Latvia (2016), Lithuania (2017), Montenegro (2014), the Netherlands (2014), Romania (2014), Serbia (2015), Slovakia (2015) and Spain (2013), all available at www.coe.int/en/web/commissioner/country-reports-by-country.
5. In Romania for example, former residential institutions for children with disabilities have been renamed "inclusive education centres"; see the report on Romania (2014), paragraph 58. In the Netherlands, special education continues be provided under the heading of "appropriate education"; see the report on the Netherlands (2014), paragraphs 185 and 188.

Moreover, access to mainstream schools does not necessarily guarantee inclusion. Often, children with disabilities – while under the same roof – are still separated from their peers in practice, educated only part-time or denied access to extended day programmes.[6] They also have much higher dropout rates. This is usually due to a lack of resources to ensure accessibility and provide forms of individual support.[7] Even existing forms of support have sometimes been withdrawn as part of austerity policies.[8]

Children with disabilities taught in specialised education do not usually obtain a recognised diploma and have limited access to secondary and higher education. Despite the lack of reliable data, it seems that once in special education, they are rarely able to reintegrate into mainstream education.[9]

The Commissioner has consistently stressed that school segregation of children with disabilities can only perpetuate the marginalisation of persons with disabilities in society and reinforce prejudices against them. He has emphasised that children with disabilities living in residential institutions are particularly affected by school segregation.[10]

Roma and Traveller children

School segregation also seriously affects Roma and Traveller children in many member states. A disproportionate number of them are enrolled in remedial classrooms and special schools, where they receive education according to a reduced curriculum.[11] In some countries, the chances of Roma children being enrolled in a special school have been 27 times higher than for non-Roma children.[12]

Furthermore, Roma children are frequently enrolled in Roma-only schools or schools with a disproportionate concentration of Roma children, where in most cases they receive less demanding and often substandard education. A survey carried out in 2016 by the European Union Fundamental Rights Agency in nine EU member states shows that 33% of Roma children were attending schools in which most pupils were Roma, and 13% were in Roma-only schools.[13]

Segregation also occurs within mainstream school premises, where Roma children can be assigned to separate classes and can be prevented from using common playgrounds or dining halls.[14]

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6.   See, *inter alia*, the report on France (2015), paragraph 251.
7.   See the report on Lithuania (2017), paragraphs 87-88.
8.   See the report on Spain (2013), paragraphs 74-76.
9.   See the report on Belgium (2016), paragraph 103.
10   10. For example, see the reports on: Belgium (2016), paragraph 112; Bulgaria (2015), paragraph 32; France (2015), paragraph 250; the Netherlands (2014), paragraph 183; and Serbia (2015), paragraph 62.
11. See the reports on: Belgium (2016), paragraphs 150 and 168; Czech Republic (2013), paragraphs 43-58; Hungary (2014), paragraph 104; Lithuania (2017), paragraph 91; Serbia (2015), paragraphs 61-62; Slovakia (2015), paragraphs 82-94; and "the former Yugoslav Republic of Macedonia" (2012), paragraphs 84-88.
12. European Court of Human Rights, *D.H. and Others v. the Czech Republic*, Application No. 57325/00, Grand Chamber Judgment of 13/11/2007, paragraph 18.
13. EU Fundamental Rights Agency, "Second European Union Minorities and Discrimination Survey (EU-MIDIS II) Roma – Selected findings" (2017). The nine countries covered by the survey were: Bulgaria, Czech Republic, Croatia, Greece, Hungary, Portugal, Romania, Slovakia and Spain.
14. See the reports on: Portugal (2012), paragraphs 61 and 62; Romania (2014), paragraph 175; and Hungary (2014), paragraphs 105 and 106.

In some countries, segregation starts in pre-school education with the enrolment of Roma children in separate preparatory classes, which in practice does not lead to inclusion in mainstream primary education but represents the start of a separate educational path.[15]

The Commissioner also noted that new forms of segregation are emerging as a means of circumventing existing anti-discrimination legislation, such as Roma-only private schools.[16]

In light of this situation, it is noteworthy that the European Commission has launched infringement proceedings against three European Union member states[17] for breaching the prohibition of discrimination in education set out in the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Council Directive 2000/43/EC).

