

In Bratislava, 26 March 2024
Our. No. 2504/2024/KVOP

Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg Cedex
FRANCE

Application no. 29359/22
Adrián SALAY against Slovakia

Written Third Party Submissions

on behalf of the

PUBLIC DEFENDER OF RIGHTS

INTRODUCTION

1. This written submissions is provided under the leave to intervene as a third party in the Court's proceedings, granted by the President of the Section under Rule 44 § 3 of the Court. In this submission, the Public Defender of Rights provides an analysis that encapsulates research findings of the Office of the Public Defender of Rights on the effects of legislative measures, policies, and practices enacted by Slovak authorities. These have contributed to discriminatory diagnostic procedures and, consequently, the overrepresentation of Roma children in special education, thereby infringing upon their right to education. Additionally, the submission includes recent relevant data underscoring the disproportionate enrolment of Roma children in special education settings.
2. According to Article 151a of the Constitution of the Slovak Republic, the Public Defender of Rights is an independent body which in the scope and in manner laid down by a law shall participate in the protection of the fundamental rights and freedoms of natural persons and legal persons in the proceedings, decision making or inactivity of public administration bodies, if their proceedings, decision making or inactivity is inconsistent with legal order or with principles of a democratic state and rule of law.

3. The Public Defender of Rights, in accordance with Section 13(1) of Act No. 564/2001 Coll., acts based on complaints from natural persons or legal entities or on their own initiative.

RESEARCH FINDINGS AND INSIGHTS BY THE PUBLIC DEFENDER OF RIGHTS

4. The Office of the Public Defender of Rights has long been addressing the violation of the right to education for Roma children in the Slovak education system. In 2013, my predecessor, Mrs. Jana Dubovcová, published the first report¹ on the issue based on a research conducted by the Office of the Public Defender of Rights. As part of her priority tasks, she decided to conduct monitoring on her own initiative and focus attention on the application of the right to education for members of the Roma national minority.
5. The Public Defender of Rights conducted the research in response to the findings of institutions, both domestic and foreign NGOs and international organizations that repeatedly pointed out several systematic issues in the functioning of the country's educational system and raised concerns of persistent discrimination against Roma children in the Slovak school system.
6. The research aimed to examine whether the Roma children were overrepresented in classes and schools for pupils with special educational needs (special classes and schools). The research focused on determining the ratio of Roma and non-Roma children in the first grades of classes and schools for pupils with special educational needs in the school year 2012/2013. Furthermore, it aimed to look at the possibilities of transferring pupils to regular mainstream classes and schools designated for pupils without special educational needs.
7. The Public Defender of Rights investigated whether forms of racial discrimination continue to exist within the Slovak educational system and, consequently, whether there is a breach of Article 12, Section 2² in conjunction with Article 42, Section 1³ of the Constitution of the Slovak Republic, as well as various international treaties to which the Slovak Republic is a party.
8. Due to budgetary limitations, the Office of the Public Defender of Rights conducted research within a confined selection of educational institutions. From June 4 to 17, 2013, the Office's staff investigated 21 Slovak schools, encompassing mainstream elementary schools with special classes or special elementary schools across Slovakia.

¹ Public Defender of Rights, "Report on the Implementation of the Right to Education for Children/Students from the Roma National Minority with Special Educational Needs" (Bratislava, July 2013), available online: <https://vop.gov.sk/report/uplatnovanie-a-vykonavanie-prava-na-vzdelavanie-romskej-a-rusinskej-narodnostnej-mensiny-so-zameranim-na-pristup-k-vzdelavaniu-a-zaradovaniu-deti-do-predskolskej-pripravy-a-do-skolskeho-vzdelavania-a/> (original title in Slovak: "Správa verejnej ochrankyne práv o uplatňovaní práva na vzdelanie detí/žiacov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami")

² Article 12, Section 2 of the Slovak Constitution states: „Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.“

³ Article 42, Section 1 of the Slovak Constitution states: „Everyone shall have the right to education. School attendance is compulsory. A law shall lay down the length of attendance.“

