

Segregated Education in Kosovo

During 2011, ECMI Kosovo has received reports that several schools in Kosovo have segregated classes for Roma, Ashkali and Egyptian children. ECMI Kosovo considers this a serious form of discrimination and a particularly problematic practice considering the current repatriation process. Therefore, ECMI Kosovo has started taking action against these cases through its project '*Enhancing the Positive Impact of the Law for Vulnerable and Marginalised Groups (VMGs) in Kosovo'* funded by the European Union and managed by the European Commission Liaison Office to Kosovo. This policy brief will explain the exact meaning of segregation in education, describe the main domestic and international laws dealing with this issue, describe and discuss the situation in Kosovo and provide several concrete policy recommendations to address this issue.

What is segregated education?

Segregation in education is a complex problem that affects Roma, Ashkali and Egyptian children in many parts of Europe, including Kosovo. It involves practices though which the school system, for different reasons, provides educational services to Roma, Ashkali and Egyptian communities separate from other ethnic communities. This can be through separate schools or classrooms. Often the laws, regulations or practices that create segregated education are not directly discriminatory, as they do not specifically target members of an ethnic community. Instead they are **indirectly discriminatory**; a seemingly neutral provision or practice that, when implemented, creates segregated education. The fact that the discrimination is indirect, however, does not make it any less harmful nor does it make the practice justifiable.

Indirect Discrimination – An Example

Students are assigned to classes based on their area of residence, a seemingly neutral selection procedure. However a segregated class can still be created by assigning all children from a Roma neighbourhood to one class.

In recent years, both the European Parliament and the Council of Europe (CoE) have come out strongly against this practice. On 28 April 2005, the **European Parliament** passed a resolution on the situation of the Roma in the European Union, in which it recognized the practice of racially segregated education and calls on the EU member states to "move forward with desegregation programmes within a predetermined period of time".[1] The **Council of Europe** (CoE) Commissioner on Human Rights published a report on 15 February 2006 also recognising the practice of segregated education in many CoE members states and recommended that segregate education "must be replaced by regular integrated education and, where appropriate, banned through legislation".[2]

[1] *European Parliament resolution on the situation of the Roma in the European Union*, P6_TA(2005)0151, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0151&language=EN

[2] *Final report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the human rights situation of the Roma, Sinti and Travellers in Europe*, CommDH(2006)1, available at: https://wcd.coe.int/ViewDoc.jsp?id=962605&Site=COE





The Law

There is a strong domestic and international legal framework against direct and indirect discrimination, covering segregated education as well. The outline below provides a brief overview of these frameworks.

International law

Probably the most well known decision against segregated education was taken by the United States Supreme Court in the case of ***Brown v. Board of Education of Topeka*** (1954), when the Court declared unanimously that the laws establishing separate schools for black and white students in the US was unconstitutional, violating the right to equality before the law. Although this was a domestic decision and consequently is of limited legal importance for Kosovo, it sets an important moral standard.

In recent years the **European Court on Human Rights** (ECHR) has also developed a strong jurisprudence on the issue of segregation in education, in particularly in relation to Roma children. It has on several occasions ruled that the separate education of Roma children is a violation of the European Convention on Human Rights, in particular **Article 14 on the prohibition of discrimination** (see, for example, *D.H. and Others v. the Czech Republic* (15 November 2007) and *Sampanis and Others v. Greece* (5 June 2008)).

Domestic law

Kosovo has a strong legal framework for the protection of human rights. Importantly, the Constitution (Article 53), states that all human rights in Kosovo shall be interpreted in line with the rulings of the ECHR, making the rulings mentioned above directly applicable to Kosovo. Moreover, the **Constitution** itself also provides ample protections against segregation, particularly though article 24, which guarantees equality before the law and protection against discrimination.

In addition to the provisions of the constitution, Kosovo has also passed a ***Law on Anti-Discrimination***, which protects all Kosovo citizens from discrimination and explicitly states in Article 3.f that segregation shall be considered discrimination.

The ***Strategy for the Integration of Roma, Ashkali and Egyptian communities in the Republic of Kosovo***, approved by the Kosovo Government in December 2008 also makes note of the problem of segregation and sets out the steps that Kosovo institutions should take to address this issue, including the organisation of a research on discrimination and segregation in education, the adoption of legal acts prohibiting and preventing segregation in education and the design of policy measures to address the issue. No concrete steps have yet been taken to implement these actions.



The Kosovo Situation: The facts

Below are listed the cases of segregation in education that have been reported to ECMI Kosovo[3]. This is by no means meant to be an exhaustive list, as it is quite possible that there are similar cases elsewhere in Kosovo that have so far gone unreported.