Migrant and refugee children

Refugee children and children with a migrant background also experience school segregation in many European countries, as they are often taught in schools with a disproportionately high presence of other migrant children. Moreover, schools and teachers are often left alone, with wide powers of discretion and few resources or requirements, to address the specific learning needs of migrant pupils.[18] The Commissioner has noted with concern that children with a migrant background have also at times tended to be overrepresented in special education.[19] The recent increase in the number refugees arriving in Europe is making the issue of school segregation more acute, as many member states have yet to develop comprehensive integration policies that effectively secure the right of migrant and refugee children to mainstream education.[20]

Children deprived of access to school

Some children are entirely deprived of access to school education. Depriving children of access to school or forcing them to receive education at home is also a form of segregation. This is a particular problem for some Roma/Traveller children from families with an itinerant lifestyle, as well as for some Roma children from migrant families, who frequently face enrolment denials.[21] Repeated housing evictions further complicate access to school by children from these communities.[22] Refugee children can face similar problems and be denied access to mainstream education.[23] Children

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15. See the report on Slovakia (2015), paragraph 87.
16. See the report on Slovakia (2015), paragraph 145.
17. Czech Republic (2014), Slovakia (2015) and Hungary (2016).
18. See Council of Europe Commissioner for Human Rights (2016), "Time for Europe to get migrant integration right", Issue Paper, available at https://rm.coe.int/16806da596.
19. See the report on Belgium (2016), paragraph 77.
20. See Council of Europe Commissioner for Human Rights (2016), "Time for Europe to get migrant integration right", op. cit., pp. 27-28. See also the Lifelong Learning Platform position paper, "Integrating refugees and migrants through education", September 2016.
21. See the reports on: Belgium (2016), paragraph 167-168; France (2015), paragraph 203 (Roma children), paragraphs 156-158 (Traveller children); and Ireland (2017), paragraphs 16-18.
22. Ibid.
23. See the reports on: Bulgaria (2015), paragraph 129; and Denmark (2014), paragraph 23.

with disabilities, especially those with severe disabilities, those living in institutions and children with psycho-social disabilities such as autism are also frequently deprived of access to school.[24] The European Committee of Social Rights has found that several member states have violated their obligations under the European Social Charter by failing to ensure access to school by certain groups of children.[25]

2. Main causes of segregation

Governments usually put forward a series of factors to justify school segregation and a number of reasons why intervening directly with the aim of desegregating the school system would be difficult or unpractical. These factors and reasons include: language difficulties; parental preferences, including the tendency among families from the majority of the population to enrol their children in schools with no students from minority or migrant groups ("white flight"); residential concentration; the need to pay attention to students' specific needs; and cultural emulation of ethnic minorities and migrant families. This is reflected in the frequent lack of government reaction to court decisions, including decisions of the European Court, which have not necessarily translated into systematic desegregation strategies and the adoption of inclusive education policies.

Strong vested interests in the area of education can explain a certain passivity on the part of states in tackling segregated education. Decision makers and political leaders, school administrations, teachers and families can sometimes actively resist changes that may alter situations of relative privilege in education.[26] The capacity of these actors to articulate their demands and to raise their criticism of government policies is much higher than the ability of vulnerable families to fight for the right of their children to education.

The reluctance to include children with disabilities is exacerbated by the wide margin of discretion which schools often enjoy when it comes to providing reasonable accommodations to these children so that they have access to education on an equal footing with others.[27] Schools often put forward economic arguments to deny these children the specific support they require to be able to access mainstream education.

Financial arrangements can also strengthen resistance against desegregation, especially as far as special education is concerned.[28] Professional groups involved

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24. See, *inter alia*, the reports on: Lithuania (2017), paragraph 84 and 89; France (2015), paragraphs 248-250; and Romania (2014), paragraph 66.
25. See various collective complaints lodged with the European Committee of Social Rights, notably: *Autism Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, *Mental Disability Advocacy Centre (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision of the merits of 3 June 2008; *Médecins du Monde–International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012; and *European Association of the Disabled (EAD) v. France*, Complaint No. 81/2012, decision on the merits of 11 September 2013.
26. See, *inter alia*, the reports on: Latvia (2016), paragraphs 77 and 81 and Lithuania (2017), paragraph 86.
27. See, *inter alia*, the reports on: the Netherlands (2014), paragraphs 181-182 and 188 and Belgium (2016), paragraphs 106 and 115.
28. See the reports on: Belgium (2016), paragraph 108, Lithuania (2017), paragraph 109 and Slovakia (2015), paragraphs 146 and 160.

in special education, such as teachers, psychologists and testing centres frequently oppose desegregation in order to protect vested interests.

Inappropriate regulation of school admissions and school access is another important cause of school segregation. In some states, schools are still allowed to select students on the basis of economic, religious or personal abilities. Testing is used both in public and private education, often as a tool to discriminate against children from vulnerable groups. In several countries, Roma children have routinely been channelled into special education based on culturally biased tests which lead to misdiagnosis of mental disability.[29] Also, religion can still be a basis for segregation in schools in certain countries. In addition, in some countries school fees may prevent poor families from attending publicly subsidised private schools.