9. The monitoring results revealed that across all surveyed special schools and elementary schools with special classes (encompassing 30 classes across 17 elementary schools), were 230 pupils enrolled in the first grade for the 2012/2013 school year. Out of these, as many as 204 were of Roma origin, constituting approximately 88.69%.⁴
10. In the report, the Public Defender of Rights highlighted this as concerning, stating, "The observed high prevalence of Roma pupils in special schools and classes for children with mild mental disabilities is alarming."⁵
11. In connection with the implementation of re-diagnosis, the monitoring primarily assessed whether, during the 2012/2013 school year, any of the schools under review had reclassified a first-grade student from the category of pupils with special educational needs to that of regular pupils, and thereafter, whether they were transferred to a regular mainstream elementary school or to a class for children without special educational needs.
12. During the assessment of the re-diagnostic outcomes, the Office of the Public Defender of Rights staff found that none of the scrutinized schools reported any instances where a student was re-diagnosed and subsequently transferred to a regular mainstream school or a class for children without special educational needs, even though some directors of the visited schools stated that such cases occurred sporadically in the past.
13. Reflecting on the monitoring outcomes, the Public Defender of Rights noted in the report, "This observation confirms the belief that being categorized as a pupil with special educational needs in the Slovak Republic's education system represents more or less a permanent association with exclusive education in a special class or special school. Such placement essentially and invariably predetermines the student's future and the extent (scope) of the primary education they can receive."⁶
14. Furthermore, the Public Defender of Rights emphasized in the report, "[...]Roma individuals educated under these conditions practically lack the opportunity to pursue higher levels of education, such as obtaining complete secondary vocational or general secondary education. This limitation significantly affects their future integration into the labour market, their economic and social circumstances, and consequently, the well-being of their families and children."⁷
15. Given that the Public Defender of Rights uncovered facts indicating that certain authorities' actions resulted not only in severe breaches of fundamental rights and freedoms but also affected a broad segment of the population, including numerous minor children, particularly from the Roma national minority, the Public Defender of

⁴ Public Defender of Rights, "Report on the Implementation of the Right to Education for Children/Students from the Roma National Minority with Special Educational Needs" (Bratislava, July 2013), page 19, available online: <https://vop.gov.sk/report/uplatnovanie-a-vykonavanie-prava-na-vzdelavanie-romskej-a-rusinskej-narodnostnej-mensiny-so-zameranim-na-pristup-k-vzdelavaniu-a-zaradovaniu-deti-do-predskolskej-pripravy-a-do-skolskeho-vzdelavania-a/> (original title in Slovak: "Správa verejnej ochrankyne práv o uplatňovaní práva na vzdelanie detí/žiacov príslušníkov rómskej národnostnej menšiny so špeciálnymi výchovno-vzdelávacími potrebami")

⁵ Ibid., page 25.

⁶ Ibid., page 21.

⁷ Ibid., page 21.

Rights exercised its authority and submitted the findings as an extraordinary report⁸ to the National Council of the Slovak Republic. Section 24 of the Act on the Public Defender of Rights states, "If the public defender of rights finds facts indicating that an infringement of fundamental rights and freedoms is significant or relates to a larger number of persons, he can submit an extraordinary report to the National Council. The extraordinary report can also contain a proposal for it to be discussed at the next plenary session of the National Council."

