

# **The Office of the Public Defender of Rights**



## **Report by the public defender of rights on the progress in the implementation of the measures proposed in 2013, 2014 and 2015 in the educational process in Slovakia to improve the protection and observance of individuals' basic rights and freedoms**

Bratislava, May 2018

The natural human tendency to help others will no longer be driven by “*I am helping you because I am the same as you*” but rather by “*I appreciate and value you because you’re different than me*”<sup>1</sup>

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<sup>1</sup> ROGERS, C. R. 1998. Způsob bytí. Klíčová témata humanistické psychologie z pohledu jejího zakladatele. Praha : Portál, 1998, 296 s. Original: A way of being. New York, USA : Houghton Mifflin Company, 1980. ISBN 80-7178-233-5.

The Office of the Public Defender of Rights<sup>2</sup> has long focused its attention on the monitoring of respect for the basic rights and freedoms of national minorities and ethnic groups, individuals from marginalised groups of population, and persons from socially disadvantaged environment. It examines and investigates situations when the rights and freedoms are violated and recommends measures to improve the existing conditions. In order to most effectively investigate and understand the problems and obstacles these people daily encounter when exercising their basic rights and freedoms, the Office, in addition to investigating complaints filed by natural and legal persons, also carries out investigations of its own initiative.

One of the Office's priorities was and, given the existing state of affairs still is improving the protection and observance of the basic rights and freedoms of individuals in education. The right to education is considered a basic right because the education itself is the essential means for the enjoyment of other basic rights. It is only thanks to learning and attaining a certain level of education that people can break away from poverty, because education is closely associated with employment, hence, with the basic right to work, as well. Access to quality education, a right which is guaranteed to all of us under the Article 42(1) of the Constitution of the Slovak Republic,<sup>3</sup> represents, therefore, the basis of a successful life and prosperity of both society and the individuals who make up that society. It is even more true for individuals from socially disadvantaged environment, marginalised groups of population and people living in poverty. Not only the findings made by the Office of the Public Defender of Rights in 2013, 2014 and 2015, but also the results of studies conducted by several organisations involved in this area over the past five years have repeatedly shown there are several shortcomings and issues in the functioning of the training and education system in Slovakia. They have raised suspicions of discrimination in education, especially with respect to members of the Roma national minority, leading to the commencement of a procedure by the European Commission against Slovakia for a suspected breach of Council Directive 2000/43/EC of 29 June 2000 (Racial Equality Directive) which implements the principle of equal treatment between persons irrespective of racial or ethnic origin. The aim of this procedure, also known as infringement, is to ensure that the EU legislation is respected, and to bring Member States' national laws into compliance with the Community law. The first measure the European Commission taken against Slovakia for the practices towards discrimination against Roma children in education was a warning letter sent to the Slovak Republic as early as at the end of 2014, by which it notified its specific objections to the existing Slovak legislation. It was an informal procedure in the form of a structured dialogue with the aim of finding a prompt solution in compliance with the EU law and avoiding a formal procedure for the violation

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<sup>2</sup> Where this report says "the Office of the Public Defender of Rights" or "the Office", it refers to the institution. Where it says "the public defender of rights" or "the ombudswoman", the reference is to a specific natural person holding the post of the public defender of rights.

<sup>3</sup> Article 42(1) of Act No. 460/1992 Coll., the Constitution of the Slovak Republic: ***Everyone has the right to education. School attendance is compulsory. Its period and age limit shall be laid down by law.***

of an obligation arising from the Community law. Since the situation had not changed, the European Commission sent a *letter of formal notice* (Brussels 2015/2025, C (2015)) to the Minister of Foreign and European Affairs of the Slovak Republic in 2015, in which it expressed its concerns over discrimination of Roma schoolchildren in that they are disproportionately over-represented in special schools and/or classes for children with mental and/or other disabilities in which education is provided to a limited degree and that they are also marginalised in other ways (e.g., Roma-only classes in mainstream schools, teaching in separated parts of a school building, separated school canteens, etc.). In 2017, two years after the commencement of the official infringement procedure, meetings were held on 17 March 2017 and 28 September 2017 between the European Commission, represented by Commissioner for Justice, Consumers and Gender Equality Věra Jourová and members of her investigation committee, and the Slovak Republic, represented mainly by the Ministry of Education, Science, Research and Sports of the Slovak Republic (hereinafter referred to as the “education ministry”) and other bodies with responsibilities in this area, in order to identify the progress made under the commenced infringement procedure concerning the violations of EU’s anti-discrimination legislation, in particular legislative changes adopted and implemented in practice. The ongoing infringement procedure may result in an action to be filed against Slovakia with the Court of Justice of the European Union and imposition of financial sanctions. With a view to the gravity of the existing situation, investigations carried out by the Office in the recent years, persisting shortcomings in the training and education sector in the Slovak Republic and necessary measures proposed to remove the identified shortcomings, I consider it necessary to assess and evaluate, at this time when the education issues are increasingly resonating in Slovak society, the progress made in the implementation of the measures proposed by the Office to the education ministry in the past in order to improve the protection and observance of the fundamental rights and freedoms of individuals in education, especially with respect to the enjoyment of their basic right to education.

prof. JUDr. Mária Patakyová, PhD.

Public Defender of Rights

## **1. Investigations into the protection and observance of the fundamental rights and freedoms in education carried out by the Office in the recent years**

The first investigation was conducted by the Office employees as early as in 2013, focused on the application of the right to education for Roma minority members, with a special emphasis on access of Roma children to education, specifically to pre-school and primary education. The investigation also sought to examine if and to what extent the Office may agree with the already existing findings that Roma children are under-represented in pre-school facilities and, on the other hand, over-represented in classes and schools for children with special educational needs, and, in addition, if various forms of segregation persist in the Slovak education system which would support the conclusion that the Roma do not enjoy equal access to education in the same extent as the majority population.

The Office employees investigated 21 primary schools to find out a share of Roma and non-Roma children in the first grade in classes or schools for children with special educational needs and the real possibilities to transfer pupils from such classes/schools to mainstream (regular) classes/schools. They further examined the use of the Roma language in schools, the presence of teacher assistants (their numbers and work), knowledge of the Roma language by teachers/teacher assistants and, last but not least, the existence and availability of pre-school training.

The investigation showed a disproportionately high share (roughly 88.69%) of Roma children in all visited special primary schools and schools with special classes. By contrast, only a minimum number of Roma children (15.02%) have passed pre-school training. Of the total number of Roma pupils enrolled for the first grade in the examined primary schools, about 65.63% had visited a zero grade and/or preparatory grade. The investigation also briefly touched upon such processes and diagnostics and re-diagnostics, including the subsequent reclassification of first grade pupils from pupils with special educational needs to the “regular” pupils category and their transfer to a mainstream school/class. We found in this respect that there had not been a single case, at any of the examined schools, of a pupil being reclassified, based on re-diagnostic testing, and subsequently transferred to a mainstream school/class.

These findings led to the conclusion that the inclusion of a pupil in the category of pupils with special educational needs is more or less permanently associated with exclusive education in a special stream of education. Such classification then basically predestines the fate of schoolchildren and the content and extent of primary education they receive in schools. It emerged that the Roma children educated this way have basically no chance to continue in higher education and acquire, for example, a full secondary education. These circumstances have a major impact on their prospects and chances on the labour market in the future, on their economic and social conditions, as well as on the situation of their families and children at a later time.

Examining the number and utilisation of teacher assistants in education of pupils with special education needs in the investigated schools showed there was a total of 47 teaching assistants aiding teachers in the schools under review, that is, 2.2 teacher assistants per school on average. The visited schools admitted they would appreciate a higher number of teacher assistants (preferably of Roma origin) but the reason for their absence is, needless to say, the lack of funding.

As far as the use of the Roma language as a teaching language in the visited schools is concerned, the finding that it is only used by two schools<sup>4</sup>, as an ancillary language and to a limited extent, was alarming. With respect to the knowledge of the Roma language by teachers and teacher assistants we found there were a total of 21 teachers and teacher assistant speaking Roma in only nine<sup>5</sup> out of 21 examined schools.

The report by the public defender of rights on the exercise of the right to education for Roma children/pupils with special educational needs<sup>6</sup> recommended the following measures be adopted:

- *in the Schools Act, expressly ban spatial, organisational, physical or symbolic exclusion or separation of Roma pupils from other pupils on grounds of their ethnic or social origin – often combined with their social marginalisation; put a ban on the creation of segregational school districts; and specify the obligations of public authorities and their responsibility to control the compliance with that ban; also, specify sanctions for non-compliance and ensure they are enforceable;*
- *in the Schools Act, make provisions for access to all levels of education also for pupils with special educational needs who attend special schools/classes;*
- *make arrangements for free-of-charge pre-school training in the official language and, if it is in the child's best interest, also in their mother tongue, in the sufficient number of facilities with the sufficient number of qualified experts; make this option also available to children from socially disadvantaged environment and to pre-school age children who clearly suffer from a language barrier, especially Roma children from socially disadvantaged environment, in order to encourage them to learn;*
- *ensure that all Roma pupils from socially disadvantaged environment are taught by qualified experts at the first level of their compulsory school attendance in the official language and where it is in their best interest, also in their mother tongue, i.e., the Roma language;*
- *create conditions for the free-of-charge use by all pupils from socially disadvantaged environment of all necessary teaching materials and aids available*

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<sup>4</sup> Special primary school Klenovec and primary school Veľká Ida.

<sup>5</sup> Primary school in Giraltovce - mixed school, Joint school – ŠZŠ Chminianske Jakubovany, special primary school Moldava nad Bodvou, special primary school Ostrovany, joint school Rudňany, joint boarding school - ŠZŠ Stará Ľubovňa, special primary school Klenovec, primary school Veľká Ida, and primary school with kindergarten Markušovce.