Gjakovë/Đakovica

In the 2010 – 2011 school year, ECMI Kosovo received reports of two segregated classes in the school 'Mustafa Bakija', a 2nd and 7th grade class (in the 2011 -2012 school year). During the summer holiday period, several organisations, including ECMI Kosovo and the OSCE, informed the municipality and school about the unconstitutionality of this practice and the need to find a solution to this problem. At the start of the new school year, no actions had been taken. Taking note of the lack of developments, ECMI Kosovo sent an official letter to the municipality urging it to take action against this practice. At the same time other organisations, including national media also highlighted the issue. Following these pressures the school took the decision to dismiss the 2nd grade class and later in the year the 7th grade class was also dismissed and the children reassigned.

Ferizaj/Uroševac

In the 2010 – 2011 school year, ECMI Kosovo received reports that there was one segregated class in the elementary school 'Tefik Çanga' During the summer holidays ECMI Kosovo held a meeting with the municipality addressing this issue. However, as the new school year commenced, no action had been taken. Therefore, ECMI Kosovo sent an official letter urging the municipality to take action against this practice. The municipality, in written, promised to take required actions and in October ECMI Kosovo received reports that the class had been dismissed and the children reassigned. ECMI Kosovo has requested official confirmation of these reports from the Municipality. At the same time ECMI Kosovo also received reports that there was a segregated pre-school class in the 'Tefik Çanga' school, which has also been dismissed.

Pejë/Peć

In 2011, ECMI Kosovo received reports that there are two segregated classes in the 'Xhemal Kada' school. On 1 November 2011, ECMI Kosovo had a meeting with the school director to raise this issue. Following this meeting, ECMI Kosovo sent an official letter to the school and municipality, asking to be provided with an official explanation on the relevant two classes and also reminding both the school and municipality of their legal obligations. ECMI Kosovo received a response denying the allegations, however other sources continue to report on the presence of these two classes. Although all attempts at official communication with the Municipal directorate for education have so far failed, a monitoring visit by ECMI Kosovo in May 2012 concluded that the two classes have been dismissed and the children reassigned.

[3] This list only includes segregation in the form of separate classrooms. ECMI Kosovo has, as of yet, not conducted any research into: segregation through the placement of Roma, Ashkali and Egyptian children in schools for children with disabilities; or, into the creation of separate schools for Roma, Ashkali and Egyptian children.

The Kosovo Situation: A Discussion

As set out above, Kosovo's legal framework prohibits segregation. However, in addressing this issue it is important to go beyond legal considerations and analyse the social context of the problem. Through discussions with both education professionals and Roma, Ashkali and Egyptian parents, ECMI Kosovo has developed an understanding of the viewpoints of both parties. It has found that school teachers and directors as well as municipal officials are often unaware of the exact meaning of discrimination or are unwilling to accept that there might be discrimination in the Kosovo educational system. Moreover, many school professionals do not recognise the negative effects of segregation on the affected children. With regards to Roma, Ashkali and Egyptian parents, it has found that these are often also unaware of the importance of integrated education or lack the willingness to confront schools and municipalities to demand that their children's rights are respected.[4]

This results in a situation where both parents and education professionals are unaware of the negative effects of segregation and/or unwilling or incapable of taking actions against this practice. However, it is clear that segregation does have important negative effects, of which this policy brief will highlight two.

First, segregated education lowers the chances of socio-economic success of the affected children, by lowering their school performance and affinity with mainstream society. Several studies have been conducted that show that the performance of Roma school children in integrated classes is significantly better in comparison to their peers in mono-ethnic classes. Moreover, separating children from the society in which they will have to live, study and work (a Kosovo society with a majority of ethnic Albanian citizens), can reasonably be assumed to lower their chances of succeeding in that society.[5] It should be noted that the lowered socio-economic chances for success do not only adversely affect the concerned communities, but also society as a whole, as society will have to pay more in welfare costs and receive less in economic output from the affected communities.[6]

Second, segregated education is a form of discrimination that provides and institutional endorsement and reinforcement of ethnic difference. It can be perceived as the school system telling the affected

[4] These conclusions are mainly based on a series of round tables conducted in 2011 with teachers, school directors, municipal officials and parents of Roma, Ashkali and Egyptian children for the project 'Building Sensitivity for Roma, Ashkali, Egyptian Communities in Schools (2)', financed by the OSCE High Commissioner on National Minorities.

