



SLOVAKIA

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

18TH SESSION OF THE UPR WORKING GROUP, JANUARY/FEBRUARY 2014

FOLLOW UP TO THE PREVIOUS REVIEW

In its response to the recommendations made during the first Universal Periodic Review of the Slovakia in 2009, the government declared that the protection of the rights of minorities, including Roma, represented one of its priorities.¹

In the previous review, Slovakia rejected a recommendation to enact and implement new legislation as well as practical measures to end discriminatory practices against Roma in the education system.² The government argued that the existing legislative guarantees were sufficient and that current legislation prohibited all forms of discrimination, in particular segregation.³

Slovakia also rejected a recommendation to develop and implement a strategy to address the disproportionate enrolment of Roma children in special schools.⁴ In setting out its position on the recommendation, the government stated that the Schools Act provides clear criteria for enrolling children in “specialized schools or classes” and that “children and pupils with health disabilities are clearly distinguished from children and pupils coming from a socially disadvantaged environment”.⁵

On the other hand, Slovakia did accept a recommendation to adopt time-bound measures to increase access for Roma children and children with disabilities to inclusive education in mainstream schools.⁶

Amnesty International greatly regrets the rejection of the recommendations to implement measures to end discrimination of Roma in education and considers that the government has so far failed to effectively address this problem. While Amnesty International appreciates that Slovakia made a commitment to increase access by all pupils to inclusive education, specific measures to put this commitment into practice have so far been lacking. As a result, Romani pupils continue to experience discrimination in access to education and continue to be overrepresented in special education and/or in segregated Roma-only education.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Judicial developments

In a landmark decision in December 2012, the Regional Court in Prešov, eastern Slovakia, ruled that by placing Romani pupils in separate classes, the elementary school in the village of Šarišské Michaľany had violated the equal treatment principle enshrined in the Anti-Discrimination Act in the Schools Act. The Court held that establishing Roma-only classes infringes human dignity,⁷ and that such measure was not a “proportionate” solution to the situation.⁸ The segregation of Romani pupils in separate classes and on separate corridors was found to be a violation of the Anti-Discrimination Act and the school was requested to change the arrangements.

In the light of the Slovak government's response that there is no need to enact and implement new legislative norms in order to put an end to discriminatory practices against Roma in the education system (see above), Amnesty International has examined the implementation of the equal treatment principle – as interpreted by the Regional Court in the case of the school in Šarišské Michalany.

Amnesty International notes with concerns that the government has so far failed to take measures to ensure that the Court's definition of ethnic segregation in education is disseminated and promoted so that it is understood by the relevant authorities responsible for its implementation, both at national and local levels. Despite the clarification by the Court that the separation of pupils on the basis of ethnicity amounts to discrimination, authorities such as the State School Inspectorate does not apply this definition in their monitoring work (see also below).

THE HUMAN RIGHTS SITUATION ON THE GROUND

Systematic discrimination against Romani children in access to education

Due to lack of government action, measures to prevent and effectively address situations of unlawful segregation in schools are still not in place. The government's failure to adopt such measures perpetuates the discrimination of Romani children in access to education.

Concerns over these serious and ongoing human rights violations have been expressed by a number of international human rights monitoring bodies, most recently in April 2013 by the Committee on the Elimination of Racial Discrimination (CERD). In its concluding observations, CERD found that the de facto segregation of Romani children in education persists⁹ and noted that despite the legal reforms¹⁰ Slovakia has failed to take measures to enforce the prohibition of discrimination in education. Similar criticism was voiced in June 2012 by the Committee on Economic, Social and Cultural Rights (CESCR) which recommended that Slovakia combat segregation of Romani children in schools by ensuring the effective enforcement of the Anti-Discrimination Act and the School Act and by raising teachers' and the general public's awareness of these laws. It also recommended that Slovakia adopt and apply an inclusive approach to the education of children with disabilities.¹¹

Effective enforcement of anti-discrimination legislation would require that the authorities involved in the educational process are capable of addressing cases of segregation of Romani pupils in schools and of taking measures to end such unlawful practices. Amnesty International is concerned that some authorities such as the State School Inspectorate¹² lack the ability, power, resources and will to effectively monitor occurrence of ethnic segregation in schools.

For example, in March 2013, Amnesty International informed the State School Inspectorate that a school in the town of Levoča was running Roma-only classes in possible violation of anti-discrimination legislation. After visiting the school, the Inspectorate informed Amnesty International that it did not find "signs of discrimination" in the school, but acknowledged that the school was running Roma-only classes, in which the educational process was adjusted to the needs of the Romani pupils.¹³ The Inspectorate found that the teaching in Roma-only classes differed from that in non-Roma classes, but concluded that these differences were in fact "positive" as they allowed for an individualised approach to teaching the pupils.¹⁴

This conclusion by the Inspectorate, in the absence of further justification and reasoning, shows the unwillingness of this public body to identify unjustified and disproportionate differential treatment in line with the decisions of the European Court of Human Rights¹⁵ and Regional Court in Prešov (Slovakia).¹⁶ Under this case law, "discriminatory difference in treatment" is defined as:

1. lacking objective and reasonable justification,
2. not pursuing a legitimate aim, and
3. not having a reasonable proportionate relationship between the means and the intended objective.