<sup>6</sup> Bratislava, July 2013, available at: <http://www.vop.gov.sk/files/Sprava%20VOPVzdelavanie%20Romov.pdf>.

*in a school facility not only during classes, but also during the preparation for classes at home, and provide them with professional assistance in the preparation for classes;*

- *ensure a sufficient number of teacher assistants in all schools and classes attended by pupils with special educational needs.*

The education ministry did not respond to the measures proposed by the Office in 2013 whose implementation could have contributed to gradual elimination of discrimination in education of children and pupils (especially those from marginalised Roma communities).

The Office also conducted further investigations related to these issues. The second investigation, carried out in 2014, focused on finding out how the current practice in testing the school readiness (so-called diagnostics which serves as a basis for deciding on the inclusion of a child to the stream of education) of children from non-stimulating environment who suffer from a cultural, language and social barrier, especially Roma children, affects the enjoyment of their basic right to education. The investigation examined their access to education from the point of view of their inclusion into a general or special stream of education, as well as their transfer between the two streams in the course of their schooling.

The investigations confirmed that when testing the school readiness of Roma children from non-stimulating environment, which is often a socially disadvantaged environment, too, the diagnostic centres do not take into consideration such circumstances as the economic and social settings from which the child comes from, the child's (not) knowledge of the Slovak language, cultural and other differences, arguing that "one cannot make differences between Roma and non-Roma children". A majority of diagnostic centres uses the same set of tests when examining the school readiness of a Roma child with a cultural, social and language barrier as they use for testing other children from socially disadvantaged environment. The investigation also confirmed that the diagnostic centres did not act in accordance with an education ministry guideline of 6 August 2013<sup>7</sup> (as applicable at the time of investigation), and some even refused to apply it.

Moreover, it has emerged that there is no generally binding regulation that would specify the frequency of re-diagnostic testing for children and pupils with special educational needs. Re-diagnostic tests are performed "based on the individual needs of a pupil", most often when requested by a school (headmaster, teacher, etc.), a school inspector or the child's legal guardian (parent) when reasonably assuming that such changes must be made in the child's education which cannot be based on the child's original diagnosis. The already mentioned education ministry guideline of 6 August 2013 only "*recommends re-assessing the school abilities of a child after the completion of the*

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<sup>7</sup> Practice of Centres for Pedagogical and Psychological Counselling and Prevention for Testing School Abilities of Children from Socially Disadvantaged Environment and for their Placement in Primary Schools of 6 August 2013.

*first grade of the compulsory school attendance*". Equally, the investigation showed that, in a majority of cases, the re-diagnostic tests are performed by the same psychologist who did the first testing before the child's enrolment for pre-primary and/or primary education, which can be considered an issue in the re-diagnostic from the point of view of impartial re-assessment of the child's school abilities and excluding any bias.

Hence, the investigation confirmed a long-term system-level discriminatory practice in the testing of children which has a direct impact on their equal chances to prepare for the next and the same level of education. A failure to consider personal and special circumstances of the tested individual (equal treatment of individuals under unequal conditions) is considered discrimination.

The report by the public defender of rights – The impact of school ability tests on the basic rights of the child from non-stimulating environment with a cultural, social and language barrier, especially from the Roma minority<sup>8</sup> – recommended adopting the following measures:

- *to cancel Variant A at special schools, which covers pupils with minor mental disabilities;*
- *to ensure that the methodology for diagnostic testing is available to, and applied by, diagnostic centres which adequately reflects abilities of children from the socially disadvantaged environment of marginalised Roma communities;*
- *to introduce compulsory re-diagnostic testing in zero grades as specified in the "Revised national action plan under the 2005-2015 Decade of Roma Inclusion for 2011-2015";<sup>9</sup>*
- *to create a state-run and state-funded programme focused specifically on free time activities to support development of poor schoolchildren;*
- *to create conditions for permanent professional services for schools provided by psychologists, special teachers, teacher assistants, Roma assistants, speech therapists, etc.*
- *to ensure lifelong learning and education for teachers, their adequate financial and material remuneration, as well as to create conditions for their adequate mental hygiene as the prevention against the burnout syndrome.*

The third (and last) investigation, conducted in 2015, examined how schools obtain informed consent necessary for the inclusion of a pupil into a special stream of education, with a special focus on how the informed consent is obtained from Roma parents of a pupil suffering a cultural, social and language barrier and of a pupil with

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<sup>8</sup> Bratislava, July 2014, available at:

<http://www.vop.gov.sk/files/Sprava%20VOP%20FINALNA%20VERZIA.pdf>.

<sup>9</sup> The Revised national action plan under the 2005-2015 Decade of Roma Inclusion for 2011-2015, priority Education – target 2 in paragraph 2.1 reads as follows: "To ensure the highest possible accuracy and consistently use the control mechanism in professional pedagogical and psychological diagnostic testing of 5 and 6 year old children before the start of their compulsory school attendance and, subsequently, after completing a year-long preparation, too."

special educational needs. The schools under review used several types of informed consent:

- a) universal (general) informed consent – usually signed by parents at the beginning of a school year (or at the beginning of compulsory school attendance);
- b) ad hoc informed consent – i.e., parents sign separate informed consents on a case by case basis;
- c) universal informed consent complemented by other separate consents – the universal informed consent covers 80-90% of situations, but parents sign additional, purpose-specific consents for each major event.

All schools under review said that they had and used informed consent forms for their purposes. Some schools use forms prepared by commercial systems, e.g., by statistical and registration form publisher ŠEVT, others use sample forms from the Internet or has drawn up their own forms. The schools usually adapt the forms as needed and based on their common experience.

With respect to the informed consent to including a child into a special stream of education, all interviewed schools have said they communicate with the child's parents individually and, usually, in person. Some schools have expressly said they explain to parents the impacts of the child's inclusion into the special stream on its future education, e.g., on which type of secondary schools the child can continue studying.

Some schools have confirmed there are sometimes conflicts between a decision of the legal guardian to grant informed consent and the child's best interest. Some parents consent to the enrolment of their child in a special school for wrong reasons – e.g., if a special school is closer to the child's home, which means the child does not have to travel by public transport, or if a special school requires “less effort” from the child. An extreme example we have encountered was when parents had yielded to the pressure of special school officials and their decision had been encouraged by “in-kind benefits” in the form of potatoes and sugar.

School officials provided various responses to question “How does the school make sure that parents have understood the purpose of informed consent?” For example, they considered the returned completed form a proof the parents had understood the consent. We found that where a school encounters a language barrier (e.g. pupil's parents have no command of the Slovak language), the school usually finds a way to communicate all necessary information to the parent in an acceptable form, e.g., by assistants or community workers who convey the information in a manner and language the parent understands. However, we also found an informed consent form during our investigation with a cross symbol next to the signature line so that a parent knows exactly where to sign the document.

The investigation has showed that schools obtain informed consents more or less intuitively; it means that they take different approaches to actively providing

information to parents and to obtaining their informed consent in situations where it is required by law.

The results also indicate that school officials take this obligation seriously, though they consider the granting of informed consent a mere formality. Obtaining the parents' signature under informed consent and its proper registration and administration still remains more important to them than the purpose of informed consent, i.e., providing relevant information to parents.

Acquiring universal informed consent covering a longer time period (e.g., several school years, or even the entire period of compulsory school attendance, etc.) or an unspecified number of events contravenes the purpose of informed consent. Contradictory to this purpose is also delivering informed consent forms to parents by pupils, with the specification of an exact deadline by which they should bring the completed forms back to the school.

The investigation, including interviews, also shows that parents do not give much weight to the signing of the forms presented to them by the school. They do not consider them decisive with respect to the education of their children.

Despite the generally good practice in obtaining informed consents, several measures have been proposed to facilitate the meeting of the purpose of informed consent, e.g.:

- *to issue a methodology guideline for schools regarding the formal requirements of parent's informed consent and how the school should proceed to obtain it;*
- *to create and publish, on the education ministry's website, recommended sample forms of informed consent based on situations where it is required by law;*
- *to ensure regular controls of how the conditions for the use of informed consent are applied by the schools in practice.*

## 2. Initial response by the education ministry to measures proposed in 2013, 2014 and 2015

The Office informed a new Minister of Education, Science, Research and Sports of the Slovak Republic (hereinafter only referred to as the “education minister”) in April 2016, after he assumed the office, about the investigations and measures proposed to remove the identified issues. At the end of May 2016, the education ministry informed the public defender of rights about the steps taken with respect to the educational process to improve the enjoyment of the right to education, especially by members of marginalised groups of population. The ministry assured her it was performing all tasks necessary to ensure the protection of the basic rights and freedoms of children in accordance with Slovakia’s commitments.

At this point, I consider it important to explain those commitments. The right to education, equal access to education and prohibition of discrimination in education are governed by a whole range of legislative documents. At the national level, they *namely* include, in addition to the Constitution of the Slovak Republic, Act No. 245/2008 Coll. on training and education (the Schools Act) and on amendments to certain acts, as amended<sup>10</sup> (hereinafter only referred to as the “Schools Act”) and Act No. 365/2004 Coll. on equal treatment in certain areas and on the protection against discrimination and on amendments to certain acts (the Antidiscrimination Act), as amended<sup>11</sup> (hereinafter only referred to as the “Antidiscrimination Act”). The most important international documents governing the right to education and the equal treatment principle in education include the International Covenant on Economic, Social and Cultural Rights,<sup>12</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>13</sup> the Convention on the Rights of the Child,<sup>14</sup> the UNESCO Convention against Discrimination in Education,<sup>15</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols,<sup>16</sup> the Charter of Fundamental Rights of the European Union,<sup>17</sup> and the already mentioned Council Directive 2000/43/EC on racial equality of 29 June 2000<sup>18</sup>, and others.