DIAGNOSTIC PRACTICES AND EDUCATIONAL ACCESS FOR MARGINALIZED CHILDREN

16. In 2014, Jana Dubovcová, the Public Defender of Rights, continued to investigate educational challenges through her initiative proactively. Her focused monitoring aimed at understanding how the applied diagnostic practices impact the fundamental right to education for children from socially disadvantaged backgrounds, and those encountering cultural, linguistic, and social barriers, notably from the Roma national minority. This involved assessing how these practices influenced the placement of children into either special or mainstream educational streams. An essential reference for this analysis was the European Court of Human Rights decision on November 13, 2007, in the case of D.H. and Others vs. the Czech Republic (application no. 57325/00).
17. The monitoring's findings were documented in a report.⁹ The monitoring was implemented through a questionnaire completed by 18 directors of selected elementary schools with special classes and special elementary schools and 22 directors of chosen centres for educational-psychological counselling and prevention. The monitoring occurred from May to June 2014, with schools uniformly represented from each region and centers selected based on the selected schools.
18. The monitoring results revealed that diagnostic centers fail to consider the unique circumstances of Roma children when assessing their school readiness. The findings revealed that most centers employed identical tests and tools to evaluate the school readiness of children from the Roma national minority facing cultural, social, and linguistic barriers, just as they would for other children from socially disadvantaged backgrounds.
19. In the report, the Public Defender of Rights concluded, "This approach results in the violation of the fundamental human right not to be discriminated against, the breach of the prohibition of discrimination, and, since the subjects of discrimination are children, also the violation of their right to special protection, breaching the principle of acting in the best interest of the child concerning those Roma national minority children who

⁸ Public Defender of Rights, "Extraordinary Report on the Facts Indicating Serious Violation of Fundamental Rights and Freedoms by Certain Authorities" (Bratislava, August 2013), available online: <https://vop.gov.sk/report/mimoriadna-sprava-2013/> (original title in Slovak: "Mimoriadna správa verejného ochrancu práv o skutočnostiach nasvedčujúcich závažnému porušeniu základných práv a slobôd konaním niektorých orgánov").

⁹ Public Defender of Rights, "Report on the Practice of Testing School Readiness and Its Impact on the Fundamental Rights of Children from Non-Stimulating Environments with Cultural, Social, and Language Barriers, Particularly from the Roma National Minority" (Bratislava, July 2014), available online: <https://vop.gov.sk/report/uplatnovanie-a-vykonavanie-prava-na-vzdelavanie-dietata-z-nepodnetneho-prostredia-podla-jeho-skolskej-sposobilosti/> (original title in Slovak: "Správa verejnej ochrankyne práv o vplyve praxe testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny").

come from socially disadvantaged environments and marginalized Roma communities. The violation of their fundamental rights, including the right to education, occurs in the way described above for diagnosing their school readiness. The discrimination against these children occurs due to the absence of different treatment for them. It is a case where the state, without an objective and reasonable reason, does not treat the persons whose situations are significantly different differently."¹⁰

20. The Public Defender of Rights further stated that "in such a case, equal treatment, i.e., using the same set of tests and tools for assessing the school readiness of a child, is not explainable by an objective, reasonable, and legally acceptable reason. The absence of different treatment in examining the school readiness of a Roma child from a socially disadvantaged and marginalized community, thus not considering his social, cultural, and language barriers in school readiness tests, in diagnostic methodology, applied methods, undoubtedly impacts the examination results and subsequently the placement of the child into an educational stream [mainstream or special education]."¹¹
21. The Public Defender of Rights also noted in the report, "The result is often that the child is placed in an educational setting outside the mainstream educational stream.[...]."¹²
22. Building on the findings, the Public Defender of Rights emphasized in the report that the existing method of diagnosing and re-diagnosing children confirms already known facts. The result very likely explains why there is such a high percentage of children from the Roma national minority diagnosed as children with mental disabilities (often with a mild degree of mental disability) in the Slovak Republic.
23. The Public Defender of Rights also warned that a pupil educated in special education will not be able to achieve complete secondary education with a graduation exam or any level of university education.
24. Children who are educated in special classes and schools for pupils with mental disabilities by completing the last year of special elementary school receive only primary education (ISCED 1). In contrast, children educated in regular elementary schools and classes acquire lower secondary education after completing elementary school (ISCED 2).¹³ Lower secondary education is one of the conditions¹⁴ for admission to secondary education with a matriculation exam, such as gymnasium or vocational school. Students who have attained only primary education can continue their education at a practical¹⁵