Deeply rooted prejudice and rejection towards ethnic minorities (especially the Roma community) result in exclusionary practices, ranging from segregation to illegal enrolment denials. An example of this is the separation of Roma children – especially girls – from other students based on the argument of parental preference and preconceived cultural or social specificities. As stressed by the European Court, parental consent can in no case serve as a waiver for discriminatory practices.[30]

In addition, the recent economic crisis and accompanying austerity measures have resulted in reduced funding of education in many European countries. Cuts have disproportionately affected the groups most in need of support. Lack of specialists for children with disabilities, reduction in programmes to support the cultural and linguistic integration of migrant children, cuts in pre-school programmes and scholarships, and termination of projects to prevent school dropouts are all measures that tend to have more adverse effects on the most vulnerable children, thereby reducing their educational opportunities.[31]

Furthermore, it must be stressed that lower quality education in a school can be both the cause and consequence of school segregation. Schools attended by socially disadvantaged students tend to have lower expectations of these children in terms of educational attainment. They are also often undesirable schools for many families which may therefore opt out from the neighbourhood when choosing a school. Thus, lower quality education tends to polarise educational demand and is a cause of increased school segregation. At the same time, schools in which a majority of disadvantaged or vulnerable children are taught require more human and financial means for adequate levels of education to be maintained. They also require strong leadership and an ambitious educational project to improve the learning experience of all children. However, in the absence of such means, education levels usually drop. In this sense, lower- quality education is also a consequence of school segregation. This vicious circle of lower quality education and school segregation is at variance with the right of all children to education on an equal footing.

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29. See the reports on: Czech Republic (2013), paragraphs 50-52 and Hungary (2014), paragraph 104.
30. European Court of Human Rights, *D.H. and Others v. the Czech Republic*, op. cit., paragraph 142.
31. See, *inter alia*, the reports on: Cyprus (2016), paragraph 95; Ireland (2017), paragraph 140; and Spain (2013), paragraphs 30-34.

Lack of access to pre-school education for Roma children, migrant and minority children and children with disabilities is also a common reality in many countries. Late schooling constitutes an additional disadvantage and a factor of further school segregation for these children, since schools may refuse to enrol children with lower linguistic competences and poorer socialisation habits.[32]

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32. See the reports on: Hungary (2014), paragraph 102; Portugal (2012), paragraph 63; Romania (2014), paragraphs 93 and 179; Slovakia (2015), paragraphs 81 and 115; and "the former Yugoslav Republic of Macedonia" (2012), paragraph 89.

II. The consequences of educating separately

Decades of segregation practices have made obvious the serious consequences of educating children separately.

School segregation is not only a practice that discriminates against children and violates their right to education on an equal footing with others, but it also reduces their chances of acquiring essential life skills through contact with others; it is often a first step in a life of segregation. Moreover, in addition to receiving education that is often of lower quality, students enrolled in special education do not usually obtain a recognised diploma at the end of their school career. Segregation clearly undermines the future job and salary opportunities of many children and youngsters. For the most advantaged children and children from the majority of the population, segregation also leads to reduced opportunities of acquiring important social and life skills as a result of lack of interaction with children from a different ethnic or cultural background or with children with disabilities.

Available studies indicate 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. The OECD has warned against the consequences of school segregation on educational achievements.[33] 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.[34] 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.

33. OECD (2012), "Equity and quality in education: supporting disadvantaged students and schools", OECD Publishing, Paris.
34. OECD (2013), "PISA 2012 results: excellence through equity - giving every student the chance to succeed (Volume II)", PISA, OECD Publishing, Paris.

The isolation of minority groups such as Roma/Travellers and migrant students newly enrolled into the education system harms the social integration of these students and weakens the bonds of social cohesion. Lack of intercultural contacts is likely to result in less tolerance for diversity, lack of respect for religious and cultural differences and may exacerbate attitudes of racism, discrimination and exclusion among the youth. In particular, exclusion from or divisions in education along ethnic and language lines have a seriously negative impact on social cohesion and reconciliation in multi-ethnic societies struggling to come to terms with a violent past.[35] In contrast, inclusive education integrates cultural, social, religious and other differences and facilitates the emergence of shared values in diverse societies.

School segregation is also negative from an economic point of view. The Commissioner has observed that special schools and other forms of separate educational provision are far more costly to the state than mainstream schools.[36] High concentrations of vulnerable students in the same schools and classrooms oblige public authorities to provide substantial material and human resources to meet the needs of high numbers of students who may have learning difficulties. In addition, separation worsens school dropout rates and generates high costs in terms of human capital loss as well as in terms of costs induced by the need to implement second chance programmes and other forms of remedial education. These costs could be significantly reduced with inclusive education systems.

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35. For example, this is the case in Bosnia and Herzegovina, where a system of "two schools under one roof" was developed, as well as in the "the former Yugoslav Republic of Macedonia" and in parts of Croatia. See the Human Rights Comment "Inclusive education vital for social cohesion in diverse societies", 5 May 2015. See also the report on "the former Yugoslav Republic of Macedonia" (2013), paragraphs 27-31.
36. See the report on Czech Republic (2013), paragraph 57.

III. Key principles for an inclusive education policy

Inclusive education policies at national and local level should be based on a series of key principles, if they are to tackle school segregation and promote inclusion. Five principles appear to be essential.