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<sup>10</sup> Under §3(d) of this Act, the training and education are based on the principles of the prohibition of all forms of discrimination, and segregation in particular. The child or pupil has a right to equal access to education. The rights laid down in the Schools Act are guaranteed to all applicants, children, pupils and students on an equal basis in conformity with the principle of equal treatment in education provided for under a separate regulation.

<sup>11</sup>The provision of §5 of the Antidiscrimination Act governs the equal treatment principle in social security, health care, provision of goods and services, and education.

<sup>12</sup>Article 13.

<sup>13</sup>Article 5(v).

<sup>14</sup>Article 28.

<sup>15</sup>Article 1, Article 3.

<sup>16</sup>Article 2 of the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950).

<sup>17</sup>Article 14.

<sup>18</sup>For the purposes of this directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

The state's commitment to respect and protect the fundamental rights and freedoms of individuals that are anchored in the international documents can be understood as the state's obligation to take all steps to gradually achieve the full realisation of the rights guaranteed under the international documents with the maximum use of its resources by all appropriate means, including the adoption of legislative, administrative, budgetary and other measures.

In 1997, the so-called Maastricht Guidelines were adopted, defining the obligations of the states, the non-compliance with which is deemed a violation of the Covenant on Economic, Social and Cultural Rights. These obligations include, *for example*:

- obligations of conduct and of results; i.e., to define particular actions towards the realisation of rights and, at the same time, to achieve specific targets by implementing them;
- margin of discretion – states enjoy a margin of discretion in selecting the means for implementing their respective obligations but they bear the burden of proof to demonstrate their measurable progress towards the realisation of particular rights;
- availability of resources – in some cases, realisation of the rights depends on the availability of adequate financial and material resources;
- state policies – an obligation to avoid pursuing, by action or omission, a policy or practice which deliberately contravenes or ignores obligations of the International Covenant on Economic, Social and Cultural Rights, or fails to achieve the required standard of conduct or result. This obligation also means that *any discrimination* on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights *is prohibited*.

With respect to the measure proposed by the public defender of rights **to expressly prohibit** spatial, organisational, physical or symbolic **exclusion** or **separation of Roma pupils from other pupils, to prohibit the creation of segregational school districts** and **to specify sanctions for non-compliance and ensure that the prohibition is enforceable**, the education minister stated in a letter of 31 May 2016 as follows: “*the training and education are based on the principle of the prohibition of all forms of discrimination, and segregation in particular.*” Moreover, the Antidiscrimination Act governs the application of the equal treatment principle and specifies the means of legal protection where this principle is violated. These means include a petition to commence proceedings in the matters related to the violation of the equal treatment principle under §9 et seq. of the Antidiscrimination Act, or the extra-judicial protection of rights through mediation. Said means of legal protection cannot, however, be deemed sufficient, especially with respect to their availability to persons from marginalised groups of population or from socially disadvantaged environment (hereinafter only referred to as “SDE”). The poor general awareness of the existence of the means of legal protection

against discrimination, the lack of information about free legal assistance available to the public, the costs associated with the proceedings in the matters related to violations of the equal treatment principle, the disproportionate length of judicial proceedings and people's mistrust in courts represent the barriers faced by discriminated persons in the use of the means of legal protection where the equal treatment principle has been breached. However, the Antidiscrimination Act has also enabled initiating proceedings in the matters related to violations of the equal treatment by legal persons specified by law in cases where the infringement of the principle of equal treatment adversely affects the rights, legally protected interests or freedoms of a larger or indefinite number of persons, or where such infringement otherwise poses a serious threat to the public interest. It involves an action in the public interest (*actio popularis*) whose significance in the context of the protection against discrimination is in that the traditional access to justice for discriminated persons at an individual level has its limits and cannot effectively cover discrimination against minorities in all its forms.<sup>19</sup> According to the generally available information, Slovak courts have so far delivered only one final ruling on the action in the public interest<sup>20</sup> since the introduction of the public action mechanism in Slovakia, filed under the Antidiscrimination Act by a legal person – Slovak non-governmental organisation Centre for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*). The court has decided that the defendant breached the equal treatment principle (by placing Roma children into special classes), thus having discriminated the Roma children on grounds of their ethnic origin.<sup>21</sup> Following this ground-breaking case, the Centre for Civil and Human Rights has continued filing actions in the public interests; there are currently four such proceedings pending before general courts of the Slovak Republic. In one of these cases, the public action<sup>22</sup> has been turned down by a first-instance court<sup>23</sup> and is now under review within appellate proceedings. The main purpose of the measure proposed by the public defender of rights was to **ensure that the prohibition** of discrimination, and segregation in particular, can **be enforced** in practice, and to **specify** a particular **entity responsible** for its **violation**, along with applicable **sanctions**. Incorporating the consistent application of the prohibition of all forms of discrimination and segregation in schools and school facilities into the Pedagogical and Organisational Instructions for the School Year of 2016/2017 and into the Pedagogical and Organisational Instructions for the School Year of 2017/2018 (Part 1.5.4.3 Discrimination)<sup>24</sup> is, in my opinion, an action that has partially

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<sup>19</sup> Verejné žaloby ako nástroj účinnej právnej ochrany pred diskrimináciou. Poradňa pre občianske a ľudské práva (*Actions in the Public Interest as a Means of Effective Legal Protection against Discrimination*. Centre for Civil and Human Rights), 2015. ISBN: 978-80-970562-3-0.

<sup>20</sup> Action in the public interest filed by the Centre for Civil and Human Rights against primary school with kindergarten in Šarišské Michaľany.

<sup>21</sup> Resolution of the Prešov District Court of 19 April 2012, proceedings No. 25C/133/2010-263.

<sup>22</sup> Action in the public interest filed by the Centre for Civil and Human Rights against Stará Ľubovňa and the Ministry of Education, Science, Research and Sports of the Slovak Republic for segregation of Roma children in Primary School Stará Ľubovňa – Podsadek.

<sup>23</sup> Judgment of the Bratislava II District Court of 6 April 2016, proceedings No. 11C/351/2015-387.

<sup>24</sup> Paragraph 1: "To consistently apply the prohibition of all forms of discrimination and segregation in schools and school facilities. To eliminate unwanted phenomena such as spatial, organisational, physical and symbolic exclusion or separation of Roma children and pupil on grounds of their ethnic origin (often

reflected the proposed measure, but its verbatim transposition into pedagogical and organisational rules that are more of guidance and recommendation in their nature<sup>25</sup> without including any sanctions for its prohibition cannot be considered the adoption of the proposed measure.

Embedding the prohibition of all forms of discrimination and segregation in schools and school facilities into a law is closely related with the issue of its compliance. The education ministry is of the opinion that the Slovak Republic, represented by the education ministry, has no obligation to examine whether pupils are correctly enrolled in special classes (because this task is performed by the State School Inspection), as well as it has no obligation to remove discrimination in schools it has not caused.<sup>26</sup> The oversight over the compliance with the prohibition of discrimination and segregation in education and the use of discriminatory and segregational practices in education is the responsibility of the State School Inspection. In the school year of 2016/2017, based on the Report on the situation and standard of education in schools and school facilities in the Slovak Republic in the school year of 2016/2017<sup>27</sup>, the inspection also focused its controlling activities on the observance of rights in education of children with special educational needs and the creation of conditions for inclusive education of SDE schoolchildren. Three of the inspected schools had applied segregational practices in education of Roma schoolchildren in conflict with the training and education principles laid down in the Schools Act. These schools (primary school with kindergarten in Giraltovce, primary school in Terňa, and primary school with kindergarten in Hurbanovo) had Roma-only classes created, which were located outside the building in which other pupils had classes. Since the Roma schoolchildren had classes in separated and spatially segregated premises, the schools violated one of the principles of training and education – the prohibition of all forms of discrimination, and segregation in particular. These are no lone examples. The Office of the Public Defender of Rights received a complaint at the beginning of the school year of 2017/2018, made by parents of Roma children attending a primary school at the Francisci Street in Levoča. They complained that a second grade class is attended solely by Roma children in the school year of 2017/2018. They further noted that this segregation continued from the previous school year of 2016/2017 when the same pupils were also placed in a Roma-only first grade class. The claimants notified this situation of Amnesty International Slovensko, the Prešov school inspection centre, and the education ministry. Considering the gravity of the allegations made in the complaint and the results of the survey into the current state of measures proposed by my predecessor, I asked, for the purposes of this report, the headmaster of the primary school in Levoča for her position

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combined with social marginalisation) from other children and pupils. To create suitable conditions for their education in schools and classes jointly with a majority population.”

<sup>25</sup> The POIs are designed to provide guidance for the organisation of the school year and provide important information and recommendations regarding the educational process in schools and school facilities within the network of schools and school facilities in the Slovak Republic. They contain information, instructions, recommendations and guidance for schools and school facilities, dates of school holidays, as well as a list of generally binding laws and regulations and sector-specific regulations.

<sup>26</sup> [https://www.poradna-prava.sk/site/assets/files/1304/odpoved\\_peticia\\_h.pdf](https://www.poradna-prava.sk/site/assets/files/1304/odpoved_peticia_h.pdf).