¹⁰ Public Defender of Rights, "Report on the Practice of Testing School Readiness and Its Impact on the Fundamental Rights of Children from Non-Stimulating Environments with Cultural, Social, and Language Barriers, Particularly from the Roma National Minority" (Bratislava, July 2014), page 13 and 14, available online: <https://vop.gov.sk/report/uplatnovanie-a-vykonavanie-prava-na-vzdelavanie-dietata-z-nepodnetneho-prostredia-podla-jeho-skolskej-sposobilosti/> (original title in Slovak: "Správa verejnej ochrankyne práv o vplyve praxe testovania školskej spôsobilosti na základné práva dieťaťa z nepodnetného prostredia s kultúrnou, sociálnou, jazykovou bariérou, najmä z rómskej národnostnej menšiny").

¹¹ Ibid., page 14.

¹² Ibid., page 14.

¹³ §16, (3) a of Act No. 245/2008 Coll. Act on Education (School Act) and on amendments to certain acts, see also State Educational Program for Children and Students with Health Disadvantages, Educational Program for Children and Students with Mental Disabilities, Educational Program for Children with Mental Disabilities ISCED 1.

¹⁴ § 62 of Act No. 245/2008 Coll.

¹⁵ §99 of Act No. 245/2008 Coll.

or vocational training school¹⁶. It is not possible to undertake matriculation exams at these schools.

25. Despite the amendment to Act No. 245/2008 Coll., the School Act, effective from January 1, 2022, which modified the prerequisites and opportunities for pupils, including those from special classes and schools for students with mental disabilities, to acquire lower secondary education through commission exams¹⁷ or external testing¹⁸, the prospects for these pupils to pursue further education after graduating from a special school continue to remain extremely limited due to significantly reduced curriculum taught in special schools.
26. Therefore, in the conclusion of the report, the Public Defender of Rights recommended the elimination of variant A in special schools for pupils with mild mental disability. She also recommended ensuring that diagnostic centers have at their disposal and use a diagnostic examination methodology that appropriately considers the abilities of children coming from socially disadvantaged and marginalized Roma communities.

IMPACT OF SPECIAL EDUCATION AND RECENT DATA ON THE OVERREPRESENTATION OF ROMA CHILDREN IN SPECIAL EDUCATION

27. In April 2023, The European Commission decided to refer Slovakia to the Court of Justice of the European Union for failing to effectively tackle the issue of segregation of Roma children in education.¹⁹
28. The European Commission in its statement stated that “Slovakia has undertaken a series of legislative reforms and adopted several strategies and action plans to foster Roma inclusion in education. However, after carefully assessing those measures and monitoring the situation on the ground, the Commission concluded that the reforms undertaken so far are insufficient.”²⁰ Despite various legislative and policy initiatives aimed at fostering integration, Roma children in Slovakia thus continue facing educational barriers. These children are often placed in special schools and classes for students with mild mental disabilities. Many Roma children who are educated in mainstream schools are taught in separate classes or schools.
29. The Commission's statement references a survey²¹ conducted by the European Union Agency for Fundamental Rights, which singled out Slovakia as one of the two EU countries with the highest levels of educational segregation. Specifically, around 65% of Roma children from marginalized communities in Slovakia, aged 6 to 15, attend schools predominantly comprised of Roma pupils—a five percentage point increase since 2016, according to data from EU-MIDIS II and EU-SILC MRK 2020. Similarly, the FRA reports that Bulgaria experiences comparable levels of educational segregation.²²

¹⁶ §100 of Act No. 245/2008 Coll.

¹⁷ § 31a of Act No. 245/2008 Coll.

¹⁸ § 155 (9) of Act No. 245/2008 Coll.

¹⁹ European Commission. "The European Commission Decides to Refer SLOVAKIA to the Court of Justice of the European Union for Not Sufficiently Addressing Discrimination Against Roma Children at School." Press release. available online: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2249.

²⁰ Ibid.

²¹ European Union Agency for Fundamental Rights, "ROMA IN 10 EUROPEAN COUNTRIES — MAIN RESULTS," 2023, p. 40, available online: <https://fra.europa.eu/en/publication/2022/roma-survey-findings>.