Amnesty International considers that the measures adopted so far by the government fail to effectively address discrimination in access to education in a consistent and effective manner.

The principles – enshrined in Slovak legislation¹⁷ – of equal access to education, while taking into account the educational needs of individuals, and the prohibition of all forms of discrimination have not been put into practice. As a result, Romani children continue to experience discrimination in access to education.

Amnesty International is also concerned that schools lack the necessary support to address existing cases of segregation. In the case of Šarišské Michalany (see above), the Court asked the school to ensure that Romani pupils are educated in classes with their non-Roma peers. The final judgment was delivered in December 2012. However, the Ministry of Education and other public institutions have not yet taken the necessary measures to support the school in implementing this judgment. It is equally concerning that the Ministry of Education has not taken action to ensure that the Court's definition of "ethnic segregation" in education is disseminated to the key stakeholders in the educational system, including the State School Inspectorate.

Although as of the 2012/2013 school year, the Ministry of Education has been recommending in its guidelines that schools ensure compliance with the Anti-Discrimination Act and eliminate "spatial, organizational, physical and symbolic exclusion or separation of Romani pupils on the basis of their ethnicity,"¹⁸ little effort has been made to enforce these principles. The Ministry has failed to take measures to provide the schools and other authorities in the educational system with tools to enforce the law.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of the Slovak Republic:

National human rights framework:

- To take measures to effectively implement the prohibition of discrimination as enshrined in the Anti-Discrimination Act and the Schools Act;
- To adopt and operationalise a definition of what acts amount to "segregation" in education, utilizing the definition of segregation provided by the case law of the European Court of Human Rights and of the Prešov Court and to disseminate and promote it to all relevant education and monitoring authorities;
- To develop and implement adequate training on the principle of equal treatment and non-discrimination among teachers, directors and other educational staff.

Discrimination of Romani children in access to education:

- To introduce a clear duty on all schools to de-segregate education. This should be accompanied by effective support for schools, including training and resources, and by incentives to develop comprehensive action plans aimed at de-segregation in education;
- To reform the State School Inspectorate and/or other monitoring bodies to assume a function to prevent and eradicate segregation in education. Such reform should include detailed guidelines and procedures on how to identify, monitor and combat segregation in practice and what action to take when the ban on discrimination and segregation is violated;
- To ensure that all victims of discrimination are provided with effective remedies and the means to secure them, including by strengthening the mandates of national human rights monitoring bodies.

¹ UPR Slovakia: Report of the Working Group on the UPR of Slovakia, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. 14 September 2009. A/HRC/12/17/Add.1, para. 21

² A/HRC/12/17 Recommendation no. 72 (Austria)

³ [Government] Presentation on the occasion of the adoption of the outcome of the Universal Periodic Review of the Slovak Republic. 25 September 2009, Geneva. p.3.

⁴ A/HRC/12/17 Recommendations no. 75 (New Zealand) and no. 76 (Japan)

⁵ A/HRC/12/17/Add.1, para. 28

⁶ A/HRC/12/17 Recommendations no. 77 (New Zealand).

⁷ Decision of the Regional Court in Prešov: P. v Základná škola s materskou školou Š.M; 20 December 2012, p. 19

⁸ The requirement of proportionality was developed in the case law of the European Court of Human Rights. A difference in treatment is discriminatory if has “no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised. See, among others, *D.H. and Others v. the Czech Republic*, European Court of Human Rights Grand Chamber judgment, November 13, 2007, para. 196.

⁹ Committee on the Elimination of Racial Discrimination, Concluding Observations: Slovakia, 17 April 2013, CERD/C/SVK/CO/9-10, paragraph 11

¹⁰ Adoption of a new Schools Act in 2008 that prohibits discrimination and segregation in education.

¹¹ Concluding observations of the Committee on Economic, Social and Cultural Rights. 30 April – 18 May 2012, E/C.12/SVK/CO/2, para. 26.

¹² Inspectorate is a body responsible for monitoring the compliance of educational process with the law.

¹³ Letter from the State School Inspectorate to Amnesty International. 23 March 2013.

¹⁴ *Id.* Supra note 12.

¹⁵ *D. H. v Czech Republic*, App.No. 57325/00, 2007-Xii ECtHR., *Oršuš and others v Croatia*, judgment of the Grand Chamber of the European Court of Human Rights.

¹⁶ Decision of the Regional Court in Prešov, Supra note 7, p. 2.

¹⁷ The Schools Act (No. 245/2008), The Anti-Discrimination Act (No. 365/2004).

¹⁸ Pedagogical and organizations guidelines for school year 2012/2013; Available at:

http://www.nucem.sk/documents//46/legislativa/POP_2012-2013.pdf

Pedagogical and organizations guidelines for school year 2013/2014. Available at: <https://www.minedu.sk/data/att/4966.pdf>