<sup>27</sup> [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka\\_sprava/sprava\\_16\\_17\\_2.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka_sprava/sprava_16_17_2.pdf).

and the chief school inspector for cooperation in the case in question. Given that a thematic inspection focused on the signs of segregation in the organisation of educational process had been carried out at this school in the second semester 2017/2018, I decided not to conduct my own investigation. The Prešov school inspection centre found out that the representation of Roma children in all classes varied (ranging from 11.1% to 100%). Allocating Roma pupils to classes in individual grades proved to be more or less uniform, except for the class that had 100% of Roma children. It is the class referred to in the complaint. The Prešov school inspection centre concluded that “*a group of pupils from a marginalised Roma community had been allocated to a separate class due to which they had suffered social exclusion in education for two years. This situation does not facilitate social inclusion of said group of pupils and bears the signs of segregation in mainstream education.*” In this particular case, I decided not to duplicate the report on the violation of the prohibition of all forms of discrimination, and segregation in particular. I believe that the measure imposed by the school inspection authority to remove the identified issues will be sufficient to eliminate all manifestations of segregation in education of Roma schoolchildren at this school, and not only in the next school year.

The education minister further noted in his letter that in order to facilitate the application of the prohibition of discrimination and segregation across the entire education system, the Methodology and Pedagogy Centre, reporting directly to the education ministry, had started preparing a new national project entitled *School Open to All (Škola otvorená všetkým)* focused on the implementation of informal education as a means to avoid the incorrect practice of placing children into a special stream of education and to improve the school attendance of SDE schoolchildren. The education ministry thus in fact recognised the existence of incorrect practices in diagnostic testing. The national project *School Open to All* is implemented with the support from the European Social Fund and the European Regional Development Fund under the Human Resources operational programme. A total of 130 primary and 50 pre-primary schools have joined the project implemented by the Methodology and Pedagogy Centre over the period from 1 February 2016 until 30 November 2019. One of the core activities is the *Implementing Inclusive Education Model in Kindergartens and Supporting Informal Education*, where the minimum of 825 and the maximum of 2,475 children and tutors are expected to participate. However, *two years* since the project was launched, the informal education programme has only be joined by 416 children and 424 family members, tutored by teachers at 48 kindergartens, according to a press release of 19 June 2017.<sup>28</sup> The second project activity – *Implementing Inclusive Education Model in Primary Schools* – aims to create 120 up to 480 new positions for pedagogical employees in kindergartens and primary schools, and 130 up to 600 new positions for teacher assistants. According to a press release of 23 October 2017<sup>29</sup>, new kindergarten and primary school jobs have *so far* been created (as at

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<sup>28</sup>[http://npsov.mpc-edu.sk/files/articles/tlacove-spravy/Neform%C3%A1lne%20vzdel%C3%A1vanie%20-%20C5%A1anca%20pre%20pred%C5%A1kol%C3%A1kov%20mimo%20vzdel%C3%A1vacieho%20syst%C3%A9mu\\_1507971290.pdf](http://npsov.mpc-edu.sk/files/articles/tlacove-spravy/Neform%C3%A1lne%20vzdel%C3%A1vanie%20-%20C5%A1anca%20pre%20pred%C5%A1kol%C3%A1kov%20mimo%20vzdel%C3%A1vacieho%20syst%C3%A9mu_1507971290.pdf).

<sup>29</sup><https://www.minedu.sk/narodny-projekt-%E2%80%9Eskola-otvorena-vsetkym%E2%80%9C-spusta-kontinualne-vzdelavanie/>.

the end of September 2017) *only* for 180 pedagogical employees and 285 teacher assistants. Together with teachers, they have created inclusive teams whose task is to provide conditions for quality education of all children, thus preventing their unfounded transfer to special classes. The third activity is *Enhancing Competences of Pedagogical and Expert Staff* through an accredited continuous education programme which is expected to be joined by 2,500 participants. The information presented at a meeting between the European Commission and the Slovak Republic at the end of September 2017 indicates that just a half of the envisaged number of participants (around 1,300) has so far joined the continuous education programme. The implementation of the national project should be considered a step in the right direction to eliminate discrimination and segregation in education, however, due to its limited duration, it cannot be included among permanent desegregation measures aimed at achieving sustainable discrimination- and segregation-free schools. Also, the question is whether the aforementioned maximum targets set under the project will actually be achieved given the limited time that remains until the end of the project. Since the project is already in the second half of its implementation period, it also is questionable whether the total allocation of EUR 28,882,756 slated for its implementation will be used. According to the information presented in the last press release of 20 April 2018, on Prešov and Banská Bystrica conferences where experts were to evaluate the conditions in inclusive education, an answer to this question could be provided in an interim evaluation report to be published at the national project website: <http://npsov.mpc-edu.sk/>.

Another measure which the education ministry believes will help enhance the protection and observance of the right to education in connection with the testing of SDE children for school readiness was the publication of the Guideline to the Practice of Centres for Pedagogical and Psychological Counselling and Prevention for Testing School Readiness of SDE Children of 4 March 2016 (No. 2016-11850/9969:1-100A) which contains methodology information for experts in counselling centres. Unlike the previous Guideline to the Practice of Centres for Pedagogical and Psychological Counselling and Prevention for Testing School Abilities of Children from Socially Disadvantaged Environment and for their Placement in Primary Schools of 6 March 2013 (No. 2013-12192/36264:2-914), the “new” guideline specifies that the objective of testing is to identify weaknesses and strengths of a child to serve as a basis for pedagogical work and interventions. Besides their titles<sup>30</sup>, the difference between these two guidelines is that while the previous guideline “*recommends re-assessing the child’s school abilities after the completion of the first grade of compulsory school attendance*”, the “new” guideline says “*the effectiveness of the child’s education based on the previous recommendation **must be** assessed and further steps in the child’s education recommended after the completion of the first grade of compulsory schools attendance*”. I see the **lack of a legally binding arrangement concerning the frequency of re-diagnostic testing** as a

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<sup>30</sup> The expression “child’s school *abilities*” in the title of the previous guideline was replaced by the expression “child’s school *readiness*” in the title of the new one, which is seemingly more correct and easier to be accepted by the public.

problem in relation to these recommendations. The frequency of re-diagnostic testing of children and pupils with special educational needs is not specified by any generally binding regulation. The common practice in counselling centres shows that the diagnostic tests were performed mainly where there was a reason indicated by a teacher, a school inspector and/or if directly requested by the child's legal guardian. The new guidelines replaced "recommends" by "must be". However, the fact that the effectiveness of the child's education based on the previous recommendation *must be* assessed and decision made about the child's further course of education does not mean it is a generally binding legal obligation. Last but not least, we must discuss to whom these *recommendations* are addressed, and their character. The guidelines are addressed to the heads of education departments at district offices in the seats of the region in the Slovak Republic who should inform directors of the centres for pedagogical and psychological counselling and prevention – which fall within their founding authority and territorial jurisdiction – about these practices. Mediating the information that has the nature of advice and leaving its actual implementation more or less at a discretion of counselling centres, the degree of which may vary due to a number of factors (e.g., the lack of personnel capacities, mindset of the centre's experts, etc.), instead of a legally binding obligation to perform re-diagnostic tests in regular intervals does clearly not contribute to improvements in the practice of testing the children's school readiness.

Regarding the proposed measure to **cancel Variant A** – intended for children with minor mental disabilities, the education ministry replied that minor mental disabilities prevent the children who suffer from such disabilities from complying with educational standards applied at mainstream primary schools. According to the ministry, the parents of those children do not consider their placement in special classes/schools a segregating, let alone discriminatory, practice because it is the parents who chose the school their child will attend based on their own judgment and free decision. Quite the contrary, if special education was not available, these parents could consider it a violation of democratic principles in society. For many of these parents, the special stream of education is the last chance to provide their children with at least elementary education, according to the ministry. Transferring the responsibility for the inclusion of children with special educational needs in special classes/schools unto their parents who are "those who have the last say", and arguing that discrimination would be if they were not granted, due to their special educational needs, access to special education to achieve at least elementary (but in terms of content and scope extremely limited) education, may be considered turning down the responsibility by the state for the current situation in education and for high numbers of children included in the special stream of education. The European Court of Human Rights (ECHR) has also refused to accept the argument about parents' informed consent to the discriminatory placement of their children in segregated classes or schools. This is also evident from its decision in the case of *D.H. and others v. the Czech Republic*, in which the ECHR has ruled that no waiver of the right not to be subjected to racial discrimination, even if based on fully informed consent, can be accepted, as it would be counter to an important public interest. As regards the cancellation of Variant A, which largely covers

Roma children, the Strategy of the Slovak Republic for Integration of Roma until 2020 sets partial target 6 under *D.2.1 Education* as follows: “*to increase the share of pupils from the marginalised Roma community educated in regular classes at primary schools*” can be understood as a recommendation to eliminate the placement of Roma schoolchildren in Variant A. In an updated 2016-2018 Action Plan for the aforementioned strategy, the said partial target 6 under *D.2.1 Education* is, however, focused more on ensuring an objective and culturally sensitive assessment of special educational needs of schoolchildren from the marginalised Roma community by developing new diagnostic tools and adjusting the practice and methodology for obtaining the child’s legal guardian’s informed consent to the child’s placement in the special stream of education<sup>31</sup>, rather than by creating supportive measures and conditions conducive to their inclusive education in regular classes.

As regards the issue of obtaining informed consents from schoolchildren’s legal guardians, with respect to which the public defender of rights had proposed several measures, the education ministry concluded in its replay of May 2016 that, given that the investigation by the public defender of rights had shown a relatively good practice in applying this mechanism and that the provision of informed consent did not seem to be an issue between schools and schoolchildren’s legal guardians, and considering a risk of increasing an administrative burden, adopting special measures at the level of the education ministry is not justified and proportionate. In Part 1.5.1 Reducing the information asymmetry of its Pedagogical and Organisational Instructions for the School Year of 2016/2017, the education ministry only recommended “*to ensure that informed consent of the legal guardian be obtained in writing, with the legal guardian’s own signature, and including a note that the legal guardian has been advised on the consequences of such consent. Before signing, the legal guardian needs be provided with the necessary information in a comprehensive manner, taking into account a specific situation in the educational process for which the consent is required.*”

Further actions which should have contributed to the elimination of shortcomings in the educational system in Slovakia, thus reflecting the measures proposed by the public defender of rights, are included in the next part of this evaluation report, so-called internal audit, which I have commissioned the Office of the Public Defender of Rights to carry out.