1. An expanded vision of the right to education

The minimum educational requirements for social inclusion have significantly risen with time. Expanded and better access to educational experiences – both in the formal and non-formal sectors – is needed for children and young people to acquire the necessary skills to live and work in today's societies.

The OECD and the EU have pointed out the importance of completing some form of post-compulsory education to avoid risks of unemployment and social exclusion. Accessing pre-primary education is also recognised as a key element to boost further educational opportunities. Numerous studies have demonstrated that access to pre-school education enhances school achievement and eases access to higher levels of education, especially for the most vulnerable groups.

Moreover, having access to socialisation experiences outside the classroom – after-school activities, youth camps, etc. – is also essential to acquiring skills and competences that are key for future work and life.[37]

Today, the right to education needs to be construed on the basis of an expanded vision of education that goes beyond compulsory and formal education. It should include access to pre-school education and higher education, but also to extra-curricular activities and non-formal education. Persons belonging to disadvantaged groups in society must have access to such learning experiences on an equal footing with others, and the authorities must work to provide such opportunities.

2. The right to and the rights in education

Ensuring that children belonging to disadvantaged groups have access to school is not enough, nor is it sufficient to distribute these children across different schools if such schools are not adapted to their needs and do not offer quality education.[38]

Katarina Tomaševski, the first UN Special Rapporteur on the right to education, developed the concept of the 4 As to make education a meaningful right. She identified availability, accessibility, acceptability and adaptability as four key components of education which states must provide if they are to ensure an effective right to

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37. See the reports on Slovakia (2015), paragraph 86; and Belgium (2016), paragraph 109.
38. See the reports on: Czech Republic (2013), paragraph 61; France (2015), paragraph 251; Hungary (2014), paragraph 105; and Serbia (2015), paragraph 74.

education. Availability imposes on the authorities the duty of providing for a sufficient number of schools (and teachers) so as to meet the needs of all school-age students; accessibility involves ensuring unhindered, affordable and non-discriminatory access to education for all children; acceptability involves providing quality education, in a safe environment, while respecting specific features of certain groups (such as ethnic minorities) and accepting children's views on how their rights are implemented; and adaptability involves establishing education systems that can adapt to the needs of all children, in particular those with specific needs such as children with disabilities, minority and refugee children or working children.[39]

The 4 As concept is instrumental in tackling school segregation and should be a basic principle of any inclusive education policy. In other words, inclusive education requires both safeguarding the right to and the rights in education.

3. Education as a public responsibility

Fighting school segregation cannot be successful unless education is understood as a public service.[40] This can translate into different forms of education provision, including through private providers. In many countries, states fund private schools under specific conditions, which usually include non-discriminatory clauses (regarding economic, cultural, sexual or religious differences) and the non-profit nature of education provision. However, systems in place to monitor the operation of private providers are not always efficient and public authorities often have a limited capacity to remedy situations that go against the public interest and common good.[41]

While direct provision of education by the state provides conditions that are more likely to secure fairness and equality, education systems with a high proportion of private providers tend to produce higher levels of education inequalities, notably since some private providers are profit-oriented and highly selective in their practices, which collides with the principle of common good enshrined in the mission of public services. Therefore, it is of crucial importance to ensure that education systems with a high proportion of private providers are equipped with solid regulations and effective monitoring tools to detect and eliminate exclusionary practices that may lead to higher levels of school segregation.

At the same time, the state is responsible for ensuring that all public schools are inclusive, a principle that occasionally requires actions to neutralise social closure strategies developed by some schools and families.

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39. Tomaševski K. (2001), "Human rights obligations: making education available, accessible, acceptable and adaptable", Rights to Education Primers No. 3, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund / Sida, Stockholm.
40. See also Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)13 on ensuring quality in education.
41. See, *inter alia*, the report on Ireland (2017), paragraphs 102-114 and 125-127.

4. Regulating school choice

School choice per se does not inevitably generate discrimination. A high number of education systems provide education under quasi-market conditions, allowing for school choice under specific circumstances. As pointed out by the OECD, the key for a fair education system is not whether the system offers more or less choice, but whether choice is regulated, especially with a view to mitigating the impact of social, cultural, economic and other factors which may result in discriminatory patterns.

Thus, in order to fight school segregation, school choice must be governed. States must establish clear rules regulating choice and must balance the principle of school choice with the need to consider and meet all education needs. In principle, this includes measures such as defining school catchment zones, reserving places for students with special needs and limiting ratios of children from some disadvantaged groups in certain schools. In cases of excessive demand for certain schools, it can also involve taking into consideration income and other social factors as elements to determine school access.

5. All children can learn

The education system must rest on the assumption that all children can learn and have the potential to be educated. This implies developing high expectations regarding the learning outcomes of all children. It also implies that the system must identify the specific learning needs of different children and adapt teaching practices to specific circumstances in order to meet those needs and ensure that all children have adequate possibilities to learn while at school and in other settings. In a nutshell, this principle means that states must take measures to ensure that economic, social, cultural or personal circumstances do not turn into sources of discrimination preventing some children from benefitting from a satisfactory learning experience on an equal footing with others.