²² Ibid.

30. As the Public Defender of Rights, this recent action by the European Commission to refer Slovakia to the Court of Justice of the European Union resonates deeply with our findings and concerns. The persistence of segregation and the continued placement of Roma children in special education underscores systemic issues that have yet to be effectively addressed within our national educational framework.
31. Despite the legislative reforms, strategies, and action plans implemented to promote Roma inclusion, recent data continue to point to a worrying trend: the overrepresentation of Roma children in special education remains unabated. This situation not only highlights the challenges in achieving genuine integration but also reflects on the effectiveness of the measures taken so far.
32. According to the January 2019 report from the Ministry of Finance of the Slovak Republic, children from marginalized Roma communities are overrepresented in special education, comprising 63% of pupils in special classes. Furthermore, 16.1% of children from marginalized Roma communities are educated in special education with a diagnosis of mild mental disability, which is five times higher than the overall population (3.2%).²³
33. According to the EU SILC_MRK 2020 data, 17% of children from Marginalized Roma Communities (MRK) aged 6 to 15 years are educated in a special schools or special classes.²⁴
34. Among the children from MRK, boys were more frequently placed into special education (20%) compared to girls (13%). According to the EU SILC_MRK findings compared to 2018, there has been a decrease in the proportion of children aged 6 to 15 in special education within MRK by four percentage points - from 21% to the aforementioned 17%. However, compared to the overall population, it is still about three times higher.²⁵
35. Furthermore, the 2019 report from the Ministry of Finance of the Slovak Republic also underscores the significant issue of the disproportionately large number of pupils in general being educated in special schools in Slovakia compared to other countries. According to the report, the proportion of students in special education in Slovakia is almost four times higher than the EU average. The majority of pupils in special schools and classes (71%) are those with mild mental disabilities.²⁶
36. According to the EU SILC_MRK 2020 data, up to 63% of children from Marginalized Roma Communities aged 6 to 15 years in special education are educated in classes with only Roma classmates, while schools with exclusively Roma students are attended by 32% of pupils from Marginalized Roma Communities in special education. According to the authors of the analysis, this points to the creation of classes composed solely of

²³ Ministry of Finance of the Slovak Republic. "Expenditure Review on Groups at Risk of Poverty or Social Exclusion," January 2019, p. 7 and 21. available online: <https://www.mfsr.sk/sk/media/tlacove-spravy/uhp-revizia-vydavkov-skupiny-ohrozene-chudobou.html>.

²⁴ Filip Markovič and Ľudmila Plachá, "Income and Living Conditions in Marginalized Roma Communities: Selected Indicators from the EU SILC_MRC 2020 Survey (Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020)," Office of the Plenipotentiary of the Slovak Government for Roma Communities, 2020, p. 34.

²⁵ Ibid., page 34.

²⁶ Ministry of Finance of the Slovak Republic. "Expenditure Review on Groups at Risk of Poverty or Social Exclusion," January 2019, p. 7, Available at: <https://www.mfsr.sk/sk/media/tlacove-spravy/uhp-revizia-vydavkov-skupiny-ohrozene-chudobou.html>

children from Marginalized Roma Communities in schools that also educate non-Roma children.²⁷

37. In the context of diagnostic procedures applied for determination of the diagnosis, it is also important to note that 73% of students from MRK in special schools and classes live in households where Romani is the primary language of communication.²⁸
38. According to the statistical collection of the Ministry of Education, Science, Research, and Sport of the Slovak Republic, in the school year 2022/2023 out of a total of 482,426 primary school pupils, 26,439 pupils attended special primary schools or special classes, which is 5.48%. Of these, 17,728 pupils were diagnosed with mental disability and of these, 12,189 pupils were diagnosed with mild mental disability (variant "A").²⁹
39. Furthermore, the Ministry of Education, Science, Research, and Sport of the Slovak Republic states that despite the total number of primary school pupils decreasing by approximately 250,000 over the last 35 years, the number of children and pupils placed into the special education stream remains almost constant, fluctuating around the number 25,000.³⁰
40. The Ministry of Education also stated that since 2018, in connection with the adoption of several important legislative changes and administrative measures, the overall trend in placing students with diagnosed mental disabilities into the special education stream has reversed, "but this cannot yet be considered a significant breakthrough. Contributing to this are the barely implemented or almost not at all realized transitions of students from special to mainstream education, for which a re-diagnosis of students is necessary."³¹