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<sup>31</sup>Action Plan for D. 2. 1 Education – partial target 6, available at [:https://www.minv.sk/swift\\_data/source/romovia/akcne\\_plany/2017/AktualizovaneAPStrategie.pdf](https://www.minv.sk/swift_data/source/romovia/akcne_plany/2017/AktualizovaneAPStrategie.pdf) .

### **3. From investigations to infringement proceedings – and other steps aimed at removing the shortcomings in the functioning of the Slovak education system**

It was after the initiation of infringement proceedings that I noticed the first steps towards changes in the functioning of Slovakia's education system, which the new minister communicated to my predecessor in May 2016. According to Council Directive 2000/43/EC on racial equality, the violation of which by the Slovak Republic, as well as by the Czech Republic<sup>32</sup> and Hungary<sup>33</sup> was objected to by the European Commission, all forms of discrimination (direct<sup>34</sup> and indirect<sup>35</sup>) on grounds of racial or ethnic origin are prohibited. This directive aims to increase involvement in economic and social life and reduce social exclusion by discouraging any discrimination. The Roma, as a particularly large and vulnerable group that is rather prone to social exclusion, are falling directly under the scope of the directive. The European Commission monitors whether the EU Member States comply with the directive in practice, even though solutions to particular cases of discrimination fall within the jurisdiction of individual EU Member States where they are decided according to national law and by national courts. The European Commission has already dealt with problems arising directly from national provisions, e.g., by initiating infringement proceedings against Romania.<sup>36</sup> However, the Roma-specific problems are rarely based directly on national legislation; they are typically the result of how the relevant national laws are applied in practice.

*“The Commission recognises that legislation alone is not enough to resolve the deep-rooted social exclusion of the Roma and the prejudice they still face. Legislation needs to be combined with policy and financial measures. A key element of the drive to tackle discrimination of the Roma at EU level was the adoption of an EU Framework for National Roma Integration Strategies up to 2020.”<sup>37</sup>*

By adopting the Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States (2013/C378/01), the European Commission

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<sup>32</sup> Proceedings concerning the violation of Council Directive 2000/43/EC on racial equality, commenced in 2014.

<sup>33</sup> Proceedings concerning the violation of Council Directive 2000/43/EC on racial equality, commenced in 2016.

<sup>34</sup> Direct discrimination occurs where one person is treated less favourably on grounds of racial or ethnic origin than another is, has been or would be treated in a comparable situation.

<sup>35</sup> Indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of certain racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

<sup>36</sup> The European Commission challenged a provision in Romanian legislation which appeared to allow a special category of indirect discrimination in the area of land management and planning. The provision was formulated in a neutral way but appeared to affect particularly the Roma

<sup>37</sup> Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, of 17 January 2014.

emphasises the need to ensure effective practical enforcement of the directive, in particular by encouraging the Member States to adopt measures aimed at ensuring that their national, regional and local administrative regulations are not discriminatory and do not result in segregation practices. The recommendation suggests taking effective measures to ensure equal treatment and access for Roma boys and girls to quality education and to ensure that all Roma pupils complete at least compulsory education. These measures include, inter alia, putting an end to any inappropriate placement of Roma pupils in special needs schools, reducing early school leaving, increasing the access to early childhood education, considering the needs of individual pupils and using inclusive teaching and learning methods. By adopting this recommendation, the Member States were given a “manual” for the implementation of policies aimed at Roma integration with a view to ensuring the implementation of national Roma integration strategies. As of 1 January 2016, the Member States were required, for the first time in that year as well as in every subsequent year thereafter, to submit an account of measures adopted in accordance with the Commission recommendation and thus provide information about progress made in the implementation of their own national Roma integration strategies. According to the 2016 Monitoring Report on the implementation of the Roma integration strategy of the Slovak Republic until 2020<sup>38</sup>, of the total number of 31 activities/measures falling under the education area, 16 were evaluated as “*fulfilled/being fulfilled*” and the remaining 15 were evaluated as “*pending*”. None of the activities was marked as “*not being complied with*”. The total volume of funds drawn for the performance of activities/measures in this area was EUR 1,545,037.42 in 2016.

Seeking to prevent the initiation of proceedings against the Slovak Republic, the Slovak government submitted, and the Parliament approved, an amendment to legislation concerning the education system. The Schools Act was amended and supplemented with §107 on education and training of children and pupils from socially disadvantaged environment, which came into force on 1 January 2016. This provision originally consisted of five paragraphs; however, paragraphs 4 and 5 concerning the subsidy for pupils from SDE and the purpose of its use were deleted. This subsidy has been moved under §4e of Act No. 597/2003 Coll. on the financing of primary schools, secondary schools and school facilities as amended (hereinafter referred to as the “Schools Financing Act”). The reason for moving the legislative provisions concerning the subsidy and the purpose of the use of financial resources allocated to schools for pupils from SDE in the form of this subsidy was that the financing of schools should be governed by a single legislative act. At present, §107 of the Schools Act reads as follows:

*“(1) Education and training of children from socially disadvantaged environment and pupils from socially disadvantaged environment is carried out at schools according to individual conditions. Individual conditions are*

- a) adjustment of the organisation of education and training,*
- b) adjustment of the environment in which education and training takes place, or*

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<sup>38</sup> <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-209866?prefixFile=m>.

*c) application of specific methods and forms of education and training.*

*(2) A child or a pupil whose special educational needs are based solely on his/her development within a socially disadvantaged environment cannot be placed in a special school or in a special class in a kindergarten, a special class in a primary school or a special class in a secondary school.*

*(3) Children or pupils from a socially disadvantaged environment are integrated into a kindergarten class, primary school class or a secondary school class together with other children or pupils. The foregoing shall not apply to the integration of a pupil from socially disadvantaged environment enrolled in*

*a) the zero grade in a primary school with informed consent of the legal guardian or  
b) a specialised class pursuant to §29 (11).“*

The provision of §107 of the Schools Act directly stipulates that a child or a pupil whose special educational needs are arising solely from the development of such child or pupil within SDE cannot be placed in a special school or a special class in a kindergarten, a special class in a primary school or a special class in a secondary school. **In practice, this is intended to mean that the sole fact that a child comes from SDE cannot be the reason for its placement in a special school/class.** The measure, which is aimed at preventing segregation, establishes an obligation to place children and pupils from SDE in classes together with other children and pupils.

**From the viewpoint of the Office, this was a first step which establishes formal legal requirements for changing the procedures applied towards the education of children from marginalized groups of the population.**

The amendment concerning the provision of a subsidy for pupils from SDE introduced a rule, effective from 1 September 2016, according to which the subsidy is only awarded to those SDE pupils who have received an opinion from the centre for pedagogical and psychological counselling and prevention and have been placed in a mainstream primary school class. The subsidy is not awarded to pupils in special primary schools and/or in special primary school classes and pupils individually integrated in primary schools. The reason why these three categories have been excluded from the provision of the subsidy is that SDE pupils, following a diagnostic examination which has revealed that their special educational needs are arising solely from their development in SDE, are recommended for placement in mainstream schools which are expected to use this annual subsidy – in the amount<sup>39</sup> set by the education ministry – for support measures intended for that particular group of pupils. However, the transitional provision of §9f of the Schools Financing Act stipulates that, for the purposes of providing the subsidy intended to improve the conditions for the education and training of SDE pupils, an SDE

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<sup>39</sup> Starting at EUR 106 in the 2015/2016 school year, this amount rose to EUR 109 in the 2016/2017 school year and currently stands at EUR 260. The subsidy for students from socially disadvantaged environment for the 2017/2018 school year has increased by more than 100 % in comparison with the 2016/2017 school year. In the 2018/2019 school year, it is expected to stand at EUR 150.

pupil also means, between 1 September 2017 and 31 December 2018, a pupil that is a member of a household, whose member is a beneficiary of assistance in material need, and the legal guardian of such pupil demonstrates this fact to the headmaster of the primary school.

The government stated that reintroducing the “*SDE children*” diagnostic category and linking it with the financial subsidy would become an important tool to remove the ongoing practice of incorrectly diagnosing Roma children and including them in the category of children with a mild mental disability. Before the legislative change in 2016, the status of social disadvantage or a socially disadvantaged environment was assessed by the offices for labour, social affairs and family which coordinated financial assistance to families in material need whose children were attending mainstream and special schools/classes. However, as of 1 January 2016, the assessment of social disadvantage falls within the responsibility of the centres for pedagogical and psychological counselling and prevention, whose primary role is, in fact, assessing the special educational needs and the intelligence of children. In order to be able to correctly identify SDE, a guideline of 4 March 2016 (No. 2016-11850/9969:1-100A) has set at least an exemplificative list of eight factors which, when combined, may identify a child’s environment as such that “*puts the child at a disadvantage in the educational process as well as in psychological testing*”. These include a family environment not fulfilling the basic functions; poverty and material need in the child’s family where at least one of the parents is long-term unemployed; at least one of the parents has not completed basic education; unsatisfactory housing and hygiene; language of instruction is different from the language spoken by the child “at home”; the child’s family living in a segregated community; and the last factor covers the social exclusion of the community or the child’s family from the mainstream society. An SDE characterised in this manner is typical of that of many Roma children. The decision whether a Roma child’s poor educational performance is attributable to these socio-cultural factors or to a mild mental disability is very difficult to make during a single testing session held before the child’s compulsory school attendance. However, the goal of the assessment of children’s readiness for school is clear – to make a pre-enrolment selection where their examination would result in a recommendation whether to enrol in the general or special stream of education. Distinguishing between the consequences of development in SDE and a mild form of mental disability should be made on the basis of a long-term observation of the child and evaluation of its development, while taking into account the qualitative analysis of the child’s performance. At the same time, the guideline fails to specify how many factors must be fulfilled in order for the child to be classified as “*SDE child*” and its wording also implies that, in evaluating the socially disadvantaged environment, there are also other factors not included in the list which may be taken into account, thus creating elbow room for the centres of pedagogical and psychological counselling and prevention to act at their discretion. Professional staff employed with the centres of pedagogical and psychological counselling and prevention have therefore been left to decide on this socio-economic category on the basis of a vaguely formulated guidance and without the necessary expertise for this task.