[5] In the European Court on Human Rights case 'Oršuš and Others v. Croatia' (17 July 2008) a psychological study was put forward as evidence which asserted that "segregated education produced emotional and psychological harm in Roma children, in terms of lower self-esteem and self-respect and problems in the development of their identity". Available at: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=837978&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

Moreover, G. Kertesi and G. Kézdi (2005) argue that "As a result of segregation, the value of educational services decreases in the Roma school and increases in the endowment school" in 'Segregation in the Primary School System in Hungary: Causes and Consequences' (translation) in *Közgazdasági Szemle*, Vol. 52, No. 4 and 5., 2005. Available at: http://www.personal.ceu.hu/staff/Gabor_Kezdi/WorkingPapers/Kertesi-Kezdi-2005-Segregation-translated.pdf

[6] This argument is expanded on in "*Desegregating Roma schools: a cost-benefit-analysis*" by Mihai Surdu, available at http://www.policy.hu/surdu/final%20policy%20paper.pdf

children that they are different and should be treated as such, while at the same time reinforcing this idea to the children of the other communities from which they are separated.[7]

There are two common counterarguments used to justify segregated education, the first revolves around parental consent, while the second revolves around the need for special educational attention for certain groups. The first argument centres on the fact that the parents from the children undergoing segregated education sometimes give the explicit consent for this practice. However, there are two factors that should be taken into consideration. First, the parents in question are often of low social-economic background, having undergone little to no education themselves. In light of this, one can reasonably wonder whether these parents can take informed decisions on this issue, particularly if pressured by school officials.[8] The second factor is that the interest of the child should come before the interest of the parent, and the best interest of the children is in this instance clearly not to subject them to a discriminatory practice that might impede their chances to succeed in life.

The second counterargument focuses on the fact that some communities require specific educational attention, either because they have language problems or due to other reasons that negatively affect their school performance. In fact, such special treatment can be justified as long as the selection criteria for such programs are based on objective measurements (e.g. language or other performance tests), the programs are proportional to the problem, and they can be proven to be aimed at reintegrating the affected children into the regular school system. If these criteria are not fulfilled (and the burden of proof lies with the relevant institution), such a program should be considered discriminatory.

Conclusions

Based on these findings, ECMI Kosovo makes three main observations. First, the practice of segregation is not an incidental but a chronic problem in Kosovo. Second, there is a lack of awareness among educational professionals on the meaning of discrimination and segregation. Third, there is a lack of willingness of educational professionals to take actions against segregation, unless faced by outside pressures. Considering these factors, ECMI Kosovo is of the opinion that its current approach of pressuring schools to dissolve segregated classrooms, although delivering positive results in the short term, is not a long term solution. Most importantly, it in no way prevents Kosovo schools from, in the future, creating new segregated classes. Therefore, ECMI Kosovo sets forth three main policy recommendations to address this issue, all of which should be implemented simultaneously to achieve the greatest effect:

Recommendations

[7] The psychological study conducted for the 'Oršuš and Others v. Croatia' (17 July 2008) case also asserted that segregated education was "an obstacle to creating a social network of Roma and non-Roma children". Available at: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=837978&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

[8] This is the view taken by the European Court on Human Rights in the case of *D.H. and Others v. the Czech Republic (*13 November 2007), where it stated: "(…) the Court is not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent".



- The Kosovo government, in line with the Roma, Ashkali and Egyptian Strategy, should design policy measures and legal acts to explicitly prevent and prohibit segregation in education. Such measures should be designed in coordination with relevant stakeholders, including school directors and civil society organisations.
- Municipalities and school directors should be informed by the Ministry of Education, Science, and Technology of their obligations, under current legislation, to prevent and prohibit segregated education.
- An awareness raising campaign should be organised to inform educational professionals on discrimination, its meanings and how to prevent such practices. Moreover, trainings on discrimination and education should be integrated into the curriculum taught by the Faculty of Education.

Further reading

- Amnesty International (2011) '*Right to Education without Discrimination: Policy Brief to the Slovak Government*'. Available at: http://www.amnesty.org/en/library/info/EUR72/003/2011/en
  Provides a concise analysis on the right to education particularly in relation to segregated education, also analysing ECHR jurisprudence.
- European Roma Rights Centre (2007) '*A Study of Anti-Discrimination Law and Government Measures to Eliminate Segregation in Education in Bulgaria, Czech Republic, Hungary, Romania and Slovakia: The Impact of Legislation and Policies on School Segregation of Romani Children*'. Available at: http://www.errc.org/cms/upload/media/02/36/m00000236.pdf
  A comprehensive review of government policies in the field of education which targets the problems of inequality in access to education, and more specifically, segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia.
- Jack Greenberg (2010) '*Report on Roma Education Today: From Slavery to Segregation and Beyond*'. Available at: http://www.columbialawreview.org/articles/report-on-roma-education-today-from-slavery-to-segregation-and-beyond
  An academic analysis of the segregated education of Roma in Europe today, by Jack Greenberg, one of the lawyers who argued Brown v. Board of Education

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ECMI Kosovo is the principal non-government organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.