IV. Moving towards inclusive education: conclusions and recommendations

School segregation is at variance with international and European human rights standards, which enshrine a positive obligation for states to secure the right of every child to quality education without discrimination. Therefore, the Commissioner for Human Rights calls on member states of the Council of Europe to tackle this persistent phenomenon in their education systems by making progress in introducing genuinely inclusive education.

In order to achieve these goals, which require strong leadership and political commitment, the Commissioner issues the following twelve conclusions and recommendations.

1. Ensuring a comprehensive legal prohibition of discrimination

Despite the existence of firmly entrenched international standards prohibiting discrimination and related provisions in most domestic legislation, laws in some countries still leave room for ambiguity regarding the prohibition of school segregation on the basis of ethnicity or on other grounds. Court decisions issued in some member states demonstrate that the prohibition of discrimination is not sufficiently established in legislation and that there is a need for amending existing laws and spelling out important concepts more clearly, so as to ensure that sanctions can be applied effectively in cases of school segregation.[42]

A high degree of clarity in the legislation prohibiting discrimination is required to secure the rights of vulnerable children to and in education effectively. The legislation should be comprehensive and explicit enough to address situations in which tradition, freedom of choice, parental consent or urban segregation are used to legitimise discrimination and high concentrations of Roma children, children with a migrant background or children with disabilities in specific schools. Additionally, the right to inclusive education should be clearly enshrined in domestic legislation and a system of targeted sanctions should be in place against decisions and measures which infringe on this right.

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42. See, *inter alia*, chapter 3 of the DARE-Net project: Desegregation and Action for Roma in Education-Network, on school segregation in Hungary.

A clear and comprehensive legal framework is all the more necessary as school segregation is often the result of indirect discrimination, that is apparently neutral measures that have a disproportionately negative impact on some groups of children without objective and reasonable justification. Recognising the difficulty in establishing indirect discrimination, in its case law on discrimination in the area of education the European Court has established that less strict evidential rules should apply in cases of alleged indirect discrimination. In particular, when statistics show a disproportionate impact of a measure on a given group of children, it is for the respondent party to show that such impact is the result of objective factors that are unrelated, for instance, to ethnic origin.[43]

Moreover, it is important to ensure that segregation is explicitly considered as a form of discrimination, as recommended by the European Commission against Racism and Intolerance (ECRI) in its General Policy Recommendation No. 7 on national policies to combat racism and racial discrimination.[44]

The legislation should also establish, in compliance with the provisions of the UNCRPD, that the failure to provide reasonable accommodations to persons with disabilities is a form of discrimination.[45] Under the UNCRPD, reasonable accommodation is defined as the necessary adjustments to ensure that persons with disabilities can enjoy all human rights on an equal basis with others.

In addition, rules prohibiting segregation within mainstream schools must be in place to prevent the setting up of separate groups for children from ethnic minorities or children with disabilities within schools or classes.

2. Adopting a school desegregation strategy

States tend to be more reactive than proactive when facing problems of educational exclusion and school segregation, an approach which is not likely to result in structural and sustainable changes. They should instead adopt comprehensive desegregation strategies with clear targets, sufficient resources to implement them and a clear and an ambitious timetable. The commitment to desegregation should be supported at the highest level of state authorities.[46]

Desegregation requires time. However, attempts to desegregate have all too often been carried out via short-term projects which frequently are based on external funding and which terminate once the source of funding disappears. This approach makes it difficult to ensure sustainable results and the institutionalisation of good practices. Moreover, it is a substantial waste of financial and human resources. Thus, it is essential to ensure that the process is carried out in a sustainable manner with clear, long-term objectives. Sustainability must also be ensured through clear

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43. See, *inter alia*, European Court of Human Rights, *D.H. and Others v. the Czech Republic*, op.cit. See also the European Court, Factsheet on Roma and Travellers (2017), op. cit.
44. ECRI, General Policy Recommendation No. 7 on national policies to combat racism and racial discrimination, paragraph 6. See also ECRI's country-by-country reports, which contain useful recommendations on how to build comprehensive anti-discrimination legislative frameworks.
45. See, *inter alia*, the report on Belgium (2016), paragraph 115.
46. See, *inter alia*, the reports on: Belgium (2016), paragraph 114 and Czech Republic (2013), paragraph 66.

ownership by the national authorities, as the process cannot be left in the hands of NGOs and other private actors or local authorities.

Desegregation strategies must include awareness-raising campaigns, measures to overcome specific vested interests of different educational actors, and actions to ensure high expectations of all children and high-quality education for all of them. They also require funding arrangements to ensure that all schools have the professional expertise and the necessary means to implement inclusive education.