According to information on amendments under §107 of the Schools Act of 26 January 2016, as published by the Regional Schools Section at the Ministry of Education, *“it is not necessary to have the centres of pedagogical and psychological counselling and prevention examine, automatically and across the board, all pupils for whom the subsidy is being provided pursuant to the criteria which are still applicable (Note.: the conditions applicable before 1 September 2016), but only those whose school or legal guardian has identified the need for expert advice where the existence of special educational needs arising from the social disadvantage is assumed”*. On the one hand, it is possible to provide a subsidy only after having complied with both conditions, one of which involves the examination by a centre of pedagogical and psychological counselling and prevention along with the issuance of its subsequent opinion (with the second condition being the placement in a mainstream class), however, on the other hand, it is not necessary to examine again all children for whom the subsidy has been received so far, as noted above. Such examination would only apply to those children, in whose case their parent or school assumes that special educational needs of the child might be arising from a social disadvantage.

As shown above, it is clear that children attending special schools or classes, for whom this subsidy was received before the amendment effective from 1 September 2016, do not have to be re-diagnosed on an across-the-board basis. In other words, it will suffice to select only those where it can be reasonably assumed that such children had previously been misdiagnosed and their special educational needs, as a result of which they were included in Variant A, may arise only from the socially disadvantaged environment that they come from. The remaining children who are suffering from a mental disability and, at the same time, come from an environment that would satisfy even all of the eight factors defining the socially disadvantaged environment are not entitled to this financial subsidy. Therefore, the subsidy for children from SDE had been withheld for special schools or special classes, because the legislation prevents from receiving this subsidy those children with mental disabilities who, at the same time, happen to come from a socially disadvantaged environment.

On the contrary, children from SDE attending mainstream primary schools that had been receiving this subsidy before the amendment effective from 1 September 2016 were required to have this “diagnosis”, i.e., inclusion in the category *“SDE child”* reconfirmed. Without the confirmed diagnosis, the school which they attended would not be able to receive the financial subsidy. Employees of the school facilities for educational counselling and prevention confirmed that the centres of pedagogical and psychological counselling and prevention were congested by the vast quantity of assessments to be carried out in order to confirm SDE before the deadline set by the education ministry (15 November 2016). In this connection, the chief school inspector described some of the problems caused by this situation: *“We do not have a lot of information, but I can tell you about the situation in Jarovnice. Based on this diagnostics – or rather incomplete diagnostics because they are really not capable of handling this volume [15 November 2016]...the school has a lot of [Roma] pupils [from a socially disadvantaged environment]....and will*

lose EUR 70,000 which they used for teacher assistants' salaries. Therefore they will not be able to provide the children with such level of care as they had so far.”<sup>40</sup> The question is whether this procedure might have caused many children to be excluded from the “SDE children” category even though they would otherwise be classified as such, and whether this might have resulted in a decline in the number of such pupils.

Moreover, the financing of costs for pupils from SDE is governed by §4e of the Schools Financing Act where paragraph 1 concerning the provision of the subsidy per pupil from SDE reads as follows: “the Ministry *may* allocate to the primary school founder, from the Ministry’s budgetary chapter and from the budgetary chapter of the Ministry of the Interior, a subsidy for the improvement of conditions for the education and training of pupils from socially disadvantaged environment in the course of a calendar year”. The wording of this provision clearly implies that this is not an entitlement-based measure.

The introduction of special classes was also among the changes aimed at removing the shortcomings in Slovakia’s education sector. As of 1 September 2015, §29(11) of the Schools Act has been amended by Act No. 188/2015 Coll. amending the Schools Act and other acts as follows: “*A special class may be set up at a primary school with the consent of the founder. A special class is used for the instruction of pupils who are not likely to master the curriculum in the relevant grade, in order to compensate for the lacking educational content. A pupil is placed in a special class by the headmaster based on a proposal by the class teacher and opinion from the school counsellor with an informed consent of the pupil’s legal guardian for the time strictly necessary, but for no more than one school year. A special class may be set up for at least four pupils and for up to eight pupils from the same grade or from several grades. Where the number of pupils in a special class is less than four, the special class must be closed.*” According to the provision cited above, this class is intended for those pupils who need some kind of a “compensation” programme to become integrated in the educational process and who need individual assistance of a qualified pedagogue and a special pedagogue to catch up with what they missed. This seemingly neutral measure runs counter to the idea of inclusive education because it may contribute to deepening the segregation. If this measure is not applied as *ultima ratio* in practice, the child’s basic right to equal access to education will not be fulfilled on the basis of this legislative amendment and its purpose will be open to circumvention in the future.

Effective from 1 September 2015, the powers of the State School Inspection were reinforced. Pursuant to §13(1) of Act No. 596/2003 Coll. on state administration in education and school self-governing bodies and on amendments to certain acts as amended, the State School Inspection performs the function of state control over the level of activities in school facilities for educational counselling and prevention, i.e. the centres of pedagogical and psychological counselling and prevention and the centres of special

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<sup>40</sup> The report by Amnesty International and the European Roma Rights Centre: A lesson in discrimination: Segregation of Romani children in primary education in Slovakia. February, 2017, pg. 20.

educational counselling. The State School Inspection is authorised to supervise the selection and correct use of selected diagnostic practices. If, in doing so, it finds that a school facility for educational counselling and prevention has failed to act in the best interest of the child and its educational needs, it may present a proposal to recall its director or to exclude that facility from the network of schools and school facilities. In carrying out these supervisory activities, it may use the services of experts in the given area. Before the legislative amendment, the State School Inspection had no powers in the area of supervision over the functioning of these facilities. The intention behind extending the State School Inspection's powers with this supervisory role was to help eliminate incorrect diagnostics and prevent incorrect inclusion of children into the special stream of education. In the 2015/2016 school year, the chief school inspector presented to the education ministry six proposals to exclude a school from the network of schools and school facilities and one proposal to recall a school headmaster.<sup>41</sup> In the 2016/2017 school year the chief school inspector filed one proposal for a change in the network of schools and school facilities involving the exclusion of a detached facility (in Slovak: elokované pracovisko, i.e., a school facility located away from the main school buildings), one proposal for the exclusion of a school from the network of schools and school facilities, two proposals for the exclusion of school facilities from the network of schools and school facilities and four proposals to recall a school headmaster.<sup>42</sup> The decisions on these proposals, with the exception of the recall of a school headmaster, fall within the remit of the education ministry. For instance, in the case of the Private Special Primary School in Rokycany, the children were intentionally placed in the special school on the basis of non-standard diagnostic tests carried out by the private special educational counselling centre Oco, mama a ja (Dad, Mom and Me). As a result of inappropriate tests and diagnostics, the children were diagnosed with mental retardation with a recommendation that these children be taught at the Private Special Primary School in Rokycany.<sup>43</sup> The education ministry decided on the exclusion of the school in Rokycany from the network of schools as of 1 September 2016 and on the exclusion of the private school facility for educational counselling and prevention Oco, mama a ja from the network of school facilities as of 1 March 2016. In the last and the most recent case, the education ministry decided on the exclusion of the Detached Facility in Sečovce as part of the Joint School in Dobšiná, as of 31 January 2018. The reason was that the school ability test and determination of the mental level of children by the Private Centre of Special and Educational Counselling in Sečovce was not always carried out correctly, as revealed by the results of a thematic inspection. The inspection challenged the impartiality of 119 diagnostic reports issued by this facility for pupils placed in the 2<sup>nd</sup> group based on their disability. It also ordered that 98 diagnostic examinations must be carried out again.<sup>44</sup> Based on the identified

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<sup>41</sup> [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka\\_sprava/sprava\\_15\\_16.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka_sprava/sprava_15_16.pdf)

<sup>42</sup> [https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka\\_sprava/sprava\\_16\\_17\\_2.pdf](https://www.ssiba.sk/admin/fckeditor/editor/userfiles/file/Dokumenty/velka_sprava/sprava_16_17_2.pdf).

<sup>43</sup> Report of the Research Institute for Child Psychology and Pathopsychology. Available at: <http://www.vudpap.sk/>.