CONCLUSION

41. In conclusion, this third-party intervention by the Public Defender of Rights emphasizes the significant and systemic barriers Roma children face within the national education framework.
42. The Public Defender of Rights has drawn attention to recurring themes such as the disproportionate placement of Roma children in special education, the flawed testing procedures, and the lack of effective re-evaluation mechanisms. These issues form part of a broader pattern of discrimination that severely impairs the rights of Roma children to fair, equitable, and inclusive education.

²⁷ Filip Markovič and Ľudmila Plachá, "Income and Living Conditions in Marginalized Roma Communities: Selected Indicators from the EU SILC_MRC 2020 Survey (Príjmy a životné podmienky v marginalizovaných rómskych komunitách: Vybrané ukazovatele zo zisťovania EU SILC_MRK 2020)," Office of the Plenipotentiary of the Slovak Government for Roma Communities, 2020, p. 35, accessed [17/03/2024], https://www.romovia.vlada.gov.sk/site/assets/files/1561/analyticka_sprava_eu_silc_mrk_2020_elektronicka_final.pdf.

²⁸ Ibid., page 36.

²⁹ Ministry of Education, Research, Development and Youth of the Slovak Republic. Methodological guide desegregation in education and training. 2024, p.35, available online: <https://www.minedu.sk/desegregacia/>

³⁰ Ibid.

³¹ Ibid.

43. The alarming overrepresentation of Roma children in special classes and schools for students with mild intellectual disabilities has a fundamental impact on their later employment prospects. By violating the right to education without discrimination, it brings entire generations from marginalized Roma communities to a perpetual cycle of poverty.³²
44. Education serves as a crucial instrument for advancing equality and alleviating poverty. Research findings show that for children originating from marginalized Roma communities in Slovakia, there is up to a 70% likelihood that they, like their parents, will become unemployed or will work for less than the minimum wage in irregular employment.³³
45. In light of the evidence presented and the implications, this submission respectfully requests the Court to consider the documented patterns of discrimination and the failure of national measures to rectify these deep-rooted issues.
46. The principles at stake include the fundamental right to non-discriminatory education, as enshrined in Article 2 of Protocol No. 1 and Article 14 of the European Convention on Human Rights. The application of these principles in the context of Slovakia's education system, primarily as it affects Roma children, is of significant concern.
47. Moreover, this submission stresses the importance of cultural sensitivity and the need for regular, unbiased assessments within educational settings. It emphasizes the necessity for the state to adopt proactive measures to prevent and address segregation and discrimination, ensuring that all children, irrespective of their ethnic origin, have equal access to quality education.
48. Regarding testing and diagnosis of children from Roma marginalized communities, the Public Defender of Rights also recommended that the National Council of the Slovak Republic adopt legal measures to ensure that children's diagnostics are based on longer-term observation and evaluation of their development through diagnostic examinations. These examinations should consider the abilities of children from socially disadvantaged environments of marginalized Roma communities, aiming to identify each child's strengths and weaknesses for their inclusive education.
49. The Public Defender of Rights hopes that the evidence and principles outlined in this submission will aid the Court's understanding of the systemic nature of the challenges faced by Roma children in Slovakia's educational system.

Sincerely,

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Public Defender of Rights

³² Public Defender of Rights, 'Annual Report 2019', p. 14 available online: <https://vop.gov.sk/vyrocné-spravy/>

³³ Michaela Bednarik, Slavomir Hidas, Gabriel Machlica, 'Enhancing the Social Integration of Roma', Organisation for Economic Co-operation and Development, 2019, p. 8.