The authorities should make full use of available funding sources, notably funds provided within the framework of the European Union, while making sure that such funds are effectively used to implement desegregation measures.[47]

Setting up a system of free and compulsory pre-school education should be part of desegregation strategies, as this can substantially contribute to promoting equal opportunities for all children from the very start of their educational path and to diminishing the impact of factors that are used to legitimise school segregation in practice.

Desegregation plans which target children with disabilities should be part of wider policies of deinstitutionalisation since, as highlighted by the UNCRPD, inclusive education is incompatible with institutionalisation.[48]

Strategic plans for desegregation should also include effective monitoring and evaluation mechanisms. All too often, the lack of comprehensive data and information on school segregation prevents the authorities from adequately assessing school segregation in the country. Therefore, it is essential for the authorities to collect on a regular basis reliable and up-to-date statistical data that is disaggregated by ethnicity, disability and gender in order to develop a solid basis from which to work towards fairer and more inclusive education systems.[49] Moreover, the lack of evaluation makes it difficult to assess the impact of policies and actions that have been implemented. Strong monitoring mechanisms involving all the relevant stakeholders contribute to the development of evidence-based policies.

3. Raising awareness of inclusive education

One of the main obstacles to school desegregation is the lack of awareness in society about the importance of inclusive education for social cohesion.[50] Therefore, launching campaigns to raise awareness of the dangers of school segregation, and at the same time to stress the multiple benefits of inclusive education on aspects such as educational performance, reduction of school dropout, labour market integration and social cohesion, can have a positive impact on the attitudes and expectations of

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47. See, *inter alia*, European Court of Auditors (2016), "EU policy initiatives and financial support for Roma integration: significant progress made over the last decade, but additional efforts needed on the ground", Special Report No. 14, ECA, Luxembourg.
48. UN Committee on the Rights of Persons with Disabilities, General Comment No. 4, paragraph 66. See also the reports on: Czech Republic (2013), paragraph 117; Romania (2015), paragraph 69; and Slovak Republic (2015), paragraph 159.
49. See, *inter alia*, the report on Czech Republic (2013), paragraphs 47 and 62.
50. See, *inter alia*, the reports on: Czech Republic (2013), paragraph 58; Lithuania (2017), paragraph 84; and Latvia (2016), paragraph 89.

society as a whole.[51] It can also alter the schooling strategies of minority groups which sometimes reproduce segregation though emulation and social closure practices.

Furthermore, inclusive education requires a mentality shift at societal level, from seeing certain children as a problem to identifying existing needs and improving the education systems themselves. It is crucial that society at large, decision makers and all the actors involved in the field of education fully understand the need for this paradigm shift.[52]

Explaining inclusive education and raising awareness of its importance must therefore be integrated into the political discourse.

4. Ensuring quality of education in all schools

Schools with a high concentration of disadvantaged students often become "bad" schools. High concentrations of poverty and academic difficulties tend to lower expectations which teachers and families may have regarding the learning possibilities of children. Teachers have no incentive to remain in such schools, which in turn generates high levels of staff turnover and makes it more difficult for schools to design quality educational projects. The authorities do not always make all the efforts required to ensure quality standards in all schools. All too often, allowing the existence of "ghetto schools" serves the purpose of avoiding potential conflicts with families which do not want their children to be educated together with children from vulnerable or minority groups.

As already mentioned above, the lack of action to ensure quality of education feeds the vicious circle of lower quality of education and high concentration of students belonging to disadvantaged groups. It is essential for states to take all the necessary material and organisational measures to ensure quality of education in all schools.

The Council of Europe has carried out extensive work on the provision of quality education and the Committee of Ministers Recommendation on ensuring quality education provides useful guidance in this regard.[53]

5. Planning educational supply with an inclusive lens

All too often, the authorities take decisions regarding the planning of education without having social inclusion as an objective. For example, decisions to open, close or maintain specific schools or decisions to open new classrooms in certain schools are often taken without giving due consideration to the needs of the most vulnerable children for inclusive education. Instead, they tend to respond to particular demands, sources of pressure and vested interests.

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51. For example, see The World Bank, "Economic costs of Roma exclusion", a summary note issued by its Europe and Central Asia Human Development Department in April 2010, on the economic benefits of reducing school segregation of Roma children.
52. See, *inter alia*, the report on Slovakia (2015), paragraph 111.
53. Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2012)13.

Guidance by international institutions provides that if necessary, educational facilities should be closed down to combat school segregation or children should be transferred to mainstream schools in order to avoid high levels of concentration of children from disadvantaged groups.[54] Such decisions can be highly unpopular. Adequate planning of educational supply with a more inclusive lens may prevent social conflicts resulting from the transfer of students or the closing down of educational facilities. Among other measures, this requires careful planning of where to open schools, in order to ensure a balanced distribution of vulnerable children and adequate allocation of resources to improve school infrastructure in poor neighbourhoods, with a view to making schools more attractive. It also requires active policies to diagnose specific educational needs and to avoid concentration of late-arriving students – notably migrant and refugee children – in the less desired schools. Other measures, such as designing socially balanced catchment areas, can also play a decisive role in tackling school segregation.