<sup>44</sup> The Report of the State School Inspection on the situation in the provision of professional activities in school facilities of educational counselling and prevention in the 2016/2017 school year in the Slovak Republic. Available

shortcomings, the chief school inspector submitted a proposal to exclude this facility from the network of schools and school facilities of the Slovak Republic, although the administrative proceedings on this matter have been discontinued due to the commencement of judicial proceedings. Extending the State School Inspection's powers can be perceived as a step towards increasing the level of supervision mechanism over the inclusion of children into the general and special stream of education. With this competence, however, the scope of activities performed by this inspection authority within its remit has increased and, therefore, in order to ensure proper supervision over the provision of professional activities in the school facilities of educational counselling and prevention, its personnel capacities and funding should be sufficiently reinforced to meet the expectations arising from new responsibilities. In connection with the possibility of involving experts in the given field for the purposes of implementing the new competence of the State School Inspection, i.e., assessment of correct diagnostics, the question is whether the participation of independent review centres at district offices in the seat of the self-governing region, whose experts could be providing assistance to the inspection authority in fulfilling its new competence, should not be considered with a view to ensuring impartial and due examination of the correct selection and use of diagnostic procedures in fulfilling this task. These centres could also be acting as authorities competent to assess contradicting diagnostic conclusions.

The measures described above (amendment to §107 of the Schools Act, special classes, subsidy for children from SDE, the new competence of the State School Inspection) are the Education Ministry's key actions towards a gradual removal of discrimination and segregation in the Slovak educational system which the Ministry adopted in response to the initiation of the infringement procedure.

Additional steps aimed at improving the fulfilment of the rights of all children and pupils to education, with a special focus on children and pupils with a disadvantage, irrespective of whether due to health, social or other reasons, were communicated to me by the new Minister of Education, Science, Research and Sports of the Slovak Republic (hereinafter as the "education minister") in her letter of 16 November 2017.

Not only the legislative changes, but also other pilot projects that are currently being implemented, are seen by the education ministry as important steps carried out in the best interest of the child. For instance, a project titled "*Diagnostic and re-diagnostic examinations of children from socially disadvantageous environment in inclusive education*" is mentioned in connection with diagnostic and re-diagnostic examinations, with implementation deadline by December 2020. The task, which is part of the Kežmarok District Development Project, approved by Resolution No. 45/2016 of the Government of

the Slovak Republic, Point B.19,<sup>45</sup> currently falls within the responsibility of the Research Institute of Child Psychology and Pathopsychology. The project consists of three modules:

- Counselling-diagnostic module,
- Inclusive School module, and
- Further Education module.

As part of the above project, a new approach to diagnostics is studied in order to identify the strengths and weaknesses of every child for the purposes of their inclusive education. A working meeting of the project team held on 13 March 2017 in Kežmarok approved a task to prepare a framework project involving the activities of pilot verification of the project based on monthly assessments, to ensure the supervision for professional staff and cooperation among all stakeholders in pilot verification for children from SDE. If good results are achieved, the said project can be seen as worthy of special attention in terms of its use in the future (as a guide for other districts). Identification of the strengths and weaknesses of a child in its diagnosis and the related inevitable change in the experts' approach to children from SDE as well as to Roma children is a sign of a shift in the paradigm in the education system. Considering the framework project of activities performed under the project pilot *verification*, the preparation of which has been agreed by the relevant stakeholders in March 2017, it is reasonable to assume that the project in Kežmarok has already delivered concrete results. However, these results are not yet known in more detail.

It was not only the State School Inspection, but also the education ministry whose powers have been extended following the legislative changes, i.e. examination of additional pedagogical documentation comprising, for instance, a proposal for the education of a child or pupil with special educational needs in a kindergarten, primary school, secondary school and special school or a report from the diagnostic examination of a child or pupil and a written opinion of the school facility for educational counselling and prevention (§11 (9) (a) and (b) of the Schools Act). The education ministry may review further pedagogical documentation upon request if there are reasonable grounds to believe that a pupil's education is not in line with his/her educational needs. The results of such review are to be indicated in a written opinion which is to be delivered to the child's or pupil's legal guardian, the competent school facility for educational counselling and prevention, the headmaster of the school or director of the school facility who decides on the admission of the child or pupil, as well as to the State School Inspection, i.e., to those entities that are supposed to act in the best interest of the child in terms of his/her education. However, it is not known how many times the education ministry made use of this new competence and whether in such cases a pupil has been transferred to a different stream of education.

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<sup>45</sup> Resolution No. 45 of the Government of the Slovak Republic of 10 February 2016 concerning the proposal of the Kežmarok District Development Action Plan, Point B.19: Creating a pilot model for the diagnostics and re-diagnostics of children and pupils with special educational needs in the region with a view to increasing their success rate in achieving learning outcomes. Available at: [http://www.nro.vlada.gov.sk/site/assets/files/1101/uznesenie\\_vlady\\_slovenskej\\_republiky\\_c\\_45\\_z\\_10\\_feb\\_ruara\\_2016\\_k\\_navrhu\\_akcneho\\_planu\\_rozvoja\\_okresu\\_kezmarok.pdf](http://www.nro.vlada.gov.sk/site/assets/files/1101/uznesenie_vlady_slovenskej_republiky_c_45_z_10_feb_ruara_2016_k_navrhu_akcneho_planu_rozvoja_okresu_kezmarok.pdf).

Pre-school education is another area that is not sufficiently underpinned in the Slovak educational system even though it plays a key role in education. Pre-school education serves as the basis for subsequent education, helps to prevent early school leaving and increases the social integration of children and the overall level of their skills. In connection with free pre-school education, which the Office has been highlighting as inevitable ever since the beginning of its investigations in this area, the education ministry stated that *“for all children, including children from SDE, education in a kindergarten is provided free of charge one year before the beginning of compulsory school attendance.”* *In order to ensure the highest possible school readiness rate of children in kindergartens also in regions and municipalities with insufficient kindergarten capacities, the education ministry also contributed with a purpose-specific subsidy for capacity reinforcement“.* The Office proposed free pre-school education in the state language and, if it is in the best interest of the child, also in their mother tongue, in a sufficient number of facilities with a sufficient number of qualified personnel. Lack of knowledge of the language of instruction in kindergartens represents an obstacle to achieving the highest possible school readiness rate of children before the beginning of compulsory school attendance. This requirement was addressed by the education ministry allowing the legal guardian of the child, in submitting the application for admission to a kindergarten, to indicate the language (Slovak, Hungarian, Roma) requested by the legal guardian as the language of instruction for the child. As revealed by the investigation of the education ministry carried out in the territorial scope of the Banská Bystrica District Office, no request for education in the Roma language has been reported by any kindergarten or primary school. Even though the Banská Bystrica region is one of the three regions with a high percentage of the Roma population, the fact that regional investigation has not confirmed the need to provide education in the mother tongue cannot automatically rebut the presumption that providing such education would significantly contribute to improving the application of the right to education for members of marginalized Roma communities.

The public defender of rights also proposed to amend the applicable legislation in a way that would incentivise the participation of both Roma and non-Roma children from SDE in pre-school education, which should be free of charge, by introducing **compulsory pre-school education** after the age of five, i.e. one year before the beginning of compulsory school attendance Pursuant to applicable legislation, pre-school education in kindergartens is not compulsory and is typically intended for children between three and six years of age; but preferably for children after five years of age (or children with deferred or additionally deferred commencement of compulsory pre-school attendance). Based on publicly available sources the education ministry agrees with the introduction of compulsory pre-school attendance which, in the best case, could become a reality already in 2019.<sup>46</sup> However, this requires amendments to the applicable legislation encompassed in the Schools Act which must be preceded by negotiations with the representatives of cities

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<sup>46</sup> Available at: <https://spravy.pravda.sk/domace/clanok/446742-ministerka-lubyova-suhlasi-s-rozsirenim-povinnej-predskolskej-dochadzky/>.

and municipalities as the founders of kindergartens because compulsory pre-school attendance will affect their budgets. In this connection it will also be necessary to complete the existing network and capacities of kindergartens and, for this purpose, the cities and municipalities will not only require more funds, but also some time. According to the education ministry, insufficient capacities can be built with the use of European funds, specifically through the Human Resources Operational Programme falling within the remit of the Ministry of the Interior and through the Integrated Regional Operational Programme falling under the Ministry of Agriculture. Because kindergartens increase the school readiness rate of children and lay the groundwork for their subsequent education, it is more than necessary to establish compulsory pre-school education by the Schools Act. Therefore I avail myself of this opportunity to call upon the competent authorities, which have the necessary powers in this area, to actively engage in the implementation of this step. The Czech Republic may be presented as an example of good practice, as it introduced compulsory pre-school education as of the school year 2017/2018 for children who have reached the age of five years before the start of this school year. The measure in the form of compulsory pre-school education will only be effective if the number and capacity of kindergartens is increased all around the country. The lack of high-quality and accessible facilities for pre-school children combined with the possibility of individual pre-school education of children by their parents at home (the so-called exemption from the kindergarten attendance obligation) may lead to a situation where the parents of Roma children or children from SDE would decide to teach or, worse than that, may be driven into teaching their children at home. This will result in the further deepening of segregation. Therefore I insist that, along with the measure involving the introduction of compulsory pre-primary education, it is also necessary to simultaneously extend the existing network of kindergartens, modernise the infrastructure of kindergartens and their logistical background, including their adaptation for children with special educational needs (compensation and special teaching aids, teacher assistants, etc.) in order to lay the groundwork for the development of their key competencies and for inclusive education already at the lowest level of education.

The measure - **ensuring that all Roma pupils are taught by qualified experts at the first level of their compulsory school attendance in the official language** and where it is in their **best interest, also in their mother tongue**, i. e., **the Roma language** – which emanates from the right of members of ethnic minorities to education in their language, has transformed into one of the government’s objectives to which the government has committed itself in its Manifesto of 2016. The government, as part of deepening Slovakia’s economic, social and territorial cohesion and within its policy of support for ethnic minorities, has committed to increasing the support and ensuring the development of education provided to children and pupils belonging to ethnic minorities in their mother tongue.<sup>47</sup> Also, the Action Plan for the Protection of the Rights of Persons Belonging to

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<sup>47</sup> Available at: [http://www.vlada.gov.sk/data/files/6483\\_programove-vyhlasenie-vlady-slovenskej-republiky.pdf](http://www.vlada.gov.sk/data/files/6483_programove-vyhlasenie-vlady-slovenskej-republiky.pdf).