6. Regulating and monitoring school admissions

Regulations on school admissions differ among European national education systems. Some systems allow for high levels of school choice, while others allocate students to the nearest school. Similarly, while some systems provide clear procedures for regulating school admissions in cases of oversubscription, others grant schools a high degree of discretion in selecting students. Obviously, the softer the rules for managing school admissions, the higher the likelihood that discriminatory practices may take place in school districts or in schools themselves.

States must make use of their competence to regulate school admissions while taking into account the principle of inclusiveness.[55] To this end, school admission procedures should establish priorities of access for students with special needs and students belonging to disadvantaged groups. Other positive practices that promote integration of students from vulnerable groups into mainstream schools include the introduction of means-tested systems and reserved places for students from certain disadvantaged groups.

However, setting up clear rules regarding processes of admission will be ineffective unless robust monitoring mechanisms are in place. The authorities must introduce clear standards and strong inspection mechanisms to ensure that school admissions are carried out in full compliance with the law. In addition, a system of sanctions should be established to prevent and deter fraud in the process.

7. Prohibiting testing as a selection tool

Some education systems allow schools to use tests to select students. Schools often rely on the results of such tests to argue for the inadequacy of the school regarding the specific needs of some children and thus to exclude them from enrolment. It has

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54. See European Commission (2015), "Guidance for member states on the use of European structural and investment funds for tackling educational and spatial segregation".
55. See the report on Ireland (2017), paragraphs 132 and 134.

been a common practice in some countries to use 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. 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.[56] Tests have been used by schools – and occasionally by teachers themselves – that may have an interest in excluding children with a migrant background and children belonging to ethnic minorities, since their presence in the school may affect the social reputation of the school, make their work more difficult and have an impact on the potential demand from families from the majority of the population.

While enrolment tests are still permissible in some states, they cannot be formally used to deny children access to particular schools, a fact that is mostly ignored by families in a disadvantaged social and economic situation or migrant families.[57] Moreover, these families are often intimidated by teachers or school principals and, therefore, tend to accept testing as a legitimate practice. The prohibition of enrolment based on testing is the best way to ensure that such tests are not used as a tool to discriminate against students.

8. Assessing student needs

Prohibiting enrolment tests does not imply eliminating the individual assessment of educational needs. Assessing the needs of each child is a precondition for allocating additional support where it is required, as well as for ensuring a more balanced distribution of students with specific needs across schools (see below).

Needs assessment should be carried out using validated and objective indicators that are derived exclusively from the children's educational needs. They include, *inter alia*, language difficulties, notably in terms of the language of schooling, any learning difficulties or disabilities and individual circumstances which can hinder a child's possibilities of learning in adequate conditions and on an equal footing with others.[58] It must be stressed that the ethnic origin, nationality or socio-economic background of children should never be used as proxies for these objective indicators and that assigning children to certain schools on these grounds is in breach of anti-discrimination standards.

Therefore, it is essential to develop a comprehensive and effective system of assessment of students' social and educational needs. Such a system should be independent from schools and its work should be carefully and regularly monitored by the

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56. See European Court of Human Rights, *D.H. and others v. the Czech Republic*, op. cit.; see also the European Court, Factsheet on Roma and Travellers (2017), op. cit.

57. See the letter dated 7 October 2016 from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to Mr Bohuslav Sobotka, Prime Minister of the Czech Republic, concerning the human rights of Roma and persons with disabilities, available at https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2016)36&Language. See also the report on "the former Yugoslav Republic of Macedonia" (2012), paragraphs 86 and 93.

58. See in particular Committee of Ministers of the Council of Europe Recommendation CM/Rec(2008)4 on strengthening the integration of children of migrants and of immigrant background and Recommendation CM/Rec(2014)5 on the importance of competences in the language(s) of schooling for equity and quality in education and for educational success.

authorities. As stated above, in no way can school enrolment tests be considered as a valid means of assessing children's needs.

Many educational systems lack such transparent and objective means to assess educational needs. An even higher number of them carry out an assessment of students' needs only once students have already been enrolled in specific schools, thus preventing a balanced distribution of students among schools. States must provide the necessary means and expertise to evaluate children's needs before they start schooling. Only by anticipating the needs assessment will it be possible to balance the distribution of students from vulnerable groups or those with learning difficulties across different schools and to effectively allocate the additional human and material resources required to ensure that vulnerable children can fully enjoy their right to education. In practice, this implies that needs assessment be carried out before children enter primary education, through concerted action by local authorities and social, health and educational services.

9. Balancing the distribution of students from vulnerable groups

A comprehensive and transparent needs assessment system may prove inefficient if measures to balance the distribution of students with specific needs are not in place. The lack of such measures perpetuates unequal systems, in which some schools have large proportions of children from vulnerable groups who may have specific educational needs and others are much more socially and academically homogenous.

It is therefore indispensable to have an adequate regulatory framework in place to avoid high concentrations of vulnerable children in specific schools.[59] Each school benefitting from public funds should reserve a minimum number of places for vulnerable students who may have specific needs. Moreover, it is highly recommended that states set a maximum threshold of places for such children for each school.[60] If the children's needs assessment is adequately carried out, this threshold should correspond to the proportion of vulnerable children in a specific neighbourhood or reference territory, thereby ensuring that the school population reflects the composition of the population in the neighbourhood.

Additionally, the authorities could take steps to prevent late-arriving students – who may present more of these legitimate difficulties, notably migrant and refugee children – from being concentrated in schools which are in less demand and usually the poorest in resources.

Regulating classroom ratios in schools located in disadvantaged areas and ensuring that late-arriving students are equally distributed among schools in the reference area are measures that can prevent high concentrations of students from a disadvantaged background and with specific educational needs in particular schools.

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59. See the reports on: Ireland (2017), paragraph 136; Montenegro (2014), paragraph 76; and Slovakia (2015), paragraph 84.
60. See examples in European Union Agency For Fundamental Rights (2017), "Together in the EU: promoting the participation of migrants and their descendants", p. 41, available at http://fra.europa.eu/en/publication/2017/migrant-participation.

10. Defining socially balanced school districts

While residential segregation is not the only factor causing school segregation, it has an undeniable impact on the concentration of children from vulnerable groups in specific schools. If school districts coincide with neighbourhoods with a high concentration of persons from disadvantaged groups, it is very likely that schooling will reproduce the high levels of residential segregation.

Shaping alternative school districts that mix neighbourhoods with different social characteristics may facilitate a more balanced distribution of students from vulnerable groups and lead to a more inclusive education system. Redefining school zones or school districts can be coupled with a policy of school transportation (busing) so as to facilitate a more socially balanced distribution of students. Nonetheless, while busing can be effective in the context of highly segregated education systems, a rational use must be made of it and it has to be balanced against the principle of proximity and the need for community involvement in education.

11. Allocating the best teachers to the most challenging schools

As already mentioned above, economically deprived schools usually face high levels of teacher turnover. Social problems, low educational expectations, difficulties related to career development and the absence of incentives to work in deprived schools stimulate teacher turnover and prevent the consolidation of stable and long-term educational projects. Some states have a system of incentives for teachers' professional development in which career paths can evolve depending on the school or teacher performance. However, measures that connect career paths to working in schools located in socially and economically deprived neighbourhoods are less frequent. This lack of incentives generates instability and turnover in economically deprived schools and prevents teachers from specialising and from developing the professional expertise that is needed in these schools.

Introducing a comprehensive system of professional incentives could attract highly qualified teachers in schools in socially and economically deprived areas, which in turn could make these schools more attractive to families that would normally refuse to enrol their children in such schools.

Additionally, teachers working in such schools should be provided with specific training (initial and in-service) and support (including practices such as teachers' assistants) so as to be able to adapt teaching methods and adequately respond to their students' needs. Useful guidance can be found, *inter alia*, in the Committee of Ministers Recommendation on strengthening the integration of children of migrants and of immigrant background.[61]

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61. Recommendation CM/Rec(2008)4. See in particular section B, on staff recruitment and development.

12. Promoting parental participation in the school

The alienation of families with a migrant background or families from ethnic minorities and their lack of participation in school activities and school life is an important obstacle to inclusive education and a factor that triggers school segregation. The lack of relevant policies to stimulate parental involvement in education generates cultural distance between these families and the school, strengthens social closure and reduces opportunities for intercultural contacts. The lack of information and positive involvement can in particular lead parents to give their consent to school segregation of their children.[62]

Only few states have developed specific policies to reach out and engage, for example, with migrant families. However, research at international level has demonstrated that parental involvement has a clear positive impact on the school climate, community social cohesion and educational performance.[63] Parental involvement in the school and the community should therefore be an essential component of inclusive education policies. States should create conditions to ensure that all families are welcomed in the school and the community at the local level and have their voice heard and taken into account in decision-making processes.[64] Positive practices include school or community mediators, who often play an important role in closing the gap between schools and families.[65]

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62. See the report on the Czech Republic (2013), paragraphs 58 and 63.
63. For example, see the introduction in Schnell P., Fibbi R., Crul M. and Montero-Sieburth M. (2015), "Family involvement and educational success of the children of immigrants in Europe. Comparative perspectives", *Comparative Migration Studies*, Vol. 3, No. 14.
64. Recommendation CM/Rec(2008)4. See in particular section F, on support for parents of migrant children.
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The current Commissioner, Nils Muižnieks, took up his functions in April 2012. He succeeded Thomas Hammarberg (2006-2012) and Álvaro Gil-Robles (1999-2006).

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