Ethnic Minorities for the years 2016-2020 presents, under objective No. 3, seven activities aimed at improving the educational process of children of the members of ethnic minorities which include, inter alia, “*more effective enabling of Roma children education in the Roma language as their mother tongue*”.<sup>48</sup> The Report on National Minority Education System for 2016 issued by the Committee on National Minorities and Ethnic Groups in 2017 indicates that, as at 15 September 2016, the Slovak network of schools and school facilities had 352 kindergartens, 262 primary schools, 40 secondary vocational schools, and 30 grammar schools with language of instruction other than Slovak. **In none of these schools, the Roma language is the language of instruction.** According to the report, the only school with Slovak *and* Roma as the language of instruction is the Private Grammar School of Z. J. Malla in Kremnica. Within pre-primary and primary education, the Roma language is taught (as a subject) at the Primary Joint School – Private Primary School with Kindergarten in Kremnica and at the Private Primary School in Košice at Galaktická Street 9. This means that a majority of Roma children and pupils are educated in kindergartens and primary schools where the language of instruction is Slovak or Hungarian. According to the latest information provided by the education ministry, there are seven schools in Slovakia where the Roma language is taught during the 2017/2018 school year. In Košice, these schools include the aforementioned Private Primary School at Galaktická Street 9, the Private Pedagogical and Social Academy, the Private School of Music and Dramatic Arts and the Conservatory of Jozef Adamovič. In other parts of Slovakia excluding Košice these include the Private School of Music and Dramatic Arts in Rimavská Sobota, the Private Joint School Biela voda in Kežmarok and the aforementioned Private Grammar School of Z. J. Malla in Kremnica. Except for the Private Primary School at Galaktická Street in Košice, all of these schools provide secondary education. Using the mother tongue of the members of ethnic minorities as the language of instruction is closely related to the adequate preparation of text books and teaching aids, as well as to the continuing education of pedagogical and professional staff at schools with minority language as the language of instruction. The training of pedagogical and professional staff is regulated by Act No. 317/2009 Coll. on pedagogical and professional staff and on amendments to certain acts as amended. According to the data available on the website of the education ministry, there were 1,715 programmes of continuing education accredited as of 27 September 2017. For the Roma language, an accredited training programme called “*Roma Language in Education*” was available at the Methodological-Pedagogical Centre, with accreditation valid from 20 July 2012 to 31 December 2017. The content of the programme was aimed at helping the target group of pedagogical staff to gain knowledge and skills that will enable them to respond to the current needs of Roma pupils in terms of respecting their specificities and cultural differences. The education of Roma is closely related to the possibilities of studying the Roma language at universities. At present, the Roma language as a study programme is not accredited at any Slovak college or university. In this

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<sup>48</sup> Available at: <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-204579?prefixFile=m>.

connection, however, it is worthwhile to note the effort of the University of Prešov and the Constantine the Philosopher University in Nitra. The University of Prešov might be able to open its study programme “*Roma Language and Literature*”, if approved, already in the academic year 2018/2019. The Constantine the Philosopher University is working on the accreditation of the study programme “*Romology*” and plans to build the Roma language laboratory in the future as a permanent section of the Institute of Romology Studies.

Success in educating the children from marginalized communities or SDE also depends on the level of professional services. Pedagogical employees are expected to possess abilities and skills that they can use either in education process of individuals and groups, but also in handling various situations in cooperation with the pupil’s family and other competent authorities. There is a lack of professional services that would assist the pedagogical staff in addressing the individual needs of pupils and their families, as well as high quality training of pedagogical employees already during their studies. In order to increase the professional personnel capacities at schools, in particular by increasing the number of teacher assistants, social pedagogues, school psychologists and special pedagogues, whose inevitable presence was also mentioned by my predecessor in the proposed measure – **creating the conditions for permanent professional services for schools provided by psychologists, special teachers, teacher assistants, Roma assistants, speech therapists, etc.**, the education ministry has prepared a document titled “*Model for Objectivising the Professional Staff Headcount at School*”, which was approved by the education minister at the beginning of 2017. On its basis, the Schools Act includes, as of 1 September 2017, an obligation for all primary and secondary schools, which are not special schools and provide education to more 20 individually integrated pupils with disabilities, to employ a special pedagogue, therapeutic pedagogue, speech therapist or school psychologist (§94 (4) of the Schools Act). Based on the Model for Objectivising the Professional Staff Headcount at School, “*as of 15 September 2015, there were 536 primary schools (25.37 %) and 43 secondary schools (6.05 %) which employed a special pedagogue. In order to meet the target, i.e. having a special pedagogue employed with every primary school and every secondary school educating more than 20 pupils with disabilities, we would need 497 special pedagogues in primary schools (as of the date of publication of the Model for Objectivising the Professional Staff Headcount at School, there were 304 special pedagogues working at primary schools with more than 20 integrated pupils, i.e. 61.2 %) and 143 special pedagogues at secondary schools (as of the date of publication of the Model for Objectivising the Professional Staff Headcount at School, there were 18 special pedagogues working at secondary schools with more than 20 integrated pupils, i.e. 12.6 %), which accounts for a total requirement of 640 special pedagogues at schools.*”<sup>49</sup> In connection with the preparation of the Model for Objectivising the Professional Staff Headcount at School and the strengthening of support personnel, the education ministry published in 2016 a call for grant applications to increase inclusiveness of education under the title “*More Success at Primary Schools*”. The priority of the project is to reduce and prevent early school leaving and support the approach towards high-quality pre-school, primary and secondary education. Primary schools may

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<sup>49</sup> Model for Objectivising the Professional Staff Headcount, available at: <https://www.minedu.sk/data/att/11075.pdf>.

use the obtained funds for the creation of new jobs for pedagogical assistants, an inclusive team composed of a special pedagogue, school psychologist, social pedagogue and for teacher assistants to help pupils with disabilities. This project reflects the measure proposed by the Public Defender of Rights; however, the question remains whether the applicant for a non-repayable grant will be able to preserve the jobs (that were newly created as part of the project) also after the end of the project implementation period from its own funds. At the same time, as another step towards strengthening the support personnel at schools, education minister presented a legislative amendment concerning the number of pupils from SDE, for whom the primary schools receive a subsidy for improving the conditions for the education and training of pupils from SDE. At present, the founder of a primary school educating more than 85 pupils from SDE (compared to the previous threshold of 100 pupils from SDE) is required to use at least 50 % of the total subsidy, which is intended for improving the conditions for the education and training of pupils from SDE and is received by a primary school, for the personnel costs of a teacher assistant for pupils from SDE or of a social pedagogue. This is intended to support the employment of teacher assistants or social pedagogues depending on the number of pupils from SDE taught in mainstream classes of primary schools.

#### **4. Evaluation of the status of the proposed measures and final words**

The purpose of this report is to provide a basic overview of measures which the public defender of rights has been proposing for many years with a view to improving the educational process in Slovakia and to point to the current status of changes adopted to remove systemic discrimination and segregation in education (and also potential shortcomings in these changes and the questions raised during their implementation). The report also contains an evaluation as regards the extent to which the measures proposed by the public defender of rights have been adopted. The report is not intended to cover the whole range of changes brought by individual steps undertaken by competent authorities in the relevant area, nor can it be drawn up to such level of detail that every single measure, initiative, plan or project is assessed. It focuses only on the most important changes with which the Slovak Republic responded to the initiation of infringement proceedings and which were adopted in order to prevent continued violation of children's basic right to education.

It is beyond any doubt that, since the initiation of the infringement proceedings, the education ministry has been continuously working on the preparation of steps aimed at improving the fulfilment of the rights of all children and pupils to education, with a special focus on children and pupils with a certain type of disadvantage, irrespective of whether due to health, social or other reasons. Some of them have translated into arrangements adopted in the form of generally binding regulations, the ministry's instructions or guidelines, while others have the form of short- or long-term projects to support inclusive educational practice.

Even though the Schools Act explicitly prohibits discrimination and segregation, it cannot prevent the occurrence of discriminatory practices and remove them from everyday practice at schools. Making legislative changes is not enough. The change which is expected to be in the best interest of children and society not only by the European Commission, but also by the Office, can only be delivered by internalisation of the goals pursued by the amendment provisions, by their actual application in practice, and by changing the mindsets of all who are involved in making changes in the school system. However, the practice in the recent years, as confirmed by investigations of various institutions as well as petitions addressed to the Office, has built on the classical educational model that does not work with "Otherness", especially when it comes to the Roma minority.

Having thoroughly examined the package of specific measures aimed at contributing to the overall improvement of the situation in the school system, and comparing them with the measures proposed by my predecessor, I have to state that the reforms implemented by the Ministry did not result in an obvious progress even though they seemed to be promising at first as regards putting an end to discrimination and segregation in education. In order to meet their promised purpose, the government should implement them with all due respect by means of desegregation measures that will be as specific and sustainable as possible.

Therefore my recommendation is ensuring a general change in positions, a shift in the mainstream population's attitude towards minority while accepting diversity as something that enriches society, as well as tolerating "otherness". In fact, it is in the interest of all of us to take all steps necessary to ensure that discrimination and segregation will no longer be part of the educational process in Slovakia. The motivation to such conduct should not just be the attempts to avoid judicial proceedings by European structures, but mainly the genuine commitment to ensure equal treatment for all, to ease tensions between the majority and minority populations, and in particular the effort to improve the conditions in the training and education of our children and to ensure their universal personal development, social inclusion and prospects in the future.